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# Federal Register

Friday
July 23, 1999

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# Contents

**Federal Register**

Vol. 64, No. 141

Friday, July 23, 1999

**American Battle Monuments Commission**
NOTICES
Meetings:
Utah Beach, Normandy, France; Wall of Liberty Foundation World War II memorial project; proposed construction, 39967

**Arts and Humanities, National Foundation**
*See* National Foundation on the Arts and the Humanities

**Blind or Severely Disabled, Committee for Purchase From People Who Are**
*See* Committee for Purchase From People Who Are Blind or Severely Disabled

**Centers for Disease Control and Prevention**
NOTICES
Meetings:
Disease, Disability, and Injury Prevention and Control Special Emphasis Panel, 40008

**Commerce Department**
*See* Export Administration Bureau
*See* International Trade Administration
*See* National Oceanic and Atmospheric Administration
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 39969–39970

**Committee for Purchase From People Who Are Blind or Severely Disabled**
NOTICES
Procurement list; additions and deletions, 39967–39969
Procurement list; additions and deletions; correction, 39969

**Commodity Futures Trading Commission**
RULES
Commodity Exchange Act:
Alternative methods of compliance with requirements for disclosure of exchange disciplinary information and access denial actions, 39915–39918
Deficiencies, inaccuracies, and changes resulting from exchange disciplinary and access denial actions; reporting requirements, 39912–39913
National Futures Association; performance of certain functions with respect to exchange disciplinary and access denial actions, 39913–39915

**Customs Service**
NOTICES
Customhouse broker license cancellation, suspension, etc.:
Hardy, Robert W., et al.; retraction, 40060
Sterling International et al., 40060–40061

**Employment and Training Administration**
NOTICES
Adjustment assistance:
American Silicon Technologies, 40046
Consolidated Coal Co., 40046
International Paper Corp., 40046–40047
Maine Rubber International et al., 40047–40048
Environmental statements; availability, etc.:
Jacksonville, FL; Job Corps Center relocation to Walgreen Road, 40048
NAFTA transitional adjustment assistance:
Fairfield Industries Inc., 40048

**Employment Standards Administration**
NOTICES
Agency information collection activities:
Proposed collection; comment request, 40048–40049
Minimum wages for Federal and federally-assisted construction; general wage determination decisions, 40049–40050

**Energy Department**
*See* Federal Energy Regulatory Commission
NOTICES
Meetings:
Environmental Management Site-Specific Advisory Board—
Oak Ridge Reservation, TN, 39972

**Environmental Protection Agency**
RULES
Air quality implementation plans; approval and promulgation; various States:
California, 39920–39927
Practice and procedure:
Civil penalties administrative assessment, compliance or corrective action orders issuance, and permits revocation, termination, or suspension, 40137–40190
Water pollution control:
Ocean dumping; site designations—
San Francisco Deep Ocean Disposal Site, CA, 39927–39934
PROPOSED RULES
Air quality implementation plans; approval and promulgation; various States:
California, 39963
Grants and other Federal assistance:
State and local assistance—
Indian Tribes; environmental program grants, 40083–40103
State, interstate, and local government agencies; environmental program grants, 40063–40081
Hazardous waste:
Identification and listing—
Dye and pigment industries, 40191–40230
NOTICES
Agency information collection activities:
Proposed collection; comment request, 39986–39987
Submission for OMB review; comment request, 39987–39989
Environmental statements; availability, etc.:
Agency statements—
Comment availability, 39989–39990
Weekly receipts, 39990–39991
Superfund; response and remedial actions, proposed settlements, etc.:
Clearwater Finishing Site, SC, 39991
John P. Saad Site, TN, 39991
Waste, Inc., Site, IN, 39991–39992

**Executive Office of the President**
*See* Presidential Documents

**Export Administration Bureau**
**RULES**
Export licensing:
Commerce control list—
Wassenaar Arrangement List of Dual-Use Items; implementation; commerce control list revisions and reporting requirements, 40105–40135

**Federal Aviation Administration**
**RULES**
Airworthiness standards:
Special conditions—
Raytheon Model 390 airplane, 39899–39912
**PROPOSED RULES**
Airworthiness directives:
Airbus, 39946–39949
McDonnell Douglas, 39944–39946
Class E airspace, 39949–39951
**NOTICES**
Passenger facility charges; applications, etc.:
Oakland, CA, et al., 40055–40057

**Federal Communications Commission**
**RULES**
Common carrier services:
Domestic telecommunications; deregulated entry requirements and streamlined exit requirements, 39938–39940
Radio services, special:
Private land mobile services—
900 MHz specialized mobile radio service; construction requirements for Metropolitan Trading Area licensees; correction, 39942–39943
Radio stations; table of assignments:
Colorado, 39940–39941
Kansas, 39940–39941
Various States, 39941–39942
**PROPOSED RULES**
Radio stations; table of assignments:
Georgia, 39964
Texas, 39963–39965
Vermont, 39965
**NOTICES**
Agency information collection activities:
Proposed collection; comment request, 39992–39993
Reporting and recordkeeping requirements, 39993–39994
Submission for OMB review; comment request, 39994–39995
Common carrier services:
Wireless telecommunications services—
AM, FM, TV, LPTV, and FM and TV translator construction permits; closed broadcast auction; minimum opening bids and other procedural issues, 39995–40004

**Federal Deposit Insurance Corporation**
**NOTICES**
Meetings; Sunshine Act, 40004

**Federal Emergency Management Agency**
**NOTICES**
Disaster and emergency areas:
North Dakota, 40004–40005
South Dakota, 40005
Texas, 40005

**Federal Energy Regulatory Commission**
**NOTICES**
Agency information collection activities:
Proposed collection; comment request, 39972–39973
Electric rate and corporate regulation filings:
Minergy Neenah, L.L.C., et al., 39973–39976
Hydroelectric applications, 39976–39986
*Applications, hearings, determinations, etc.:*
N.E.W. Hydro, Inc., 39973

**Federal Reserve System**
**NOTICES**
Banks and bank holding companies:
Change in bank control, 40005–40006
Formations, acquisitions, and mergers, 40006–40007
Permissible nonbanking activities, 40007
Meetings; Sunshine Act, 40007

**Food and Drug Administration**
**RULES**
Animal drugs, feeds, and related products:
Marbofloxacin tablets, 39918–39919
**NOTICES**
Agency information collection activities:
Reporting and recordkeeping requirements, 40008
Submission for OMB review; comment request, 40008–40012
Grants and cooperative agreements; availability, etc.:
Orphan drug products; safety and effectiveness in rare diseases and conditions; clinical studies, 40012–40016
Meetings:
Medical Devices Advisory Committee, 40016–40017

**Health and Human Services Department**
*See* Centers for Disease Control and Prevention
*See* Food and Drug Administration
*See* Health Care Financing Administration
*See* Health Resources and Services Administration
*See* National Institutes of Health
**NOTICES**
Agency information collection activities:
Submission for OMB review; comment request, 40007–40008

**Health Care Financing Administration**
**RULES**
Medicare and Medicaid:
Nurse aide training programs loss; appeal, 39934–39938
**NOTICES**
Agency information collection activities:
Submission for OMB review; comment request, 40017–40018

**Health Resources and Services Administration**
**NOTICES**
Committees; establishment, renewal, termination, etc.:
Childhood Vaccines Advisory Commission, 40018

**Housing and Urban Development Department**
**PROPOSED RULES**
Low-income housing:
One-strike screening and eviction for drug abuse and other criminal activity, 40261–40280
Public housing developments; required conversion to tenant-based assistance, 40231–40237
Public housing developments; voluntary conversion to tenant-based assistance, 40239–40248

**NOTICES**
Agency information collection activities:
Proposed collection; comment request, 39969, 40029–40030
Submission for OMB review; comment request, 39970
Grants and cooperative agreements; availability, etc.:
Facilities to assist homeless—
Excess and surplus Federal property, 40031
Healthy Homes Initiative, 40249–40259
Mortgage and loan insurance programs:
Debenture interest rates, 40031–40032
Privacy Act:
Systems of records, 40032–40034

**Interior Department**
*See* Land Management Bureau
*See* National Park Service

**International Trade Administration**
**NOTICES**
Antidumping:
Live cattle from—
CaNada, 39970–39971
Polychloroprene rubber from—
Japan, 39971
*Applications, hearings, determinations, etc.:*
University of—
California at Santa Barbara, 39972
Illinois at U/C, 39971–39972

**International Trade Commission**
**NOTICES**
Import investigations:
Video graphics display controllers and products containing same, 40042–40043

**Justice Department**
*See* National Institute of Corrections
**NOTICES**
Pollution control; consent judgments:
Carlos R. Leffler, Inc., 40043
FMC Corp., 40043–40044
Homestake Mining Co. of California, 40044
New York City Housing Preservation and Development Department, 40044–40045

**Labor Department**
*See* Employment and Training Administration
*See* Employment Standards Administration

**Land Management Bureau**
**NOTICES**
Environmental statements; notice of intent:
Pony Express Resource Management Plan, UT; correction, 40034

**National Foundation on the Arts and the Humanities**
**NOTICES**
Agency information collection activities:
Proposed collection; comment request, 40050–40051

**National Institute of Corrections**
**NOTICES**
Grants and cooperative agreements; availability, etc.:
Staff sexual misconduct with inmates; investigations of allegations; training curriculum development, 40045–40046

**National Institutes of Health**
**NOTICES**
Meetings:
National Cancer Institute, 40018–40020
National Heart, Lung, and Blood Institute, 40020
National Institute of Allergy and Infectious Diseases, 40021–40022
National Institute of Child Health and Human Development, 40020–40021
National Institute of Diabetes and Digestive and Kidney Diseases, 40022–40024
National Institute of Environmental Health Sciences, 40022–40023
National Institute of Mental Health, 40024
National Institute of Neurological Disorders and Stroke, 40022
National Institute on Aging, 40023
National Institute on Alcohol Abuse and Alcoholism, 40023
Scientific Review Center, 40024–40029

**National Oceanic and Atmospheric Administration**
**PROPOSED RULES**
Fishery conservation and management:
West Coast States and Western Pacific fisheries—
Pacific Coast groundfish; exempted fishing permit, 39965–39966

**National Park Service**
**NOTICES**
Environmental statements; availability, etc.:
New Orleans Jazz National Historical Park, LA, 40034–40037
Vancouver National Historical Reserve, WA, 40037
Yosemite National Park, CA; Merced Wild and Scenic River management plan, 40037–40038
Native American human remains and associated funerary objects:
California Parks and Recreation Department, CA; inventory from Cuyamaca Rancho State Park, CA, 40038
Minnesota Indian Affairs Council, MN—
Inventory, 40039–40040
University of Arkansas, University Museum, AR—
Inventory from Montgomery County, IL, 40041
Kohler Mound, IL, shell-tempered pottery vessel and animal bone tools, 40040–40041
University of Pennsylvania, Museum of Archaeology and Anthropology, PA—
Inventory, 40041–40042
Reports and guidance documents; availability, etc.:
Reference Manual 53; wireless telecommunication facilities in National Park Service units; guidance for park managers, 40042

**Neighborhood Reinvestment Corporation**
**NOTICES**
Meetings; Sunshine Act, 40051

**Postal Service**
**NOTICES**
Meetings; Sunshine Act, 40051–40052

**Presidential Documents**
**ADMINISTRATIVE ORDERS**
Iraq; continuation of emergency (Notice of July 20, 1999), 39897

**Presidio Trust**
**PROPOSED RULES**
Management of the Presidio; general provisions, etc.:
Environmental quality, 39951–39963

**Public Health Service**
*See* Centers for Disease Control and Prevention
*See* Food and Drug Administration
*See* Health Resources and Services Administration
*See* National Institutes of Health

**Research and Special Programs Administration**
**NOTICES**
Hazardous materials:
Applications; exemptions, renewals, etc., 40057–40059

**Securities and Exchange Commission**
**RULES**
Securities:
Reports made by brokers and dealers; CFR correction, 39918
**NOTICES**
Meetings; Sunshine Act, 40054–40055
*Applications, hearings, determinations, etc.:*
Colchester Street Trust et al., 40052–40054

**Social Security Administration**
**NOTICES**
Agency information collection activities:
Proposed collection; comment request, 40055

**Transportation Department**
*See* Federal Aviation Administration
*See* Research and Special Programs Administration

**Treasury Department**
*See* Customs Service
*See* United States Mint
**NOTICES**
Agency information collection activities:
Submission for OMB review; comment request, 40059–40060

**United States Information Agency**
**NOTICES**
Meetings:
Cultural Property Advisory Committee, 40061

**United States Mint**
**RULES**
Exchange of paper currency and coin:
Melting discontinuance and substitution of mechanical means to destroy mutilated coins, 39919–39920

---

**Separate Parts In This Issue**

**Part II**
Environmental Protection Agency, 40063–40081

**Part III**
Environmental Protection Agency, 40083–40103

**Part IV**
Department of Commerce, Bureau of Export Administration, 40105–40135

**Part V**
Environmental Protection Agency, 40137–40190

**Part VI**
Environmental Protection Agency, 40191–40230

**Part VII**
Department of Housing and Urban Development, 40231–40237

**Part VIII**
Department of Housing and Urban Development, 40239–40248

**Part IX**
Department of Housing and Urban Development, 40249–40259

**Part X**
Department of Housing and Urban Development, 40261–40280

---

**Reader Aids**
Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

## CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

**3 CFR**

**Executive Orders**

12722 (See Notice of July 20, 1999) ..... 39897
12724 (See Notice of July 20, 1999) ..... 39897

**Administrative Orders**

Notice of July 20, 1999 ..... 39897

**14 CFR**

23 ..... 39899

**Proposed Rules:**

39 (2 documents) ..... 39944, 39946
71 (2 documents) ..... 39949, 39950

**15 CFR**

740 ..... 40106
743 ..... 40106
774 ..... 40106

**17 CFR**

3 ..... 39912
9 (2 documents) ..... 39913, 39915
240 ..... 39918

**21 CFR**

520 ..... 39918

**24 CFR**

**Proposed Rules:**

5 ..... 40262
200 ..... 40262
247 ..... 40262
880 ..... 40262
882 ..... 40262
884 ..... 40262
891 ..... 40262
960 ..... 40262
966 ..... 40262
972 (2 documents) ..... 40232, 40240
982 ..... 40262

**31 CFR**

100 ..... 39919

**36 CFR**

**Proposed Rules:**

1010 ..... 39951

**40 CFR**

22 ..... 40138
52 (2 documents) ..... 39920, 39923
228 ..... 39927

**Proposed Rules:**

35 (2 documents) ..... 40064, 40084
52 ..... 39963
148 ..... 40192
261 ..... 40192
268 ..... 40192
271 ..... 40192
302 ..... 40192
745 ..... 40064

**42 CFR**

431 ..... 39934
498 ..... 39934

**47 CFR**

1 ..... 39938
63 ..... 39938
73 (4 documents) ..... 39940, 39941
90 ..... 39942

**Proposed Rules:**

73 (5 documents) ..... 39963, 39964, 39965

**50 CFR**

**Proposed Rules:**

660 ..... 39965

**Federal Register**
Vol. 64, No. 141
Friday, July 23, 1999

# Presidential Documents

**Title 3—**

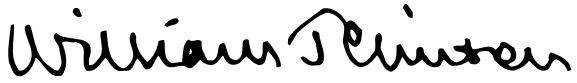
## The President

**Notice of July 20, 1999**

## Continuation of Iraqi Emergency

On August 2, 1990, by Executive Order 12722, President Bush declared a national emergency to deal with the unusual and extraordinary threat to the national security and foreign policy of the United States constituted by the actions and policies of the Government of Iraq. By Executive Orders 12722 of August 2, 1990, and 12724 of August 9, 1990, the President imposed trade sanctions on Iraq and blocked Iraqi government assets. Because the Government of Iraq has continued its activities hostile to United States interests in the Middle East, the national emergency declared on August 2, 1990, and the measures adopted on August 2 and August 9, 1990, to deal with that emergency must continue in effect beyond August 2, 1999. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing the national emergency with respect to Iraq.

This notice shall be published in the **Federal Register** and transmitted to the Congress.



THE WHITE HOUSE,
*July 20, 1999.*

[FR Doc. 99–19043
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# Rules and Regulations

Federal Register
Vol. 64, No. 141
Friday, July 23, 1999

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.

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 23

**[Docket No. CE145; Special Conditions No. 23–096–SC]**

## Special Conditions: Raytheon Model 390 Airplane

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final special conditions.

**SUMMARY:** These special conditions are issued for the Raytheon Aircraft Company Model 390 airplane. This airplane will have a novel or unusual design feature(s) not typically associated with normal, utility, acrobatic, and commuter category airplanes. These design features include turbofan engines, engine location, swept wings and stabilizer, and certain performance characteristics necessary for this type of airplane. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that existing in the current business jet fleet and expected by the user of this class of aircraft.

**EFFECTIVE DATE:** August 23, 1999.

**FOR FURTHER INFORMATION CONTACT:** Lowell Foster, Aerospace Engineer, Standards Office (ACE–110), Small Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration, Room 1544, 601 East 12th Street, Kansas City, Missouri 64106; telephone (816) 426–5688.

**SUPPLEMENTARY INFORMATION:**

### Background

On August 1, 1995, Raytheon Aircraft Company (then Beech Aircraft Corporation), 9707 East Central, Wichita, Kansas 67201, applied for a type certificate for their new Raytheon Model 390 Airplane. The Raytheon Model 390 has a composite fuselage, a metal wing with 22.8 degrees of leading-edge sweepback, and a combination composite/metal empennage in a T-tail configuration with trimmable horizontal tail with 27.3 degrees of leading-edge sweepback. The airplane will accommodate six passengers and a crew of two. The Model 390 will have a $V_{MO}/M_{MO}$ of 320 knots/m.83, and has two turbofan engines mounted on the aft fuselage above and behind the wing.

Raytheon plans to incorporate certain novel and unusual design features into the Model 390 airplane for which the airworthiness regulations do not contain adequate or appropriate safety standards. These features include turbofan engines, engine location, swept wings and stabilizer, and certain performance characteristics necessary for this type of airplane.

### Type Certification Basis

Under the provisions of 14 CFR part 21, § 21.17, Raytheon Aircraft Company must show that the Raytheon Model 390 meets the applicable provisions of 14 CFR part 23, effective February 1, 1965, as amended by Amendments 23–1 through 23–52, effective July 25, 1996; 14 CFR part 36, effective December 1, 1969, through the amendment effective on the date of type certification; 14 CFR part 34; exemptions, if any; and the special conditions adopted by this rulemaking action.

If the Administrator finds that the applicable airworthiness regulations (*i.e.,* 14 CFR part 23) do not contain adequate or appropriate safety standards for the Raytheon Model 390 because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

Special conditions, as appropriate, are issued in accordance with § 11.49 after public notice, as required by §§ 11.28 and 11.29(b), and become part of the type certification basis in accordance with § 21.17(a)(2).

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, the special conditions would also apply to the other model under the provisions of § 21.101(a)(1).

### Novel or Unusual Design Features

The Raytheon Model 390 will incorporate the following novel or unusual design features: These features include turbofan engines, engine location, swept wings and stabilizer, and certain performance characteristics necessary for this type of airplane.

### Performance

The Raytheon Model 390 has a wing with 22.8 degrees of leading-edge sweepback and a T-tail configuration with trimmable horizontal stabilizer with 27.3 degrees of leading-edge sweepback. The Model 390 will have a $V_{MO}/M_{MO}$ of 320 knots/M.83, and it will have two turbofan engines mounted on the aft fuselage.

Previous certification and operational experience with airplanes of like design in the transport category reveal certain unique characteristics compared to conventional aircraft certificated under part 23. These characteristics have caused safety problems in the past when pilots attempted takeoffs and landings, particularly with a large variation in temperature and altitude, using procedures and instincts developed with conventional airplanes.

One of the major distinguishing features of a swept-wing design not considered in current part 23 is a characteristically flatter lift curve without a ''stall'' break near the maximum coefficient of lift, as in a conventional wing. The ''stall'' separation point may occur at a much higher angle of attack than the point of maximum lift, and the angle of attack for maximum lift can be only recognized by precise test measurements or specific detection systems. This phenomenon is not apparent to a pilot accustomed to operating a conventional airplane where increasing angle of attack produces increased lift to the point where the wing stalls. In a swept-wing design, if the pilot does not operate in accordance with established standards developed through a dedicated test program, increasing angle of attack may produce very little lift yet increase drag markedly to the point where flight is impossible. These adverse conditions may be further compounded by the characteristics of turbofan engines, including specified $N_1/N_2$ rotational speeds, temperature, and pressure limits that make its variation in thrust output with changes in temperature and altitude more

complex and difficult to predict. In recognition of these characteristics, Special Civil Air Regulations No. SR–422 and follow-on regulations established weight-altitude-temperature (WAT) limitations and procedures for scheduling takeoff and landing for turbine powered transport category airplanes, so the pilot could achieve reliable and repeatable results under all expected conditions of operation. This entails specific tests such as minimum unstick speed, $V_{MU}$, to ensure that rotation and fly-out speeds are correct and that the airplane speed schedule will not allow the airplane to lift off in ground effect and then be unable to accelerate and continue to climb out. In conjunction with the development of takeoff and landing procedures, it was also necessary to establish required climb gradients and data for flight path determination under all approved weights, altitudes, and temperatures. This enables the pilot to determine, before takeoff, that a safe takeoff, departure, and landing at destination can be achieved.

**Takeoff**

Based upon the knowledge and experience gained with similar high speed, high efficiency turbojet airplanes, special conditions require performance standards for takeoff, takeoff speeds, accelerate-stop distance, takeoff path, takeoff distance, takeoff run, and takeoff flight path.

Additionally, procedures for takeoff, accelerate-stop distance, and landing are proposed as those established for operation in service and must be executable by pilots of average skill and include reasonably expected time delays.

**Climb**

To maintain a level of safety that is equivalent to the current business jet fleet for takeoff, takeoff speeds, takeoff path, takeoff distance, and takeoff run, it is appropriate to require specific climb gradients, airplane configurations, and consideration of atmospheric conditions that will be encountered. These special conditions include climb with one engine inoperative, balked landing climb, and general climb conditions.

**Landing**

Landing distance determined for the same parameters is consistent with takeoff information for the range of weights, altitudes, and temperatures approved for operation. Further, it is necessary to consider time delays to provide for in-service variation in the activation of deceleration devices such as spoilers and brakes.

**Trim**

Special conditions are issued to maintain a level of safety that is consistent with the use of $V_{MO}/M_{MO}$ and the requirements established for previous part 23 jet airplanes. Current standards in part 23 did not envision this type of airplane and the associated trim considerations.

**Demonstration of Static Longitudinal Stability**

To maintain a level of safety consistent with existing business jet airplanes, it is appropriate to define applicable requirements for static longitudinal stability. Current standards in part 23 did not envision this type of airplane and the associated stability considerations. Special conditions will establish static longitudinal stability requirements that include a stick force versus speed specification and stability requirements applicable to high speed jet airplanes.

Consistent with the concept of $V_{MO}/M_{MO}$ being a maximum operational speed limit, rather than a limiting speed for the demonstration of satisfactory flight characteristics, it is appropriate to extend the speed for demonstration of longitudinal stability characteristics from the $V_{MO}/M_{MO}$ of 14 CFR part 23 to the maximum speed for stability characteristics, $V_{FC}/M_{FC}$, for this airplane.

**Static Directional and Lateral Stability**

Consistent with the concept of $V_{MO}/M_{MO}$ being a maximum operational speed limit, rather than a limiting speed for the demonstration of satisfactory flight characteristics, it is appropriate to extend the speed for demonstration of lateral/directional stability characteristics from the $V_{MO}/M_{MO}$ of part 23 to the maximum speed for stability characteristics, $V_{FC}/M_{FC}$ for this airplane.

**Stall Characteristics**

The stall characteristics requirements are relaxed from part 23 to be equivalent to that acceptable in current business jets. These special conditions reflect a higher expected pilot proficiency level, the remote chance that a stall will be encountered in normal operation, and the requirements are relaxed as compensation for meeting the higher performance requirements in these special conditions.

**Vibration and Buffeting**

The Raytheon Model 390 will be operated at high altitudes where stall-Mach buffet encounters (small speed margin between stall and transonic flow buffet) are likely to occur, which is not presently addressed in part 23. The special condition will require buffet onset tests and the inclusion of information in the Airplane Flight Manual (AFM) to provide guidance to the flightcrew. This information will enable the flightcrew to plan flight operations that will maximize the maneuvering capability during high altitude cruise flight and preclude intentional operations exceeding the boundary of perceptible buffet. Buffeting is considered to be a warning to the pilot that the airplane is approaching an undesirable and eventually dangerous flight regime, that is, stall buffeting, high speed buffeting or maneuvering (load factor) buffeting. In straight flight, therefore, such buffet warning should not occur at any normal operating speed up to the maximum operating limit speed, $V_{MO}/M_{MO}$.

**High Speed Characteristics and Maximum Operating Limit Speed**

The Raytheon Model 390 will be operated at high altitude and high speeds. The proposed operating envelope includes areas in which Mach effects, which have not been considered in part 23, may be significant. The anticipated low drag of the airplane and the proposed operating envelope are representative of the conditions not envisioned by the existing part 23 regulations. These conditions may degrade the ability of the flightcrew to promptly recover from inadvertent excursions beyond maximum operating speeds. The ability to pull a positive load factor is needed to ensure, during recovery from upset, that the airplane speed does not continue to increase to a value where recovery may not be achievable by the average pilot or flightcrew.

Additionally, to allow the aircraft designer to conservatively design to higher speeds than may be operationally required for the airplane, the concept of $V_{DF}/M_{DF}$, the highest demonstrated flight speed for the type design, is appropriate for this airplane. This permits $V_D/M_D$, the design dive speed, to be higher than the speed actually required to be demonstrated in flight. Accordingly, the special conditions allow one to determine a maximum demonstrated flight speed and to relate the speeds $V_{MO}/M_{MO}$ and $V_{DF}/M_{DF}$.

**Flight Flutter Tests**

Flight flutter test special conditions are proposed to $V_{DF}/M_{DF}$ rather than to $V_D$, in keeping with the $V_{DF}/M_{DF}$ concept.

**Out-of-Trim Characteristics**

High speed airplanes have experienced a number of upset incidents involving out-of-trim conditions. This is particularly true for swept-wing airplanes and airplanes with a trimmable stabilizer. Service experience has shown that out-of-trim conditions can occur in flight for various reasons and that the control and maneuvering characteristics of the airplane may be critical in recovering from upsets. The existing part 23 regulations do not address high speed out-of-trim conditions. These special conditions test the out-of-trim flight characteristics by requiring the longitudinal trim control be displaced from the trimmed position by the amount resulting from the three-second movement of the trim system at this normal rate with no aerodynamic load, or the maximum mis-trim that the autopilot can sustain in level flight in the high speed cruise condition, whichever is greater. Special conditions require the maneuvering characteristics, including stick force per g, be explored throughout a specified maneuver load factor speed envelope. The dive recovery characteristics of the aircraft in the out-of-trim condition specified would be investigated to determine that safe recovery can be made from the demonstrated flight dive speed $V_{DF}/M_{DF}$.

**Takeoff Warning System**

Jet airplanes incorporating leading-edge sweep in the wing and horizontal tail and incorporating a trimmable horizontal tail have had accidents because of the criticality of the airplane's configuration at takeoff. Unlike simple, straight wing airplanes, an incorrect flap or horizontal tail trim setting can significantly alter the takeoff distance. Special conditions to require a takeoff warning system are proposed to maintain a level of safety appropriate for this class of aircraft.

**Engine Fire Extinguishing System**

The Model 390 design includes engines mounted aft on the fuselage; therefore, early visual detection of engine fires is precluded. The applicable existing regulations do not require fire-extinguishing systems for engines. Aft mounted engine installations were not envisaged in the development of part 23; therefore, special conditions for a fire extinguishing system with the applicable agents, containers, and materials for the engines of the Model 390 are appropriate.

**Airspeed Indicating System**

To maintain a level of safety consistent with that existing in the current business jet fleet, and to be consistent with the establishment of speed schedule performance requirements, it is appropriate to establish applicable requirements for determining and providing airspeed indicating system calibration information. Additionally, it is appropriate to establish special conditions requiring protection of the pitot tube from malfunctions associated with icing conditions. Special conditions will establish airspeed indicating system calibration and pitot tube ice protection requirements applicable to transport category jet airplanes.

**Static Pressure System**

Special conditions are appropriate to establish applicable requirements for providing static pressure system calibration information in the AFM. Since aircraft of this type are frequently equipped with devices to correct the altimeter indication, it is also appropriate to establish requirements to ensure the continued availability of altitude information where such a device malfunctions. Current standards in part 23 did not envision this type of airplane and the associated static pressure requirements.

**Minimum Flightcrew**

The Raytheon Model 390 operates at high altitudes and speeds not envisioned in part 23 and must be flown in a precise speed schedule to achieve flight manual takeoff and landing distances; therefore, it is appropriate to specify workload considerations. Special conditions will specify the items to be considered in workload determination.

**Airplane Flight Manual (AFM) Information**

To be consistent with the performance special conditions, it is also necessary to require that the maximum takeoff and landing weights, takeoff distances, and associated atmospheric conditions be made available to the pilot in the AFM and that the airplane be operated within its performance capabilities. Special conditions will add maximum takeoff weights, maximum landing weights, and minimum takeoff distances as limitations in the AFM. Additionally, special conditions are included to add takeoff flight path and procedures necessary to achieve the performance in the limitations section as information in the AFM.

**Effects of Contamination on Natural Laminar Flow Airfoils**

Airfoil configurations similar to the Raytheon Model 390 had measurable degradations of handling qualities and performance when laminar flow was lost due to airfoil contamination. Tripping of the boundary layer could be caused from flight in precipitation conditions or by the presence of contamination such as insects. If measurable effects are detected, it should be determined that the minimum flight characteristics standards continue to be met and that any degradations to performance information are identified. This may be accomplished by a combination of analysis and testing. Current standards in part 23 did not envision this type of airplane and the associated airfoil contamination considerations. Special considerations are issued since existing regulations do not require these adverse effects to be evaluated.

**Discussion of Comments**

A notice of proposed special conditions No. 23–98–01–SC for the Raytheon Aircraft Company Model 390 airplanes was published on November 2, 1998 (63 FR 58660). Comments were received from two organizations.

*1. Comment*

SC23.45 and 23.53 Accelerate-Stop Distances. The first commenter expected the special conditions to reflect the intent of NPRM 93–8, Accelerate-Stop (NPA 25B, D, G–244) and, as such, include reference to the following:

i. specific accelerate-stop delays
ii. wet runway accountability
iii. worn brakes

SC23.45(l)(3) and 23.53(c) are relevant in this regard.

*FAA Response*

Not adopted. Part 23 twin engine jet special conditions reflect earlier 14 CFR part 25 requirements and are basically parallel to existing commuter category requirements. Worn brakes have not been a safety problem for commuter or small business jets, only the large transport airplanes. Worn brake requirements are not included in this special condition, or previous jet special conditions, because there isn't a safety-based justification.

*2. Comment*

Enroute flight paths. The special condition lacks consideration of the determination and scheduling of enroute flight paths. It is proposed that the provisions of 25.123, enroute flight paths, be included much as 25.111/SC23.61 have been.

*FAA Response*

Not adopted. The enroute flight paths requirement, § 25.123, is a requirement that addresses specific requirements for part 121 operating rules. Part 121 specifies terrain and obstruction clearances required of the net enroute flight paths subsequent to the failure of one or two engines. This class is typically not operated under part 121.

*3. Comment*

Use of the Flight Test Guide. Whilst it may not be relevant inside special conditions, we would expect use to be made of the Flight Test Guide for large transport airplanes (AC 25.7A), as appropriate.

*FAA Response*

We agree that this is not relevant to special conditions.

*4. Comment*

It is a normally expected condition in the operation of jet powered airplanes that prolonged descents are made from high cruising altitude with low thrust settings. It is desirable that the airplane be trimmable in this flight phase. Compliance with JAR 23.161(c)(3) must be shown, in addition to the requirements of FAA SC23.161.

*FAA Response*

Not adopted. Special condition 23.161(c)(3) for trim is identical to § 25.161(c)(3). We believe that part 25 requirements for trim are adequate for this class of airplane.

*5. Comment*

SC23.175 Demonstration of static longitudinal stability. The FAA position is acceptable with the following modifications:

Delete SC23.175(d)(4) and (5) and introduce a new (d)(4) to read:

(4) The airplane trimmed at 1.4 $V_{SO}$ with—

i. Power or thrust off
ii. Power or thrust for level flight

*FAA Response*

Not adopted. The special condition is based on § 25.175(d) and is appropriate for this class airplane. Commenter is requesting new requirement not in § 23.175 or § 25.175 at this time.

*6. Comment*

SC23.181 Dynamic Stability. The FAA position is acceptable with the following modification: In 23.181(a) and (b) replace ''stalling speed'' by ''1.2 $V_S$.''

*FAA Response*

Not adopted. The current requirement in § 23.181(a) is more conservative than 1.2 $V_S$ and will, therefore, be retained. This is not a special condition.

*7. Comment*

SC23.203 Turning flight and accelerated turning stalls. The FAA position is acceptable with the following modifications.

In SC23.203(c)(1), before ''The thrust necessary to maintain level flight'' add ''with flight idle thrust and * * *.''

In SC23.203(c)(2), after ''flaps and landing gear'' add ''and deceleration devices.''

Delete SC23.203(c)(5).

Justification—The turning and accelerated stalls must be investigated over the thrust range required for wings level stalls. The B390 has speed brakes whose effects on stall characteristics must be taken into account. The B390 may be fitted with a device that affects stall characteristics. Stall characteristics must then be assessed over all loading conditions as required by 23.141.

*FAA Response*

Partially adopted. Deceleration devices should be considered and have been added. Idle thrust stalls were not considered necessary for the previous part 23 jets; therefore, it will not be included in these special conditions. Section 23.141 addresses all loading conditions so SC23.203(c)(5) is redundant and unnecessary and has been deleted.

*8. Comment*

SC23.251 Vibration and buffeting. The FAA position is acceptable with the following comment: The cross-reference to SC23.1581 is incorrect. It should be to SC23.1583.

*FAA Response*

Adopted. This has been corrected in the final version.

*9. Comment*

SC23.253 High-speed characteristics. The FAA position is acceptable with the following addition:

23.253(a)(4) Trim change due to airbrake selection:

With the airplane trimmed at $V_{MO}/M_{MO}$, extension of the airbrakes at speeds above $V_{MO}/M_{MO}$, over the available range of movements of the pilots control must not result in a positive load factor greater than 2.0 with the stick free, and any nose down pitching moment must not require a stick force of more than 20 lbs. to maintain 1g flight.

*FAA Response*

Not adopted. This requirement is not currently addressed in part 23 or part 25.

*10. Comment*

SC23.1323 Airspeed indication system. The FAA position is acceptable with the following additions:

(c) From 1.3 $V_S$ to stall warning speed the IAS must change perceptibly with CAS and in the same sense, and at speeds below stall warning speed the IAS must not change in an incorrect sense.

(d) From $V_{MO}$ to $V_{MO}+\frac{2}{3}(V_{DF}-V_{MO})$ the IAS must change perceptively with CAS and in the same sense, and at higher speeds up to $V_{DF}$ the IAS must not change in an incorrect sense.

(e) There must be no indication of speed that would cause undue difficulty to the pilot during the takeoff between the initiation of rotation and the achievement of a steady climbing condition.

*FAA Response*

Not adopted. These requirements are not currently addressed in part 23 or part 25.

*11. Comment*

SC23.201 Wings level stall. The FAA position is acceptable with the following modifications:

In SC23.201(e)(2), after ''Flaps and landing gear'' and add ''and deceleration devices.''

Delete SC23.201(e)(5).

Justification—The B390 has speed brakes whose effects on stall characteristics must be taken into account. Furthermore, the B390 may also be fitted with a device that affects stall characteristics. Stall characteristics must then be assessed over all loading conditions as required by 23.141.

*FAA Response*

Adopted. Deceleration devices should be considered and have been added. Section 23.141 addresses all loading conditions so SC23.201(e)(5) is redundant and unnecessary and has been deleted.

12. Comment

Additional Items. The JAA validation team for the Beech 390 is currently considering the following additional FAA special conditions, which are not listed in the FR of 2nd November.

84SC23.1513 Minimum Control Speed
SC23.1523 Minimum Flight Crew
SC23.1541 Markings and Placards
SC23.1545 Airspeed Indicator
SC23.1581 (Airplane Flight Manual and Approved Material) General
SC23.1583 Operating Limitations
SC23.1585 Operating Procedures
SC23.A Effects on contamination on natural laminar flow airfoils

We have the following comments on one of these:

SC23.1583 Operating Limitations

1. Federal Aviation Regulations 23.1583(a)(2) and this SC23.1583(a)(3) incorrectly refer to maneuvering speed as $V_O$. It should be $V_A$.

2. Replace SC23.1583(k) by:

(k) Ambient temperatures. Where appropriate maximum and minimum ambient temperatures for operation.

3. Add.

(l) Allowable lateral fuel loading. The maximum allowable lateral fuel loading differential, if less than the maximum possible.

(m) Baggage and cargo loading. The following information for each baggage and cargo compartment or zone.

(1) The maximum allowable load; and

(2) The maximum intensity of loading

(n) Systems. Any limitation on the use of airplane systems and equipment.

(o) Smoking. Any restriction on smoking in the airplane.

*FAA Response*

Partially adopted. All of these are included in the FAA special conditions and listed in the **Federal Register**. Comments 2 and 3 are from the current § 23.1583 and were inadvertently omitted and will be used. $V_O$ replaced $V_A$ and is correctly used in this special condition.

*13. Comment*

SC23.207 Stall Warning. In 23.207(d), change the reference from 23.1585 to special condition SC23.1585.

*FAA Response*

Adopted. This was inadvertently omitted in the notice and will be corrected in the final version.

*14. Comment*

SC23.1545 Airspeed indicator. Instead of compliance with Federal Aviation Regulations 23.1545, the following applies:

''The following markings must be made on each airspeed indicator:

a. A maximum allowable airspeed indication showing the variation of $V_{MO}/M_{MO}$ with altitude or compressibility limitations (as appropriate), or a radial red line marking for $V_{MO}/M_{MO}$ established for any altitude up to the maximum operating altitude for the airplane.

A revision to the published special conditions for the Model 390 is required to add special condition 23.1545 as written in Issue Paper F–1.

*FAA Response*

Adopted. This was inadvertently omitted in the notice and will be corrected as follows:

''Instead of compliance with Federal Aviation Regulations 23.1545, the following applies:

The following markings must be made on each airspeed indicator:

(a) A maximum allowable airspeed indication showing the variation of $V_{MO}/M_{MO}$ with altitude or compressibility limitations (as appropriate), or a radial red line marking for $V_{MO}/M_{MO}$ must be made at the lowest value of $V_{MO}/M_{MO}$ established for any altitude up to the maximum operating altitude for the airplane.''

*15. Comment*

SC23.1195 Engine Fire Extinguishing System. The published special condition states the following:

''The fire extinguishing system, the quantity of the extinguishing agent, the rate of discharge, and the discharge distribution must be adequate to extinguish fires.''

SC23.1195 ''Engine Fire Extinguishing System'', as written in Issue Paper P–1, was not incorporated exactly in the published Special Condition 23.1195(a)(2). The Issue Paper states the following:

''The fire extinguishing system, the quantity of the extinguishing agent, the rate of discharge, and the discharge distribution must be adequate to extinguish fires. An individual 'one shot' system may be used.''

A revision to the published Special Condition for the Model 390 is required to incorporate the last sentence as stated in the Issue Paper P–1.

It was further recommended that the FAA revise existing SC23.1195 to add the paragraph numbering to coincide with the existing Federal Aviation Regulations part 23 paragraphs § 23.1197, § 23.1197, § 23.1199, § 23.1201.

*FAA Response*

Adopted. This was inadvertently omitted in the notice and will be corrected in the final version. The existing paragraphs will also be separated into sections that parallel existing part 23 paragraphs.

*16. Comment*

Special Condition 23.1587 ''Performance Information.'' A typographical error appears in the published SC23.1587(b)(4).

The reference in this section to SC23.45 (d), (e), and (f) should be SC23.45 (j), (k), and (l). SC23.45 (d), (e), and (f) do not exist.

A revision to the published Special Conditions for the Model 390 is required to correct the typographical error.

*FAA Response*

Adopted. This was inadvertently omitted in the notice and will be corrected in the final version.

Except as discussed above, the special conditions are adopted as proposed.

**Applicability**

As discussed above, these special conditions are applicable to the Raytheon Model 390 Airplane. Should Raytheon Aircraft Company apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, the special conditions would apply to that model as well under the provisions of § 21.101(a)(1).

**Conclusion**

This action affects only certain novel or unusual design features on one model of airplane. It is not a rule of general applicability, and it affects only the applicant who applied to the FAA for approval of these features on the airplane.

**List of Subjects in 14 CFR Part 23**

Aircraft, Aviation safety, Signs and symbols.

The authority citation for these special conditions is as follows: 49 U.S.C. 106(g); 40113, 44701, 44702, and 44704; 14 CFR 21.16 and 21.17; and 14 CFR 11.28 and 11.49.

**The Special Conditions**

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for Raytheon Aircraft Company Model 390 airplane.

**Special Condition (SC) 23.45. Performance: General**

Instead of the requirements of 14 CFR Part 23, § 23.45(g) and (h), the following apply:

(g) The following, as applicable, must be determined on a smooth, dry, hard-surfaced runway—

(1) Takeoff distance of special condition SC23.53;

(2) Accelerate-stop distance of special condition SC23.55;

(3) Takeoff distance and takeoff run of special condition SC23.59; and

(4) Landing distance of special condition SC23.75.

**Note:** The effect on these distances of operation on other types of surfaces (for example, grass, gravel), when dry, may be determined or derived and these surfaces listed in the Airplane Flight Manual.

(h) Unless otherwise prescribed, the applicant must select the takeoff,

enroute, approach, and landing configurations for the airplane.

In addition to the requirements of § 23.45 and the paragraphs above, the following apply:

(i) The airplane configurations may vary with weight, altitude, and temperature to the extent that they are compatible with the operating procedures required by paragraph (d) of this special condition.

(j) Unless otherwise prescribed, in determining the accelerate-stop distances, takeoff flight paths, takeoff distances, and landing distances, changes in the airplane's configuration, speed, power, and thrust, must be made in accordance with procedures established by the applicant for operation in service.

(k) Procedures for the execution of balked landings and discontinued approaches associated with the conditions prescribed in special conditions SC23.77 and SC23.67(d) must be established.

(l) The procedures established under paragraphs (d) and (e) of § 23.45 must:

(1) Be able to be consistently executed in service by crews of average skill;

(2) Use methods or devices that are safe and reliable; and

(3) Include allowance for any time delays in the execution of the procedures that may reasonably be expected in service.

**SC23.49 Stalling speed.**

In § 23.49(b), change the reference from ''§ 23.201'' to ''§ 23.201 and special condition SC23.201.''

**SC23.51 Takeoff speeds.**

Instead of compliance with § 23.51, the following apply:

(a) $V_1$ must be established in relation to $V_{EF}$, as follows:

(1) $V_{EF}$ is the calibrated airspeed at which the critical engine is assumed to fail. $V_{EF}$ must be selected by the applicant, but may not be less than $V_{MCG}$ determined under § 23.149(f) and special condition SC23.149(f).

(2) $V_1$, in terms of calibrated airspeed, is the takeoff decision speed selected by the applicant; however, $V_1$ may not be less than $V_{EF}$ plus the speed gained with the critical engine inoperative during the time interval between the instant at which the critical engine failed and the instant at which the pilot recognizes and reacts to the engine failure, as indicated by the pilot's application of the first retarding means during the accelerate-stop test.

(b) $V_{2\ min}$, in terms of calibrated airspeed, may not be less than the following:

(1) 1.2 $V_{S1}$, or

(2) 1.10 times $V_{MC}$ established under § 23.149.

(c) $V_2$, in terms of calibrated airspeed, must be selected by the applicant to provide at least the gradient of climb required by special condition SC23.67(b), but may not be less than the following:

(1) $V_{2\ min}$, and

(2) $V_R$ plus the speed increment attained (in accordance with special condition SC23.57(c)(2)) before reaching a height of 35 feet above the takeoff surface.

(d) $V_{MU}$ is the calibrated airspeed at and above which the airplane can safely lift off the ground and continue the takeoff. $V_{MU}$ speeds must be selected by the applicant throughout the range of thrust-to-weight ratios to be certified. These speeds may be established from free-air data if these data are verified by ground takeoff tests.

(e) $V_R$, in terms of calibrated airspeed, must be selected in accordance with the following conditions of paragraphs (e)(1) through (e)(4) of this special condition:

(1) $V_R$ may not be less than the following:

(i) $V_1$;

(ii) 105 percent of $V_{MC}$;

(iii) The speed (determined in accordance with special condition SC23.57(c)(2)) that allows reaching $V_2$ before reaching a height of 35 feet above the takeoff surface; or

(iv) A speed that, if the airplane is rotated at its maximum practicable rate, will result in a $V_{LOF}$ of not less than 110 percent of $V_{MU}$ in the all-engines-operating condition and not less than 105 percent of $V_{MU}$ determined at the thrust-to-weight ratio corresponding to the one-engine-inoperative condition.

(2) For any given set of conditions (such as weight, configuration, and temperature), a single value of $V_R$, obtained in accordance with this special condition, must be used to show compliance with both the one-engine-inoperative and the all-engines-operating takeoff provisions.

(3) It must be shown that the one-engine-inoperative takeoff distance, using a rotation speed of 5 knots less than $V_R$, established in accordance with paragraphs (e)(1) and (e)(2) of this special condition, does not exceed the corresponding one-engine-inoperative takeoff distance using the established $V_R$. The takeoff distances must be determined in accordance with special condition SC23.59(a)(1).

(4) Reasonably expecting variations in service from the established takeoff procedures for the operation of the airplane (such as over-rotation of the airplane and out-of-trim conditions) may not result in unsafe flight characteristics or in marked increases in the scheduled takeoff distances established in accordance with special condition SC23.59.

(f) $V_{LOF}$ is the calibrated airspeed at which the airplane first becomes airborne.

**SC23.53 Takeoff performance.**

Instead of complying with § 23.53, the following apply:

(a) In special conditions SC23.51, SC23.55, SC23.57 and SC23.59, the takeoff speeds, the accelerate-stop distance, the takeoff path, the takeoff distance, and takeoff run described must be determined:

(1) At each weight, altitude, and ambient temperature within the operation limits selected by the applicant; and

(2) In the selected configuration for takeoff.

(b) No takeoff made to determine the data required by this section may require exceptional piloting skill or alertness.

(c) The takeoff data must be based on a smooth, dry, hard-surfaced runway.

(d) The takeoff data must include, within the established operational limits of the airplane, the following operational correction factors:

(1) Not more than 50 percent of nominal wind components along the takeoff path opposite to the direction of takeoff, and not less than 150 percent of nominal wind components along the takeoff path in the direction of takeoff; and

(2) Effective runway gradients.

**SC23.55 Accelerate-stop distance.**

In the absence of specific accelerate-stop distance requirements, the following apply:

(a) The accelerate-stop distance is the sum of the distances necessary to—

(1) Accelerate the airplane from a standing start to $V_{EF}$ with all engines operating;

(2) Accelerate the airplane from $V_{EF}$ to $V_1$, assuming that the critical engine fails at $V_{EF}$; and

(3) Come to a full stop from the point at which $V_1$ is reached assuming that, in the case of engine failure, the pilot has decided to stop as indicated by application of the first retarding means at the speed $V_1$.

(b) Means other than wheel brakes may be used to determine the accelerate-stop distance if that means—

(1) Is safe and reliable;

(2) Is used so that consistent results can be expected under normal operating conditions; and

(3) Is such that exceptional skill is not required to control the airplane.

(c) The landing gear must remain extended throughout the accelerate-stop distance.

**SC23.57 Takeoff path.**

In the absence of specific takeoff path requirements, the following apply:

(a) The takeoff path extends from a standing start to a point in the takeoff at which the airplane is 1,500 feet above the takeoff surface or at which the transition from the takeoff to the enroute configuration is completed and a speed is reached at which compliance with special condition SC23.67(c) is shown, whichever point is higher. In addition, the following apply:

(1) The takeoff path must be based on procedures prescribed in special condition SC23.45;

(2) The airplane must be accelerated on the ground to $V_{EF}$, at which point the critical engine must be made inoperative and remain inoperative for the rest of the takeoff; and

(3) After reaching $V_{EF}$, the airplane must be accelerated to $V_2$.

(b) During the acceleration to speed $V_2$, the nose gear may be raised off the ground at a speed not less than $V_R$. However, landing gear retraction may not begin until the airplane is airborne.

(c) During the takeoff path determination, in accordance with paragraphs (a) and (b) of this special condition, the following apply:

(1) The slope of the airborne part of the takeoff path must be positive at each point;

(2) The airplane must reach $V_2$ before it is 35 feet above the takeoff surface and must continue at a speed as close as practical to, but not less than, $V_2$ until it is 400 feet above the takeoff surface;

(3) At each point along the takeoff path, starting at the point at which the airplane reaches 400 feet above the takeoff surface, the available gradient of climb may not be less than 1.2 percent; and

(4) Except for gear retraction, the airplane configuration may not be changed, and no change in power or thrust that requires action by the pilot may be made, until the airplane is 400 feet above the takeoff surface.

(d) The takeoff path must be determined by a continuous demonstrated takeoff or by synthesis from segments. If the takeoff path is determined by the segmental method, the following apply:

(1) The segments must be clearly defined and must be related to the distinct changes in the configuration, speed, and power or thrust;

(2) The weight of the airplane, the configuration, and the power or thrust must be constant throughout each segment and must correspond to the most critical condition prevailing in the segment;

(3) The flight path must be based on the airplane's performance without ground effect; and

(4) The takeoff path data must be checked by continuous demonstrated takeoffs, up to the point at which the airplane is out of ground effect and its speed is stabilized, to ensure that the path is conservative relative to the continuous path.

**Note:** The airplane is considered to be out of the ground effect when it reaches a height equal to its wing span.

**SC23.59 Takeoff distance and takeoff run.**

In the absence of specific takeoff distance and takeoff run requirements, the following apply:

(a) Takeoff distance is the greater of the following:

(1) The horizontal distance along the takeoff path from the start of the takeoff to the point at which the airplane is 35 feet above the takeoff surface, determined under special condition SC23.57; or

(2) 115 percent of the horizontal distance along the takeoff path, with all engines operating, from the start of the takeoff to the point at which the airplane is 35 feet above the takeoff surface, as determined by a procedure consistent with special condition SC23.57.

(b) If the takeoff distance includes a clear way, the takeoff run is the greater of the following:

(1) The horizontal distance along the takeoff path from the start of the takeoff to a point equidistant between the point at which $V_{LOF}$ is reached and the point at which the airplane is 35 feet above the takeoff surface, as determined under special condition SC23.57; or

(2) 115 percent of the horizontal distance along the takeoff path, with all engines operating, from the start of the takeoff to a point equidistant between the point at which $V_{LOF}$ is reached and the point at which the airplane is 35 feet above the takeoff surface, determined by a procedure consistent with special condition SC23.57.

**SC23.61 Takeoff flight path.**

In the absence of specific takeoff flight path requirements, the following apply:

(a) The takeoff flight path begins 35 feet above the takeoff surface at the end of the takeoff distance determined in accordance with special condition SC23.59.

(b) The net takeoff flight path data must be determined so that they represent the actual takeoff flight paths (determined in accordance with special condition SC23.57 and with paragraph (a) of this special condition) reduced at each point by a gradient of climb equal to 0.8 percent.

(c) The prescribed reduction in climb gradient may be applied as an equivalent reduction in acceleration along that part of the takeoff flight path at which the airplane is accelerated in level flight.

**SC23.63 Climb: general.**

Instead of compliance with § 23.63, the following applies:

Compliance with the requirements of special conditions SC23.67 and SC23.77 must be shown at each weight, altitude, and ambient temperature within the operational limits established for the airplane and with the most unfavorable center of gravity for each configuration.

**SC23.65 Climb: all engines operating.**

Delete requirement of § 23.65.

**SC23.66 Takeoff climb: One engine inoperative.**

Delete requirement of § 23.66.

**SC23.67 Climb: One engine inoperative.**

Instead of compliance with § 23.67, the following apply:

(a) Takeoff; landing gear extended. In the critical takeoff configuration existing along the flight path (between the points at which the airplane reaches $V_{LOF}$ and at which the landing gear is fully retracted) and in the configuration used in special condition SC23.57 without ground effect, unless there is a more critical power operating condition existing later along the flight path before the point at which the landing gear is fully retracted, the steady gradient of climb must be positive at $V_{LOF}$ and with the following:

(1) The critical engine inoperative and the remaining engine at the power or thrust available when retraction of the landing gear begins in accordance with special condition SC23.57, and

(2) The weight equal to the weight existing when retraction of the landing gear begins, determined under special condition SC23.57.

(b) Takeoff; landing gear retracted. In the takeoff configuration existing at the point of the flight path at which the landing gear is fully retracted and in the configuration used in special condition SC23.57, without ground effect, the steady gradient of climb may not be less than 2.4 percent at $V_2$ and with the following:

(1) The critical engine inoperative, the remaining engine at the takeoff power or thrust available at the time the landing gear is fully retracted, determined under special condition SC23.57 unless there is a more critical power operating

condition existing later along the flight path but before the point where the airplane reaches a height of 400 feet above the takeoff surface; and

(2) The weight equal to the weight existing when the airplane's landing gear is fully retracted, determined under special condition SC23.57.

(c) Final takeoff. In the enroute configuration at the end of the takeoff path, determined in accordance with special condition SC23.57, the steady gradient of climb may not be less than 1.2 percent at not less than 1.25 $V_S$ and with the following:

(1) The critical engine inoperative and the remaining engine at the available maximum continuous power or thrust; and

(2) The weight equal to the weight existing at the end of the takeoff path, determined under special condition SC23.57.

(d) Approach. In the approach configuration corresponding to the normal all-engines-operating procedure in which $V_S$ for this configuration does not exceed 110 percent of the $V_S$ for the related landing configuration, the steady gradient of climb may not be less than 2.1 percent with the following:

(1) The critical engine inoperative, the remaining engine at the available in-flight takeoff power or thrust;

(2) The maximum landing weight; and

(3) A climb speed established in connection with normal landing procedures, but not exceeding 1.5 $V_S$.

#### SC23.73 Reference landing approach speed.

In § 23.73(b), change the reference from ''§ 23.149(c)'' to ''special condition SC23.149.''

#### SC23.75 Landing distance.

Instead of compliance with § 23.75, the following apply:

(a) The horizontal distance necessary to land and to come to a complete stop from a point 50 feet above the landing surface must be determined (for each weight, altitude, temperature, and wind within the operational limits established by the applicant for the airplane), as follows:

(1) The airplane must be in the landing configuration;

(2) A steady approach at a gradient of descent not greater than 5.2 percent (3 degrees), with an airspeed of not less than $V_{REF}$, determined in accordance with special condition SC23.73, must be maintained down to the 50-foot height;

(3) Changes in configuration, power or thrust, and speed must be made in accordance with the established procedures for service operation;

(4) The landing must be made without excessive vertical acceleration, tendency to bounce, nose over, ground loop, or porpoise;

(5) The landings may not require exceptional piloting skill or alertness; and

(6) It must be shown that a safe transition to the balked landing conditions of special condition SC23.77 can be made from the conditions that exist at the 50-foot height.

(b) The landing distance must be determined on a level, smooth, dry, hard-surfaced runway. In addition, the following apply:

(1) The brakes may not be used so as to cause excessive wear of brakes or tires; and

(2) Means other than wheel brakes may be used if that means is as follows:

(i) Is safe and reliable;

(ii) Is used so that consistent results can be expected in service; and

(iii) Is such that exceptional skill is not required to control the airplane.

(c) The landing distance data must include correction factors for not more than 50 percent of the nominal wind components along the landing path opposite to the direction of landing and not less than 150 percent of the nominal wind components along the landing path in the direction of landing.

(d) If any device is used that depends on the operation of any engine, and if the landing distance would be noticeably increased when a landing is made with that engine inoperative, the landing distance must be determined with that engine inoperative unless the use of compensating means will result in a landing distance not more than that with each engine operating.

#### SC23.77 Balked landing.

Instead of compliance with § 23.77, the following apply:

In the landing configuration, the steady gradient of climb may not be less than 3.2 percent with the following:

(a) The engines at the power or thrust that is available eight seconds after initiation of movement of the power or thrust controls from the minimum flight idle to the inflight takeoff position; and

(b) A climb speed of not more than $V_{REF}$, as defined in § 23.73(b).

#### SC23.145 Longitudinal control.

In § 23.145(c), change the reference from ''§ 23.251'' to ''special condition SC23.251.''

#### SC23.149 Minimum control speed.

In § 23.149(c), change the reference from ''§ 23.75'' to ''special condition SC23.75.''

Delete § 23.149(d).

In § 23.149(f), delete ''At the option of the applicant, to comply with the requirements of § 23.51(c)(1), $V_{MCG}$ may be determined.''

#### SC23.153 Control during landings.

In § 23.153(c), change the reference from ''§ 23.75'' to ''special condition SC23.75.''

#### SC23.161 Trim.

Instead of compliance with § 23.161, the following apply:

(a) General. Each airplane must meet the trim requirements of this special condition after being trimmed, and without further pressure upon or movement of the primary controls or their corresponding trim controls by the pilot or the automatic pilot.

(b) Lateral and directional trim. The airplane must maintain lateral and directional trim with the most adverse lateral displacement of the center of gravity within the relevant operating limitations during normally expected conditions of operation (including operation at any speed from 1.4 $V_{S1}$ to $V_{MO}/M_{MO}$).

(c) Longitudinal trim. The airplane must maintain longitudinal trim during the following:

(1) A climb with maximum continuous power at a speed not more than 1.4 $V_{S1}$, with the landing gear retracted, and the flaps in the following positions:

(i) Retracted, and

(ii) In the takeoff position.

(2) A power approach with a 3 degree angle of descent, the landing gear extended, and with the following:

(i) The wing flaps retracted and at a speed of 1.4 $V_{S1}$; and

(ii) The applicable airspeed and flap position used in showing compliance with special condition SC23.75.

(3) Level flight at any speed from 1.4 $V_{S1}$ to $V_{MO}/M_{MO}$ with the landing gear and flaps retracted, and from 1.4 $V_{S1}$ to $V_{LE}$ with the landing gear extended.

(d) Longitudinal, directional, and lateral trim. The airplane must maintain longitudinal, directional, and lateral trim (for the lateral trim, the angle of bank may not exceed five degrees) at 1.4 $V_{S1}$ during climbing flight with the following:

(1) The critical engine inoperative;

(2) The remaining engine at maximum continuous power or thrust; and

(3) The landing gear and flaps retracted.

#### SC23.171 [Stability] General.

In § 23.171, change reference from ''§§ 23.173 through 23.181'' to ''special conditions SC23.173, SC23.175, SC23.177, SC23.181, and § 23.181.''

**SC23.173 Static longitudinal stability.**

Instead of compliance with § 23.173, the following apply:

Under the conditions specified in special condition SC23.175, the characteristics of the elevator control forces (including friction) must be as follows:

(a) A pull must be required to obtain and maintain speeds below the specified trim speed, and a push must be required to obtain and maintain speeds above the specified trim speed. This must be shown at any speed that can be obtained except speeds higher than the landing gear or wing flap operating limit speeds or $V_{FC}/M_{FC}$, whichever is appropriate, or lower than the minimum speed for steady unstalled flight.

(b) The airspeed must return to within 10 percent of the original trim speed for the climb, approach, and landing conditions specified in special condition SC23.175, paragraph (a), (c), and (d), and must return to within 7.5 percent of the original trim speed for the cruising condition specified in special condition SC23.175, paragraph (b), when the control force is slowly released from any speed within the range specified in paragraph (a) of this special condition.

(c) The average gradient of the stable slope of the stick force versus speed curve may not be less than 1 pound for each 6 knots.

(d) Within the free return speed range specified in paragraph (b) of this special condition, it is permissible for the airplane, without control forces, to stabilize on speeds above or below the desired trim speeds if exceptional attention on the part of the pilot is not required to return to and maintain the desired trim speed and altitude.

**SC23.175 Demonstration of static longitudinal stability.**

Instead of compliance with § 23.175, static longitudinal stability must be shown as follows:

(a) Climb. The stick force curve must have a stable slope at speeds between 85 and 115 percent of the speed at which the airplane—

(1) Is trimmed, with—.'

(i) Wing flaps retracted;

(ii) Landing gear retracted;

(iii) Maximum takeoff weight; and

(iv) The maximum power or thrust selected by the applicant as an operating limitation for use during climb; and

(2) Is trimmed at the speed for best rate of climb except that the speed need not be less than 1.4 $V_{S1}$.

(b) Cruise. Static longitudinal stability must be shown in the cruise condition as follows:

(1) With the landing gear retracted at high speed, the stick force curve must have a stable slope at all speeds within a range which is the greater of 15 percent of the trim speed plus the resulting free return speed range, or 50 knots plus the resulting free return speed range, above and below the trim speed (except that the speed range need not include speeds less than 1.4 $V_{S1}$, nor speeds greater than $V_{FC}/M_{FC}$, nor speeds that require a stick force of more than 50 pounds), with—.'

(i) The wing flaps retracted;

(ii) The center of gravity in the most adverse position;

(iii) The most critical weight between the maximum takeoff and maximum landing weights;

(iv) The maximum cruising power selected by the applicant as an operating limitation, except that the power need not exceed that required at $V_{MO}/M_{MO}$; and

(v) The airplane trimmed for level flight with the power required in paragraph (b)(1)(iv) of this special condition.

(2) With the landing gear retracted at low speed, the stick force curve must have a stable slope at all speeds within a range which is the greater of 15 percent of the trim speed plus the resulting free return speed range, or 50 knots plus the resulting free return speed range, above and below the trim speed (except that the speed range need not include speeds less than 1.4 $V_{S1}$, nor speeds greater than the minimum speed of the applicable speed range prescribed in paragraph (b)(1), nor speeds that require a stick force of more than 50 pounds), with—

(i) Wing flaps, center of gravity position, and weight as specified in paragraph (b)(1) of this special condition;

(ii) Power required for level flight at a speed equal to $(V_{MO} + 1.4\ V_{S1})/2$; and

(iii) The airplane trimmed for level flight with the power required in paragraph (b)(2)(ii) of this special condition.

(3) With the landing gear extended, the stick force curve must have a stable slope at all speeds within a range which is the greater of 15 percent of the trim speed plus the resulting free return speed range, or 50 knots plus the resulting free return speed range, above and below the trim speed (except that the speed range need not include speeds less than 1.4 $V_{S1}$, nor speeds greater than $V_{LE}$, nor speeds that require a stick force of more than 50 pounds), with—

(i) Wing flap, center of gravity position, and weight as specified in paragraph (b)(1) of this section;

(ii) The maximum cruising power selected by the applicant as an operating limitation, except that the power need not exceed that required for level flight at $V_{LE}$; and

(iii) The aircraft trimmed for level flight with the power required in paragraph (b)(3)(ii) of this section.

(c) Approach. The stick force curve must have a stable slope at speeds between 1.1 $V_{S1}$ and 1.8 $V_{S1}$, with—

(1) Wing flaps in the approach position;

(2) Landing gear retracted;

(3) Maximum landing weight; and

(4) The airplane trimmed at 1.4 $V_{S1}$ with enough power to maintain level flight at this speed.

(d) Landing. The stick force curve must have a stable slope, and the stick force may not exceed 80 pounds, at speeds between 1.1 $V_{S0}$ and 1.8 $V_{S0}$ with—

(1) Wing flaps in the landing position;

(2) Landing gear extended;

(3) Maximum landing weight;

(4) Power or thrust off on the engines; and

(5) The airplane trimmed at 1.4 $V_{S0}$ with power or thrust off.

**SC23.177 Static directional and lateral stability.**

Instead of compliance with § 23.177, the following apply:

(a) The static directional stability (as shown by the tendency to recover from a skid with the rudder free) must be positive for any landing gear and flap position, and it must be positive for any symmetrical power condition to speeds from 1.2 $V_{S1}$ up to $V_{FE}$, $V_{LE}$, or $V_{FC}/M_{FC}$ (as appropriate).

(b) The static lateral stability (as shown by the tendency to raise the low wing in a sideslip with the aileron controls free and for any landing gear position and flap position, and for any symmetrical power conditions) may not be negative at any airspeed (except speeds higher than $V_F$ or $V_{LE}$, when appropriate) in the following airspeed ranges:

(1) From 1.2 $V_{S1}$ to $V_{MO}/M_{MO}$.

(2) From $V_{MO}/M_{MO}$ to $V_{FC}/M_{FC}$, unless the Administrator finds that the divergence is—

(i) Gradual;

(ii) Easily recognizable by the pilot; and

(iii) Easily controllable by the pilot.

(c) In straight, steady, sideslips (unaccelerated forward slips) the aileron and rudder control movement and forces must be substantially proportional to the angle of the sideslip. The factor of proportionality must lie between limits found necessary for safe operation throughout the range of

sideslip angles appropriate to the operation of the airplane. At greater angles, up to the angle at which full rudder control is used or when a rudder pedal force of 180 pounds is obtained, the rudder pedal forces may not reverse and increased rudder deflection must produce increased angles of sideslip. Unless the airplane has a yaw indicator, there must be enough bank accompanying sideslipping to clearly indicate any departure from steady unyawed flight.

**SC23.181 Dynamic stability.**

In § 23.181(d), change the reference from § 23.175 to SC23.175.

**SC23.201 Wings level stall.**

In § 23.201(c), change the reference from ''§ 23.49'' to ''§ 23.49 and special condition SC23.49.''

Instead of compliance with § 23.201 (d) and (e), the following apply:

(d) The roll occurring between the stall and the completion of the recovery may not exceed approximately 20 degrees.

(e) Compliance with the requirements of this section must be shown with:

(1) Power—

(i) Off; and

(ii) The thrust necessary to maintain level flight at 1.6 $V_{S1}$ (where $V_{S1}$ corresponds to the stalling speed with flaps in the approach position, the landing gear retracted, and maximum landing weight).

(2) Flaps, landing gear, and deceleration devices in any likely combination of positions.

(3) Trim at 1.4 $V_{S1}$ or at the minimum trim speed, whichever is higher.

(4) Representative weights within the range for which certification is requested.

**SC23.203 Turning flight and accelerated turning stalls.**

Instead of compliance with § 23.203(c), the following apply:

(c) Compliance with the requirements of this section must be shown with:

(1) The thrust necessary to maintain level flight at 1.6 $V_{S1}$ (where $V_{S1}$ corresponds to the stalling speed with flaps in the approach position, the landing gear retracted, and maximum landing weight).

(2) Flaps, landing gear, and deceleration devices in any likely combination of positions.

(3) Trim at 1.4 $V_{S1}$ or at the minimum trim speed, whichever is higher.

(4) Representative weights within the range for which certification is requested.

**SC23.207 Stall warning.**

Instead of compliance with § 23.207(c) and (d), the following applies:

(c) During the stall tests required by § 23.201(b) and § 23.203(a)(1), the stall warning must begin at a speed exceeding the stalling speed by seven percent or at any lesser margin if the stall warning has enough clarity, duration, distinctiveness, or similar properties.

(d) Change reference from 23.1585 to SC23.1585.

**SC23.251 Vibration and buffeting.**

Instead of compliance with § 23.251, the following apply:

(a) The airplane must be designed to withstand any vibration and buffeting that might occur in any likely operating condition. This must be shown by calculations, resonance tests, or other tests found necessary by the Administrator.

(b) Each part of the airplane must be shown in flight to be free from excessive vibration, under any appropriate speed and power conditions up to $V_{DF}/M_{DF}$. The maximum speeds shown must be used in establishing the operating limitations of the airplane in accordance with special condition SC23.1583.

(c) Except as provided in paragraph (d) of this special condition, there may be no buffeting condition in normal flight, including configuration changes during cruise, severe enough to interfere with the control of the airplane, to cause excessive fatigue to the flightcrew, or to cause structural damage. Stall warning buffeting within these limits is allowable.

(d) There may be no perceptible buffeting condition in the cruise configuration in straight flight at any speed up to $V_{MO}/M_{MO}$, except that stall warning buffeting is allowable.

(e) With the airplane in the cruise configuration, the positive maneuvering load factors at which the onset of perceptible buffeting occurs must be determined for the ranges of airspeed or Mach Number, weight, and altitude for which the airplane is to be certified. The envelopes of load factor, speed, altitude, and weight must provide a sufficient range of speeds and load factors for normal operations. Probable inadvertent excursions beyond the boundaries of the buffet onset envelopes may not result in unsafe conditions.

**SC23.253 High speed characteristics.**

Instead of compliance with § 23.253, the following apply:

(a) Speed increase and recovery characteristics. The following speed increase and recovery characteristics must be met:

(1) Operating conditions and characteristics likely to cause inadvertent speed increases (including upsets in pitch and roll) must be simulated with the airplane trimmed at any likely cruise speed up to $V_{MO}/M_{MO}$. These conditions and characteristics include gust upsets, inadvertent control movements, low stick force gradient in relation to control friction, passenger movement, leveling off from climb, and descent from Mach to airspeed limit altitudes.

(2) Allowing for pilot reaction time after effective inherent or artificial speed warning occurs, it must be shown that the airplane can be recovered to a normal attitude and its speed reduced to $V_{MO}/M_{MO}$ without the following:

(i) Exceptional piloting strength or skill;

(ii) Exceeding $V_D/M_D$, or $V_{DF}/M_{DF}$, or the structural limitations; and

(iii) Buffeting that would impair the pilot's ability to read the instruments or control the airplane for recovery.

(3) There may be no control reversal about any axis at any speed up to $V_{DF}/M_{DF}$ with the airplane trimmed at $V_{MO}/M_{MO}$. Any tendency of the airplane to pitch, roll, or yaw must be mild and readily controllable, using normal piloting techniques. When the airplane is trimmed at $V_{MO}/M_{MO}$, the slope of the elevator control force versus speed curve need not be stable at speeds greater than $V_{FC}/M_{FC}$, but there must be a push force at all speeds up to $V_{DF}/M_{DF}$ and there must be no sudden or excessive reduction of elevator control force as $V_{DF}/M_{DF}$ is reached.

(b) Maximum speed for stability characteristics. $V_{FC}/M_{FC}$. $V_{FC}/M_{FC}$ is the maximum speed at which the requirements of special conditions SC23.173, SC23.175, SC23.177, SC23.181 and § 23.181 must be met with the flaps and landing gear retracted. It may not be less than a speed midway between $V_{MO}/M_{MO}$ and $V_{DF}/M_{DF}$ except that, for altitudes where Mach number is the limiting factor, $M_{FC}$ need not exceed the Mach number at which effective speed warning occurs.

**SC23.255 Out-of-trim characteristics.**

In the absence of specific requirements for out-of-trim characteristics, the Raytheon Model 390 must comply with the following:

(a) From an initial condition with the airplane trimmed at cruise speeds up to $V_{MO}/M_{MO}$, the airplane must have satisfactory maneuvering stability and controllability with the degree of out-of-trim in both the airplane nose-up and

nose-down directions, which results from the greater of the following:

(1) A three-second movement of the longitudinal trim system at its normal rate for the particular flight condition with no aerodynamic load (or an equivalent degree of trim for airplanes that do not have a power-operated trim system), except as limited by stops in the trim system, including those required by § 23.655(b) for adjustable stabilizers; or

(2) The maximum mis-trim that can be sustained by the autopilot while maintaining level flight in the high speed cruising condition.

(b) In the out-of-trim condition specified in paragraph (a) of this special condition, when the normal acceleration is varied from +l g to the positive and negative values specified in paragraph (c) of this special condition, the following apply:

(1) The stick force versus g curve must have a positive slope at any speed up to and including $V_{FC}/M_{FC}$; and

(2) At speeds between $V_{FC}/M_{FC}$ and $V_{DF}/M_{DF}$, the direction of the primary longitudinal control force may not reverse.

(c) Except as provided in paragraph (d) and (e) of this special condition, compliance with the provisions of paragraph (a) of this special condition must be demonstrated in flight over the acceleration range as follows:

(1) $-1$ g to +2.5 g; or

(2) 0 g to 2.0 g, and extrapolating by an acceptable method to $-1$ g and +2.5 g.

(d) If the procedure set forth in paragraph (c)(2) of this special condition is used to demonstrate compliance and marginal conditions exist during flight test with regard to reversal of primary longitudinal control force, flight tests must be accomplished from the normal acceleration at which a marginal condition is found to exist to the applicable limit specified in paragraph (b)(1) of this special condition.

(e) During flight tests required by paragraph (a) of this special condition, the limit maneuvering load factors, prescribed in §§ 23.333(b) and 23.337, need not be exceeded. Also, the maneuvering load factors associated with probable inadvertent excursions beyond the boundaries of the buffet onset envelopes determined under special condition SC23.251(e), need not be exceeded. In addition, the entry speeds for flight test demonstrations at normal acceleration values less than 1 g must be limited to the extent necessary to accomplish a recovery without exceeding $V_{DF}/M_{DF}$.

(f) In the out-of-trim condition specified in paragraph (a) of this special condition, it must be possible from an overspeed condition at $V_{DF}/M_{DF}$ to produce at least 1.5 g for recovery by applying not more than 125 pounds of longitudinal control force using either the primary longitudinal control alone or the primary longitudinal control and the longitudinal trim system. If the longitudinal trim is used to assist in producing the required load factor, it must be shown at $V_{DF}/M_{DF}$ that the longitudinal trim can be actuated in the airplane nose-up direction with the primary surface loaded to correspond to the least of the following airplane nose-up control forces:

(1) The maximum control forces expected in service, as specified in §§ 23.301 and 23.397.

(2) The control force required to produce 1.5 g.

(3) The control force corresponding to buffeting or other phenomena of such intensity that is a strong deterrent to further application of primary longitudinal control force.

**SC23.629 Flutter.**

Instead of the term/speed ''$V_D$'' in § 23.629(b), use ''$V_{DF}/M_{DF}$.''

**SC23.703 Takeoff warning system.**

In the absence of specific requirements for a takeoff warning system, the following apply:

Unless it can be shown that a lift or longitudinal trim device that affects the takeoff performance of the aircraft would not give an unsafe takeoff configuration when selected out of an approved takeoff position, a takeoff warning system must be installed and meet the following requirements:

(a) The system must provide to the pilots an aural warning that is automatically activated during the initial portion of the takeoff roll if the airplane is in a configuration that would not allow a safe takeoff. The warning must continue until—

(1) The configuration is changed to allow safe takeoff, or

(2) Action is taken by the pilot to abandon the takeoff roll.

(b) The means used to activate the system must function properly for all authorized takeoff power settings and procedures and throughout the ranges of takeoff weights, altitudes, and temperatures for which certification is requested.

**SC23.1195 Engine Fire Extinguishing System.**

(a) Fire extinguishing systems must be installed and compliance must be shown with the following:

(1) Except for combustor, turbine, and tailpipe sections of turbine-engine installations that contain lines or components carrying flammable fluids for which a fire originating in these sections can be controllable, a fire extinguisher system must serve each engine compartment.

(2) The fire extinguishing system, the quantity of the extinguishing agent, the rate of discharge, and the discharge distribution must be adequate to extinguish fires. An individual ''one shot'' system may be used.

(3) The fire extinguishing system for a nacelle must be able to simultaneously protect each compartment of the nacelle for which protection is provided.

**SC23.1197 Fire Extinguishing Agents.**

(a) Fire extinguishing agents must meet the following requirements:

(1) Be capable of extinguishing flames emanating from any burning of fluids or other combustible materials in the area protected by the fire extinguishing system;

(2) Have thermal stability over the temperature range likely to be experienced in the compartment in which they are stored; and

(3) If any toxic extinguishing agent is used, provisions must be made to prevent harmful concentrations of fluid or fluid vapors from entering any personnel compartment even though a defect may exist in the extinguishing system. This must be shown by test except for built-in carbon dioxide fuselage compartment fire extinguishing systems for which:

(i) Five pounds or less of carbon dioxide will be discharged, under established fire control procedures, into any fuselage compartment; or

(ii) Protective breathing equipment is available for each flight crew member on flight deck duty.

**SC23.1199 Extinguishing Agent Containers.**

(a) Fire extinguishing agent containers must meet the following requirements:

(1) Each extinguishing agent container must have a pressure relief to prevent bursting of the container by excessive internal pressures.

(2) The discharge end of each discharge line from a pressure relief connection must be located so the discharge of the fire extinguishing agent would not damage the airplane. The line must also be located or protected to prevent clogging caused by ice or other foreign matter.

(3) A means must be provided for each fire extinguishing agent container to indicate that the container has discharged or that the charging pressure is below the established minimum necessary for proper functioning.

(4) The temperature of each container must be maintained, under intended operating conditions, to prevent the pressure in the container from falling below that necessary to provide an adequate rate of discharge, or rising high enough to cause premature discharge.

(5) If a pyrotechnic capsule is used to discharge the fire extinguishing agent, each container must be installed so that temperature conditions will not cause hazardous deterioration of the pyrotechnic capsule.

**SC23.1201 Fire Extinguishing System Materials.**

(a) Fire extinguisher system materials must meet the following requirements:

(1) No material in any fire extinguishing system may react chemically with any extinguishing agent so as to create a hazard; and

(2) Each system component in an engine compartment must be fireproof.

**SC23.1323 Airspeed indicating system.**

In addition to the requirements of § 23.1323, the following apply:

(a) The airspeed indicating system must be calibrated to determine the system error in flight and during the accelerate-takeoff ground run. The ground run calibration must be determined as follows:

(1) From 0.8 of the minimum value of $V_1$ to the maximum value of $V_2$, considering the approved ranges of altitude and weight; and

(2) With the flaps and power settings corresponding to the values determined in the establishment of the takeoff path under special condition SC23.57, assuming that the critical engine fails at the minimum value of $V_1$.

(b) The information showing the relationship between IAS and CAS, determined in accordance with paragraph (a) of this special condition, must be shown in the Airplane Flight Manual.

**SC23.1325 Static pressure system.**

In addition to the requirements of § 23.1325, the following apply:

(a) The altimeter system calibration required by § 23.1325(e) must be shown in the Airplane Flight Manual.

(b) If an altimeter system is fitted with a device that provides corrections to the altimeter indication, the device must be designed and installed in such manner that it can be by-passed when it malfunctions, unless an alternate altimeter system is provided. Each correction device must be fitted with a means for indicating the occurrence of reasonably probable malfunctions, including power failure, to the flightcrew. The indicating means must be effective for any cockpit lighting condition likely to occur.

**SC23.1501 [Operating Limitations and Information] General.**

Instead of the requirements of § 23.1501(a), the following apply:

(a) Each operating limitation specified in §§ 23.1505 through 23.1522, 23.1524 through 23.1527 and special conditions SC23.1505, SC23.1513, and SC23.1523.

**SC23.1505 Airspeed limitations.**

In § 23.1505 (a)(2)(ii), change the reference from ''§ 23.251'' to ''special condition SC23.251.''

Instead of compliance with § 23.1505(c), the following applies: The maximum operating limit speed ($V_{MO}/M_{MO}$ airspeed or Mach number, whichever is critical at a particular altitude) is a speed that may not be deliberately exceeded in any regime of flight (climb, cruise, or descent), unless a higher speed is authorized for flight test or pilot training operations. $V_{MO}/M_{MO}$ must be established so that it is not greater than the design cruising speed, $V_C$, and so that it is sufficiently below $V_D/M_D$, or $V_{DF}/M_{DF}$, to make it highly improbable that the latter speeds will be inadvertently exceeded in operations. The speed margin between $V_{MO}/M_{MO}$ and $V_D/M_D$, or $V_{DF}/M_{DF}$, may not be less than that determined under § 23.335(b) or found necessary during the flight tests conducted under special condition SC23.253.

**SC23.1513 Minimum control speed.**

In § 23.1513, change the reference from ''§ 23.149'' to ''§ 23.149 and special condition SC23.149.''

**SC23.1523 Minimum flightcrew.**

Instead of compliance with § 23.1523, the following apply:

The minimum flightcrew must be established so that it is sufficient for safe operation considering:

(a) The workload on individual flightcrew members and each flightcrew member workload determination must consider the following:

(1) Flight path control,

(2) Collision avoidance,

(3) Navigation,

(4) Communications,

(5) Operation and monitoring of all essential airplane systems,

(6) Command decisions, and

(7) The accessibility and ease of operation of necessary controls by the appropriate flightcrew member during all normal and emergency operations when at the flightcrew member station.

(b) The accessibility and ease of operation of necessary controls by the appropriate flightcrew member; and

(c) The kinds of operation authorized under § 23.1525.

**SC23.1541 [Markings and Placards] General.**

Instead of § 23.1541(a)(1), the following applies:

(a)(1) The markings and placards specified in §§ 23.1545 to 23.1567 and special condition SC23.1545; and

**SC23.1545 Airspeed indicator.**

Instead of compliance with § 23.1545, the following applies:

''The following markings must be made on each airspeed indicator:

(a) A maximum allowable airspeed indication showing the variation of $V_{MO}/M_{MO}$ with altitude or compressibility limitations (as appropriate), or a radial red line marking for $V_{MO}/M_{MO}$ must be made at the lowest value of $V_{MO}/M_{MO}$ established for any altitude up to the maximum operating altitude for the airplane.

**SC23.1581 [Airplane Flight Manual and Approved Manual Material.] General.**

In § 23.1581 replace references to § 23.1583, § 23.1585, and § 23.1587 with special conditions SC23.1583, SC23.1585, and SC23.1587, respectively.

**SC23.1583 Operating limitations.**

Instead of the requirements of § 23.1583, the following apply:

(a) Airspeed limitations. The following airspeed limitations and any other airspeed limitations necessary for safe operation must be furnished:

(1) The maximum operating limit speed, $V_{MO}/M_{MO}$, and a statement that this speed limit may not be deliberately exceeded in any regime of flight (climb, cruise, or descent) unless a higher speed is authorized for flight test or pilot training.

(2) If an airspeed limitation is based upon compressibility effects, a statement to this effect and information as to any symptoms, the probable behavior of the airplane, and the recommended recovery procedures.

(3) The maneuvering speed, $V_O$, and a statement that full application of rudder and aileron controls, as well as maneuvers that involve angles of attack near the stall, should be confined to speeds below this value.

(4) The maximum speed for flap extension, $V_{FE}$, for the takeoff, approach, and landing positions.

(5) The landing gear operating speed or speeds, $V_{LO}$.

(6) The landing gear extended speed, $V_{LE}$ if greater than $V_{LO}$, and a statement that this is the maximum speed at

which the airplane can be safely flown with the landing gear extended.

(b) Powerplant limitations. The following information must be furnished:

(1) Limitations required by § 23.1521.

(2) Explanation of the limitations, when appropriate.

(3) Information necessary for marking the instruments, required by § 23.1549 through § 23.1553.

(c) Weight and loading distribution. The weight and extreme forward and aft center of gravity limits required by §§ 23.23 and 23.25 must be furnished in the Airplane Flight Manual. In addition, all of the following information and the information required by § 23.1589 must be presented either in the Airplane Flight Manual or in a separate weight and balance control and loading document, which is incorporated by reference in the Airplane Flight Manual:

(1) The condition of the airplane and the items included in the empty weight, as defined in accordance with § 23.29.

(2) Loading instructions necessary to ensure loading of the airplane within the weight and center of gravity limits, and to maintain the loading within these limits in flight.

(d) Maneuvers. A statement that acrobatic maneuvers, including spins, are not authorized.

(e) Maneuvering flight load factors. The positive maneuvering limit load factors for which the structure is proven, described in terms of accelerations, and a statement that these accelerations limit the angle of bank in turns and limit the severity of pull-up maneuvers must be furnished.

(f) Flightcrew. The number and functions of the minimum flightcrew must be furnished.

(g) Kinds of operation. The kinds of operation (such as VFR, IFR, day, or night) and the meteorological conditions in which the airplane may or may not be used must be furnished. Any installed equipment that affects any operating limitation must be listed and identified as to operational function.

(h) Additional operating limitations must be established as follows:

(1) The maximum takeoff weights must be established as the weights at which compliance is shown with the applicable provisions of part 23 (including the takeoff climb provisions of special condition SC23.67(a) through (c) for altitudes and ambient temperatures).

(2) The maximum landing weights must be established as the weights at which compliance is shown with the applicable provisions of part 23 (including the approach climb and balked landing climb provisions of special conditions SC23.67(d) and SC23.77 for altitudes and ambient temperatures).

(3) The minimum takeoff distances must be established as the distances at which compliance is shown with the applicable provisions of part 23 (including the provisions of special conditions SC23.55 and SC23.59 for weights, altitudes, temperatures, wind components, and runway gradients).

(4) The extremes for variable factors (such as altitude, temperature, wind, and runway gradients) are those at which compliance with the applicable provision of part 23 and these special conditions is shown.

(i) Maximum operating altitude. The maximum altitude established under § 23.1527 must be furnished.

(j) Maximum passenger seating configuration. The maximum passenger seating configuration must be furnished.

(k) Ambient temperatures. Where appropriate, maximum and minimum ambient air temperatures for operation.

(l) Allowable lateral fuel loading. The maximum allowable lateral fuel loading differential, if less than the maximum possible.

(m) Baggage and cargo loading. The following information for each baggage and cargo compartment or zone.

(1) The maximum allowable load; and

(2) The maximum intensity of loading.

(n) Systems. Any limitation on the use of airplane systems and equipment.

(o) Smoking. Any restriction on smoking in the airplane.

**SC23.1585 Operating procedures.**

Instead of the requirements of § 23.1585, the following applies:

(a) Information and instruction regarding the peculiarities of normal operations (including starting and warming the engines, taxiing, operation of wing flaps, slats, landing gear, speed brake, and the automatic pilot) must be furnished, together with recommended procedures for the following:

(1) Engine failure (including minimum speeds, trim, operation of the remaining engine, and operation of flaps);

(2) Restarting turbine engines in flight (including the effects of altitude);

(3) Fire, decompression, and similar emergencies;

(4) Use of ice protection equipment;

(5) Operation in turbulence (including recommended turbulence penetration airspeeds, flight peculiarities, and special control instructions);

(6) Procedures for transition from landing approach to balk landing climb; and

(7) The demonstrated crosswind velocity and procedures and information pertinent to operation of the airplane in crosswinds.

(b) Information identifying each operating condition in which the fuel system independence prescribed in § 23.953 is necessary for safety must be furnished, together with instructions for placing the fuel system in a configuration used to show compliance with that section.

(c) For each airplane showing compliance with § 23.1353(g)(2) or (g)(3), the operating procedures for disconnecting the battery from its charging source must be furnished.

(d) If the unusable fuel supply in any tank exceeds 5 percent of the tank capacity, or 1 gallon, whichever is greater, information must be furnished indicating that, when the fuel quantity indicator reads ''zero'' in level flight, any fuel remaining in the fuel tank cannot be used safely in flight.

(e) Information on the total quantity of usable fuel for each fuel tank must be furnished.

(f) The buffet onset envelopes determined under special condition SC23.251 must be furnished. The buffet onset envelopes presented may reflect the center of gravity at which the airplane is normally loaded during cruise if corrections for the effect of different center of gravity locations are furnished.

**SC23.1587 Performance information.**

Instead of the requirements of § 23.1587, the following applies:

(a) Each Airplane Flight Manual must contain information to permit conversion of the indicated temperature to free air temperature if other than a free air temperature indicator is used to comply with the requirements of § 23.1303(d).

(b) Each Airplane Flight Manual must contain the performance information computed under the applicable provisions of this part for the weights, altitudes, temperatures, wind components, and runway gradients, as applicable, within the operational limits of the airplane, and must contain the following:

(1) The conditions under which the performance information was obtained, including the speeds associated with the performance information.

(2) $V_S$ determined in accordance with special condition SC23.49.

(3) The following performance information (determined by extrapolation and computed for the range of weights between the maximum landing and maximum takeoff weights):

(i) Climb in the landing configuration.

(ii) Climb in the approach configuration.

(iii) Landing distance.

(4) Procedures established under special condition SC23.45(j), (k), and (l) that are related to the limitations and information required by special condition SC23.1583(h) and by this paragraph. These procedures must be in the form of guidance material, including any relevant limitations or information.

(5) An explanation of significant or unusual flight or ground handling characteristics of the airplane.

**SC23.A Effects of contamination on natural laminar flow airfoils.**

In the absence of specific requirements for airfoil contamination, airplane airfoil designs that have airfoil pressure gradient characteristics and smooth aerodynamic surfaces that may be capable of supporting natural laminar flow must comply with the following:

(a) It must be shown by tests, or analysis supported by tests, that the airplane complies with the requirements of §§ 23.141 through 23.207, 23.233, 23.251, 23.253 (and any changes made to these paragraphs by these special conditions) with any airfoil contamination that would normally be encountered in service and that would cause significant adverse effects on the handling qualities of the airplanes resulting from the loss of laminar flow.

(b) Significant performance degradations identified as resulting from the loss of laminar flow must be provided as part of the information required by special conditions SC23.1585 and SC23.1587.

Issued in Kansas City, Missouri on July 9, 1999.

**Michael Gallagher,**

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

[FR Doc. 99–18819 Filed 7–22–99; 8:45 am]

**BILLING CODE 4910–13–P**

## COMMODITY FUTURES TRADING COMMISSION

## 17 CFR Part 3

## Compliance With Commission Regulation 3.31 Requirements for Reporting Deficiencies, Inaccuracies, and Changes Resulting From Exchange Disciplinary and Access Denial Actions

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Advisory.

**SUMMARY:** The Commodity Futures Trading Commission (''Commission'') advises registrants and applicants for registrant status that they are relieved of filing a Form 3–R, as required under Commission regulation 3.31, if the information to be reported is solely the result of an exchange disciplinary or access denial action. The Commission has recently delegated to the National Futures Association (''NFA'') the duty to receive and to process exchange disciplinary and access denial action information filed by the exchanges in accordance with Commission Regulation 9.11. Thus, the NFA will possess the foregoing information that registrants and applicants for registrant status would otherwise be required to include in a Form 3–R.

**EFFECTIVE DATE:** July 23, 1999.

**FOR FURTHER INFORMATION CONTACT:** Rachel F. Berdansky, Special Counsel, or Joshua R. Marlow, Attorney-Advisor, Division of Trading and Markets, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581. Telephone: (202) 418–5490.

**SUPPLEMENTARY INFORMATION:**

### I. Introduction

The Commission has published elsewhere today in the **Federal Register** an Advisory and a Notice and Order relating to the filing, processing, and maintenance of exchange disciplinary or access denial actions required under Regulation 9.11 (''Regulation 9.11 notices'').[1] The Advisory, among other things, permits exchanges to file either electronic or written Regulation 9.11 notices with the NFA rather than filing these notices with the Commission. The Notice and Order accompanying the Advisory delegates to the NFA the duty to receive and to process disciplinary and access denial action information filed by exchanges pursuant to Regulation 9.11(a). As part of this delegation, the NFA will serve as the official custodian of records for exchange disciplinary and access denial actions.

Information contained in exchange Regulation 9.11 notices must be reported by registrants—and applicants awaiting registration—on Form 3–R, pursuant to Regulation 3.31. Regulation 3.31(a) requires an applicant or registrant as a futures commission merchant, commodity trading advisor, commodity pool operator, introducing broker, or leverage transaction merchant to correct promptly any deficiency or inaccuracy in Form 7–R or Schedule D to Form 7–R which has rendered the information contained therein non-current or inaccurate. These corrections must be made on Form 3–R. Section (b) imposes a similar requirement on an applicant or registrant as a floor broker, floor trader, associated person, any person qualifying for temporary no-action under Part 1.66 of the Commission's regulations,[2] and each principal of a futures commission merchant, commodity trading advisor, commodity pool operator, introducing broker, or leverage transaction merchant. These individuals must use Form 3–R to make changes to Form 8–R.

As the official custodian of records for exchange Regulation 9.11 filings, the NFA will now have disciplinary information currently required to be reported in a Form 3–R prior to an individual or entity subject to an exchange disciplinary or access denial action actually filing the form. Therefore, to avoid duplicative regulatory reporting, the Commission hereby advises all individuals and entities subject to Regulation 3.31 that they are relieved from Regulation 3.31 reporting obligations resulting from an exchange disciplinary or access denial action and reported by an exchange pursuant to a Regulation 9.11 notice.

### II. Compliance With Regulation 3.31

The NFA has apprised the Commission that exchange Regulation 9.11 notices will be regularly reviewed by the NFA's registration processing group staff.[3] This is the same staff

[1] Regulation 9.11(a) requires that whenever an exchange decision pursuant to which a disciplinary or access denial action is to be imposed has become final, the exchange must provide written notice of such action to the person against whom the action was taken and the Commission within 30 days thereafter.

[2] Regulation 1.66 grants no-action relief to those floor traders granted trading privileges on a contract market on or before April 26, 1993 from the then-new registration requirements for floor traders under Regulation 3.11.

[3] Pursuant to Section 8a(10) of the Commodity Exchange Act, the NFA has been delegated numerous registration functions by the Commission. Part 3 of Commission Regulations, 17 C.F.R. § 3 (1998), is dedicated to registration. Most registration functions were delegated to the NFA in 1983. 49 FR 35158 (August 3, 1983) (''NFA's registration rules . . . apply to all persons required to be registered under the Act (and not otherwise exempt by Commission rule or order) . . . [A]ll documents referred to in [Part 3] regulations will be filed with, submitted to or given by NFA at its Chicago office instead of the Commission.'') Subsequent orders have added to, or clarified, this delegation. *See* 48 FR 51809 (November 14, 1983); 48 FR 8226 (March 5, 1984); 49 FR 39593 (October 9, 1984), amended by 49 FR 45418 (November 16, 1984); 50 FR 34885 (August 28, 1985); 51 FR 25929 (July 17, 1986); 51 FR 34490 (September 29, 1986); 54 FR 19594 (May 8, 1989); 54 FR 41133 (October 5, 1989); 58 FR 19657 (April 15, 1993); 59 FR 38957 (August 1, 1994); 62 FR 36050 (July 3, 1997); 63 FR 18821 (April 16, 1998); and 63 FR 63913 (November 17, 1998). An earlier Notice and Order delegated to the NFA limited registration functions with respect to introducing brokers and their associated persons. *See* 49 FR 15940 (April 13, 1983).

currently responsible for receiving and processing Form 3–Rs filed pursuant to Regulation 3.31. Exchange disciplinary information reported in Regulation 9.11 filings will be posted on the NFA's Background Affiliation Status Information Center (''BASIC'') database.[4] On a daily basis, the NFA will print copies of all entries made in BASIC. These copies will be forwarded to the registration processing group and treated as substitutes for Form 3–Rs. The registration processing group will then update the necessary registration records and the paper copy will be placed in the registrant's or potential registrant's file.

### III. Conclusion

The information contained in a Form 3–R filed as a result of an exchange disciplinary or access denial action is identical to that included in an exchange Regulation 9.11 filing. Pursuant to the Commission's delegation to the NFA to receive and to process exchange Regulation 9.11 notices and to maintain a database of the information contained therein, the NFA will have timely access to exchange Regulation 9.11 notices. Therefore, the Commission, in order to avoid duplicative regulatory reporting, is permitting any individual or entity otherwise required under Regulation 3.31(a) or (b) to file a Form 3–R as a result of an exchange disciplinary or access denial action to forego this reporting obligation. The Commission emphasizes that this relief applies only with respect to exchange disciplinary or access denial actions. All other reporting obligations under Regulation 3.31 remain unchanged.

Issued in Washington, D.C. on July 19, 1999 by the Commission.

**Jean A. Webb,**

*Secretary of the Commission.*

[FR Doc. 99–18805 Filed 7–22–99; 8:45 am]

BILLING CODE 6351–01–M

## COMMODITY FUTURES TRADING COMMISSION

## 17 CFR Part 9

## Performance of Certain Functions by the National Futures Association With Respect to Regulation 9.11

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Notice and order.

**SUMMARY:** Consistent with the Commodity Futures Trading Commission's (''Commission'') efforts toward reducing the burden of regulatory reporting by exchanges and recognizing advances in electronic media technology, the Commission is delegating to the National Futures Association (''NFA'') the duty to receive and to process exchange disciplinary and access denial action information, in accordance with procedures established by the Commission. As part of this delegation, the NFA shall serve as the official custodian of records for exchange disciplinary filings. The NFA additionally will be responsible for using the data collected to generate administrative reports for Commission oversight use.

**EFFECTIVE DATE:** July 23, 1999.

**FOR FURTHER INFORMATION CONTACT:** Rachel F. Berdansky, Special Counsel, or Joshua R. Marlow, Attorney-Advisor, Division of Trading and Markets, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581, telephone (202) 418–5490.

**SUPPLEMENTARY INFORMATION:**

### I. Introduction

Commission Regulation 9.11 was established in 1978 to carry out certain mandates of Section 8c of the Commodity Exchange Act (''Act'').[1] Among other things, Section 8c of the Act requires exchanges to discipline members; to notify the disciplined individuals, the Commission, and the public of disciplinary actions; and grants the Commission the authority to review exchange disciplinary actions. Regulation 9.11 sets forth the manner in which an exchange is to provide that notice.[2]

In January 1991, the NFA created its Clearinghouse of Disciplinary Information (''CDI'') database, a central repository for information regarding disciplinary actions taken by the NFA, the Commission, and the exchanges. The need for a resource of this kind became evident following the 1989 joint Commission and Federal Bureau of Investigation undercover investigation of floor trading practices at the Chicago Board of Trade and the Chicago Mercantile Exchange. Members of the media found that they had to contact several different organizations to obtain disciplinary history and registration information regarding individuals allegedly involved in illegal trading practices.

CDI has since been replaced by a more versatile database called the Background Affiliation Status Information Center (''BASIC''). A primary reason for the NFA's switch to BASIC was to make information found in CDI available to the public on the Internet.[3] Specifically, the public can access information pertaining to the types of violations committed, penalties imposed, the effective date of the action, and, in some cases, text from the exchange's decision.[4] BASIC, which can be searched by NFA identification number, individual name or firm name, essentially replicates what was previously available to the public only by calling the NFA's toll-free telephone line.

One result from the creation of CDI and BASIC has been that since 1991, the exchanges have been filing disciplinary and access denial action notices (''Regulation 9.11 notices'') in duplicate, once with the Commission pursuant to Regulation 9.11, and again with the NFA. Pursuant to ongoing discussions between the Joint Compliance Committee (''JCC''),[5] the NFA, and the Commission, the exchanges and the NFA have requested Commission permission to allow the exchanges to file Regulation 9.11 notices solely with the NFA to reduce the exchanges' regulatory reporting obligations. Toward that end, the NFA has agreed to process all exchange Regulation 9.11 notices and to assume complete responsibility for maintaining a database of all

[1] 43 FR 59343 (December 20, 1978). Commission regulations referred to herein can be found at 17 C.F.R. § 9 (1998).

[2] Regulation 9.11(a) requires that whenever an exchange decision pursuant to which a disciplinary or access denial action is to be imposed has become final, the exchange must provide written notice of such action to the person against whom the action was taken and the Commission within 30 days thereafter. The contents to be included in the notice are set forth in Regulation 9.11(b). Regulation 9.11(c) specifies that notice must be delivered either in person or by mail to both the individual subject to the action and to the Commission. Notice filed with the Commission also must include the date on which notice was delivered to the individual and state whether delivery was in person or by mail. Pursuant to Regulation 9.11(d), filing by mail becomes complete upon deposit in the mail. Finally, Regulation 9.11(e) provides that a duly authorized officer, agent, or employee of the exchange must certify that the required notice is true and correct.

[3] The Internet address for the NFA's BASIC system is http://www.nfa.futures.org/BASIC/.

[4] BASIC contains all disciplinary actions taken by the NFA since its inception in 1982, all Commission disciplinary actions taken since 1975, and all disciplinary actions taken by exchanges since at least 1990.

[5] The JCC was established in May 1989 to aid in the development of improved compliance systems through joint exchange efforts and information sharing among self-regulatory organizations. The JCC is comprised of senior compliance officials from all of the domestic futures exchanges and the NFA. Commission staff participate as observers.

[4] A description of BASIC and how exchange disciplinary data is posted on the system can be found in the Advisory and Notice and Order published elsewhere today in the *Federal Register.*

exchange, NFA, and Commission disciplinary actions.

In the past, periodic reviews by the Commission's Division of Trading and Markets (''Division'') of exchange accuracy and timeliness in filing notices of disciplinary and access denial actions with the NFA revealed that the information provided to the NFA often was incomplete and generally arrived two to six months after the relevant action. Thus, the Commission was unwilling to relinquish its responsibility for collecting and maintaining exchange disciplinary information until satisfied that the exchanges were filing complete and accurate information with the NFA in a timely manner. The exchanges were apprised of the Division's concerns and the Division has continued to monitor the exchanges' progress.[6] The Commission is now satisfied that the exchanges are filing accurate and timely disciplinary and access denial action notices with the NFA.

In recognition of the exchanges' progress in filing accurate and timely notices of disciplinary and access denial actions with the NFA, and the NFA's success in developing its BASIC system, the Commission hereby delegates to the NFA the following duties: (1) To process exchange disciplinary information; (2) to provide the Commission with access to a Management Report summarizing all recent exchange disciplinary information; (3) to assist the Commission in enforcing exchange compliance with Regulation 9.11 filing requirements; and (4) to serve as the official custodian of a database containing records of the exchanges' disciplinary and access denial actions.[7] The Commission is retaining its oversight authority of the exchanges' disciplinary programs, including its authority to review and to modify exchange disciplinary actions and to take enforcement or other remedial action against exchanges for noncompliance with Regulation 9.11.

This Notice and Order is being issued in conjunction with a Commission Advisory, published elsewhere today in the **Federal Register,** permitting the exchanges to file Regulation 9.11 notices directly with the NFA, rather than filing these notices with the Commission. Among other things, the Advisory provides the exchanges with the option of filing Regulation 9.11 notices with the NFA electronically or in writing. The Commission believes that the resulting effect of the Advisory will be to reduce exchanges' compliance costs by lessening the exchanges' regulatory reporting burden and allowing the exchanges to take advantage of electronic media technology.[8]

## II. Delegation of Duties to the NFA

### *A. Processing Regulation 9.11 Filings and Notice of Filing Deficiencies*

The NFA must process exchange Regulation 9.11 notices in a manner consistent with Regulation 9.11.[9] For purposes of this Notice and Order, the term ''process'' generally refers to receipt of filings and review of filings for compliance with applicable requirements. As explained in the accompanying Advisory, regulation 9.11 notices filed with the NFA, either in writing or electronically, must satisfy all of the content requirements set forth in Regulation 9.11(b) and must be filed in a timely manner. Toward that end, electronic notices will be deemed timely if verified by an exchange within 30 days of a final disciplinary or access denial action. Written notices also must be promptly verified, and it shall be the NFA's duty to monitor that those exchanges choosing to file written notices complete the verification process in a timely manner.[10]

### *B. NFA Reports and BASIC Query Capabilities*

The NFA shall have a duty to provide the Commission with access to a Management Report so that the Commission can diligently carry out its legislative mandate. This Management Report must include the following for each disciplinary or access denial action:

- Name of Contributor (*i.e.*, an exchange, the NFA, or the Commission).
- Name of Respondent.
- Contributor Reference Number.
- Date of Decision or Order.
- Date of Notification of Member.
- Date of Notification of NFA.
- Date Available to BASIC Users.
- Total Number of Days for Data to be Released into BASIC (*i.e.* the number of days from the date of an exchange final action until the date of exchange verification/certification).
- Changes Made to Records By Exchanges After the 30-day Period Prescribed in Regulation 9.11(a) Has Expired.
- Name of Staff Person Entering Data (*i.e.*, initials).

The Commission currently maintains a database of all exchange disciplinary and access denial actions (''9.11 database'') which it uses to generate 42 standardized statistical reports and four standardized summary reports, including a management report.[11] Generally, the Commission has been generating these reports on a quarterly basis, except the management report, which is produced biweekly. As the Commission needs these reports for effective oversight of the domestic futures industry, the BASIC system must provide the Commission with the capability to generate these standardized reports, whenever needed, without having to submit requests to the NFA. The NFA therefore shall provide the Commission with unlimited local access to the BASIC system.[12]

The Commission also requires that BASIC have the capability to conduct specialized ad hoc queries of the NFA database. For instance, the Commission often needs data that pertain to a particular rule violation or exchange. The NFA has assured the Commission that, as part of BASIC's query capability development, the system will soon have the capacity to process customized queries and generate resulting reports. This Notice and Order hereby requires that BASIC's customized ad hoc query capability be developed in a manner which will allow the NFA to produce and deliver customized reports to the Commission, on demand, in approximately three business days from the day of request. All Commission requests for ad hoc queries and customized reports shall be made by designated Division staff members.

### *C. BASIC Maintenance*

The NFA shall maintain, and serve as the official custodian of, records for

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[6] In a June 11, 1998 letter to all JCC representatives, Stephen Braverman, Associate Director, Division of Trading and Markets, expressed the Division's view that it was eager to pursue the goal of allowing exchanges to file Regulation 9.11 notices electronically with the NFA, but wanted assurances that the exchanges' filings would be accurate and timely.

[7] Section II. *infra* includes a complete description of these duties.

[8] The Commission is encouraging all exchanges to file electronic Regulation 9.11 notices with the NFA due to associated time and cost savings. *See* Advisory, note 10.

[9] The Commission expects that, pursuant to the Advisory, the exchanges will file all Regulation 9.11 notices with the NFA. However, if an exchange files a Regulation 9.11 notice with the Commission rather than the NFA, the Commission will immediately forward the notice to the NFA for processing.

[10] *See* Advisory, Section IV.C.

[12] Although the Commission's 9.11 database only includes exchange disciplinary and access denial actions, and thus, only these actions are included in the Commission's management report, BASIC also includes all NFA and Commission disciplinary and administrative actions. Therefore, the Commission believes that the Management Report generated from BASIC will best serve the Commission and the NFA if it includes the above specified information, where applicable, about all actions input into the BASIC system.

[12] ''Unlimited local access'' in this context means that the Commission shall have the capability to access all data in BASIC and BASIC's query features from its headquarters and regional offices.

exchange Regulation 9.11 filings. The NFA shall fulfill this obligation by continuing to maintain the BASIC system and further developing it as necessary to comply with the terms of this Notice and Order.

### III. Authority

Pursuant to Section 8a(10) of the Act, the Commission has issued numerous orders authorizing the NFA to perform various portions of the Commission's registration functions and responsibilities under the Act.[13] In this connection, the Commission previously has issued orders authorizing the NFA to perform registration processing functions with respect to floor brokers (''FBs'') and floor traders (''FTs''), including: (1) Processing and, where appropriate, granting applications for registration under the Act; (2) issuing and terminating, where appropriate, temporary licenses; (3) processing the triennial review of registration information, periodic updates, terminations of trading privileges, and requests for withdrawal from registration; (4) establishing and maintaining systems of records regarding FBs and FTs and serving as official custodian of those records; (5) denying, conditioning, suspending, modifying, restricting or revoking the registration of any FB, FT, or applicant for registration in either category; and (6) granting the registration of any applicant for registration as an FB or FT, or maintaining the registration of any registered FB or FT who may be subject to statutory disqualification from registration without forwarding such cases to the Commission for review.[14] Accordingly, the NFA has adopted, and the Commission has approved, rules to govern the performance of those functions. For example, NFA Rule 501(b) pertains to the NFA's authority to deny, condition, suspend, restrict and revoke registration of floor brokers and floor traders. Additionally, Rule 505 sets forth procedures governing floor broker applicants, floor trader applicants, and registrants disqualified from registration under Sections 8a(2), 8a(3) or 8a(4) of the Act.[15]

This Notice and Order is in accord with the Commission's previous delegation to the NFA to perform registration processing functions with respect to FBs and FTs, in that, an individual's disciplinary history clearly is a factor that must be considered in any determination of his or her fitness to execute customer orders and personal trades on an exchange floor. Deeming the NFA as the custodian of all exchange Regulation 9.11 filings, and delegating to the NFA the responsibility for processing these notices and generating statistical and summary reports with the information amassed, should ensure that the NFA has the necessary information to continue to make appropriate registration determinations.

Moreover, the Commission anticipates that, when BASIC's customized ad hoc query capabilities are fully developed and operational, as discussed above, there will be no need to continue maintaining the Commission's 9.11 database. Thus, this delegation will facilitate the Commission performing its regulatory and oversight functions in a more efficient manner by eliminating a duplicative and time-consuming administrative duty.

### IV. Conclusion and Order

In light of the NFA's and exchanges' requests for Commission authorization to allow exchanges to file Regulation 9.11 notices solely with the NFA, and for the NFA to assume complete responsibility for processing these notices and maintaining a database of all exchange, NFA, and Commission actions, the Commission has determined, in accordance with Section 8(a)(10) of the Act, to delegate to the NFA the authority to perform the following functions:

1. To process exchange disciplinary information filed with it by an exchange or the Commission for inclusion in the BASIC system;

2. To provide the Commission with access to a Management Report summarizing all recent exchange disciplinary information; to provide the Commission with the capability to generate standardized reports on the BASIC system; and to provide the Commission with ad hoc queries generated from BASIC;

3. To assist the Commission in enforcing exchange compliance with Regulation 9.11 filing requirements; and

4. To serve as the official custodian of a database containing records of all exchange disciplinary and access denial actions filed with the NFA for inclusion in the BASIC system.

The NFA is authorized to perform all functions specified herein until such time as the Commission orders otherwise. Nothing in this Notice and Order shall affect the Commission's oversight authority of the exchanges' disciplinary programs. The Commission is relating all of its oversight authority, including its authority to review and to modify exchange disciplinary actions and to take enforcement or other remedial action against exchanges for noncompliance with Regulation 9.11. The NFA may submit to the Commission for clarification any specific matters that have been delegated to it, and Commission staff will be available to discuss with NFA staff issues relating to implementation of this Notice and Order.

Issued in Washington, D.C. on July 19, 1999 by the Commission.

**Jean A. Webb,**

*Secretary of the Commission.*

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BILLING CODE 6351–01–M

[13] Section 8a(10) of the Act provides that the Commission may authorize any person to perform any portion of the registration functions under the Act, notwithstanding any other provisions of law, in accordance with rules adopted and submitted by that person to the Commission and subject to the provisions of the Act applicable to registrations granted by the Commission. 7 U.S.C. 12(a)(10) (1982).

[14] *See* 51 FR 25929 (July 17, 1986); 51 FR 34490 (September 29, 1986); 58 FR 19657 (April 15, 1993); 59 FR 38957 (August 1, 1994); and 62 FR 36050 (July 3, 1997). In addition, the Commission previously has authorized the NFA to perform registration functions, and to take adverse registration actions, with respect to futures commission merchants, introducing brokers, commodity pool operators, commodity trading advisors, leverage transaction merchants, agricultural trade option merchants, associated persons of any of the foregoing entities, as well as applicants for registration in any of the aforementioned categories. *See* 49 FR 15940 (April 13, 1983); 49 FR 35158 (August 3, 1983); 48 FR 51809 (November 14, 1983); 48 FR 8226 (March 5, 1984); 49 FR 39593 (October 9, 1984), amended by 49 FR 45418 (November 16, 1984); 50 FR 34885 (August 28, 1985); 54 FR 19594 (May 8, 1989); 54 FR 41133 (October 5, 1989); 63 FR 18821 (April 16, 1998); and 63 FR 63913 (November 17, 1998).

[15] The entire set of NFA rules governing registration can be found in the current ''National Futures Association Manual,'' Vol. 5, No. 3, April 1, 1999. *See* Registration Rules, Rule 101 through Rule 801, pp. 8001–8057. After July 1, 1999, the NFA rules will be available on the NFA's website. *See* note 3.

## COMMODITY FUTURES TRADING COMMISSION

### 17 CFR Part 9

### Alternative Methods of Compliance With Requirements for Disclosure of Exchange Disciplinary Information and Access Denial Actions

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Advisory.

**SUMMARY:** The Commodity Futures Trading Commission (''Commission'') is issuing guidance concerning alternative methods of compliance with the requirements of Regulation 9.11(a) for the disclosure of information to the Commission by exchanges regarding disciplinary actions and access denial

actions.[1] Rather than filing notices of these actions with the Commission, an exchange may now electronically transmit the required notice to the National Futures Association (''NFA'') through the NFA's Background Affiliation Status Information Center (''BASIC'') system, or deliver written notice to the NFA to be input into BASIC. Because of the relative convenience, and since BASIC's ultimate success depends upon direct filing of exchange Regulation 9.11 notices with the NFA, the Commission anticipates that the exchanges will comply with Regulation 9.11(a) by one of these two alternative methods rather than filing these notices with the Commission. This Advisory does not affect the manner in which an exchange must provide written notice to the person against whom the relevant action was taken. The Commission also is clarifying its view that Regulation 9.11(b)(2) requires that all notices of disciplinary and access denial actions indicate whether financial harm to a customer was involved in the rule violation resulting in imposition of the action.

**EFFECTIVE DATE:** July 23, 1999.

**FOR FURTHER INFORMATION CONTACT:** Rachel F. Berdansky, Special Counsel, or Joshua R. Marlow, Attorney-Advisor, Division of Trading and Markets, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581. Telephone: (202) 418–5490.

**SUPPLEMENTARY INFORMATION:**

## I. Introduction

The Commission is advising exchanges concerning two alternative methods of compliance with Regulation 9.11(a) pertaining to the disclosure of disciplinary actions and access denial actions. As explained below, Regulation 9.11(a) requires, among other things, that an exchange file written notice with the Commission of actions which result in discipline or denial of access to its members. Pursuant to this Advisory, rather than filing the required notice with the Commission, an exchange has the option of filing the notice with the NFA either electronically or in writing.[2] As discussed below, based on current practice, the Commission expects that all exchanges will adopt one of these two alternative notification methods for Regulation 9.112(a) compliance.[3]

## II. Regulation 9.11 Requirements

Regulation 9.11(a) requires that whenever an exchange decision pursuant to which a disciplinary or access denial action is to be imposed has become final, the exchange must provide written notice of such action to the person against whom the action was taken and the Commission within 30 days thereafter.[4] The content to be included are set forth in Regulation 9.11(b), which requires that notice include the name of the individual against whom the action was taken; a statement of the reasons for the action; a list of any rules which the individual was charged with having violated or which otherwise serve as the basis of the action; a statement of the exchange's conclusions and findings regarding each violation charged or, in the event of a settlement, a statement specifying those rule violations which the exchange believes were committed; the terms of the action; the date the action was taken; the date the action will become effective; and a statement informing the party subject to the action of the availability of Commission review pursuant to Section 8c of the Commodity Exchange Act. Regulation 9.11(c) specifies that notice must be delivered either in person or by mail to both the individual subject to the action and to the Commission. Notice filed with the Commission also must include the date on which notice was delivered to the individual and state whether delivery was in person or by mail. Pursuant to Regulation 9.11(d), filing by mail becomes complete upon deposit in the mail. Finally, Regulation 9.11(e) provides that a duly authorized officer, agent, or employee of the exchange must certify that the required notice is true and correct.

## III. Alternative Methods of Compliance

In response to requests from the NFA and the Joint Compliance Committee (''JCC''),[5] the Commission is issuing this Advisory to reduce exchanges' regulatory reporting burden and to facilitate the use of electronic media by exchanges for delivery of notice of disciplinary and access denial actions to the NFA's BASIC system.[6] Earlier this year, BASIC replaced its predecessor, the Clearinghouse of Disciplinary Information (''CDI''), as the central repository for disciplinary actions imposed by the NFA, the Commission, and the exchanges. BASIC contains information regarding all disciplinary actions taken by the NFA since its inception in 1982, all Commission disciplinary actions taken since its inception in 1975, and all disciplinary actions taken by domestic exchange since at least 1990.[7] A primary reason for the NFA's move from CDI to BASIC was to create a more versatile database capable of providing the public with information regarding the disciplinary history of brokers. Accordingly, the NFA has made BASIC accessible to the public via the World Wide Web.[8]

To assist the NFA is maintaining a complete database of disciplinary and access denial actions, all of the domestic exchanges have been voluntarily filing Regulation 9.11 information with the NFA since 1990, either electronically or in written form, in addition to filing required Regulation 9.11 notice with the Commission.[9] Thus, to avoid

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[1] Commission regulations referred to herein are found at 17 CFR 9 (1998).

[2] The exchange is still required to provide notice to the individual subject to the action in the manner prescribed by Regulation 9.11.

[3] This Advisory does not eliminate the permissibility of an exchange filing a Regulation 9.11 notice with the Commission to satisfy its Regulation 9.11(a) obligations. However, the Commission believes that the industry and the public are better served by the exchanges filing Regulation 9.11 notices with the NFA in the manner prescribed by this Advisory.

[4] As authorized by Regulation 8.27, an exchange is not required to notify the Commission of any summary action resulting in the imposition of minor penalties for the violation of exchange rules relating to decorum or attire.

[5] The JCC was established in May 1989 to aid in the development of improved compliance systems through joint exchange efforts and information-sharing among self-regulatory organizations. The JCC is comprised of senior compliance officials from all of the domestic futures exchanges and the NFA. Commission staff participate as observers.

Exchange requests to file notices of disciplinary and access denial actions with the NFA, in lieu of filing paper notices with the Commission pursuant to Commission Regulation 9.11(a), were the product of ongoing discussions among the JCC, the NFA and Commission staff. The most recent meeting concerning this issue took place at the Commission's headquarters in Washington, DC on February 24, 1999. Present were representatives of the NFA and staff from the Commission's Division of Trading and Markets.

[6] This Advisory constitutes the latest in a series of measures the Commission has taken to recognize advances in electronic media technology and to facilitate the use of such technology where adequate measures exist to safeguard customer interests. *See, e.g.*, 62 FR 7675 (February 20, 1997) (permitting the use of electronic recordkeeping of customer orders generated by electronic order-routing systems); 62 FR 18265 (April 15, 1997) (adopting a program for commodity pool operators and commodity trading advisers to file disclosure documents with the Commission electronically on a voluntary basis); and 62 FR 31507 (June 10, 1997) (offering alternative, electronic methods of compliance to futures commission merchants (''FCM'') regarding order confirmation, purchase-and-sale and monthly statements, and recordkeeping requirements).

[7] BASIC makes available information pertaining to the types of violations a registrant has committed, penalties imposed, the effective date of the action(s), and, in some cases, additional information in the form of case text from an exchange decision. Information may be accessed by NFA identification number, registrant name, or firm name.

[8] BASIC can be accessed on the World Wide Web at http://www.nfa.futures.org/BASIC/.

[9] According to the NFA, the Chicago Board of Trade (including the MidAmerica Commodity Exchange) and the Chicago Mercantile Exchange currently file notices of all disciplinary and access

duplication and to diminish the burden of regulatory reporting, the Commission is allowing the exchanges to file Regulation 9.11 notices directly with the NFA, either in writing or by electronic entry of the required data into BASIC, rather than filing the required notice with the Commission. Although exchanges are permitted to file the required notice with the NFA in writing, the Commission believes that electronic filing is a faster and more cost-effective means of transmission for both the exchanges and the NFA.[10] Therefore, the Commission strongly encourages exchanges to file Regulation 9.11 notices electronically with the NFA.

This Advisory is being issued in conjunction with a Notice and Order delegating to the NFA the responsibility of processing all Regulation 9.11 filings into BASIC.[11] Pursuant to the Notice and Order, the NFA will furnish the Commission with local access to BASIC and will facilitate the Commission's access to regular management reports and oversight reports regarding exchange disciplinary and access denial actions. Thus, the Commission's ability to perform its regulatory and oversight duties will not be diminished.

## IV. Content and Delivery of Notice

### *A. Content of Notice*

With respect to the content of Regulation 9.11 notices, the Commission is clarifying that Regulation 9.11(b)(2) requires that an exchange indicate in its notification of disciplinary or access denial actions whether the violation that resulted in the action also resulted in financial harm to any customers. Regulation 9.11(b)(2) mandates that an exchange include in its notification ''[a] statement of the reasons for the disciplinary action or access denial action.'' Clearly, customer harm should be a critical fact considered by an exchange in determining whether to discipline or to deny access to a member. Inclusion of a customer harm determination in Regulation 9.11 notices should not impose any additional burden on the exchanges. Currently, exchanges have a similar obligation under Commission Regulation 1.67 to notify an FCM of any disciplinary action involving a customer transaction cleared by the FCM if the exchange determines that the member conducting the transaction committed a rule violation that resulted in financial harm to the customer.[12] Thus, those cases involving a notification to an FCM under Regulation 1.67 should be reported under Regulation 9.11(b)(2). This clarification should result in more uniformity among the exchanges regarding the content of Regulation 9.11 notices, given that several exchanges already commonly indicate in their notifications if a member was ordered to or agreed to pay restitution.[13]

The Commission believes that inclusion of customer harm is essential because it cannot effectively perform its regulatory and oversight functions without knowledge of those instances in which brokers violate their fiduciary duty to customers by taking advantage of customer orders and engaging in fraudulent activity. This Advisory does not affect any other exchange obligations set forth under Regulation 9.11, though for purposes of compliance with Regulation 9.11(e), it does provide for electronic certification that electronic filings are true and correct.

### *B. Verification and Timeliness of Electronic Notice*

Although this Advisory permits an exchange to fulfill its Commission notification obligations by electronically transmitting Regulation 9.11 notices directly to the NFA, exchanges must take precautions to ensure the accuracy of information entered into BASIC, as the NFA makes most of this information publicly available on its World Wide Web site.[14] Thus, those exchange electronically filing with the NFA must verify the accuracy of their information as input into BASIC within the 30-day deadline imposed by Regulation 9.11(a). Verification must be accomplished by an authorized exchange employee, after data entry into the appropriate fields, by marking a field labeled ''complete.'' If the ''incomplete'' field is marked, the system will save the data already entered and an exchange employee must return to edit or complete the data and mark the ''complete'' field. Checking ''complete'' will result in the information being uploaded onto BASIC for public access.[15]

Accordingly, exchanges have a duty to supervise the transmission process to ensure accuracy of data, to proofread the information once entered into the appropriate fields, and to correct any data which is incomplete or inaccurate. Marking the ''complete'' field shall be deemed verification and the information will be released to the public. Furthermore, the date of exchange verification will be considered the date of notification to the NFA.[16] In sum, to comply with Regulation 9.11(a), all electronic filings must be complete, accurate, and verified no later than 30 days after an exchange decision to impose a disciplinary or access denial action has become final.[17] For regulatory purposes, exchange verification of an electronic filing in the manner described above will satisfy the

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denial actions electronically through BASIC. The New York Mercantile Exchange (including Commodity Exchange, Inc.) electronically files notices of all actions relating to trade practice violations only; its recordkeeping violations are input by NFA. The NFA inputs all exchange disciplinary action information for the Coffee, Sugar and Cocoa Exchange, Inc.; the Kansas City Board of Trade; the Minneapolis Grain Exchange; and the New York Cotton Exchange & Affiliates.

[10] As explained below, if an exchange files in writing, the NFA must input the data into BASIC. The NFA then will take the additional step of providing the exchange with the information as it will appear on BASIC. The exchange then must proofread the information to verify its accuracy. Whereas, if an exchange files electronically, the exchange can accomplish the input and verification of the data in a single log-in session.

[11] The Commission has chosen to issue an Advisory, in lieu of amending Regulation 9.11, in order to expedite the delegation of certain Regulation 9.11 responsibilities to the NFA. The timing of the issuance of this Advisory is intended to coincide with the NFA's recent introduction of its BASIC system. Among other features, the BASIC system will make electronic filing faster and easier. Because this Advisory simply facilitates exchange compliance with the existing substantive requirements of Regulation 9.11, the Commission considers an amendment unnecessary. However, the Commission will continue to monitor exchange compliance with regulation 9.11 and reserves the right to amend Regulation 9.11 if it deems necessary.

[12] Regulation 1.67 was promulgated pursuant to Section 206 of the Futures Trading Practices Act of 1992, Pub. L. No. 102–546, § 206, 106 Stat. 3590 (1992). 58 FR 37644 (July 13, 1993).

[13] *See, e.g.,* ''New York Mercantile Exchange Notice of Final disciplinary Action Pursuant to CFTC Regulation 9.11,'' March 8, 1996; ''96–INV–13,'' amended notice of disciplinary action (Chicago Board of Trade), June 27, 1997; ''Report of Disciplinary Action,'' (Chicago Mercantile Exchange), January 16, 1998; ''Notice of Disciplinary Action,'' (Coffee, sugar & Cocoa Exchange, Inc.), March 26, 1998; ''Notice of Disciplinary Action.'' (Coffee, Sugar & Cocoa Exchange, Inc.), May 4, 1998.

[14] Commission Advisory 4027–97 (62 FR 31507) defines the term ''electronic media'' as ''facsimiles, electronic mail, Internet World Wide Web sites and computer networks (e.g., local area networks and commercial on-line services).'' However, for purposes of this release, the term ''electronic media'' only encompasses local access to BASIC. An exchange may not transmit a Regulation 9.11 notice by mailing it electronically over the internet or via any other electronic media.

[15] These are current NFA procedures respecting input of 9.11 information into BASIC. These procedures are likely to subject to change when BASIC is upgraded later this year.

[16] An incomplete electronic filing will not constitute notice compliant with Regulation 9.11(a), even if an exchange verifies that the information is complete. Because the Commission will have local access to BASIC, information entered in a complete manner and electronically verified shall be deemed notice to the Commission.

[17] The Commission will review the timeliness of exchange Regulation 9.11 filings pursuant to its oversight activities, including rule enforcement reviews conducted by the Commission's Division of Trading and Markets.

certification procedure set forth in Commission Regulation 9.11(e).[18]

*C. Verification and Timeliness of Written Notice*

Alternatively, exchanges filing written Regulation 9.11 notices with the NFA, in lieu of filing with the Commission, shall be deemed in compliance with the 30-day period prescribed in Regulation 9.11(a) when notice to the NFA is filed in person with the NFA during normal business hours or placed in the mail within 30 days of the date of final action.[19] All other Regulation 9.11 requirements must be satisfied by these exchanges, including certification. Consistent with current practice employed by the NFA for processing written notices, the NFA will continue to enter the information into BASIC on behalf of the exchange, mark the ''incomplete'' field, and provide a copy of the information as entered into BASIC to the exchange. The exchange is responsible for ensuring the accuracy of information posted on BASIC.[20] Toward that end, an authorized exchange employee must, after proofreading for completeness and accuracy, log-in to BASIC and change the ''incomplete'' marking to ''complete'' or otherwise notify the NFA that the data has been verified and that the NFA is authorized to change the marking to ''complete.'' The Commission expects that the exchanges will promptly complete the verification process after receiving a copy of the data from the NFA.

**V. Conclusion**

This Advisory permits an exchange to comply with the Commission notification provision of Regulation 9.11(a) by filing with the NFA electronic or written notices of disciplinary or access denial actions. Because all exchanges have been voluntarily providing the NFA with these notices, in addition to filing with the Commission, the exchanges should realize a reduction in their regulatory reporting duty. Although each exchange has the choice of filing electronic or written Regulation 9.11 notices, the Commission believes that electronic filing will prove more cost-effective for the exchanges and the NFA. Again, the Commission urges exchanges to file with NFA by this alternative electronic means.

This Advisory, in conjunction with the accompanying Notice & Order, gives the NFA the responsibility of maintaining BASIC, an electronic clearinghouse of all exchange, NFA, and Commission disciplinary actions. The Commission is relying on the exchanges to work with the NFA to keep BASIC current. This not only will assist the Commission in performing its oversight functions, but will provide the public with up-to-date information regarding the disciplinary history of anyone against whom a futures-related action has been taken. Commission staff will closely monitor the manner in which this new process operates to assure that it fully satisfies the relevant regulatory requirements.

Issued in Washington, DC on July 19, 1999 by the Commission.

**Jean A. Webb,**

*Secretary of the Commission.*

[FR Doc. 99–18804 Filed 7–22–99; 8:45 am]

**BILLING CODE 6351–01–M**

[18] Commission Regulation 9.11(e) provides that certification must be completed by an authorized exchange employee. Because verification of an electronically filed Regulation 9.11 notice shall satisfy the certification provision of Regulation 9.11(e), the Commission believes it is appropriate to require that exchange verification be completed by an authorized exchange employee.

[19] Filings may be mailed to the National Futures Association, Attn: General Counsel's Office, 200 West Madison Street, Chicago, IL 60606.

[20] When CDI was created in 1990, each exchange signed a contract shielding the NFA from any liability arising out of inaccurate information posted on CDI. All of the exchanges executed addenda in December 1998 and January 1999 extending the terms of those contracts to BASIC.

## SECURITIES AND EXCHANGE COMMISSION

### 17 CFR Part 240

### General Rules and Regulations, Securities Exchange Act of 1934

*CFR Correction*

In Title 17 of the Code of Federal Regulations, parts 240 to end, revised as of April 1, 1999, page 384, § 240.17a–5 is corrected by adding paragraphs (g)(2) and (3) after paragraph (g)(1)(iv) to read as follows:

**§ 240.17a–5 Reports to be made by certain brokers and dealers.**

* * * * *

(g) * * *

(2) If the broker or dealer is exempt from § 240.15c3–3, the independent public accountant shall ascertain that the conditions of the exemption were being complied with as of the examination date and that no facts came to his attention to indicate that the exemption had not been complied with during the period since his last examination.

(3) A material inadequacy in the accounting system, internal accounting controls, procedures for safeguarding securities, and practices and procedures referred to in paragraph (g)(1) of this section which is expected to be reported under these audit objectives includes any condition which has contributed substantially to or, if appropriate corrective action is not taken, could reasonably be expected to (i) inhibit a broker or dealer from promptly completing securities transactions or promptly discharging his responsibilities to customers, other broker–dealers or creditors; (ii) result in material financial loss; (iii) result in material misstatements of the broker's or dealer's financial statements; or (iv) result in violations of the Commission's recordkeeping or financial responsibility rules to an extent that could reasonably be expected to result in the conditions described in paragraphs (g)(3) (i), (ii), or (iii) of this section.

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[FR Doc. 99–55522 Filed 7–22–99; 8:45 am]

**BILLING CODE 1505–01–D**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Part 520

### Oral Dosage Form New Animal Drugs; Marbofloxacin Tablets

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Pfizer, Inc. The NADA provides for use of marbofloxacin tablets in dogs for the treatment of infections associated with bacteria susceptible to marbofloxacin.

**EFFECTIVE DATE:** July 23, 1999.

**FOR FURTHER INFORMATION CONTACT:** Melanie R. Berson, Center for Veterinary Medicine (HFV–110), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–7540.

**SUPPLEMENTARY INFORMATION:** Pfizer, Inc., 235 East 42d St., New York, NY 10017, filed NADA 141–151 Zeniquin™ (marbofloxacin) tablets for the treatment of infections in dogs associated with bacteria susceptible to marbofloxacin. The drug is limited to use by or on the order of a licensed veterinarian, and prohibited from extralabel use in food-producing animals. The NADA is approved as of June 26, 1999, and the regulations are amended by adding § 520.1310 to reflect the approval. The

basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of 21 CFR part 20 and 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

Under section 512(c)(2)(F)(i) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360b(c)(2)(F)(i)), this approval qualifies for 5 years of marketing exclusivity beginning June 26, 1999, because no active ingredient (including any ester or salt of the active ingredient) has been approved in any other application filed under section 512(b)(1) of the act.

The agency has determined under 21 CFR 25.33(d)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of ''rule'' in 5 U.S.C. 804(3)(A) because it is a rule of ''particular applicability.'' Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

### List of Subjects in 21 CFR Part 520

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 520 is amended as follows:

## PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 520 continues to read as follows:

**Authority:** 21 U.S.C. 360b.

2. Section 520.1310 is added to read as follows:

#### § 520.1310 Marbofloxacin tablets.

(a) *Specifications.* Each tablet contains either 25, 50, 100, or 200 milligrams of marbofloxacin.

(b) *Sponsor.* See No. 000069 in § 510.600(c) of this chapter.

(c) [Reserved]

(d) *Conditions of use*—(1) *Dogs*—(i) *Amount.* 1.25 milligrams per pound of body weight once daily, but may be increased to 2.5 milligrams per pound of body weight once daily.

(ii) *Indications for use.* For the treatment of infections in dogs associated with bacteria susceptible to marbofloxacin.

(iii) *Limitations.* Federal law restricts this drug to use by or on the order of a licensed veterinarian. Federal law prohibits the extralabel use of this drug in food-producing animals.

Dated: July 15, 1999.

**George A. Mitchell,**

*Acting Director, Center for Veterinary Medicine.*

[FR Doc. 99–18769 Filed 7–22–99; 8:45 am]

BILLING CODE 4160–01–F

## DEPARTMENT OF THE TREASURY

### United States Mint

### 31 CFR Part 100

**RIN 1525–ZA00**

### Exchange of Coin

**AGENCY:** United States Mint, Treasury.

**ACTION:** Final rule.

**SUMMARY:** In furtherance of the U.S. Mint's efforts to improve the environment, reduce energy consumption and enhance workplace safety and efficiency, the Mint wishes to discontinue melting and instead employ mechanical means to destroy mutilated coins. These mechanical means cannot be used to process fused or mixed coins, which represent a very small percentage of the coins redeemed annually by the Mint. Accordingly, by this amendment the Mint will also discontinue accepting fused or mixed coins for redemption, and require that all bent or partial coins submitted for redemption be separated by denomination in order to be acceptable.

**EFFECTIVE DATE:** August 23, 1999.

**FOR FURTHER INFORMATION CONTACT:** (Legal) Gwen Mattleman, Attorney-Advisor (202) 874–4043, or Kenneth Gubin, Chief Counsel (202) 874–5953; (Technical) Andrew Cosgarea, Associate Director, Head, Circulating Coinage Business Unit (202) 874–6100.

**SUPPLEMENTARY INFORMATION:**

### Background

Part 100, Subpart C of Treasury Regulations 31 CFR, promulgated under 31 U.S.C. 5120, provides for the exchange of bent, partial, fused and mixed coins. The Mint has identified and is actively pursuing initiatives to improve the environment, reduce energy consumption and enhance efficiency and workplace safety. Melting coins submitted for redemption by the Mint's current heat induction procedures is not energy efficient and adds to the Mint's annual electrical expenses. It is also a physically challenging process for the Mint's employees. For these reasons, in 64 FR 4063, January 27, 1999, the Mint published a proposed rule notifying the public of its intention to discontinue melting and begin using mechanical means (such as a hammer mill or rolling mill) to destroy mutilated coins. As the mechanical destruction process requires that coins be separated by alloy, these mechanical methods cannot be used to process fused coins or unsorted (mixed) coin lots. Mutilated coins delivered in these lots of mixed alloy categories often are in a condition which precludes machine sorting, and redemption of mixed coins can be labor-intensive and inefficient. Fused and mixed coins represent a very small component of the United States Mint's annual coin redemptions. Therefore, the Mint's proposed rule published in 64 FR 4063, January 27, 1999 also notified the public of the Mint's intention to amend Part 100 of 31 CFR to discontinue acceptance of fused and mixed coins for redemption and require that all bent or partial coins submitted for redemption be separated by denomination. Comments were solicited through the January 27, 1999 publication of the proposed rule in the **Federal Register** (which included telephone numbers of legal and technical staff and a dedicated email address). No comments from the public were received. For the foregoing reasons, effective 30 days from the date of publication of this final rule, the Mint amends Part 100 of 31 CFR to discontinue acceptance of fused and mixed coins for redemption and to require that all bent or partial coins submitted for redemption be separated by denomination.

### Special Analyses

This regulation is not a significant regulatory action for purposes of Executive Order 12866. The Mint has paid out less than $8 million in total annual mutilated coin redemptions for each of 1996, 1997 and the seven-month period ending July 31, 1998. For each such period, fused and mixed coins as a group constitute less than 1% of total coins redeemed, and approximately 1% or less of the total lots redeemed. Fused and mixed coins are currently redeemed at metal rates lower than the rates paid for sorted coins. For these reasons, the United States Mint does not believe that the regulation will have an annual effect on the economy of $100 million or more or materially adversely affect any sector of the economy, productivity,

competition, jobs, the environment, public health, or State, local, or tribal governments or communities. The Mint does not anticipate that the rule will result in inconsistency, interfere with another agency's actions, materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof, or raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866. It is hereby certified that this regulation will not have a significant economic impact on a significant number of small entities. Accordingly, a regulatory flexibility analysis is not required. Lots of fused and mixed coins recorded together as a group constituted approximately 1% or less of the total coin lots redeemed for each of calendar 1996, 1997 and the period ending July 31, 1998, amounting to 23, 19 and 13 lots, respectively, of fused and mixed coins. Although the Mint does not maintain records which consistently indicate the business or personal nature of the transactions conducted by individuals or entities tendering coins for redemption, the majority of these lots were submitted by individuals transacting with the Mint in their own name. Even if each such individual were a ''small entity'' within the meaning of 5 U.S.C. 604(a), the Mint does not believe that this quantity of lots indicates that a significant number of small entities will be significantly impacted if the Mint were to require sorting of coins previously accepted as mixed and discontinue accepting fused coins.

**List of Subjects in 31 CFR Part 100**

Currency, Gold.

For the reasons set forth in the preamble, the United States Mint amends 31 CFR Part 100 as follows:

## PART 100—EXCHANGE OF PAPER CURRENCY AND COIN

### Subpart C—Exchange Of Coin

1. The authority citation for Part 100 is revised to read as follows:

**Authority:** 31 U.S.C. 321.

2. Revise § 100.11(b) to read as follows:

**§ 100.11 Exchange of bent and partial coins.**

* * * * *

(b) *Redemption basis.* Bent and partial coins shall be presented separately by denomination category in lots of at least one pound for each category. Bent and partial coins shall be redeemed on the basis of their weight and denomination category rates (which is the weight equivalent of face value). If not presented separately by denomination category, bent and partial coins will not be accepted for redemption. Denomination categories and rates are Cents, @ $1.4585 per pound; Nickels, @ $4.5359 per pound; Dimes, Quarters, Halves, and Eisenhower Dollars @ $20.00 per pound; and Anthony Dollars @ $56.00 per pound. Copper plated zinc cents shall be redeemed at the face value equivalent of copper one cent coins.

* * * * *

3. Revise § 100.12(b) to read as follows:

**§ 100.12 Exchange of fused and mixed coins.**

* * * * *

(b) The United States Mint will not accept fused or mixed coins for redemption.

**Philip N. Diehl,**

*Director.*

[FR Doc. 99–18849 Filed 7–22–99; 8:45 am]

BILLING CODE 4810–37–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[CA 71–154a; FRL6400–1]**

### Clean Air Act Approval and Promulgation of California State Implementation Plan for the San Joaquin Valley Unified Air Pollution Control District

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** EPA is taking direct final action on revisions to the California State Implementation Plan (SIP). The revisions are rules from the San Joaquin Valley Unified Air Pollution Control District (District). These rules were submitted by the State on behalf of the District to provide general permitting requirements and general provisions for the implementation of NSR and other SIP requirements for stationary sources in the District.

This approval action will incorporate these rules into the federally approved SIP. EPA is approving these rules to support District new source review (NSR) rules that are required by section 110(a) and part D of Clean Air Act as amended in 1990 (CAA or Act). These other rules, which are required for areas that have not attained the national ambient air quality standards (NAAQS) for one or more pollutants, will be the subject of a subsequent rulemaking action. Thus, EPA is finalizing the approval of these general provisions and general permitting rules into the California SIP under provisions of the CAA regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality standards, and plan requirements for nonattainment areas.

**DATES:** This rule is effective on September 21, 1999 without further notice, unless EPA receives adverse comments by August 23, 1999. If EPA receives such comment, it will publish a timely withdrawal in the **Federal Register** informing the public that EPA's approval of these rules will not take effect.

**ADDRESSES:** Comments must be submitted in writing to Ed Pike at the Region IX mailing address listed below. Copies of the rules and EPA's evaluation report are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rules are available for inspection at the following locations:

Permits Office (AIR–3), Air Division, Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105

Environmental Protection Agency, Air Docket (6102), 401 ''M'' Street, SW, Washington, DC 20460

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 ''L'' Street, Sacramento, CA 95814

San Joaquin Valley Unified Air Pollution Control District, Central Region, 1990 E. Gettysburg Avenue, Fresno CA 93726

A courtesy copy of these rules may be available via the Internet at http://arbis.arb.ca.gov/drdb/sju/cur.htm. However, these versions of the District rules may be different than the versions submitted to EPA for approval. Readers are cautioned to verify that the adoption date of the rule listed is the same as the rule submitted to EPA for approval. The official submittal is only available at the four agency addresses listed above.

**FOR FURTHER INFORMATION CONTACT:** Ed Pike, (telephone 415/744–1211), Air Division (Air–3), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901, or pike.ed@epa.gov.

**SUPPLEMENTARY INFORMATION**

### I. Applicability

The rules being approved into the California SIP in this action are District Rules 1110, 1140, 1150, 2010, 2031,

2040, 2070, 2080, and 2092. Rules 1110, 1140, 1150, 2010, and 2040 were adopted by the District Board of Directors on December 17, 1992, and submitted to EPA by the California Air Resources Board (CARB) as a revision to the SIP on September 28, 1994. Rules 2031, 2070, 2080, and 2092 were adopted by the District on December 17, 1992, and submitted to EPA by CARB on November 18, 1993.

The District is composed of Fresno County, a portion of Kern County [1], Kings County, Madera County, Merced County, San Joaquin County, Stanislaus County, and Tulare County. The eight former County air pollution management agencies merged to form the unified Valley-wide District in 1992. The District is designated as a serious nonattainment area for ozone and particulate matter less than ten microns in diameter ($PM_{10}$). The District is designated attainment for the nitrogen dioxide ($NO_2$), sulfur dioxide ($SO_2$), and carbon monoxide (CO) NAAQS, although nitrogen oxides (including $NO_2$) and sulfur oxide (including $SO_2$) are regulated as precursors to other nonattainment pollutants. For the detailed area designations that apply to the District, please refer to 40 CFR 81.305. The CAA air quality planning requirements for nonattainment NSR are set out in part D of Title I of the Act, with implementing regulations at 40 CFR 51.160 through 51.165.

## II. Summary of Rule Contents

Prior to the formation of the current District in 1992, EPA had approved separate SIPs for each of the eight individual Counties.[2] Today's action eliminates minor variations in the eight separate County SIPs by approving one set of rules that apply across all eight counties. This action will provide consistency and clarity by allowing regulated sources of air pollution, the public, and regulatory agencies to refer to one set of rules for the entire District rather than eight sets of rules.

District Rule 1110, ''Circumvention,'' prohibits concealment or dilution of emissions to circumvent statutory or regulatory requirements. District Rule 1140, ''Applicability of Emission Limits,'' states that a source subject to multiple emission limits must comply with the most stringent applicable emission or concentration rate unless specifically exempted. Rule 1150, ''Separation and Combination,'' specifies how compliance is determined for emission streams that are combined prior to release to the atmosphere. These rules are contained in the General Provisions section of the District regulations. They contain the procedures for implementing other requirements, but do not contain or directly impose numerical air pollutant limitations.

District Rule 2010, ''Permits Required,'' contains the general requirement to (1) obtain an Authority to Construct permit for a new or modified source; and (2) obtain a Permit to Operate prior to operation. District Rule 2031, ''Transfer of Permits,'' requires District approval for the transfer of a permit to a different person or piece of equipment. District Rule 2040, ''Applications,'' requires that applicants submit all necessary information and specifies the administrative process for the District to act on the application. District Rule 2070, ''Standards for Granting Applications,'' explains the procedures for the District to approve or deny an application for an Authority to Construct or Permit to Operate. District Rule 2080, ''Conditional Approval,'' grants the District authority to issue or revise specific written conditions on an Authority to Construct or a Permit to Operate to assure compliance with air contaminant emission standards or limitations. District Rule 2092, ''Standards for Permits to Operate,'' defines the conditions which must be met in order for the District to issue a Permit to Operate.

## III. EPA Evaluation and Action

The air quality planning requirements for nonattainment NSR are set out in part D of title I of the Clean Air Act. EPA has issued a ''General Preamble'' describing EPA's preliminary views on how EPA intends to review SIPs and SIP revisions submitted under part D, including those State submittals containing nonattainment NSR SIP requirements (see 57 FR 13498 (April 16, 1992) and 57 FR 18070 (April 28, 1992)). Because EPA is describing its interpretations here only in broad terms, the reader should refer to the General Preamble for a more detailed discussion. EPA has also proposed regulations to implement the changes under the 1990 Amendments in the NSR provisions in part D of Title I of the Act. (See 61 FR 38249 (July 23, 1996)). Upon final promulgation of those regulations, EPA will review those NSR SIP submittals on which it has already taken final action to determine whether additional SIP revisions are necessary.

This rulemaking replaces rules from the following SIPs: Fresno County, Kern County, Kings County, Madera County, Merced County, San Joaquin County, Stanislaus County, and Tulare County. EPA's approval of the following rules replaces similar categories of rules in the individual County SIPs: Circumvention (Rule 1110), Applicability of Emission Limits (Rule 1140), Separation and Combination (Rule 1150), Permits Required (Rule 2010), Transfer of Permits (Rule 2031), Applications (2040), Standards for Granting Applications (Rule 2070), and Standards for Permits to Operate (Rule 2092). Please see the Technical Support Document for a complete list of the SIP rules that EPA is replacing.

EPA has evaluated District Rules 110, 1140, 1150, 2010, 2031, 2040, 2070, 2080, and 2092 and has determined that each rule is consistent with the CAA, EPA regulations and EPA policy. These general provisions and permitting rules will support permitting requirements for major and minor sources in the District (updates to District New Source Review requirements will be the subject of subsequent EPA rulemaking action). Therefore, these rules are being approved under section 110(k)(3) of the CAA as consistent with the requirements of section 110(a), including section 110(a)(2)(C), and part D of Title I of the Act. For additional description of these Rules and EPA's approval action, please refer to the Technical Support Document for this action.

EPA is publishing this direct final approval without prior proposal because the Agency views this SIP revision as a noncontroversial revision and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This direct final approval will be effective September 21, 1999 without further notice unless the Agency receives adverse comments by August 23, 1999.

If the EPA receives such comments, then EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on this rule. Any parties interested in commenting on this rule should do so at this time. If no such comments are

[1] This District includes the portion of Kern County defined in District rule 1020 section 3.44 (adopted November 13, 1996 and approved at 64 FR 13514).

[2] Each County SIP generally contains a rule corresponding to each of the current District rules that EPA is taking action on, although the current rules have been renumbered.

received, the public is advised that this direct final approval will be effective on September 21, 1999 and no further action will be taken on the proposed rule.

## IV. Administrative Requirements

### *A. Executive Order 12866*

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order (E.O.) 12866, Regulatory Planning and Review.

### *B. Executive Order 12875*

Under Executive Order 12875, Enhancing the Intergovernmental Partnership, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.'' Today's rule does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

### *C. Executive Order 13045*

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be ''economically significant'' as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This rule is not subject to E.O. 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

### *D. Executive Order 13084*

Under Executive Order 13084, Consultation and Coordination with Indian Tribal Governments, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.'' Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

### *E. Regulatory Flexibility Act*

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.*, v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

### *F. Unfunded Mandates*

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

### *G. Submission to Congress and the Comptroller General*

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a ''major'' rule as defined by 5 U.S.C. 804(2).

*H. Petitions for Judicial Review*

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 21, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, General provisions, Hydrocarbons, Incorporation by reference, Intergovernmental relations, New source review, Nitrogen dioxide, Particulate matter, Permits, Reporting and recordkeeping requirements, Sulfur dioxide, Volatile organic compounds.

**Note:** Incorporation by reference of the State Implementation Plan for the State of California was approved by the Director of the Federal Register on July 1, 1982.

Dated: July 7, 1999.

**Felicia Marcus,**

*Regional Administrator, Region IX.*

Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

## PART 52—[AMENDED]

1. The authority citation for Part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

## Subpart F—California

2. Section 52.220 is amended by adding paragraphs (c)(194)(i)(C)(*4*) and (c)(199)(i)(D)(*6*) to read as follows:

**§ 52.220 Identification of plan.**

* * * * *

(c) * * *

(194) * * *

(i) * * *

(C) * * *

(*4*) Rules 2031, 2070, 2080, and 2092 adopted on May 21, 1992 and amended on December 17, 1992.

* * * * *

(199) * * *

(i) * * *

(D) * * *

(*6*) Rules 1110, 1140, 1150, 2010, and 2040 amended on December 17, 1992.

* * * * *

[FR Doc. 99–18600 Filed 7–22–99; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 52

**[CA–227–151; FRL–6378–2]**

## Approval and Promulgation of State Implementation Plans; California—South Coast

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** EPA is concluding the Public Consultative Process (PCP) on mobile source emission reductions needed for attainment of the 1-hour ozone national ambient air quality standard (NAAQS) in the Los Angeles-South Coast Air Basin Area (South Coast). EPA is also approving the State's update to the state implementation plan (SIP) for ozone in the South Coast to reflect the outcome of this process and the implementation status of some of the control measures. Finally, EPA is approving the State's joint commitment with EPA to issue regulations to eliminate the remaining SIP shortfall as determined appropriate for each agency. EPA is taking these actions under provisions of the Clean Air Act (CAA) regarding EPA action on SIP submittals, SIPs for NAAQS, and plan requirements for nonattainment areas.

**EFFECTIVE DATE:** This rule is effective on August 23, 1999.

**ADDRESSES:** The rulemaking docket for this rule is available for public inspection during normal business hours at EPA's Region IX office, Air Division, 75 Hawthorne Street, San Francisco, CA 94105–3901. A reasonable fee may be charged for copying parts of the docket.

Electronic availability: This document is also available as an electronic file on EPA's Region 9 Web Page at http://www.epa.gov/region09.

Copies of related materials are also available for inspection at the following location: California Air Resources Board, 2020 L Street, Sacramento, California.

**FOR FURTHER INFORMATION CONTACT:** Dave Jesson, EPA Region IX Air Planning Office, (415) 744–1288, or jesson.david@epa.gov.

**SUPPLEMENTARY INFORMATION:**

### I. EPA's Final Action

We are concluding the Public Consultative Process on mobile source reductions needed for attainment of the 1-hour ozone NAAQS in the South Coast.[1] During this process, we have issued or are in the process of issuing regulations which are expected to reduce emissions of nitrogen oxides ($NO_X$) in the South Coast in 2010 by approximately 94 tons per day (tpd), and reduce emissions of volatile organic compounds (VOC) by about 39 tpd.[2] This is roughly 85 percent of the Federal emission reductions identified in the 1994 ozone SIP submittal for the South Coast.

To achieve the remaining reductions (15 tpd of $NO_X$ and 8 tpd of VOC), we intend to continue a focused cooperative effort with California to resolve remaining issues and to agree upon the best approach for achieving the balance of reductions still unaccomplished. We will complete by December 31, 2001, any actions identified as appropriate for our rulemaking under our existing commitment, promulgated when we approved the 1994 ozone SIP (40 CFR 52.238).

We are approving a similar commitment by the California Air Resources Board (CARB). The State included this commitment in Executive Order G–99–037, dated May 20, 1999.[3] In the order, CARB ''commits to continue working with U.S. EPA and the affected parties to achieve the emission reductions identified in the SIP for federal measures, and to (a) adopt by December 31, 2000, and submit as a SIP revision, a revised attainment demonstration for the federal one-hour ozone standard in the South Coast Air Basin, and (b) adopt by December 31, 2001, control measures needed to achieve any additional emission reductions which are determined to be appropriate for ARB.'' This State commitment replaces a commitment made at the beginning of the Public Consultative Process in 1996, and codified at 40 CFR 52.220(c)(235). We are therefore rescinding that prior commitment.

Finally, we are approving the State's update on the status of CARB control measures in the 1994 ozone SIP, included as Attachment A to the Executive Order. This update displays

[1] For a description of the boundaries of the Los Angeles-South Coast Air Basin, see 40 CFR 81.305. The nonattainment area includes all of Orange County and the more populated portions of Los Angeles, San Bernardino, and Riverside Counties.

[2] The South Coast plan sometimes substitutes the term Reactive Organic Gases (ROG) for VOC. These terms are essentially synonymous.

[3] CARB submitted the Executive Order on May 20, 1999. We found the submittal complete on May 20, 1999. We adopted the completeness criteria on February 16, 1990 (55 FR 5830) and, pursuant to section 110(k)(1)(A) of the CAA, revised the criteria on August 26, 1991 (56 FR 42216).

reductions from CARB's various measures for control of mobile sources, consumer products, and aerosol paints. It also discusses new CARB control measures to achieve the reductions required in the 1994 ozone SIP.

## II. Background

On June 7, 1999, in 64 FR 30276–30287, we proposed to conclude the Public Consultative Process, identified emissions reductions from promulgated and pending Federal measures, discussed potential measures for eliminating the remaining emissions reduction shortfall, and proposed to approve CARB's commitment and SIP update for the South Coast. For additional details and background, please consult that document and our final approval of the 1994 ozone SIP for the South Coast, which was issued on January 8, 1997 (62 FR 1150–1187).[4]

You may also find in the proposal a description of EPA's consent decree and settlement agreement with environmental plaintiffs in *Coalition for Clean Air, et al.* v. *SCAQMD, CARB, and USEPA*, No. CV 97–6916 HLH (C.D. Cal.). Among other things, the consent decree requires us to conclude the Public Consultative Process by July 1, 1999, and to attempt to promulgate by December 31, 2001, final measures that are needed for ozone attainment and are appropriate for EPA to promulgate.[5]

## III. Response to Public Comments

### *A. Summary of Comments and Responses*

In response to the proposal, we received comments from South Coast Air Quality Management District (''SCAQMD''), City of Los Angeles (''City''), Los Angeles County Sanitation Districts, and US Navy (Region Southwest). We appreciate the thoughtful comments and the commenters' support and encouragement of our efforts to achieve further emission reductions from national and international mobile sources beyond the jurisdiction of local and State agencies.

1. Fair Share Reductions of Federal Sources

All but one of the commenters asked the Federal government to do its fair share in reducing emissions from Federal mobile sources, stating that: (a) Further control of local stationary sources will be difficult, given the stringency of existing local rules, and (b) Federal sources are under-controlled. To make this point visually, SCAQMD presented a table showing 2010 reductions from 1990 baseline emissions inventories for Federal sources, in contrast to much greater reductions required from stationary sources in the 1994 California Ozone SIP. Commenters stated that it is especially critical that EPA and other federal agencies cooperate and achieve additional reductions from sources beyond the State's regulatory authority.

*Response:* We intend that the Federal government will contribute emission reductions to help the South Coast attain the NAAQS. We will fulfill our regulatory responsibilities under Title II of the CAA and thus will continue to pursue all appropriate national mobile source controls, even after the current shortfall is eliminated.

2. Toxic Benefit of Diesel Emission Reductions

SCAQMD noted that we stated that mobile sources are a contributor to urban air toxics and adverse health effects have been associated with diesel exhaust. SCAQMD presented a table of the potential cancer risk contribution from diesel compared to all other emission sources in the South Coast. SCAQMD stated that local citizens may not benefit from potential reductions in toxic emissions if reductions are achieved from non-diesel sources located in and around airports and marine ports, rather than from diesel-type sources in the aircraft and marine engine categories.

*Response*: We appreciate SCAQMD's information regarding the relative magnitude of diesel emissions among sources of air toxics in the South Coast. Reductions in urban air toxics are, and will continue to be, an important consideration in our standard-setting activities.

3. Heavy-Duty Off-Cycle Settlement

SCAQMD estimated a 7 tpd $NO_X$ emission reduction shortfall in 2010 in the South Coast due to excess emissions from non-compliant engines. SCAQMD expressed concern about claiming benefits from the settlement until this issue is resolved.

*Response*: We agree that this issue warrants further analysis in the context of future SIP revisions, and wish to work with SCAQMD and CARB to assess 2010 emissions from trucks in the South Coast using the most current inventory models and assumptions. For purposes of the close-out of the Public Consultative Process, which is rooted in the 1994 SIP submittal, we continue to agree with CARB that use of the 1994 SIP assumptions throughout made the most sense, rather than attempting to adjust the SIP analysis with various updates to our information base. Thus, all of the calculations in the table of Public Consultative Process reductions and shortfalls at 64 FR 30280–1 are consistent with the 1994 ozone SIP in terms of base year and projected emissions inventories and emissions factors. The emission reduction numbers shown for the heavy-duty off-cycle settlement are for the early introduction in October 2002 of cleaner engines assumed in the 1994 ozone SIP to be introduced in January 2004.

4. Public Process

Commenters desired greater opportunities for public input. SCAQMD noted that agreements negotiated by EPA and CARB with affected industries did not go through extensive discussions and public input. In order to update stakeholders on future developments and public involvement opportunities, the City of Los Angeles recommended that we establish an information mechanism, such as EPA Region IX's web page. Commenters objected to the 14-day public comment period as too short to allow for the most meaningful comment.

*Response:* We intend to post information on the status of our South Coast mobile source activities on the Region IX web page (www.epa.gov/region09/air). The Office of Mobile Source web page (www.epa.gov/omswww) informs the public of ongoing national mobile source rulemaking activities and opportunities for public involvement. Both EPA and CARB will also continue to use mailing lists of parties interested in the aircraft/airport and vessel/port task forces. We solicit suggestions for other ways to expand public notification and involvement. While we prefer longer public comment periods, we need to comply with a consent decree, which requires final action by July 1.

5. Enforceability of Credited SIP Reductions; Credit for Voluntary Measures

SCAQMD expressed concern that CARB and EPA should not claim credit for voluntary agreements (such as the State's clean locomotive fleet agreement

[4] The 1994 ozone SIP for the South Coast consists of two plans: *California's 1994 State Implementation Plan for Ozone,* which deals with the State's control measures, and the South Coast Air Quality Management District's *1994 Air Quality Management Plan,* which includes all of the local control measures and other plan elements. The State's portion of the plan is available electronically at the California Air Resources Board's web site at *www.arb.ca.gov/sip/sip.htm*.

[5] We issued a notice of the pending settlement on December 9, 1998 (63 FR 67879), consistent with CAA section 113(g). The consent decree was entered by the Court on June 9, 1999; the settlement agreement has been signed by the plaintiffs and EPA.

with railroads operating in California), unless the agreements are turned into regulatory form. SCAQMD encouraged us to provide backstop measures for future rules, in the event that emission reductions do not occur. The City of Los Angeles supported voluntary measures, noted that existing EPA policy on credit for voluntary measures constrains SIP accounting for such measures, and urged us to assist states and local air districts in developing flexible and innovative emission reduction strategies and allowing full SIP credit for such programs.

*Response:* As indicated in the proposal, we have concluded that it is appropriate to assign credit to the South Coast Locomotive Fleet Average Emissions Program. The agreement between CARB and the railroads is exemplary in its detail and in the extent of its provisions to quantify and verify reductions. We believe that the program will achieve the scheduled reductions, but if it does not, we will use our existing authorities to assure that the reductions will occur. We support voluntary and other innovative measures and commit to work with agencies to establish SIP credit to the extent that such credit is consistent with the Clean Air Act.

6. Remaining Shortfall

Some commenters encouraged EPA not to downplay the potential shortfall of 23 tpd, which must be eliminated if the area is to attain the ozone NAAQS. These commenters also felt that EPA should not assign responsibility for remaining reductions to the State. If EPA ultimately does assign responsibility to the State, SCAQMD urged EPA to require the State to achieve reductions from mobile sources, rather than stationary sources, which are already stringently controlled. SCAQMD also felt that EPA's statement that ''EPA actions might not be limited to controls on mobile sources and fuels'' was not consistent with the consent decree.

*Response:* We agree with commenters that the task of eliminating the shortfall is important and directly linked to public health protection. In concert with the State and other parties, we expect to achieve most, if not all, of the remaining reductions from mobile sources rather than stationary sources.

7. Marine Vessel Activities

The City requested that EPA fund finalization of the ship emission and alternative marine vessel control strategy study, and that EPA support (including with Federal funds) CARB's Deep Sea Vessel/Shipping Channel Technical Working Group. The Navy reiterated its opposition to an operational control strategy to move the vessel channel 25 miles off the coast, based on the Navy's belief that the strategy lacks scientific support and would have severe impacts on the Pt. Mugu Sea Test Range. The Navy preferred a strategy involving slowing commercial vessels, and encouraged us to make that determination, implement the measure, and conclude the process with respect to marine vessel operational controls.

*Response:* In May 1999, the EPA contracted study referenced in the City's comment letter was finalized. However, the results may need to be updated to reflect more recent information. We will continue to participate in, and support, studies needed to evaluate the feasibility and benefit of marine vessel control options. We appreciate the Navy's valuable contributions to the technical assessment of potential strategies, as we do the participation and expertise of the shipping industry, the ports, and other stakeholders. CARB, EPA, and other participants will provide the Navy with opportunities to express its views and share its research as we conclude the technical projects and reach final decisions on the best approaches.

8. Programs to Increase Engine Turn-Over Rates

The City encouraged us to pursue Federal funding sources for such programs and to ensure that Federal fleets, such as the U.S. Postal Service fleet, convert to cleaner technologies at an accelerated rate.

*Response:* We identified possible Federal funding sources in the proposal and will attempt to direct currently available funds to projects that can reduce pollutants in the South Coast. Other potential Federal funds, such as for the Clean Air Partnership, or Federal subsidies, including changes to the Federal Tax Code, depend upon Congressional action. We intend to work with Federal agencies in the South Coast to increase use of alternative-fueled vehicles with the lowest emissions.

*B. Conclusion*

We are finalizing the action as proposed. As noted above, however, we will undertake additional actions in response to comments in order to improve and strengthen the process for resolving the remaining shortfall in emission reductions.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

## IV. Administrative Requirements

*A. Executive Order 12866*

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order (E.O.) 12866, Regulatory Planning and Review.

*B. Executive Order 12875*

Under Executive Order 12875, Enhancing the Intergovernmental Partnership, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal Government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.'' Today's rule does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

*C. Executive Order 13045*

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be ''economically significant'' as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of

the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This rule is not subject to E.O. 13045 because it is does not involve decisions intended to mitigate environmental health or safety risks.

*D. Executive Order 13084*

Under Executive Order 13084, Consultation and Coordination with Indian tribal governments, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal Government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.'' Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

*E. Regulatory Flexibility Act*

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.*, v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

*F. Submission to Congress and the Comptroller General*

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a ''major'' rule as defined by 5 U.S.C. 804(2).

*G. Petitions for Judicial Review*

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 21, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

*H. Unfunded Mandates*

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that this action does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action proposes to approve pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Oxides of nitrogen, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: July 1, 1999.

**Laura Yoshii,**

*Acting Regional Administrator, Region IX.*

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

## PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

## Subpart F—California

2. Section 52.220 is amended by removing paragraph (c)(235) and adding paragraph (c)(265) to read as follows:

**§ 52.220 Identification of plan.**

* * * * *

(c) * * *

(265) New and amended plans for the following agencies were submitted on May 20, 1999, by the Governor's designee.

(i) Incorporation by reference.

(A) California Air Resources Board.

(*1*) Executive Order G–99–037, dated May 20, 1999, State commitment to continue working with U.S. EPA and the affected parties to achieve the emission reductions identified in the SIP for federal measures, and to adopt by December 31, 2000, and submit as a SIP revision, a revised attainment demonstration for the federal one-hour ozone standard in the South Coast Air

Basin, and adopt by December 31, 2001, control measures needed to achieve any additional emission reductions which are determined to be appropriate for ARB; Attachment A, update to the 1994 ozone SIP for the South Coast.

[FR Doc. 99–18719 Filed 7–22–99; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 228

**[FRL–6377–3]**

### Ocean Dumping; Amendment of Site Designation

**AGENCY:** Environmental Protection Agency (EPA)

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is amending the site designation for the San Francisco Deep Ocean Disposal Site (SF–DODS), an existing deep ocean dredged material disposal site located off San Francisco, California, by setting a permanent annual disposal volume limit and clarifying conditions and requirements for use of the site.

Use of the SF–DODS, at the annual volume limit of 4.8 million cubic yards, is consistent with, and is an important component of the regional Long Term Management Strategy for the Placement of Dredged Material in the San Francisco Bay Region (LTMS). Clarifications to the original site designation Rule, developed from experience with and monitoring of site use since designation, include addition of management measures and other site use requirements to further minimize the potential for any adverse environmental impacts. All aspects of the August 11, 1994 SF–DODS designation Final Rule not explicitly amended here remain in full effect.

**EFFECTIVE DATE:** July 23, 1999.

**FOR FURTHER INFORMATION CONTACT:** Ms. Kathleen Dadey, Dredging and Sediment Management Team, U.S. Environmental Protection Agency, Region IX (WTR–8), 75 Hawthorne Street, San Francisco, CA 94105, telephone (415) 744–1995 or Mr. Allan Ota, telephone (415) 744–1980.

**SUPPLEMENTARY INFORMATION:** The primary supporting documents for this designation amendment are the Final EIS for the Designation of a Deep Water Ocean Dredged Material Disposal Site off San Francisco, California (August 1993), the Long Term Management Strategy for the Placement of Dredged Material in the San Francisco Bay Region Final Policy EIS/Programmatic EIR (October, 1998), and the SF–DODS designation Final Rule (40 CFR 228.15(l)(3)). All are available for public inspection at the following locations:

1. EPA Region IX, Library, 75 Hawthorne Street, 13th Floor, San Francisco, California 94105
2. EPA Public Information Reference Unit, Room 2904, 401 M Street, SW, Washington, DC 20460
3. ABAG/MTC Library, 101 8th Street, Oakland, California 94607
4. Alameda County Library, 835 C Street, Hayward, California 94541
5. Bancroft Library, University of California, Berkeley, California 94720
6. Berkeley Public Library, 2090 Kittredge Street, Berkeley, California 94704
7. Daly City Public Library, 40 Wembley Drive, Daly City, California 94015
8. Environmental Information Center, San Jose State University, 125 South 7th Street, San Jose, California 95192
9. Half Moon Bay Library, 620 Correas Street, Half Moon Bay, California 94019
10. Hayward Public Library, 835 C Street, Hayward, California 94541
11. Hoover Institute, Stanford University, Stanford, California 94305
12. Marin County Library, Civic Center, 3501 Civic Center Drive, San Rafael, California 94903
13. North Bay Cooperative Library, 725 Third Street, Santa Rosa, California 95404
14. Oakland Public Library, 125 14th Street, Oakland, California 94612
15. Richmond Public Library, 325 Civic Center Plaza, Richmond, California 94804
16. San Francisco Public Library, Civic Center, Larkin & McAllister, San Francisco, California 94102
17. San Francisco State University Library, 1630 Holloway Avenue, San Francisco, California 94132
18. San Mateo County Library, 25 Tower Road, San Mateo, California 94402
19. Santa Clara County Free Library, 1095 North Seventh Street, San Jose, California 95112
20. Santa Cruz Public Library, 224 Church Street, Santa Cruz, California 95060
21. Sausalito Public Library, 420 Litho Street, Sausalito, California 94965
22. Stanford University Library, Stanford, California 94305

Additional supporting documentation is contained in the draft SF–DODS Site Management and Monitoring Plan Implementation Manual, the LTMS EIS/R administrative record, and related documents, available from the EPA Region IX Library (number 1 in the list above).

#### A. Regulated Entities

Entities potentially regulated by this action are persons, organizations, or Government bodies seeking to dispose of dredged material in ocean waters at the SF–DODS, under the Marine Protection Research and Sanctuaries Act, 33 U.S.C. 1401 *et seq.* The Rule is primarily of relevance to parties in the San Francisco area seeking permits from the U.S. Army Corps of Engineers to transport dredged material for the purpose of disposal into ocean waters at the SF–DODS, as well as the U.S. Army Corps of Engineers itself (when proposing to dispose of dredged material at the SF–DODS).

Potentially regulated categories and entities seeking to use the SF–DODS and thus subject to this Rule include:

| Examples of potentially regulated entities | |
|---|---|
| Industry and General Public | • Ports.<br>• Marinas and Harbors<br>• Shipyards and Marine Repair Facilities.<br>• Berth owners. |
| State, local and tribal governments | • Governments owning and/or responsible for ports, harbors, and/or berths.<br>• Government agencies requiring disposal of dredged material associated with public works projects. |
| Federal Government | • U.S. Army Corps of Engineers Civil Works projects.<br>• Other Federal agencies, including the Department of Defense. |

This table lists the types of entities that EPA is now aware could potentially be regulated. EPA notes, however, that nothing in this amendment alters in any way, the jurisdiction of EPA, or the types of entities regulated under the Marine Protection Research and Sanctuaries Act. To determine if you or your organization is potentially regulated by this action, you should carefully consider whether you expect to propose ocean disposal of dredged material, in accordance with the Purpose and Scope provisions of 40 CFR 220.1, and if you wish to use the SF–DODS. If you have questions regarding the applicability of this action to a particular entity, consult the persons listed in the proceeding **FOR FURTHER INFORMATION** section.

**B. Background**

Section 102 (c) of the Marine Protection Research and Sanctuaries Act (MPRSA) of 1972, as amended, 33 U.S.C. 1401 *et seq.*, gives the Administrator of EPA authority to designate sites where ocean disposal may be permitted. On October 1, 1986, the Administrator delegated authority to designate ocean dredged material disposal sites to the Regional Administrator of the EPA Region in which the site(s) is located. Today's action, amending the 40 CFR 228.15 (l)(3) SF–DODS designation Rule, is being made pursuant to that authority.

By publication of a Final Rule in the **Federal Register** on August 11, 1994 (59 FR 41243), EPA Region IX designated the SF–DODS as an ocean dredged material disposal site. The center of the SF–DODS is located approximately 49 nautical miles (91 kilometers) west of the Golden Gate and occupies an area of approximately 6.5 square nautical miles (22 square kilometers). Water depths within the SF–DODS range from approximately 8,200 to 9,840 feet (2,500 to 3,000 meters). The center coordinates of the oval-shaped site are: 37°39.0′ North latitude by 123°29.0′ West longitude (North American datum, dated 1983). The north-south axis is approximately four nautical miles (7.5 kilometers); the east-west axis is 2.5 nautical miles (4.5 kilometers).

The SF–DODS is an important component of the LTMS. The LTMS is a cooperative interagency planning process for dredged material management that incorporates concerns and issues of a wide range of stakeholders, including navigation and fishing interests, environmental organizations and the general public. The LTMS seeks to develop a comprehensive, technically feasible, environmentally suitable, and economically prudent long-range approach to meeting the region's dredged material disposal needs.

In its August 11, 1994 Final Rule, EPA designated the SF–DODS for use for a period of 50 years, with an interim capacity of six million cubic yards per calendar year until December 31, 1996. Because the LTMS regional planning effort was not completed by that date, the SF–DODS designation was subsequently extended (by Final Rule dated December 30, 1996, 61 FR 68964) at an interim annual volume limit of 4.8 million cubic yards until December 31, 1998. The reason for revising the volume limit from six to 4.8 million cubic yards was the revised and substantially decreased estimate of the long term need for ocean disposal of dredged material, resulting primarily from military base closures in the region.

Since the August 11, 1994 and December 30, 1996 Final Rules, substantial effort has been made toward development of a comprehensive dredged material management approach for the region. The federal and state LTMS agencies have prepared the Final LTMS EIS/R which was published in October 1998. The LTMS EIS/R evaluates dredged material management options for the San Francisco Bay Region over the next 50 years, and contains a comprehensive evaluation of alternatives for dredged material disposal in the San Francisco Bay area, including ocean disposal, in-Bay disposal (placement at designated sites within the San Francisco Bay Estuary that are managed under section 404 of the Clean Water Act), and upland disposal or beneficial reuse. The alternatives evaluated in the LTMS EIS/R include varying levels of dredged material disposal or reuse in each of these three placement environments. The potential environmental and socioeconomic effects of each alternative were evaluated in the EIS/R. Based on these analyses, the environmentally preferred alternative (and the selected action) calls for significantly reducing in-Bay disposal and significantly increasing beneficial reuse and/or upland disposal. Specifically, the LTMS selected alternative includes a long-term goal of 20% in-Bay disposal, 40% beneficial reuse (and/or upland disposal), and 40% ocean disposal, primarily at the SF–DODS.

The LTMS EIS/R recognized, however, that beneficial reuse of dredged material, especially in the earlier years of LTMS implementation, will not always be a practicable alternative. Currently, only limited opportunities for beneficial use of dredged material exist in the Bay area. Although several reuse projects are in the planning stages, their specific capacities and the time frames of their availability are uncertain. In addition, the costs associated with reuse options may render them not practicable for certain projects or entities. For these reasons, a relatively higher proportion of aquatic (ocean plus in-Bay) disposal than called for as the long term goal under the LTMS selected alternative is expected to be necessary until substantial new upland disposal or reuse capacity becomes available.

EPA has determined that disposal of suitable dredged material at the SF–DODS presents less risk of adverse environment impact than does in-Bay disposal (see for example, Section 6.1 of the LTMS Final EIS/R). Therefore, to the extent that disposal at the SF–DODS is practicable, it may be the least environmentally damaging alternative, and in-Bay disposal of dredged material may not be permitted under the Clean Water Act section 404(b)(1) Guidelines (40 CFR part 230). Consequently, EPA has determined that there is a need for continued availability of the SF–DODS for dredged material disposal at the annual volume limit of 4.8 million cubic yards, and that this disposal volume limit is an important aspect of the regional LTMS planning effort and necessary for its success. Today's action is primarily intended to set a permanent annual volume limit that will allow the SF–DODS to accommodate dredging projects for which beneficial reuse (and/or upland disposal) is not practicable, while minimizing the amount of dredged material disposed in-Bay. In addition, EPA is making several changes that clarify the Site Management and Monitoring Plan (SMMP) for the SF–DODS, and that provide enhanced environmental protection.

**C. Disposal Volume Limit**

The annual disposal limit for the SF–DODS (as a permanently designated site) is 4.8 million cubic yards. This volume is considerably less than the 6 million cubic yards per year originally determined to be environmentally acceptable for the SF–DODS. To date, project-specific, annual, and confirmatory monitoring efforts have indicated that disposal at the SF–DODS has not resulted in significant adverse environmental impacts, consistent with the conclusions of the original (1993) site designation EIS.

A number of disposal violations have occurred since the SF–DODS was designated in 1994. However, considering that nearly 2,500 barge

loads have been disposed at the site over the past three years, violations have been relatively rare. Furthermore, EPA has vigorously pursued enforcement of permit violations and will continue to do so.

Public comments on the LTMS EIS/R and on the draft SF–DODS Site Management and Monitoring Plan Implementation Manual expressed the concern that the original SF–DODS site designation EIS (EPA, 1993) contained an inaccurate evaluation of potential impacts due to increased disposal-related vessel traffic to and from the SF–DODS. Specifically, the original site designation EIS concluded that vessel traffic in the area would increase by only approximately two percent as a result of trips to the SF–DODS. (The 1998 LTMS EIS/R assumed a worst-case situation of approximately three times the average disposal frequency evaluated in the SF–DODS EIS.) One commenter, using vessel traffic information summarized in the SF–DODS EIS, calculated that worst-case overall vessel traffic increases in the Western Traffic Lane due to dredged material transport could be as great as 77 percent of the existing traffic. The commenter was concerned that this vessel traffic increase could result in significant disturbance-related impacts, especially to seabirds and marine mammals.

EPA has re-evaluated the potential vessel traffic increase, and the potential for this increase to result in adverse environmental impacts. This evaluation, which is presented in detail in the response to comments on the LTMS EIS/R, corroborates the EIS/R commenter's calculations and suggests that overall traffic increases may be between 110 and 162 percent. Nevertheless, EPA has determined that significant adverse impacts are unlikely to result from even the worst-case vessel traffic increases potentially associated with the 4.8 million cubic yard annual disposal volume limit, for the following reasons:

The worst-case increase in vessel traffic is significant in terms of absolute numbers. However, the majority of other vessels using the Western Traffic Lane (i.e., the one used by dredged material disposal-related vessels) are considerably larger in size, travel faster, carry cargo that is likely to be more dangerous to the aquatic environment if spilled or otherwise discharged, and generally are expected to result in a greater potential for disturbance to birds and mammals along the route to the SF–DODS than do the relatively small and slow-moving tugs and barges transporting dredged material. For example, as documented in the LTMS Final EIS/R, large commercial ships (56%) and tankers (13.3%) comprised the majority of the vessels using the Western Transit Lane during the period of 1980 through 1991.

Monitoring to date, including regional environmental monitoring and observers on dredged material disposal vessels, particularly during years of high disposal activity, has confirmed that no adverse effects to seabirds and marine mammals have occurred in terms of distraction, stress or alteration of behavior. Furthermore, seabird and marine mammal monitoring during transits to the SF–DODS will continue, and in some cases may increase, as a result of changes to Mandatory Condition #12 (see below).

### D. Other Technical Changes to the SF–DODS SMMP

*SMMP Implementation Manual*

EPA is clarifying the SF–DODS Rule to ensure that permittees use the most current information available regarding site management and monitoring by explicitly directing them to adhere to requirements contained in the current version of the SMMP Implementation Manual. EPA intends to use the Implementation Manual as the primary vehicle for addressing new technology, making changes resulting from site monitoring, and incorporating other improvements. In this way, EPA can effect necessary modifications in the most expedient and efficient manner.

*Surface Target Area*

EPA is modifying to Mandatory Condition #5 to reduce the surface target area of the SF–DODS from the existing radius of 1,000 meters to a circle with a radius of 600 meters. EPA's intent is to ensure that dredged material deposition outside of the SF–DODS boundary is minimized.

*Acceptable Sea State*

A number of commenters to the SF–DODS SMMP Implementation Manual and the LTMS EIS/R expressed concern regarding the maximum acceptable sea state for transit to the SF–DODS. They felt that the existing limits of ''gale warning'' and seas ''over 18 feet'' were not restrictive enough to minimize spillage and accidents. The Corps has incorporated revised acceptable sea states in its contracts for recent dredging projects and EPA has clarified sea states in the SMMP Implementation Manual to address these concerns. EPA is codifying a more restrictive sea state limit by modifying Mandatory Condition #1 to specifically limit the acceptable wave height to a maximum of 16 feet. Improvements in technology may result in changes to particular characteristics of the acceptable sea state (e.g., wave period). EPA will update the SMMP Implementation Manual to incorporate these changes, as appropriate.

*Scow Loading and Certification*

EPA and the Corps have implemented several other modifications to dredging and disposal operations as a result of experience gained from monitoring and managing the SF–DODS to date. We are revising to Mandatory Condition #2 to clarify dredged material disposal vessel loading limitations and to include more specific provisions for inspections and written certification of each disposal vessel.

*Distance From Farallon Islands*

The U.S. Coast Guard has noted that EPA does not have authority to restrict vessel traffic within already existing designated marine traffic lanes. A portion of the existing traffic lane used to transport material to the SF–DODS overlaps the three mile limit around the Farallon Islands. Therefore, EPA is changing to Mandatory Condition #4 to reflect that the permittee must be at all times within the traffic lane, but is encouraged to remain at least three miles from the Farallon Islands whenever possible, consistent with safe navigation practices.

*Navigation Systems*

Previous experience with disposal at SF–DODS has indicated to EPA that some permittees and/or their contractors may not be interpreting the details of this condition as EPA intended. Therefore, we are clarifying our intent by providing more specific information in the condition.

*Monitoring During Transit*

EPA is clarifying Mandatory Condition #12 to ensure continued and representative monitoring of birds and marine mammals during transit of dredged material vessels to the SF–DODS and to focus monitoring effort during times when transport of material is high. We intend to ensure that observers are present on a sufficient number of disposal vessel trips to characterize fully the potential impact of disposal site use and transit on seabirds and marine mammals, taking into account, to the extent feasible, seasonal variations in such potential impacts.

*Violation Notification*

In response to a request from the National Oceanic and Atmospheric Administration, EPA is modifying

Mandatory Condition #11 to specifically require permittees to notify the Sanctuary Manager within 24 hours of any permit violation which occurs within the boundaries of either the Gulf of the Farallones National Marine Sanctuary or the Monterey Bay National Marine Sanctuary. Furthermore, EPA will continue to inform the Sanctuary Managers of all violations, both within and outside of the Sanctuaries.

*Reporting Requirements*

EPA is modifying Mandatory Condition #13 to specifically require permittees to provide all pertinent information related to the dredging and dredged material disposal to the agencies. This will ensure that EPA and the Corps of Engineers have adequate data to determine if permit violations have occurred and to correct such violations at the earliest possible time.

**E. Ocean Dumping Site Designation Criteria**

Five general criteria and 11 specific site selection criteria are used in the selection and approval of ocean disposal sites for continued use (40 CFR 228.5 and 40 CFR 228.6(a)). As described in the site designation EIS, the SF–DODS was specifically selected as the alternative which best complies with these criteria.

Monitoring activities conducted pursuant to the requirements of the SF–DODS SMMP have shown that the SF–DODS is in compliance with the site designation criteria and is performing as predicted in the site designation EIS. For example, seafloor mapping indicates that bulk of the dredged material has landed within the site boundary and has not been transported offsite thereafter. Deposits exceeding 17 centimeters in thickness have been identified only at the center of the SF–DODS and no deposits thicker than the five centimeter threshold established in the site designation Final Rule have been detected at or outside of the site boundary. No apparent changes in the basic successional stage of the native benthic communities attributable to dredged material disposal have been observed outside the site boundary. Therefore, any significant disturbances associated with dredged material disposal are limited to within the site boundary. In addition, water column studies have confirmed that plumes resulting from disposal operations dissipate rapidly and that the suspended sediment concentration of plumes decreases to ambient levels shortly after disposal.

Vessel traffic associated with disposal operations has not interfered with overall navigation in the region and has had no significant impact on marine mammals, birds, fish or other flora or fauna in the general region of the SF–DODS. Moreover, management actions taken by EPA and codified in today's final Rule further reduce the potential for adverse impacts.

EPA has determined that, in general, disposal of suitable dredged material at the SF–DODS is less environmentally damaging than in-Bay disposal (see for example, section 6.1 in the LTMS Final EIS/R). Therefore, use of the SF–DODS for disposal of suitable dredged material has reduced potential cumulative adverse impacts to the aquatic environment. Use of the SF–DODS during 1996, 1997 and 1998 resulted in a total of approximately 5.7 million cubic yards of dredged material not being disposed at in-Bay sites.

Taken together, the evaluations presented in the site designation EIS and Final Rule, and the site monitoring results to date, confirm that the SF–DODS is performing as predicted and that it continues to meet the general and specific site designation criteria of 40 CFR 228.5 and 228.6. Furthermore, EPA Region IX has determined that it is appropriate to designate a permanent annual disposal volume limit of 4.8 million cubic yards for the SF–DODS.

Management of the site continues to be the responsibility of the Regional Administrator of EPA Region IX, in cooperation with the Corps South Pacific Division Engineer and the San Francisco District Engineer, based on the requirements defined in the Final Rule. The requirement for compliance with the Ocean Dumping Criteria of the MPRSA may not be superseded by the provisions of the LTMS or any future comprehensive regional management plan for dredged material. EPA also emphasizes that ocean disposal site designation does not constitute or imply EPA Region IX's or the Corps San Francisco District's approval of ocean disposal of dredged material from any project. Before disposal of any dredged material at the SF–DODS may occur, EPA Region IX and the Corps San Francisco District must evaluate the proposed project according to the Ocean Dumping Criteria (40 CFR part 227) adopted pursuant to the MPRSA. EPA Region IX or the Corps San Francisco District will not allow ocean disposal of material if either agency determines that the Ocean Dumping Criteria are not met.

**F. Response to Comments**

The proposed Rule was published in the **Federal Register** on April 29, 1999. The comment period ended June 1, 1999. A total of two comment letters were received.

*Annual Volume Limitation*

Both letters received addressed EPA's proposed annual volume limit at SF–DODS. One commenter wanted EPA to reduce the annual limit, while the other wanted EPA to increase it. The first commenter expressed concern that the proposed volume of 4.8 million cubic yards per year was too high and requested that EPA set the limit at 3.8 million cubic yards. The commenter cited the LTMS agencies' earlier decision to consider a maximum of 80 percent of total volume disposed in any one placement environment. EPA's decision to reduce the SF–DODS annual volume limit from six million cubic yards to 4.8 million cubic yards in fact, reflects our commitment to the 80 percent maximum concept. EPA revised the annual volume limit in 1996 to reflect new estimates of dredging in the Bay area (average annual volume of six million cubic yards). Today's 4.8 million cubic yard figure is 80 percent of that total. EPA believes that the 4.8 million cubic yard limit, along with other controls and requirements included in the Site Management and Monitoring Plan, is adequately protective of the marine environment, while providing the ''safety valve'' needed to ensure that in-Bay disposal is minimized.

The second commenter believed that EPA's choice of 4.8 million cubic yards per year could hamper the LTMS process, particularly in years when dredging needs exceed the average. This commenter used dredging data from 1991 to 1997 (presumably the same or similar to data reported in the LTMS EIS/R) to calculate a maximum likely annual dredging volume of nearly eight million cubic yards. Based on this, the commenter requested that EPA reestablish the original annual limit of six million cubic yards. EPA rejects this argument for several reasons. Early years of the data set incorporate dredging volumes associated with projects that no longer occur (primarily operations at military facilities that are now closed). Therefore, the standard deviation calculated by the commenter may no longer provide an appropriate estimate of expected dredged material volumes. Moreover, the year 1997 includes two port deepening projects, each with larger volumes than generally associated with maintenance work, which also tend to skew the data. EPA believes that the 4.8 million cubic yard limit is appropriate, given recent changes in Bay area dredging requirements and the high-end estimate

of future deepening projects used to calculate the average volume of material dredged.

*Vessel Traffic Impacts*

One commenter, while commending EPA for reducing the surface target area and clarifying other conditions, reiterated concerns regarding potential impacts associated with transport of dredged material to the site. As stated above, as a result of comments on the LTMS EIS/R, EPA re-evaluated dredged material transit prior to publishing the final SF–DODS Rule. Based on this review, we believe that the potential for adverse impacts from dredged material vessels using the Western Traffic lane are minimal, particularly compared with those associated with other users. Risks associated with marine transit occur primarily during periods of bad weather and high seas. Vessels such as oil tankers and cargo ships are not subject to weather-related regulatory constraints, whereas dredged material vessels going to SF–DODS are. Moreover, EPA has further restricted the acceptable sea state for transport of dredged material to SF–DODS. In addition, EPA has strengthened and clarified the monitoring requirements during transport to SF–DODS. This monitoring is our best scientific basis for determining whether use of SF–DODS results in impacts to marine wildlife.

*Monitoring Requirements*

Both commenters referred to the Rule's monitoring requirements. One commenter objected to EPA's clarification to Mandatory permit condition (12) regarding monitoring during transit, suggesting that it was an increase in monitoring. This clarification is based on review of prior monitoring reports and would not result in any actual increase in the average number of monitoring trips that the Corps required during either of its recent projects using SF–DODS. In fact, we commend the Corps for conducting for adequate and representative monitoring on those projects. We amended condition (12) to ensure that all permitees provide similar representative monitoring.

The other commenter requested that EPA provide data on impacts to wildlife behavior at reference sites or at SF–DODS prior to designation, as a ''frame of reference'' comparison. EPA believes that the regional environmental monitoring currently undertaken provides such a reference.

The commenter also indicated that monitoring data from year(s) of high site usage are necessary to confirm the conclusions of 1995–1996 monitoring (during which relatively little disposal at SF–DODS occurred). EPA concurs and now has the full report of monitoring from 1997–1998, during which the highest site use has occurred. This report provides supporting evidence of the lack of impacts to wildlife from dredged material transit, as originally noted by the monitoring group by letter dated February 4, 1999. This commenter also suggested that the monitoring data may indicate that marine mammals are avoiding ship traffic. We do not expect that this avoidance, if it occurs, is likely to significantly disrupt migration, feeding, or other behaviors, as a result of the small area of the Western Traffic Lane relative to the overall habitat of marine mammals, as well as other wildlife.

*Reporting Requirements*

Finally, one commenter expressed concerns regarding language in Mandatory permit condition (13) requiring that the EPA or Corps could request reports ''at any other time or interval required''. The commenter suggested that EPA include in the Rule the conditions under which this requirement might be invoked. EPA recognizes the commenter's concern that this language might be considered ''arbitrary and capricious''. However, we have decided to defer further constraints on reporting requirements to the SF–DODS Implementation Plan. EPA has decided to retain this broad language in the Rule for subsequent clarification as necessary.

**G. Regulatory Requirements**

*1. Consistency With the Coastal Zone Management Act*

EPA prepared a Coastal Zone Consistency Determination (CCD) document based on information presented in the site designation EIS (August 1993). The CCD evaluated whether the proposed action—designation of ''Alternative Site 5'' (now SF–DODS) as described in the site designation EIS as an ocean disposal site for up to 50 years, with an annual capacity of six million cubic yards of dredged material meeting ocean disposal criteria—would be consistent with the provisions of the Coastal Zone Management Act. The CCD was formally presented to the California Coastal Commission (Commission) at their public hearing April 12, 1994. The Commission staff report recommended that the Commission concur with EPA's CCD, which the Commission did by a unanimous vote. Because the approved CCD was based on 50 years of site use at up to six million cubic yards of material annually, and none of the provisions in this amendment exceed these parameters, the effects of today's rule are well within the scope of the prior review and do not require further Commission review.

*2. Endangered Species Act Consultation*

During development of the site designation EIS, EPA consulted with the National Marine Fisheries Service (NMFS) and the U.S. Fish and Wildlife Service (FWS) pursuant to the provisions of the Endangered Species Act (ESA), regarding the potential for designation and use of any of the alternative ocean disposal sites under study to jeopardize the continued existence of any federally listed species. This consultation process is fully documented in the August 1993 site designation EIS. NMFS and FWS concluded that none of the three alternative disposal sites, including the SF–DODS, if designated and used for disposal of dredged material meeting the criteria for ocean disposal, would likely jeopardize the continued existence of any federally listed species.

The results of over four years of monitoring data indicate that disposal of dredged material at the SF–DODS has not had an adverse impact on federally listed or candidate species, nor their designated critical habitat.

The ESA consultation was based on site use of up to six million cubic yards of dredged material per year, for 50 years. Since the action now does not exceed these parameters and because conditions have not changed for any of the listed or candidate threatened or endangered species potentially affected by disposal site use, the effects of today's rule are well within the scope of the original consultation and do not require further Endangered Species Act consultation.

**H. Administrative Review**

*1. Executive Order 12866*

Under Executive Order 12866 (58 FR 51735, October 4, 1993), EPA must determine whether the regulatory action is ''significant'', and therefore subject to OMB review and other requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to lead to a rule that may:

(a) 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;

(b) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(c) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or

(d) Raise novel legal or policy issues arising out of legal mandates, the Presidents priorities, or the principles set forth in the Executive Order.

This amendment should have minimal impact on permittees. Clarifications contained herein do not substantively alter the intent of the Rule nor its interpretation, and in general, codify actions that are already being taken. The annual volume limitation merely makes permanent the temporary volume set in the December 30, 1996 Rule amendment (61 FR 68964). Consequently, EPA has determined that this final Rule is not a ''significant regulatory action'' under the terms of Executive Order 12866.

*2. Executive Order 13084*

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Tribal governments are not affected in any fashion. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

*3. Regulatory Flexibility*

The Regulatory Flexibility Act (RFA) provides that whenever an agency promulgates a final rule under 5 U.S.C. 553, the agency must prepare a regulatory flexibility analysis (RFA) unless the head of the agency certifies that the final Rule will not have a significant economic impact on a substantial number of small entities (5 U.S.C. 604 and 605). The amended site designation only has the effect of clarifying an existing Rule and setting a permanent annual disposal volume, providing a continuing disposal option for dredged material. Consequently, EPA's action will not impose any additional economic burden on small entities. For this reason, the Regional Administrator certifies, pursuant to section 605(b) of the RFA, that the final Rule will not have a significant economic impact on a substantial number of small entities.

*4. Paperwork Reduction Act*

The Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, is intended to minimize the reporting and record-keeping burden on the regulated community, as well as to minimize the cost of Federal information collection and dissemination. In general, the Act requires that information requests and record-keeping requirements affecting ten or more non-Federal respondents be approved by OMB. Since the Rule does not establish or modify any information or record-keeping requirements, but only clarifies existing requirements, it is not subject to the provisions of the Paperwork Reduction Act.

*5. Unfunded Mandates*

Title II of the Unfunded Mandates Reform Act (UMRA) of 1995 (Pub. L. 104–4) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any year.

This final rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local or tribal governments or the private sector. As described elsewhere in this preamble, today's Rule only has the effect of clarifying an existing Rule and setting a permanent annual disposal volume, providing a continuing disposal option for dredged material. Consequently, it imposes no new enforceable duty on any State, local or tribal governments or the private sector. Similarly, EPA has also determined that this Rule contains no regulatory requirements that might significantly or uniquely affect small government entities. Thus, the requirements of section 203 of the UMRA do not apply to this Rule.

*6. Executive Order 12875*

Today's Rule does not create a mandate on State, local or tribal governments. The Rule does not impose any enforceable duties on these entities. As described elsewhere in this preamble, today's Rule only has the effect of clarifying an existing Rule and setting a permanent annual disposal volume, providing a continuing disposal option for dredged material. Consequently, it imposes no new enforceable duty on any State, local or tribal governments. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this Rule.

*7. Executive Order 13045*

EPA interprets E.O. 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This Rule is not subject to E.O. 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

*8. Executive Order 12898*

To the greatest extent practicable and permitted by law, and consistent with the principles set forth in the report on the National Performance Review, each Federal agency shall make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations in the United States and its territories and possessions, the District of Columbia, the Commonwealth of Puerto Rico, and the Commonwealth of the Mariana Islands.

This Final Rule only clarifies an existing Rule and sets a permanent annual disposal volume at the SF–DODS. Consequently, today's action is not subject to further review under E.O. 12898.

*9. Compliance With Administrative Procedure Act*

The Administrative Procedure Act (APA), 5. U.S.C. 551 *et seq.*, generally requires that substantive rules be

published 30 days prior to their effective date except:

''(1) A substantive rule which grants or recognizes an exemption or relieves a restriction; * * * or (3) as otherwise provided by the agency for good cause found and published with the rule.'' 5 U.S.C. 553(d).

EPA is issuing today's final rule as effective July 23, 1999, under the provisions of 5 U.S.C. 553(d). As is explained elsewhere in this preamble, today's final Rule is needed to clarify mandatory conditions for site use and to set a permanent site volume limit. Continued availability of SF–DODS for disposal of suitable dredged material is essential to the success of the Long Term Management Strategy for the San Francisco Bay area. The site, however, has not been available for disposal since December 31, 1998, restricting project proponents' disposal options and potentially hindering efficient and environmentally-protective planning. In the absence of today's Rule, SF–DODS would remain closed to dredged material unless the USACE undertakes site selection under MPRSA section 103 or invokes an economic waiver (40 CFR 225.3). A number of dredging projects proposing to use SF–DODS this calendar year could experience substantial delays and/or increase pressures on in-Bay disposal sites. By re-opening SF–DODS for disposal of suitable dredged material, today's final Rule has the effect of removing a restriction and thus meets the exception specified in 5 U.S.C. 553(d). In addition, EPA believes today's rule meets the ''good cause'' exception of 5 U.S.C. 553(d)(3). As previously noted, failure to re-open the site could adversely affect a number of proposed projects, including federal civil works maintenance activities. Issuing today's final Rule as immediately effective would avoid potential disruption of projects, and is in the public interest. EPA has determined that there is good cause within the meaning of 5 U.S.C. 553(d)(3) to issue this Rule as effective July 23, 1999.

*10. Congressional Review Act*

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 808 allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and public procedure on the rule is impracticable, unnecessary or contrary to the public interest. As stated previously, EPA has made such a good cause finding, including the reasons therefor, and established an effective date of July 23, 1999. As stated above, failure to re-open SF–DODS to disposal of suitable dredged material as expeditiously as possible could adversely affect a number of proposed projects, including federal civil works maintenance activities. Issuing today's final Rule as immediately effective would avoid potential disruption of projects, and is in the public interest. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

**List of Subjects in 40 CFR Part 228**

Environmental protection, Water pollution control.

Dated: June 29, 1999.

**Alexis Strauss,**

*Acting Regional Administrator, Region IX.*

In consideration of the foregoing, chapter I of title 40 of the Code of Federal Regulations is amended as set forth below.

## PART 228—[AMENDED]

1. The authority citation for part 228 continues to read as follows:

**Authority:** 33 U.S.C. 1412 and 1418.

2. Section 228.15 is amended in paragraph (l)(3)(vi) by adding a sentence before the last sentence; by revising paragraph (l)(3)(vii); and revising paragraphs (l)(3)(viii)(A)(*1*), (*2*), (*4*), (*5*), (*7*), (*11*), (*12*), and (*13*) to read as follows:

**§ 228.15 Dumping sites designated on a final basis.**

* * * * *

(1) * * *

(3) * * *

(vi) * * * Adherence to the provisions of the most current SMMP Implementation Manual, including mandatory permit conditions, site monitoring activities, and any other condition(s) EPA or the Corps have required as part of the project authorization or permit, is a requirement for use of the SF–DODS.

* * *

* * * * *

(vii) *Type and capacity of disposed materials.* Site disposal capacity is 4.8 million cubic yards of suitable dredged material per year for the remaining period of site designation. This limit is based on considerations in the regional Long Term Management Strategy for the placement of dredged material within the San Francisco Bay region, and on monitoring of site use since the SF–DODS was designated in 1994.

(viii) * * *

(A) * * *

(*1*) Transportation of dredged material to the SF–DODS shall only be allowed when weather and sea state conditions will not interfere with safe transportation and will not create risk of spillage, leak or other loss of dredged material in transit to the SF–DODS. No disposal trips shall be initiated when the National Weather Service has issued a gale warning for local waters during the time period necessary to complete dumping operations, or when wave heights are 16 feet or greater. The permittee must consult the most current version of the SMMP Implementation Manual for additional restrictions and/or clarifications regarding other sea state parameters, including, but not limited to wave period.

(*2*) All vessels used for dredged material transportation and disposal must be loaded to no more than 80 percent by volume of the vessel. Before any disposal vessel departs for the SF–DODS, an independent quality control inspector must certify in writing that the vessel meets the conditions and requirements of a certification checklist that contains all of the substantive elements found in the example contained in the most current SMMP Implementation Manual. For the purposes of paragraph (l)(3)(viii) of this section, ''independent'' means not an employee of the permittee or dredging contractor; however, the Corps of Engineers may provide inspectors for Corps of Engineers dredged material disposal projects.

* * * * *

(*4*) Disposal vessels in transit to and from the SF–DODS should remain at least three nautical miles from the Farallon Islands whenever possible. Closer approaches should occur only in situations where the designated vessel traffic lane enters the area encompassed by the 3-mile limit, and where safety may be compromised by staying outside of the 3-mile limit. In no case may disposal vessels leave the designated vessel traffic lane.

(*5*) When dredged material is discharged within the SF–DODS, no portion of the vessel from which the materials are to be released (*e.g.*, hopper dredge or towed barge) can be further

than 1,900 feet (600 meters) from the center of the target area at 37°39′ N, 123°29′ W.

* * * * *

(*7*) Disposal vessels shall use an appropriate navigation system capable of indicating the position of the vessel carrying dredged material (for example, a hopper dredged vessel or towed barge) with a minimum accuracy and precision of 100 feet during all disposal operations. The system must also indicate the opening and closing of the doors of the vessel carrying the dredged material. If the positioning system fails, all disposal operations must cease until the navigational capabilities are restored. The back-up navigation system, with all the capabilities listed in this condition, must be in place on the vessel carrying the dredged material.

* * * * *

(*11*) The permittee shall report any anticipated or actual permit violations to the District Engineer and the Regional Administrator within 24 hours of discovering such violation. If any anticipated or actual permit violations occur within the Gulf of the Farallones or the Monterey Bay National Marine Sanctuaries, the permittee must also report any such violation to the respective Sanctuary Manager within 24 hours. In addition, the permittee shall prepare and submit reports, certified accurate by the independent quality control inspector, on a frequency that shall be specified in permits, to the District Engineer and the Regional Administrator setting forth the information required by Mandatory Conditions in paragraphs (l)(3)(viii)(A)(*8*) and (*9*) of this section.

(*12*) Permittees, and the Corps in its Civil Works projects, must make arrangements for independent observers to be present on disposal vessels for the purpose of conducting shipboard surveys of seabirds and marine mammals. Observers shall employ standardized monitoring protocols, as referenced in the most current SMMP Implementation Manual. At a minimum, permittees shall ensure that independent observers are present on at least one disposal trip during each calendar month that disposal occurs, AND on average at least once every 25 vessel trips to the SF–DODS.

(*13*) At the completion of short-term dredging projects, at least annually for ongoing projects, and at any other time or interval requested by the District Engineer or Regional Administrator, permittees shall prepare and submit to the District Engineer and Regional Administrator a report that includes complete records of all dredging, transport and disposal activities, such as navigation logs, disposal coordinates, scow certification checklists, and other information required by permit conditions. Electronic data submittals may be required to conform to a format specified by the agencies. Permittees shall include a report indicating whether any dredged material was dredged outside the areas authorized for dredging or was dredged deeper than authorized for dredging by their permits.

* * * * *

[FR Doc. 99–18606 Filed 7–22–99; 8:45 am]

BILLING CODE 6560–50–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Care Financing Administration

### 42 CFR Parts 431 and 498

**[HCFA–2054–IFC]**

**RIN 0938–AJ59**

## Medicare and Medicaid Program; Appeal of the Loss of Nurse Aide Training Programs

**AGENCY:** Health Care Financing Administration (HCFA), HHS.

**ACTION:** Interim final rule with comment period.

**SUMMARY:** This interim final rule revises current Medicare and Medicaid regulations to provide participating nursing facilities, skilled nursing facilities, and dually participating nursing facilities an opportunity for an evidentiary hearing before an administrative law judge to challenge a facility's loss of its approved nurse aide training program. This rule also amends Medicaid regulations to permit States to provide evidentiary hearings for facilities that participate only in the Medicaid program and that face a loss of their nurse aide training programs. Previous regulations have provided only for an informal hearing when facilities lose training programs and do not otherwise face enforcement remedies under the Medicare and Medicaid programs.

**DATES:** Effective date: These regulations are effective July 23, 1999.

*Comment date:* Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. on September 21, 1999.

**ADDRESSES:** Mail an original and 3 copies of written comments to the following address:

Health Care Financing Administration, Department of Health and Human Services, Attention: HCFA–2054–IFC, P.O. Box 9010, Baltimore, MD 21244–9010

Room 443–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, or

Room C5–16–03, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Comments may be submitted electronically to the following e-mail address: (filecode 2054ifc)@hcfa.gov. For e-mail procedures and information on ordering copies of the **Federal Register** containing this document and electronic access, see the beginning of **SUPPLEMENTARY INFORMATION**.

**FOR FURTHER INFORMATION CONTACT:** Jeffrey Golland, (202) 619–3377.

**SUPPLEMENTARY INFORMATION:**

### E-Mail, Comments, Procedures, Availability of Copies, and Electronic Access

E-mail comments must include the full name and address of the sender, and must be submitted to the referenced address to be considered. All comments must be incorporated in the e-mail message because we may not be able to access attachments. Electronically submitted comments will be available for public inspection at the Independence Avenue address, below. Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code HCFA–2054–IFC. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in Room 443–G of the Department's 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).

### I. Background

To participate in the Medicare and Medicaid programs, facilities furnishing nursing services must satisfy certain requirements as a prerequisite to their receiving a provider agreement. Specifically, they must comply with the requirements set forth at section 1819(b), (c), and (d) of the Social Security Act (the Act) for the Medicare program, and section 1919(b), (c), and (d) of the Act for the Medicaid program. Implementing regulations further clarifying these statutory requirements are set forth at 42 CFR Part 483 (Requirements for States and Long Term Care Facilities). Facilities wishing to

participate in these programs may do so only after they have been surveyed, or inspected, by a survey team and found to be in substantial compliance with program requirements. While we administer these programs at the Federal level, typically these surveys are performed by State agencies acting under an agreement with us pursuant to section 1864 of the Act. States conduct routine surveys on the average of once annually for each facility. When States perform these surveys, they make recommendations to us if Medicare determinations are involved, whereas determinations for facilities wishing to participate only in the Medicaid program are made predominately by the States. Facilities found to be furnishing services in substantial compliance with Federal requirements are issued a provider agreement and are thereby entitled to furnish reimbursable nursing services to Medicare beneficiaries and Medicaid recipients.

Among the requirements that nursing facilities must meet is an obligation to employ only those nurse aides who are qualified to fill those positions. Sections 1819(b)(5)(A) and 1919(b)(5)(A) of the Act specifically prohibit nursing facilities from employing individuals as nurse aides for more than 4 months unless these individuals have completed a training and competency evaluation program and are competent to furnish nursing or nursing related services. These requirements are reflected in the regulations at § 483.75(g) (Staff qualifications). According to sections 1819(f)(2)(B) and 1919(f)(2)(B) of the Act, States approve these training programs and have discretion to approve nurse aide training programs that are offered by or in facilities.

Under sections 1819(g)(2)(B) and 1919(g)(2)(B) of the Act, if a facility is found to have furnished substandard quality of care during a standard survey, it is subject to an extended survey that is designed to probe in more depth the facility's policies and procedures that produced substandard quality of care. If a facility is subjected to an extended survey and has been operating an approved nurse aide training program, it loses its ability to provide the program for 2 years as required by sections 1819(f)(2)(B)(iii)(I) and 1919(f)(2)(B)(iii)(I) of the Act.

When we published the nursing home survey and enforcement regulations in the November 10, 1994 final rule (59 FR 56116), we addressed issues raised by a facility's loss of its nurse aide training program. In that final rule (59 FR 56228), we concluded that facilities facing this loss should have access to the informal dispute resolution process offered under § 488.331, but that they should not have an opportunity for an administrative law judge (ALJ) hearing since we perceived a facility's loss in this context as not rising to the level of deprivation marked by sanctions described elsewhere in the statute such as facility agreement terminations or civil money penalties. It is only if a facility suffers an adverse and direct legal consequence under the Medicare program that it is entitled to administrative and judicial review. Accordingly, the regulations at § 498.3(d)(10)(iii) (Scope and applicability), precluded the opportunity for an ALJ hearing when a facility loses its approval to train nurse aides. Similarly, Medicaid regulations, at § 431.153(f)(2) (Evidentiary hearing), also precluded the opportunity for Medicaid-only certified facilities to receive a full evidentiary hearing for losses of their approved nurse aide training programs. Facilities have had the ability to challenge the loss of their nurse aide training programs only if they also were challenging the imposition of a remedy that was appealable.

## II. Provisions of the Interim Final Rule

We are amending the Medicare and Medicaid regulations to permit a facility an opportunity for an evidentiary hearing if it loses its approved nurse aide training program. In the context of the appeals system available to long term care facilities that are either Medicare or Medicaid certified or dually certified for both the Medicare and Medicaid programs, this means the opportunity for a hearing before an ALJ of the Departmental Appeals Board and to request review by the Board of an ALJ decision. As has always been the case, the nurse aide training program ceases to operate pending an appeal. While we are deleting the Medicaid regulation that foreclosed the possibility of an evidentiary hearing in these cases, we are leaving to States the details of whether or how they may provide hearings to those facilities participating only in the Medicaid program. However, nurse aid training programs provided by Medicaid-only facilities in States that elect to provide these hearings must cease to operate pending an appeal just has been the case for Medicare certified facilities.

When we published the survey and enforcement final rule in November 1994, we did not have the benefit of the experience we have had since that time. We could continue to advance the same arguments we made in the preamble to the November 1994 final rule as to the relative merits of losing a nurse aide training program compared with the impact of one or more of the remedies set out in the statute. We believe, however, that we should acknowledge the arguments that have been advanced by individual facilities on the magnitude of the loss to them when they are unable to train nurse aides themselves. Facilities have alerted us to the difficulty they sometimes have in finding qualified nurse aides once they are unable to train their own. Those employed as nurse aides are not highly paid and are not always available in abundance to facilities whenever they need to hire additional staff or replace those who leave. Turnover in these positions is high, thereby placing increased pressures on facilities to maintain the staff they need to furnish essential services to facility residents. Thus, the loss of an ability to train nurse aides can have significant consequences for a facility.

Although the waiver provision in the statute, at sections 1819(f)(2)(C) and 1919(f)(2)(C) of the Act, provides relief to some facilities in these situations, it is not universal in scope and, therefore, may not reach all facilities that have difficulty employing qualified individuals as nurse aides. The waiver provision authorizes a State to permit a facility that has lost its approval to train its nurse aides to continue that training in the facility (although not under the direction of the facility) if it determines that there is no other training program within a reasonable distance of the facility and the State can assure that there is an adequate environment to operate the program in the facility.

Because the reason for the loss of nurse aide training is a fact-driven conclusion that the facility has provided substandard quality of care, we recognize the desirability of furnishing a facility the opportunity to challenge these factual findings in a forum that is designed to hear identical disputes that arise when remedies are imposed on noncompliant facilities. Thus, there is sufficient reason to have a regulation that furnishes the same appeal process that has been available for the imposition of remedies on a facility.

We view the provision of administrative hearings in cases involving the loss of nurse aide training, along with those that have been furnished up to now for most of the remedies imposed under § 488.406 (Available remedies), as being derived from sections 1866(b)(2) and 1866(h) of the Act. These sections provide for the review of certain determinations we have made such as those in which we conclude that a facility is not complying substantially with the requirements of

the Act. We believe these sections of the statute are triggered when affected facilities sustain genuinely adverse legal consequences under the Medicare program as a result of action we have taken. As a matter governed by sections 1866(b)(2) and 1866(h) of the Act, these hearings are funneled through the administrative process described in section 205(b) of the Act and to judicial review of our final decision according to section 205(g) of the Act. Both sections 205(b) and 205(h) are incorporated in the Medicare statute at section 1866(h) of the Act.

Therefore, we are revising the Medicare and the Medicaid sections of the regulations. We are revising the Medicaid hearing regulations by deleting the reference at § 431.153(b)(3) (Limit on grounds for appeal) that preclude States from granting evidentiary hearings to Medicaid facilities losing their nurse aide training programs. We are not affirmatively requiring States to provide a hearing in these cases because that is a decision we believe States should determine in light of circumstances that are apt to differ among the States.

We are revising the Medicare hearing regulations that have precluded facilities from challenging the level of noncompliance we have found since findings of substandard quality of care are uniquely sensitive to specific findings of noncompliance. Specifically, a finding of substandard quality of care is premised upon a determination that there are discrete levels of noncompliance found under three regulations (§§ 483.13 (Resident behavior and facility practices), 483.15 (Quality of life), and 483.25 (Quality of care)). Thus, to adequately challenge a finding of substandard quality of care, a facility may need to be in a position to challenge the specific levels of noncompliance that gave rise to the finding. Accordingly, we are revising § 498.3(b)(13) to permit this kind of challenge.

We are also revising § 498.3(b) (Initial determinations by HCFA) by adding a new paragraph (15) that will make a finding of substandard quality of care that results in the loss of the approval of a facility's nurse aide training program an initial determination for purposes of receiving an evidentiary hearing.

Additionally, we are revising the regulations at § 498.3(d)(10)(iii) (Administrative actions that are not initial determinations) by deleting the reference to the loss of nurse aide training as an administrative action that is not an initial determination. These revisions will affect the hearing rights of facilities that are participating in the Medicare or Medicaid program or are dually participating in the Medicare and Medicaid programs.

We intend that these changes to the regulations be effective upon publication. Thus, we will apply the new rules to determinations made after the effective date of this interim final rule in which we or the States find substandard quality of care (communicated to the facility in a statement of deficiencies on HCFA Form 2567) that leads to the facility's loss of its ability to train nurse aides.

## III. Response to Comments

Because of the large number of items of correspondence we normally receive on **Federal Register** documents published for comment, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, when we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

## IV. Waiver of Proposed Rulemaking

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** and invite public comment on the proposed rule. The notice of proposed rulemaking includes a reference to the legal authority under which the rule is proposed, and the terms and substances of the proposed rule or a description of the subjects and issues involved. This procedure can be waived, however, if an agency finds good cause that a notice-and-comment procedure is impracticable, unnecessary, or contrary to the public interest and incorporates a statement of the finding and its reasons in the rule issued.

We believe that engaging in proposed rulemaking in the context of this rule is unnecessary. We are not making substantive changes in the standards that nursing facilities must meet to participate in the Medicare and Medicaid programs. Facilities will continue to be obligated to meet the requirements of 42 C.F.R. Part 483 to retain program certification including the requirement that only trained nurse aides be employed by the facility. Nor are we changing in any way the basis for the imposition of remedies on long term care facilities when they are found to be out of compliance with Federal certification requirements. Facilities will still face the imposition of remedies, as they have before, when they fail to comply. They will continue to be subject to the consequences of a finding of substandard quality of care including the loss of nurse aide training programs and the required notifications to attending physicians and a State's Administrator Licensing Board. Thus, these rule changes will not affect the well being of residents by releasing facilities from any obligation they already owe under these programs. Indeed, under this rule, facilities that have lost their ability to train nurse aides will face that consequence unless our determination that the facility has provided substandard quality of care is reversed by an ALJ or by the Departmental Appeals Board upon its review of the hearing decision. This final rule only affects the type of review that nursing facilities may receive when they face the loss of their training programs.

In addition, we do not believe that this rule will adversely impact States. While those States that choose to provide hearings in nurse aide training cases may experience some added burdens, we believe they will be minimal. Specifically, we expect that there will be very few cases involving the loss of nurse aide training in facilities certified only in the Medicaid program.

Moreover, we are providing facilities with appeal rights that were not previously granted. In doing so, we are recognizing the industries' interest in having additional appeal rights.

For the same reasons, we believe that we have good cause to dispense with the usual 30 day delay in the effective date of a rule, and believe that this rule should become effective immediately upon publication. Because we are not revising either a substantive standard that governs nursing home conduct or the consequences facilities may face because of their failure to comply with these requirements, we are, therefore, not affecting any provision that governs the manner in which nursing facilities must furnish safe and healthful conditions for the delivery of nursing services they furnish to their residents. Nursing home residents will continue to have all the protections they have always had under the nursing home requirements of participation and the survey and enforcement rules. Accordingly, we believe that we have good cause to make this procedural change effective immediately.

Therefore, we find good cause to waive the notice of proposed rulemaking and to issue this final rule on an interim basis. We are providing a 60-day comment period for public comment.

## V. Information Collection Requirements

Ordinarily, we would be required to estimate the public reporting burden for information collection requirements for these regulations in accordance with Chapter 35 of Title 44 of the United State Code. However, sections 4204(b) and 4214(d) of the Omnibus Budget Reconciliation Act of 1987 provide for a waiver of Paperwork Reduction Act requirements for these regulations.

## VI. Regulatory Impact Statement

We have examined the impacts of this interim final rule as required by Executive Order 12866 and the Regulatory Flexibility Act (RFA) (Pub. L. 96–354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). The RFA requires agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, non-profit organizations, and government agencies. Most hospitals and most other providers and suppliers are small entities, either by non-profit status or by having revenues of $5 million or less annually. For purposes of the RFA, all participating nursing facilities, skilled nursing facilities, and dually participating nursing facilities are considered to be small entities. Individuals and States are not included in the definition of a small entity.

Section 1102(b) of the Social Security Act, (the Act) requires us to prepare a regulatory impact analysis if a rule 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 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 50 beds.

Section 202 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4 also requires that agencies assess anticipated costs and benefits before issuing any rule that may result in an annual expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million. We believe that this interim final rule is not an economically significant rule as described in the Executive order, nor a significant action as defined in the Unfunded Mandates Reform Act. Aggregate impacts of the rule, and aggregate expenditures caused by the rule, would not approach $100 million for either the public or the private sector. Also, we believe that nursing facilities will not object to any additional costs they might incur in pursuing challenges to a loss of their nurse aide training programs because they have been advocating this type of hearing since we published our nursing facility enforcement final rule in November 1994.

In addition, national provider organizations, as well as individual providers, have requested that we permit an appeal through our administrative process. Furthermore, this interim final rule would not affect a facility's decision to continue to serve beneficiaries.

According to our survey estimates, approximately 400 of the 17,000 long term care facilities participating in Medicare and Medicaid programs would be affected by this interim final rule. The facilities affected are those that have had an extended survey conducted as a result of an inspection finding substandard quality of care, with no remedies imposed. Whenever substandard quality of care is found, the facility may not conduct nurse aide training in its facility.

Although there would be no economic impact on Medicare contractors or beneficiaries, some providers would incur the cost of preparing an appeal when an inspection triggers an extended survey (and subsequent loss of the ability to provide nurse aide training). This would be in addition to appealing the finding through the already available informal dispute resolution process. Also, States may incur additional costs if their surveyors need to testify in cases that previously would not have been permitted to be heard by an ALJ and would incur additional costs if they choose to provide hearings themselves for Medicaid-only facilities. These costs, however, would be minimal since we anticipate very few of these cases to arise in any State.

As stated earlier, we believe that this interim final rule will not have a significant economic impact on providers, Medicare contractors, or beneficiaries. In addition, long term care facilities that lose the ability to conduct nurse aide training with no other remedies involved, will be supportive of their ability to appeal the findings that gave rise to the loss of their training programs since they have been seeking just this solution since the publication of the final nursing home enforcement rule in 1994.

For these reasons, we are not preparing analyses for either the RFA or section 1102(b) of the Act because we have determined, and we certify, that this rule will not have a significant economic impact on a substantial number of small entities or a significant impact on the operations of a substantial number of small rural hospitals.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

### List of Subjects

*42 CFR Part 431*

Grant programs-health, Health facilities, Medicaid, Privacy, Reporting and recordkeeping requirements.

*42 CFR Part 498*

Administrative practice and procedure, Health facilities, Health professions, Medicare, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 42 CFR Chapter IV is amended as set forth below:

## PART 431—STATE ORGANIZATION AND GENERAL ADMINISTRATION

A. Part 431 is amended as set forth below.

1. The authority citation for part 431 continues to read as follows:

**Authority:** Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

### § 431.153 [Amdended]

2. In § 431.153, paragraph (b)(3) is removed and reserved.

## PART 498—APPEALS PROCEDURES FOR DETERMINATIONS THAT AFFECT PARTICIPATION IN THE MEDICARE PROGRAM AND FOR DETERMINATIONS THAT AFFECT THE PARTICIPATION OF ICFs/MR AND CERTAIN NFs IN THE MEDICAID PROGRAM

B. Part 498 is amended as set forth below:

1. The authority citation for part 498 continues to read as follows:

**Authority:** Secs. 1102 and 1871 of the Social security Act (42 U.S.C. 1302 and 1395hh).

2. In § 498.3, paragraph (b)(13) is revised, a new paragraph (b)(15) is added, and paragraph (d)(10)(iii) is revised to read as follows:

### § 498.3 Scope and applicability.

* * * * *

(b) *Initial determinations by HCFA.*

* * *

(13) The level of noncompliance found by HCFA in a SNF or NF but only

if a successful challenge on this issue would affect—

(i) The range of civil money penalty amounts that HCFA could collect (The scope of review during a hearing on imposition of a civil money penalty is set forth in § 488.438(e) of this chapter); or

(ii) A finding of substandard quality of care that results in the loss of approval for a SNF or NF of its nurse aide training program.

* * * * *

(15) The finding of substandard quality of care that leads to the loss by a SNF or NF of the approval of its nurse aide training program.

* * * * *

(d) *Administrative actions that are not initial determinations.* * * *

(10) * * *

(iii) The imposition of State monitoring.

* * * * *

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program)

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: July 14, 1999.

**Michael M. Hash,**

*Deputy Administrator, Health Care Financing Administration.*

Approved: July 16, 1999.

**Donna E. Shalala,**

*Secretary.*

[FR Doc. 99–18802 Filed 7–20–99; 12:04 pm]

**BILLING CODE 4120–01–P**

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Parts 1 and 63

**[CC Docket No. 97–11; FCC 99–104]**

## Section 214 Deregulated Entry Requirements and Streamlined Exit Requirements for Domestic Telecommunications Common Carriers

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission has adopted rules that de-regulate market entry and streamline market exit filing requirements, under section 214 of the Communications Act of 1934. The rules confer ''blanket'' section 214 certification for new lines of all domestic carriers, exempt line extensions and video programming services from section 214 requirements, and provide that all section 214 applications to discontinue domestic service will be automatically granted unless the Commission notifies the applicants otherwise. The Commission's action also grants the substance of the section 214 regulatory relief requested by the Independent Telephone and Telecommunications Alliance in its forbearance petition and extends that relief to all domestic carriers.

**DATES:** Effective August 23, 1999.

**FOR FURTHER INFORMATION CONTACT:** Marty Schwimmer, 202–418–2334.

**SUPPLEMENTARY INFORMATION:**

1. Section 214 of the Communications Act of 1934 requires common carriers to obtain Commission approval for the construction, acquisition, or operation of lines of communication (entry certification) and for the discontinuance of service to a community (exit certification). The FCC implements the section 214 requirements with its rules at 47 CFR part 63 and related rules of practice at 47 CFR part 1. The Telecommunications Act of 1996 exempted from section 214 line extensions and video programming systems, under section 402(b)(2)(A) (codified as a Note to section 214) and under Section 302(a) (codified as section 651), respectively. The 1996 Act also enabled the Commission to forbear from enforcing provisions of the Act, codified as Section 10 of the Act.

2. In 1997, the Commission released an NPRM proposing to modify its rules at 47 CFR part 63 to implement these changes, entitled Implementation of Section 402(b)(2)(A) of the Telecommunications Act of 1996, *Notice of Proposed Rulemaking,* CC Docket No. 97–11, 12 FCC Rcd 1111 (1997), 62 FR 4965 (February 3, 1997). The Commission proposed to (1) codify the statutory exemptions, (2) forbear from enforcing the section 214 entry certification requirements for some carriers; and (3) streamline its exit certification rules. The Commission also sought comment on alternatives, including whether to streamline the section 214 entry certification procedures, which would include granting blanket authority rather than forbearing from enforcing section 214. On February 17, 1998, the Independent Telephone and Telecommunications Alliance (ITTA) filed a petition seeking forbearance from section 214 entry certification requirements for its members.

3. The Commission has revised 47 CFR parts 1 and 63, in a Report and Order released June 30, 1999, in Docket No. 97–11. In the same document, it has also granted the substance of the section 214 relief sought by ITTA, in a Memorandum Opinion and Order in AAD File No. 98–43. The revised rules confer section 214 authorization for new lines of all domestic carriers, so that no applications need be filed, codify the statutory exemptions from section 214 authorization for line extensions and video programming systems, and provide that all applications for section 214 authorization to discontinue service will be approved automatically, in 31 days for non-dominant carriers and 60 days for dominant carriers, unless the Commission notifies the carriers otherwise.

4. The Commission's purpose in conferring blanket section 214 authority for new lines of all carriers, rather than forbearing from exercising its section 214 jurisdiction for only some carriers, is to deregulate and promote competition in domestic market entry. At the same time, with blanket authority, unlike forbearance, the Commission retains the ability to stop extremely abusive practices against consumers by withdrawing the section 214 authorization that allows the abusive carrier to operate.

5. The Commission's purpose in automatically granting all domestic discontinuance applications of dominant carriers as well as non-dominant carriers is, similarly, to reduce regulatory exit burdens and advance Congress' pro-competitive and de-regulatory policies. The Commission recognizes that carriers assume a certain amount of risk in entering a new market and that, if there are significant barriers to exit, a carrier may be reluctant to assume these risks and may choose not to enter the market. At the same time, the Commission also recognizes that even customers with competitive alternatives need fair notice and information to choose a substitute service, and that by requiring applications to be filed and notice to be given to all customers, unlike de-regulating exit procedures by eliminating filing and notice requirements altogether, subscribers will have adequate opportunity to comment on whether substitute service is available.

**List of Subjects**

*47 CFR Part 1*

Administrative practice and procedure.

*47 CFR Part 63*

Communications common carriers, Reporting and recordkeeping requirements, Telegraph, Telephone.

Federal Communications Commission.

**Magalie Roman Salas,**

*Secretary.*

### Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 1 and 63 as follows:

## PART 1—PRACTICE AND PROCEDURE

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

**Authority:** 47 U.S.C. 151, 154, 207, 303, and 309(j), unless otherwise noted.

2. Section 1.763 is amended by revising the first sentence in paragraph (b) to read as follows:

**§ 1.763 Construction, extension, acquisition or operation of lines.**

* * * * *

(b) In cases under this section requiring a certificate, notice is given to and a copy of the application is filed with the Secretary of Defense, the Secretary of State (with respect to such applications involving service to foreign points), and the Governor of each State involved. * * *

## PART 63—EXTENSION OF LINES, NEW LINES, AND DISCONTINUANCE, REDUCTION, OUTAGE AND IMPAIRMENT OF SERVICE BY COMMON CARRIERS; AND GRANTS OF RECOGNIZED PRIVATE OPERATING AGENCY STATUS

3. The part heading is revised as set out above.

4. The authority citation for part 63 is revised to read as follows:

**Authority:** Sections 1, 4(i), 4(j), 10, 11, 201–205, 214, 218, 403 and 651 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 160, 201–205, 214, 218, 403, and 571, unless otherwise noted.

**§§ 63.01 through 63.03 [Removed]**

5. Sections 63.01 through 63.03 are removed.

**§§ 63.05 and 63.06 [Removed]**

6. Sections 63.05 and 63.06 are removed.

**§ 63.08 [Removed]**

7. Section 63.08 is removed.

8. Section 63.07 is redesignated as § 63.01 and is revised to read as follows:

**§ 63.01 Authority for all domestic common carriers.**

(a) Any party that would be a domestic interstate communications common carrier is authorized to provide domestic, interstate services to any domestic point and to construct, acquire, or operate any domestic transmission line as long as it obtains all necessary authorizations from the Commission for use of radio frequencies. This authority does not apply to acquisitions of corporate control, which are not limited to acquisitions of equity ownership, such as stock or partnership interests, and which include actual working control by whatever manner exercised (such as, for example, by veto power, controlling interest in a board of directors, or other shareholder agreement provisions).

(b) Domestic common carriers subject to this section shall not engage in any line construction that may have a significant effect on the environment as defined in § 1.1307 of this chapter without prior compliance with the Commission's environmental rules. See § 1.1312 of this chapter.

9. New § 63.02 is added to read as follows:

**§ 63.02 Exemptions for extensions of lines and for systems for the delivery of video programming.**

(a) Any common carrier is exempt from the requirements of section 214 of the Communications Act of 1934, as amended, for the extension of any line.

(b) A common carrier shall not be required to obtain a certificate under section 214 of the Communications Act of 1934 with respect to the establishment or operation of a system for the delivery of video programming.

10. Section 63.04 is redesignated as § 63.25 and the section heading is revised to read as follows:

**§ 63.25 Special provisions relating to temporary or emergency service by international carriers.**

11. Section 63.52 is amended by revising the section heading and paragraph (b) to read as follows:

**§ 63.52 Copies required; fees; and filing periods.**

* * * * *

(b) No application accepted for filing and subject to part 63 of these rules, unless provided for otherwise, shall be granted by the Commission earlier than 30 days following issuance of public notice by the Commission of the acceptance for filing of such application or any major amendment unless said public notice specifies another time period.

* * * * *

12. Section 63.71 is revised to read as follows:

**§ 63.71 Procedures for discontinuance, reduction or impairment of service by domestic carriers.**

Any domestic carrier that seeks to discontinue, reduce or impair service shall be subject to the following procedures:

(a) The carrier shall notify all affected customers of the planned discontinuance, reduction, or impairment of service and shall notify and submit a copy of its application to the public utility commission and to the Governor of the State in which the discontinuance, reduction, or impairment of service is proposed, and also to the Secretary of Defense, Attn. Special Assistant for Telecommunications, Pentagon, Washington, DC 20301. Notice shall be in writing to each affected customer unless the Commission authorizes in advance, for good cause shown, another form of notice. Notice shall include the following:

(1) Name and address of carrier;

(2) Date of planned service discontinuance, reduction or impairment;

(3) Points of geographic areas of service affected;

(4) Brief description of type of service affected; and

(5) One of the following statements:

(i) If the carrier is non-dominant with respect to the service being discontinued, reduced or impaired, the notice shall state:

The FCC will normally authorize this proposed discontinuance of service (or reduction or impairment) unless it is shown that customers would be unable to receive service or a reasonable substitute from another carrier or that the public convenience and necessity is otherwise adversely affected. If you wish to object, you should file your comments within 15 days after receipt of this notification. Address them to the Federal Communications Commission, Washington, DC 20554, referencing the § 63.71 Application of (carrier's name). Comments should include specific information about the impact of this proposed discontinuance (or reduction or impairment) upon you or your company, including any inability to acquire reasonable substitute service.

(ii) If the carrier is dominant with respect to the service being discontinued, reduced or impaired, the notice shall state:

The FCC will normally authorize this proposed discontinuance of service (or reduction or impairment) unless it is shown that customers would be unable to receive service or a reasonable substitute from another carrier or that the public convenience and necessity is otherwise adversely affected. If you wish to object, you should file your comments within 30 days

after receipt of this notification. Address them to the Federal Communications Commission, Washington, DC 20554, referencing the § 63.71 Application of (carrier's name). Comments should include specific information about the impact of this proposed discontinuance (or reduction or impairment) upon you or your company, including any inability to acquire reasonable substitute service.

(b) The carrier shall file with this Commission, on or after the date on which notice has been given to all affected customers, an application which shall contain the following:

(1) Caption—''Section 63.71 Application'';

(2) Information listed in § 63.71(a) (1) through (4) above;

(3) Brief description of the dates and methods of notice to all affected customers;

(4) Whether the carrier is considered dominant or non-dominant with respect to the service to be discontinued, reduced or impaired; and

(5) Any other information the Commission may require.

(c) The application to discontinue, reduce or impair service, if filed by a domestic, non-dominant carrier, shall be automatically granted on the 31st day after its filing with the Commission without any Commission notification to the applicant unless the Commission has notified the applicant that the grant will not be automatically effective. The application to discontinue, reduce or impair service, if filed by a domestic, dominant carrier, shall be automatically granted on the 60th day after its filing with the Commission without any Commission notification to the applicant unless the Commission has notified the applicant that the grant will not be automatically effective. For purposes of this section, an application will be deemed filed on the date the Commission releases public notice of the filing.

[FR Doc. 99–18765 Filed 7–21–99; 8:45 am]
BILLING CODE 6712–01–P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

**[MM Docket No. 99–48; RM–9472]**

### Radio Broadcasting Services; Carbondale, CO

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document allots Channel 244A to Carbondale, Colorado, as that community's first local commercial FM transmission service in response to a petition for rule making filed by Mountain West Broadcasting. *See* 64 FR 8781, February 23, 1999. Coordinates used for Channel 244A at Carbondale are 39–25–30 NL and 107–22–43 WL. With this action, the proceeding is terminated.

**DATES:** Effective August 30, 1999. A filing window for Channel 244A at Carbondale, Colorado, will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent Order.

**FOR FURTHER INFORMATION CONTACT:** Nancy Joyner, Mass Media Bureau, (202) 418–2180.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Report and Order, MM Docket No. 99–48, adopted July 7, 1999, and released July 16, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center (Room CY–A257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

## PART 73—[AMENDED]

1. The authority citation for part 73 reads as follows:

**Authority:** 47 U.S.C. 154, 303, 334, 336.

**§ 73.202 [Amended]**

2. Section 73.202(b), the Table of FM Allotments under Colorado, is amended by adding Carbondale, Channel 244A.

Federal Communications Commission.

**John A. Karousos,**

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 99–18826 Filed 7–22–99; 8:45 am]
BILLING CODE 6712–01–P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

**[MM Docket No. 99–47; RM–9471]**

### Radio Broadcasting Services; Council Grove, KS

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document allots Channel 281C3 to Council Grove, Kansas, as that community's first local aural transmission service in response to a petition for rule making filed by Dana Puopolo. *See* 64 FR 8781, February 23, 1999. Coordinates used for Channel 281C3 at Council Grove are 38–39–42 NL and 96–29–18 WL. With this action, the proceeding is terminated.

**DATES:** Effective August 30, 1999. A filing window for Channel 281C3 at Council Grove, Kansas, will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent Order.

**FOR FURTHER INFORMATION CONTACT:** Nancy Joyner, Mass Media Bureau, (202) 418–2180.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Report and Order, MM Docket No. 99–47, adopted July 7, 1999, and released July 16, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center (Room CY–A257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

## PART 73—[AMENDED]

1. The authority citation for part 73 reads as follows:

**Authority:** 47 U.S.C. 154, 303, 334, 336.

**§ 73.202 [Amended]**

2. Section 73.202(b), the Table of FM Allotments under Kansas, is amended by adding Council Grove, Channel 281C3.

Federal Communications Commission.

**John A. Karousos,**

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 99–18827 Filed 7–22–99; 8:45 am]

BILLING CODE 6712–01–P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

**[MM Docket No. 99–49; RM–9473]**

### Radio Broadcasting Services; El Jebel, CO

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document allots Channel 263A to El Jebel, Colorado, as that community's first local aural transmission service in response to a petition for rule making filed by Mountain West Broadcasting. *See* 64 FR 8780, February 23, 1999. Coordinates used for Channel 263A at El Jebel are 39–23–42 NL and 107–06–29 WL. With this action, the proceeding is terminated.

**DATES:** Effective August 30, 1999. A filing window for Channel 263A at El Jebel, Colorado, will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent Order.

**FOR FURTHER INFORMATION CONTACT:** Nancy Joyner, Mass Media Bureau, (202) 418–2180.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Report and Order, MM Docket No. 99–49, adopted July 7, 1999, and released July 16, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center (Room CY–A257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

## PART 73—[AMENDED]

1. The authority citation for part 73 reads as follows:

**Authority:** 47 U.S.C. 154, 303, 334, 336.

**§ 73.202 [Amended]**

2. Section 73.202(b), the Table of FM Allotments under Colorado, is amended by adding El Jebel, Channel 263A.

Federal Communications Commission.

**John A. Karousos,**

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 99–18828 Filed 7–22–99; 8:45 am]

BILLING CODE 6712–01–P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

### Radio Broadcasting Services; Various Locations

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission, on its own motion, editorially amends the Table of FM Allotments to specify the actual classes of channels allotted to various communities. The changes in channel classifications have been authorized in response to applications filed by licensees and permittees operating on these channels. This action is taken pursuant to *Revision of Section 73.3573(a)(1) of the Commission's Rules Concerning the Lower Classification of an FM Allotment,* 4 FCC Rcd 2413 (1989), and the *Amendment of the Commission's Rules to permit FM Channel and Class Modifications [Upgrades] by Applications,* 8 FCC Rcd 4735 (1993).

**EFFECTIVE DATE:** July 23, 1999.

**FOR FURTHER INFORMATION CONTACT:** Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Report and Order, adopted July 7, 1999, and released July 16, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 12th Street, SW, Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., 1231 20th Street, NW, Washington, DC. 20036, (202) 857–3800, facsimile (202) 857–3805.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

## PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303, 334 and 336.

**§ 73.202 [Amended]**

2. Section 73.202(b), the Table of FM Allotments under Arizona, is amended by removing Channel 269C2 and adding Channel 269C1 at Springerville.

3. Section 73.202(b), the Table of FM Allotments under Colorado, is amended by removing Channel 289C3 and adding Channel 289C at Ouray.

4. Section 73.202(b), the Table of FM Allotments under Florida, is amended by removing Channel 280C1 and adding Channel 280C at Cape Coral and by removing Channel 284C3 and adding Channel 284C2 at Naples.

5. Section 73.202(b), the Table of FM Allotments under Georgia, is amended by removing Channel 239C2 and adding Channel 239C1 at Valdosta.

6. Section 73.202(b), the Table of FM Allotments under Kentucky, is amended by removing Channel 288A and adding Channel 288C3 at Mount Sterling, by removing Channel 288A and adding Channel 287A at Prestonsburg, and by removing Channel 247A and adding Channel 247C3 at Salyersville.

7. Section 73.202(b), the Table of FM Allotments under Michigan, is amended by removing Channel 281C1 [1] and adding Channel 288C3 at Gladstone and by removing Channel 276A and adding Channel 274A at Pentwater.

8. Section 73.202(b), the Table of FM Allotments under Minnesota, is amended by removing Channel 270A and adding Channel 270C2 at Walker.

9. Section 73.202(b), the Table of FM Allotments under Mississippi, is amended by removing Channel 267A and adding Channel 267C3 at Vicksburg.

10. Section 73.202(b), the Table of FM Allotments under Missouri, is amended by removing Channel 228C3 and adding Channel 228C2 at Osage Beach, by removing Channel 237A and adding Channel 237C2 at Owensville and by removing Channel 230A and adding Channel 230C3 at Scott City.

11. Section 73.202(b), the Table of FM Allotments under Montana, is amended by removing Channel 251C3 and adding Channel 254C1 at Hamilton.

12. Section 73.202(b), the Table of FM Allotments under Nebraska, is amended

[1] The Report and Order in MM Docket No. 88–49 substituted Channel 288C1 for Channel 288A. *See* 54 FR 37682, September 12, 1989.

by removing Channel 241A and adding Channel 241C at McCook.

13. Section 73.202(b), the Table of FM Allotments under Nevada, is amended by removing Channel 233C2 and adding Channel 233C3 at Sun Valley.

14. Section 73.202(b), the Table of FM Allotments under New Hampshire, is amended by removing Channel 272A and adding Channel 272C3 at Lancaster.

15. Section 73.202(b), the Table of FM Allotments under New Mexico, is amended by removing Channel 287C2 and adding Channel 287C3 at Alamogordo.

16. Section 73.202(b), the Table of FM Allotments under Texas, is amended by removing Channel 264C2 and adding Channel 264C3 at Overton.

17. Section 73.202(b), the Table of FM Allotments under Vermont, is amended by removing Channel 229C3 and adding Channel 229A at Addison.[2]

18. Section 73.202(b), the Table of FM Allotments under Washington, is amended by removing Channel 254A and adding Channel 254C3 at Mabton.

19. Section 73.202(b), the Table of FM Allotments under West Virginia, is amended by removing Channel 285A and adding Channel 285B1 at Clarksburg.

20. Section 73.202(b), the Table of FM Allotments under Wyoming, is amended by removing Channel 297A and adding Channel 297C2 at Kemmerer, by removing Channel 235C1 and adding Channel 235C at Sheridan and by removing Channel 269A and adding Channel 269C1 at Thermopolis.

Federal Communications Commission.

**John A. Karousos,**

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 99–18835 Filed 7–22–99; 8:45 am]

**BILLING CODE 6712–01–P**

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 90

**[PR Docket No. 89–553, PP Docket No. 93–253, GN Docket No. 93–252, FCC 95–395]**

### Metropolitan Trading Area Licensees; Correction

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule, correction.

**SUMMARY:** This correction amendment clarifies 47 CFR 90.665(c). This correction amendment is necessary to clarify that the Commission adopted two distinct options to satisfy construction requirements for Metropolitan Trading Area (MTA) licensees in the 900 MHz Specialized Mobile Radio Service.

**EFFECTIVE DATE:** August 12, 1999.

**FOR FURTHER INFORMATION CONTACT:** Don Johnson, Policy and Rules Branch, Commercial Wireless Division, Wireless Telecommunications Bureau, at (202) 418–7240.

**SUPPLEMENTARY INFORMATION:** This *Second Erratum*, DA 95–2327, released November 8, 1995, is available for inspection and copying during normal business hours in the FCC Reference Center, 445 Twelfth Street, S.W., Washington D.C. The complete text may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, N.W., Washington D.C. 20036 (202) 857–3800. The document is also available via the internet at http://www.fcc.gov/Bureaus/Wireless/Orders/1995/index.html.

### Synopsis

This document corrects 47 CFR 90.665(c) of the Final Rules, set forth in the amendatory text to the Second Order on Reconsideration and Seventh Report and Order in the above—captioned proceeding, 60 FR 48913 (September 19, 1995), 47 CFR 90.665. This correction clarifies that there are two distinct options to satisfy construction requirements for Metropolitan Trading Area (MTA) licensees in the 900 MHz Specialized Mobile Radio Service. Under the first option, the MTA licensee must demonstrate coverage of one-third of the MTA's population three years from the date of license grant, and demonstrate two-thirds coverage of the MTA's population five years after license grant. The second option requires an MTA licensee to demonstrate five years after license grant that it is providing substantial service to the MTA. An MTA licensee must, three years from license grant, either show that the one-third population coverage standard has been satisfied, or provide written notification that it has elected to show substantial service to the MTA five years from license grant. In addition, as part of the election to provide a substantial service showing, each MTA licensee must, three years from license grant, indicate how it expects to demonstrate substantial service at five years. We find good cause under section 553(d)(3) of the Administrative Procedure Act (5 U.S.C. chapter 5) and 47 CFR 1.427(b) to depart from the general requirement that final rules take effect not less than thirty days after their publication in the **Federal Register**. In this case, the three-year construction deadline for most licensees affected by this erratum is August 12, 1999. Therefore, to avoid any possible confusion of what a licensee would need to do if it elects the substantial service option, we make the effective date of the amended rule to be August 12, 1999.

### List of Subjects in 47 CFR Part 90

Private Land Mobile Radio Service.

Federal Communications Commission.

**Magalie Roman Salas,**

*Secretary.*

Accordingly, 47 CFR Part 90 is corrected by making the following amendment:

## PART 90—PRIVATE LAND MOBILE RADIO SERVICE

1. The authority citation for Part 90 is revised as follows:

**Authority:** Sections 4(i), 11, 303(g), 303(r), and 332(c)(7) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 161, 303(g), 303(r), 332(c)(7).

2. § 90.665(c) is revised to read as follows:

**§ 90.665 Authorization, construction and implementation of MTA licenses.**

* * * * *

(c) Each MTA licensee in the 896–901/935–940 MHz band must, three years from the date of license grant, construct and place into operation a sufficient number of base stations to provide coverage to at least one-third of the population of the MTA; further, each MTA licensee must provide coverage to at least two-thirds of the population of the MTA five years from the date of license grant. Alternatively, an MTA licensee must demonstrate, through a showing to the Commission five years from the date of license grant, that it is providing substantial service. An MTA licensee must, three years from license grant, either show that the ⅓ population coverage standard has been satisfied, or provide written notification that it has elected to show substantial service to the MTA five years from license grant. In addition, as part of the election to provide a substantial service showing, each MTA licensee must, three years from license grant, indicate how it expects to demonstrate substantial service at five years. The MTA licensee must meet the population coverage benchmarks regardless of the extent to

[2] Pursuant to MM Docket No. 98–52, effective December 14, 1998, Channel 229C3 was substituted for Channel 229A at Hague, New York, and reallotted to Addison, Vermont. *See* 63 FR 62957, November 10, 1998.

which incumbent licensees are present within the MTA block.

* * * * *

[FR Doc. 99–18766 Filed 7–22–99; 8:45 am]

**BILLING CODE 6712–01–P**

# Proposed Rules

Federal Register
Vol. 64, No. 141
Friday, July 23, 1999

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 98–NM–268–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; McDonnell Douglas Model DC–9, DC–9–80, and C–9 (Military) Series Airplanes, and Model MD–88 Airplanes

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes the supersedure of two existing airworthiness directives (AD), applicable to certain McDonnell Douglas Model DC–9, DC–9–80, and C–9 (military) series airplanes, and Model MD–88 airplanes, that currently require installation of hydraulic line restrictors in the main landing gear (MLG), and modification or replacement of the left and right MLG hydraulic damper assemblies. This action would require an additional modification of the MLG hydraulic damper assemblies, or replacement of the MLG hydraulic damper assemblies with modified and reidentified hydraulic damper assemblies. This proposal is prompted by reports indicating that MLG hydraulic damper assemblies removed for overhaul had failed or damaged spring retainers, due to insufficient material thickness of the spring retainers. The actions specified by the proposed AD are intended to prevent failure of the hydraulic damper assemblies of the MLG, which could result in vibration damage and collapse of the MLG.

**DATES:** Comments must be received by August 23, 1999.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–268–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

**FOR FURTHER INFORMATION CONTACT:** Albert Lam, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5346; fax (562) 627–5210.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 98–NM–268–AD.'' The postcard will be date stamped and returned to the commenter.

### Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–268–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

### Discussion

On January 5, 1996, the FAA issued AD 96–01–09, amendment 39–9485 (61 FR 2407, January 26, 1996), applicable to certain McDonnell Douglas Model DC–9–80 series airplanes and Model MD–88 airplanes, to require installation of hydraulic line restrictors in the main landing gear (MLG), and modification of the hydraulic damper assembly of the MLG. That action was prompted by reports of vibration occurring in the MLG during landing; in some cases, such vibration has led to the collapse of the MLG. The requirements of that AD are intended to prevent incidents of vibration in the MLG, which can adversely affect the integrity of the MLG.

On September 30, 1996, the FAA issued AD 96–21–01, amendment 39–9777 (61 FR 53042, October 10, 1996), applicable to certain McDonnell Douglas Model DC–9 series airplanes. That AD is similar to AD 96–01–09 in that it requires either replacement or modification of the hydraulic damper assembly. That action was prompted by reports indicating that insufficient damping of the hydraulic shimmy damper in the MLG can allow high torsional vibration to occur. The requirements of that AD are intended to prevent such vibration, which can damage the MLG assembly and lead to its collapse.

### Actions Since Issuance of Previous Rule

Since the issuance of those AD's, the FAA has received reports indicating that, during overhaul, 30 percent of the latest configuration of the MLG hydraulic damper assemblies installed on McDonnell Douglas Model DC–9 series airplanes had failed or damaged spring retainers in the assemblies. Investigation revealed that the cause of the failed or damaged spring retainers

may be insufficient material thickness of the spring retainers. Such failure of the spring retainers, if not corrected, could result in failure of the hydraulic damper assemblies of the MLG, which could result in vibration damage and collapse of the MLG.

**Explanation of Relevant Service Information**

The FAA has reviewed and approved McDonnell Douglas Service Bulletin DC9–32–311, dated July 6, 1998, and McDonnell Douglas Alert Service Bulletin DC9–32A311, Revision 01, dated March 8, 1999, which describe procedures for modification of the hydraulic damper assemblies of the MLG, or replacement of the MLG hydraulic damper assemblies with modified and reidentified hydraulic damper assemblies. The modification involves removal and disassembly of the damper assembly, removal of the spring retainers in the damper assembly, and replacement with new spring retainers. Accomplishment of the actions specified in the service bulletins is intended to adequately address the identified unsafe condition.

**Explanation of Requirements of Proposed Rule**

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, this proposed AD would supersede AD 96–01–09 and AD 96–21–01 to continue to require replacement or modification of the left and right MLG hydraulic damper assemblies and installation of hydraulic line restrictors in the MLG. This proposed AD would add an additional modification of the hydraulic damper assemblies of the MLG, or replacement of the MLG hydraulic damper assemblies with modified and reidentified hydraulic damper assemblies. The actions would be required to be accomplished in accordance with the service bulletins described previously.

**Cost Impact**

There are approximately 2,015 airplanes of the affected design in the worldwide fleet. The FAA estimates that 1,145 airplanes of U.S. registry would be affected by this proposed AD.

The installation that is currently required by AD 96–01–09, and retained in this proposal, takes approximately 4 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts cost approximately $928 per airplane. Based on these figures, the cost impact of the currently required installation on U.S. operators is estimated to be $1,168 per airplane.

The modification that is currently required by AD 96–01–09, and retained in this proposal, takes approximately 6 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts cost approximately $4,000 per airplane. Based on these figures, the cost impact of the currently required modification on U.S. operators is estimated to be $4,360 per airplane.

The replacement that is currently required by AD 96–21–01, and retained in this proposal, takes approximately 6 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts cost approximately $11,139 per airplane (two assemblies at $5,569 each). Based on these figures, the cost impact of the currently required replacement on U.S. operators is estimated to be $11,499 per airplane.

The modification that is currently required by AD 96–21–01, and retained in this proposal, takes approximately 11 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts cost approximately $2,907 per airplane. Based on these figures, the cost impact of the currently required modification on U.S. operators is estimated to be $3,567 per airplane.

The modification or replacement that is proposed in this AD action would take approximately 18 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts would cost approximately $608 per airplane. Based on these figures, the cost impact of the modification proposed by this AD on U.S. operators is estimated to be $1,932,760, or $1,688 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the current or 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 removing amendment 39–9485 (61 FR 2407, January 26, 1996), and amendment 39–9777 (61 FR 53042, October 10, 1996), and by adding a new airworthiness directive (AD), to read as follows:

**McDonnell Douglas:** Docket 98–NM–268–AD. Supersedes AD 96–01–09, Amendment 39–9485; and AD 96–21–01, Amendment 39–9777.

*Applicability:* Model DC–9–81 (MD–81), –82 (MD–82), –83 (MD–83), and –87 (MD–87) series airplanes, and Model MD–88 airplanes; as listed in McDonnell Douglas Service Bulletins MD80–32–276 and MD80–32–278, both dated March 31, 1995; and Model DC–9–10, –20, –30, –40, and –50; and C–9 (military) series airplanes, as listed in McDonnell Douglas Service Bulletin DC9–32–289, dated March 7, 1996; 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 (h) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

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

To prevent failure of the hydraulic damper assemblies of the MLG, which could result in vibration damage and collapse of the MLG, accomplish the following:

**Restatement of Requirements of AD 96–01–09**

*Modifications*

(a) For airplanes listed in McDonnell Douglas MD–80 Service Bulletin MD80–32–276, dated March 31, 1995, that have not been previously modified (installation of brake line restrictors) in accordance with McDonnell Douglas MD–80 Service Bulletin MD80–32–246: Within 9 months after February 26, 1996 (the effective date of AD 96–01–09, amendment 39–9485), install filtered brake line restrictors in the MLG hydraulic brake system in accordance with McDonnell Douglas MD–80 Service Bulletin MD80–32–276, dated March 31, 1995, or Revision 1, dated October 17, 1995.

**Note 2:** Installation of filtered restrictors in accordance with the instructions specified in McDonnell Douglas MD–80 Alert Service Bulletin, MD80–A32–286, dated September 11, 1995, is considered acceptable for compliance with paragraph (a) of this AD.

(b) For airplanes listed in McDonnell Douglas MD–80 Service Bulletin MD80–32–278, dated March 31, 1995: Within 36 months after February 26, 1996, modify the hydraulic damper assembly (by removing shims, increasing bolt torque, and incorporating changes to increase the volume of fluid passing between the two damper chambers) in accordance with McDonnell Douglas MD–80 Service Bulletin MD80–32–278, dated March 31, 1995, or Revision 1, dated September 6, 1995.

*Restatement of Requirements of AD 96–21–01*

*Replacement or Modification*

(c) For airplanes listed in McDonnell Douglas Service Bulletin DC9–32–289, dated March 7, 1996: Within 24 months after November 14, 1996 (the effective date of AD 96–21–01, amendment 39–9777), either replace or modify the MLG hydraulic damper assembly, in accordance with the procedures specified as either ''Option 1'' or ''Option 2,'' respectively, of the service bulletin.

**New Requirements of this AD**

*Replacement or Modification*

(d) For McDonnell Douglas Model DC–9 series airplanes, and C–9 (military) series airplanes (as listed in McDonnell Douglas Alert Service Bulletin DC9–32A311, Revision 01): Within 18 months after the effective date of this AD, accomplish the requirements specified in either paragraph (d)(1) or (d)(2) of this AD in accordance with McDonnell Douglas Service Bulletin DC9–32–311, dated July 6, 1998, or McDonnell Douglas Alert Service Bulletin DC9–32A311, Revision 01, dated March 8, 1999.

(1) Modify the left and right MLG hydraulic damper assemblies.

(2) Replace the left and right MLG hydraulic damper assemblies with modified and reidentified hydraulic damper assemblies having part number (P/N) SR09320057–7005, SR09320057–7007, SR09320057–7009, or 5923142–5513.

(e) For McDonnell Douglas Model DC–9–80 series airplanes, and MD–88 airplanes (as listed in McDonnell Douglas Alert Service Bulletin DC9–32A311, Revision 01): Within 3,000 flight cycles after incorporation of the latest configuration of the left and right MLG hydraulic damper assemblies, or within 9 months after the effective date of this AD, whichever occurs later; accomplish the requirements specified in either paragraph (d)(1) or (d)(2) of this AD in accordance with McDonnell Douglas Service Bulletin DC9–32–311, dated July 6, 1998, or McDonnell Douglas Alert Service Bulletin DC9–32A311, Revision 01, dated March 8, 1999.

(f) Paragraph (b) or (c) of this AD, as applicable, must be accomplished prior to or concurrent with the accomplishment of either paragraph (d) or (e) of this AD, as applicable.

*Spares*

(g) As of the effective date of this AD, no person shall install on any airplane a damper sub assembly having P/N SR09320057–9, SR09320057–17, or 5923142–5017; or a damper assembly having P/N SR09320057–7001, SR09320057–7003, or 5923142–5511, unless the part has been modified and reidentified in accordance with paragraph (d)(2) of this AD.

*Alternative Methods of Compliance*

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

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

*Special Flight Permits*

(i) 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 July 15, 1999.

**D.L. Riggin,**

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

[FR Doc. 99–18627 Filed 7–22–99; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 99–NM–91–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Airbus Model A310 Series Airplanes

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Airbus Model A310 series airplanes. This proposal would require repetitive high frequency eddy current inspections to detect fatigue cracking at the hole in the lower web of the inner and outer attachment fittings of the number 3 wing spoilers; and corrective actions, if necessary. This proposal also provides for an optional modification, which would terminate the repetitive inspections. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to detect and correct fatigue cracking and eventual failure of the attachment fittings of the number 3 wing spoilers.

**DATES:** Comments must be received by August 23, 1999.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99-NM–91-AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 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:** Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule.

The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 99–NM–91–AD.'' The postcard will be date stamped and returned to the commenter.

**Availability of NPRMs**

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–91–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 certain Airbus Model A310 series airplanes. The DGAC advises that it has received reports of fatigue cracking in the attachment fittings of the number 3 wing spoilers. The propagation of such cracks could result in the deformation of the wing rear spar web and associated Titanium doubler which, if left undetected, could lead to fuel leaks and loss of various hydraulic and electrical systems.

**Explanation of Relevant Service Information**

Airbus has issued Service Bulletin A310–57–2078, Revision 01, dated January 11, 1999, which describes procedures for repetitive high frequency eddy current inspections to detect fatigue cracking at the hole in the lower web of the inner and outer attachment fittings of the number 3 wing spoilers, and corrective actions, if necessary. (The corrective actions are contained in the service bulletin described below.) The DGAC classified this service bulletin as mandatory and issued French airworthiness directive 98–483–271(B) R1, dated June 2, 1999, in order to assure the continued airworthiness of these airplanes in France.

Airbus also has issued Service Bulletin A310–75–2079, Revision 01, dated January 11, 1999, which describes procedures for performing a high frequency eddy current inspection to detect fatigue cracking of holes in the wing structure; reaming and cold working of those holes; and replacing the attachment fittings with new steel fittings.

Accomplishment of this replacement would eliminate the need for the repetitive inspections described in Airbus Service Bulletin A310–57–2078.

Accomplishment of the actions specified in the service bulletins is intended to adequately address the identified unsafe condition.

**FAA's Conclusions**

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

**Explanation of Requirements of Proposed Rule**

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletins described previously, except as discussed below. This proposed AD also would provide for optional terminating action for the repetitive inspections.

Operators should note that, in consonance with the findings of the DGAC, the FAA has determined that the repetitive inspections proposed by this AD can be allowed to continue in lieu of accomplishment of a terminating action. Additionally, the FAA has determined that, for certain instances where cracking is detected, the repair may be deferred for a specified period of time. In making these determinations, the FAA considers that, in the case of this AD, long-term continued operational safety will be adequately assured by accomplishing the repetitive inspections to detect cracking before it represents a hazard to the airplane, and by accomplishing repairs within the specified time limits.

**Differences Between the Proposed AD and Service Bulletins**

The referenced service bulletins do not include any repair procedures for cracks found in the holes of the wing structure that is not part of the attachment fittings. This proposal would require that repair of such cracks be accomplished in accordance with a method approved by either the FAA, or the DGAC (or its delegated agent). In light of the type of repair that would be required to address the identified unsafe condition, and in consonance with existing bilateral airworthiness agreements, the FAA has determined that, for this proposed AD, a repair approved by either the FAA or the DGAC (or its delegated agent) would be acceptable for compliance with this proposed AD.

**Cost Impact**

The FAA estimates that 44 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 2 work hours per airplane to accomplish the proposed inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $5,280, or $120 per airplane, per inspection cycle.

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

Should an operator elect to accomplish the optional terminating action rather than continue the repetitive inspections, it would take approximately 110 work hours per airplane to accomplish the modification, at an average labor rate of $60 per work hour.

Required parts will cost approximately $13,280 per airplane. Based on these figures, the cost impact of this optional terminating action is estimated to be $19,880 per airplane.

### Regulatory Impact

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

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

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

### The Proposed Amendment

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

### § 39.13 [Amended]

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

**Airbus Industrie:** Docket 99–NM–91–AD.

*Applicability:* Model A310 series airplanes, on which Airbus Industrie Modification 04117 or 04799 has been installed in production; except those airplanes on which Airbus Industrie Modification 11929 (reference Airbus Industrie Service Bulletin A310–57–2079, dated July 21, 1998, or Revision 01, dated January 11, 1999) has been installed; certificated in any category.

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

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

To detect and correct fatigue cracking and eventual failure of the attachment fittings of the number 3 wing spoilers, which, if left undetected, could lead to fuel leaks and loss of various hydraulic and electrical systems, accomplish the following:

**Inspection**

(a) At the applicable compliance time specified in paragraph (a)(1), (a)(2), or (a)(3) of this AD, perform a high frequency eddy current inspection to detect fatigue cracking at the hole in the lower web of the inner and outer attachment fittings of the number 3 wing spoilers, in accordance with Airbus Industrie Service Bulletin A310–57–2078, Revision 01, dated January 11, 1999. Repeat the inspection thereafter at intervals not to exceed 1,200 flight cycles.

(1) For airplanes that have accumulated 14,200 or fewer total flight cycles as of the effective date of this AD, accomplish the inspection required by paragraph (a) of this AD prior to the accumulation 10,800 total flight cycles or within 800 flight cycles after the effective date of this AD, whichever occurs later.

(2) For airplanes that have accumulated more than 14,200 total flight cycles but fewer than 15,400 total flight cycles as of the effective date of this AD, accomplish the inspection required by paragraph (a) of this AD within 400 flight cycles after the effective date of this AD.

(3) For airplanes that have accumulated 15,400 or more total flight cycles as of the effective date of this AD, accomplish the inspection required by paragraph (a) of this AD within 200 flight cycles after the effective date of this AD.

**Note 2:** Inspection of the attachment fittings of the number 3 wing spoilers accomplished prior to the effective date of this AD in accordance with the original issue of Airbus Industrie Service Bulletin A310–57–2078, dated July 21, 1998, is considered acceptable for compliance with the inspection required by paragraph (a) of this AD.

**Replacement**

(b) If any crack is found during any inspection required by paragraph (a) of this AD, at the applicable compliance time specified in paragraph (b)(1), (b)(2), or (b)(3) of this AD, perform a high frequency eddy current inspection for fatigue cracking of the holes in the wing structure; ream and cold work those holes; and replace the cracked aluminum wing spoiler number 3 actuator attachment fitting with a new steel fitting; in accordance with Airbus Industrie Service Bulletin A310–57–2079, Revision 01, dated January 11, 1999. Accomplishment of the replacement constitutes terminating action for the repetitive inspection requirements of paragraph (a) of this AD for the replaced fitting.

(1) If the crack is less than 0.078 inches (2.0 mm) in length, inspect, ream, cold work, and replace within 100 flight cycles after accomplishment of the inspection.

(2) If the crack is 0.078 inches (2.0 mm) in length or greater and less than 0.118 inches (5.0 mm) in length, inspect, ream, cold work, and replace within 50 flight cycles after accomplishment of the inspection.

(3) If the crack is greater than 0.118 inches (5.0 mm) in length, inspect, ream, cold work, and replace prior to further flight.

**Optional Terminating Modification**

(c) Accomplishment of the high frequency eddy current inspection for fatigue cracking of the holes in the wing structure; reaming and cold working of those holes; and replacement of all aluminum wing spoiler number 3 actuator attachment fittings with new steel fittings; in accordance with Airbus Industrie Service Bulletin A310–57–2079, Revision 01, dated January 11, 1999; constitutes terminating action for the repetitive inspection requirements of paragraph (a) of this AD.

**Note 3:** Replacement of aluminum attachment fittings of the number 3 wing spoilers with steel fittings accomplished prior to the effective date of this AD in accordance with the original issue of Airbus Industrie Service Bulletin A310–57–2079, dated July 21, 1998, is considered acceptable for compliance with the applicable fitting replacement specified in paragraphs (b) and (c) of this AD.

**Wing Repair**

(d) If any crack is found in the wing structure during any inspection required by paragraph (b) or specified in paragraph (c) of this AD, prior to further flight, repair in accordance with a method approved by either the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate; or the Direction Générale de l'Aviation Civile (DGAC) (or its delegated agent). For a repair method to be approved by the Manager, International Branch, ANM–116, as required by this paragraph, the Manager's approval letter must specifically reference this AD.

**Note 4:** For paragraph (d) of this AD, the wing spoiler number 3 actuator attachment fittings are not considered part of the wing structure.

**Alternative Methods of Compliance**

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

**Note 5:** Information concerning the existence of approved alternative methods of

compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

**Special Flight Permits**

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

**Note 6:** The subject of this AD is addressed in French airworthiness directive 98–483–271(B) R1, dated June 2, 1999.

Issued in Renton, Washington, on July 19, 1999.

**D.L. Riggin,**

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

[FR Doc. 99–18861 Filed 7–22–99; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Airspace Docket No. 99–AGL–43]**

## Proposed Modification of Class E airspace; Madison, WI

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This notice proposes to modify Class E airspace at Madison, WI. A Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (Rwy) 21, and a VHF Omnidirectional Range (VOR) SIAP to Rwy 21, have been developed for Dane County Regional Airport-Truax Field. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approaches. This action proposes to increase the radius of the existing controlled airspace for this airport.

**DATES:** Comments must be received on or before September 9, 1999.

**ADDRESSES:** Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL–7, Rules Docket No. 99–AGL–43, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Airspace Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

**FOR FURTHER INFORMATION CONTACT:** Annette Davis, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 99–AGL–43.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

### Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, SW, Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed of a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which described the application procedure.

### The Proposal

The FAA is considering an amendment to 14 CFR part 71 to modify Class E airspace at Madison, WI, to accommodate aircraft executing the proposed GPS Rwy 21 SIAP, and VOR Rwy 21 SIAP, at Dane County Regional Airport-Truax Field by modifying the existing controlled airspace. Controlled airspace extending upward from 700 to 1200 feet AGL is needed to contain aircraft executing the approaches. The area would be depicted on appropriate aeronautical charts. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9F dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore this proposed 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 proposed 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).

### The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

## PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

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.

**§ 71.1 [Amended]**

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

* * * * *

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

* * * * *

**AGL WI E5 MADISON, WI [Revised]**

Madison, Dane County Regional Airport—Truax Field, WI
(Lat. 43° 08′ 23″N., long. 89° 20′ 15″W)
Middleton, Morey Airport, WI
(Lat. 43° 06′ 51″N., long. 89° 31′ 51″W)

That airspace extending upward from 700 feet above the surface within an 8.8-mile radius of Dane County Regional Airport—Truax Field and within 2.6 miles either side of the 188° bearing from the airport extending from the 8.8-mile radius to 13.9 miles south of the airport, and within a 6.3-mile radius of Morey Airport.

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Issued in Des Plaines, Illinois on July 8, 1999.

**David B. Johnson,**

*Acting Manager, Air Traffic Division.*

[FR Doc. 99–18820 Filed 7–22–99; 8:45 am]

**BILLING CODE 4910–13–M**

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Airspace Docket No. 99–AGL–38]**

## Proposed Modification of Class E Airspace; Bryan, OH

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This notice proposes to modify Class E airspace at Bryan, OH. A global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (Rwy) 07, and a GPS SIAP to Rwy 25, have been developed for Williams County Airport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approaches. This action proposes to increase the radius of the existing controlled airspace for this airport.

**DATES:** Comments must be received on or before August 16, 1999.

**ADDRESSES:** Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Council, AGL–7, Rules Docket No. 99–AGL 38, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air traffic Division, Airspace Branch, Federal Aviation Administration 2300 East Devon Avenue, Des Plaines, Illinois.

**FOR FURTHER INFORMATION CONTACT:** Michelle M. Behm, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 99–AGL–38.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

### Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, SW, Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

### The Proposal

The FAA is considering an amendment to 14 CFR part 71 to modify Class E airspace at Bryan, OH, to accommodate aircraft executing the proposed GPS Rwy 07 SIAP, and GPS Rwy 25 SIAP, at Williams County Airport by modifying the existing controlled airspace. Controlled airspace extending upward from 700 to 1200 feet AGL is needed to contain aircraft executing the approaches. The area would be depicted on appropriate aeronautical charts. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9F dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore this, proposed 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 proposed 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**

Airspsace, Incorporation by reference, Navigation (air).

**The Proposed Amendment**

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

## PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

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.

**§ 71.1 [Amended]**

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

* * * * *

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

* * * * *

**AGL OH E5 Bryan, OH [Revised]**

Bryan, Williams County Airport, OH
(Lat. 41°28′03″N., long. 84°30′24″W)
Bryan NDB
(Lat. 41°28′47″N., long. 84°27′58″W)
Community Hospitals of Williams County, Inc., OH
Point in Space Coordinates
(Lat. 41°27′47″N., long. 84°33′28″W)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Williams County Airport and within 1.7 miles each side of the 068° bearing from the Bryan NDB, extending from the NDB to 7.0 miles east of the NDB, and within a 6.0-mile radius of the Point in Space serving Community Hospitals of Williams County, Inc., excluding the airspace within the Defiance, OH, Class E airspace area.

* * * * *

Issued in Des Plaines, Illinois on June 16, 1999.

**David B. Johnson,**

*Acting Manger, Air Traffic Division.*

[FR Doc. 99–18822 Filed 7–22–99; 8:45 am]

BILLING CODE 4910–13–M

## PRESIDIO TRUST

## 36 CFR Part 1010

**RIN 3212–AA02**

## Management of the Presidio: Environmental Quality

**AGENCY:** The Presidio Trust.

**ACTION:** Proposed rule.

**SUMMARY:** The Presidio Trust (Trust) was created by Congress in 1996 to manage a portion of the former U.S. Army base known as the Presidio, in San Francisco, California. Pursuant to law, administrative jurisdiction of approximately 80 percent of this property was transferred from the National Park Service (NPS), Department of the Interior (DOI), to the Trust as of July 1, 1998. By publication in the **Federal Register** on June 30, 1998 (63 FR 35694), the Trust adopted a final interim rule for interim management of the area under its administrative jurisdiction. This proposed rule would supplement those requirements with regulations implementing the National Environmental Policy Act of 1969 (NEPA) and would replace the Trust's interim procedures and guidelines for implementing NEPA, the availability of which was noticed in the **Federal Register** on September 14, 1998 (63 FR 49142). Public comment is invited on this proposed rule and will be considered by the Trust in promulgating a final rule.

**DATES:** Comments on this rulemaking must be received by September 21, 1999.

**ADDRESSES:** Written comments on this proposed rule must be sent to Karen A. Cook, General Counsel, the Presidio Trust, 34 Graham Street, P.O. Box 29052, San Francisco, CA 94129–0052.

**FOR FURTHER INFORMATION CONTACT:** Karen A. Cook, General Counsel, the Presidio Trust, 34 Graham Street, P.O. Box 29052, San Francisco, CA 94129–0052, Telephone: 415–561–5300.

**SUPPLEMENTARY INFORMATION:**

**Background**

The Presidio Trust is a wholly-owned government corporation created pursuant to Title I of the Omnibus Parks and Public Lands Act of 1996, Public Law 104–333, 110 Stat. 4097 (the Trust Act). Pursuant to section 103(b) of the Trust Act, the Secretary of the Interior transferred administrative jurisdiction to the Trust of all of Area B of the former Presidio Army Base, as shown on the map referenced in the statute, on July 1, 1998.

Section 104(j) of the Trust Act authorizes the Trust, ''in consultation with the Secretary [of the U.S. Department of the Interior], to adopt and to enforce those rules and regulations that are applicable to the Golden Gate National Recreation Area and that may be necessary and appropriate to carry out its duties and responsibilities'' under the Trust Act. Consistent with that authority as well as regulations of the Council on Environmental Quality (CEQ) at 40 CFR 1507.3(a), the Trust has adopted interim procedures and guidelines for implementing NEPA, in consultation with CEQ. These interim procedures and guidelines consist of those of the National Park Service, to the extent they do not conflict with the Presidio Trust Act or regulations of the Presidio Trust. Notice of the Trust's adoption of these interim procedures was published in the **Federal Register** on September 14, 1998 (63 FR 49142). These interim procedures and guidelines will remain in effect until the Trust adopts final procedures and guidelines, as proposed herein, which will replace the interim procedures and guidelines in their entirety.

Prior to proposing these regulations, the Trust consulted with CEQ pursuant to its regulations, 40 CFR 1507.3(a). The Trust has also consulted with officials of the Department of the Interior and the National Park Service designated by the Secretary of the Interior to facilitate such consultation. The Trust anticipates that consultation with these and other interested entities will continue during the comment period on these proposed regulations.

The Trust is providing for a public comment period of 60 days on these regulations. All comments, including names and addresses, when provided, will be placed in the public record and made available for public inspection and copying. The Trust will consider each comment received within this period and then publish final regulations in the **Federal Register**. That promulgation will include a discussion of any comments received and any amendments made to these proposed regulations as a result of the comments.

**Foundations of This Rulemaking**

In drafting these proposed regulations, the Trust primarily consulted the NEPA procedures and guidelines of the National Park Service, the Department of Housing and Urban Development (HUD), and the former Pennsylvania Avenue Development Corporation (PADC), a wholly-owned government corporation that had responsibility for administering projects and property along the corridor from the White House to the Capitol in Washington, D.C. Although parts of the

NEPA procedures of each of these federal entities are incorporated into the Trust's proposed regulations, the Trust relied on the PADC regulations as the primary model for their structure and format. These regulations of the PADC are found at 36 CFR part 907.

The Trust chose the PADC regulations as its model for a number of reasons. First, there are many similarities between the Trust and the PADC. Both were created to manage a relatively large area of property of national interest in an urban locale. Like the PADC, the Trust is a wholly-owned federal government corporation and is expected to make use of private sector resources and approaches in meeting its goals on behalf of the public. Both the Trust and the PADC were designed to be directed by a Board of Directors including private individuals and public officials, and their statutory authorities are similar. Second, the Trust found the PADC regulations to be appropriately concise and flexible for an organization of the Trust's size that is involved to a great extent in planning, land use, construction, and leasing activities. Third, the PADC regulations were published in the **Federal Register** following notice, public comment, and CEQ review, and they have been formally promulgated as regulations in the Code of Federal Regulations. Finally, like the PADC at the time that its NEPA regulations were adopted, the Trust is in a position to refer to and build upon significant planning and environmental review work that has already been completed for the area under its administrative jurisdiction, undergone public review, and been approved by appropriate agencies. This work has been documented in the Final General Management Plan Amendment (July 1994) for the Presidio of San Francisco (the ''Plan''), prepared by the NPS, and in the Final Environmental Impact Statement (July 1994) (the ''Plan EIS'') prepared in conjunction with the Plan by the NPS. The Trust is required to exercise many of its authorities in accordance with the general objectives of the General Management Plan Amendment. Trust Act, section 104(a).

Although the Trust did not rely on them as a model for the structure of its NEPA regulations, the Trust also looked both to the NEPA regulations of the Department of Housing and Urban Development (HUD) and to the NPS procedures and guidelines to provide substantive content in certain areas, particularly concerning categorical exclusions from further NEPA review. The current HUD regulations are found at 24 CFR part 50 and contain a categorical exclusion that is potentially applicable to the anticipated activities of the Trust with respect to the residential structures in the area under its administrative jurisdiction. The current NPS procedures and guidelines are found in ''NPS–12: National Environmental Policy Act Guidelines,'' which was originally adopted in 1982 and, while advisory, serves as a permanent directive to the NPS. NPS is in the process of developing a Director's Order and NPS Handbook 12 to replace the 1982 NPS–12. A draft of the handbook is currently available on the Internet at http://www.nps.gov/planning/nepa/!nps12.pdf. It is to this draft that the Trust has referred in drafting its proposed NEPA regulations. Although the scope and structure of this 129-page draft is beyond what is necessary for the Trust's purposes, and although it interweaves guidance on certain authorities that are inapplicable to the Trust, a number of categorical exclusions identified in the NPS draft are potentially applicable to the anticipated activities of the Trust and therefore have been incorporated into these proposed regulations.

**Section-by-Section Analysis**

Although these regulations adopt the general structure of the PADC regulations, they have been reorganized in order to more clearly describe the usual order in which NEPA issues are considered. Specifically, the PADC regulations first describe ''actions that normally require an EIS,'' then ''actions that do not require an EA or an EIS,'' and then ''actions that normally require an EA.'' In the normal course, the responsible agency official first determines whether an action is one that normally does not require either an EA or an EIS, i.e., one that is categorically excluded. If it is not such an action, the responsible agency official then considers whether the action is one that normally requires an EIS, and if so, an EIS is usually prepared. If the action is not one that is categorically excluded and also not one that normally requires an EIS, then an EA is usually prepared, following which a determination is made as to whether an EIS should be prepared or a finding of no significant impact (FONSI) should be made. These regulations have been reordered to parallel this customary course of decision-making.

*Section 1010.1 Policy*

This section is adapted almost verbatim from § 907.1 of this title. Paragraph (d) of this section has been revised slightly to recognize that the Trust has a broader mission than the PADC.

*Section 1010.2 Purpose*

This section is adapted almost verbatim from § 907.2 of this title and has been revised simply to be applicable to the Trust and to provide a precise reference to the CEQ regulations implementing NEPA.

*Section 1010.3 Definitions*

In modeling these proposed regulations on the existing regulations of the NPS and DOI, the Trust consistently changed a variety of terms used in the existing regulations as appropriate to the Trust and its separate mission, organization and statutory authority. First, references to the ''Corporation'' were changed to the ''Trust.'' Second, the term ''development area'' was replaced by ''Presidio Trust Area,'' as defined in § 1001.4 of the Trust's proposed regulations. Third, the definitions of ''Plan'' and ''Final EIS'' were changed to reflect the full titles of the management plan (referred to herein as the ''Plan'') and environmental impact statement (referred to herein as the ''Plan EIS'') that apply to the Presidio Trust Area as opposed to the PADC area. (Although these documents were prepared by the NPS, the Trust is a successor in interest to the NPS with respect to compliance with NEPA and other environmental compliance statutes. Trust Act, section 104(c).) Fourth, definitions for the authorizing statute and governing body are unnecessary in this section, since they already appear in § 1001.4 of this chapter. Fifth, other definitions were eliminated because they appear infrequently in the body of the regulations.

More substantive changes were made to the definitions as follows:

—The term ''Private Developer'' was changed to ''project applicant,'' since projects that may be proposed for the Presidio Trust Area are likely to encompass a wider variety of work than simply development by private parties. The definition was also expanded to include partnerships and corporations, in order to make clear that the form of organization is immaterial to its status as a project applicant.

—The acronyms ''EIS'' for environmental impact statement and ''EA'' for environmental assessment were used in order to make the regulations more concise and easier to read. These acronyms are in common usage today among agencies, public interest groups, courts, and the media.

—The definition of ''decision-maker'' was shortened to simply ''the Board or its designee'' in order to be

consistent with other Trust regulations and practices.

*Section 1010.4 Responsible Trust Official*

This section combines the provisions of § § 907.4 and 907.5 of this title in order to keep the regulations concise. The provisions of § 907.4 of this title are included in paragraph (a), and the provisions of § 907.5 are included in paragraph (b). Minor modifications to these provisions include the following:

—A sentence has been added at the end of paragraph (a) to clarify that ultimate responsibility and authority for implementation of NEPA with respect to the Trust's activities continues to rest with the Executive Director and the Board of Directors. Under current Trust practice, the Executive Director is entitled to overrule or alter decisions of any Trust employee, and the Board is entitled to overrule or alter decisions of the Executive Director.

—In paragraph (b)(6), the term ''with the assistance of the Office of the General Counsel'' has been changed to ''in consultation with the General Counsel'' to reflect that the responsible Trust official should cooperatively consult with and seek the advice of the General Counsel and not simply be provided with the General Counsel's assistance.

—In paragraph (b)(8), the phrase concerning submittal of EIS's with proposed legislation has been removed since this issue is dealt with elsewhere in the regulations.

—In paragraph (b)(10), the reference to the Paperwork Reduction Act has been removed because it is unnecessary. The Trust intends to fulfill the requirements of this law, but need not restate it in the Code of Federal Regulations.

—A provision has been added, at paragraph (b)(12), allowing the responsible Trust official to designate other Trust employees to execute these duties under his or her supervision. This is necessary for the sake of administrative flexibility.

*Section 1010.5 Major Decision Points*

This section is based on § 907.6 of this title but has been revised for clarity. Most significantly, paragraph (b)(2) now makes clear that (1) A determination on whether to require an EA or EIS must be made prior to moving beyond the conceptual or preliminary study stage if the proposed action or project is not categorically excluded, and (2) A determination on whether to require an EIS can be made either with or without the completion of an EA.

*Section 1010.6 Determination of Requirement for EA or EIS*

This section is adapted from § 907.7 of this title and has been revised to reflect the usual order in which environmental review determinations are made, as discussed above. When appropriate, the Trust anticipates that this determination will be documented and made available to the public.

*Section 1010.7 Actions That Do Not Require an EA or an EIS*

This section is adapted from § 907.10 of this title and Appendix A to part 907 of this title. Paragraph (a) restates the general rule provided in the first paragraph of § 907.10. Paragraph (b) restates the criteria set by § 907.10(a). For the sake of clarity and ease of use, paragraph (c) provides the list of categorical exclusions without reference to an appendix. In accordance with 40 CFR 1508.4, paragraph (d) provides criteria for determining that an otherwise applicable categorical exclusion should not be utilized because of extraordinary circumstances.

The first criterion in paragraph (b) has been drafted in light of section 104(c) of the Trust Act, which provides that the Trust is considered a successor in interest to the National Park Service with respect to compliance with the National Environmental Policy Act, 42 U.S.C. sec. 4321 *et seq.* and other environmental compliance statutes. In preparation for the transfer of the Presidio from the Army, the NPS undertook an extensive planning effort, which culminated in the Plan and the Plan EIS. The Trust Act (section 104(a)) requires the Trust to use its key authorities in accordance with the general objectives of the Plan, among other things. The Trust therefore anticipates that the environmental effects of many of the actions it considers will have already been analyzed in the Plan EIS. Similarly, the Trust anticipates that, in accordance with 1010.9(c) and guidance provided by CEQ, proposed actions whose environmental effects may not have already been adequately analyzed in the Plan EIS will be considered in a NEPA document that will tier off of the Plan EIS. The criterion in the PADC regulations concerning estimated cost of the project has been removed in recognition of the fact that even inexpensive actions may have the potential for significant environmental impacts. In its place are inserted two additional criteria (at (b)(2) and (b)(4)) concerning whether additional analysis is necessary.

Most of the categorical exclusions listed in paragraph (c) were derived from the PADC regulations and the draft NPS–12 guidelines. The PADC regulations contain ten categorical exclusions (identified herein as PADC–i through PADC–x); the draft NPS–12 guidelines contain 17 categorical exclusions for which no formal documentation is necessary (identified herein as letters NPS–A through NPS–Q in section 3.3 of the draft NPS–12 guidelines) and 54 categorical exclusions for which minimal documentation is necessary (identified herein as NPS–A1 through NPS–A10, NPS–B1 through NPS–B8, NPS–C1 through NPS–C19, NPS–D1 through NPS–D4, NPS–E1 through NPS–E7, and NPS–F1 through NPS–F6 of section 3.4 of the draft NPS–12 guidelines). In addition, because the Trust has administrative jurisdiction of a variety of residential housing units, one of the categorical exclusions was derived from the NEPA regulations of the Department of Housing and Urban Development (HUD), found at 24 CFR 50.20. These HUD regulations contain six categorical exclusions (identified herein as HUD–1 through HUD–6).

These categorical exclusions of other agencies were combined and reorganized in order to read more clearly and apply more precisely to the types of actions that are likely to be undertaken in the Presidio Trust Area without significant environmental effects. The introductory paragraph also clarifies that these exclusions apply regardless of whether the Trust is undertaking the action, is participating in the action with an outside entity or entities, or is approving the action to be undertaken by an outside entity or entities. The following chart identifies the source of and discusses each categorical exclusion included in these proposed regulations:

| Proposed categorical exclusion | Source(s) and discussion |
|---|---|
| (1) Personnel actions and investigations and personal services contracts. | This categorical exclusion was taken directly from NPS–A. In addition, PADC–i covers ''personnel actions.'' |

| Proposed categorical exclusion | Source(s) and discussion |
|---|---|
| (2) Administrative actions and operations directly related to the operation of the Trust (e.g., purchase of furnishings, services, and space acquisition or conversion for the Trust offices or maintenance facilities). | This categorical exclusion was taken from PADC–ii, adapted to the Trust, and modified to included maintenance facilities. |
| (3) Internal organizational changes and facility and office expansions, reductions, and closings. | This categorical exclusion was taken from NPS–B and modified to include expansions of the Trust's facilities and offices. |
| (4) Routine financial transactions, including such things as salaries and expenses, procurement, guarantees, financial assistance, income transfers, audits, fees, bonds and royalties. | This categorical exclusion was taken from NPS–C and modified to include procurement of all sorts and not simply procurement contracts, since the Trust by law operates under different procurement requirements than does the NPS. |
| (5) Management, formulation, allocation, transfer and reprogramming of the Trust's budget. | This categorical exclusion was taken from NPS–G. |
| (6) Routine and continuing government business, including such things as supervision, administration, operations, maintenance, and replacement activities having limited context and intensity (limited size and magnitude or short-term effects). | This categorical exclusion was taken directly from NPS–F. |
| (7) Preparation, issuance, and submittal of publications and routine reports. | This categorical exclusion combines NPS–L and NPS–N. Although NPS–N applies only to routine reports required by law or regulation, that limitation has been dropped here in recognition of the fact that the Trust will likely prepare routine reports from time to time at its own initiative, but that will nevertheless have no significant environmental impacts. |
| (8) Activities which are educational, informational, or advisory (including interpretive programs), or otherwise in consultation with or providing technical assistance to other agencies, public and private entities, visitors, individuals, or the general public. | This categorical exclusion combines the categorical exclusions of NPS–J, NPS–M, NPS–Q, and NPS–B3. |
| (9) Legislative proposals of an administrative or technical nature, including such things as changes in authorizations for appropriations or financing authority, minor boundary changes and land transactions; or having primarily economic, social, individual or institutional effects, as well as and comments and reports on legislative proposals. | This categorical exclusion was taken almost verbatim from NPS–H. |
| (10) Promulgation of regulations and requirements, or amendments thereto, provided such actions do not: (i) increase public use to the extent of compromising the nature and character of the area or causing physical damage to it; (ii) introduce non-compatible uses which might compromise the nature and characteristics of the area or cause physical damage to it; (iii) conflict with adjacent ownerships or land uses; or (iv) cause a nuisance to adjacent owners or occupants. | This categorical exclusion was taken from NPS–A8 and modified to make clear that it covers both promulgation of new regulations and requirements and modification of existing regulations and requirements. |
| (11) Proposal, adoption, revision, and termination of policies, directives, regulations, and guidelines of an administrative, financial, legal, technical, or procedural nature, the environmental effects of which are too broad, speculative, or conjectural to lend themselves to meaningful environmental analysis. | This categorical exclusion was taken from NPS–I. The words ''proposal, adoption, revision, and termination'' were included to describe actions related to the items listed in NPS–I. In addition, this categorical exclusion does not include the restriction in NPS–I concerning such policies, etc., being subject to later review under NEPA, either collectively or on a case-by-case basis. If such policies, etc., do have environmental effects that lend themselves to meaningful environmental analysis in the future, then those effects will be reviewed under NEPA at that time. |
| (12) Preparation, approval, coordination, and implementation of plans, including priorities, justifications, and strategies, for non-manipulative and non-destructive research, monitoring, inventorying, and information gathering. | This categorical exclusion is derived primarily from NPS–B4 and includes language from NPS–B5 and NPS–E6. In addition, the terms ''preparation, approval, coordination, and implementation'' were added in order to cover the type of items listed in NPS–B5 (i.e., ''statements for management, outlines of planning requirements, and agreements between NPS offices for plans and studies''). The term ''non-destructive'' was added from NPS–E6. |
| (13) Identification, nomination, certification, and determination of eligibility of properties for listing in the National Register of Historic Places and the National Historic Landmark and National Natural Landmark Programs. | This categorical exclusion is derived from NPS–E5. The term ''biosphere reserves'' was removed because it is unlikely to be applicable in light of the fact that the Golden Gate National Recreation Area is already a part of a biosphere reserve. Similarly, the term ''development of standards'' was removed because the Presidio Trust does not anticipate engaging in such activities. |
| (14) Minor or temporary changes in amounts or types of visitor use for the purpose of ensuring visitor safety or resource protection, minor changes in programs or regulations pertaining to visitor activities, and approval of permits for special events or public assemblies and meetings, as well as leases for use of real property for no more than three months, provided such events, assemblies, meetings and leases entail only short-term or readily mitigated environmental disturbance. | This categorical exclusion combines NPS–D1, NPS–D2, and NPS–D3 into a single item. It adds the concept of ''temporary'' changes in amounts or types of visitor use. It also includes within its ambit short-term leases of no longer than three months, provided that such leases entail only short-term or readily mitigated environmental disturbance. |
| (15) Designation of environmental study areas and research areas, including those closed temporarily or permanently to the public, provided there is no environmental impact. | This categorical exclusion is derived from NPS–E7. |

| Proposed categorical exclusion | Source(s) and discussion |
|---|---|
| (16) Land and boundary surveys and minor boundary adjustments or land acquisitions or exchanges resulting in no significant change in land use. | This categorical exclusion combines NPS–K, NPS–A2, and NPS–C2. |
| (17) Archaeological surveys and permits involving only surface collection or small-scale test excavations. | This categorical exclusion is derived from NPS–E1. |
| (18) Promulgation of development guidelines that are in accordance with the general objectives of the Plan as covered by the Plan EIS. | This categorical exclusion was taken from PADC–v. The term ''development general and square guidelines'' was changed to simply ''development guidelines'' in light of the non-urban nature of much of the Presidio Trust Area. |
| (19) Implementation of a proposal or plan which was covered by a previously prepared EA and/or EIS or categorically excluded, or changes to such a proposal or plan when such changes would cause no environmental impact. | This categorical exclusion combines PADC–x, NPS–A1, and NPS–B1. Although PADC–x was restricted to ''development proposal[s] identical to the requirements of the'' PADC's development plan, a proposal need not be absolutely ''identical'' to a previously considered proposal in order to be covered by the EA and/or EIS for a very similar proposal. |
| (20) Contracts, work authorizations, or procurement actions directly related to and implementing proposals, programs, and master agreements for which an EA and/or an EIS have been prepared, or which were categorically excluded, or which are related to administrative operation of the Trust. | This categorical exclusion was taken from PADC–vi. The words ''or which were categorically excluded'' have been added to make clear that the criteria here is that the proposal, program, or master agreement have gone through the NEPA process to the extent that it was required. |
| (21) The leasing, permitting, sale, or financing of, or granting of non-fee interests regarding, real or personal property in the Presidio Trust Area. | This categorical exclusion is based on PADC–vii, which uses the term ''[a]cquisition/disposal by lease, easement, or sale of real and personal property owned by the Corporation.* * *'' The term ''permitting'' was added to recognize this form of legal agreement, which has been used by the NPS in the past and may continue to be used by the Trust. The PADC–vii exclusion also refers to such actions ''implementing a prior decision of the Board of Directors.'' The Trust anticipates that all such actions will be implementing prior decisions of or direction provided by the Board, and therefore has eliminated this requirement as superfluous. The Trust is barred from selling fee interests in real property under its administrative jurisdiction, and the wording of this categorical exclusion is in no way intended to add to the Trust's authority under law. |
| (22) Extension, reissuance, renewal, renegotiation, modification, conversion in form, or termination of agreements for use of real property (including but not limited to leases, permits, licenses, concession contracts, use and occupancy agreements, easements, and rights-of-way) that were in force as of the date the Trust received administrative jurisdiction of the underlying real property, so long as such agreements were previously subject to NEPA, do not involve new construction or new or substantially greater environmental impacts, and new information of substantial importance or changed circumstances relevant to environmental conditions do not come into play. | This categorical exclusion combines NPS–A3, NPS–A4, NPS–A5, and NPS–A6. The term ''conversion in form'' is intended to cover the situation in NPS–A4 regarding ''conversion of existing permits to rights-of-way'' as well as other conversions in form (e.g., from a concession contract to a lease). The Trust has inherited a variety of agreements from the NPS in a variety of forms and may wish to standardize these through such conversion. |
| (23) Issuance of permits relating to minor development activities (sign approval, interior modifications, minor exterior changes to facade, etc.) that are consistent with the Secretary of the Interior's ''Standards for the Treatment of Historic Properties'' at 36 CFR Part 68, as applicable. | This categorical exclusion comes from PADC–iv, which was modified (1) to cover ''issuance of permits,'' which entails a decision, rather than ''review of permit applications,'' and (2) to add a requirement of consistency with the Secretary's Standards as they may apply to the Presidio, since the Presidio is a National Historic Landmark. The restriction to the PADC ''Development Area'' was also removed as it was relevant only to the PADC. |
| (24) Rehabilitation, modification, or improvement of historic properties in conformance with the Secretary of the Interior's ''Standards for the Treatment of Historic Properties'' at 36 CFR Part 68. | This categorical exclusion is intended to cover work on structures and other properties that will not have the potential for significant environmental effect. Work undertaken in conformance with similar standards at 36 CFR 67.7 is considered not to harm historic structures under regulations of the Advisory Council on Historic Preservation at 36 CFR 800.9(c)(2). |
| (25) Rehabilitation, modification, or improvement of non-historic properties when the following conditions are met:. | |
| (i) In the case of residential buildings, the unit density is not changed more than 20 percent | |
| (ii) The project does not involve changes in land use (from non-residential to residential or from residential to non-residential); and | |
| (iii) The estimated cost of rehabilitation is less than 75 percent of the total estimated cost of replacement after rehabilitation | This categorical exclusion is taken from HUD–2, but has been restricted to apply only to non-historic structures and other properties, since historic structures and other properties are covered by the preceding categorical exclusion. |
| (26) Removal, reduction, or restraint of resident individuals of species that are not threatened or endangered which pose dangers to visitors, residents, or neighbors or immediate threats to resources of the Presidio Trust Area. | This categorical exclusion is derived from NPS–E3 and has been modified to cover dangers to residents and neighbors of the Presidio Trust Area and also to cover reduction (e.g., trimming of vegetation) and restraint (e.g., impoundment of animals). |

| Proposed categorical exclusion | Source(s) and discussion |
|---|---|
| (27) Removal of non-historic materials and structures in order to restore natural conditions when such removal has no potential for adverse environmental impacts, including impacts to cultural landscapes or archaeological resources. | This categorical exclusion comes directly from NPS–E4. |
| (28) Installation, construction, removal, permitting, maintenance, replacement-in-kind, relocation, operation, or modification of signs, displays, kiosks, traffic control devices, pedestrian and traffic safety features, trails, trailside camping zones, fencing, landscaping, sanitary facilities, comfort stations, utility facilities, parking lots, and other minor structures and facilities. | This categorical exclusion combines NPS–C5, NPS–C8, NPS–C9, NPS–C10; NPS–C11; NPS–C12, NPS–C17, NPS–C18, NPS–C19, and NPS–D4, which cover such minor structures. The restriction in NPS–C17 and NPS–C18 on ''areas showing clear evidence of recent human disturbance'' has been removed as unnecessary in light of the centuries of human occupation of the Presidio Trust Area and the developed state of much of the Presidio Trust Area. Likewise, the restriction in NPS–C19 on construction of fences ''posing no effect on wildlife migrations'' has also been removed in light of the lack of existing wildlife migration in the Presidio Trust Area that would be hindered by fences. |
| (29) Routine maintenance, property management, resource management, and research or educational activities with no potential for environmental impact or non-conformance with the Secretary of the Interior's ''Standards for the Treatment of Historic Properties'' at 36 CFR Part 68, as applicable. | This categorical exclusion comes primarily from NPS–O. PADC–iii also covers ''property management,'' and that term was added here to reflect the breadth of the Trust's authorities in the Presidio Trust Area. Also added was the reference to the Secretary's Standards, in light of the Presidio's status as a National Historic Landmark. |
| (30) Issuance of rights-of-way for and installation, maintenance, or repair of overhead or underground utility lines (e.g., power, water, irrigation, telecommunications, etc.) not involving placement of poles or towers outside of existing traffic and utility corridors and not involving vegetation clearance (other than for placement of poles), and not resulting in visual intrusion in the Presidio Trust Area or non-conformance with the Secretary's ''Standards for the Treatment of Historic Properties'' at 36 CFR Part 68, as applicable; and. | This categorical exclusion combines NPS–C13, NPS–C14, NPS–C15, and NPS–C16 concerning utilities and utility rights-of-way. The restriction in NPS–C16 on ''areas showing clear evidence of recent human disturbance'' has been modified to require conformance with the Secretary's Standards, in light of the developed state of much of the Presidio Trust Area. |
| (31) Experimental testing of no longer than 180 days of mass transit systems, and changes in operation of existing systems with no potential for adverse environmental impact. | This categorical exclusion is derived from NPS–C7. The limitation in NPS–C7 is for ''testing of short duration (no more than one season),'' but this categorical exclusion sets a more precise (and longer) limit of 180 days, both for the sake of clarity and for the sake of necessary and appropriate testing under real-world conditions in an area that interacts with mass transit systems of neighboring jurisdictions. |

The provisions of § 907.10(c) of this title concerning changes to the list of categorical exclusions have not been included in these regulations. Nevertheless, the Trust anticipates that this list of categorical exclusions will be reviewed and refined as additional categories are identified and as experience is gained in the categorical exclusion process. Changes to this list—like any changes to the wording of these proposed regulations—will be made only after consultation with CEQ and public notice and opportunity for comment.

*Section 1010.8 Actions That Normally Require an EIS*

This section is adapted from § 907.8 of this title and has generally been revised for clarity and simplicity. In particular, the specific criteria in paragraph (b) have been replaced by a reference to the criteria enumerated in the CEQ regulations at 40 CFR 1508.27.

In paragraph (c), the reference to amendments to the PADC Plan in the PADC regulations has not been included. Paragraphs (c)(1) and (2) are derived from § 907.8(b)(3) and (4) of this title, respectively. Paragraph (c)(2) has been revised to remove any implication that the Trust might approve, fund, or construct a building that is not in accordance with the general objectives of the Plan, since such action would not be authorized by the Trust Act. Paragraph (c)(3) has been added.

*Section 1010.9 Preparation of an EIS*

This section is adapted from § 907.9 of this title. The second sentence of paragraph (a), while not included in the PADC regulations, is specifically authorized by 40 CFR 1507.3(e), and the Trust believes it is necessary to include this provision in order to provide for circumstances in which there may be a lengthy delay between the decision to prepare an EIS and the actual preparation of the EIS.

In paragraph (b), the Trust believes the sentence referencing the CEQ regulations is unnecessary and so has omitted it.

Paragraph (c) is likely to be invoked by the Trust in preparing NEPA documents that tier off of the Plan EIS for proposed actions that are in accordance with the Plan's general objectives, but whose environmental effects may not have been adequately analyzed in the Plan EIS.

*Section 1010.10 Actions That Normally Require an EA*

This section is adapted from § 907.11 of this title. The most significant changes were made to the categories of action in paragraph (c), which are based on § 907.11(b) of this title. The first item in this list—which is derived from § 907.11(b)(2) of this title—has been modified slightly to use terms more applicable to the Presidio Trust Area. As noted in the introductory phrase of § 1010.10(c), regulations that would be categorically excluded under § 1010.7(c)(11) are not required to undergo an EA. The second item has been revised to use a broader term than ''development proposals''—the term used in § 907.11(b)(3) of this title—for proposals that may be submitted by project applicants. The third item on the list is derived from § 907.11(b)(6) and revised to cover more broadly all significant alterations to public access. The items listed in § § 907.11(b)(1), (4), (5), (7), and (8) of this title have not been included, as they are either dealt with more precisely under the section on categorical exclusions or they are not applicable to the Presidio Trust Area.

*Section 1010.11 Preparation of an EA*

The first three paragraphs of this section are adapted almost verbatim from § 907.12 of this title. Paragraph (b) has been shortened by not listing all areas possibly covered by an EA, but instead noting that only those resources that are relevant need to be addressed in the EA. Paragraph (d) has been added to allow the use of ''mitigated FONSIs'' in which the original proposal is revised so as to avoid impacts that would otherwise require the preparation of an EIS.

*Section 1010.12 Public Involvement*

This section is based on § 907.13 of this title, but has been expanded to specify specific means by which the Trust will provide for public involvement.

*Section 1010.13 Trust Decision-making Procedures*

This section is based on § 907.14 of this title.

*Section 1010.14 Review of Proposals by Project Applicants*

This section is adapted from § 907.15 of this title. Throughout these regulations, care has been taken to revise the PADC regulations to clarify that, consistent with CEQ regulations and this § 1010.14, in certain circumstances the Trust is not the entity that will be performing the actual work to prepare the initial EA or EIS. For example, in § 1010.8(a) (based on § 907.8 of this title), the phrase ''PADC shall perform or have performed an environmental assessment'' has been changed to read ''the Trust shall require the preparation of an EA.'' Similarly, the phrase ''PADC will immediately begin to prepare or have prepared the environmental impact statement'' has been changed to read ''the Trust will prepare or direct the preparation of an EIS * * * .''

In forming the Trust, Congress required that the Trust become financially self-sufficient within fifteen complete fiscal years. Trust Act section 105(b). If the Trust does not achieve this goal, the property under its administrative jurisdiction will be transferred to the General Services Administration for disposal in accordance with the Defense Authorization Act of 1990. Trust Act section 104(o). As a result, it is necessary for the Trust to recover from project applicants, to the greatest appropriate extent, the costs of environmental review of their proposals.

Under the CEQ Regulations at 40 CFR 1506.5(b), the Trust may require that a project applicant complete the EA (as opposed to the EIS) regarding its project on behalf of the Trust, so long as the Trust makes its own evaluation of the environmental issues and takes responsibility for the scope and content of the final EA. This provision has been incorporated herein at paragraph (d).

The CEQ Regulations contemplate that an EIS, in contrast to an EA, will be completed by the reviewing agency or its contractor, and not by the project applicant. Such an undertaking can require significant resources and cost in the tens or hundreds of thousands of dollars. Given the Trust's statutory obligation to become financially self-sufficient, the Trust believes it is appropriate in most circumstances to require the project applicant to cover these substantial costs. For similar reasons, the Trust likewise believes it is appropriate in most circumstances to require the project applicant to cover the costs of any applicable historic preservation review, including review under section 106 of the National Historic Preservation Act.

The Trust is mindful of the need—as expressed in the CEQ Regulations—for the EIS to be prepared independently by either the Trust or a contractor to the Trust with no financial or other interest in approval of the project. In light of the Trust's mandate to become self-sufficient, the Trust therefore has the option of recovering the costs of preparing EIS's either in the form of higher rents or other charges to the project applicant or its tenants, or in the form of an upfront charge on the project applicant. The Trust has rejected the former option, since it places the Trust in the position of not being able to recover its environmental review costs from an applicant whose project is ultimately rejected (e.g., for reasons identified in the environmental review process), and therefore in the position of potentially being viewed as having an interest in a less searching or independent environmental review that would encourage the ultimate approval of the project and recoupment of the Trust's environmental review costs. This would be contrary to the spirit of NEPA and the Trust Act.

As a result, the Trust has opted to charge most project applicants an upfront, non-refundable fee sufficient to cover the anticipated costs of project review in the EIS stage. Paragraph (e) has been added in order to specify procedures for the Trust to cover these costs. Should an amendment or supplement to the EIS be required, the Trust may require an additional non-refundable fee to cover some or all of the anticipated costs of this work. In order to provide greater certainty for project applicants, encourage careful estimation and control of costs, and avoid any appearance that the Trust is acting at the direction of a project applicant because the applicant is making regular payments to the Trust during the review process, the Trust alone will bear the risk that its estimate of anticipated costs proves too low as a result of unforeseen circumstances (other than the need to prepare an amendment or supplement to the EIS). Likewise, in order to avoid any potential pressure for the Trust to cut corners in its environmental review, no portion of the fee will be refundable. In this way, appropriate resources will be devoted to preparation of EIS's, without threatening the Trust's goal of self-sufficiency and without jeopardizing the independence of the environmental review process.

Furthermore, section 1010.14(e) also provides that fees paid by project applicants will also include costs associated with review under other applicable laws. Key among such other applicable laws is Section 106 of the National Historic Preservation Act. Although section 1010.14(e) is not applicable unless an EIS is to be prepared, the Trust intends to require applicants to bear the full cost of reviewing proposals under Section 106 of the National Historic Preservation Act, while the Trust will remain responsible for the final decision on such proposals, consistent with regulations of the Advisory Council on Historic Preservation at 36 CFR 800.1(c)(1)(i).

Because the Trust believes that in many circumstances it will be appropriate to require project applicants to prepare EA's and to cover the anticipated costs of preparing EIS's on their projects, the Trust has considered the potential effects that such requirements might have on the number of potential applicants for projects in the Presidio Trust Area. The Trust has concluded that such requirements will be financially acceptable in the marketplace among project applicants. First, the Presidio Trust Area is a remarkably desirable location with features that are unique, both in the Bay Area and elsewhere in the country. Second, project applicants under the California state counterpart to NEPA, the California Environmental Quality Act, are almost uniformly required by relevant state and local agencies in proximity to the Presidio to prepare the relevant environmental documentation at their own expense (and at the risk that the project will not be approved in an economically viable form). Third, the

Trust anticipates that the economics of most projects that may be proposed will support an upfront investment for environmental review. In any event, these proposed regulations would provide the Trust with the discretion not to apply these requirements with respect to certain projects or applicants where such a waiver would be appropriate.

*Section 1010.15 Actions Where Lead Agency Designation is Necessary*

This section is adapted from § 907.16 of this title. As a practical matter, the Trust anticipates that NPS will be its most likely partner for consultation purposes, but the regulations allow for consultation with other agencies (such as the U.S. Fish and Wildlife Service) where appropriate.

**Regulatory Impact**

This proposed rulemaking will not have an annual effect of $100 million or more on the economy nor adversely affect productivity, competition, jobs, prices, the environment, public health or safety, or State or local governments. This proposed rule will not interfere with an action taken or planned by another agency or raise new legal or policy issues. In short, little or no effect on the national economy will result from adoption of this proposed rule. Because this proposed rule is not ''economically significant,'' it is not subject to review by the Office of Management and Budget under Executive Order 12866. Furthermore, this proposed rule is not a ''major rule'' under the Congressional review provisions of the Small Business Regulatory Enforcement Fairness Act, 5 U.S.C. 801 *et seq.*

The Trust has determined and certifies pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, that this proposed rule will not have a significant economic effect on a substantial number of small entities.

The Trust has determined and certifies pursuant to the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that this proposed rule will not impose a cost of $100 million or more in any given year on local, State, or tribal governments or private entities.

**Environmental Impact**

The Presidio Trust has prepared an Environmental Assessment (EA) in connection with this proposed rule. The EA determined that this proposed rule will not have a significant effect on the quality of the human environment because it is neither intended nor expected to change the physical status quo of the Presidio in any significant manner.

As a result, the Trust has issued a Finding of No Significant Impact (FONSI) concerning these final interim regulations and has therefore not prepared an Environmental Impact Statement concerning this proposed action. The EA and the FONSI were prepared in accordance with the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.* (NEPA), and regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA, 40 CFR parts 1500–1508.

Both the EA and the FONSI are available for public inspection at the offices of the Presidio Trust, 34 Graham Street, The Presidio, San Francisco, CA 94129, between the hours of 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays.

**Other Applicable Authorities**

The Presidio Trust has drafted and reviewed these proposed regulations in light of Executive Order 12988 and has determined that they meet the applicable standards provided in secs. 3(a) and (b) of that order.

**List of Subjects in 36 CFR Part 1010**

Administrative practice and procedure, Environmental impact statements, National parks, Public lands, Recreation and recreation areas.

Dated: July 16, 1999.

**Karen A. Cook,**

*General Counsel.*

Accordingly, the Presidio Trust proposes to add 36 CFR Part 1010, as set forth below:

**CHAPTER X—PRESIDIO TRUST**

Part
1010 Environmental quality

**PART 1010—ENVIRONMENTAL QUALITY**

Sec.
1010.1 Policy.
1010.2 Purpose.
1010.3 Definitions.
1010.4 Responsible Trust official.
1010.5 Major decision points.
1010.6 Determination of requirement for EA or EIS.
1010.7 Actions that do not require an EA or EIS.
1010.8 Actions that normally require an EIS.
1010.9 Preparation of an EIS.
1010.10 Actions that normally require an EA.
1010.11 Preparation of an EA.
1010.12 Public involvement.
1010.13 Trust decision-making procedures.
1010.14 Review of proposals by project applicants.
1010.15 Actions where lead agency designation is necessary.
1010.16 Actions to encourage agency cooperation early in the NEPA process.
1010.17 Actions to eliminate duplication with State and local procedures.

**Authority:** Pub. L. 104–333, 110 Stat. 4097 (16 U.S.C. sec. 460bb note); 42 U.S.C. sec. 4321 et seq.; 40 CFR 1507.3.

**§ 1010.1 Policy.**

The Presidio Trust's policy is to:

(a) Use all practical means, consistent with the Trust's statutory authority, available resources, and national policy, to protect and enhance the quality of the human environment;

(b) Ensure that environmental factors and concerns are given appropriate consideration in decisions and actions by the Trust;

(c) Use systematic and timely approaches which will ensure the integrated use of the natural and social sciences and environmental design arts in planning and decision-making which may have an impact on the human environment;

(d) Develop and utilize ecological, cultural, and other environmental information in the management of the Presidio Trust Area pursuant to the Trust Act;

(e) Invite the cooperation and encourage the participation, where appropriate, of Federal, State, and local authorities and the public in Trust planning and decision-making processes that affect the quality of the human environment; and

(f) Minimize any possible adverse effects of Trust decisions and actions upon the quality of the human environment.

**§ 1010.2 Purpose.**

The regulations in this part are prepared to supplement Council on Environmental Quality regulations at 40 CFR parts 1500 through 1508 for implementing the procedural provisions of the National Environmental Policy Act of 1969, as amended (NEPA), and otherwise to describe how the Trust intends to consider environmental factors and concerns in the Trust's decision-making process.

**§ 1010.3 Definitions.**

(a) The following terms have the following meanings as used in this part:

*Decision-maker* means the Board or its designee.

*EA* means an environmental assessment, as defined at 40 CFR 1508.9.

*EIS* means an environmental impact statement, as defined at 40 CFR 1508.11.

*The Plan* means the Final General Management Plan Amendment (July 1994) for the Presidio of San Francisco,

prepared by the National Park Service, U.S. Department of the Interior.

*The Plan EIS* means the Final Environmental Impact Statement (July 1994) prepared in conjunction with the Plan by the National Park Service. The term ''previously prepared EIS'' includes the Plan EIS.

*Project applicant* means an individual, firm, partnership, corporation, joint venture, or other public or private entity other than the Trust (including a combination of more than one such entities) which seeks to demolish, construct, reconstruct, develop, preserve, rehabilitate, or restore real property within the Presidio Trust Area.

(b) If not defined in this part or in this chapter, other terms used in this part have the same meanings as those provided in 40 CFR part 1508.

**§ 1010.4 Responsible Trust official.**

(a) The Executive Director shall designate an employee of the Trust as the official responsible for implementation and operation of the Trust's policies and procedures on environmental quality and control. The delegation of this responsibility shall not abrogate the responsibility of the Executive Director and the Board to ensure that NEPA and other applicable laws are followed, or the right of the Executive Director and the Board to overrule or alter decisions of the responsible Trust official in accordance with the Trust's regulations and procedures.

(b) This responsible Trust official shall:

(1) Coordinate the formulation and revision of Trust policies and procedures on matters pertaining to environmental protection and enhancement;

(2) Establish and maintain working relationships with relevant government agencies concerned with environmental matters;

(3) Develop procedures within the Trust's planning and decision-making processes to ensure that environmental factors are properly considered in all proposals and decisions in accordance with this part;

(4) Develop, monitor, and review the Trust's implementation of standards, procedures, and working relationships for protection and enhancement of environmental quality and compliance with applicable laws and regulations;

(5) Monitor processes to ensure that the Trust's procedures regarding consideration of environmental quality are achieving their intended purposes;

(6) Advise the Board, officers, and employees of the Trust of technical and management requirements of environmental analysis, of appropriate expertise available, and, in consultation with the Trust's General Counsel, of relevant legal developments;

(7) Monitor the consideration and documentation of the environmental aspects of the Trust's planning and decision-making processes by appropriate officers and employees of the Trust;

(8) Ensure that all EA's and EIS's are prepared in accordance with the appropriate regulations adopted by the Council on Environmental Quality and the Trust;

(9) Consolidate and transmit to appropriate parties the Trust's comments on EIS's and other environmental reports prepared by other agencies;

(10) Acquire information and prepare appropriate reports on environmental matters required of the Trust;

(11) Coordinate Trust efforts to make available to other parties information and advice on the Trust's policies for protecting and enhancing the quality of the environment; and

(12) Designate other Trust employees to execute these duties under the supervision of the responsible Trust official, where necessary for administrative convenience and efficiency. As used in this chapter, the term ''responsible Trust official'' includes any such designee.

**§ 1010.5 Major decision points.**

(a) The possible environmental effects of a proposed action or project within the Presidio Trust Area must be considered along with technical, financial, and other factors throughout the decision-making process. For most Trust projects there are three distinct stages in the decision-making process:

(1) Conceptual or preliminary study stage;

(2) Detailed planning or final approval stage;

(3) Implementation stage.

(b) Environmental review will be integrated into the decision-making process of the Trust as follows:

(1) During the conceptual or preliminary study stage, the responsible Trust official shall determine whether the proposed action or project is one which is categorically excluded under § 1010.7 or requires further NEPA review (i.e., an EA or an EIS).

(2) If the proposed action or project is not categorically excluded, then prior to the Trust's proceeding beyond the conceptual or preliminary study stage, the responsible Trust official must determine whether an EIS is required.

(3) An EIS, if determined necessary, must be completed and circulated at the earliest point at which meaningful analysis can be developed for the proposed action or project, and in any event prior to the Trust's final approval of the proposed action or project.

**§ 1010.6 Determination of requirement for EA or EIS.**

In deciding whether to require the preparation of an EA or an EIS, the responsible Trust official will determine whether the proposal is one that:

(a) Normally does not require either an EA or an EIS (i.e., qualifies for a categorical exclusion under § 1010.7);

(b) Normally requires an EIS; or

(c) Normally requires an EA, but not necessarily an EIS.

**§ 1010.7 Actions that do not require an EA or EIS.**

(a) *General rule.* Pursuant to 40 CFR 1508.4, neither an EA nor an EIS is required for actions that do not individually or cumulatively have a significant effect on the human environment.

(b) *Criteria.* The criteria which were used to determine those categories of action that normally do not require either an EA or an EIS, and which are therefore covered by the categorical exclusions listed in paragraph (c) of this section, include:

(1) Implementation of the action or proposal is in accordance with the general objectives of the Plan and with the Trust Act, and the environmental effects have been adequately analyzed in the Plan EIS, or in a supplement thereto, or in an EA and/or an EIS; or

(2) No additional analysis or public input is necessary to determine whether there is a potential for significant impact; or

(3) The action or proposal is related solely to internal administrative operations of the Trust; or

(4) Preliminary analysis indicates that no potential significant impact would occur.

(c) *Categorical exclusions.* The categories of action identified in this paragraph have been determined by the Trust to have no significant effect on the human environment and are therefore categorically excluded. Such actions (whether approved by the Trust or undertaken by the Trust directly or indirectly) do not require the preparation of an EA or an EIS:

(1) Personnel actions and investigations and personal services contracts;

(2) Administrative actions and operations directly related to the operation of the Trust (e.g., purchase of furnishings, services, and space acquisition or conversion for the Trust offices or maintenance facilities);

(3) Internal organizational changes and facility and office expansions, reductions, and closings;

(4) Routine financial transactions, including such things as salaries and expenses, procurement, guarantees, financial assistance, income transfers, audits, fees, bonds and royalties;

(5) Management, formulation, allocation, transfer and reprogramming of the Trust's budget;

(6) Routine and continuing government business, including such things as supervision, administration, operations, maintenance, and replacement activities having limited context and intensity (limited size and magnitude or short-term effects);

(7) Preparation, issuance, and submittal of publications and routine reports;

(8) Activities which are educational, informational, or advisory (including interpretive programs), or otherwise in consultation with or providing technical assistance to other agencies, public and private entities, visitors, individuals, or the general public;

(9) Legislative proposals of an administrative or technical nature, including such things as changes in authorizations for appropriations or financing authority, minor boundary changes and land transactions; or having primarily economic, social, individual or institutional effects, as well as comments and reports on legislative proposals;

(10) Promulgation of regulations and requirements, or amendments thereto, provided such actions do not:

(i) increase public use to the extent of compromising the nature and character of the area or causing physical damage to it;

(ii) introduce non-compatible uses which might compromise the nature and characteristics of the area or cause physical damage to it;

(iii) conflict with adjacent ownerships or land uses; or

(iv) cause a nuisance to adjacent owners or occupants;

(11) Proposal, adoption, revision, and termination of policies, directives, regulations, and guidelines of an administrative, financial, legal, technical, or procedural nature, the environmental effects of which are too broad, speculative, or conjectural to lend themselves to meaningful environmental analysis;

(12) Preparation, approval, coordination, and implementation of plans, including priorities, justifications, and strategies, for non-manipulative and non-destructive research, monitoring, inventorying, and information gathering;

(13) Identification, nomination, certification, and determination of eligibility of properties for listing in the National Register of Historic Places and the National Historic Landmark and National Natural Landmark Programs;

(14) Minor or temporary changes in amounts or types of visitor use for the purpose of ensuring visitor safety or resource protection, minor changes in programs or regulations pertaining to visitor activities, and approval of permits for special events or public assemblies and meetings, as well as leases for use of real property for no more than three months, provided such events, assemblies, meetings and leases entail only short-term or readily mitigated environmental disturbance;

(15) Designation of environmental study areas and research areas, including those closed temporarily or permanently to the public, provided there is no environmental impact;

(16) Land and boundary surveys and minor boundary adjustments or land acquisitions or exchanges resulting in no significant change in land use;

(17) Archaeological surveys and permits involving only surface collection or small-scale test excavations;

(18) Promulgation of planning and design guidelines that are in accordance with the general objectives of the Plan as covered by the Plan EIS;

(19) Implementation of a proposal or plan which was covered by a previously prepared EA and/or EIS or categorically excluded, or changes to such a proposal or plan when such changes would cause no environmental impact;

(20) Contracts, work authorizations, or procurement actions directly related to and implementing proposals, programs, and master agreements for which an EA and/or an EIS have been prepared, or which were categorically excluded, or which are related to administrative operation of the Trust;

(21) The leasing, permitting, sale, or financing of, or granting of non-fee interests regarding, real or personal property in the Presidio Trust Area;

(22) Extension, reissuance, renewal, renegotiation, modification, conversion in form, or termination of agreements for use of real property (including but not limited to leases, permits, licenses, concession contracts, use and occupancy agreements, easements, and rights-of-way) that were in force as of the date the Trust received administrative jurisdiction of the underlying real property, so long as such agreements were previously subject to NEPA, do not involve new construction or new or substantially greater environmental impacts, and new information of substantial importance or changed circumstances relevant to environmental conditions do not come into play.

(23) Issuance of permits relating to minor development activities (sign approval, interior modifications, minor exterior changes to facade, etc.) that are consistent with the Secretary of the Interior's ''Standards for the Treatment of Historic Properties'' at 36 CFR part 68, as applicable;

(24) Rehabilitation, modification, or improvement of historic properties in conformance with the Secretary of the Interior's ''Standards for the Treatment of Historic Properties'' at 36 CFR part 68;

(25) Rehabilitation, modification, or improvement of non-historic properties when the following conditions are met:

(i) In the case of residential buildings, the unit density is not changed more than 20 percent;

(ii) The project does not involve changes in land use (from non-residential to residential or from residential to non-residential); and

(iii) The estimated cost of rehabilitation is less than 75 percent of the total estimated cost of replacement after rehabilitation;

(26) Removal, reduction, or restraint of resident individuals of species that are not threatened or endangered which pose dangers to visitors, residents, or neighbors or immediate threats to resources of the Presidio Trust Area;

(27) Removal of non-historic materials and structures in order to restore natural conditions when such removal has no potential for adverse environmental impacts, including impacts to cultural landscapes or archaeological resources;

(28) Installation, construction, removal, permitting, maintenance, replacement-in-kind, relocation, operation, or modification of signs, displays, kiosks, traffic control devices, pedestrian and traffic safety features, trails, trailside camping zones, fencing, landscaping, sanitary facilities, comfort stations, utility facilities, parking lots, and other minor structures and facilities;

(29) Routine maintenance, property management, resource management, and research or educational activities with no potential for environmental impact or non-conformance with the Secretary of the Interior's ''Standards for the Treatment of Historic Properties'' at 36 CFR part 68, as applicable;

(30) Issuance of rights-of-way for and installation, maintenance, or repair of overhead or underground utility lines (e.g., power, water, irrigation, telecommunications, etc.) not involving placement of poles or towers outside of

existing traffic and utility corridors and not involving vegetation clearance (other than for placement of poles), and not resulting in visual intrusion in the Presidio Trust Area or non-conformance with the Secretary's ''Standards for the Treatment of Historic Properties'' at 36 CFR part 68, as applicable; and

(31) Experimental testing of no longer than 180 days of mass transit systems, and changes in operation of existing systems with no potential for adverse environmental impact.

(d) *Overriding criteria.* An action which falls into one or more of the categories in paragraph(s) of this section may still require the preparation of an EIS or an EA if the responsible Trust official determines it meets the criteria stated in § 1010.8(b) or § 1010.10(b), respectively, or involves extraordinary circumstances that may have a significant environmental effect. At its discretion, the Trust may require the preparation of an EA or an EIS for a proposal or action that otherwise qualifies for a categorical exclusion.

### § 1010.8 Actions that normally require an EIS.

(a) *General procedure.* So long as a proposed action or project is not categorically excluded under § 1010.7, the Trust shall require the preparation of an EA to determine if the proposed action or project requires an EIS. Nevertheless, if it is readily apparent to the responsible Trust official that the proposed action or project will have a significant impact on the environment, an EA is not required, and the Trust will prepare or direct the preparation of an EIS without preparing or completing the preparation of an EA. To assist the responsible Trust official in determining if a proposal or action normally requires the preparation of an EIS, the following criteria and categories of action are provided.

(b) *Criteria.* Criteria used to determine whether proposals or actions may significantly affect the environment and therefore require an EIS are described in 40 CFR 1508.27.

(c) *Categories of action.* The following categories of action normally require an EIS (unless categorically excluded or previously analyzed in an EA or EIS):

(1) Legislative proposals made by the Trust to the United States Congress;

(2) Approval, funding, construction, and/or demolition in preparation for construction of any new building, if that activity is not contemplated by the Plan and has a significant effect on the human environment that has not previously been reviewed in the Plan EIS or other previously prepared EA or EIS; and

(3) Proposals that would significantly alter the kind and amount of recreational, historical, or cultural resources of the Presidio Trust Area or the integrity of the setting.

### § 1010.9 Preparation of an EIS.

(a) *Notice of intent.* When the Trust decides to prepare an EIS, it shall publish a notice of intent in the **Federal Register** in accordance with 40 CFR 1501.7 and 1508.22. Where there is a lengthy period between the Trust's decision to prepare an EIS and the time of actual preparation, then at the discretion of the responsible Trust official the notice of intent shall be published at a reasonable time in advance of preparation of the EIS.

(b) *Preparation.* After having determined that an EIS will be prepared and having published the notice of intent, the Trust will begin to prepare or to direct the preparation of the EIS. The EIS shall be formatted in accordance with 40 CFR 1502.10.

(c) *Supplemental environmental impact statements.* The Trust may supplement a draft or final EIS at any time. The Trust shall prepare a supplement to either a draft or final EIS when: (1) Substantial changes are proposed to an action analyzed in the draft or final EIS that are relevant to environmental concerns;

(2) There are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts; or

(3) Actions are proposed which relate to or are similar to other actions taken or proposed and that together will have a cumulatively significant impact on the human environment.

### § 1010.10 Actions that normally require an EA.

(a) *General procedure.* If a proposal or action is not one that normally requires an EIS, and does not qualify for a categorical exclusion under § 1010.7, the Trust will require, prepare, or direct the preparation of an EA. An EA should be prepared when the Trust has insufficient information on which to determine whether a proposal may have significant impacts. An EA assists the Trust in complying with NEPA when no EIS is necessary, and it facilitates the preparation of an EIS, if one is necessary.

(b) *Criteria.* Criteria used to determine those categories of action that normally require an EA, but not necessarily an EIS, include:

(1) Potential for minor degradation of environmental quality;

(2) Potential for cumulative impact on environmental quality; and

(3) Potential for impact on protected resources.

(c) *Categories of action.* The following categories of action normally require the preparation of an EA (unless categorically excluded or previously analyzed in an EA or EIS):

(1) Promulgation of regulations and requirements to the extent such an action is not covered by a categorical exclusion;

(2) Proposals submitted by project applicants to the Trust for its review, as described in § 1010.14; and

(3) Proposals to significantly add or alter access between the Presidio Trust Area and surrounding neighborhoods.

### § 1010.11 Preparation of an EA.

(a) *When to prepare.* The Trust will begin the preparation of an EA (or require it to be begun) as early as possible after it is determined by the responsible Trust official to be required. The Trust may prepare or require an EA at any time to assist planning and decision-making.

(b) *Content and format.* An EA is a concise public document used to determine whether to prepare an EIS. Only those resources that may experience significant impacts and that are specifically relevant to the particular proposal should be addressed in the EA. Those areas should be addressed in as much detail as is necessary to allow an analysis of the alternatives and the proposal. The EA shall contain brief discussions of the following topics:

(1) Purpose and need for the proposed action.

(2) Description of the proposed action.

(3) Alternatives considered, including a No Action alternative.

(4) Environmental effects of the proposed action and the alternatives, including mitigation measures.

(5) Listing of agencies, organizations, and/or persons consulted.

(c) *Finding of no significant impact (''FONSI'').* If an EA is completed and the responsible Trust official determines that an EIS is not required, then the responsible Trust official shall prepare a finding of no significant impact. The finding of no significant impact shall be made available to the public by the Trust as specified in 40 CFR 1506.6.

(d) *Mitigated FONSI.* If an EA is completed and the responsible Trust official determines that an EIS is required, then prior to preparation of an EIS, the proposal may be revised in order to mitigate the impacts identified in the EA through adherence to legal requirements, inclusion of mitigation as an integral part of the proposal, and/or fundamental changes to the proposal. If the revised proposal does not qualify for

a categorical exclusion under § 1010.7, a subsequent EA will be prepared on the revised proposal and will result in a Mitigated Finding of No Significant Impact, preparation of an EIS, or additional revision of the proposal and a subsequent EA.

**§ 1010.12 Public involvement.**

The Trust will make public involvement an essential part of its environmental review process. Public notice of anticipated Trust actions, opportunities for involvement, and availability of environmental documents will be facilitated through announcements in the Trust's monthly newsletter, postings on its web site (www.presidiotrust.gov), placement of public notices in newspapers, direct mailings, and other means appropriate for involving the public in a meaningful way. The Trust will conduct scoping with interested federal, state and local agencies and Indian tribes, and hold public workshops to gather early input whenever appropriate. Notice of all public workshops will be given in a timely manner. Interested persons may also obtain information concerning any pending EIS or any other element of the environmental review process of the Trust by contacting the responsible Trust official at the following address: Presidio Trust, P.O. Box 29052, San Francisco, California, 94129–0052.

**§ 1010.13 Trust decision-making procedures.**

To ensure that at major decision-making points all relevant environmental concerns are considered by the decision-maker, the following procedures are established.

(a) An environmental document (i.e., the EA, finding of no significant impact, EIS, or notice of intent), in addition to being prepared at the earliest point in the decision-making process, shall accompany the relevant proposal or action through the Trust's decision-making process to ensure adequate consideration of environmental factors.

(b) The decision-maker shall consider in its decision-making process only decision alternatives encompassed by the range of alternatives discussed in the relevant environmental documents. Also, where an EIS has been prepared, the decision-maker shall consider all alternatives described in the EIS, and a written record of the consideration of alternatives during the decision-making process shall be maintained.

(c) Any environmental document prepared for a proposal or action shall be made part of the record of any formal rulemaking by the Trust.

**§ 1010.14 Review of proposals by project applicants.**

(a) Each proposal for demolition, construction, reconstruction, development, preservation, rehabilitation, or restoration of real property submitted by a project applicant to the Trust for its review, and which the decision-maker agrees to consider, shall require an EA unless categorically excluded or covered by a previously prepared EA and/or EIS.

(b) The decision-maker may not take any approval action on such a proposal submitted by a project applicant until such time as the appropriate environmental review documents have been prepared and submitted to the decision-maker.

(c) At a minimum, and as part of any submission made by a project applicant to the decision-maker for its approval, such project applicant shall make available data and materials concerning the proposal sufficient to permit the Trust to carry out its environmental review responsibilities. When requested, the project applicant shall provide additional information that the responsible Trust official believes is necessary to permit it to satisfy its environmental review functions.

(d) With respect to each project proposed for consideration for which the responsible Trust official determines an EA shall be prepared, the decision-maker may require a project applicant to submit a draft EA regarding its proposal for the Trust's evaluation and revision. In accordance with 40 CFR 1506.5(b), the Trust shall make its own evaluation of the environmental issues and shall take responsibility for the scope and content of the final EA.

(e) With respect to each project proposed for consideration for which the responsible Trust official determines an EIS shall be prepared, the decision-maker may require a project applicant to pay a non-refundable fee to the Trust sufficient to cover a portion or all of the Trust's anticipated costs associated with preparation and review of the EIS, including costs associated with review under other applicable laws. Such fee shall be paid to the Trust in full prior to commencement of the preparation of the EIS or any amendment or supplement thereto.

(f) In accordance with 40 CFR 1506.5(c), the EIS shall be prepared by the Trust and/or by contractors who are selected by the Trust and who certify that they have no financial or other interest in the outcome of the project, and the Trust shall independently evaluate the EIS prior to its approval and take responsibility for ensuring its adequacy. The EIS shall be prepared in accordance with 40 CFR part 1502.

(g) The responsible Trust official may set time limits for environmental review appropriate to each proposal, consistent with 40 CFR 1501.8 and 1506.10.

(h) The responsible Trust official shall at the earliest possible time ensure that the Trust commences its environmental review on a proposed project and shall provide the project applicant with any policies or information deemed appropriate in order to permit effective and timely review by the Trust of a proposal once it is submitted to the decision-maker for approval.

**§ 1010.15 Actions where lead agency designation is necessary.**

(a) Consistent with 40 CFR 1501.5, where a proposed action by the Trust involves one or more other Federal agencies, or where actions by the Trust and one or more Federal agencies are directly related to each other because of their functional interdependence or geographical proximity, the Trust will seek designation as lead agency for those actions that directly relate to implementation of the general objectives of the Plan and for those actions that relate solely to the Presidio Trust Area.

(b) For an action that qualifies as one for which the Trust will seek designation as lead agency, the Trust will promptly consult with the appropriate Federal agency to establish lead agency and cooperating agency designations.

(c) For an action as to which the Trust undertakes lead or cooperating agency status, the Trust is authorized to enter into a memorandum of understanding or agreement to define the rights and responsibilities of lead and cooperating agencies.

**§ 1010.16 Actions to encourage agency cooperation early in the NEPA process.**

(a) Consistent with 40 CFR 1501.6, the Trust may request the NPS to be a cooperating agency for actions or projects significantly affecting the quality of the Presidio. In addition, upon request of the Trust, any other Federal agency that has jurisdiction by law or special expertise with respect to any environmental issue that should be addressed in the analysis may be a cooperating agency. The Trust shall use the environmental analysis and proposals of cooperating agencies with jurisdiction by law or special expertise to the maximum extent possible consistent with its responsibility as lead agency.

**§ 1010.17 Actions to eliminate duplication with State and local procedures.**

Consistent with 40 CFR 1506.2, the Trust shall cooperate with State and local agencies to the fullest extent possible to reduce duplication between NEPA and State and local requirements. Such cooperation shall to the fullest extent possible include:

(a) Joint planning processes.

(b) Joint environmental research and studies.

(c) Joint public hearings (except where otherwise provided by statute).

(d) Joint environmental assessments.

[FR Doc. 99–18687 Filed 7–22–99; 8:45 am]

BILLING CODE 4310–4R–U

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[CA 71–154b; FRL–6400–2]**

### Proposed Approval and Promulgation of California State Implementation Plan for San Joaquin Valley Unified Air Pollution Control District

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve revisions to the California State Implementation Plan (SIP). These rules were submitted by the State on behalf of the District to provide general permitting requirements and general provisions for the implementation of NSR and other SIP requirements for stationary sources in the District. The rules were also submitted to improve the consistency and clarity of the existing SIP.

The intended effect of proposing approval of these rules is to control air pollution in accordance with the requirements of the Act and improve the consistency and clarity of the existing SIP. In the Final Rules section of this **Federal Register**, the EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision and anticipates no adverse comments. A detailed rationale for this approval is set forth in the direct final rule. If no adverse comments are received, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period. Any parties interested in commenting should do so at this time.

**DATES:** Comments on this proposed action must be received in writing by August 23, 1999.

**ADDRESSES:** Written comments on this action must be sent to Ed Pike at the Region IX address mailing address listed below.

Copies of the rules and EPA's evaluation report of each rule are available for public inspection at EPA's Region 9 office during normal business hours at the following address: Permits Office (AIR–3), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105. Copies of the submitted rules are also available for inspection at the following locations:

Environmental Protection Agency, Air Docket (6102), 401 ''M'' Street, SW, Washington, DC 20460

California Air Resources Board Stationary Source Division, Rule Evaluation Section 2020 ''L'' Street, Sacramento, CA 95814

San Joaquin Valley Unified Air Pollution Control District, Central Region, 1990 E. Gettysburg Avenue, Fresno, CA 93726

A courtesy copy of current District regulations may be available via the Internet at http://arbis.arb.ca.gov/drdb/sju/cur.htm. However, EPA assumes no responsibility for the availability or accuracy of this website. In addition, the version of the rules available on this website may not be the same as the rules submitted to EPA for approval, and readers should verify that the adoption dates are the same.

**FOR FURTHER INFORMATION CONTACT:** Ed Pike at (415) 744–1211 or pike.ed@epa.gov.

**SUPPLEMENTARY INFORMATION:** EPA is proposing to approve the following rules into the SIP: 1110 Circumvention; 1140 Applicability of Emission Limits; 1150 Separation and Combination; 2010 Permits Required; 2031 Transfer of Permits; 2040 Applications; 2070 Standards for Granting Applications; 2080 Conditional Approval; and 2092 Standards for Permits to Operate. Rules 1110, 1140, 1150, 2010, and 2040 were adopted by the District Board of Directors on December 17, 1992, and submitted to EPA by the California Air Resources Board (CARB) as a revision to the SIP on September 28, 1994. Rules 2031, 2070, 2080, and 2092 were adopted by the District on December 17, 1992, and submitted to EPA by CARB on November 18, 1993.

For further information, please see the information provided in the direct final action which is located in the Rules section of this **Federal Register**.

Dated: July 9, 1999.

**Felicia Marcus,**

*Regional Administrator, Region IX.*

[FR Doc. 99–18601 Filed 7–22–99; 8:45 am]

BILLING CODE 6560–50–P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

**[MM Docket No. 99–256, RM–9527]**

### Radio Broadcasting Services; Refugio and Taft, TX

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This document requests comments on a petition filed by Pacific Broadcasting of Missouri, L.L.C. requesting the substitution of Channel 293C2 for Channel 291C3 at Refugio, Texas, reallotment of Channel 293C2 from Refugio, Texas, to Taft, Texas, and modification of the license for Station KTKY to specify operation on Channel 293C2 at Taft, Texas. The coordinates for Channel 293C2 at Taft are 27–52–00 and 97–13–08. Pacific also requested the allotment of Channel 291A at Refugio, Texas, at coordinates 28–21–58 and 97–19–11. Mexican concurrence will be requested for the allotment the allotments at Refugio and Taft. In accordance with Section 1.420(i) of the Commission's Rules, we shall not accept competing expressions of interest in the use of Channel 293C2 at Refugio.

**DATES:** Comments must be filed on or before September 7, 1999, and reply comments on or before September 22, 1999.

**ADDRESSES:** Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Pamela C. Cooper, Davis Wright Tremaine LLP, 1155 Connecticut Avenue, NW, suite 700, Washington, DC 20036.

**FOR FURTHER INFORMATION CONTACT:** Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–256, adopted July 7, 1999, and released July 16, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center,

Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC. 20036, (202) 857–3800, facsimile (202) 857–3805.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

Federal Communications Commission.

**John A. Karousos,**

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 99–18829 Filed 7–22–99; 8:45 am]

**BILLING CODE 6712–01–P**

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

**[MM Docket No. 99–258, RM–9681]**

### Radio Broadcasting Services; Iowa Park, TX

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This document requests comments on a petition filed by Fred R. Morton, Jr. proposing the allotment of Channel 242A at Iowa Park, Texas. The channel can be allotted to Iowa Park in compliance with the Commission's spacing requirements at coordinates 34–01–27 NL and 98–41–14 WL. There is a site restriction 8.3 kilometers (5.2 miles) north of the community.

**DATES:** Comments must be filed on or before September 7, 1999, and reply comments on or before September 22, 1999.

**ADDRESSES:** Federal Communications Commission, Washington, DC. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Fred R. Morton, Jr., Post Office Box 704, Sugar Land, Texas 77487–0704.

**FOR FURTHER INFORMATION CONTACT:** Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–258, adopted July 7, 1999, and released July 16, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC. 20036, (202) 857–3800, facsimile (202) 857–3805.

Provisions of the Regulatory Flexibility Act of l980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

Federal Communications Commission.

**John A. Karousos,**

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 99–18830 Filed 7–22–99; 8:45 am]

**BILLING CODE 6712–01–P**

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

**[MM Docket No. 99–259, RM–9685]**

### Radio Broadcasting Services; Soperton, GA

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Commission requests comments on a petition filed by John Morgan Dowdy seeking the allotment of Channel 253A to Soperton, GA, as the community's second local FM service. Channel 253A can be allotted to Soperton in compliance with the Commission's minimum distance separation requirements with a site restriction of 9.6 kilometers (6 miles) southeast, at coordinates 32–19–41 NL; 82–29–50 WL, to avoid a short-spacing to Station WSB-FM, Channel 253C, Atlanta, GA, and to the proposed allotment of Channel 252C3, at Hawkinsville, GA (MM Docket No. 99–199).

**DATES:** Comments must be filed on or before September 7, 1999, and reply comments on or before September 22, 1999.

**ADDRESSES:** Federal Communications Commission, 445 12th Street, S.W., Room TW–A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Lawrence J. Bernard, Jr., 5224 Chevy Chase Parkway NW, Washington, D.C. 20015 (Counsel to petitioner).

**FOR FURTHER INFORMATION CONTACT:** Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–259, adopted July 7, 1999, and released July 16, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

Federal Communications Commission.

**John A. Karousos,**

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 99–18831 Filed 7–22–99; 8:45 am]

**BILLING CODE 6712–01–P**

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

**[MM Docket No. 99–260, RM–9686]**

### Radio Broadcasting Services; Bristol, VT

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Commission requests comments on a petition filed by Blue Sky Broadcasting, LLC, seeking the allotment of Channel 248A to Bristol, VT, as the community's first local aural service. Channel 248A can be allotted to Bristol in compliance with the Commission's minimum distance separation requirements with respect to domestic allotments without the imposition of a site restriction, at coordinates 44–08–18 NL; 73–05–00 WL. Canadian concurrence as a specially negotiated short-spaced allotment is required since Bristol is located within 320 kilometers (200 miles) of the U.S.-Canadian border and the allotment would be short-spaced to Station CHOM–FM, Channel 249C1, Montreal, Quebec.

**DATES:** Comments must be filed on or before September 7, 1999, and reply comments on or before September 22, 1999.

**ADDRESSES:** Federal Communications Commission, 445 12th Street, SW, Room TW–A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: David D. Oxenford, Fisher Wayland Cooper Leader & Zaragoza, L.L.P., 2001 Pennsylvania Avenue, NW, Washington, DC 20006 (Counsel to petitioner).

**FOR FURTHER INFORMATION CONTACT:** Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–260, adopted July 7, 1999, and released July 16, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

Federal Communications Commission.

**John A. Karousos,**

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 99–18832 Filed 7–22–99; 8:45 am]

**BILLING CODE 6712–01–P**

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

**[MM Docket No. 99–257, RM–9683]**

### Radio Broadcasting Services; Centerville, TX

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This document requests comments on a petition filed by Wolverine Broadcasting proposing the allotment of Channel 274A at Centerville, Texas. The channel can be allotted to Centerville in compliance with the Commission's spacing requirements at coordinates 31–17–00 NL and 95–53–00 WL. There is a site restriction 9.4 kilometers (5.8 miles) east of the community.

**DATES:** Comments must be filed on or before September 7, 1999, and reply comments on or before September 22, 1999.

**ADDRESSES:** Federal Communications Commission, Washington, DC. 20554.

In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Law Offices of Henry E. Crawford, 1150 Connecticut Avenue, NW, Suite 900, Washington, DC 20036–4192.

**FOR FURTHER INFORMATION CONTACT:** Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–257, adopted July 7, 1999, and released July 16, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC. 20036, (202) 857–3800, facsimile (202) 857–3805.

Provisions of the Regulatory Flexibility Act of l980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

Federal Communications Commission.

**John A. Karousos,**

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 99–18833 Filed 7–22–99; 8:45 am]

**BILLING CODE 6712–01–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 660

**[ID. 052799B]**

### Fisheries Off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Exempted Fishing Permit

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Receipt of an application for an Exempted Fishing Permit (EFP).

**SUMMARY:** NMFS announces receipt of an application for an EFP that would permit the Pacific Whiting Conservation Cooperative and the Midwater Trawlers Cooperative to use trawl gear to conduct a pre-recruit survey for Pacific whiting.

Such information could improve the ability to determine whiting yields. An EFP is needed to authorize the use of a 1.5 cm mesh liner, smaller than legal 3-inch mesh allowed for midwater trawl gear, that applicants will use to catch pre-recruit whiting. An EFP is also needed to allow the vessels to operate at times and in areas which Federal regulations would otherwise prohibit.

**DATES:** The survey will begin in July 1999, and is expected to be completed in about 6 weeks.

**ADDRESSES:** Copies of the EFP are available from Becky Renko, Northwest Region, NMFS, 7600 Sand Point Way NE., Bldg. 1, Seattle, WA 98115–0070.

**FOR FURTHER INFORMATION CONTACT:** Becky Renko 206–526–6110.

**SUPPLEMENTARY INFORMATION:** This action is authorized by the Magnuson-Stevens Fishery Conservation and Management Act and by the implementing regulations at 50 CFR 600.745, which state that EFPs may be used to authorize fishing activities that would otherwise be prohibited.

An EFP application from Dr. Vidar Wespestad, who represents the Pacific Whiting Conservation Cooperative (the catcher/processor fleet representative in the whiting fishery) and the Midwater Trawlers Cooperative, and a supporting cover memorandum from NMFS, were received and considered by the Pacific Fishery Management Council (Council) at an April 5–9, 1999, meeting in Sacramento, CA. The Council discussed the EFP application, solicited public comment on it, and recommended issuance of the EFP.

The applicant proposes to use two trawl vessels to conduct a pre-recruit survey to establish an annual recruitment index for assessing Pacific whiting year-class strength off the coasts of Washington, Oregon, and California. Such a recruitment survey is consistent with research and data needs identified by the Council for 1998–2000. This EFP would further support a cooperative industry/NMFS program that started in 1998.

During this project, the applicant anticipates a catch of approximately 42 metric tons (mt) of whiting, less than 0.02 percent of the 1999 optimum yield, and an incidental catch of less than 7 mt (consisting of Pacific herring, sanddab, jack mackerel, spiny dogfish, yellowtail rockfish, widow rockfish, sablefish, flatfish, and others). The applicant expects a low incidental take of chinook salmon (approximately 45 fish). Except for small quantities preserved for laboratory study, or to fill Federal, state, or university requests, the applicant will not retain any fish caught. The applicant expects that the whiting taken will be too small and too fragile to sell or donate to a foodbank. Hence, the applicant will discard the whiting at sea after biological samples of whiting are collected.

The survey will begin south of Monterey Bay at 36°40′ north latitude and proceed north to 48°20′ north latitude. Trawl stations will be set at 20 mile intervals and located between the 50 and 200 meter depth contours. The trawl gear used in this survey will be comparable to that used by NMFS survey vessels.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: July 19, 1999.

**Gary C. Matlock,**

*Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 99–18883 Filed 7–22–99; 8:45 am]

BILLING CODE 3510–22–F

# Notices

**Federal Register**

Vol. 64, No. 141

Friday, July 23, 1999

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## AMERICAN BATTLE MONUMENTS COMMISSION

### Utah Beach, Normandy, France; Wall of Liberty Foundation Proposed WWII Memorial Project; Public Meeting

**AGENCY:** American Battle Monuments Commission.

**ACTION:** Proposed construction by the Wall of Liberty Foundation of a World War II memorial project near Utah Beach, Normandy, France; Public Meeting to receive comments on project proposal and concept design.

**SUMMARY:** The Wall of Liberty (WOL) Foundation has prepared a proposal and concept design regarding the construction of a proposed World War II memorial project in the vicinity of Utah Beach on the coast of Normandy, France. The American Battle Monuments Commission (ABMC) will conduct a public meeting to hear the presentation by the Wall of Liberty Foundation regarding this proposal, ask questions and discuss the project, and receive public comments on the foundation's proposal and design.

As the federal agency charged with oversight of erection of private association memorials on foreign soil under the Code of Federal Regulations, Title 36, Chapter 4, Parts 400 through 402, ABMC announces its intent to conduct a public meeting to receive comments on the WOL Foundation proposal at the following date, time and location: Tuesday, August 17, 1999, at 9:30AM; Courthouse Plaza II, Suite 500, 2300 Clarendon Boulevard, Arlington, VA 22201.

The purpose of the public meeting is to afford all interested persons the opportunity to hear the Foundation's proposal, view the concept design, and present their views regarding the information presented in the proposal.

**SUPPLEMENTARY INFORMATION:** This memorial is proposed to be built just behind the Normandy invasion Utah Beach on a site donated by a private French citizen. The concept design has been developed for the WOL Foundation by a French architect. This project would include a memorial consisting of inscribed granite walls set in circular gardens, a small visitors center and entry way, parking facilities, lighting, pedestrian walkways, and other infrastructure improvements to support the siting of the memorial.

On August 10, 1999, the WOL Foundation proposal and concept design will be available for review by interested persons at the offices of the ABMC located at the address shown above.

The public meeting will begin with a formal presentation by the WOL Foundation and will then be open to the public for comments on the proposed project. Following comments from the public, members of the Commission will also be provided an opportunity to comment and, through questioning, clarify any pertinent aspects of the proposal. In an effort to accommodate those who wish to speak, the following procedures will be followed:

- Upon entering the meeting area, every individual who wishes to speak must sign up and include his/her name (clearly written) and current mailing address. A speakers list will be created and speakers will be called in the order of sign-up. No sign-ups will be accepted after 9:00AM.
- Advance sign-up is available by calling ABMC at (703) 696–6900.
- Group representatives presenting formally adopted positions of their group and elected officials may speak for five (5) minutes. Individuals may speak for three (3) minutes. In the interest of fairness, no time extension will be allowed. All comments should address the content of the proposal and/or the concept design. It is expected that all attendees will be courteous and respectful of the views of others.

Written comments will also be accepted through August 25, 1999, and will receive the same weight as comments made at the public meeting. All such comments should be addressed to ABMC, at the address shown above, Attention: LTC Theodore Gloukhoff. ABMC will render a written decision following the public meeting. All comments will be fully considered in the preparation of the final decision of the Commission.

**FOR FURTHER INFORMATION CONTACT:** COL Dale F. Means for technical information at 703–696–6899; LTC Theodore Gloukhoff, for administrative/logistical information at 703–696–6900.

Dated: July 9, 1999.

**Theodore Gloukhoff,**

*Director of Personnel and Administration, ABMC*

[FR Doc. 99–18815 Filed 7–22–99; 8:45 am]

**BILLING CODE 6120–01–P**

## COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

### Procurement List, Additions and Deletion

**AGENCY:** Committee for Purchase From People Who Are Blind or Severely Disabled.

**ACTION:** Additions to and deletion from the Procurement List.

**SUMMARY:** This action adds to the Procurement List a commodity and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes from the Procurement List a service previously furnished by such agencies.

**EFFECTIVE DATE:** August 23, 1999.

**ADDRESSES:** Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Gateway 3, Suite 310, 1215 Jefferson Davis Highway, Arlington, Virginia 22202–4302.

**FOR FURTHER INFORMATION CONTACT:** Beverly Milkman (703) 603–7740.

**SUPPLEMENTARY INFORMATION:** On April 23, May 21, June 4 and 11, 1999, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (64 F.R. 19976, 27752, 29992, 31539 and 31540) of proposed additions to and deletion from the Procurement List:

### Additions

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodity and services and impact of the additions on the current or most recent contractors, the Committee has determined that the commodity and services listed below are suitable for procurement by the Federal Government

under 41 U.S.C. 46—48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodity and services to the Government.

2. The action will not have a severe economic impact on current contractors for the commodity and services.

3. The action will result in authorizing small entities to furnish the commodity and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodity and services proposed for addition to the Procurement List.

Accordingly, the following commodity and services are hereby added to the Procurement List:

*Commodity*

Hood, Stockinette
8415–LL–S04–8922

*Services*

Base Supply Center and Operation of Individual Equipment Element Store, Francis E. Warren Air Force Base, Wyoming
Janitorial/Custodial, USDA Building 255E, Sanford Airport, Sanford, Florida
Operation of Peace Corps Warehouse and Distribution Center, 2416 Oakville Street, Alexandria, Virginia
Switchboard Operation, Langley Air Force Base, Virginia

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

### Deletion

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action may not result in any additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action will not have a severe economic impact on future contractors for the service.

3. The action may result in authorizing small entities to furnish the service to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the service deleted from the Procurement List.

After consideration of the relevant matter presented, the Committee has determined that the service listed below is no longer suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Accordingly, the following service is hereby deleted from the Procurement List:

Grounds Maintenance, Basewide (except Military Family Housing), Kelly Air Force Base, Texas

**Beverly L. Milkman,**

*Executive Director.*

[FR Doc. 99–18862 Filed 7–22–99; 8:45 am]

BILLING CODE 6353–01–P

## COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

### Procurement List; Proposed Additions and Deletions

**AGENCY:** Committee for Purchase From People Who Are Blind or Severely Disabled.

**ACTION:** Proposed additions to and deletions from Procurement List.

**SUMMARY:** The Committee has received proposals to add to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and to delete commodities previously furnished by such agencies.

**COMMENTS MUST BE RECEIVED ON OR BEFORE:** August 23, 1999.

**ADDRESSES:** Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Gateway 3, Suite 310, 1215 Jefferson Davis Highway, Arlington, Virginia 22202–4302.

**FOR FURTHER INFORMATION CONTACT:** Beverly Milkman (703) 603–7740.

**SUPPLEMENTARY INFORMATION:** This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

### Additions

If the Committee approves the proposed addition, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodities and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities. I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.

2. The action will result in authorizing small entities to furnish the commodities and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and services proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following commodities and services have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

*Commodities*

Table, Field Operating
6530–01–321–5592
NPA: Arizona Industries for the Blind, Phoenix, Arizona
Portfolio, Canvas, Imprintable
8105–00–NIB–1079
NPA: Industries for the Blind, Inc., Milwaukee, Wisconsin

*Services*

Acquisition & Distribution of Batteries
6135–00–985–7846
NPA: Eastern Carolina Vocational Center, Inc., Greenville, North Carolina
Base Supply Center, New London U.S. Naval Submarine Base, Groton, Connecticut
NPA: Central Association for the Blind & Visually Impaired Utica, New York
Commissary Shelf Stocking, Custodial and Warehousing, Fort Knox, Kentucky
NPA: Trace, Inc., Eagle, Idaho
Duplication of Official Use Documents (GPO Program C492–S), Government Printing Office, North Capitol & H Streets, NW, Washington, DC
NPA: Alliance, Inc., Baltimore, Maryland
Mailing Services, National Council on Disability, 1331 F Street, NW, Washington, DC
NPA: Anchor Mental Health Association (Anchor Services Workshop), Washington, DC
Operation of Individual Equipment Element Store, Randolph Air Force Base, Texas
NPA: San Antonio Lighthouse, San Antonio, Texas

Storage & Distribution of Tape, Webbing and Other Accouterments, Defense Supply Center—Philadelphia, Philadelphia, Philadelphia
NPA: Arizona Industries for the Blind, Phoenix, Arizona
Telephone Switchboard Operations, Barksdale Air Force Base, Louisiana
NPA: Louisiana Association for the Blind, Shreveport, Louisiana

**Deletions**

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action will result in authorizing small entities to furnish the commodities to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities proposed for deletion from the Procurement List.

The following commodities have been proposed for deletion from the Procurement List:

Cabinet, Tool, Mobile & Tool Box, Portable
5140–01–010–4776
5140–00–030–6617
5140–00–870–4796
5140–00–319–5079
5140–00–494–2015
Tool Box, Portable
5140–01–010–4861
Mirror, Glass
7105–00–496–9866

**Beverly L. Milkman,**

*Executive Director.*

[FR Doc. 99–18863 Filed 7–22–99; 8:45 am]

BILLING CODE 6353–01–P

## COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

### Proposed Additions to the Procurement List; Correction

In the document appearing on page 37098, FR Doc. 99–17479, in the issue of July 9, 1999, in the second column, the service listed as Janitorial/Custodial, Fort Hamilton Proper, Fort Hamilton Manor and Fort Hamilton Tenants (less buildings 114 & 116), Fort Hamilton, New York should read Janitorial/Custodial, Fort Hamilton Proper, Fort Hamilton Manor and Fort Hamilton Tenants, Fort Hamilton, New York.

**Beverly L. Milkman,**

*Executive Director.*

[FR Doc. 99–18865 Filed 7–22–99; 8:45 am]

BILLING CODE 6353–01–P

## DEPARTMENT OF COMMERCE

### Submission for OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

*Agency:* Bureau of Export Administration (BXA).

*Title:* Chemical Weapons Convention Declaration Forms.

*Agency Form Number:* Form 1–1, Form 1–2, Form 1–2A, Form 1–2B, etc.

*OMB Approval Number:* 0694–0091.

*Type of Request:* Reinstatement, with change, of a previously approved collection for which approval has expired.

*Burden:* 34,709 hours.

*Average Time Per Response:* 10 minutes—31 hours per response.

*Number of Respondents:* 2,241 respondents.

*Needs and Uses: Declarations:* The CWC requires initial and annual declarations for activities involving Schedule 1, Schedule 2, Schedule 3 and Unscheduled Discrete Organic Chemicals (UDOCs) above specified threshold quantities. The frequency of this collection is the minimum required under the CWC.

*Schedule 1:* The CWC requires initial declarations for facilities that produced in excess of specified aggregate quantities of Schedule 1 chemicals in calendar year 1997, 1998 or 1999.

*Schedule 2:* The CWC requires industry to review production, processing and consumption data from the three previous calendar years to determine whether there is a declaration requirement on past activities.

*Schedule 3:* The CWC requires initial declarations from plant sites that had one or more plants that produced in excess of specified quantities of one or more Schedule 3 chemicals in calendar year 1996.

*UDOCs:* Although the majority of declarations will come from plant sites that produced UDOCs, the declaration requirements for such production involve the fewest forms. The CWC only requires declarations from plant sites that produced UDOCs in excess of specified quantities in the previous calendar year.

BXA officials will review the information collected from the data declarations for completeness and accuracy. The data will then be compiled into a report for transmittal to the USNA and subsequent presentation to the OPCW. The collected data will also be used by BXA officials to monitor the aggregate amount of Schedule 1 chemicals in the United States to ensure that it is at all times below 1 metric ton (as required by Part VI.A.2 of the Convention's Annex on Implementation and Verification), and to prepare such additional reports as the USNA may reasonably require.

*Inspections:* Each State Party to the CWC, including the United States Government, has agreed to allow inspections of certain declared facilities by inspectors employed by the Organization for the Prohibition of Chemical Weapons (OPCW) to ensure that their activities are consistent with obligations under the CWC. The Department of Commerce is responsible for leading, hosting and escorting inspections of all facilities in the United States, except Department of Defense and Department of Energy facilities and other United States Government facilities that notify the USNA of their decision to be excluded from the CWCR.

*Affected Public:* Individuals, businesses or other for-profit institutions.

*Respondent's Obligation:* Mandatory.

*OMB Desk Officer:* David Rostker (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, Office of the Chief Information Officer, (202) 482–3272, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at LEngelme@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20230.

Dated: July 16, 1999.

**Linda Engelmeier,**

*Departmental Forms Clearance Officer, Office of the Chief Information Officer.*

[FR Doc. 99–18779 Filed 7–22–99; 8:45 am]

BILLING CODE 3510–33–P

## DEPARTMENT OF COMMERCE

### Submission for OMB Review; Comment Request

The Department of Commence (DOC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

*Agency:* National Institute of Standards and Technology.

*Title:* Manufacturing Extension Partnership Program Evaluation Pilot Survey.

*Agency Form Number:* None.

*OMB Approval Number:* N/A.

*Type of Request:* New Collection.

*Burden:* 213 hours.

*Number of Respondents:* 850.

*Avg. Hours Per Response:* 15 minutes.

*Needs and Uses:* The Manufacturing Extension Partnership Program is a nationwide network of services and support for smaller manufacturers giving them access to new technologies, resources, and expertise. The goal of the program is to improve the global competitiveness of U.S. manufacturing establishments. This collection will measure the impact of these centers on the nation's manufacturers.

*Affected Public:* Businesses or other for-profit organizations.

*Frequency:* On occasion.

*Respondent's Obligation:* Voluntary.

*OMB Desk Officer:* Virginia Huth, (202) 395–6929.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at LEngelme@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Virginia Huth, OMB Desk Officer, Room 10236, New Executive Office Building, 725 17th Street, NW, Washington, DC 20503.

Dated: July 15, 1999.

**Linda Engelmeier,**

*Departmental Forms Clearance Officer, Office of the Chief Information Officer.*

[FR Doc. 99–18780 Filed 7–22–99; 8:45 am]

**BILLING CODE 3510–13–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–122–833]**

### Amended Preliminary Antidumping Determination: Live Cattle From Canada

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**EFFECTIVE DATE:** July 23, 1999.

**FOR FURTHER INFORMATION CONTACT:** Gabriel Adler or Kris Campbell, Office of AD/CVD Enforcement 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230; telephone (202) 482–1442 or (202) 482–3813, respectively.

### Amendment of Preliminary Determination

The Department of Commerce (the Department) is amending the preliminary determination in the antidumping investigation of live cattle from Canada. This amended preliminary determination results in revised antidumping rates.

On June 30, 1999, the Department issued its affirmative preliminary determination in this proceeding. *See Notice of Preliminary Determination of Sales at Less Than Fair Value: Live Cattle from Canada*, 64 FR 36847 (July 8, 1999). In the preliminary determination, we provided notice that we were considering issuing an amended preliminary determination based on the following facts:

> Immediately prior to the date of the determination (on June 29th and 30th), the respondents filed revised U.S., home market, and cost databases. Our initial examination of the information indicates that, for at least one company, the antidumping rate calculated using such data may differ significantly from the rates listed below. We will examine this data further and, if we find that the errors corrected result in a rate that differs substantially from the rates as calculated for this preliminary determination, we may issue an amended preliminary determination for any such company.

*Id.* at 36848.

On July 1, 1999, we confirmed that the corrections contained in the revised data filed prior to the preliminary determination result in a substantial change to the antidumping rate for one company (Schaus). This company's June 30th filing corrected a number of errors, found in preparing for verification, to the company's U.S., home market, and cost databases, including omissions of cost items that had previously resulted in significantly understated costs prior to the correction of these errors. The company's corrected data results in a change to its antidumping rate from 5.43 percent to 15.69 percent.

On July 12, 1999, Schaus filed a submission indicating that it was ceasing its participation in this investigation. In this submission, Schaus stated that, ''[f]rom the very beginning of this investigation, Schaus has sought to cooperate to the best of its ability'' but that it was unable to continue due to resource constraints. *See* Letter from Schaus Land & Cattle Company to the Department, July 12, 1999, at 1–2. Schaus also stated its intent to withdraw certain information from the record in this investigation, specifying that it wished to withdraw ''its responses to Sections B, C, and D of the Department's questionnaire and its supplemental submissions pertaining to those sections.'' *Id.*

Given that Schaus declined, subsequent to the preliminary determination, to cooperate further in this proceeding, we may determine for the final determination that Schaus will be subject to the facts available. However, their withdrawal after the preliminary determination does not prevent corrections of the preliminary determination to accurately reflect the information on the record at the time it was made. To do otherwise would allow manipulation of the administrative process in a manner that prevents the determination of accurate antidumping rates, and would thwart the proper administration of the antidumping law. Accordingly, we are implementing the corrections referred to in our preliminary determination, based on the significant corrections to errors in Schaus's data as provided in its June 30th submission. In so doing, we have determined that under these facts (*i.e.*, a pre-preliminary correction by the respondent of significant errors as acknowledged in the Department's Notice of Preliminary Determination, which results in a corrected rate that differs substantially from the prior rate, and Schaus's post-preliminary withdrawal of information), correction of the preliminary antidumping duty rate is warranted.

Therefore, we are amending our preliminary determination to revise the antidumping rate for Schaus, along with the corresponding correction to the ''all others'' rate, as listed below. Suspension of liquidation will be revised accordingly and parties shall be notified of this determination, in accordance with sections 733(d) and (f) of the Act.

The revised weighted-average dumping margins are as follows:

| Exporter/producer | Weighted-average margin percentage |
|---|---|
| Cor Van Raay | 4.49 |
| Groenenboom | 3.90 |
| JGL | 3.94 |
| Pound Maker | *0.18 |
| Riverside/Grandview | 6.81 |
| Schaus | 15.69 |
| All Others | 5.57 |

*de minimis.

This determination is published pursuant to sections 733(d) and 777(i)(1) of the Act.

Dated: July 16, 1999.

**Richard W. Moreland,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 99–18855 Filed 7–22–99; 8:45 am]

BILLING CODE 3510–DS–P

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–588–046]**

### Polychloroprene Rubber From Japan: Notice of Rescission of Antidumping Duty Administrative Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of rescission of antidumping duty administrative review.

**SUMMARY:** On January 25, 1999, the Department of Commerce (''the Department'') initiated an administrative review of the antidumping duty order on polychloroprene rubber from Japan for Denki Kagaku Kogyo K.K. (''Denka'') and Tosoh Corporation (''Tosoh''). *See* 64 FR 3682. This review was requested by the petitioner, DuPont Dow Elastomers L.L.C. (''DuPont''), and covers the period December 1, 1997 through November 30, 1998, We are now rescinding this review as a result of DuPont's timely withdrawal of its request for an administrative review for Denka and the non-shipper status of Tosoh.

**EFFECTIVE DATE:** July 23, 1999.

**FOR FURTHER INFORMATION CONTACT:** Nova Daly or Thomas Futtner, Group II, Office 4, Office of AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department 0of Commence, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–0989 or 482–3814, respectively.

**SUPPLEMENTARY INFORMATION:**

#### 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 to the Tariff Act of 1930 (''the Act'') by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations as codified at 19 CFR part 351 (1998).

#### Background

On December 31, 1998, the petitioner, DuPont, requested that the Department conduct an administrative review of the antdumping duty order on polchloroprene rubber from Japan for the period December 1, 1997 through November 30, 1998, covering two producers and/or exporters: Denka and Tosoh. No other interested party requested that the Department conduct an administrative review. We published a notice of initiation of the antidumping duty administrative review for these companies on January 25, 1999 (64 FR 3682).

#### Scope of the Review

Imports covered by this review are shipments of polychloroprene rubber, an oil resistant synthetic rubber also known as polymerized chlorobutadiene or neoprene, currently classifiable under items 4002.42.00, 4002.49.00, 4003.00.00, 4462.15.21 and 4462.00.00 of the *Harmonized Tariff Schedule of the United States* (''HTSUS''). HTSUS item numbers are provided for convenience and for the U.S. Customs Service purposes. The written descriptions remain dispositive.

#### Rescission of 1997/1998 Antidumping Duty Administrative Review

On February 26, 1999, in response to the Department's questionnaire, Tosoh stated that it had made no shipments to the United States of the subject merchandise during the period of review (''POR''). The Department independently confirmed with the U.S. Customs Service that there were no shipments from Tosoh during the POR. Therefore, in accordance with § 351.213(d)(3) of the Department's regulations, and consistent with our practice, we are treating this firm as a non-shipper for purposes of this review, and are rescinding this review with respect to Tosoh (*see, e.g. Certain Welded Carbon Steel Pipe and Tube From Turkey: Final Results and Partial Rescission of Antidumping Administrative Review,*, 63 FR 35190, 35191 (June 29, 1998)). On March 15, 1999, the petitioner filed a letter with the Department withdrawing its request that the Department conduct an administrative review of Denka sales. This withdrawal complies with § 351.213(d)(1) of the Department's regulations which grants parties 90 days from the publication of the notice of initiation of review to withdraw their request for review. Because of the non-shipper status of one company, Tosoh, and DuPont's timely request for the termination of the review for Denka, the Department is rescinding this review in its entirety in accordance with § 351.213(d) of our regulations.

This notice is in accordance with section 751 of the Tariff Act and § 351.213(d) of the Department's regulations.

Dated: July 20, 1999.

**Robert S. LaRussa,**

*Assistant Secretary for Import Administration.*

[FR Doc. 99–18859 Filed 7–22–99; 8:45 am]

BILLING CODE 3510–DS–M

## DEPARTMENT OF COMMERCE

### International Trade Administration

### University of Illinois at U/C; 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, NW, Washington, DC.

*Docket Number:* 99–009. *Applicant:* University of Illinois at U/C, Urbana, IL 61801. *Instrument:* Confocal Microscope Attachment. *Manufacturer:* Witec GmbH, Germany. *Intended Use:* See notice at 64 FR 31540, June 11, 1999.

*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:* This is a compatible accessory for an existing instrument purchased for the use of the applicant. The National Institutes of Health advises in its memorandum dated June 8, 1999, that the accessory is pertinent to the intended uses and that it knows of no comparable domestic accessory.

We know of no domestic accessory which can be readily adapted to the existing instrument.

**Frank W. Creel,**

*Director, Statutory Import Programs Staff.*

[FR Doc. 99–18851 Filed 7–22–99; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

### Application for Duty-Free Entry of Scientific Instrument

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 an instrument of equivalent scientific value, for the purposes for which the instrument shown below is intended to be used, is 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, DC 20230. Application 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, NW, Washington, DC.

*Docket Number:* 99–018. *Applicant:* University of California at Santa Barbara, Santa Barbara, CA 93106. *Instrument:* Electron Microscope, Model JEM–1230. *Manufacturer:* JEOL Ltd., Japan. *Intended Use:* The instrument is intended to be used to carry out research objectives during studies of the following: (1) Adult and Developing Visual System, (2) Age Related Macular Degeneration, (3) Cellular and Molecular Mechanisms in Retinal Detachment, (4) Molecular Structure and Function of Tau Protein, (5) Mechanism of Action of the Anti-tumor Drug Taxol, (6) Dispersion Patterns for Retinal Neuroblasts, (7) Development and Anatomy of the Nematode C. elegans. In addition, the instrument will be used for training graduate students, postdoctoral fellows, faculty and staff. Application accepted by Commissioner of Customs: July 9, 1999.

**Frank W. Creel,**

*Director, Statutory Import Programs Staff.*

[FR Doc. 99–18852 Filed 7–22–99; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF ENERGY

### Environmental Management Site-Specific Advisory Board, Oak Ridge

**AGENCY:** Department of Energy.

**ACTION:** Notice of open meeting.

**SUMMARY:** Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site-Specific Advisory Board (EM SSAB), Oak Ridge.

**DATES:** Wednesday, August 4, 1999 6:00–9:30 p.m.

**ADDRESSES:** Garden Plaza, 215 S. Illinois Avenue, Oak Ridge, TN 37830.

**FOR FURTHER INFORMATION CONTACT:** Marianne Heiskell, Federal Coordinator/Ex-Officio Officer, Department of Energy Oak Ridge Operations Office, P.O. Box 2001, EM–90, Oak Ridge, TN 37831, (423) 576–0314.

**SUPPLEMENTARY INFORMATION:** Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

*Tentative Agenda*

1. Recognition ceremony for outgoing Board members and an orientation for new Board members.
2. The ORSSAB Project Teams will share their FY99 accomplishments.

*Public Participation:* The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Marianne Heiskell at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments at the end of the meeting. This notice is being published less than 15 days before the date of the meeting due to programmatic issues that had to be resolved prior to publication.

*Minutes:* Minutes of this meeting will be available for public review and copying at the Department of Energy's Information Resource Center at 105 Broadway, Oak Ridge, TN between 7:30 a.m. and 5:30 p.m. Monday through Friday, or by writing to Marianne Heiskell, Department of Energy Oak Ridge Operations Office, P.O. Box 2001, EM–90, Oak Ridge, TN 37831, or by calling her at (423) 576–0314.

Issued at Washington, DC on July 20, 1999.

**Rachel M. Samuel,**

*Deputy Advisory Committee Management Officer.*

[FR Doc. 99–18823 Filed 7–22–99; 8:45 am]

**BILLING CODE 6450–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. IC99–585–000, FERC–585]**

### Proposed Information Collection and Request for Comments

July 19, 1999.

**AGENCY:** Federal Energy Regulatory Commission.

**ACTION:** Notice of proposed information collection and request for comments.

**SUMMARY:** In compliance with the requirements of section 3506(c)(2)(a) of the Paperwork Reduction Act of 1195 (Pub. L. 104–13), the Federal Energy Regulatory Commission (Commission) is soliciting public comment on the specific aspects of the information collection described below.

**DATES:** Consideration will be given to comments submitted on or before September 21, 1999.

**ADDRESSES:** Copies of the proposed collection of information can be obtained from and written comments may be submitted to the Federal Energy Regulatory Commission, Attn: Michael Miller, Office of the Chief Information Officer, CI–1, 888 First Street NE, Washington, DC 20426.

**FOR FURTHER INFORMATION CONTACT:** Michael Miller may be reached by telephone at (202) 208–1415, by fax at (202) 208–2425, and by e-mail at mmiller@ferc.fed.us.

**SUPPLEMENTARY INFORMATION:**

*Abstract:* The information collected under the requirements of FERC–585 ''Reporting of Electric Energy Shortages and Contingency Plans under PURPA 206'' (OMB No. 1902–0138) is used by the Commission to implement the statutory provisions of sections 206 of the Public Utility Regulatory Policies Act of 1979 (PURPA) Pub. L. 95–617, 92 Stat. 3117 added to the Federal Power Act (FPA) section 202, subsection (g). FPA section 202(g) requires the Commission to establish rules requiring each public utility to report to FERC and appropriate State regulatory authorities any anticipated shortage of electric energy or capacity which would affect

the utility's ability to serve its wholesale customers; and submit to the Commission and the appropriate State regulatory authority, and periodically revise contingency plans respecting shortages of electric energy or capacity which would equitably accommodate service to both direct retail customers and those served by utilities supplied at wholesale by the public utility.

The Commission uses the information to evaluate and formulate appropriate options for action in the event an anticipated shortage is reported and/or materializes. The Commission implements these filing requirements in the Code of Federal Regulations (CFR) under 18 CFR Part 294.

*Action:* The Commission is requesting a three-year extension of the current expiration date, with no changes to the existing collection of data.

*Burden Statement:* Public reporting burden for this collection is estimated as:

| Number of respondents annually (1) | Number of responses per respondent (2) | Average burden hours per response (3) | Total annual burden hours (1)×(2)×(3) |
|---|---|---|---|
| 7 | 1 | 73 | 511 |

Estimated cost burden to respondents: 511 hours / 2,080 hours per year × $109,889 per year = $26,997.

The reporting burden includes the total time, effort, or financial resources expended to generate, maintain, retain, disclose, or provide the information including: (1) Reviewing instructions; (2) developing, acquiring, installing, and utilizing technology and systems for the purposes of collecting, validating, verifying, processing, maintaining, disclosing and providing information; (3) adjusting the existing ways to comply with any previously applicable instructions and requirements; (4) training personnel to respond to a collection of information; (5) searching data sources; (6) completing and reviewing the collection of information; and (7) transmitting, or otherwise disclosing the information.

The estimate of cost for respondents is based upon salaries for professional and clerical support, as well as direct and indirect overhead costs. Direct costs include all costs directly attributable to providing this information, such as administrative costs and the cost for information technology. Indirect or overheard costs are costs incurred by an organization in support of its mission. These costs apply to activities which benefit the whole organization rather than any one particular function or activity.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to 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 submission of responses.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 99–18785 Filed 7–22–99; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Project No. 2689–021]**

## N.E.W. Hydro, Inc.; Meeting

July 19, 1999.

Take notice that Commission staff will be at the Oconto Falls Project (Project No. 2689) on August 4, 1999, to conduct a site visit. This site visit concerns N.E.W. Hydro, Inc.'s (licensee) request for an amendment of article 401 of the license, filed with the Commission on May 26, 1999. The site visit is scheduled to begin at 10 a.m. Expected participants need to contact Mr. Loyal Gake at (920) 293–4628, or Diana Shannon at (202) 208–7774. For further information, please contact Diana Shannon at the number above.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 99–18788 Filed 7–22–99; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. EG99–157–000, et al.]**

## Minergy Neenah, L.L.C., et al.; Electric Rate and Corporate Regulation Filings

July 16, 1999.

Take notice that the following filings have been made with the Commission:

### 1. Minergy Neenah, L.L.C.

[Docket No. EG99–157–000]

Take notice that on July 13, 1999, Minergy Neenah, L.L.C. amended its application to clarify which electric utility companies are affiliated companies.

*Comment date:* August 6, 1999, in accordance with Standard Paragraph E at the end of this notice.

### 2. Astoria Gas Turbine Power LLC

[Docket No. EG99–167–000]

Take notice that on July 12, 1999, Astoria Gas Turbine Power LLC filed with the Federal Energy Regulatory Commission an amendment to its application for determination of exempt wholesale generator status pursuant to section 32(a)(1) of the Public Utility Holding Company Act of 1935 (PUHCA). The amendment provided a clarified explanation of the company's affiliations with electric utility companies.

*Comment date:* August 6, 1999, in accordance with Standard Paragraph E at the end of this notice.

### 3. Okeechobee Generating Company

[Docket No. EG99–188–000]

On July 13, 1999, Okeechobee Generating Company (Okeechobee), a limited liability corporation with its principal place of business at 7500 Old Georgetown Road, Bethesda, MD 20814, filed with the Federal Energy Regulatory Commission an application for

determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

Okeechobee proposes to construct, own and operate a nominally rated 500 MW natural gas-fired, combined cycle power plant in Okeechobee County, Florida. The proposed power plant is expected to commence commercial operation in the Spring of 2003. All capacity and energy from the plant will be sold exclusively by Okeechobee at wholesale.

*Comment date:* August 6, 1999, in accordance with Standard Paragraph E at the end of this notice.

**4. Lone Star Steel Sales Company**

[Docket No. EG99–189–000]

On July 13, 1999, Lone Star Steel Sales Company (LSSS), P.O. Box 803546, Dallas, Texas 75380, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

LSSS is a Delaware corporation with its principal place of business in Dallas, Texas. LSSS is engaged exclusively in the business of owning or operating an eligible facility selling electric energy at wholesale. The eligible facility consists of 15 MW of gas-fired generation located in Northeast Texas that is entirely within the certificated service area of Southwestern Electric Power Company (SWEPCO).

*Comment date:* August 6, 1999, in accordance with Standard Paragraph E at the end of this notice.

**5. Indeck-Yerkes Limited Partnership**

[Docket No. EG99–190–000]

On July 13, 1999, Indeck-Yerkes Limited Partnership (Indeck-Yerkes) filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations. Indeck-Yerkes is a Delaware limited partnership created for the purpose of owning and/or operating a 53 MW cogeneration facility located in Tonawanda, New York (the Facility).

The Facility is a topping cycle, natural gas and No. 2 oil-fueled, combined cycle cogeneration plant. It is an ''eligible facility'' within the meaning of section 32(a)(2) of the Public Utility Holding Company Act of 1935 because it will be used for the generation of electric energy exclusively for sale at wholesale.

*Comment date:* August 6, 1999, in accordance with Standard Paragraph E at the end of this notice.

**6. Indeck-Yerkes Energy Services, Inc.**

[Docket No. EG99–191–000]

On July 13, 1999, Indeck-Yerkes Energy Services, Inc. , filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations. Indeck-Yerkes is an Illinois corporation created for the sole purpose of operating a 53 MW cogeneration facility located in Tonawanda, New York (the Facility).

The Facility is a topping cycle, natural gas and No. 2 oil-fueled, combined cycle cogeneration plant. It is an ''eligible facility'' within the meaning of section 32(a)(2) of the Public Utility Holding Company Act of 1935 because it will be used for the generation of electric energy exclusively for sale at wholesale.

*Comment date:* August 6, 1999, in accordance with Standard Paragraph E at the end of this notice.

**7. Indeck-Oswego Limited Partnership**

[Docket No. EG99–192–000]

On July 13, 1999, Indeck-Oswego Limited Partnership (Indeck-Oswego), filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations. Indeck-Oswego is an Illinois limited partnership created for the purpose of owning and/or operating a 54 MW cogeneration facility located in Oswego, New York (the Facility).

The Facility is a topping cycle, natural gas and No. 2 oil-fueled, combined cycle cogeneration plant. It is an ''eligible facility'' within the meaning of section 32(a)(2) of the Public Utility Holding Company Act of 1935 because it will be used for the generation of electric energy exclusively for sale at wholesale.

*Comment date:* August 6, 1999, in accordance with Standard Paragraph E at the end of this notice.

**8. Indeck Energy Services of Ilion, Inc.**

[Docket No. EG99–193–000]

On July 13, 1999, Indeck Energy Services of Ilion, Inc. (Applicant), filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations. The Applicant is an Illinois corporation created for the sole purpose of operating a 58 MW cogeneration facility located in Ilion, New York (the Facility).

The Facility is a topping cycle, natural gas and No. 2 oil-fueled, combined cycle cogeneration plant. It is an ''eligible facility'' within the meaning of section 32(a)(2) of the Public Utility Holding Company Act of 1935 because it will be used for the generation of electric energy exclusively for sale at wholesale.

*Comment date:* August 6, 1999, in accordance with Standard Paragraph E at the end of this notice.

**9. Indeck-Ilion Limited Partnership**

[Docket No. EG99–194–000]

On July 13, 1999, Indeck-Ilion Limited Partnership (Indeck-Ilion), filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations. Indeck-Ilion is an Illinois limited partnership created for the purpose of owning and/or operating a 58 MW cogeneration facility located in Ilion, New York (the Facility).

The Facility is a topping cycle, natural gas and No. 2 oil-fueled, combined cycle cogeneration plant. It is an ''eligible facility'' within the meaning of section 32(a)(2) of the Public Utility Holding Company Act of 1935 because it will be used for the generation of electric energy exclusively for sale at wholesale.

*Comment date:* August 6, 1999, in accordance with Standard Paragraph E at the end of this notice.

**10. Indeck Energy Services of Oswego, Inc.**

[Docket No. EG99–195–000]

On July 13, 1999, Indeck Energy Services of Oswego, Inc. filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations. Indeck Energy Services of Oswego, Inc. is an Illinois corporation created for the sole purpose of operating a 54 MW cogeneration facility located in Oswego, New York (the Facility).

The Facility is a topping cycle, natural gas and No. 2 oil-fueled, combined cycle cogeneration plant. It is an ''eligible facility'' within the meaning of section 32(a)(2) of the Public Utility Holding Company Act of 1935 because it will be used for the generation of electric energy exclusively for sale at wholesale.

*Comment date:* August 6, 1999, in accordance with Standard Paragraph E at the end of this notice.

**11. Tractebel Energy Marketing, Inc.; Cogentrix Energy Power Marketing, Inc.; South Jersey Energy Company, and CHI Power Marketing, Inc.**

[Docket Nos. ER94–142–023; ER95–1739–016; ER97–1397–006 and ER96–2640–011]

Take notice that on July 12, 1999, the above-mentioned power marketers filed quarterly reports with the Commission in the above-mentioned proceedings for information only. These filings are available for public inspection and copying in the Public Reference Room or on the web at www.ferc.fed.us/online/rims.htm for viewing and downloading (call 202–208–2222 for assistance).

**12. Tennessee Power Company; EMC Gas Transmission Company; Lambda Energy Marketing Company; AMVEST Power, Inc.; ER97–2045–009; American Power Exchange, Inc.; Clearinghouse Corporation; TexPar Energy, Inc.; PowerTec International, LLC; and J. L. Walker & Associates**

[Docket Nos. ER95–581–017; ER96–2320–012; ER94–1672–018; ER94–1578–019; ER98–2020–004; ER95–62–018; ER96–1–015 and ER95–1261–016]

Take notice that on July 12, 1999, the above-mentioned power marketers filed quarterly reports with the Commission in the above-mentioned proceedings for information only. These filings are available for public inspection and copying in the Public Reference Room or on the web at www.ferc.fed.us/online/rims.htm for viewing and downloading (call 202–208–2222 for assistance).

**13. Energy Transfer Group, L.L.C.; AMVEST Coal Sales, Inc.; Symmetry Devise Research, Inc.; Power Exchange Corporation; ICC Energy Corporation; Superior Electric Power Corporation; InterCoast Power Marketing Company; and DC Tie, Inc.**

[Docket Nos. ER96–280–014; ER97–464–011; ER96–2524–006; ER95–72–019; ER96–1819–011; ER95–1747–015; ER94–6–014 and ER91–435–030]

Take notice that on July 13, 1999, the above-mentioned power marketers filed quarterly reports with the Commission in the above-mentioned proceedings for information only. These filings are available for public inspection and copying in the Public Reference Room or on the web at www.ferc.fed.us/online/rims.htm for viewing and downloading (call 202–208–2222 for assistance).

**14. Illinova Power Marketing, Inc.**

[Docket No. ER99–3208–000]

On July 13, 1999, Illinova Power Marketing, Inc., filed an amendment to its June 11, 1999 application requesting approval of a proposed market-based rate tariff, waiver of certain regulations, and blanket approvals, and for specific approval of a power purchase agreement.

*Comment date:* August 2, 1999, in accordance with Standard Paragraph E at the end of this notice.

**15. Lakewood Cogeneration, LP**

[Docket No. ER99–3542–000]

Take notice that on July 12, 1999, the above-mentioned affiliated power producer filed its quarterly report for the quarter ending June 30, 1999.

*Comment date:* July 30, 1999, in accordance with Standard Paragraph E at the end of this notice.

**16. Great Bay Power Corporation**

[Docket No. ER99–3552–000]

Take notice that on July 13, 1999, Great Bay power Corporation (Great Bay), tendered for filing a service agreement between PP&L, Inc. and Great Bay for service under Great Bay's revised Tariff for Short Term Sales. This Tariff was accepted for filing by the Commission on July 24, 1999, in Docket No. ER98–3470–000. The service agreement is proposed to be effective July 8, 1999.

*Comment date:* August 2, 1999, in accordance with Standard Paragraph E at the end of this notice.

**17. American REF–FUEL Company of Essex County**

[Docket No. ER99–3553–000]

Take notice that American REF–FUEL Company of Essex County (REF–FUEL/Essex), owner of a qualifying small power production facility located in Newark, New Jersey, on July 13, 1999, tendered for filing proposed changes in its Rate Schedule FERC No. 1, Supplement No. 2. Under the proposed new rate schedule, the rates charged by REF–UEL/Essex for capacity and energy sold to Public Service Electric and Gas Company would be lower than the rates currently in effect.

Copies of this filing were served upon the jurisdictional customers and the New Jersey Board of Public Utilities.

*Comment date:* August 2, 1999, in accordance with Standard Paragraph E at the end of this notice.

**18. Lone Star Steel Sales Company**

[Docket No. ER99–3554–000]

Take notice that on July 13, 1999, Lone Star Steel Sales Company (LSSS), petitioned the Commission for acceptance of Lone Star Steel Sales Company Rate Schedule FERC No. 1, the granting of certain blanket approvals, including the authority to sell electricity at market-based rates, and the waiver of certain Commission regulations.

LSSS intends to engage in wholesale electric power and energy purchases and sales as market-based rates. LSSS is an Exempt Wholesale Generator (EWG) with a total of 15 MW of generation, located in Northeast Texas. LSSS is a wholly owned subsidiary of Lone Star Steel Company which is primarily in the business of producing tubular steel products.

*Comment date:* August 2, 1999, in accordance with Standard Paragraph E at the end of this notice.

**19. Florida Power & Light Company**

[Docket No. ER99–3555–000]

Take notice that on July 13, 1999, Florida Power & Light Company (FPL), tendered for filing proposed service agreements with Florida Power & Light Company—Energy Marketing and Trading Division for Short-Term Firm transmission service under FPL's Open Access Transmission Tariff.

FPL requests that the proposed service agreement be permitted to become effective on July 1, 1999

FPL states that this filing is in accordance with section 35 of the Commission's regulations.

*Comment date:* August 2, 1999, in accordance with Standard Paragraph E at the end of this notice.

**20. Louisville Gas and Electric Company/Kentucky Utilities Company**

[Docket No. ER99–3556–000]

Take notice that on July 13, 1999, Louisville Gas and Electric Company/Kentucky Utilities (LG&E/KU), tendered for filing an executed Service Agreement for Firm Point-To-Point Transmission Service between LG&E/KU and West Penn Power Company d/b/a Allegheny Energy under LG&E/KU's Open Access Transmission Tariff.

*Comment date:* August 2, 1999, in accordance with Standard Paragraph E at the end of this notice.

**21. Bangor Hydro-Electric Company**

[Docket No. ER99–3557–000]

Take notice that on July 13, 1999, Bangor Hydro-Electric Company filed an executed service agreement for market-based sales with Reliant Energy Services, Inc.

*Comment date:* August 2, 1999, in accordance with Standard Paragraph E at the end of this notice.

**22. PP&L, Inc.**

[Docket No. ER99–3558–000]

Take notice that on July 13, 1999, the above-mentioned public utility filed its

quarterly report for the quarter ending June 30, 1999.

*Comment date:* August 2, 1999, in accordance with Standard Paragraph E at the end of this notice.

**23. W. Hayne Hipp**

[Docket No. ID–2271–001]

Take notice that on July 9, 1999, W. Hayne Hipp filed an executed Application under section 305(b) of the Federal Power Act For Authorization to Hold Interlocking Positions as a director of SCANA Corporation and Wachkovia Corporation.

*Comment date:* August 9, 1999, in accordance with Standard Paragraph E at the end of this notice.

**Standard Paragraphs**

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/ online/rims.htm (call 202–208–2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 99–18786 Filed 7–22–99; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

## Notice of Intent To File Application for New License

July 19, 1999.

a. *Type of filing:* Notice of Intent to File Application for a New License.

b. *Project No.:* 201.

c. *Date filed:* July 7, 1999.

d. *Submitted By:* Petersburg Municipal Power and Light.

e. *Name of Project:* Blind Slough Project.

f. *Location:* On Crystal Creek, Mitkof Island, near the City of Petersburg, Alaska.

g. *Filed Pursuant to:* 18 CFR 16.6 of the Commission's regulations.

h. *Effective date of current license:* June 1, 1980.

i. *Expiration date of current license:* November 12, 2004.

j. *The project consists of:* (1) a 32-foot high by 205-foot long rockfill dam; (2) an ungated side-channel spillway; (3) Crystal Lake Reservoir, with approximately 4,450 acre-feet of active storage and a surface area of 233 acres at spillway crest elevation 1,294 feet msl; (4) a 4,642-foot long, 20-inch diameter steel penstock; (5) two powerhouses containing generating units with rated capacities of 1,600 kW and 400 kW; and (6) other facilities and interests appurtenant to operation of the project.

k. *Pursuant to 18 CFR 16.7 information on the project is available at:* Dennis Lewis, Superintendent, Petersburg Municipal Power and Light, P.O. Box 329, 11 South Nordic, Petersburg, AK 99833, (907) 772–4203.

l. *FERC contact:* Vince Yearick, 202–219–3073 or vince.yearick@ferc.fed.us.

m. Pursuant to 18 CFR 16.8, 16.9, and 16.10 each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by November 12, 2002.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 99–18787 Filed 7–22–99; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

## Amendment To License, and Soliciting Comments, Motions To Intervene, and Protests

July 19, 1999.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Amendment to License.

b. *Project No.:* 2306–024.

c. *Date Filed:* June 18, 1999.

d. *Applicant:* Citizens Utilities Company.

e. *Name of Project:* Clyde River Hydroelectric Project.

f. *Location:* On the Clyde River in Orleans County, Vermont. The project does not utilize federal or tribal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Kevin Perry, Citizens Utilities Company, Citizens Road, Newport, VT 05855, (802) 334–0326.

i. *FERC Contact:* Any questions on this notice should be addressed to Frankie Green at (202) 501–7704, or e-mail address: frankie.green@ferc.fed.us.

j. *Deadline for filing comments and or motions:* August 23, 1999.

All documents (original and eight copies) should be filed with David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

Please include the project number (2306–024) on any comments or motions filed.

k. *Description of Proposal.* The applicant proposes modifications in both the Seymour Lake and Echo Lake Dams in order to utilize the spillways to help regulate lake levels. The applicant would lower spillway crests at both dams to facilitate run-of-river operations and to leave existing gates open one inch to provide continuous river flow. Provisions for the installation of flashboards on the lowered spillways have been made allowing the dams to be operated under the current mode of operation, if desired. At the Seymour Dam, the existing timber crib with concrete cap would be replaced with a new concrete gravity type structure. To compensate for the lost gate, the discharge capacity at Seymour Dam the Spillway length would be increased to include the area of the existing abutment wall.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. This filing may be viewed on http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211,.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments,

protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 99–18789 Filed 7–22–99; 8:45 am]

**BILLING CODE 6717–01–M**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

## Non-Project Use of Project Lands and Waters and Soliciting Comments, Motions To Intervene, and Protests

July 19, 1999.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Non-Project Use of Project Lands and Waters.

b. *Project No:* 2503–051.

c. *Date Filed:* June 4, 1999.

d. *Applicant:* Duke Energy Corporation.

e. *Name of Project:* Keowee & Jocassee Hydroelectric Project.

f. *Location:* Adjacent to Outerbanks of Keowee Resorts and Marina, on Lake Keowee, in Pickens County, South Carolina. The project does not utilize federal or tribal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *FERC Contact:* Mr. E.M. Oakley, Duke Energy Corporation, P.O. Box 1006 (EC12V), Charlotte, NC 28201–1006, (704) 382–5778.

i. *FERC Contact:* Any questions on this notice should be addressed to Brian Romanek at (202) 219–3076, or e-mail address: brian.romanek@ferc.fed.us.

j. *Deadline for filing comments and or motions:* August 30, 1999.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington DC 20426.

Please include the project number (2503–051) on any comments or motions filed.

k. *Description of Proposal:* Duke Energy Corporation proposes to lease to Outerbanks, Inc., a 1.62-acre parcel within the bed of Lake Keowee for the construction of a commercial/residential marina. This facility will include 5 piers with a total of 56 boat slips. The facility is intended to provide boating access for renters of cabins and townhomes that are part of the Outerbanks of Keowee Resorts & Marina facility. No dredging is proposed in conjunction with this application.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. This filing may be viewed on http://www.ferc.fed.us /online/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITION'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 99–18790 Filed 7–22–99; 8:45 am]

**BILLING CODE 6717–01–M**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

## Application Accepted for Filing and Soliciting Motions To Intervene and Protests

July 19, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* P–11735–000.

c. *Date filed:* April 26, 1999.

d. *Applicant:* Universal Electric Power Corporation.

e. *Name of Project:* Red River Lock and Dam No. 5 Hydro Project.

f. *Location:* At the existing U.S. Army Corps of Engineers' Red River Lock and Dam No. 5 on the Red River, near the Town of Coushatta, Bossier County, Louisiana.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contact:* Mr. Ronald S. Feltenberger, Universal Electric Power Corp, 1145 Highbrook Street, Akron, Ohio 44301, (330) 535–7115.

i. *FERC Contact:* Ed Lee (202) 219–2809 or E-mail address at Ed.Lee@FERC.fed.us.

j. *Deadline for filing motions to intervene and protests:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. This application is not ready for environmental analysis at this time.

l. *Description of Project:* The proposed project would utilize the existing U.S. Army Corps of Engineers' Red River Lock and Dam No. 5, and would consist of the following facilities: (1) Five new steel penstocks, each about 100-foot-long and 12-foot-in-diameter; (2) a new powerhouse to be constructed on the downstream side of the dam having an installed capacity of 19,800 kilowatts; (3) a new 300-foot-long, 14.7-kilovolt transmission line; and (4) appurtenant facilities. The proposed average annual generation is estimated to be 121 gigawatthours. The cost of the studies under the permit will not exceed $2,200,000.

m. *Available Locations of Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 888 First Street, NE, Room 2–A, Washington, DC 20426, or by calling (202) 219–1371. A copy is also available for inspection and reproduction at Universal Electric Power Corp., Mr. Ronald S. Feltenberger, 1145 Highbrook Street, Akron, Ohio 44301, (330) 535–7115. A copy of the application may also be viewed or printed by accessing the Commission's website on the Internet at http://www.ferc.fed.us/online/rims.htm or call (202) 208–2222 for assistance.

n. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application maybe may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 99–18791 Filed 7–22–99; 8:45 am]

**BILLING CODE 6717–01–M**

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

## Application Accepted for Filing and Soliciting Motions To Intervene and Protests

July 19, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* P–11737–000.

c. *Date filed:* April 26, 1999.

d. *Applicant:* Universal Electric Power Corporation.

e. *Name of Project:* Red River Lock and Dam No. 4 Hydro Project.

f. *Location:* At the existing U.S. Army Corps of Engineers' Red River Lock and Dam No. 4 on the Red River, near the

town of Powhatan, Red River County, Louisiana.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Ronald S. Feltenberger, Universal Electric Power Corp., 1145 Highbrook Street, Akron, Ohio 44301, (330) 535–7115.

i. *FERC Contact:* Ed Lee (202) 219–2809 or E-mail address at Ed.Lee@FERC.fed.us.

j. *Deadline for filing motions to intervene and protests:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. This application is not ready for environmental analysis at this time.

l. *Description of Project:* The proposed project would utilize the existing U.S. Army Corps of Engineers' Red River Lock and Dam No. 4, and would consist of the following facilities: (1) Five new steel penstocks, each about 100-foot-long and 10.5-foot-in-diameter; (2) a new powerhouse to be constructed on the downstream side of the dam having an installed capacity of 27,000 kilowatts; (3) a new 300-foot-long, 14.7-kilovolt transmission line; and (4) appurtenant facilities. The proposed average annual generation is estimated to be 166 gigawatt hours. The cost of the studies under the permit will not exceed $3,000,000.

m. *Avialable Locations of Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 888 First Street, NE, Room 2–A, Washington, DC 20426, or by calling (202) 219–1371. A copy is also available for inspection and reproduction at Universal Electric Power Corp., Mr. Ronald S. Feltenberger, 1145 Highbrook Street, Akron, Ohio 44301, (330) 535–7115. A copy of the application may also be viewed or printed by accessing the Commission's website on the Internet at http://www.ferc.fed.us/online/rims.htm or call (202) 208–2222 for assistance.

n. Individual desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'' ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 99–18792 Filed 7–22–99; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

## Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

July 19, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 11764–000.

c. *Date Filed:* June 14, 1999.

d. *Applicant:* Universal Electric Power Corporation.

e. *Name of Project:* Mississippi Lock and Dam No. 22 Hydroelectric Project.

f. *Location:* On the Mississippi River near the town of Ashburn, in Ralls County, Missouri, and near the town of Kinderhook, in Pike County, Illinois. The project would utilize the U.S. Army Corps of Engineers Mississippi Lock and Dam No. 22 and reservoir.

g. *Filed Pursuant to:* Federal Power Act, 16 USC 791(a)–825(r).

h. *Applicant Contact:* Gregory S. Feltenberger, Universal Electric Power Corporation, 1145 Highbrook Street, Akron, Ohio 44301, (330) 535–7115.

i. *FERC Contact:* Tom Dean, thomas.dean@ferc.fed.us, 202–219–2778.

j. *Deadline for Filing Comments, Motions to Intervene, and Protests:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedures require all intervenors filing documents with the Commission to serve a copy of the document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that affects the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. The project would be located at the existing U.S. Army Corps of Engineers Mississippi Lock and Dam No. 22 and would consist of the following proposed facilities: (1) Eight 80-foot-long, 108-inch-diameter penstocks; (2) a powerhouse on the downstream side of the dam housing eight turbine generating units with a total installed capacity of 10.0 MW; (3) a tailrace discharge apron; (4) a 200-foot-long, 14.7 kV transmission line; and (5) other appurtenances.

Applicant estimates that the average annual generation would be 61,000 MWh and that the cost of the studies under the permit would be $2,000,000.

l. A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

Proposed Scope of Studies Under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

Comments, Protests, or Motions to intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 99–18793 Filed 7–22–99; 8:45 am]

**BILLING CODE 6717–01–M**

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

## Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

July 19, 1999.

Take notice that the following hydroelectric application has been filed

with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 11765–000.

c. *Date Filed:* June 15, 1999.

d. *Applicant:* Universal Electric Power Corporation.

e. *Name of Project:* Lock A Hydroelectric Project.

f. *Location:* On the Tombigbee River near the town of Amory, in Monroe County, Mississippi. The project would utilize the U.S. Army Corps of Engineers Lock A and reservoir.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Gregory S. Feltenberger, Universal Electric Power Corporation, 1145 Highbrook Street, Akron, Ohio 44301, (330) 535–7115.

i. *FERC Contact:* Tom Dean, thomas.dean@ferc.fed.us, 202–219–2778.

j. *Deadline for Filing Comments, Motions to Intervene, and Protests:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedures require all intervenors filing documents with the Commission to serve a copy of the document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. The project would be located at the existing U.S. Army Corps of Engineers Lock A and would consist of the following proposed facilities: (1) One 240-foot-long, 96-inch-diameter penstock; (2) a powerhouse on the downstream side of the dam housing a single turbine generating unit with an installed capacity of 1.35 MW; (3) a tailrace discharge apron; (4) a 500-foot-long, 14.7 kV transmission line; and (5) other appurtenances.

Applicant estimates that the average annual generation would be 8,200 MWh and that the cost of the studies under the permit would be $600,000.

l. A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent (allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

Preliminary Permit—Any qualified development applicant, desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

Proposed Scope of Studies Under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 99–18794 Filed 7–22–99; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

## Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

July 19, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 11766–000.

c. *Date Filed:* June 18, 1999.

d. *Applicant:* Universal Electric Power Corporation.

e. *Name of Project:* Mississippi Lock and Dam No. 5 Hydroelectric Project.

f. *Location:* On the Mississippi River near Minnesota City, in Winona County, Minnesota, and near Fountain City, in Buffalo County, Wisconsin. The project would utilize the U.S. Army Corps of Engineers Mississippi Lock Dam No. 5 and reservoir.

g. *Filed Pursuant to :* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Gregory S. Feltenberger, Universal Electric Power Corporation, 1145 Highbrook Street, Akron, Ohio 44301, (330) 535–7115.

i. *FERC Contact:* Tom Dean, thomas.dean@ferc.fed.us, 202–219–2778.

j. *Deadline for Filing Comments, Motions to Intervene, and Protests:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedures require all intervenors filing documents with the Commission to serve a copy of the document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. The project would be located at the existing U.S. Army Corps of Engineers Mississippi Lock and Dam No. 5 and would consist of the following proposed facilities: (1) Six 80-foot-long, 96–inch-diameter penstocks; (2) a powerhouse on the downstream side of the dam housing six turbine generating units with a total installed capacity of 10.0 MW; (3) a tailrace discharge apron; (4) a 200-foot-long, 14.7 kV transmission line; and (5) other appurtenances.

Applicant estimates that the average annual generation would be 61,000 MWh and that the cost of the studies under the permit would be $2,000,000.

l. A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. This filing may be viewed on the web at http:www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction at the address in items above.

Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before, the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans—and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.20, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. An additional copy must be sent to Director, Division of Protest Review, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an Agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 99–18795 Filed 7–22–99; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

## Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

July 19, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 11767–000.

c. *Date Filed:* June 21, 1999.

d. *Applicant:* Universal Electric Power Corporation.

e. *Name of Project:* Mississippi Lock and Dam No. 6 Hydroelectric Project.

f. *Location:* On the Mississippi River near the town of Trempealeau, in Trempealeau County, Wisconsin, and near the town of Winona, in Winona County, Minnesota. The project would utilize the U.S. Army Corps of Engineers Mississippi Lock and Dam No. 6 and reservoir.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Gregory S. Feltenberger, Universal Electric Power Corporation, 1145 Highbrook Street, Akron, Ohio 44301, (330) 535–7115.

i. *FERC Contact:* Tom Dean, thomas.dean@ferc.fed.us, 202–219–2778.

j. *Deadline for Filing Comments, Motions to Intervene, and Protests:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedures require all intervenors filing documents with the Commission to serve a copy of the document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. The project would be located at the existing U.S. Army Corps of Engineers Mississippi Lock and Dam No. 6 and would consist of the following proposed facilities: (1) Eight 80-foot-long, 96-inch-diameter penstocks; (2) a powerhouse on the downstream side of the dam housing eight turbine generating units with a total installed capacity of 10.8 MW; (3) a tailrace discharge apron; (4) a 4-mile-long, 14.7 kV transmission line; and (5) other appurtenances.

Applicant estimates that the average annual generation would be 66,000 MWh and that the cost of the studies under the permit would be $2,000,000.

l. A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) name in this public notice.

Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party of the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 99–18796 Filed 7–23–99; 8:45 am]

BILLING CODE 6717–01–M

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

## Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

July 19, 1999.

Take notice that the following hydroelectric application has been filed

with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 11768–000.

c. *Date Filed:* June 21, 1999.

d. *Applicant:* Universal Electric Power Corporation.

e. *Name of Project:* H.K. Thatcher Lock and Dam Hydroelectric Project.

f. *Location:* On the Ouachita River near the towns of El Dorado and Calion, in Union County, Arkansas. The project would utilize the U.S. Army Corps of Engineers H.K. Thatcher Lock and Dam and reservoir.

g. *Filed Pursuant to:* Federal Power Act, 16 USC 791(a)–825(r).

h. *Applicant Contact:* Gregory S. Feltenberger, Universal Electric Power Corporation, 1145 Highbrook Street, Akron, Ohio 44301, (330) 535–7115.

i. *FERC Contact:* Tom Dean, thomas.dean@ferc.fed.us, 202–219–2778.

j. *Deadline for Filing Comments, Motions To Intervene, and Protests:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedures require all intervenors filing documents with the Commission to serve a copy of the document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. The project would be located at the existing U.S. Army Corps of Engineers H.K. Thatcher Lock and Dam and would consist of the following proposed facilities: (1) Two 240-foot-long, 96-inch-diameter penstocks; (2) a powerhouse on the downstream side of the dam housing two turbine generating units with a total installed capacity of 3.0 MW; (3) a tailrace discharge apron; (4) a 500-foot-long, 14.7 kv transmission line; and (5) other appurtenances.

Applicant estimates that the average annual generation would be 18,000 MWh and that the cost of the studies under the permit would be $1,000,000.

l. A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. This filing may be viewed on the web at http://www.ferc. fed.us/online/rims.htm (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

Proposed Scope of Studies Under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 99–18797 Filed 7–22–99; 8:45 am]

**BILLING CODE 6717–01–M**

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

## Application Tendered for Filing With the Commission and Soliciting Additional Requests

July 19, 1999.

Take notice that the following hydroelectric application has been filed

with the Commission and is available for public inspection:

a. *Type of Application:* Exemption (Less than 5 MW).

b. *Project No.:* 11784–000.

c. *Date filed:* June 28, 1999.

d. *Applicant:* Wynning Resources Roanoak Limited Partnership.

e. *Name of Project:* Roanoak Hydroelectric Project.

f. *Location:* On Howard's Fork of the San Miguel River, San Miguel County, Colorado.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant:* Mr. E. Lee Wynne, President, Wynning Resources, Inc., 4710 Kannah Creek Road, Whitewater, CO 81527, Phone (970) 243–8284.

i. *FERC Contact:* M. Charlene Scott, charlene.scott@ferc.fed.us, 202–219–2817.

j. *Deadline for Filing Additional Study Request:* August 27, 1999.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. This application is not ready for environmental analysis at this time.

l. The proposed project would consist of: (1) A diversion structure; (2) a 3,500-foot-long, 12-inch-diameter PVC penstock; (3) a powerhouse with an installed capacity of 325 kilowatts; and (4) other appurtenances.

m. A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. The application may be viewed on http://www.ferc.fed.us/rims.htm (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

n. With this notice, we are initiating consultation with the State Historic Preservation Officer as required by § 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR 800.4.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 99–18798 Filed 7–22–99; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

## Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

July 19, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 11778–000.

c. *Date Filed:* June 28, 1999.

d. *Applicant:* Universal Electric Power Corporation.

e. *Name of Project:* Mississippi Lock and Dam #5A Hydroelectric Project.

f. *Location:* On Mississippi River, Winona County, Minnesota. The project would utilize the U.S. Army Corps of Engineers, Mississippi Lock and Dam #5A.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Gregory S. Feltenberger, Universal Electric Power Corporation, 1145 Highbrook Street, Akron, OH 44301, (330) 535–7115.

i. *FERC Contact:* Héctor M. Pérez, hector.perez@ferc.fed.us, 202–219–2843, or robert.bell@ferc.fed.us, 202–219–2806.

j. *Deadline for Filing Motions To Intervene, Protest and Comments:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. The project would use the U.S. Army Corps of Engineer's Mississippi Lock and Dam #5A and would consist of the following facilities: Five new 80-foot-long, 96-inch-diameter penstocks at the outlet works; (2) a new powerhouse containing five generating units having a total installed capacity of 6 MW; (3) a new tailrace; (4) a new 300-foot-long, 14.7-KV transmission line; and (5) other appurtenances.

The project would have an annual generation of 37,000 MWh and project power would be sold to a local utility.

l. A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 208–1371. The application may be viewed on http://www.ferc.fed.us/rims.htm (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be

served on the applicant(s) named in this public notice.

Proposed Scope of Studies Under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST, MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 99–18799 Filed 7–22–99; 8:45 am]

**BILLING CODE 6717–01–M**

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–6402–4]**

## Agency Information Collection Activities: Continuing Collection; Comment Request; Part B: Permit Application, Permit Modifications and Special Permits

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit the following continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB): Part B Permit Application, Permit Modifications and Special Permits, EPA ICR #1573.05, OMB No. 2050-0009, expires on December 31, 1999. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

**DATES:** Comments must be submitted on or before September 21, 1999.

**ADDRESSES:** Commenters must send an original and two copies of their comments referencing docket number F–1999–PBIP–FFFFF to: RCRA Docket Information Center, Office of Solid Waste (5305G), U.S. Environmental Protection Agency Headquarters (EPA, HQ) 401 M Street, SW, Washington, DC 20460. Hand deliveries of comments should be made to the Arlington, VA address below. Comments may also be submitted electronically through the Internet to: rcra-docket@epamail.epa.gov. Comments in electronic format should also be identified by the docket number F–1999–PBIP–FFFFF. All electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

Commenters should not submit any confidential business information (CBI) electronically. An original and two copies of CBI must be submitted under separate cover to: RCRA CBI Document Control Officer, Office of Solid Waste (5305W), U.S. EPA, 401 M Street, SW, Washington, DC 20460.

Public comments and supporting materials are available for viewing in the RCRA Information Center (RIC), located at Crystal Gateway I, First Floor, 1235 Jefferson Davis Highway, Arlington, VA. The RIC is open from 9 a.m. to 4 p.m., Monday through Friday, excluding federal holidays. To review docket materials, it is recommended that the public make an appointment by calling (703) 603–9230. The public may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies cost $0.15/page. This document and the supporting documents that detail the Part B Permit Application, Permit Modifications and Special Permits ICR are also electronically available. See the **SUPPLEMENTARY INFORMATION** section for information on accessing them.

**FOR FURTHER INFORMATION CONTACT:** Dave Eberly by mail at the Office of Solid Waste (5303W), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460, by phone at (703) 308–8645, or by Internet e-mail at: eberly.david@epamail.epa.gov.

**SUPPLEMENTARY INFORMATION:**

### Internet Availability

Today's document and the supporting documents that detail the Part B Permit Application, Permit Modifications and Special Permits ICR are available on the Internet. Follow these instructions to access this information electronically:

WWWURL:http//www.epa.gov/epaoswer/hazwaste/permit/partb/index.htm
FTP:ftp.epa.gov
Login: anonymous
Password: your Internet e-mail address
Path:/pub/epaoswer

**Note:** The official record for this action will be kept in paper form and maintained at the address in the **ADDRESSES** section above.

*Affected Entities:* Entities potentially affected by this action are owners and operators of hazardous waste management facilities.

*Title:* Part B Permit Application, Permit Modifications and Special Permits, EPA ICR #1573.05, OMB No. 2050–0009, expires on December 31, 1999.

*Abstract:* Section 3005 of Subtitle C of RCRA requires treatment, storage or disposal (TSD) facilities to obtain a permit. To obtain the permit, the TSD must submit an application describing the facility's operation. There are two parts to the RCRA permit application—part A and part B. Part A defines the processes to be used for treatment, storage, and disposal of hazardous

wastes; the design capacity of such processes; and the specific hazardous wastes to be handled at the facility. Part B requires detailed site specific information such as geologic, hydrologic, and engineering data. In the event that permit modifications are proposed by the applicant or EPA, modifications must conform to the requirements under sections 3004 and 3005.

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 Agency today begins an effort to examine the part B permit application requirements and consider options for reducing the burden and increasing the usefulness of the information that is collected. The Agency would appreciate any information on the users of this information, how they use this information, how the information could be improved, and how the burden for this information collected can be reduced.

Therefore, the EPA would like to solicit comments to:

(i) 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;

(ii) 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;

(iii) enhance the quality, utility, and clarity of the information to be collected; and

(iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

*Burden Statement:* The estimated average burden for renewing the existing part B ICR is as follows:

—Demonstrations and exceptions: 2.4 hours
—Legal review: 100 hours
—Permit information under 270.10(j): 10 hours
—Demonstrations under 270.14(a): .1 hour
—General facility standards: 486 hours
—Financial assurance: 19 hours
—Ground-water protection: 237 hours
—Specific unit requirements under 270.15 through 270.26: 1,737 hours
—Permit modifications: 2.4 hours
—Renewal of permits: 1 hour
—Special forms of permits: 99 hours

The number of respondents per year for part B permit applications, permit modifications and special permits is variable. In the 1996 part B ICR, EPA estimated that 44 part B permit applications, 58 permit modifications and 5 special forms of permits were submitted annually. The 1996 estimated total annual burden on respondents for part B permit applications, permit modifications and special permits was 118,926 hours.

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.

Dated: July 16, 1999.

**Elizabeth A. Cotsworth,**

*Acting Director, Office of Solid Waste.*

[FR Doc. 99–18874 Filed 7–22–99; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–6402–6]**

## Agency Information Collection Activities: Submission for OMB Review; Comment Request, NSPS Glass Manufacturing Plants

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: NSPS Subpart CC, Glass Manufacturing Plants, OMB Control Number 2060–0054, EPA number 1131.06, expiration date July 31, 1999. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

**DATES:** Comments must be submitted on or before August 23, 1999.

**FOR FURTHER INFORMATION CONTACT:** Sandy Farmer at EPA by phone at (202) 260–2740, by E-Mail at Farmer.Sandy@epamail.epa.gov or download a copy of the ICR off the Internet at http://www.epa.gov/icr and refer to EPA ICR No. 1131.06.

**SUPPLEMENTARY INFORMATION:**

*Title:* NSPS Subpart CC, Glass Manufacturing Plants, OMB Control Number 2060–0054, EPA number 1131.06, expiration date July 31, 1999. This is a request for extension of a currently approved collection.

*Abstract:* The New Source Performance Standards (NSPS) for glass manufacturing plants were proposed on June 15, 1979 and promulgated on October 7, 1980, and amended October 19, 1984. Approximately 30 sources are currently subject to the standard, and it is estimated that no additional sources will become subject to the standard in the next three years. The standards do not apply to hand glass melting furnaces, glass melting furnaces designed to produce less than 4,550 kilograms of glass per day, or all-electric melters. Experimental furnaces are not subject to the emission standards at 40 CFR 60.292. The standards set particulate matter emission limits. There are separate limits for sources using ''modified-process'' glass melting furnaces. Modified-process is defined as any technique designed to minimize emissions without add-on controls. Emission limits are specific for the type of glass produced, and are listed at section 60.292(a) and section 60.293(b).

Owners or operators of the affected facilities described must make initial reports when a source becomes subject, conduct and report on a performance test, demonstrate and report on continuous monitor performance, maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility. Semiannual reports of excess emissions are required. These notifications, reports, and records are required, in general, for all sources subject to NSPS. The recordkeeping and reporting requirements specific to glass manufacturing plants are detailed in the CFR. This information is being collected to assure compliance with 40 CFR part 60, subpart CC.

Any owner or operator subject to the provisions of this part shall maintain a file of these measurements, and retain the file for at least two years following

the date of such measurements, maintenance reports, and records. All reports are sent to the delegated State or Local authority. In the event that there is no such delegated authority, the reports are sent directly to the EPA Regional Office.

In the Administrator's judgment, particulate matter emissions from glass manufacturing plants cause or contribute to air pollution that may reasonably be anticipated to endanger public health or welfare. Therefore, NSPS were promulgated for this source category at 40 CFR part 60, subpart CC.

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 **Federal Register** Notice required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on January 5, 1999. No comments were received.

*Burden Statement:* The annual public reporting and recordkeeping burden for this collection of information is estimated to average 6.5 hours per response. 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.

*Respondents/Affected Entities:* Owners and operators of Glass Manufacturing Plants.

*Estimated Number of Respondents:* 30

*Frequency of Response:* Initial reports if there are new sources, and, semiannual excess emissions reports

*Estimated Total Annual Hour Burden:* 398 hours.

*Estimated Total Annualized Capital, O&M Cost Burden:* $174,000.

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 following addresses. Please refer to EPA ICR No. 1131.06 and OMB Control No. 2060–0054 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, Office of Policy, Regulatory Information Division (2137), 401 M Street, SW, Washington, DC 20460;
and
Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA 725 17th Street, NW, Washington, DC 20503.

Dated: July 19, 1999.

**Joseph Retzer,**

*Director, Regulatory Information Division.*

[FR Doc. 99–18872 Filed 7–22–99; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–6402–5]**

## Agency Information Collection Activities: Submission for OMB Review; Comment Request; Reporting and Recordkeeping Requirements for the New Source Performance Standards for Municipal Solid Waste Landfills

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Reporting and Recordkeeping Requirements for the New Source Performance Standards for Municipal Solid Waste Landfills, OMB Control Number 2060–0220, expiration date August 31, 1999. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

**DATES:** Comments must be submitted on or before August 23, 1999.

**FOR FURTHER INFORMATION CONTACT:** Sandy Farmer at EPA by phone at (202) 260–2740, by E-Mail at Farmer.Sandy@epamail.epa.gov or download a copy of the ICR off the Internet at http://www.epa.gov/icr and refer to EPA ICR No. 1557.04.

**SUPPLEMENTARY INFORMATION:** *Title:* Reporting and Recordkeeping Requirements for the New Source Performance Standards for Municipal Solid Waste Landfills (OMB Control No. 2060–0220; EPA ICR No. 1557.04) expiring 8/31/99. This is a request for extension of a currently approved collection.

*Abstract:* In the Administrator's judgement municipal solid waste (MSW) landfill emissions generated by decomposition of municipal solid waste deposited in an MSW landfill may reasonably be anticipated to endanger public health or welfare. Therefore, NSPS were promulgated for this source category.

All respondents must submit an initial design capacity report which includes the landfill's maximum design capacity, date of anticipated startup, and the anticipated refuse acceptance rate. If the design capacity of a new landfill is less than 2,500,000 megagrams (Mg), no further reporting or recordkeeping is required. Under certain circumstances, amended design capacity reports may be required. If the facility's design capacity is equal to or greater than 2,500,000 Mg, the owner or operator is required to determine the facility's nonmethane organic compound (NMOC) emission rate.

If the NMOC emission rate is determined to be <50 Mg/yr, using Tier 1, Tier 2, or Tier 3 calculations, no further calculation or testing is required for that year. Owners or operators of MSW landfills emitting <50 Mg NMOC per year may submit reports of NMOC emission rates yearly. However, NSPS Subpart WWW, also allow owners or operators to report less frequently. Under these provisions, the NMOC report may be accompanied by an estimation of the annual NMOC emission rate for each of the next 5 years, provided that none of the estimated rates reaches 50 Mg/yr. In this case, the owner or operator would not submit annual reports, but the estimation would be updated and resubmitted every 5 years. The owner or operator would also be required to revise the estimate in any year in which the actual waste acceptance rate for that year exceeds the waste acceptance rate upon which the previously submitted estimate is based.

Owners or operators of landfills with collection and control systems installed in compliance with the standards are not required to submit reports of NMOC emission rates. Owners or operators of affected facilities would be required to keep records of accumulated refuse and waste acceptance rates for a minimum of 5 years.

For landfills required to install collection and control systems (i.e., those emitting greater than 50 Mg/yr of

NMOC), submission of a collection and control system design plan is required. After review of the design plan and installation of the collection and control system, an initial performance test and report for the system is required. Thereafter, annual compliance reports would be required.

For control systems using an enclosed combustion device, the initial performance test would also include the average combustion temperature, and the percent reduction of NMOC achieved. For control systems using a boiler, the initial performance report would include a description of the location at which the emission stream is introduced into the boiler, and the average combustion temperature of the boiler.

For control systems using an open flare, the initial performance report would include a description and the flare type, visible emissions reading, a heat content determination, flow rate measurements, and exit velocity determinations. Where control devices other than an open flare or closed combustion device are used, owners or operators would be required to submit to the Administrator information describing the control device and parameters that will indicate its proper performance.

Following submission of the initial performance report, owners or operators would be required to keep continuous monitoring records of the parameters reported in the initial performance report and records of monthly monitoring of the collection system and quarterly monitoring of surface methane concentration. Annual compliance reports and recordkeeping would include descriptions of any periods in which the value of any of the monitored operating parameters falls outside the established ranges and any period when the collection system or air pollution control equipment malfunctioned or when the collected gas was diverted from the control device. When applicable, each owner or operator of a controlled landfill will submit a closure report to EPA within 30 days of waste acceptance cessation.

The information collected will be used by EPA personnel to ensure compliance with the NSPS and identify the sources subject to the standards. When appropriate under NSPS, Subpart WWW, each owner or operator of a controlled landfill shall submit annual reports of exceedances, gas steam diversion, control device non-operation, collection system failure, the date at installations and the location of each well or well collection system and equipment removal.

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 **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on 1/5/99 (64 FR 499); no comments were received.

*Burden Statement:* The annual public reporting and recordkeeping burden for this collection of information is estimated to average 11.3 hours per response. 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.

*Respondents/Affected Entities:* Owners or Operators of MSW landfills for which construction, modification, or reconstruction commences on or began accepting waste after May 30, 1991.

*Estimated Number of Respondents:* 172 each year.

*Frequency of Response:* quarterly, annually.

*Estimated Total Annual Hour Burden:* 3,379 hours.

*Estimated Total Annualized Cost Burden:* $80,000.

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 following addresses. Please refer to EPA ICR No. 1557.04 and OMB Control No. 2060–0220 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, Office of Policy, Regulatory Information Division (2137), 401 M Street, SW, Washington, DC 20460;

and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503.

Dated: July 19, 1999.

**Joseph Retzer,**

*Director, Regulatory Information Division.*

[FR Doc. 99–18873 Filed 7–22–99; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

**[ER–FRL–6244–7]**

## Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared June 21, 1999 Through July 02, 1999 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564–5167.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 09, 1999 (64 FR 17362).

### Draft EISs

ERP No. D–AFS–L65319–OR Rating EO2, Pelican Butte Ski Area Master Development Plan, Implementation, Winema National Forest, Klamath Ranger District, Klamath County, OR.

*Summary:* EPA expressed environmental objections concerning insufficient information to predict impacts to water quality and air quality, especially visibility. Reductions in habitat, especially for the spotted owl, do not comply with the NW Forest Plan.

ERP No. D–BLM–J65298–CO Rating EC2, Yankee Gulch Sodium Minerals Project, To Produce Sodium Products, Piceance Basin, Right-of-Way Permit and COE Section 404 Permit, Rio Blanco County, CO.

*Summary:* EPA expressed environmental concerns for the protection of soil and ground water, and ensuring that impacts are monitored and mitigated.

ERP No. D–FHW–E40778–NC Rating EC2, US 74 Shelby Bypass Transportation Improvements, Construction, Funding and COE Section 404 Permit, Cleveland County, NC.

*Summary:* EPA is requesting further consideration of a bypass corridor to the south of the Shelby Central Business District. No particular bypass alternative to the north of Shelby is preferred by EPA, and the agency has noted

substantial impacts to surface streams because they traverse two water supply watersheds and would require stream locations. Socioeconomic impacts (i.e., relocations, and noise) also appear to be substantial for a north bypass alternative.

ERP No. D–FHW–F40381–MN Rating EC2, Phalen Boulevard Project, Construction of a new 4.3 Kilometer Roadway, from I35E to Johnson Parkway, Funding, in the City of St. Paul, Ramsey County, MN.

*Summary:* EPA expressed environmental concerns regarding the remediation of contaminated sites that would most likely occur if the proposed project were to be implemented.

ERP No. D–FHW–K40233–CA Rating EC2, US–7 Expressway Project, Construction between CA–98 to Interstate 8, Improve Access to the new Calexico East Port of Entry, Funding and COE Section 404 Permit, Imperial County, CA.

*Summary:* EPA expressed environmental concerns with potential cumulative and secondary effects, as well as impacts to water quality and prime farmland.

ERP No. DS–AFS–J65277–CO Rating EC2, Sheep Flats Diversity Unit, Timber Sales and Related Road Construction, Additional Information on Soils and Water Quality, Grand Mesa, Uncompahgre and Gunnison National Forests, Colibran Ranger District, Mesa County, CO.

*Summary:* EPA expressed environmental concerns and requested additional information on the effectiveness of current Best Management Practices for mitigating sedimentation impacts.

**Final EISs**

ERP No. F–AFS–K65199–AZ, Windmill Range Allotment Management Plan, Cattle Grazing Use, Implementation, Coconino National Forest, Mormon Lake, Peaks and Sedona Ranger Districts, Coconino and Yavapal Counties, AZ.

*Summary:* Review of the Final EIS was not deemed necessary. No formal comment letter was sent to the preparing agency.

ERP No. F–FTA–K54022–CA, Third Street Light Rail Project, Transportation Improvements, Funding, U.S. Coast Guard Permit, and COE Section 404 Permit, San Francisco Municipal Railway, in the City and County of San Francisco, CA.

*Summary:* Review of the Final EIS has been completed and the project found to be satisfactory.

Dated: July 20, 1999.

**Joseph C. Montgomery,**

*Environmental Protection Specialist, Office of Federal Activities.*

[FR Doc. 99–18884 Filed 7–22–99; 8:45 am]

**BILLING CODE 6560–50–U**

## ENVIRONMENTAL PROTECTION AGENCY

**[ER–FRL–6244–6]**

## Environmental Impact Statements; Notice of Availability

*Responsible Agency:* Office of Federal Activities, General Information (202) 564–7167 OR (202) 564–7153.

Weekly receipt of Environmental Impact Statements Filed July 12, 1999 Through July 16, 1999 Pursuant to 40 CFR 1506.9.

EIS No. 990237, Draft Supplement, IBR, CA, Programmatic EIS—Central Valley Project Improvement Act (CVPIA) of 1992 Implementation, Additional Information for the Project Simulation Model (PROSIM) Hydrology, Central Valley, Trinity Contra Costa, Alamenda, Santa Clara and San Benito Counties, CA, Due: September 13, 1999, Contact: Alan Candish (916) 978–5197.

EIS No. 990238, Draft EIS, AFS, CA, Eldorado and Tahoe National Forests Land and Resource Management Plan, Standard and Guidelines for the Grazing Allotment, Implementation, CA, Due: October 15, 1999, Contact: Susan A. Rodman (530) 621–5298.

EIS No. 990239, Final EIS, AFS, CO, South Fork Salvage Analysis Area, Implementation, Routt Divide Blowdown, Land and Resource Management Plan, Medicine Bow-Routt National Forests, Hahns Peak/Bears Ears Ranger District, Rounty County, CO, Due: August 23, 1999, Contact: Sherry Reed (970) 870–2184.

EIS No. 990240, Draft EIS, FHW, NC, Fayetteville Outer Loop Corridor Study, Transportation Improvement Program (TIP) Cape Fear River, Cumberland, Hoke and Robeson Counties, NC, Due: September 7, 1999, Contact: Nicolas L. Graf (919) 856–4346.

EIS No. 990241, Draft EIS, AFS, WA, Stimson ANILCA Access Easement Project, Reconstruct and Construct, Colville National Forest, Sullivan Lake Ranger District, Pend Oreille Counties, WA, Due: September 07, 1999, Contact: Timothy M. Bertram (509) 446–7500.

EIS No. 990242, Final EIS, BOP, KY, McCreary County Federal Correctional Facility, Construction and Operation, Five Possible Sites, McCreary County, KY, Due: August 23, 1999, Contact: James B. Jones (202) 307–3230.

EIS No. 990243, Draft EIS, NPS, WA, Vancouver National Historic Reserve Cooperative Management Plan, Preservation, Education and Public Use, Implementation, Clark County, City of Vancouver, WA, Due: September 7, 1999, Contact: Larry Beal (303) 969–2454.

EIS No. 990244, Draft EIS, COE, FL, Lake Okeechobee Regulation Schedule Study, To Maintain or Improve Existing Water Storage, St. Lucie and Caloosahatchee River Estuaries, FL, Due: September 30, 1999, Contact: Mark Ziminske (904) 232–1786.

EIS No. 990245, Final Supplement, NOA, Northeast Multispecies Fishery Management Plan, Updated Information concerning Overfishing of Red Hake and Silver Hake Fishiers, Northeast United States, Due: August 23, 1999, Contact: Kathi Rodrigues (978) 281–9300.

EIS No. 990246, Draft EIS, NOA, NC, VA, Tilefish Fishery Management Plan (FMP), (Lopholatilus chamaeleonticeps), To Prevent Overfishing and Rebuild the Resource of Tilefish, Located in the Atlantic Ocean north of the Virginia/North Carolina Border, VA and NC, Due: September 7, 1999, Contact: Kathi Rodriques (978) 281–9300.

EIS No. 990247, Final EIS, GSA, CA, United States Border Facility, Tecate Port of Entry (POE) Realignment and Expansion, NPDES Permit, City of Tecate, San Diego County, CA, Due: August 23, 1999, Contact: Rosanne Nieto (415) 522–3490.

EIS No. 990248, Final EIS, COE, GA, Latham River/Jekyll Creek Environmental Restoration Project (Section 1135), To Establish the Without Project Condition, Atlantic Intracoastal Waterway (AIWW), Glynn County, GA, Due: August 23, 1999, Contact: Rudy Nyc (404) 562–5223.

EIS No. 990249, Final EIS, FHW, CA, California Forest Highway 137, Improvements to Wentworth Springs Road and the Stumpy Meadows Reservoir Dam eastward (14.4 miles) to Ice House Road, Eldorado National Forest, El Dorado County, CA, Due: August 23, 1999, Contact: Richard J. Cushing (303) 716–2138.

EIS No. 990250, Final EIS, COE, WI, IL, Upper Des Plaines River Flood Damage Reduction Project, Recommended Plan to Construct a Lateral Storage Area, National Economic Development (NED), Lake County, IL and Kenosha and Racine

Counties, WI, Due: August 23, 1999, Contact: Keith Ryder (312) 353–6400.
EIS No. 990251, Final EIS, NPS, MT, Glacier National Park, General Management Plan, Implementation, Waterton Glacier International Peace Park, Lake National Park, Flathead and Glacier, MT, Due: August 23, 1999, Contact: Christina Anderson (406) 888–7911.
EIS No. 990252, Final Supplement, FAA, IN, Indianapolis International Airport Master Plan Development, Updated/New Information, Establishing New Air Traffic Procedures to Restore, Construct and Operate, Runway 5L/23R Parallel to existing Runway 14/32 and connecting to Runways 5R/23L and 5L/23R, Airport Layout Plan Approval, Funding and US COE Section 404 Permit, Marion County, IN, Due: August 16, 1999, Contact: Wally Welter (847) 294–8091.

The above FAA EIS should have appeared in the 07/16/99 **Federal Register**. The 30-day Comment Period is Calculated from 7/16/99.

**Joseph C. Montgomery,**

*Environmental Protection Specialist, Office of Federal Activities.*

[FR Doc. 99–18885 Filed 7–22–99; 8:45 am]

BILLING CODE 6560–50–U

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–6402–3]**

### Proposed Settlement, Clearwater Finishing Site, Clearwater, Aiken County, South Carolina

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of proposed settlement.

**SUMMARY:** Under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the United States Environmental Protection Agency (EPA) proposes to enter into a ''prospective purchaser agreement'' (PPA) concerning property owned by the Aiken County Forfeited Land Commission (FLC) in Aiken County, South Carolina. EPA proposes to enter into the PPA with the Clearwater Development Corporation, Inc., (CDC). The PPA concerns the acquisition by the CDC of certain real property presently owned the FLC in Clearwater, Aiken County, South Carolina.

The real property in question consists of a 64.39 acre tract located at U.S. Highway One and State Road #126 (also known as Belvadere Road), Clearwater, Aiken County, South Carolina. The Property is the subject of a Purchase and Sale Agreement between the FLC and CDC. Pursuant to the PPA, the Settling Respondent agrees to conduct further environmental assessment at the Site pursuant to a Voluntary Contract with the South Carolina Department of Health and Environmental Control. The PPA will also settle and resolve, subject to reservations and limitations contained in the PPA, the potential liability of the Settling Respondent for the Existing Contamination as defined in the PPA at the Property which may otherwise result from Settling Respondent becoming the owner of the property. The CDC will be protected from CERCLA liability for past costs which may arise from their participation in the acquisition of the Property, as described above.

EPA will consider public comments on the proposed settlement for thirty (30) days. EPA may withdraw from or modify the proposed settlement should public comments disclose facts or considerations which indicate the proposed settlement is inappropriate, improper or inadequate.

Copies of the proposed settlement are available from: Ms. Paula V. Batchelor, Waste Management Division, U.S. EPA, Region 4, Atlanta Federal Center, 61 Forsyth Street, S.W., Atlanta, Georgia 30303–8909.

Written comments may be submitted to Ms. Batchelor within thirty (30) calendar days of the date of publication.

Dated: July 14, 1999.

**Anita Davis,**

*Acting Chief, Program Services Branch, Waste Management Division.*

[FR Doc. 99–18867 Filed 7–22–99; 8:45 am]

BILLING CODE 6560–50–M

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–6402–2]**

### John P. Saad Superfund Site; Notice To Rescind Federal Register Notice Dated June 16, 1999

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice to rescind previous **Federal Register** notice.

**SUMMARY:** On June 16, 1999, the Environmental Protection Agency (EPA) published two (2) Notices of Proposed Settlements for response costs incurred by the EPA at the John P. Saad Superfund Site (site) located Nashville, Tennessee. The purpose of this notice is to rescind EPA's June 16, 1999 **Federal Register** Notices (64 FR 32234–32235) regarding the settlements of response costs at the Site. The Notice of Proposed Settlements for the Site may be republished in the future following final approval of the settlements.

Dated: July 14, 1999.

**Anita Davis,**

*Acting Chief, Program Services Branch, Waste Management Division.*

[FR Doc. 99–18868 Filed 7–22–99; 8:45 am]

BILLING CODE 6560–50–M

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–6401–8]**

### Proposed Amendment to CERCLA Administrative De Minimis Settlement; Waste, Inc.

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice; request for public comment.

**SUMMARY:** In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (''CERCLA''), 42 U.S.C. 9622(i), notice is hereby given of a proposed amendment to an administrative de minimis settlement concerning the Waste, Inc. Superfund site in Michigan City, Indiana, which will add The Toro Company as a settling party. The amended settlement is designed to resolve fully The Toro Company's liability at the site through a covenant not to sue under sections 106 and 107 of CERCLA, 42 U.S.C. 9606 and 9607, and section 7003 of the Resource Conservation and Recovery Act, 42 U.S.C. 6973. The Toro Company will pay $19,581.14 into a Waste, Inc. Special Account within the EPA Hazardous Substances Superfund which will be used to finance the response action being implemented by the major PRPs under a unilateral order for the Site. For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the amended settlement. The Agency will consider all comments received and may modify or withdraw its consent to the amended settlement if comments received disclose facts or considerations which indicate that the amended settlement is inappropriate, improper, or inadequate. The Agency's response to any comments received will be available for public inspection at:

Michigan City Public Library, 100 E. 4th Street, Michigan City, Indiana; and

U.S. Environmental Protection Agency, Region 5 Records Center, 77 West Jackson Boulevard (7–HJ), Chicago, IL 60604, TEL: (312) 886–0900, Mon–Fri: 8:00 a.m.–4:00 p.m.

Commenters may request an opportunity for a public meeting in the affected area in accordance with section 7003(d) of RCRA, 42 U.S.C. 6973(d).

**DATES:** Comments must be submitted on or before August 23, 1999.

**ADDRESSES:** The proposed settlement and additional background information relating to the settlement are available for public inspection at:

Michigan City Public Library, 100 E. 4th Street, Michigan City, Indiana;

La Porte County Health Department, 104 Brinckmann Avenue, Michigan City, Indiana;

Bethany Baptist Church, 215 Miller Street, Michigan City, Indiana; and

U.S. Environmental Protection Agency, Region 5 Records Center, 77 West Jackson Boulevard (7–HJ), Chicago, IL 60604, TEL: (312) 886–0900, Mon–Friday: 8:00 a.m.–4:00 p.m.

A copy of the proposed settlement may be obtained from John Tielsch, Assistant Regional Counsel, 77 W. Jackson Blvd., Chicago, Illinois 60604, Mail Code C–14J, 312/353–7447.

Comments should reference the Waste, Inc. site, Michigan City, Indiana, and EPA Docket No. V–W–98–C–439 and should be addressed to: Sonja Brooks, Regional Hearing Clerk, U.S. Environmental Protection Agency, Mail Code R–19J, 77 W. Jackson Blvd., Chicago, Illinois 60604.

**FOR FURTHER INFORMATION CONTACT:** John H. Tielsch, Assistant Regional Counsel, United States Environmental Protection Agency, Region 5, 77 W. Jackson Blvd., Chicago, Illinois 60604, Mail Code C–14J, 312/353–7447.

**William E. Muno,**

*Director, Superfund Division, Region 5.*

[FR Doc. 99–18869 Filed 7–22–99; 8:45 am]

**BILLING CODE 6560–50–M**

## FEDERAL COMMUNICATIONS COMMISSION

### Public Information Collection(s) Being Reviewed by the Federal Communications Commission

July 16, 1999.

**SUMMARY:** The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

**DATES:** Written comments should be submitted on or before September 21, 1999. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

**ADDRESSES:** Direct all comments to Les Smith, Federal Communications Commissions, 445 12th Street, SW, Room 1–A804, Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

**FOR FURTHER INFORMATION CONTACT:** For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at lesmith@fcc.gov.

**SUPPLEMENTARY INFORMATION:**

*OMB Control Number:* 3060–0573.

*Title:* FCC Form 394 Application for Franchise Authority Consent to Assignment or Transfer of Control of Cable Television Franchise.

*Form Number:* FCC Form 394.

*Type of Review:* Extension of a currently approved collection.

*Respondents:* Business and other for-profit entities; State, local or tribal governments.

*Number of Respondents:* 2,000.

*Estimated Time Per Response:* 1–5 hours.

*Frequency of Response:* On occasion filing requirement.

*Total Annual Burden:* 7,000 hours.

*Total Annual Cost:* $377,000.

*Needs and Uses:* FCC Form 394 is a standardized form that is completed by cable operators in connection with the transfer of control of cable television systems. FCC Form 394 is used by cable operators to apply for local franchise authority (''LFA'') approval to assign or transfer control of a cable television system. The data are used by the LFAs to restrict profiteering transactions and other transfers that are likely to adversely affect cable rates or service in the franchise area.

*OMB Control Number:* 3060–0106.

*Title:* Section 43.61—Reports of Overseas Telecommunications Traffic.

*Form Number:* N/A.

*Type of Review:* Extension.

*Respondents:* Business or other for-profit entities.

*Number of Respondents:* 440 respondents.

*Estimated Time Per Response:* 47.8 hours per response (avg.).

*Total Annual Burden:* 21,070 hours.

*Estimated Annual Reporting and Recordkeeping Cost Burden:* $518,000.

*Frequency of Response:* Annual, Quarterly, On occasion.

*Needs and Uses:* The telecommunications traffic data report is an annual reporting requirement imposed on common carriers engaged in the provision of overseas telecommunications services. The collection of Section 43.61 overseas telecommunications traffic data is necessary for the Commission to fulfill its regulatory responsibilities under the Communications Act of 1934, as amended, 47 U.S.C. Sections 151–614 (1996). The collected data are essential to both the Commission and carriers for international facilities planning, facility authorization, monitoring emerging developments in communications services, analyzing market structures, tracking the balance of payments in international communications services, and market analysis purposes. Subject carriers are required to submit their annual reports no later than July 31 of each year for the preceding period of January through December. A revised report must be submitted for inaccuracies exceeding five percent of the reported figure by October 31, pursuant to Section 43.61(a)(2).

*OMB Control Number:* 3060–0817.

*Title:* Computer III Further Remand Proceedings: BOC Provision of Enhanced Services (ONA Requirements), CC Docket No. 95–20.

*Form Number:* N/A.

*Type of Review:* Extension.

*Respondents:* Business or other for-profit entities.

*Number of Respondents:* 500 respondents.

*Estimated Time Per Response:* 72.5 hours per response (avg.).

*Total Annual Burden:* 36.250 hours.

*Estimated Annual Reporting and Recordkeeping Cost Burden:* $0.

*Frequency of Response:* On occasion; third party disclosures.

*Needs and Uses:* In the Report and Order issued in CC Docket No. 95–20, released March 10, 1998, the Commission eliminates outdated, unnecessary regulations, while continuing to protect against potential anticompetitive behavior by the Bell Operating Companies (BOCs) in the provision of information services. The Commission established several collections of information: (1) The Commission no longer requires BOCs to file their Comparably Efficient Interconnection (CEI) plans with the Commission and to obtain pre-approval of CEI plans and amendments before initiating or altering an intraLATA information service. Instead, we require BOCs to post their CEI plans and plan amendments on their publicly accessible Internet sites linked to and searchable from the BOC's main Internet page, and to notify the Common Carrier Bureau at the time of the posting. The substance of the notification may be limited to the Internet address and path to the relevant CEI plan or amended plan; the form may consist of a letter to the Secretary with a copy to the Bureau. The requirement extends to CEI plans for new or modified telemessaging or alarm monitoring services, and for new or amended payphone services. In addition, if the BOC receives a good faith request for a plan from someone who does not have Internet access, the BOC must notify that person where a paper copy of the plan is available for public inspection. (2) The Commission removes the Computer II network disclosure rules for BOCs providing information through a Compute II separate subsidiary, the Computer II carrier rule, and the Computer III network disclosure rules. The Commission extends the disclosure requirements in Section 51.325(a) of its rules to require incumbent LECs to provide public notice of any network changes that will affect the manner in which CPE is attached to the network. The collections relating to CEI plans will be used to ensure that BOCs comply with Commission policies and regulations safeguarding against potential anticompetitive behavior by the BOCs in the provision of information services. The disclosure of CPE is necessary to encourage competition in the telecommunications services market by lifting operations barriers to entry.

Federal Communications Commission.

**Magalie Roman Salas,**

*Secretary.*

[FR Doc. 99–18763 Filed 7–22–99; 8:45 am]

BILLING CODE 6712–01–P

## FEDERAL COMMUNICATIONS COMMISSION

### Public Information Collections Approved by Office of Management and Budget

July 14, 1999.

The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collections pursuant to the Paperwork Reduction Act of 1995, Public Law 104–13. 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 control number. For further information contact Shoko B. Hair, Federal Communications Commission, (202) 418–1379.

**Federal Communications Commission**

*OMB Control No.:* 3060–0898.

*Expiration Date:* 12/31/98.

*Title:* Incumbent Local Exchange Carrier Anti-Cramming Best Practices Statistics.

*Form No.:* N/A.

*Respondents:* Business or other for-profit.

*Estimated Annual Burden:* 9 respondents; 9 hours per response (avg.); 81 total annual burden hours for all collections.

*Estimated Annual Reporting and Recordkeeping Cost Burden:* $0.

*Frequency of Response:* One time requirement.

*Description:* Certain incumbent local exchange carriers (ILECs) have been requested to submit data regarding records of consumer complaints for cramming. Cramming is the placement of invalid or unclear charges on consumers' local telephone bills. ILECs possess information that will assist the Commission in determining the degree to which the anti-cramming best practices have been effective during the past year. The information will also provide the Commission with the ability to suggest modifications to the guidelines prior to competition. Obligation to comply: Voluntary.

*OMB Control No.:* 3060–0540.

*Expiration Date:* 05/31/2002.

*Title:* Tariff Filing Requirements for Nondominant Common Carriers.

*Form No.:* N/A.

*Respondents:* Business or other for-profit.

*Estimated Annual Burden:* 2000 respondents; 10.5 hours per response (avg.); 21,000 total annual burden hours for all collections.

*Estimated Annual Reporting and Recordkeeping Cost Burden:* $1,260,000.

*Frequency of Response:* On occasion.

*Description:* Domestic nondominant carriers must file tariffs pursuant to 47 USC Section 203, implementing regulations are found at 47 CFR Sections 61.20–61.23. The information collected pursuant to the nondominant tariff filing rules is used to comply with Section 203 of the Communications Act of 1934, as amended, which requires that carriers file schedules indicating the rates, terms, and conditions of their service offerings. The information collected pursuant to the tariff filing requirements is used by the Commission to determine whether the rates, terms, and conditions of service offered are just and reasonable as the Act requires. These tariff filing requirements enable the Commission and the public to ensure that the service offerings of communications common carriers comply with the requirements of the Act. Obligation to respond: Mandatory.

*OMB Control No.:* 3060–0853.

*Expiration Date:* 05/31/2002.

*Title:* Receipt of Service Confirmation Form; Universal Service for Schools and Libraries.

*Form No.:* FCC 486.

*Respondents:* Business or other for-profit.

*Estimated Annual Burden:* 30,000 respondents; 1.5 hours per response (avg.); 45,000 total annual burden hours for all collections.

*Estimated Annual Reporting and Recordkeeping Cost Burden:* $0.

*Frequency of Response:* On occasion.

*Description:* The Commission adopted rules providing support for all telecommunications services, Internet access, and internal connections for all eligible schools and libraries. To participate in the program, schools and libraries must confirm that they are actually receiving the services eligible for support. FCC Form 486, Receipt of Service Confirmation Form is used by all billed entities who filed an FCC Form 471 on behalf of an eligible school, library, library consortium, or consortium of multiple entities, to inform the School and Library Division when they begin receiving or have received service from the service provider. The FCC Form 486 is also used to confirm that technology plans of entities applying for universal service support have a plan in place to utilize the services for which they have contracted, and to indicate the name of

the authorized reviewing body, contact name, and contact telephone number. The FCC Form 486 is used to implement the Congressional mandate for universal service. Applications and forms used to administer the universal service schools and libraries program, including FCC Form 472, Billed Entity Applicant Reimbursement Form, may be obtained by calling the Schools and Libraries Division at 1–888–203–8100 or visiting 2021 L Street, NW, Suite 600, Washington, DC 20037. Obligation to comply: To obtain or retain benefits.

*OMB Control No.:* 3060–0106.

*Expiration Date:* 10/31/99.

*Title:* Section 43.61—Reports of Overseas Telecommunications Traffic.

*Form No.:* N/A.

*Respondents:* Business or other for-profit.

*Estimated Annual Burden:* 440 respondents; 47.8 hours per response (avg.); 21,070 total annual burden hours for all collections.

*Estimated Annual Reporting and Recordkeeping Cost Burden:* $518,000.

*Frequency of Response:* Annual, Quarterly, On occasion.

*Description:* The telecommunications traffic data report is an annual reporting requirement imposed on common carriers engaged in the provision of overseas telecommunications services. The collection of Section 43.61 overseas telecommunications traffic data is necessary for the Commission to fulfill its regulatory responsibilities under the Communications Act of 1934, as amended, 47 U.S.C. Sections 151–614 (1996). The collected data are essential to both the Commission and carriers for international facilities planning, facility authorization, monitoring emerging developments in communications services, analyzing market structures, tracking the balance of payments in international communications services, and market analysis purposes. Subject carriers are required to submit their annual reports no later than July 31 of each year for the preceding period of January through December. A revised report must be submitted for inaccuracies exceeding five percent of the reported figure by October 31, pursuant to Section 43.61(a)(2). Obligation to respond: Mandatory.

*OMB Control No.:* 3060–0411.

*Expiration Date:* 06/30/2002.

*Title:* Procedures for Formal Complaints Filed Against Common Carriers.

*Form No.:* FCC Form 485.

*Respondents:* Business or other for-profit; Individuals; Not-for-Profit Institutions; Federal Government; and State, Local or Tribal Government.

*Estimated Annual Burden:* 5645 respondents; 2.95 hours per response (avg.); 16,677 total annual burden hours for all collections.

*Estimated Annual Reporting and Recordkeeping Cost Burden:* $63,000.

*Frequency of Response:* On occasion.

*Description:* Sections 206 to 209 of the Communications Act of 1934, as amended provide the statutory framework for our current rules for resolving formal complaints filed against common carriers. Section 208(a) authorizes complaints by any person complaining of anything done or omitted to be done by any common carrier subject to the provisions of the Act. Section 208(a) specifically states that it should be the duty of the Commission to investigate the matters complained of in such manner and by such means as it shall deem proper. Information filed pursuant to 47 CFR 1.720 *et seq.* is provided either with or in response to a formal complaint to determine whether or not there has been a violation of the Communications Act of 1934, as amended, or the Commissions' Rules or Orders. Respondents must submit a FCC Form 485 (Formal Complaint Intake Form) with any formal complaint to indicate that the complaint satisfies the applicable procedural and substantive requirements under the Communications Act of 1934, as amended, and the FCC's rules. The information is used by the Commission to determine the sufficiency of the complaint and aid its processing by the staff. FCC Form 485 is being revised. A public notice will be issued to announce the availability of the revised FCC Form 485 for public use. Affected respondents are complainants and potential defendant common carriers. Obligations to respond: Required to obtain or retain benefits.

Public reporting burden for the collections of information is as noted above. Send comments regarding the burden estimate or any other aspect of the collections of information, including suggestions for reducing the burden to Performance Evaluation and Records Management, Washington, DC 20554.

Federal Communications Commission.

**Magalie Roman Salas,**

*Secretary.*

[FR Doc. 99–18764 Filed 7–22–99; 8:45 am]

**BILLING CODE 6712–01–P**

## FEDERAL COMMUNICATIONS COMMISSION

### Public Information Collection(s) Submitted to OMB for Review and Approval

July 14, 1999.

**SUMMARY:** The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

**DATES:** Written comments should be submitted on or before August 23, 1999. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

**ADDRESSES:** Direct all comments to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW, Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

**FOR FURTHER INFORMATION CONTACT:** For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at lesmith@fcc.gov.

**SUPPLEMENTARY INFORMATION:**

*OMB Control Number:* 3060–0713.

*Title:* Alternative Broadcast Inspection Program (ABIP) Compliance Notification.

*Form Number:* N/A.

*Type of Review:* Extension of a currently approved collection.

*Respondents:* Business or other for-profit entities; and Not-for-profit institutions.

*Number of Respondents:* 50.

*Estimated Time Per Response:* 5 mins. (50 responses/yr.).

*Frequency of Response:* On occasion reporting requirements; Third party disclosure.

*Total Annual Burden:* 250 hours.

*Total Annual Cost:* None.

*Needs and Uses:* The Commission established an ABIP that permits broadcast stations to arrange for a voluntary inspection of their facility by an entity, usually a state broadcast association, and to have the entity notify the Commission's local field office that the broadcast station has passed an inspection. The information collection requires such entities to file a statement with the FCC field office, in whose geographic area of responsibility the broadcast station is located, that the broadcast station has passed an ABIP inspection. The Commission will use the information collected to determine which broadcast stations are exempted from routine, random inspections by the local FCC field office during a two or three year period.

Federal Communications Commission.

**Magalie Roman Salas,**

*Secretary.*

[FR Doc. 99–18762 Filed 7–22–99; 8:45 am]

**BILLING CODE 6712–01–P**

## FEDERAL COMMUNICATIONS COMMISSION

**[DA 99–1346; Report No. AUC–99–25–A (Auction No. 25)]**

## Auction of AM, FM, TV, LPTV, and FM and TV Translator Construction Permits Scheduled for September 28, 1999; Minimum Opening Bids and Other Procedural Issues

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice.

**SUMMARY:** On July 9, 1999, the Mass Media Bureau (''MMB'') and the Wireless Telecommunications Bureau (''WTB'') (collectively, ''Bureaus'') released a Public Notice announcing the minimum opening bids and other auction procedures for the Closed Broadcast Auction of AM, FM, TV, LPTV, and FM and TV Translator Construction Permits.

**DATES:** The auction will begin on September 28, 1999.

**ADDRESSES:** See text of the Public Notice and related attachments for information regarding important addresses.

**FOR FURTHER INFORMATION CONTACT:** Wireless Telecommunications Bureau: Auctions and Industry Analysis Division: Bob Allen, Legal Branch at (202) 418–0660; Jeff Garrettson, Auctions Operations Branch at (202) 418–0660 or Bob Reagle, Auctions Operations Branch at (717) 338–2807.

Mass Media Bureau: Shaun Maher, Video Services Division at (202) 418–2324; Lisa Scanlan, Audio Services Division at (202) 418–2700.

Media Contact: Meribeth McCarrick at (202) 418–0654.

**SUPPLEMENTARY INFORMATION:** This is a summary of a Public Notice that was released on July 9, 1999. The complete text of this Public Notice is available in its entirety, including all Attachments, for inspection and copying during normal business hours in the Reference Information Center, Room CY A–257, 445 12th Street, S.W., Washington, D.C., and also may be purchased from the Commission's copy contractor, International Transcription Services, (202) 857–3800, fax (202) 857–3805, 1231 20th Street, N.W., Washington, D.C. 20036. It is also available on the Commission's website at http://www.fcc.gov.

### Synopsis of the Public Notice

*A. Introduction*

1. This Public Notice announces the procedures and minimum opening bids for the upcoming Closed Broadcast Auction. On May 17, 1999 the Bureaus released a Public Notice (*See* ''Closed Broadcast Auctions Scheduled for September 28, 1999; Comment Sought on Minimum Opening Bids and Other Auction Procedures,'' *Public Notice*, DA 99–940 (rel. May 17, 1999) (''*Closed Broadcast Auction Public Notice*''), 64 FR 29312 (June 1, 1999), seeking comment on the establishment of reserve prices or minimum opening bids for the auction of AM, FM, TV, LPTV, and FM and TV Translator Construction Permits (Auction No. 25), in accordance with the Balanced Budget Act of 1997. In addition, the Bureaus sought comment on a number of procedures to be used in Auction No. 25. The Bureaus received 39 comments and 7 reply comments in response to the *Closed Broadcast Auction Public Notice.*

2. Pursuant to the *Broadcast First Report and Order*, 63 FR 48615 (September 11, 1998), (*See* Implementation of Section 309(j) of the Communications Act—Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Service Licenses, *First Report and Order,* MM Docket No. 97–234, GC Docket No. 92–52 and GEN Docket No. 90–264, (''*Broadcast First Report and Order*'') and *Memorandum Opinion and Order*, 64 FR 24523 (May 7, 1999), (''*Memorandum Opinion and Order on Reconsideration*''), participation in this auction is limited to those applicants identified in the *Closed Broadcast Auction Public Notice.*

3. Auction Date: The auction will begin on September 28, 1999. The initial schedule for bidding will be announced by public notice at least one week before the start of the auction. Unless otherwise announced, bidding will be conducted each business day and will continue until bidding has stopped on all licenses.

4. Auction Title: Auction No. 25 (Closed Broadcast Auction).

5. Bidding Methodology: Simultaneous multiple round bidding. Bidding will be permitted only from remote locations, either electronically (by computer) or telephonically.

6. Pre-Auction Deadlines:

- Auction Seminar—August 3, 1999.
- Short Form Application (FCC Form 175)—August 20, 1999; 5:30 p.m. ET.
- Orders for Remote Bidding Software—August 20, 1999.
- Upfront Payments (via wire transfer)—September 13, 1999; 6:00 p.m. ET.
- Mock Auction—September 24, 1999.

7. Telephone Contacts:

- Auctions Hotline—(888) CALL–FCC ((888) 225–5322), press Option #2 or (717) 338–2888 (direct dial). (*For General Auction Information, and Seminar Registration. Hours of service: 8 a.m.–5:30 p.m. ET. Monday–Friday*).
- FCC Technical Support Hotline—(202) 414–1250 (voice); (202) 414–1255 (text telephone (TTY)). (*Hours of service: 8 a.m.–6 p.m. ET, Monday–Friday*).

8. List of Attachments:

- Attachment A—Summary of Construction Permits to be Auctioned, Upfront Payments, Minimum Opening Bids.
- Attachment B—Guidelines for Completion of FCC Forms 175 and Exhibits.
- Attachment C—Auction-Specific Instructions for FCC Remittance Advice FCC Form 159.
- Attachment D—Electronic Filing and Review of FCC Form 175.
- Attachment E—Accessing the FCC Network Using Windows 95/98.
- Attachment F—FCC Remote Bidding Software Order Form.
- Attachment G—Summary Listing of Documents from the Commission and the Wireless Telecommunications Bureau Addressing the Application of the Anti-Collusion Rules.
- Attachment H—Auction Seminar Registration Form.

9. Background: All spectrum to be auctioned is the subject of pending,

mutually exclusive applications for construction permits for the AM, FM, TV, LPTV, and FM and television translator services, for which the Commission has not approved a settlement agreement that obviates the need for an auction. This includes mutually exclusive applications for full service FM, AM and television stations that were subject to the comparative freeze, instituted after the decision of the U.S. Court of Appeals for the District of Columbia in *Bechtel* v. *FCC.* The auction will also include pending mutually exclusive applications for LPTV, FM translator and television translator, as well as certain mutually exclusive LPTV and television translator DTV displacement relief applications. Pursuant to the *Broadcast First Report and Order,* participation in the auction will be limited to those applicants identified in this Public Notice and applicants will be potentially eligible to bid on only those construction permits for which they filed an appropriate long-form application and the Bureaus will dismiss the previously-filed long-form application of any pending applicant failing to timely file a short-form application to participate in the Closed Broadcast Auction.

10. Due Diligence: Potential bidders are solely responsible for investigating and evaluating all technical and marketplace factors that may have a bearing on the value of the facilities on which they intend to bid.

11. The FCC makes no representation or warranties about the use of this spectrum for particular services. Applicants should be aware that an FCC auction represents an opportunity to become a FCC permittee in these services, subject to certain conditions and regulations. An FCC auction does not constitute an endorsement by the FCC of any particular services, technologies or products, nor does an FCC construction permit or license constitute a guarantee of business success.

12. Participation: Those wishing to participate in the auction must:

- Submit a short form application (FCC Form 175) by 5:30 p.m. Eastern Time, August 20, 1999.
- Submit a sufficient upfront payment and an FCC Remittance Advice Form (FCC Form 159) by 6:00 p.m. Eastern Time, September 13, 1999.
- Comply with all provisions outlined in this Public Notice and applicable rules of the Commission.

13. Prohibition of Collusion: To ensure the competitiveness of the auction process, the Commission's Rules prohibit mutually exclusive applicants within a group from communicating with each other during the auction about bids, bidding strategies, or settlements. This prohibition becomes effective at the short form filing deadline and ends on the down payment due date. Bidders competing for the same construction permit(s) are encouraged not to use the same individual as an authorized bidder. A violation of the anti-collusion rule could occur if an individual acts as the authorized bidder for two or more competing applicants, and conveys information concerning the substance of bids or bidding strategies between the bidders he/she is authorized to represent in the auction. Also, if the authorized bidders are different individuals employed by the same organization (*e.g.,* law firm or engineering consulting firm), a violation could similarly occur. At a minimum, in such a case, applicants should certify that precautionary steps have been taken to prevent communication between authorized bidders and that applicants and their bidding agents will comply with the anti-collusion rule. The Bureaus, however, caution that merely filing a certifying statement as part of an application will not outweigh specific evidence that collusive behavior has occurred, nor will it preclude the initiation of an investigation when warranted. However, applicants may enter into bidding agreements *before* filing their FCC Form 175 short-form applications, as long as they disclose the existence of the agreement(s) in their Form 175 short-form applications. By electronically submitting their FCC Form 175 short form applications, applicants are certifying their compliance with Sections 1.2105(c) and 73.5002. In addition, Section 1.65 of the Commission's Rules requires an applicant to *maintain* the accuracy and completeness of information furnished in its pending application and to notify the Commission within 30 days of any substantial change that may be of decisional significance to that application. Thus, Section 1.65 requires an auction applicant to notify the Commission of any violation of the anti-collusion rules upon learning of such violation. Bidders are therefore required to make such notification to the Commission immediately upon discovery.

14. Bidder Information Package: Given the closed nature of Auction No. 25 and the fact that the pool of potential bidders is limited to those that had previously filed long-form applications, no Bidder Information Package will be provided. All information necessary to participate in the Closed Broadcast Auction is contained in this Public Notice, the *Closed Broadcast Auction Public Notice,* the *Broadcast First Report and Order,* the *Memorandum Opinion and Order on Reconsideration* and the Commission's rules. Applicants may access updated information about Auction No. 25 at the following address on WTB's web site:

http:// www.fcc.gov/wtb/auctions/auc25/auc25.html

15. Future Releases: Further information regarding sequencing and length of bidding rounds and other procedural issues will be released in a future public notice.

16. Relevant Authority: Prospective bidders must familiarize themselves thoroughly with the Commission's Rules relating to broadcast auctions, contained in Title 47, Part 73 of the Code of Federal Regulations.

17. Prospective bidders must also be thoroughly familiar with the procedures, terms and conditions contained in this Public Notice, the *Closed Broadcast Auction Public Notice,* the *Broadcast First Report and Order;* the *Memorandum Opinion and Order on Reconsideration* and Part 1, Subpart Q of the Commission's Rules concerning Competitive Bidding Proceedings.

18. The terms contained in the Commission's Rules, relevant orders, public notices and bidder information package are not negotiable. The Commission may amend or supplement the information contained in our public notices at any time, and will issue public notices to convey any new or supplemental information to bidders. It is the responsibility of all prospective bidders to remain current with all Commission Rules and with all public notices pertaining to this auction. Copies of most Commission documents, including public notices, can be retrieved from the FCC Internet node via anonymous ftp @ftp.fcc.gov or the FCC World Wide Web site at http:// www.fcc.gov/wtb/auctions. Additionally, documents may be obtained for a fee by calling the Commission's copy contractor, International Transcription Service, Inc. (ITS), at (202) 314–3070. When ordering documents from ITS, please provide the appropriate FCC number (*e.g.,* FCC 98–194 for the *Broadcast First Report and Order,* 63 FR 48615 (September 11, 1998) and FCC 99–234 for the *Memorandum Opinion and Order for Reconsideration* 64 FR 24523 (May 7, 1999).

19. Bidder Alerts: All applicants must certify on their FCC Form 175 applications under penalty of perjury that they are legally, technically,

financially and otherwise qualified to hold a license, and not in default on any payment for Commission construction permits or licenses (including down payments) or delinquent on any non-tax debt owed to any Federal agency. Applicants should be aware that by filing their FCC Form 175 applications, they are certifying that they have long-form applications on file and that there has been no change of control of their long-form applications that would render them ineligible to participate in the auction under 47 U.S.C. 309(1) or any applicable Commission rule. Prospective bidders are reminded that submission of a false certification to the Commission is a serious matter that may result in severe penalties, including monetary forfeitures, license revocations, exclusion from participation in future auctions, and/or criminal prosecution.

20. Although applicants have had an extensive opportunity to conduct due diligence due to the length of time ensuing since the filing of their long-form applications, the following reminder is provided: As is the case with many business investment opportunities, some unscrupulous entrepreneurs may attempt to use the broadcast spectrum to deceive and defraud unsuspecting investors. Common warning signals of fraud include the following:

- The first contact is a ''cold call'' from a telemarketer, or is made in response to an inquiry prompted by a radio or television infomercial.
- The offering materials used to invest in the venture appear to be targeted at IRA funds, for example by including all documents and papers needed for the transfer of funds maintained in IRA accounts.
- The amount of the minimum investment is less than $25,000.
- The sales representative makes verbal representations that: (a) the Internal Revenue Service (''IRS''), Federal Trade Commission (''FTC''), Securities and Exchange Commission (''SEC''), FCC, or other government agency has approved the investment; (b) the investment is not subject to state or federal securities laws; or (c) the investment will yield unrealistically high short-term profits. In addition, the offering materials often include copies of actual FCC releases, or quotes from FCC personnel, giving the appearance of FCC knowledge or approval of the solicitation.

21. Information about deceptive telemarketing investment schemes is available from the FTC at (202) 326–2222 and from the SEC at (202) 942–7040. Complaints about specific deceptive telemarketing investment schemes should be directed to the FTC, the SEC, or the National Fraud Information Center at (800) 876–7060. Consumers who have concerns about specific proposals may also call the FCC National Call Center at (888) CALL–FCC ((888) 225–5322).

22. National Environmental Policy Act (NEPA) Requirements: Licensees must comply with the Commission's rules regarding the National Environmental Policy Act (NEPA). The construction of a broadcast antenna facility is a federal action and licensees must comply with the Commission's NEPA rules for each such facility. See 47 CFR 1.1305–1.1319.

*B. Eligibility For New Entrant Bidding Credit*

23. For the Closed Broadcast Auction the Commission adopted the New Entrant Bidding Credit to promote and facilitate the diversification of ownership in the mass media. The bidder's attributable interests shall be determined as of the short form (FCC Form 175) filing deadline—August 20, 1999. Bidders intending to divest a media interest or make any other ownership changes, such as resignation of positional interests, in order to avoid attribution for purposes of qualifying for the New Entrant Bidding credit must have consummated such divestment transactions or have completed such ownership changes by no later than the short-form filing deadline—August 20, 1999.

24. *Determination of Eligibility for Bidding Credit.* The interests of the bidder, and of any individuals or entities with an attributable interest in the bidder in other media of mass communications shall be considered when determining a bidder's eligibility for the New Entrant bidding credit.

25. For purposes of determining which entities qualify for a New Entrant Bidding Credit, the following information should be considered: the interests of the bidder, and of individuals or entities with an attributable interest in the bidder, in other media of mass communications at the time of the short-form application filing deadline. These interests should be considered to the extent that they are considered attributable under the broadcast multiple ownership rules. Further, any bidder asserting new entrant status must have *de facto* as well as *de jure* control of the entity claiming the bidding credit.

26. Under traditional broadcast attribution rules, those entities or individuals with an attributable interest in a bidder include: all officers and directors of a corporate bidder; any owner of 5% or more of the voting stock of a corporate bidder; all partners and limited partners of a partnership bidder, unless the limited partners are sufficiently insulated from exercising management and control of the partnership; and all members of a limited liability company, unless sufficiently insulated. In cases where a bidder is an individual and his or her spouse or other close family member holds interests in other media, such interests are not automatically attributable to the bidder, rather the Commission decides attribution issues in this context based on certain factors that it has traditionally considered to be relevant. Bidders are also reminded that, in the *Memorandum Opinion and Order on Reconsideration,* the Commission determined to consider, in a future order, whether to attribute the mass media interests of any individual or entity who holds a significant equity and/or debt interest in a broadcast auction bidder claiming New Entrant status, even if such an interest is nonvoting. Specifically, the *Memorandum Opinion and Order on Reconsideration* stated that this further order would consider the appropriateness of attributing the mass media interests held by substantial investors in a bidder claiming a credit as a New Entrant and the threshold at which a nonvoting equity and/or debit interest in a New Entrant should be attributable. While the Commission has not yet released its further order resolving these issues, it stated in the *Memorandum Opinion and Order on Reconsideration* that the further order would be released ''expeditiously'' and its release would not delay the commencement of broadcast service auctions. Therefore, bidders should be aware of these outstanding issues when considering their qualifications for the New Entrant bidding credit. The eligibility standards will be governed by the rule in effect on the short-form filing for the New Entrant bidding credit.

27. *Consortia and Joint Bidding Arrangements.* A party holding a non-controlling, attributable interest in one applicant will be permitted to acquire an ownership interest, form a consortium with, or enter into a joint bidding arrangement with other applicants for construction permits in the same MX Group provided that: (1) the attributable interest holder certify that it has not and will not communicate with any party concerning the bids or bidding strategies of more than one of the applicants in which it holds an attributable interest, has

formed a consortium, or has entered into a joint bidding arrangement; and (2) the arrangements do not result in a change in control of any of the applicants. While the anti-collusion rule does not prohibit non-auction related business negotiations among auction applicants, bidders are reminded that certain discussion or exchanges could broach on impermissible subject matters because they may convey pricing information and bidding strategies. Such subject areas include, but are not limited to, issues such as management, sales, local marketing agreements, rebroadcast agreements and other transactional arrangements.

28. *Application Showing.* Applicants should note that they will be required to file supporting documentation as Exhibits A and C to their FCC Form 175 short form applications to establish that they satisfy the eligibility requirements to qualify for a New Entrant Bidding Credit. Ownership information must also be provided in the Closed Broadcast Auction in order for us to verify eligibility to participate in the auction. Specifically, for the Closed Broadcast Auction, applicants will be required to file (in Exhibit A to their FCC Form 175 short form applications) a full and complete statement of the ownership of the bidding entity, to include all attributable interest holders. If the information reflects that here has been a change of control, the related long-form application will be dismissed and the applicant will be ineligible to participate in the auction. The applicant must provide the ownership information for itself and its attributable interest-holders, as defined by Section 73.3555 and Note 2 of that section, including: all officers and directors of a corporate bidder; any owner of 5% or more of the voting stock of a corporate bidder; all partners and limited partners of a partnership bidder, unless the limited partners are sufficiently insulated from the management or operation of the partnership; and all members of a limited liability company, except those sufficiently insulated from its management or operation. Bidders must certify (in Exhibit A) compliance with the Commission's policies relating to media interests of immediate family members. In addition, in those cases where a New Entrant Bidding credit is being sought, a certification under penalty of perjury must be set forth in Exhibit C attesting to the eligibility of the bidder for the level of credit claimed. If the applicant is applying to bid as a consortium of applicants eligible for the New Entrant bidding credit, this information must be provided for each consortium member. In cases where a joint biding arrangement is contemplated, an Exhibit B must be filed. Applicants owned by minorities or women, as defined in 47 CFR 1.2110(b)(2), may attach an exhibit (Exhibit D) regarding this status.

29. *Bidding Credits.* Applicants that qualify for the New Entrant Bidding Credit, as set forth in 47 CFR 73.5007, are eligible for a bidding credit that represents the amount by which a bidder's winning bids are discounted. The size of a New Entrant Bidding Credit depends on the number of ownership interests in other media of mass communications that are attributable to the bidder-entity and its attributable interest-holders:

- A 35 percent bidding credit will be given to a winning bidder if it, and/or any individual or entity with an attributable interest in the winning bidder, has no attributable interest in any other media of mass communications, as defined in 47 CFR 73.5008 and
- A 25 percent bidding credit will be given to a winning bidder if it, and/or any individual or entity with an attributable interest in the winning bidder, has no attributable interest in no more than three media of mass communications, as defined in 47 CFR 73.5008; and
- No bidding credit will be given if any of the commonly owned mass media facilities would serve the same area as the proposed broadcast or secondary broadcast station, as defined in 47 CFR 73.5007, or if the winning bidder, and/or any individual or entity with an attributable interest in the winning bidder, have attributable interests in more than three mass media facilities.

30. Attributable interests held by a winning bidder in existing low power television, television translator or FM translator facilities will not be counted among the bidders' other mass media facilities. Bidding credits are not cumulative: qualifying applicants receive either the 25 percent or the 35 percent bidding credit, but not both.

31. Closed Broadcast Auction bidders should note that unjust enrichment provisions apply to winning bidders that use bidding credits and subsequently assign or transfer control of their licenses to an entity not qualifying for the same level of bidding credit. Finally, Closed Broadcast Auction bidders should also note that there are no installment payment plans in the Closed Broadcast Auction.

*C. Pre-Auction Procedures*

32. *Short-Form Application (FCC Form 175)—Due August 20, 1999, 5:30 p.m. ET.* In order to be eligible to bid in this auction, applicants must first electronically submit an FCC Form 175 application. This application must be received at the Commission by 5:30 p.m. ET on August 20, 1999. Late applications will not be accepted.

33. There is no application fee required when filing an FCC Form 175. However, to purchase bidding eligibility, an applicant must submit an upfront payment. *See* Paragraph 40 below.

34. *Electronic Filing.* As of January 1, 1999, applications to participate in FCC auctions must be filed electronically, unless it is not operationally feasible. *See* 47 CFR 1.2105(a). Applicants will be permitted to file their FCC Form 175 applications in paper form only in the event the FCC experiences technical difficulties with its electronic systems. In such an event, the FCC will announce the procedure for submitting paper applications.

35. For Auction No. 25, applicants may file applications electronically beginning August 3, 1999. The system will generally be open for filing on a 24-hour basis. The Form 175 filing window will remain open until 5:30 p.m. ET on August 20, 1999. Applicants are strongly encouraged to file early, and applicants are responsible for allowing adequate time for filing their applications. Applicants may update or amend their electronic applications multiple times until the filing deadline on August 20, 1999. Information about the electronic filing of the FCC Form 175 application is included in Attachment D. Technical support is available at (202) 414–1250 (voice) or (202) 414–1255 (text telephone (TTY)); the hours of service are 8 a.m.—6 p.m. ET, Monday—Friday.

36. *Completion of the FCC Form 175.* Applicants should carefully review 47 CFR 1.2105 and 73.5002 and must complete all items on the FCC Form 175. Instructions for completing the FCC Form 175 are in Attachment B to the Public Notice. Applicants should not consider their form submitted to the FCC until they press the ''Submit Form 175'' button on the ''Submit'' page and receive confirmation from the filing system that the form has been received by the Commission.

37. *Electronic Review of FCC Form 175.* The FCC Form 175 review software may be used to review and print applicants' FCC Form 175 applications. Applicants may also view other applicants' completed FCC Form 175

after the filing deadline has passed and the FCC has issued a public notice explaining the status of the applications. For this reason, it is important that applicants do not include their Taxpayer Identification Numbers (TINs) on any Exhibits to their FCC Form 175 applications. There are no fees for accessing this system or for submitting an FCC Form 175. *See* Attachment D of the Public Notice for details.

38. *Application Processing and Minor Corrections.* After the deadline for filing the FCC Form 175 applications has passed, the FCC will process all timely submitted short-form applications to determine which are acceptable for filing, and will subsequently issue a public notice identifying: (1) those short-form applications which are mutually exclusive and are acceptable for filing (including FCC file numbers and the construction permits for which they applied); (2) those applications rejected; and (3) those short-formed applications that have minor defects that may be corrected, and the deadline for filing such corrected applications.

39. As described more fully in the Commission's Rules, after the August 20, 1999, short form filing deadline, applicants may make only minor non-technical corrections to their FCC Form 175 applications. Applicants will not be permitted to make major modifications to their applications (*e.g.*, change their construction permit selections or proposed service areas, change the certifying official, or change control of the applicant, or change bidding credits). *See* 47 CFR 1.2105.

40. *Upfront Payments—Due September 13, 1999.* In order to be eligible to bid in the auction, applicants must submit an upfront payment accompanied by an FCC Remittance Advice Form (FCC Form 159). Applicants may access an electronic version of the FCC Form 159 (August 1998 version) after completing the electronic FCC Form 175; however, the FCC Remittance Advice Form (FCC Form 159) is to be submitted by facsimile transmission to Mellon Bank in accordance with the instructions below. Earlier versions of this form will not be accepted. All upfront payments must be received at Mellon Bank in Pittsburgh, PA, by 6:00 p.m. ET on September 13, 1999.

Please note that:

- All payments must be made in U.S. dollars.
- All payments must be made by wire transfer.
- Upfront payments for Auction No. 25 go to a lockbox number different from the ones used in previous FCC auctions, and are different from the lockbox number to be used for post-auction payments.
- Failure to deliver the upfront payment by the September 13, 1999 deadline will result in no bidding eligibility being accorded the applicant.

41. *Making Auction Payments by Wire Transfer.* Wire transfer payments must be received by 6:00 p.m. ET on September 13, 1999. To avoid untimely payments, applicants should discuss arrangements (including bank closing schedules) with their banker several days before they plan to make the wire transfer, and allow sufficient time for the transfer to be initiated and completed before the deadline. Applicants will need the following information:

ABA Routing Number: 043000261
Receiving Bank: Mellon Pittsburgh
BNF: FCC/ 910–0171
OBI Field: (Skip one space between each information item)
''AUCTIONPAY''
TAXPAYER IDENTIFICATION NO. (same as FCC Form 159, block 26)
PAYMENT TYPE CODE (enter ''A25U'')
FCC CODE 1 (same as FCC Form 159, block 23A: ''25'')
PAYER NAME (same as FCC Form 159, block 2)
LOCKBOX NO. #358430

**Note:** The BNF and Lockbox number are specific to the upfront payments for this auction; do not use BNF or Lockbox numbers from previous auctions.

42. Applicants must fax a completed FCC Form 159 to Mellon Bank at (412) 236–5702 at least one hour before placing the order for the wire transfer (but on the same business day). On the cover sheet of the fax, write ''Wire Transfer—Auction Payment for Auction Event No. 25.'' Bidders may confirm receipt of their upfront payment at Mellon Bank by contacting their sending financial institution.

43. *FCC Form 159.* Each upfront payment must be accompanied by a completed FCC Remittance Advice Form (FCC Form 159). Proper completion of FCC Form 159 is critical to ensuring correct credit of upfront payments. Detailed instructions for completion of FCC Form 159 are included in Attachment C to the Public Notice.

44. *Amount of Upfront Payment.* In the *Broadcast First Report and Order* the Commission delegated to the Bureaus the authority and discretion to determine an appropriate upfront payment for each construction permit being auctioned. In the *Closed Broadcast Auction Public Notice,* the Bureaus proposed certain upfront payments. We received comments from a number of parties, including the National Translator Association (''NTA''). NTA states that any organization which is exempt from annual regulatory fees should be exempted from the requirement of filing upfront payments. However, Section 73.5003 of the Commission's rules requires that every bidder in every broadcast service shall submit an upfront payment prior to the commencement of bidding. Therefore, we shall not adopt NTA's suggestion and all bidders will be required to submit an upfront payment.

45. Applicants potentially eligible to participate in competitive bidding in more than one MX Group should note that upfront payments are not attributed to specific licenses, but instead will be translated to bidding units to define a bidder's maximum bidding eligibility. For Auction No. 25, the amount of the upfront payment will be translated into bidding units on a one-to-one basis, *e.g.*, a $25,000 upfront payment provides the bidder with 25,000 bidding units. The total upfront payment defines the maximum amount of bidding units on which the applicant will be permitted to bid (including standing high bids) in any single round of bidding. Thus, an applicant does not have to make an upfront payment to cover all construction permits which the applicant has selected on FCC Form 175, but rather to cover the maximum number of bidding units that are associated with construction permits on which the bidder wishes to place bids and hold high bids at any given time. Bidders are reminded that failure to submit an upfront payment of sufficient size to provide bidding eligibility for every MX Group in which an applicant has a pending long-form application will limit the bidding eligibility of that applicant.

46. In order to be able to place a bid on a construction permit, in addition to having specified that permit on the FCC Form 175, a bidder must have an eligibility level that meets or exceeds the number of bidding units assigned to that license. At a minimum, an applicant's total upfront payment must be enough to establish eligibility to bid on at least one of the construction permits applied for on the FCC Form 175, or else the applicant will not be eligible to participate in the auction.

47. In calculating the upfront payment amount, an applicant should determine the *maximum* number of bidding units it may wish to bid on in any single round, and submit an upfront payment covering that number of bidding units. Bidders should check their calculations carefully as there is no provision for

increasing a bidder's maximum eligibility after the upfront payment deadline.

48. An applicant potentially eligible to bid in more than one MX group may, on its FCC Form 175, indicate an intent to bid on every construction permit for which an underlying long-form has been filed, but its actual bidding in any round will be limited by the bidding units reflected in its upfront payment.

49. *Applicant's Wire Transfer Information for Purposes of Refunds.* Because experience with prior auctions has shown that in most cases wire transfers provide quicker and more efficient refunds than paper checks, the Commission will use wire transfers for all Auction No. 25 refunds. To avoid delays in processing refunds, applicants should include wire transfer instructions with any refund request they file; they may also provide this information in advance by faxing it to the FCC Billings and Collections Branch, ATTN: Linwood Jenkins or Geoffrey Idika, at (202) 418–2843. Please include the following information:

Name of Bank
ABA Number
Account Number to Credit
Correspondent Bank (if applicable)
ABA Number
Account Number
Contact and Phone Number

(Applicants should also note that implementation of the Debt Collection Improvement Act of 1996 requires the FCC to obtain a Taxpayer Identification Number (TIN) before it can disburse refunds.)

50. *Auction Registration.* Approximately ten days before the auction, the FCC will issue a public notice announcing all qualified bidders for Auction No. 25. Qualified bidders are those applicants whose FCC Form 175 applications have been accepted for filing and that have timely submitted upfront payments sufficient to make them eligible to bid on at least one of the construction permits for which a long-form application was previously accepted.

51. All qualified bidders are automatically registered for the auction. Registration materials will be distributed prior to the auction by two separate overnight mailings, each containing part of the confidential identification codes required to place bids. These mailings will be sent only to the contact person at the applicant address listed in the FCC Form 175.

52. Applicants that do not receive both registration mailings will not be able to submit bids. Therefore, any qualified applicant that has not received both mailings by noon on September 23, 1999 should contact the FCC National Call Center at (888) CALL–FCC ((888) 225–5322, press option 2 at the prompt). Receipt of both registration mailings is critical to participating in the auction and each applicant is responsible for ensuring it has received all of the registration material.

53. Qualified bidders should note that lost login codes, passwords or bidder identification numbers can be replaced only by appearing in person at the FCC Auction Headquarters located at 445—12th Street, S.W., Washington, D.C. 20554. Only an authorized representative or certifying official, as designated on an applicant's FCC Form 175, may appear in person with two forms of identification (one of which must be a photo identification) in order to receive replacement codes. Bidders needing replacement codes must call technical support at 202–414–1250 prior to arriving at the FCC.

54. *Remote Electronic Bidding Software.* Qualified bidders that file or amend the FCC Form 175 electronically are strongly encouraged to bid electronically. Due to the fact that each of the potential bidders has already paid substantial fees to the Commission in connection with the filing of their long-form applications, the software packages required to participate in remote electronic bidding will be provided on request at no charge to the bidders in the Closed Broadcast Auction. These software packages must be ordered by August 20, 1999. (Auction software is tailored to a specific auction, so software from prior auctions will not work for Auction No. 25.) A software order form is included in the Public Notice.

55. *Auction Seminar.* On August 3, 1999, the FCC will sponsor a free, informational seminar for the Closed Broadcast Auction at the Main Meeting Room on the first floor of the Headquarters Building of the Federal Communications Commission located at 445—12th Street, S.W., Washington, DC 20554. The seminar will provide attendees with information about pre-auction procedures, conduct of the auction, FCC remote bidding software, and the Closed Broadcast Auction service and auction rules.

56. To register, refer to the registration materials form included as Attachment H with the Public Notice. Registrations are accepted on a first-come, first-served basis.

57. *Mock Auction.* All qualified bidders will be eligible to participate in a mock auction on September 24, 1999. The mock auction will enable applicants to become familiar with the electronic software prior to the auction. Free demonstration software will be available for use in the mock auction. Participation by all bidders is strongly recommended. Details will be announced by public notice.

*D. Auction Event*

58. The first round of the auction will begin on September 28, 1999. The initial round schedule will be announced in a Public Notice listing the qualified bidders, to be released approximately 10 days before the start of the auction.

59. *Auction Structure—Simultaneous Multiple Round Auction.* In the *Closed Broadcast Auction Public Notice,* we proposed to award the construction permits in a single, simultaneous multiple round auction. On this proposal, Community Broadcasters Association (''CBA'') filed comments, stating that auctions for LPTV displacement applications should be set up to run seriatim. CBA stresses the importance of the auction for displaced LPTV licensees and notes that this category of bidder consists of small operators who cannot afford the time or staff to stay on-line indefinitely. However, contrary to CBA's expressed concerns, bidders in the Closed Broadcast Auction are not compelled by our procedures to stay online indefinitely, or for extensive periods of time. Only a periodic presence will be required during each round of the auction: first to place a bid; then later to check round results.

60. The Bureau concludes that the construction permits in the Closed Broadcast Auction will be awarded through a single, simultaneous multiple round auction. Unless otherwise announced, bids will be accepted on all construction permits in each round of the auction. This approach allows for a more efficient auction process and, in cases where bidders are eligible to participate in multiple markets, allows them to take advantage of any synergies that exist among construction permits.

61. *Maximum Eligibility and Activity Rules.* In the *Closed Broadcast Auction Public Notice,* the Bureau proposed that the amount of the upfront payment submitted by a bidder would determine the initial maximum eligibility (as measured in bidding units) for each bidder. We received comments from Fant Broadcasting Company (''Fant''). Fant believes that the 100% eligibility rule is too high for a multiple market bidder and will force such bidders to either exercise a waiver or to bid, producing artificially low bid amounts for markets with smaller bidding units. Fant suggests a 50% eligibility requirement in stage one of the auction.

62. We note that in the Closed Broadcast Auction, only a very small percentage of bidders are potentially eligible to bid on more than one market. For that reason, even if valid, we do not see the factors stated by Fant as having a significant impact on the conduct of the Closed Broadcast Auction. Further, no other commenter raises similar concerns and none of the reply comments express support for this position.

63. We adopt the maximum eligibility and activity rule proposal for the Closed Broadcast Auction. The amount of the upfront payment submitted by a bidder determines the initial maximum eligibility (in bidding units) for each bidder. Note again that upfront payments are not attributed to specific construction permits, but instead will be translated into bidding units to define a bidder's initial maximum eligibility. The total upfront payment defines the maximum number of bidding units on which the applicant will initially be permitted to bid.

64. To ensure that the auction closes within a reasonable period of time, an activity rule requires bidders to bid actively throughout the auction, rather than wait until the end before participating. Bidders are required to be active on 100 percent of their maximum eligibility during each round of the auction.

65. A bidder is considered active on a construction permit in the current round if it is either the high bidder at the end of the previous bidding round and does not withdraw the high bid in the current round, or if it submits an acceptable bid in the current round. A bidder's activity level in a round is the sum of the bidding units associated with construction permits on which the bidder is active. Required minimum activity levels ensure that an auction will proceed expeditiously and efficiently. Because such procedures have proven successful in maintaining the pace of previous auctions, we adopt them for the Closed Broadcast Auction.

66. *Activity Rule Waivers, Reducing Eligibility and Stopping Rules.* In the *Closed Broadcast Auction Public Notice,* we proposed that each bidder in the auction would be provided five activity rule waivers that may be used in any round during the course of the auction. We also proposed to employ a simultaneous stopping rule in Auction No. 25, meaning that all construction permits would remain open until the first round in which no new acceptable bids, proactive waivers or withdrawals were received. Finally, we proposed a special stopping rule, meaning that the Bureaus would accept bids in the final round(s) only for construction permits on which the high bid increased in at least one of the preceding specified number of rounds. We received numerous comments on our activity rule, eligibility reduction and stopping rule proposals.

67. Based upon our experience in previous auctions, the Bureau adopts its proposal and each bidder will be provided five activity rule waivers that may be used in any round during the course of the auction. Use of an activity rule waiver preserves the bidder's current bidding eligibility despite the bidder's activity in the current round being below the required minimum level. An activity rule waiver applies to an entire round of bidding and not to a particular construction permit.

68. The FCC auction system assumes that bidders with insufficient activity would prefer to use an activity rule waiver (if available) rather than lose bidding eligibility. Therefore, the system will automatically apply a waiver (known as an ''automatic waiver'') at the end of any round where a bidder's activity level is below the minimum required unless: (1) there are no activity rule waivers available; or (2) the bidder overrides the automatic application of a waiver by reducing eligibility, thereby meeting the minimum requirements.

69. A bidder with insufficient activity that wants to reduce its bidding eligibility rather than use an activity rule waiver must affirmatively override the automatic waiver mechanism during the round by using the reduce eligibility function in the software. In this case, the bidder's eligibility is permanently reduced to bring the bidder into compliance with the activity rules. Once eligibility has been reduced, a bidder will not be permitted to regain its lost bidding eligibility.

70. A bidder may proactively use an activity rule waiver as a means to keep the auction open without placing a bid. If a bidder submits a proactive waiver (using the proactive waiver function in the bidding software) during a round in which no bids are submitted, the auction will remain open and the bidder's eligibility will be preserved. An automatic waiver invoked in a round in which there are no new valid bids or withdrawals will not keep the auction open.

71. Bidding will remain open on all construction permits until bidding stops on every construction permit. Thus, the auction will close for all construction permits when one round passes during which no bidder submits a new acceptable bid on any construction permit, applies a proactive waiver, or withdraws a previous high bid. The Bureaus retain the discretion to close the auction for all construction permits after the first round in which no bidder submits a proactive waiver, a withdrawal, or a new bid on any license on which it is not the standing highest bidder. Thus, absent any other bidding activity, a bidder placing a new bid on a construction permit for which it is the standing high bidder would not keep the auction open under this modified stopping rule.

72. The Bureaus retain the discretion to keep an auction open even if no new acceptable bids or proactive waivers are submitted, and no previous high bids are withdrawn. In this event, the effect will be the same as if a bidder had submitted a proactive waiver. Thus the activity rule will apply as usual, and a bidder with insufficient activity will either lose bidding eligibility or use an activity rule waiver (if it has any left).

73. The Bureaus reserve the right to declare that the auction will end after a specified number of additional rounds (''special stopping rule''). If the FCC invokes this special stopping rule, it will accept bids in the final round(s) only for construction permits on which the high bid increased in at least one of the preceding specified number of rounds. The FCC intends to exercise this option only in extreme circumstances, such as where the auction is proceeding very slowly, where there is minimal overall bidding activity, or where it appears likely that the auction will not close within a reasonable period of time. Before exercising this option, the FCC is likely to attempt to increase the pace of the auction by, for example, increasing the number of bidding rounds per day.

74. *Auction Delay, Suspension, or Cancellation.* In the *Closed Broadcast Auction Public Notice,* the Bureau proposed that, by public notice or by announcement during the auction, the Bureau may delay, suspend, or cancel the auction in the event of natural disaster, technical obstacle, evidence of an auction security breach, unlawful bidding activity, administrative or weather necessity, or for any other reason that affects the fair and competitive conduct of competitive bidding. The Commission received no comments on this proposal.

75. Because this approach has proven effective in resolving exigent circumstances in previous auctions, the Bureau will adopt its proposed auction cancellation rules. By public notice or by announcement during the auction, the Bureau may delay, suspend or cancel the auction in the event of natural disaster, technical obstacle, evidence of an auction security breach,

unlawful bidding activity, administrative or weather necessity, or for any other reason that affects the fair and competitive conduct of competitive bidding. In such cases, the Bureau, in its sole discretion, may elect to: resume the auction starting from the beginning of the current round; resume the auction starting from some previous round; or cancel the auction in its entirety. Network interruption may cause the Bureau to delay or suspend the auction. The Bureau emphasizes that exercise of this authority is solely within the discretion of the Bureaus, and its use is not intended to be a substitute for situations in which bidders may wish to apply their activity rule waivers.

76. *Bidding Procedures—Round Structure.* The initial bidding schedule will be announced by public notice at least one week before the start of the auction, and will be included in the registration mailings. The round structure for each bidding round contains a single bidding round followed by the release of the round results.

77. The FCC has discretion to change the bidding schedule in order to foster an auction pace that reasonably balances speed with the bidders' need to study round results and adjust their bidding strategies. The FCC may increase or decrease the amount of time for the bidding rounds and review periods, or the number of rounds per day, depending upon the bidding activity level and other factors.

78. *Reserve Price or Minimum Opening Bid.* In the *Closed Broadcast Auction Public Notice,* the Bureaus proposed to establish minimum opening bids and to retain discretion to lower the minimum opening bids. In the alternative, the Bureaus sought comment on whether, consistent with the Budget Act, the public interest would be served by having no minimum opening bid or reserve price. Numerous comments addressed the issue of minimum opening bids and reserve prices.

79. Except as disclosed below, the Bureaus will adopt the minimum opening bids proposed for each of the construction permits in the Closed Broadcast Auction and which are reducible at the discretion of the Bureaus, if circumstances warrant. This discretion will be exercised sparingly and early in the auction, i.e. before bidders lose all waivers and begin to lose substantial eligibility. During the course of the auction, the Bureaus will not entertain any bidder requests to reduce the minimum opening bid on specific construction permits.

80. A number of commenters submitted comments requesting that certain minimum opening bids be lowered for specific primary service television markets, due to disproportionate differences in the sizes of the markets, the number of households in the proposed markets and the average price of stations in the market. We find merit in these commenters suggesting that minimum opening bids be lowered due to differences in the size of the markets and the revisions are contained in Attachment A of the Public Notice.

81. *Minimum Accepted Bids and Bid Increments.* In the *Closed Broadcast Auction Public Notice,* the Bureaus proposed a minimum bid increment of 10 percent. Biltmore Forest submitted comments stating that 10 percent bidding increments are too high to maintain in the later stages of an auction. However, our past experience has shown us that a 10 percent bid increment is not excessive and will not significantly affect the amounts of prospective bids or the rate at which bidding occurs. Furthermore, we do have discretion to lower the bid increment during the progress of an auction, if we deem that circumstances so dictate.

82. The Bureaus adopt the proposal contained in the *Closed Broadcast Auction Public Notice.* The Bureau retains the discretion to change the minimum bid increment if it determines that circumstances so dictate, such as raising the minimum bid increment toward the end of the auction to speed the pace at which bids reach their final values. The Bureaus will do so by announcement in the Automated Auction System. Under its discretion, the Bureau may also implement an absolute dollar floor for the bid increment to further facilitate a timely close of the auction.

83. Once there is a standing high bid on a construction permit, there will be a bid increment associated with that bid indicating the minimum amount by which the bid on that license can be raised. For the Closed Broadcast Auction, we will use a flat, across-the-board increment of 10 percent to calculate minimum bid increments and retain the discretion to compute the minimum bid increment through other methodologies if circumstances so dictate.

84. Please note that all bidding will take place either through the automated bidding software or by telephonic bidding. (Telephonic bid assistants are required to use a script when handling bids placed by telephone. Telephonic bidders are therefore reminded to allow sufficient time to bid, by placing their calls well in advance of the close of a round, because four to five minutes are necessary to complete a bid submission.) There will be no on-site bidding during Auction No. 25.

85. A bidder's ability to bid on specific construction permits in the first round of the auction is determined by two factors: (1) the construction permits applied for on FCC Form 175; and (2) the upfront payment amount deposited. The bid submission screens will be tailored for each bidder to include only those licenses for which the bidder applied on its FCC Form 175.

86. The bidding software requires each bidder to login to the FCC auction system during the bidding round using the FCC account number, bidder identification number, and the confidential security codes provided in the registration materials.

87. The bid entry screen of the Automated Auction System software for the Closed Broadcast Auction allows bidders to place multiple increment bids which will let bidders increase high bids from one to nine bid increments. A single bid increment is defined as the difference between the standing high bid and the minimum acceptable bid for a construction permit.

88. *Bid Removal and Bid Withdrawal—Procedures.* Before the close of a bidding round, a bidder has the option of removing any bids placed in that round. By using the ''remove bid'' function in the software, a bidder may effectively ''unsubmit'' any bid placed within that round. A bidder removing a bid placed in the same round is not subject to withdrawal payments. Removing a bid will affect a bidder's activity for the round in which it is removed. This procedure will enhance bidder flexibility and serve to expedite the course of the auction. Therefore, the Bureaus will adopt these procedures for the Closed Broadcast Auction.

89. Once a round closes, a bidder may no longer remove a bid. However, in the next round, a bidder may withdraw standing high bids from previous rounds using the ''withdraw bid'' function (assuming that the bidder has not exhausted its withdrawal allowance). A high bidder that withdraws its standing high bid from a previous round is subject to the bid withdrawal payments specified in 47 CFR 1.2104(g) and 1.2109.

90. In previous auctions, the Bureaus have detected bidder conduct that, arguably, may have constituted strategic bidding through the use of bid withdrawals. While the Bureaus continues to recognize the important

role that bid withdrawals play in an auction, *i.e.*, reducing risk associated with efforts to secure various construction permits or licenses in combination, the Bureaus concludes that, for the Closed Broadcast Auction, adoption of a limit on their use to two rounds is the most appropriate outcome. By doing so the Bureaus believe they strike a reasonable compromise that will allow bidders to use withdrawals. Our decision on this issue is based upon our experience in prior auctions, particularly the PCS D, E and F block auction, 800 MHz SMR auction, and LMDS auction, and is in no way a reflection of our view regarding the likelihood of any speculation or ''gaming'' in this Closed Broadcast Auction.

91. The Bureaus will therefore limit the number of rounds in which bidders may place withdrawals to two rounds. These rounds will be at the bidder's discretion and there will be no limit on the number of bids that may be withdrawn in either of these rounds. Withdrawals will still be subject to the bid withdrawal payments specified in 47 CFR 1.2104(g), and 1.2109. Bidders should note that abuse of the Commission's bid withdrawal procedures could result in the denial of the ability to bid on a market.

92. If a high bid is withdrawn, the construction permit will be offered in the next round at the second highest bid price, which may be less than, or equal to, in the case of tie bids, the amount of the withdrawn bid, without any bid increment. The FCC will serve as a ''place holder'' on the construction permit until a new acceptable bid is submitted on that permit.

93. *Calculation*. Generally, a bidder that withdraws a standing high bid during the course of an auction will be subject to a payment equal to the lower of: (1) the difference between the net withdrawn bid and the subsequent net winning bid; or (2) the difference between the gross withdrawn bid and the subsequent gross winning bid for that construction permit. In the case of multiple withdrawals on a construction permit, the payment for the final withdrawer will be computed as above. The payment for all other withdrawers will be computed as the lower of: (1) either the difference between the net withdrawn bid and the highest of the subsequent net winning bids or the difference between the net withdrawn bid and the subsequent net winning bid, whichever is less; or (2) either the difference between the gross withdrawn bid and the highest of the subsequent gross withdrawn bids or the difference between the gross withdrawn bid and the subsequent gross winning bid, whichever is less. No withdrawal payment will be assessed for a withdrawn bid if either the subsequent gross or net winning bid or if any of the subsequent gross or net withdrawn bids exceed the gross or net amount of the withdrawn bid. In the event that a construction permit for which there have been withdrawn bids is not won in that auction, then those bidders with outstanding withdrawals will have 3 percent of their withdrawn bid withheld until such time as the construction permit can be reauctioned and a final payment assigned.

94. *Round Results*. The bids placed during a round are not published until the conclusion of that bidding period. After a round closes, the FCC will compile reports of all bids placed, bids withdrawn, current high bids, new minimum accepted bids, and bidder eligibility status (bidding eligibility and activity rule waivers), and post the reports for public access.

95. Reports reflecting bidders' identities and bidder identification numbers for Auction No. 25 will be available before and during the auction. Thus, bidders will know in advance the identities of the bidders against which they are bidding.

96. *Auction Announcements*. The FCC will use auction announcements to announce items such as schedule changes and round sequences and length. All FCC auction announcements will be available on the FCC remote electronic bidding system, as well as the Internet and the FCC Bulletin Board System.

97. *Other Matters —Deletions and Corrections*. Commenters Association of American Public Television Stations (APTS) and Rocky Mountain Public Broadcasting Network, Inc. (Rocky Mountain) request that so-called ''noncommercial educational'' applicants for secondary television facilities not be included in the auction. We decline the requests of APTS and Rocky Mountain and disagree that they are exempt from auction. In this case, applicants in the secondary television services are not eligible to be licensed as noncommercial educational, a key element in the Communications Act, Section 309(j)(2)(c) statutory exemption. Accordingly, the Commission must subject these applications to auction.

98. *Pre-auction Procedures for Pending, Applications*. Several commenters urge the Commission to remove their particular MX Group from the September 28, 1999 Closed Broadcast Auction, alleging that their only competitor within the group is unacceptable and should be dismissed. In the *First Report and Order*, the Commission decisively rejected this argument and unequivocally stated that it would ''not consider petitions to deny already filed, or accept additional petitions against pending applications, nor consider any questions raised in such petitions relating to the tenderability or acceptability of the pending long form applications.'' Rather, petitions to deny will be entertained only with respect to the auction winning bidder. The Commission concluded that the interests of the group of pending applicants is best served by this approach and, to do otherwise would significantly delay the commencement of competitive bidding and ultimate service to the public. Accordingly, we reject commenters' requests to examine issue pleadings at this time.

99. *Conflict Removal*. One applicant for an MX FM translator facility contends that there is no need for an auction because alternative frequencies exist and either one of the competing applicants could amend to specify a different frequency and remove the conflict. The applicant argues that the Commission's failure to open a filing window, however, precludes the filing of such amendment and forces the parties into an unnecessary auction. The applicant's assessment of its settlement options is misguided. As explicitly stated in the *First Report and Order*, pending secondary service applicants may still avoid an auction through a settlement agreement that complies with all Commission regulations, including the resolution of mutual exclusivity through various engineering means.

100. *Minor Modifications to FCC Form 175 Applications*. After the short-form filing deadline, applicants may make only minor changes to their FCC Form 175 applications. Filers should make these changes on-line, submit a letter to Amy Zoslov, Chief Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, 445 12th Street, SW, Suite 4–A760 Washington, DC 20554, briefly summarizing the changes. Questions about other changes should be directed to Bob Allen of the FCC Auctions and Industry Analysis Division at (202) 418–0660.

101. *Maintaining Currency of Information in FCC Form 175 Applications*. Applicants have an obligation under Section 1.65 of the Commission's Rules, 47 CFR 1.65, to maintain the completeness and accuracy of information in their short-form applications. Amendments reporting substantial changes of possible decisional significance in information

contained in FCC Form 175 applications, as defined by 47 CFR 1.2105(b)(2), will not be accepted and may in some instances result in the dismissal of the FCC Form 175 application.

*E. Post-Auction Procedures*

102. *Down Payments and Withdrawn Bid Payments.* After bidding has ended, the Commission will issue a public notice declaring the auction closed, identifying the winning bids and bidders for each construction permit and listing withdrawn bid payments due.

103. Within ten business days after release of the auction closing notice, each winning bidder must submit sufficient funds (in addition to its upfront payment) to bring its total amount of money on deposit with the Government to 20 percent of its net winning bids (actual bids less any applicable bidding credits). *See* 47 CFR 1.2107(b). In addition, by the same deadline, all bidders must pay any withdrawn bid amounts due under 47 CFR 1.2104(g). (Upfront payments are applied first to satisfy any withdrawn bid liability, before being applied toward down payments.)

104. *Default and Disqualification.* Any high bidder that defaults or is disqualified after the close of the auction (*i.e.*, fails to remit the required down payment within the prescribed period of time, fails to submit a timely long-form application, fails to make full payment, or is otherwise disqualified) will be subject to the payments described in 47 CFR 1.2104(g)(2). In such event the Commission may re-auction the construction permit to the next highest bidder (in descending order) at their final bids. *See* 47 CFR 1.2109(b) and (c). In addition, if a default or disqualification involves gross misconduct, misrepresentation, or bad faith by an applicant, the Commission may declare the applicant and its principals ineligible to bid in future auctions, and may take any other action that it deems necessary, including institution of proceedings to revoke any existing construction permits or licenses held by the applicant. *See* 47 CFR 1.2109(d).

105. *Refund of Remaining Upfront Payment Balance.* All applicants that submitted upfront payments but were not winning bidders for a Closed Broadcast Auction construction permit may be entitled to a refund of their remaining upfront payment balance after the conclusion of the auction. No refund will be made unless there are excess funds on deposit from that applicant after any applicable bid withdrawal payments have been paid.

106. Bidders that drop out of the auction completely may be eligible for a refund of their upfront payments before the close of the auction. However, bidders that reduce their eligibility and remain in the auction are not eligible for partial refunds of upfront payments until the close of the auction. Qualified bidders that have exhausted all of their activity rule waivers, have no remaining bidding eligibility, and have not withdrawn a high bid during the auction must submit a written refund request which includes wire transfer instructions, a Taxpayer Identification Number (''TIN''), and a copy of their bidding eligibility screen print, to: Federal Communications Commission, Billings and Collections Branch, Attn: Regina Dorsey or Linwood Jenkins, 445 12th Street, S.W., Room 1-A824, Washington, D.C. 20554.

107. Bidders can also fax their request to the Billings and Collections Branch at (202) 418–2843. Once the request has been approved, a refund will be sent to the address provided on the FCC Form 159. Refund processing generally takes up to two weeks to complete. Bidders with questions about refunds should contact Linwood Jenkins or Geoffrey Idika at (202) 418–1995.

Federal Communications Commission.

**Mark R. Bollinger,**

*Deputy Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau.*

[FR Doc. 99–18834 Filed 7–22–99; 8:45 am]

**BILLING CODE 6712–01–P**

## FEDERAL DEPOSIT INSURANCE CORPORATION

### Sunshine Act Meeting

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 10:00 a.m. on Tuesday, July 27, 1999, to consider the following matters:

*Summary Agenda*

No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes previous Board of Directors' meetings.

Summary reports, status reports, and reports of actions taken pursuant to authority delegated by the Board of Directors.

Memorandum and resolution re: Revision to Memorandum of Understanding Between the Federal Deposit Insurance Corporation and the Financing Corporation regarding the Collection of Assessments.

Memorandum and resolution re: Repayment of Resolution Trust Corporation Appropriations.

*Discussion Agenda*

Memorandum and resolution re: Amendment to Part 361—Minority and Women Outreach Program—Contracting and Withdrawal of Proposed Rule entitled ''Formal Minority—and Women-Owned Business and Law Firm Certification Program.''

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, N.W., Washington, D.C.

The FDIC will provide attendees with auxiliary aids (e.g., sign language interpretation) required for this meeting. Those attendees needing such assistance should call (202) 416–2449 (Voice); (202) 416–2004 (TTY), to make necessary arrangements.

Requests for further information concerning the meeting may be directed to Mr. James D. LaPierre, Deputy Executive Secretary of the Corporation, at (202) 898–6757.

Dated: July 20, 1999.

Federal Deposit Insurance Corporation.

**James D. LaPierre,**

*Deputy Executive Secretary.*

[FR Doc. 99–18937 Filed 7–21–99; 10:40 am]

**BILLING CODE 6714–01–M**

## FEDERAL EMERGENCY MANAGEMENT AGENCY

**[FEMA–1279–DR]**

### North Dakota; Amendment No. 1 to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster for the State of North Dakota, (FEMA–1279–DR), dated June 8, 1999, and related determinations.

**EFFECTIVE DATE:** July 6, 1999.

**FOR FURTHER INFORMATION CONTACT:** Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

**SUPPLEMENTARY INFORMATION:** The notice of a major disaster for the State of North

Dakota is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of June 8, 1999:

Burke, Divide, Sioux, Williams Counties, and the Indian Reservation of the Standing Rock Sioux (that portion of the reservation which lies within the State of North Dakota) for Individual Assistance and Public Assistance.

Mercer County for Individual Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program)

**Lacy E. Suiter,**

*Executive Associate Director, Response and Recovery Directorate.*

[FR Doc. 99–18845 Filed 7–22–99; 8:45 am]

BILLING CODE 6718–02–P

## FEDERAL EMERGENCY MANAGEMENT AGENCY

**[FEMA–1279–DR]**

### North Dakota; Amendment No. 2 to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster for the State of North Dakota, (FEMA–1279–DR), dated June 8, 1999, and related determinations.

**EFFECTIVE DATE:** July 12, 1999.

**FOR FURTHER INFORMATION CONTACT:** Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

**SUPPLEMENTARY INFORMATION:** The notice of a major disaster for the State of North Dakota is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of June 8, 1999:

Cavalier, Eddy, and Morton Counties for Individual Assistance and Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program)

**Robert J. Adamcik,**

*Deputy Associate Director, Response and Recovery Directorate.*

[FR Doc. 99–18846 Filed 7–22–99; 8:45 am]

BILLING CODE 6718–02–P

## FEDERAL EMERGENCY MANAGEMENT AGENCY

**[FEMA–1280–DR]**

### South Dakota; Amendment No. 1 to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster for the State of South Dakota (FEMA–1280–DR), dated June 9, 1999, and related determinations.

**EFFECTIVE DATE:** June 18, 1999.

**FOR FURTHER INFORMATION CONTACT:** Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that the incident period for this disaster is closed effective June 18, 1999.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program)

**Lacy E. Suiter,**

*Executive Associate Director, Response and Recovery Directorate.*

[FR Doc. 99–18847 Filed 7–22–99; 8:45 am]

BILLING CODE 6718–02–P

## FEDERAL EMERGENCY MANAGEMENT AGENCY

**[FEMA–3127–EM]**

### Texas; Amendment No. 1 to Notice of an Emergency Declaration

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of an emergency for the State of Texas, (FEMA–3127–EM), dated June 23, 1998, and related determinations.

**EFFECTIVE DATE:** July 13, 1999.

**FOR FURTHER INFORMATION CONTACT:** Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that reimbursement for the eligible costs associated with the pre-staging of State fire suppression assets is authorized for mobilization and demobilization costs when associated with an approved fire grant. This reimbursement is limited to the two weeks prior to the beginning of the incident period of the associated approved fire grant.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program)

**Robert J. Adamcik,**

*Deputy Associate Director, Response and Recovery Directorate.*

[FR Doc. 99–18848 Filed 7–22–99; 8:45 am]

BILLING CODE 6718–02–P

## FEDERAL RESERVE SYSTEM

### Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than August 6, 1999.

**A. Federal Reserve Bank of Kansas City** (D. Michael Manies, Assistant Vice

President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

*1. Mahlon T. White CRT No. 7, Mahlon T. White CRT No. 2, and Lester L. Ward, Jr., as Trustee, all of* Denver, Colorado; to acquire voting shares of First Bancorp of Durango, Durango, Colorado, and thereby indirectly acquire voting shares of First National Bank of Durango, Durango, Colorado.

Board of Governors of the Federal Reserve System, July 19, 1999.

**Robert deV. Frierson,**

*Associate Secretary of the Board.*

[FR Doc. 99–18782 Filed 7–22–99; 8:45 am]

**BILLING CODE 6210–01–F**

## FEDERAL RESERVE SYSTEM

### Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 16, 1999.

**A. Federal Reserve Bank of New York** (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045-0001:

*1. Canadian Imperial Bank of Commerce, The CIBC World Markets Corporation, CIBC World Markets, Inc.*, all of Ontario, Canada, and CIBC Delaware Holdings Inc., New York, New York; to become bank holding companies by acquiring 100 percent of the voting shares of CIBC National Bank, Maitland, Florida.

**B. Federal Reserve Bank of Cleveland** (Paul Kaboth, Banking Supervisor) 1455 East Sixth Street, Cleveland, Ohio 44101-2566:

*1. Oak Hill Financial, Inc.*, Jackson, Ohio (Oak Hill); to acquire all of the voting shares of Towne Bank, Cincinnati, Ohio. As described below, Towne Bank would be formed through the conversion of Blue Ash Building and Loan Company, Cincinnati, Ohio, into a state-chartered bank.

In connection with this proposal, Oak Hill has filed notice under section 4 of the BHC Act to acquire Towne Financial, Inc., Cincinnati, Ohio, and thereby indirectly acquire Blue Ash Building and Loan Company, Cincinnati, which currently is a wholly-owned subsidiary of Towne Financial, Inc., and thereby engage in operating a savings association, pursuant to § 225.28(b)(4) of Regulation Y. After this acquisition, Oak Hill would convert Blue Ash Building and Loan Company into a state-chartered bank and the institution would be renamed Towne Bank.

*2. Sky Financial Group, Inc.*, Bowling Green, Ohio; to merge with Mahoning National Bancorp, Inc., Youngstown, Ohio, and thereby indirectly acquire Mahoning National Bank, Youngstown, Ohio.

**C. Federal Reserve Bank of Atlanta** (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

*1. Skylake Bankshares, Inc.*, North Miami Beach, Florida; to merge with Kislak Financial Corporation, Miami Lakes, Florida, and thereby indirectly acquire Kislak National Bank, North Miami, Florida.

**D. Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102-2034:

*1. Delta Trust & Banking Corporation*, Little Rock, Arkansas; to become a bank holding company by acquiring at least 80 percent of the voting shares of SEA Bancshares, Inc., Parkdale, Arkansas, and thereby indirectly acquire voting shares of Southeast Arkansas Bank, Parkdale, Arkansas.

**E. Federal Reserve Bank of Minneapolis** (JoAnne F. Lewellen, Assistant Vice President) 90 Hennepin Avenue, P.O. Box 291, Minneapolis, Minnesota 55480-0291:

*1. Milk River Banquo, Inc.*, Malta, Montana; to become a bank holding company by acquiring 81.45 percent of the voting shares of Malta Banquo, Inc., Malta, Montana, and thereby indirectly acquire First Security Bank of Malta, Malta, Montana, and Valley Bank of Glasgow, Glasgow, Montana.

**F. Federal Reserve Bank of Kansas City** (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

*1. Hillcrest Bancshares, Inc.*, Overland Park, Kansas; to acquire 100 percent of the voting shares of American Bank, Wichita, Kansas.

**G. Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

*1. Western Commerce Bank Stock Bonus Plan and Trust Agreement*, Carlsbad, New Mexico; to become a bank holding company by acquiring 29 percent of the voting shares of Western Commerce Bancshares of Carlsbad, Inc., Carlsbad, New Mexico, and thereby indirectly acquire voting shares of Western Commerce Bank, Carlsbad, New Mexico.

*2. The Jere J. Ruff Family Limited Partnership II*, Longview, Texas (in formation); to become a bank holding company by acquiring 38 percent of the voting shares of The First State Bank, Hallsville, Texas.

**H. Federal Reserve Bank of San Francisco** (Maria Villanueva, Manager of Analytical Support, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105-1579:

*1. Wallowa Bancorp*, Joseph, Oregon; to become a bank holding company by acquiring 100 percent of the voting shares of Community Bancshares, Inc., Joseph, Oregon, and thereby indirectly acquire voting shares of Community Bank, Joseph, Oregon.

In connection with this application, Applicant has also applied to acquire Citizens Title & Escrow Service, Inc., Enterprise, Oregon, and thereby engage in insurance agency activities in small towns and escrow service activities pursuant to §§ 225.28(b)(11)(iii) and 225.28(b)(5) of Regulation Y.

*2. Zions Bancorporation*, Salt Lake City, Utah; to merge with Regency Bancorp, Fresno, California, and thereby indirectly acquire Regency Bank, Fresno, California.

In connection with this application, Applicant has also applied to acquire Regency Investment Advisors, Fresno, California, and thereby engage in financial and investment advisory activities, pursuant to § 225.28(b)(6) of Regulation Y; and in providing securities brokerage, private placement, riskless principal, futures commission merchant and other agency transactional services for customer investments,

pursuant to § 225.28(b)(7) of Regulation Y.

Board of Governors of the Federal Reserve System, July 19, 1999.

**Robert deV. Frierson,**

*Associate Secretary of the Board.*

[FR Doc. 99–18781 Filed 7–22–99; 8:45 am]

BILLING CODE 6210–01–F

## FEDERAL RESERVE SYSTEM

### Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225), to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 6, 1999.

**A. Federal Reserve Bank of New York** (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045-0001:

*1. U.S. Trust Corporation*, New York, New York; to acquire North Carolina Trust Company, Greensboro, North Carolina, and thereby engage in trust company functions, pursuant to § 225.28(b)(5) of Regulation Y.

Board of Governors of the Federal Reserve System, July 19, 1999.

**Robert deV. Frierson,**

*Associate Secretary of the Board.*

[FR Doc. 99–18783 Filed 7–22–99; 8:45 am]

BILLING CODE 6210–01–F

## FEDERAL RESERVE SYSTEM

### Sunshine Act Meeting

**AGENCY HOLDING THE MEETING:** Board of Governors of the Federal Reserve System.

**TIME AND DATE:** 3:00 p.m., Wednesday, July 28, 1999.

**PLACE:** Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, N.W., Washington, D.C. 20551.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:**

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any matters carried forward from a previously announced meeting.

**CONTACT PERSON FOR MORE INFORMATION:** Lynn S. Fox, Assistant to the Board; 202–452–3204.

**SUPPLEMENTARY INFORMATION:** You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.federalreserve.gov for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: July 21, 1999.

**Robert deV. Frierson,**

*Associate Secretary of the Board.*

[FR Doc. 99–18957 Filed 7–21–99; 11:18 am]

BILLING CODE 6210–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Submission for OMB Review; Comment Request; Attitudes of U.S. and Developing Country Researchers Regarding U.S. Human Subjects Regulations

**SUMMARY:** Under the provision of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the National Bioethics Advisory Commission has submitted to the Office of Management and Budget (OMB) a request to review and approve the information collection listed below. This proposed information collection was previously published in the **Federal Register** on December 18, 1998, page 70135–70136, and allowed 60 days for public comment. Comments were received from two parties concerning the inclusion of additional respondents in the data collection. The purpose of this notice is to allow an additional 30 days for public comment.

**Proposed Collection**

*Title:* Attitudes of U.S. and Developing Country Researchers Regarding U.S. Human Subjects Regulations. *Type of Information Collection Request:* New. *Need and Use of Information Collection:* This project is an information collection commissioned by the National Bioethics Advisory Commission (NBAC) to assist the Commission in its review of U.S. policies and regulations regarding human subjects research conducted in developing countries. This study will collect information from researchers both in the U.S. and in developing countries who are involved with human subjects research, to ask them about their experiences with U.S. regulations and guidelines and with ethical issues in developing country research. The study consists of qualitative data collection in the form of focus groups and in-depth interviews, and quantitative data collection via a self-administered written survey. The respondents in this study are U.S.-based and developing country investigators who have conducted research in developing countries. U.S.-based respondents will include government, military, academic and private industry researchers. Developing country respondents will be identified through databases maintained by international organizations and will be researchers funded through a variety of sources and who work in developing countries throughout the world. Questions to be asked in focus groups, interviews and surveys include questions about informed consent procedures, about the appropriateness of U.S. regulations for developing country research activities, and about ethical challenges which researchers have faced in their developing country work. *Frequency of Response:* once. *Affected Public:* Individuals, business or other for-profit, not-for-profit institutions, Federal government. *Type of Respondents:* Researchers. *Estimated Number of Respondents:* 786. *Estimated Number of Responses per Respondent:* one. *Average Burden Hours Per Response:* 0.57. *Estimated Total Annual Burden Hours Requested:* 449. The annualized cost to respondents is estimated at: $34,800. There are no Capital Costs, Operating Costs, or Maintenance Costs to report.

**Request for Comments**

Written comments and/or suggestions from the public and affected agencies

should address one or more of the following points: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function 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 the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

**Direct Comments to OMB**

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, New Executive Office Building, Room 10235, Washington, D.C. 20503, Attention: OMB Desk Officer. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: Dr. Eric M. Meslin, National Bioethics Advisory Commission, 6100 Executive Blvd., Suite 5B01, Rockville, MD 20892–7508, or contact the Commission by phone at 301–480–6900 or by e-mail at MeslinE@OD.NIH.GOV.

**Comments Due Date**

Comments regarding this information collection are best assured of having their full effect if received on or before August 23, 1999.

Dated: July 19, 1999.

**Eric M. Meslin,**

*Executive Director, National Bioethics Advisory Commission.*

[FR Doc. 99–18803 Filed 7–22–99; 8:45 am]

**BILLING CODE 4160–17–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

### Disease, Disability and Injury Prevention and Control Special Emphasis Panel: Centers for Excellence in Health Statistics

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting.

*Name:* Disease, Disability and Injury Prevention and Control Special Emphasis Panel: Centers for Excellence in Health Statistics, Program Announcement #99119.

*Times and Dates:* 9 a.m.–9:30 a.m., July 29, 1999 (Open); 9:30 a.m.–5 p.m., July 29, 1999 (Closed); 9 a.m.–5 p.m., July 30, 1999 (Closed).

*Place*: Holiday Inn Bethesda, 8120 Wisconsin Avenue, Bethesda, MD. 20814. Telephone 301/652–2000.

*Status:* Portions of the meeting will be closed to the public in accordance with provisions set forth in section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Associate Director for Management and Operations, CDC, pursuant to Public Law 92–463.

*Matters to be Discussed:* The meeting will include the review, discussion, and evaluation of applications received in response to Program Announcement #99119.

Due to administrative delays, this notice is published less than 15 days before the meeting.

*Contact Person for More Information:* Audrey L. Burwell, M.S., Grants Coordinator, CDC National Center for Health Statistics, 1600 Clifton Rd., m/s P08, Atlanta, Ga 30333. Telephone 301/436–7062, e-mail azb2@cdc.gov.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** Notices pertaining to announcements of meetings and other committee management activities, for the both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: July 20, 1999.

**John C. Burckhardt,**

*Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.*

[FR Doc. 99–18938 Filed 7–21–99; 10:47 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 98N–0320]**

### Agency Information Collection Activities; Announcement of OMB Approval; Guidance for Industry: Notification of a Health Claim or Nutrient Content Claim Based on an Authoritative Statement of a Scientific Body

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Guidance for Industry: Notification of a Health Claim Based on an Authoritative Statement of a Scientific Body'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

**FOR FURTHER INFORMATION CONTACT:** Peggy Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

**SUPPLEMENTARY INFORMATION:** In the **Federal Register** of April 30, 1999 (64 FR 23336), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. 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. OMB has now approved the information collection and has assigned OMB control number 0910–0374. The approval expires on July 31, 2002. A copy of the supporting statement for this information collection is available on the Internet at ''http://www.fda.gov/ohrms/dockets''.

Dated: July 15, 1999.

**William K. Hubbard,**

*Senior Associate Commissioner for Policy, Planning, and Legislation.*

[FR Doc. 99–18770 Filed 7–22–99; 8:45 am]

**BILLING CODE 4160–01–F**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 98N–0222]**

### Agency Information Collection Activities; Submission for OMB Review; Comment Request; Dissemination of Information on Unapproved/New Uses for Marketed Drugs, Biologics, and Devices

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (the PRA).

**DATES:** Submit written comments on the collection of information by August 23, 1999.

**ADDRESSES:** Submit written comments on the collection of information to the

Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Wendy Taylor, Desk Officer for FDA.

**FOR FURTHER INFORMATION CONTACT:** Karen L. Nelson, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1482.

**SUPPLEMENTARY INFORMATION:** In compliance with section 3507 of the PRA (44 U.S.C. 3507), FDA has submitted the following proposed collection of information to OMB for review and clearance.

### Dissemination of Information on Unapproved/New Uses for Marketed Drugs, Biologics, and Devices (OMB Control No. 0910–0390)—Extension

In the **Federal Register** of November 20, 1998 (63 FR 64555), FDA published a final rule to add a new part 99 (21 CFR part 99) entitled ''Dissemination of Information on Unapproved/New Uses for Marketed Drugs, Biologics, and Devices.'' The final rule implemented section 401 of the Food and Drug Administration Modernization Act (FDAMA) (Pub. L. 105–115). In brief, section 401 of FDAMA amended the Federal Food, Drug, and Cosmetic Act (the act) to permit drug, biologic, and device manufacturers to disseminate certain written information concerning the safety, effectiveness, or benefits of a use that is not described in the product's approved labeling to health care practitioners, pharmacy benefit managers, health insurance issuers, group health plans, and Federal and State Government agencies, provided that the manufacturer complies with certain statutory requirements. For example, the information that is to be disseminated must be about a drug or device that is being legally marketed; it must be in the form of an unabridged reprint or copy of a peer-reviewed journal article or reference publication; and it must not be derived from another manufacturer's clinical research, unless that other manufacturer has given its permission for the dissemination. The information must be accompanied by certain information, including a prominently displayed statement that the information discusses a use or uses that have not been approved or cleared by FDA. Additionally, 60 days before dissemination, the manufacturer must submit to FDA a copy of the information to be disseminated and any other clinical trial information that the manufacturer has relating to the safety or effectiveness of the new use, any reports of clinical experience that pertain to the safety of the new use, and a summary of such information.

The rule sets forth the criteria and procedures for making such submissions to FDA. Under the rule, a submission would include a certification that the manufacturer has completed clinical studies necessary to submit a supplemental application to FDA for the new use and will submit the supplemental application within 6 months after its initial dissemination of information. If the manufacturer has planned, but not completed, such studies, the submission would include proposed protocols and a schedule for conducting the studies, as well as a certification that the manufacturer will complete the clinical studies and submit a supplemental application no later than 36 months after its initial dissemination of information. The rule also permits manufacturers to request extensions of the time period for completing a study and submitting a supplemental application and to request an exemption from the requirement to submit a supplemental application. The rule prescribes the timeframe within which the manufacturer shall maintain records that would enable it to take corrective action. The rule requires the manufacturer to submit lists pertaining to the disseminated articles and reference publications and the categories of persons (or individuals) receiving the information and to submit a notice and summary of any additional research or data (and a copy of the data) relating to the product's safety or effectiveness for the new use. The rule requires the manufacturer to maintain a copy of the information, lists, records, and reports for 3 years after it has ceased dissemination of the information and to make the documents available to FDA for inspection and copying.

FDA based its estimates of the number of submissions it would receive and the number of manufacturers who would be subject to part 99 on the number of efficacy and new use supplements for approved drugs, biologics, and devices received in fiscal year (FY) 1997 and on a projected increase in supplements due to FDAMA. In FY 1997, FDA received 198 efficacy and new use supplements from 115 manufacturers. The number of supplements increased 100 percent from FY 1995 to FY 1997 as a result of two new initiatives, the Prescription Drug User Fee Act and a new pediatric labeling regulation. If FDAMA results in an additional 50 percent increase in the number of supplements and a corresponding increase in the number of manufacturers, then the estimated number of submissions under part 99 is 297 (198 + (0.5 x 198)), and the estimated number of manufacturers is 172 (115 + (0.5 x 115)). These figures are reflected in Tables 1 and 2 of this document for §§ 99.201(a)(1), 99.201(a)(2), 99.201(a)(3), 99.201(b), 99.201(c), 99.501(a)(1), 99.501(a)(2), 99.501(b)(1), 99.501(b)(3), and 99.501(c).

The estimated burden hours for these provisions are provided in the following paragraphs of this document.

Section 99.201(a)(1) requires the manufacturer to provide an identical copy of the information to be disseminated, including any required information. The manufacturer must compile this information to prepare its submission to FDA. FDA estimates that 40 hours would be required per submission. Because 297 annual responses are expected under § 99.201(a)(1), the total burden for this provision is 11,880 hours (297 responses x 40 hours per response).

Section 99.201(a)(2) requires the manufacturer to submit clinical trial information pertaining to the safety and effectiveness of the new use, clinical experience reports on the safety of the new use, and a summary of the information. FDA estimates 24 burden hours per response for this provision for assembling, reviewing, and submitting the information and assumes that the manufacturer will have already acquired some of this information in order to decide whether to disseminate information on an unapproved use under part 99. The total burden for this provision is 7,128 hours (297 annual responses x 24 hours per response).

Section 99.201(a)(3) requires the manufacturer to explain its search strategy when assembling its bibliography. The manufacturer would have developed and used its search strategy before preparing the bibliography. FDA estimates that 1 hour would be required for the explanation. Because 297 annual responses are expected under § 99.201(a)(3), the total burden for this provision is 297 hours (297 annual responses x 1 hour per response).

Section 99.201(b) requires the manufacturer's attorney, agent, or other authorized official to sign its submissions, certifications, and requests for an exemption. FDA estimates that 30 minutes are necessary for such signatures. Because 297 annual responses are expected under § 99.201(b), the total burden for this provision is 148.5 hours (297 response x 0.5 hours per response = 148.5 hours).

Section 99.201(c) requires the manufacturer to provide two copies with its original submission. FDA does not expect that copying the submission

will be time-consuming. FDA estimates the burden to be 30 minutes. Because 297 annual responses are expected under § 99.201(c), the total burden for this provision is 148.5 hours.

While the act requires manufacturers to provide a submission to FDA before they disseminate information on unapproved/new uses, it also permits manufacturers to: (1) Have completed studies and promise to submit a supplemental application for the new use within 6 months after the date of initial dissemination, (2) provide protocols and a schedule for completing studies and submitting a supplemental application for the new use within 36 months after the date of initial dissemination, (3) have completed studies and have submitted a supplemental application for the new use, or (4) request an exemption from the requirement to submit a supplemental application. These possible scenarios are addressed in §§ 99.201(a)(4)(i)(A), 99.201(a)(4)(ii)(A), 99.201(a)(5), and 99.205(b), respectively.

To determine the number of responses in §§ 99.201(a)(4)(i)(A), 99.201(a)(4)(ii)(A), 99.201(a)(5), and 99.205(b), FDA began by estimating the number of requests for an exemption under § 99.205(b). The legislative history indicates that such exemptions are to be limited. In the final rule, FDA estimated that approximately 10 percent of all respondents would seek—or 10 percent of all submissions would contain—an ''economically prohibitive'' exemption (resulting in 17 total respondents and approximately 30 annual responses) and that the estimated reporting burden per response would be 82 hours. This results in a total hour burden of 2,460 hours for § 99.205(b) (30 submissions x 82 hours per submission).

The estimated increase in the number of exemption requests results in a corresponding decrease in the remaining number of respondents and submissions under §§ 99.201(a)(4)(i)(A), 99.201(a)(4)(ii)(A), and 99.201(a)(5). FDA assumes that the remaining 267 submissions (297 total submissions—30 submissions containing an exemption request) will be divided equally among §§ 99.201(a)(4)(i)(A), 99.201(a)(4)(ii)(A), and 99.201(a)(5), resulting in 89 responses in each provision (267 submissions/3 provisions). FDA has estimated the number of respondents in a similar fashion ((172 total respondents—17 respondents submitting an exemption request)/3 provisions = 51.6, rounded up to 52 respondents per provision).

As stated earlier, § 99.201(a)(4)(i)(A)) requires the manufacturer, if the manufacturer has completed studies needed for the submission of a supplemental application for the new use, to submit the protocol(s) for the completed studies, or, if the protocol was submitted to an investigational new drug application (IND) or investigational device exemption (IDE), to submit the IND or IDE number(s), the date of submission of the protocol(s), the protocol number(s), and the date of any amendments to the protocol(s) must be submitted with the application. This is information that each manufacturer already maintains for its drugs or devices. FDA estimates that 30 hours would be required for this response. The total burden for this provision is 2,670 hours (89 annual responses x 30 hours per response).

For manufacturers who submit protocols and a schedule for conducting studies, § 99.201(a)(4)(ii)(A)) requires the manufacturer to include, in its schedule, the projected dates on which the manufacturer expects the principal study events to occur. Manufacturers would have to contact the studies' principal investigator(s) and other company officials. FDA estimates a manufacturer would need approximately 60 hours to include the projected dates. The total burden for this provision is 5,340 hours (89 annual responses x 60 hours per response).

If the manufacturer has submitted a supplemental application for the new use, § 99.201(a)(5) requires a cross-reference to that supplemental application. Manufacturers already maintain this information. FDA estimates that 1 hour would be needed to comply with the requirement. The total burden for this provision is 89 hours (89 annual responses x 1 hour per response).

Under § 99.203, a manufacturer who has certified that it will complete studies necessary to submit a supplemental application within 36 months after its submission to FDA, but later finds that it will be unable to complete such studies or submit a supplemental application within that time period, may request an extension of time from FDA. Such requests for extension should be limited, occurring less than 1 percent of the time, because manufacturers and FDA, when developing or reviewing study protocols, should be able to identify when a study will require more than 36 months to complete. Section 99.203 contemplates extension requests under two different scenarios. Under § 99.203(a), a manufacturer may make an extension request *before* it makes a submission to FDA regarding the dissemination of information under part 99. The agency expects such requests to be limited, occurring less than 1 percent of the time (or 1 annual response), and that such requests will result in a reporting burden of 10 hours per request. The total burden hours for this provision, therefore, is 10 hours (1 annual response x 10 hours per response).

Section 99.203(b) specifies the contents of a request to extend the time for completing planned studies *after* the manufacturer has provided its submission to FDA. The required information includes a description of the studies, the current status of the studies, reasons why the study cannot be completed on time, and an estimate of the additional time needed. FDA estimates that 10 hours for reporting the required information under § 99.203(b) because it would require consultation between the manufacturer and key individuals (such as the study's principal investigator(s)). As in the case of § 99.203(a), the expected number of responses is very small (1 annual response), and the total burden hours for this provision is 10 hours (1 annual response x 10 hours per response).

Section 99.203(c) requires two copies of an extension request (in addition to the request required under section 554(c)(3) of the act (21 U.S.C. 360aaa–3)). FDA estimates that these copies would result in a reporting burden of 30 minutes. This requirement would apply to extension requests under § 99.203(a) and (b), so the total number of annual responses is 2, resulting in a total burden hour for this provision of 1 hour (2 annual responses x 0.5 hours per response).

Section 99.501(a)(1) requires the manufacturer to maintain records that identify recipients by category or individually. Under § 99.301(a)(3), FDA will notify the manufacturer whether it needs to maintain records identifying individual recipients due to special safety considerations associated with the new use. This means that, in most cases, the manufacturer will only have to maintain records identifying recipients by category. In either event, the manufacturer will know whether it must maintain records that identify individual recipients before it begins disseminating information. The time required to identify recipients individually should be minimal, and the time required to identify recipients by category should be even less. FDA estimates the burden for this provision to be 10 hours, and, because 297 annual responses are expected under § 99.501(a)(1), the total burden for this provision is 2,970 hours (297 annual responses x 10 hours per response).

Section 99.501(a)(2) requires the manufacturer to maintain a copy of the information it disseminates. FDA estimates the burden to be 1 hour. Because 297 annual responses are expected under § 99.501(a)(2), the total burden for this provision is 297 hours (297 annual responses x 1 hour per response).

Section 99.501(b)(1) requires the manufacturer to submit to FDA semiannually a list containing the articles and reference publications that were disseminated in the preceding 6-month period. FDA tentatively estimates a burden of 8 hours for this provision. The actual burden may be less if the manufacturer develops and updates the list while it disseminates articles and reference publications during the 6-month period (as opposed to generating a completely new list at the end of each 6-month period) and if the volume of disseminated materials is small. The total burden for this provision is 4,752 hours (297 responses submitted semiannually x 8 hours per response = 297 x 2 x 8 = 4,752 hours).

Section 553(a)(2) of the act (21 U.S.C. 360aaa–2) requires manufacturers that disseminate information to submit to FDA semiannually a list that identifies the categories of providers who received the articles and reference publications. Section 99.501(b)(2) also requires the list to identify which category of recipients received each particular article or reference publication. If each of the 297 submissions under part 99 results in disseminated information, § 99.501(b)(2) would result in 594 lists (297 submissions x 2 submissions per year) identifying which category of recipients received each particular article or reference publication. The agency estimates the burden to be only 1 hour per response because this type of information is maintained as a usual and customary business practice, and the total burden for this provision is 594 hours (594 lists x 1 hour per list).

In relation to § 99.201(a)(2), § 99.501(b)(3) requires the manufacturer to provide, on a semiannual basis, a notice and summary of any additional clinical research or other data relating to the safety and effectiveness of the new use and, if it possesses such research or data, to provide a copy to FDA. This burden should not be as extensive as that in § 99.201(a)(2). FDA estimates the burden to be 20 hours per response, for a total burden of 11,880 hours for this provision (297 annual responses submitted semiannually x 20 hours per response = 297 x 2 x 20 = 11,880 hours).

If a manufacturer discontinues or terminates a study before completing it, § 99.501(b)(4)) requires the manufacturer to state the reasons for discontinuing or terminating the study in its next progress report. Based on FDA's regulatory experience in monitoring studies to support supplemental applications, FDA estimates this would affect only 1 percent of all applications (297 at 0.01 = 2.97, rounded up to 3) and only 2 manufacturers (172 x 0.01 = 1.72, rounded up to 2). FDA estimates 2 hours of reporting time for this requirement because the manufacturer should know the reasons for discontinuing or terminating the study and would only need to provide those reasons in its progress report. The total burden hours for this provision is 6 hours (3 annual responses x 2 hours per response).

Section 99.501(b)(5) requires the manufacturer to submit any new or additional information that relates to whether the manufacturer continues to meet the requirements for the exemption after an exemption has been granted. FDA cannot determine, at this time, how many exemption requests will be granted, but, for purposes of this information of collection, has estimated that 10 percent of all submissions will contain an exemption request (297 total submissions x 0.10 = 29.7, rounded up to 30) and has assumed that all exemption requests will be granted, for a total of 30 annual responses. The information sought under § 99.501(b)(5) pertains solely to new or additional information and is not expected to be as extensive as the information required to obtain an exemption. Thus, FDA tentatively estimates the burden for § 99.501(b)(5) to be 41 hours per response (or half the burden associated with an exemption request), for a total burden of 1,230 hours for this provision (30 annual responses x 41 hours per response).

Section 99.501(c) requires the manufacturer to maintain records for 3 years after it has ceased dissemination of the information. FDA estimates the burden hour for this provision to be 1 hour. Because 297 annual responses are expected under § 99.501(c), the total burden for this provision is 297 hours.

*Description of Respondents*: All manufacturers (persons and businesses, including small businesses) of drugs, biologics, and device products.

In the **Federal Register** of March 4, 1999 (64 FR 10470), the agency requested comments on the proposed collections of information. No comments were received.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

| 21 CFR Section | No. of Respondents | Annual Frequency per Response | Total Annual Responses | Hours per Response | Total Hours |
|---|---|---|---|---|---|
| 99.201(a)(1) | 172 | 1.7 | 297 | 40 | 11,880 |
| 99.201(a)(2) | 172 | 1.7 | 297 | 24 | 7,128 |
| 99.201(a)(3) | 172 | 1.7 | 297 | 1 | 297 |
| 99.201(a)(4)(i)(A) | 52 | 1.7 | 89 | 30 | 2,670 |
| 99.201(a)(4)(ii)(A) | 52 | 1.7 | 89 | 60 | 5,340 |
| 99.201(a)(5) | 52 | 1.7 | 89 | 1 | 89 |
| 99.201(b) | 172 | 1.7 | 297 | 0.5 | 148.5 |
| 99.201(c) | 172 | 1.7 | 297 | 0.5 | 148.5 |
| 99.203(a) | 1 | 1 | 1 | 10 | 10 |
| 99.203(b) | 1 | 1 | 1 | 10 | 10 |
| 99.203(c) | 2 | 1 | 2 | 0.5 | 1 |
| 99.205(b) | 17 | 1.8 | 30 | 82 | 2,460 |
| 99.501(b)(1) | 172 | 3.4 | 594 | 8 | 4,752 |
| 99.501(b)(2) | 172 | 3.4 | 594 | 1 | 594 |
| 99.501(b)(3) | 172 | 3.4 | 594 | 20 | 11,880 |
| 99.501(b)(4) | 2 | 1.7 | 3 | 2 | 6 |
| 99.501(b)(5) | 17 | 1.8 | 30 | 41 | 1,230 |

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]—Continued

| 21 CFR Section | No. of Respondents | Annual Frequency per Response | Total Annual Responses | Hours per Response | Total Hours |
|---|---|---|---|---|---|
| Total Hours | | | | | 48,644 |

[1] There are no capital costs or operating and maintenance costs associated with this collection of information

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[2]

| 21 CFR Section | No. of Recordkeepers | Annual Frequency per Recordkeeping | Total Annual Records | Hours per Recordkeeper | Total Hours |
|---|---|---|---|---|---|
| 99.501(a)(1) | 172 | 1.7 | 297 | 10 | 2,970 |
| 99.501(a)(2) | 172 | 1.7 | 297 | 1 | 297 |
| 99.501(c) | 172 | 1.7 | 297 | 1 | 297 |
| Total Hours | | | | | 3,564 |

[2] There are no capital costs or operating and maintenance costs associated with this collection of information.

The estimated burden associated with the information collection requirements for this rule is 52,208 hours.

Dated: July 15, 1999.

**Margaret M. Dotzel,**

*Acting Associate Commissioner for Policy.*

[FR Doc. 99–18767 Filed 7–22–99; 8:45 am]

**BILLING CODE 4160–01–F**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### Clinical Studies of Safety and Effectiveness of Orphan Products; Availability of Grants; Request for Applications

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing changes to its Orphan Products Development (OPD) grant program for fiscal year (FY) 2000. The previous announcement of this program, which was published in the Federal Register of August 5, 1998 (63 FR 41855), is superseded by this announcement. In the future, a new announcement will be published annually.

**DATES:** The application receipt dates are November 15, 1999, and April 3, 2000.

**ADDRESSES:** Application forms are available from, and completed applications should be submitted to: Maura C. Stephanos, Grants Management Specialist, Division of Contracts and Procurement Management (HFA–522), Food and Drug Administration, 5600 Fishers Lane, rm. 2129, Rockville, MD 20857, 301–827–7183. (Applications hand-carried or commercially delivered should be addressed to 5630 Fishers Lane, rm. 2129, Rockville, MD 20852.)

**FOR FURTHER INFORMATION CONTACT:**

Regarding the administrative and financial management aspects of this notice: Maura C. Stephanos (address above).

Regarding the programmatic aspects of this notice: Ronda A. Balham, Office of Orphan Products Development (HF–35), Food and Drug Administration, 5600 Fishers Lane, rm. 8–73, Rockville, MD 20857, 301–827–3666.

**SUPPLEMENTARY INFORMATION:** FDA is announcing the anticipated availability of funds for FY 2000 for awarding grants to support clinical trials on the safety and effectiveness of products for a rare disease or condition (i.e., one with a prevalence, not incidence, of fewer than 200,000 people in the United States). Contingent on availability of FY 2000 funds, it is anticipated that $11.5 million will be available, of which $8.5 million will be for noncompeting continuation awards. This will leave $3 million for funding approximately 10 new applications. Any phase clinical trial is eligible for up to $100,000 in direct costs per annum plus applicable indirect costs for up to 3 years. Phase 2 and phase 3 clinical trials are eligible for up to $200,000 in direct costs per annum plus applicable indirect costs for up to 3 years.

FDA will support the clinical studies covered by this notice under section 301 of the Public Health Service Act (the PHS Act) (42 U.S.C. 241). FDA's research program is described in the Catalog of Federal Domestic Assistance, No. 93.103.

The Public Health Service (PHS) strongly encourages all grant recipients to provide a smoke-free work place and to discourage the use of all tobacco products. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

PHS urges applicants to submit work plans that address specific objectives of ''Healthy People 2000.'' Potential applicants may obtain a copy of ''Healthy People 2000'' (Full Report, stock no. 017–001–00474–0) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, 202–512–1800.

PHS policy is that applicants for PHS clinical research grants are required to include minorities and women in study populations so that research findings can be of benefit to all persons at risk of the disease, disorder, or condition under study; special emphasis must be placed on the need for inclusion of minorities and women in studies of diseases, disorders, and conditions which disproportionately affect them. This policy is intended to apply to males and females of all ages. If women or minorities are excluded or inadequately represented in clinical research, particularly in proposed population-based studies, a clear compelling rationale must be provided.

#### I. Program Research Goals

OPD was established to identify and facilitate the availability of orphan products. In the OPD grant program, orphan products are defined as drugs, biologics, medical devices, and foods for medical purposes that are indicated for a rare disease or condition (i.e., one with a prevalence, not incidence, of fewer than 200,000 people in the United States). Diagnostic tests and vaccines will qualify only if the U.S. population of intended use is lower than 200,000 per annum.

One way to make orphan products available is to support clinical research to determine whether the products are safe and effective. All funded studies are subject to the requirements of the Federal Food, Drug, and Cosmetic Act (the act) and regulations issued thereunder. The grants are funded under the legislative authority of section 301 of the PHS Act (42 U.S.C. 241).

The goal of FDA's OPD grant program is the clinical development of products for use in rare diseases or conditions where no current therapy exists or where current therapy would be improved. FDA provides grants to conduct clinical studies intended to provide data acceptable to the agency which will either result in or substantially contribute to approval of these products. Applicants should keep this goal in mind and must include an explanation in the ''Background and Significance'' section of the application of how their proposed study will either facilitate product approval or provide essential data needed for product development. Information regarding meetings and/or discussions with FDA reviewing division staff about the product to be studied should also be provided as an appendix to the application. This information is extremely important for the review process.

Except for medical foods that do not require premarket approval, FDA will only consider awarding grants to support clinical studies for determining whether the products are safe and effective for premarket approval under the act (21 U.S.C. 301 *et seq.*) or under section 351 of the PHS Act (42 U.S.C. 262). All studies of new drug and biological products must be conducted under the FDA's investigational new drug (IND) procedures and studies of medical devices must be conducted under the investigational device exemption (IDE) procedures. Studies of approved products to evaluate new orphan indications are also acceptable; however, these are also required to be conducted under an IND or IDE to support a change in labeling. (See section V.B of this document (''Program Review Criteria'') for critical requirements concerning IND/IDE status of products to be studied under these grants.)

Studies submitted for the larger grants ($200,000) must be continuing in phase 2 or phase 3 of investigation. Phase 2 trials include controlled clinical studies conducted to evaluate the effectiveness of the product for a particular indication in patients with the disease or condition and to determine the common or short-term side effects and risks associated with it. Phase 3 trials gather additional information about effectiveness and safety that is necessary to evaluate the overall risk-benefit relationship of the product and to provide an adequate basis for physician labeling. Studies submitted for the smaller grants ($100,000) may be phase 1, 2, or 3 trials. If a study is submitted as a phase 1/2 trial, the maximum budget support for all years requested may not exceed $100,000 per year. Budgets for all years of requested support may not exceed the $200,000 or $100,000 limitation, whichever is applicable.

Applications must propose a clinical trial of one therapy for one indication. The applicant must provide supporting evidence that a sufficient quantity of the product to be investigated is available to the applicant in the form needed for the clinical trial. The applicant must also provide supporting evidence that the patient population has been surveyed and that there is reasonable assurance that the necessary number of eligible patients is available for the study.

Funds may be requested in the budget for travel to FDA to meet with reviewing division staff about product development progress.

## II. Human Subject Protection and Informed Consent

### *A. Protection of Human Research Subjects*

Some activities carried out by a recipient under this announcement may be governed by the Department of Health and Human Services (DHHS) regulations for the protection of human research subjects (45 CFR part 46). These regulations require recipients to establish procedures for the protection of subjects involved in any research activities. Prior to funding and upon request of the Office for Protection from Research Risks (OPRR), prospective recipients must have on file with OPRR an assurance to comply with 45 CFR part 46. This assurance to comply is called an Assurance document. It includes the designated Institutional Review Board (IRB) for review and approval of procedures for carrying out any research activities occurring in conjunction with this award. If an applicable Assurance document for the applicant is not already on file with OPRR, a formal request for the required Assurance will be issued by OPRR at an appropriate point in the review process, prior to award, and examples of required materials will be supplied at that time. No applicant or performance site, without an approved and applicable Assurance on file with OPRR, may spend funds on human subject activities or accrue subjects. No performance site, even with an OPRR-approved and applicable Assurance, may proceed without approval by OPRR of an applicable Assurance for the recipients. Applicants may wish to contact OPRR by fax (301–402–0527) to obtain preliminary guidance on human subjects issues. When contacting OPRR, applicants should provide their institutional affiliation, geographic location, and all available Request For Applications (RFA) citation information.

Applicants are advised that the section on human subjects in the application kit entitled ''Section C. Specific Instructions—Forms, Item 4, Human Subjects,'' on pages 7 and 8 of the application kit, should be carefully reviewed for the certification of IRB approval requirements. Documentation of IRB approval for every participating center is required to be on file with the Grants Management Officer, FDA. The goal should be to include enough information on the protection of human subjects in a sufficiently clear fashion so reviewers will have adequate material to make a complete review. Those approved applicants who do not have a current Multiple Project Assurance with OPRR will be required to obtain a Single Project Assurance from OPRR prior to award.

### *B. Informed Consent*

Consent and/or assent forms, and any additional information to be given to a subject, should accompany the grant application. Information that is given to the subject or the subject's representative must be in language that the subject or his or her representative can understand. No informed consent, whether oral or written, may include any language through which the subject or the subject's representative is made to waive any of the subject's legal rights, or by which the subject or representative releases or appears to release the investigator, the sponsor, or the institution or its agent from liability.

If a study involves both adults and children, separate consent forms should be provided for the adults and the parents or guardians of the children.

### *C. Elements of Informed Consent*

The elements of informed consent are stated in the regulations at 45 CFR 46.116 and 21 CFR 50.25 as follows:

1. Basic elements of informed consent.

In seeking informed consent, the following information shall be provided to each subject.

(a) A statement that the study involves research, an explanation of the

purposes of the research and the expected duration of the subject's participation, a description of the procedures to be followed, and identification of any procedures which are experimental.

(b) A description of any reasonably foreseeable risks or discomforts to the subject.

(c) A description of any benefits to the subject or to others which may reasonably be expected from the research.

(d) A disclosure of appropriate alternative procedures or courses of treatment, if any, that might be advantageous to the subject.

(e) A statement that describes the extent, if any, to which confidentiality of records identifying the subject will be maintained, and that notes the possibility that FDA may inspect the records.

(f) For research involving more than minimal risk, an explanation as to whether any compensation and any medical treatments are available if injury occurs and, if so, what they consist of or where further information may be obtained.

(g) An explanation of whom to contact for answers to pertinent questions about the research and research subject's rights, and whom to contact in the event of research-related injury to the subject.

(h) A statement that participation is voluntary, that refusal to participate will involve no penalty or loss of benefits to which the subject is otherwise entitled, and that the subject may discontinue participation at any time without penalty or loss of benefits to which the subject is otherwise entitled.

2. Additional elements of informed consent.

When appropriate, one or more of the following elements of information shall also be provided to each subject.

(a) A statement that the particular treatment or procedure may involve risks to the subject (or the embryo or fetus, if the subject is or may become pregnant) which are currently unforeseeable.

(b) Anticipated circumstances under which the subject's participation may be terminated by the investigator without regard to the subject's consent.

(c) Any costs to the subject that may result from participation in the research.

(d) The consequences of a subject's decision to withdraw from the research and procedures for orderly termination of participation by the subject.

(e) A statement that significant new findings developed during the course of the research which may relate to the subject's willingness to continue participation will be provided to the subject.

(f) The approximate number of subjects involved in the study. The informed consent requirements are not intended to preempt any applicable Federal, State, or local laws which require additional information to be disclosed for informed consent to be legally effective.

Nothing in the notice is intended to limit the authority of a physician to provide emergency medical care to the extent that a physician is permitted to do so under applicable Federal, State, or local law.

## III. Reporting Requirements

An annual Financial Status Report (SF–269) is required. The original and two copies of this report must be submitted to FDA's Grants Management Officer within 90 days of the budget expiration date of the grant. Failure to file the Financial Status Report (SF–269) in a timely fashion will be grounds for suspension or termination of the grant.

For continuing grants, an annual program progress report is also required. The noncompeting continuation application (PHS 2590) will be considered the annual program progress report.

Additionally, all new and continuing grants must comply with all regulatory requirements necessary to maintain active status of their IND/IDE. This includes, but is not limited to, submission of an annual report to the appropriate regulatory review division within the FDA. Failure to meet regulatory requirements will be grounds for suspension or termination of the grant.

Program monitoring of grantees will be conducted on an ongoing basis and written reports will be prepared by the project officer. The monitoring may be in the form of telephone conversations between the project officer/grants management specialist and the principal investigator. Periodic site visits with appropriate officials of the grantee organization may also be conducted. The results of these reports will be recorded in the official grant file and may be available to the grantee upon request consistent with FDA disclosure regulations. Additionally, the grantee organization will be required to comply with all Special Terms and Conditions which state that future funding of the study will be contingent on recommendations from the OPD Project Officer verifying that: (1) There has been adequate progress toward enrollment, based on specific circumstances of the study; (2) there is an adequate supply of the product/device; and (3) there is continued compliance with all FDA regulatory requirements for the trial (e.g., annual report to IND/IDE file, communication of all protocol changes to the appropriate FDA Center, etc.).

A final program progress report, a Final Financial Status Report (SF–269), and an Invention Statement must be submitted within 90 days after the expiration of the project period as noted on the Notice of Grant Award.

## IV. Mechanism of Support

### *A. Award Instrument*

Support will be in the form of a grant. All awards will be subject to all policies and requirements that govern the research grant programs of PHS, including the provisions of 42 CFR part 52 and 45 CFR parts 74 and 92. The regulations issued under Executive Order 12372 do not apply to this program. All grant awards are subject to applicable requirements for clinical investigations imposed by sections 505, 512, and 515 of the act (21 U.S.C. 355, 360b, and 360e), section 351 of the PHS Act (42 U.S.C. 262), and regulations issued under any of these sections.

### *B. Eligibility*

These grants are available to any public or private nonprofit entity (including State and local units of government) and any for-profit entity. For-profit entities must commit to excluding fees or profit in their request for support to receive grant awards. Organizations described in section 501(c)4 of the Internal Revenue Code of 1968 that engage in lobbying are not eligible to receive grant awards

### *C. Length of Support*

The length of the study will depend upon the nature of the study. For those studies with an expected duration of more than 1 year, a second or third year of noncompetitive continuation of support will depend on: (1) Performance during the preceding year, (2) the availability of Federal funds, and (3) compliance with regulatory requirements of the IND/IDE.

### *D. Funding Plan*

The number of studies funded will depend on the quality of the applications received and the availability of Federal funds to support the projects. Before an award will be made, OPD will verify the active status of the IND/IDE for the proposed study. If the IND/IDE for the proposed study is not active or if an annual report has not been submitted to the IND file in the last 12 months, no award will be made. Further, documentation of IRB approvals for all performance sites must

be on file with the Grants Management Officer, FDA (address above), before an award can be made.

## V. Review Procedure and Criteria

*A. Review Method*

All applications submitted in response to this RFA will first be reviewed by grants management and program staff for responsiveness to this RFA. If applications are found to be nonresponsive, they will be returned to the applicant without further consideration.

Responsive applications will be reviewed and evaluated for scientific and technical merit by an ad hoc panel of experts in the subject field of the specific application. Responsive applications will also be subject to a second level of review by a National Advisory Council for concurrence with the recommendations made by the first-level reviewers, and funding decisions will be made by the Commissioner of Food and Drugs.

*B. Program Review Criteria*

Applications will be evaluated by program and grants management staff for responsiveness. Applications considered nonresponsive will be returned to the applicant, without being reviewed. Applicants are strongly encouraged to contact FDA to resolve any questions regarding criteria prior to the submission of their application. All questions of a technical or scientific nature must be directed to the OPD program staff and all questions of an administrative or financial nature must be directed to the grants management staff. (See **FOR FURTHER INFORMATION CONTACT** section of this document.) Responsiveness will be based on the following criteria:

1. The application must propose a clinical trial intended to provide safety and/or efficacy data of one therapy for one orphan indication. Additionally, there must be an explanation in the ''Background and Significance'' section of how the proposed study will either facilitate product approval or provide essential data needed for product development.

2. The prevalence, not incidence, of population to be served by the product must be fewer than 200,000 individuals in the United States. The applicant should include, in the ''Background and Significance'' section, a detailed explanation supplemented by authoritative references in support of the prevalence figure. If the product has been designated by FDA as an orphan product for the proposed indication, a statement of that fact will suffice. Diagnostic tests and vaccines will qualify only if the population of intended use is fewer than 200,000 individuals in the United States per annum.

3. The number assigned to the IND/IDE for the proposed study should appear on the face page of the application with the title of the project. Only medical foods that do not require premarket approval are exempt from this requirement. The IND/IDE must be in active status and in compliance with all regulatory requirements of FDA at the time of submission of the application. In order to meet this requirement, the original IND/IDE application, pertinent amendments, and the protocol for the proposed study must have been received by the appropriate FDA reviewing division a minimum of 30 days prior to the due date of the grant application. Studies of already approved products, evaluating new orphan indications, must also have an active IND. Exempt IND's must have their status changed to active to be eligible for this program. If the sponsor of the IND/IDE is other than the principal investigator listed on the application, a letter from the sponsor verifying access to the IND/IDE is required, and both the application's principal investigator and the study protocol must have been submitted to the IND/IDE.

4. The requested budget should be within the limits (either $100,000 in direct costs for each year for up to 3 years for any phase study, or $200,000 in direct costs for each year for up to 3 years for phase 2 or 3 studies) as stated in this request for applications. Multi-phase studies that include phase I are only eligible for $100,000 per annum for the entire 3-year period. Any application received that requests support in excess of the maximum amount allowable for that particular study will be considered nonresponsive and returned to the applicant unreviewed.

5. Consent and/or assent forms, and any additional information to be given to a subject, should be included in the grant application.

6. All applicants should follow guidelines specified in the PHS 398 Grant Application kit.

7. Evidence that a sufficient quantity of the product is available to the applicant in the form needed for the investigation must be included in the application. A current letter from the supplier as an appendix will be acceptable.

*C. Scientific/Technical Review Criteria*

The ad hoc expert panel will provide the first level of review. The application will be judged on the following scientific and technical merit criteria:

1. The soundness of the rationale for the proposed study;

2. The quality and appropriateness of the study design to include the rationale for the statistical procedures;

3. The statistical justification for the number of patients chosen for the trial, based on the proposed outcome measures and the appropriateness of the statistical procedures to be used in analysis of the results;

4. The adequacy of the evidence that the proposed number of eligible subjects can be recruited in the requested timeframe;

5. The qualifications of the investigator and support staff, and the resources available to them;

6. The adequacy of the justification for the request for financial support;

7. The adequacy of plans for complying with regulations for protection of human subjects; and

8. The ability of the applicant to complete the proposed study within its budget and within time limitations stated in this RFA.

The priority score will be based on the scientific/technical review criteria in section V.C of this document. In addition, the reviewers may advise the program staff concerning the appropriateness of the proposal to the goals of the OPD Grant Program described in section I (Program Research Goals) of this document.

*D. Award Criteria*

Resources for this program are limited. Therefore, should two or more applications be received and approved by FDA which propose duplicative or very similar studies, FDA will support only the study with the best score.

## VI. Submission Requirements

The original and five copies of the completed Grant Application Form PHS 398 (Rev. 5/95) or the original and two copies of the PHS 5161 (Rev. 7/92) for State and local governments, with copies of the appendices for each of the copies, should be delivered to Maura C. Stephanos (address above). State and local governments may choose to use the PHS 398 application form in lieu of the PHS 5161. The application receipt dates are November 15, 1999 and April 3, 2000. No supplemental or addendum material will be accepted after the receipt date. Evidence of final IRB approval will be accepted for the file after the receipt date.

The outside of the mailing package and item 2 of the application face page should be labeled, ''Response to RFA FDA OPD–2000.''

If an application for the same study was submitted in response to a previous RFA, but has not yet been acted upon, a submission in response to this RFA will be considered a request to withdraw the previous application. Resubmissions are treated as new applications; therefore, the applicant may wish to address the issues presented in the summary statements from the previous review.

**VII. Method of Application**

*A. Submission Instructions*

Applications will be accepted during normal working hours, 8 a.m. to 4:30 p.m., Monday through Friday, on or before the established receipt dates.

Applications will be considered received on time if sent or mailed on or before the receipt dates as evidenced by a legible U.S. Postal Service dated postmark or a legible date receipt from a commercial carrier, unless they arrive too late for orderly processing. Private metered postmarks shall not be acceptable as proof of timely mailing. Applications not received on time will not be considered for review and will be returned to the applicant. (Applicants should note that the U.S. Postal Service does not uniformly provide dated postmarks. Before relying on this method, applicants should check with their local post office.)

Do not send applications to the Center for Scientific Research (CSR), National Institutes of Health (NIH). Any application that is sent to the NIH, that is then forwarded to FDA and received after the applicable due date, will be deemed unresponsive and returned to the applicant. Instructions for completing the application forms can be found on the NIH home page on the Internet (address ''http://www.nih.gov/grants/funding/phs398/phs398.html''; the forms can be found at ''http://www.nih.gov/grants/funding/phs398/forms—toc.html''). However, as noted previously, applications are not to be mailed to the NIH. Applicants are advised that the FDA does not adhere to the page limitations or the type size and line spacing requirements imposed by the NIH on its applications). Applications must be submitted via mail delivery as stated previously. FDA is unable to receive applications via the Internet.

*B. Format for Application*

Submission of the application must be on Grant Application Form PHS 398 (Rev. 5/95). All ''General Instructions'' and ''Specific Instructions'' in the application kit should be followed with the exception of the receipt dates and the mailing label address. Do not send applications to the CSR, NIH. Applications from State and Local Governments may be submitted on Form PHS 5161 (Rev. 7/92) or Form PHS 398 (Rev. 5/95).

The face page of the application should reflect the request for applications number RFA–FDA–OPD–000. The title of the proposed study should include the name of the product and the disease/disorder to be studied along with the IND/IDE number. The format for all subsequent pages of the application should be single-spaced and single-side.

Data included in the application, if restricted with the legend specified below, may be entitled to confidential treatment as trade secret or confidential commercial information within the meaning of the Freedom of Information Act (5 U.S.C. 552(b)(4)) and FDA's implementing regulations (21 CFR 20.61).

Information collection requirements requested on Form PHS 398 and the instructions have been submitted by the PHS to the Office of Management and Budget (OMB) and were approved and assigned OMB control number 0925–0001.

*C. Legend*

Unless disclosure is required by the Freedom of Information Act as amended (5 U.S.C. 552) as determined by the freedom of information officials of the DHHS or by a court, data contained in the portions of this application which have been specifically identified by page number, paragraph, etc., by the applicant as containing restricted information shall not be used or disclosed except for evaluation purposes.

Dated: July 15, 1999

**Margaret M. Dotzel,**

*Acting Associate Commissioner for Policy.*

[FR Doc. 99–18771 Filed 7–22–99; 8:45 am]

**BILLING CODE 4160–01–F**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### General Hospital and Personal Use Devices Panel of the Medical Devices Advisory Committee; Notice of Meeting

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). At least one portion of the meeting will be closed to the public.

*Name of Committee*: General Hospital and Personal Use Devices Panel of the Medical Devices Advisory Committee.

*General Function of the Committee*: To provide advice and recommendations to the agency on FDA's regulatory issues.

*Date and Time*: The meeting will be held on August 2, 1999, 8 a.m. to 5 p.m.

*Location*: Corporate Bldg., conference room 020B, 9200 Corporate Blvd., Rockville, MD.

*Contact Person*: Martha T. O'Lone, Center for Devices and Radiological Health (HFZ–480), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–443–8913, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12520. Please call the Information Line for up-to-date information on this meeting.

*Agenda*: The committee will discuss possible revisions to the 1995 draft guidance entitled ''Supplementary Guidance on the Content of Premarket Notification [510(k)] Submissions for Medical Devices With Sharps Injury Prevention Features.'' The committee will also discuss the development of guidance for needle-free devices such as jet injectors intended for the delivery of drugs and biologics and the need for and content of educational programs to encourage the safe and effective use of these devices. Single copies of the 1995 draft guidance are available to the public by calling 1–800–899–0381 or 301–827–0111, and requesting Facts-on-Demand document number 934, or on the Internet using the World Wide Web (WWW) ''http://www.fda.gov/cdrh/ode/doc934.pdf''.

*Procedure*: On August 2, 1999, from 8:30 a.m. to 5 p.m., the meeting is open to the public. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by July 23, 1999. Oral presentations from the public will be scheduled between approximately 11 a.m. and 12 m. and between approximately 3:45 p.m. and 4:15 p.m. Time allotted for each presentation may be limited. Those individuals desiring to make formal oral presentations should notify the contact person by July 23, 1999, and submit a brief statement of the general nature of the evidence or

arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

*Closed Committee Deliberations*: On August 2, 1999, from 8 a.m. to 8:30 a.m., the meeting will be closed to permit FDA to present to the committee trade secret and/or confidential commercial information (5 U.S.C. 552b(c)(4)) regarding pending issues and applications.

FDA regrets that it was unable to publish this notice 15 days prior to the August 2, 1999, General Hospital and Personal Use Devices Panel of the Medical Devices Advisory Committee meeting. Because the agency believes there is some urgency to bring these issues to public discussion and qualified members of the General Hospital and Personal Use Devices Panel of the Medical Devices Advisory Committee were available at this time, the Commissioner concluded that it was in the public interest to hold this meeting even if there was not sufficient time for the customary 15-day public notice.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: July 16, 1999.

**Linda A. Suydam,**

*Senior Associate Commissioner.*

[FR Doc. 99–18768 Filed 7–22–99; 8:45 am]

**BILLING CODE 4160–01–F**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Care Financing Administration

**[Document Identifier: HCFA–R–138]**

### Agency Information Collection Activities: Submission for OMB Review; Comment Request

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

*Type of Information Collection Request:* Extension of a currently approved collection;

*Title of Information Collection:* Medicare Geographical Classification Review Board (MGCRB) Procedures and Criteria and Supporting Regulations in 42 CFR, Section 412.256;

*Form No.:* HCFA–R–138;

*Use:* This regulation sets up an application process for prospective payment system hospitals who choose to appeal their geographic status to the Medicare Geographic Classification Review Board (MGCRB). This regulation also establishes procedural guidelines for the MGCRB.

*Frequency:* Annually;

*Affected Public:* Business or other for profit, and Not for profit institutions;

*Number of Respondents:* 1,000;

*Total Annual Responses:* 1,000;

*Total Annual Hours Requested:* 1,000.

To obtain copies of the supporting statement for the proposed paperwork collections referenced above, access HCFA's WEB SITE ADDRESS at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address and phone number, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB Desk Officer designated at the following address: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: July 8, 1999.

**John P. Burke III,**

*HCFA Reports Clearance Officer, HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.*

[FR Doc. 99–18816 Filed 7–22–99; 8:45 am]

**BILLING CODE 4120–03–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Care Financing Administration

**[Document Identifier: HCFA–R–70]**

### Agency Information Collection Activities: Submission for OMB Review; Comment Request

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

*Type of Information Collection Request:* Extension of a currently approved collection;

*Title of Information Collection:* Information Collection Requirements in HSQ–110, Acquisition, Protection and Disclosure of Peer Review Organization Information and Supporting Regulations in 42 CFR, Sections 476.104, 476.105, 476.116, and 476.134;

*Form No.:* HCFA–R–70 (OMB# 0938–0426);

*Use:* ''Medicare Disclosure Information, Regulatory'' The Peer Review Improvement Act of 1982 authorizes PRO's to acquire information necessary to fulfill their duties and functions and places limits on disclosure of the information. These requirements are on the PRO to provide notices to the affected parties when disclosing information about them. These requirements serve to protect the rights of the affected parties;

*Frequency:* On occasion;

*Affected Public:* Business or other for-profit, Individuals or Households, and Not-for-profit institutions;

*Number of Respondents:* 53;

*Total Annual Responses:* 53;

*Total Annual Hours:* 30,683.

To obtain copies of the supporting statement for the proposed paperwork collections referenced above, access HCFA's WEB SITE ADDRESS at http://

www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address and phone number, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB Desk Officer designated at the following address: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: June 22, 1999.

**John P. Burke III,**

*HCFA Reports Clearance Officer, HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.*

[FR Doc. 99–18817 Filed 7–22–99; 8:45 am]

**BILLING CODE 4120–03–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Resources and Services Administration

### Advisory Commission on Childhood Vaccines Request for Nominations for Voting Members

**AGENCY:** Health Resources and Services Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Health Resources and Services Administration (HRSA) is requesting nominations to fill three vacancies on the Advisory Commission on Childhood Vaccines (ACCV). The ACCV was established by Title XXI of the Public Health Service Act (the Act), as enacted by Pub. L. 99–660 and as subsequently amended, and advises the Secretary of Health and Human Services (the Secretary) on issues related to implementation of the National Vaccine Injury Compensation Program (VICP).

**FOR FURTHER INFORMATION CONTACT:** Ms. Shelia Tibbs, Committee Management Assistant, Policy Analysis Branch, Division of Vaccine Injury Compensation, at (301) 443–4036.

**DATES:** Nominations are to be submitted by August 23, 1999.

**ADDRESSES:** All nominations are to be submitted to the Director, Division of Vaccine Injury Compensation, Bureau of Health Professions, HRSA, Parklawn Building, Room 8A–46, 5600 Fishers Lane, Rockville, MD 20857.

**SUPPLEMENTARY INFORMATION:** Under the authorities that established the ACCV, viz., the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92–463) and section 2119 of the Act, 42 U.S.C. 300aa–19, as added by Pub. L. 99–660 and amended, HRSA is requesting nominations for three voting members of the ACCV.

The ACCV advises the Secretary on the implementation of the VICP; on its own initiative or as the result of the filing of a petition, recommends changes in the Vaccine Injury Table; advises the Secretary in implementing the Secretary's responsibilities under section 2127 regarding the need for childhood vaccination products that result in fewer or no significant adverse reactions; surveys Federal, State, and local programs and activities relating to the gathering of information on injuries associated with the administration of childhood vaccines, including the adverse reaction reporting requirements of section 2125(b); advises the Secretary on means to obtain, compile, publish, and use credible data related to the frequency and severity of adverse reactions associated with childhood vaccines; and recommends to the Director, National Vaccine Program Office, research related to vaccine injuries which should be conducted to carry out the VICP.

The ACCV consists of nine voting members appointed by the Secretary as follows: three health professionals, of whom at least two are pediatricians, who are not employees of the United States, who have expertise in the health care of children, the epidemiology, etiology and prevention of childhood diseases, and the adverse reactions associated with vaccines; three members from the general public, of whom at least two are legal representatives (parents or guardians) of children who have suffered a vaccine-related injury or death; and three attorneys, of whom at least one shall be an attorney whose specialty includes representation of persons who have suffered a vaccine-related injury or death, and one shall be an attorney whose specialty includes representation of vaccine manufacturers. In addition, the Director of the National Institutes of Health, the Assistant Secretary for Health and Surgeon General, the Director of the Centers for Disease Control and Prevention, and the Commissioner of the Food and Drug Administration (or the designees of such officials) serve as nonvoting ex officio members.

Specifically, HRSA is requesting nominations for three voting members of the ACCV representing: (1) A pediatrician with special experience in childhood diseases; (2) a member from the general public who is a legal representative (parent or guardian) of a child (or children) who has suffered a vaccine-related injury or death, or who has personally suffered a vaccine-related injury (an individual who is nominated for the seat representing the general public based on a personal vaccine-related injury, may only be selected if legislation proposed by the Secretary and currently pending before Congress is enacted by October 1, 1999 to allow this expansion to the membership criteria), and (3) an attorney with no specific affiliation (as stated above, this category requires membership of three attorneys, of whom at least one shall be an attorney whose specialty includes representation of persons who have suffered a vaccine-related injury or death and one of whom is an attorney whose specialty includes representation of vaccine manufacturers—by this notice, the Department is soliciting nominations for the third attorney position). Nominees will be invited to serve 3-year terms beginning January 1, 2000, and ending December 31, 2002.

Interested persons may nominate one or more qualified persons for membership on the ACCV. Nominations shall state that the nominee is willing to serve as a member of the ACCV and appears to have no conflict of interest that would preclude the ACCV membership. Potential candidates will be asked to provide detailed information concerning such matters as financial holdings, consultancies, and research grants or contracts to permit evaluation of possible sources of conflicts of interest. A curriculum vitae or resume should be submitted with the nomination.

The Department of Health and Human Services has special interest in assuring that women, minority groups, and the physically handicapped are adequately represented on advisory committees and therefore extends particular encouragement to nominations for appropriately qualified female, minority, or physically handicapped candidates.

Dated: July 19, 1999.

**Claude Earl Fox,**

*Administrator, HRSA.*

[FR Doc. 99–18809 Filed 7–22–99; 8:45 am]

**BILLING CODE 4160–15–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Cancer Institute; Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as

amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Cancer Institute Special Emphasis Panel, NCI Scholars Program.

*Date:* August 12–13, 1999.

*Time:* 6 p.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Holiday Inn—Georgetown, 2101 Wisconsin Avenue, NW, Washington, DC 20007.

*Contact Person:* Mary Bell, Scientific Review Administrator, Grants Review Branch, National Cancer Institute, National Institutes of Health, 6130 Executive Boulevard, Rockville, MD 20892, 301/496–7978.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: July 13, 1999.

**LaVerne Y. Stringfield,**

*Committee Management Officer, NIH.*

[FR Doc. 99–18903 Filed 7–22–99; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Cancer Institute; Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets of commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Cancer Institute Special Emphasis Panel, Phase II Chemoprevention Trials.

*Date:* August 12, 1999.

*Time:* 1 p.m. to 3 p.m.

*Agenda:* To review and evaluate contract proposals.

*Place:* 6130 Executive Blvd., 6th Floor, Rockville, MD 20852 (Telephone Conference Call).

*Contact Person:* Wilna A. Woods, Deputy Chief, Special Review, Referral and Research Branch, Division of Extramural Activities, National Cancer Institute, National Cancer Institute, National Institutes of Health, Rockville, MD 20852, (301) 496–7903.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: July 13, 1999.

**LaVerne Y. Stringfield,**

*Committee Management Officer, NIH.*

[FR Doc. 99–18904 Filed 7–22–99; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Cancer Institute; Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. the grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Cancer Institute Special Emphasis Panel, Prospective Study of Diet and Cancer in Women.

*Date:* July 29, 1999.

*Time:* 1 p.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* EPN, Room 611C, 6130 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

*Contact Person:* Deborah R. Jaffe, Scientific Review Administrator, Grants Review Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, Bethesda, MD 20892, (301) 496–7221.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support 93.398, Cancer Research Manpower, 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: July 13, 1999.

**LaVerne Y. Stringfield,**

*Committee Management Officer, NIH.*

[FR Doc. 99–18905 Filed 7–22–99; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Cancer Institute; Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Cancer Institute Initial Review Group, Subcommittee E—Cancer Epidemiology, Prevention and Control.

*Date:* August 17–19, 1999.

*Time:* 7:00 p.m. to 6:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Georgetown Holiday Inn, 2101 Wisconsin Ave, N.W., Washington, DC, 20007.

*Contact Person:* Mary C. Fletcher, PhD, Scientific Review Administrator, Grants Review Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6130 Executive Boulevard, EPN-Room 643G, Bethesda, MD 20814, 301/496–7413.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction;

93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower, 93.399, Cancer Control, National Institutes of Health, (HHS)

Dated: July 13, 1999.

**LaVerne Y. Stringfield,**

*Committee Management Officer, NIH.*

[FR Doc. 99–18906 Filed 7–22–99; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Cancer Institute; Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Cancer Institute Initial Review Group, Subcommittee C—Basic & Preclinical.

*Date:* August 10–12, 1999.

*Time:* 7:30 p.m. to 12:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Georgetown Holiday Inn, 2101 Wisconsin Avenue, NW, Washington, DC 20007.

*Contact Person:* Virginia P. Wray, Scientific Review Administrator, Grants Review Branch, Division of Extramural Activities, National Cancer Institute, 6130 Executive Boulevard—Room 635, Rockville, MD 20895–7405, 301/496–9236.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: July 13, 1999.

**LaVerne Y. Stringfield,**

*Committee Management Officer, NIH.*

[FR Doc. 99–18907 Filed 7–22–99; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Cancer Institute; Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Cancer Institute Special Emphasis Panel.

*Date:* July 18–20, 1999.

*Time:* 7:00 p.m. to 12:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Silver Cloud Inn, 1150 Fairview Avenue North, Seattle, WA 98109.

*Contact Person:* Mary C. Fletcher, Scientific Review Administrator, Grants Review Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6130 Executive Boulevard, EPN–Room 643G, Bethesda, MD 20814, 301/496–7413.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: July 13, 1999.

**LaVerne J. Stringfield,**

*Committee Management Officer, NIH.*

[FR Doc. 99–18908 Filed 7–22–99; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Heart, Lung and Blood Institute; Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Heart, Lung, and Blood Institute Special Emphasis Panel, Rat Genome Data Base.

*Date:* August 3, 1999.

*Time:* 11:00 a.m. to 12:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* 6701 Rockledge Drive, Rockledge II, Bethesda, MD 20814, (Telephone Conference Call).

*Contact Person:* Ivan C. Baines, Scientific Review Administrator, NIH, NHBLI, DEA, Review Branch, Rockledge II, 6701 Rockledge Drive, Suite 7184, Bethesda, MD 20892–7922, 301/435–0277.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: July 14, 1999.

**LaVerne Y. Stringfield,**

*Committee Management Officer, NIH.*

[FR Doc. 99–18909 Filed 7–22–99; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which

would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Child Health and Human Development Special Emphasis Panel, Adrenal Insufficiency Research Project Application.

*Date:* August 2, 1999.

*Time:* 2:00 p.m. to 4:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* 6100 Executive Blvd., Room 5E01, Rockville, MD 20852. (Telephone Conference Call).

*Contact Person:* Gopal M. Bhatnagar, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, National Institutes of Health, PHS, DHHS, 9000 Rockville Pike, 6100 Bldg., Room 5E01, Bethesda, MD 20892, (301) 496–1485.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.209, Contraception and Infertility Loan Repayment Program; 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research, National Institutes of Health, HHS)

Dated: July 16, 1999.

**LaVerne Y. Stringfield,**

*Committee Management Officer, NIH.*

[FR Doc. 99–18895 Filed 7–22–99; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Allergy and Infectious Disease; Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the AIDS Research Advisory Committee, NIAID.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

*Name of Committee:* AIDS Research Advisory Committee, NIAID.

*Date:* September 3, 1999.

*Time:* 8:30 a.m. to 5:00 p.m.

*Agenda:* The Committee will provide advice on scientific priorities, policy, and program balance at the Division level. The Committee will review the progress and productivity of ongoing efforts, and identify critical gaps/obstacles to progress.

*Place:* Natcher Building, 45 Center Drive, Conference Rooms E1/E2, Bethesda, MD 20892.

*Contact Person:* Rona L. Siskind, Executive Secretary, AIDS Research Advisory Committee, Division of AIDS, NIAID/NIH, Room 4139, 6700–B Rockledge Drive, MSC 7610, Bethesda, MD 20892–7610, 301–435–3732.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: July 16, 1999.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy, NIH.*

[FR Doc. 99–18896 Filed 7–22–99; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Allergy and Infectious Diseases; 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 meetings of the National Advisory Allergy and Infectious Diseases Council.

The meetings will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Advisory Allergy and Infectious Diseases Council.

*Date:* September 2–3, 1999.

*Open:* September 2, 1999, 1:00 pm to 3:30 pm.

*Agenda:* The meeting of the full Council will be open to the public for general discussion and program presentations.

*Place:* National Institutes of Health, 9000 Rockville Pike, Building 31C, Conference Room 6, Bethesda, MD 20892.

*Closed:* September 2, 1999, 3:30 pm to 4:30 pm.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 9000 Rockville Pike, Building 31C, Conference Room 6, Bethesda, MD 20892.

*Contact Person:* John J McGowan, Director, Division of Extramural Activities, NIAID, Room 2142, 6700–B Rockledge Drive, MSC 7610, Rockville, MD 20892–7610, 301–496–7291.

*Name of Committee:* National Advisory Allergy and Infectious Diseases Council, Microbiology and Infectious Diseases Subcommittee.

*Date:* September 2–3, 1999.

*Closed:* September 2, 1999, 8:30 am to 1:00 pm.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 9000 Rockville Pike, Building 31C, Conference Room 6, Bethesda, MD 20892.

*Open:* September 3, 1999, 8:30 am to adjournment.

*Agenda:* Open program advisory discussions and presentations.

*Place:* National Institutes of Health, 9000 Rockville Pike, Building 31C, Conference Room 6, Bethesda, MD 20892.

*Contact Person:* John J McGowan, Director, Division of Extramural Activities, NIAID, Room 2142, 6700–B Rockledge Drive, MSC 7610, Rockville, MD 20892–7610, 301–496–7291.

*Name of Committee:* National Advisory Allergy and Infectious Diseases Council, Allergy, Immunology and Transplantation Subcommittee.

*Date:* September 2–3, 1999.

*Closed:* September 2, 1999, 8:30 am to 1:00 pm.

*Agenda:* To review and evaluate grant applications.

*Place:* Natcher Building, Conference Room F1/F2, 45 Center Drive, Bethesda, MD 20892.

*Open:* September 3, 1999, 8:30 am to adjournment.

*Agenda:* Open program advisory discussions and presentations.

*Place:* Natcher Building, Conference Room F1/F2, 45 Center Drive, Bethesda, MD 20892.

*Contact Person:* John J McGowan, Director, Division of Extramural Activities, NIAID, Room 2142, 6700–B Rockledge Drive, MSC 7610, Rockville, MD 20892–7610, 301–496–7291.

*Name of Committee:* National Advisory Allergy and Infectious Diseases Council, Acquired Immunodeficiency Syndrome Subcommittee.

*Date:* September 2–3, 1999.

*Closed:* September 2, 1999, 8:30 am to 1:00 pm.

*Agenda:* To review and evaluate grant applications.

*Place:* Natcher Building, 45 Center Drive, Conference Rooms E1/E2, Bethesda, MD 20892.

*Open:* September 3, 1999, 8:30 am to adjournment.

*Agenda:* Open program advisory discussions and presentations.

*Place:* Natcher Building, 45 Center Drive, Conference Rooms E1/E2, Bethesda, MD 20892.

*Contact Person:* John J McGowan, Director, Division of Extramural Activities, NIAID, Room 2142, 6700–B Rockledge Drive, MSC 7610, Rockville, MD 20892–7610, 301–496–7291.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: July 16, 1999.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy, NIH.*

[FR Doc. 99–18897 Filed 7–22–99; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Diabetes and Digestive and Kidney Diseases; Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, ZDK1–GRB–C 01 S.

*Date:* August 17, 1999.

*Time:* 2 p.m. to 4 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Natcher Bldg., 45 Center Drive, Room 6AS–37, Bethesda, MD 20892. (Telephone Conference Call).

*Contact Person:* Dan E. Matsumoto, Scientific Review Administrator, Review Branch, DEA, NIDDK, Natcher Building, Room 6AS–37B, National Institutes of Health, Bethesda, MD 20892–6600, (301) 594–8894.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: July 19, 1999.

**Anna Snouffer,**

*Acting Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 99–18900 Filed 7–22–99; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Neurological Disorders and Stroke; Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Neurological Disorders and Stroke Special Emphasis Panel.

*Date:* August 2, 1999.

*Time:* 11 a.m. to 1 p.m.

*Place:* Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Katherine Woodbury, Scientific Review Administrator, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd, Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–496–9223.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: July 15, 1999.

**LaVerne Y. Stringfield,**

*Committee Management Officer, NIH.*

[FR Doc. 99–18902 Filed 7–22–99; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National institutes of Health

### National Institute of Environmental Health Sciences; Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Environmental Health Sciences Special Emphasis Panel K23 Grant Review.

*Date:* July 30, 1999.

*Time:* 1:00 p.m. to 4:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Nat. Institute of Environmental Health Sciences, Building 101, Main Conference Room, South Campus, Research Triangle Park, NC 27709.

*Contact Person:* Linda K. Bass, Scientific Review Administrator, NIEHS, PO Box 12233 EC–24, Research Triangle Park, NC 27709, (919) 541–1307.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* National Institute of Environmental Health Sciences Special Emphasis Panel R01 Special Review.

*Date:* August 17, 1999.

*Time:* 1:00 p.m. to 3:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* NIEHS, 79 T.W. Alexander Drive, Building 4401, Conference Room 3446, Research Triangle Park, NC 27709, (Telephone Conference Call).

*Contact Person:* Linda K. Bass, Scientific Review Administrator, NIEHS, PO Box 12233 EC–24, Research Triangle Park, NC 27709, (919) 541–1307.

(Catalogue of Federal Domestic Assistance Program Nos. 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing; 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences, National Institutes of Health, HHS)

Dated: July 14, 1999.

**LaVerne Y. Stringfield,**

*Committee Management Officer, NIH.*

[FR Doc. 99–18910 Filed 7–22–99; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute on Alcohol Abuse and Alcoholism; Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel.

*Date:* July 29, 1999.

*Time:* 11:00 a.m. to 12:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Willco Building, Suite 409, 6000 Executive Boulevard, Rockville, MD 20892, (Telephone Conference Call).

*Contact Person:* Elsie D. Taylor, Scientific Review Administrator, Extramural Project Review Branch, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, Suite 409, 6000 Executive Blvd., Bethesda, MD 20892–7003, 301/443–9787, etaylor@niaaa.nih.gov.

This notice is being published less than 15 day prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: July 14, 1999.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 99–18911 Filed 7–22–99; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Alcohol Abuse and Alcoholism; Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Alcohol Abuse and Alcoholism Special Emphasis Panel.

*Date:* July 19, 1999.

*Time:* 11 a.m. to 12 p.m.

*Agenda:* To review and evaluate contract proposals.

*Place:* Willco Building, Suite 409, 6000 Executive Boulevard, Rockville, MD 20892, (Telephone Conference Call).

*Contact Person:* Sean O'Rourke, Scientific Review Administrator, Extramural Project Review Branch, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, Suite 409, 6000 Executive Boulevard, Bethesda, MD 20892–7003, 301–443–2861.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: July 14, 1999.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 99–18912 Filed 7–22–99; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute on Aging; Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute on Aging Special Emphasis Panel, Health and Retirement Study.

*Date:* August 29–30, 1999.

*Time:* 6 p.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Embassy Suites, Chevy Chase Pavilion, 4300 Military Rd., Wisconsin at Western Ave., Washington, DC 20015.

*Contact Person:* Mary Ann Guadagno, The Bethesda Gateway Building, 7201 Wisconsin Avenue/Suite 2C212, Bethesda, MD 20892, (301) 496–9666.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: July 14, 1999.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 99–18913 Filed 7–22–99; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Diabetes and Digestive and Kidney Diseases; Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, ZDK1–GRB 5 (02)M.

*Date:* July 27, 1999.

*Time:* 3 pm to 5 pm.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20982 (Telephone Conference Call).

*Contact Person:* Francisco O. Calvo, Chief, Special Emphasis Panel, Review Branch, DEA, NIDDK, National Institutes of Health, Room 6AS37D, Bldg. 45, Bethesda, MD 20892, 301–594–8897.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, ZDK1 GRB2 (01)S.

*Date:* August 2, 1999.

*Time:* 8 am to 5 pm.

*Agenda:* To review and evaluate grant applications.

*Place:* Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

*Contact Person:* Shan S. Wong, Scientific Review Administrator, Review Branch, DEA, NIDDK, Natcher Building, Room 6 AS 25, National Institutes of Health, Bethesda, MD 20892, (301) 594–7797.

*Name of Committee:* National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, ZDK1 GRB–5 (01)S.

*Date:* August 3, 1999.

*Time:* 12 pm to 7 pm.

*Agenda:* To review and evaluate grant applications.

*Place:* Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

*Contact Person:* Francisco O. Calvo, Chief, Special Emphasis Panel, Review Branch, DEA, NIDDK, National Institutes of Health, Room 6AS37D, Bldg. 45, Bethesda, MD 20892, 301–594–8897.

*Name of Committee:* National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, ZDK1 GRB–8 (02).

*Date:* August 10–12, 1999.

*Time:* 7 pm to 12 pm.

*Agenda:* To review and evaluate grant applications.

*Place:* The Daniele Hotel, 216 N. Meramec, Clayton, MO 63105.

*Contact Person:* Roberta J. Haber, Scientific Review Administrator, Review Branch, DEA, NIDDK, Natcher Building, Room 6AS–25N, National Institutes of Health, Bethesda, MD 20892, (301) 594–8898.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: July 14, 1999.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 99–18914 Filed 7–22–99; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Mental Health; Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Mental Health Special Emphasis Panel.

*Date:* July 23, 1999.

*Time:* 2 p.m. to 3 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Jack D. Maser, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6150, MSC 9608, Bethesda, MD 20892–9608, 301–443–1340.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* National Institute of Mental Health Special Emphasis Panel.

*Date:* July 26, 1999.

*Time:* 8 a.m. to 12 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* River Inn, 924 25th Street, NW, Washington, DC 20037.

*Contact Person:* Russell E. Martenson, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6138, MSC 9606, Bethesda, MD 20892–9606, 301–443–7861.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* National Institute of Mental Health Special Emphasis Panel.

*Date:* August 9–10, 1999.

*Time:* 8:30 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Chevy Chase Holiday Inn, 5520 Wisconsin Ave., Chevy Chase, MD 20815.

*Contact Person:* Robert H. Stretch, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6150, MSC 9608, Bethesda, MD 20892–9608, 301–443–4728.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* National Institute of Mental Health Special Emphasis Panel.

*Date:* August 12, 1999.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* St. James Hotel, 950 24th Street N.W., Washington, DC 20037.

*Contact Person:* Fred Altman, Scientific Review Administrator, Fellowships and Merit Programs, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6220, MSC 9621, Bethesda, MD 20892–9621, 301–443–9700.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS).

Dated: July 14, 1999.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy, NIH.*

[FR Doc. 99–18915 Filed 7–22–99; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Center for Scientific Review; Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel.

*Date:* July 19–20, 1999.

*Time:* 8 a.m. to 4 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007.

*Contact Person:* Patricia H. Hand, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4140, MSC 7804, Bethesda, MD 20892, (301) 435–1767, handp@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel ZRG1–06(01).

*Date:* July 22–23, 1999.

*Time:* 8 a.m. to 5:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Chevy Chase Holiday Inn, 5520 Wisconsin Ave., Chevy Chase, MD 20815.

*Contact Person:* Sami A. Mayyasi, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5112, MSC 7852, Bethesda, MD 20892, (301) 435–1169.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel.

*Date:* July 22, 1999.

*Time:* 12 p.m. to 1:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Chevy Chase Holiday Inn, Terrace Room, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

*Contact Person:* Robert Weller, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3160, MSC 7770, Bethesda, MD 20892, (301) 435–0694.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel.

*Date:* July 23, 1999.

*Time:* 11 a.m. to 1 PM.

*Agenda:* To review and evaluate grant applications.

*Place:* NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Patricia H. Hand, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4140, MSC 7804, Bethesda, MD 20892, (301) 435–1767, handp@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel.

*Date:* July 27, 1999.

*Time:* 2:30 PM. to 5 PM.

*Agenda:* To review and evaluate grant applications.

*Place:* NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Cheri Wiggs, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3180, MSC 7848, Bethesda, MD 20892, (301) 435–8367.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel.

*Date:* July 28, 1999.

*Time:* 8 AM to 5 PM.

*Agenda:* To review and evaluate grant applications.

*Place:* Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20853.

*Contact Person:* Leonard Jakubczack, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5172, MSC 7844, Bethesda, MD 20892, (301) 435–1247.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel ZRG–1 VACC (02).

*Date:* July 28, 1999.

*Time:* 8:30 AM to 7:00 PM.

*Agenda:* To review and evaluate grant applications.

*Place:* Hyatt Regency, One Metro Center, Bethesda, MD 20814.

*Contact Person:* Mary Clare Walker, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5104, MSC 7852, Bethesda, MD 20892, (301) 435–1165.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel.

*Date:* July 28, 1999.

*Time:* 10 AM to 2 PM.

*Agenda:* To review and evaluate grant applications.

*Place:* NIH, Rockledge 2, Bethesda, MD 20892.

*Contact Person:* Jean Hickman, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4194, MSC 7808, Bethesda, MD 20892, (301) 435–1146.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel ZRG–1 AARR–1 (03).

*Date:* July 28, 1999.

*Time:* 11 AM to 1 PM.

*Agenda:* To review and evaluate grant applications.

*Place:* NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Ranga V. Srinivas, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5108, MSC 7852, Bethesda, MD 20892, (301) 435–1167, srinivar@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel.

*Date:* July 28, 1999.

*Time:* 2 PM to 3 PM.

*Agenda:* To review and evaluate grant applications.

*Place:* NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Jay Cinque, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5186, MSC 7846, Bethesda, MD 20892, (301) 435–1252.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel SSS–7 (79).

*Date:* July 28–30, 1999.

*Time:* 6 AM to 3 PM.

*Agenda:* To review and evaluate grant applications.

*Place:* Dinah's Garden Hotel, 4261 El Camino Real, Palo Alto, CA 94306.

*Contact Person:* Houston Baker, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5128, MSC 7854, Bethesda, MD 20892, (301) 435–1175, bakerh@drg.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel.

*Date:* July 29, 1999.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Holiday Inn—Silver Spring, 8777 Georgia Avenue, Silver Spring, MD 20910.

*Contact Person:* Gertrude K. McFarland, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4110, MSC 7816, Bethesda, MD 20892, (301) 435–1784, mcfarlag@drg.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel ZRG1–RPHB–1 (3).

*Date:* July 29, 1999.

*Time:* 10:30 a.m. to 12:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Victoria S. Levin, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3172, MSC 7848, Bethesda, MD 20892, (301) 435–0912, levinv@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Center or Scientific Review Special Emphasis Panel.
*Date:* July 29, 1999.
*Time:* 11 a.m. to 12 p.m.
*Agenda:* To review and evaluate grant applications.
*Place:* NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
*Contact Person:* Priscilla B. Chen, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4104, MSC 7814, Bethesda, MD 20892, (301) 435–1787.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel.
*Date:* July 29, 1999.
*Time:* 1:30 p.m. to 3:30 p.m.
*Agenda:* To review and evaluate grant applications.
*Place:* NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
*Contact Person:* Ranga V. Srinivas, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5108, MSC 7852, Bethesda, MD 20892, (301) 435–1167, srinivar@csr.nih.gov.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Center or Scientific Review Special Emphasis Panel.
*Date:* July 29, 1999.
*Time:* 2 p.m. to 4 p.m.
*Agenda:* To review and evaluate grant applications.
*Place:* NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
*Contact Person:* Eugene Zimmerman, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4202, MSC 7812, Bethesda, MD 20892, 301–435–1220, zimmerng@csr.nih.gov.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel.
*Date:* July 29, 1999.
*Time:* 2 p.m. to 4 p.m.
*Agenda:* To review and evaluate grant applications.
*Place:* NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
*Contact Person:* Marcia Litwack, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4150, MSC 7804, Bethesda, MD 20892, (301) 435–1719.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel.
*Date:* July 30, 1999.
*Time:* 11:30 a.m. to 2 p.m.
*Agenda:* To review and evaluate grant applications.
*Place:* NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
*Contact Person:* J. Terrell Hoffeld, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4116, MSC 7816, Bethesda, MD 20892, (301) 435–1781.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: July 16, 1999.

**Anna P. Snouffer,**

*Acting Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 99–18898 Filed 7–22–99; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Center for Scientific Review; Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel zrg1–ifcn5–06.
*Date:* July 19–20, 1999.
*Time:* 8 a.m. to 6 p.m.
*Agenda:* To review and evaluate grant applications.
*Place:* Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.
*Contact Person:* Gopal C. Sharma, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4112, MSC 7816, Bethesda, MD 20892, (301) 435–1783.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel.
*Date:* July 19, 1999.
*Time:* 2 p.m. to 4 p.m.
*Agenda:* To review and evaluate grant applications.
*Place:* NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
*Contact Person:* John Bishop, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5180, MSC 7844, Bethesda, MD 20892, (301) 435–1250.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel zrgl–c/fcn–06.
*Date:* July 20, 1999.
*Time:* 2 p.m. to 3 p.m.
*Agenda:* To review and evaluate grant applications.
*Place:* NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
*Contact Person:* John Bishop, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5180, MSC 7844, Bethesda, MD 20892, (301) 435–1250.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel IFCN5–07.
*Date:* July 23, 1999.
*Time:* 10 am to 11 am.
*Agenda:* To review and evaluate grant applications.
*Place:* NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
*Contact Person:* John Bishop, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5180, MSC 7844, Bethesda, MD 20892, (301) 435–1250.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel.
*Date:* July 27, 1999.
*Time:* 1 pm to 2:30 pm.
*Agenda:* To review and evaluate grant applications.
*Place:* NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
*Contact Person:* William C. Branche, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4182, MSC 7808, Bethesda, MD 20892, (301) 435–1148.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel.
*Date:* July 28, 1999.
*Time:* 3 pm to 4 pm.
*Agenda:* To review and evaluate grant applications.

*Place:* NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* .Harold M. Davidson, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4216, MSC 7814, Bethesda, MD 20892, (301) 435–1776.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel.

*Date:* July 28–30, 1999.

*Time:* 6 pm to 6pm.

*Agenda:* To review and evaluate grant applications.

*Place:* Ritz-Carlton Hotel at Pentagon City, 1250 South Hayes Street, Arlington, VA 22202.

*Contact Person:* Jean D. Sipe, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5152, MSC 7842, Bethesda, MD 20892, (301) 435–1743.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel.

*Date:* July 28, 1999.

*Time:* 12 pm to 3 pm.

*Agenda:* To review and evaluate grant applications.

*Place:* NIH, Rockledge 2, Bethesda MD 20892, (Telephone Conference Call).

*Contact Person:* Michael A. Lang, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5210, MSC 7850, Bethesda, MD 20892, (301) 435–1265.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel.

*Date:* July 29, 1999.

*Time:* 1 pm to 2 pm.

Agenda: To review and evaluate grant applications.

*Place:* Ritz-Carlton Hotel at Pentagon City, 1250 South Hayes Street, Arlington, VA 22202.

*Contact Person:* Jean D. Sipe, Scientific Review Administration, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5152, MSC 7842, Bethesda, MD 20892, (301) 435–1743.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel.

*Date:* July 30, 1999.

*Time:* 8 am to 8 pm.

*Agenda:* To review and evaluate grant applications.

*Place:* Latham Hotel Georgetown, 3000 M Street, NW, Washington, DC 20007.

*Contact Person:* Jeanne N. Ketley, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4130, MSC 7814, Bethesda, MD 20892, (301) 435–1789.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel.

*Date:* July 30, 1999.

*Time:* 10 am to 10:30 am.

Agenda: To review and evaluate grant applications.

*Place:* Latham Hotel Georgetown, 3000 M Street, NW, Washington DC 20007.

*Contact Person:* Jeanne N. Ketley, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4130, MSC 7814, Bethesda, MD 20892, (301) 435–1789.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: July 16, 1999.

**Anna Snouffer,**

*Acting Committee Management Officer, NIH.*

[FR Doc. 99–18899 Filed 7–22–99; 8:45 am]

**BILLING CODE 4140–01–M**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Center for Scientific Review; Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, ZRG1–RPHB–1 (2).

*Date:* July 22, 1999.

*Time:* 10:15 a.m. to 11:15 a.m.

*Agenda:* To review and evaluate grant applications.

*Place:* NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Victoria S. Levin, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3172, MSC 7848, Bethesda, MD 20892, (301) 435–0912, levinv@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel.

*Date:* July 23, 1999.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Doubletree Hotel Rockville, 1750 Rockville Pike, Rockville, MD 20852.

*Contact Person:* Anshumali Chaudhari, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4128, MSC 7802, Bethesda, MD 20892, (301) 435–1210.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel.

*Date:* July 23, 1999.

*Time:* 11 a.m. to 1 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

*Contact Person:* Sami A. Mayyasi, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5112, MSC 7852, Bethesda, MD 20892, (301) 435–1169.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel.

*Date:* July 23, 1999.

*Time:* 1 pm to 2 pm.

*Agenda:* To review and evaluate grant applications.

*Place:* NIH, Rockledge 2, Bethesda, MD 20892 (telephone conference Call).

*Contact Person:* Everett E. Sinnett, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4120, MSC 7818, Bethesda, MD 20892, (301) 435–1016, ev__sinnett@nih.govc.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel zrg1 ifcn–7 (06).

*Date:* July 23, 1999.

*Time:* 2 pm to 4 pm.

*Agenda:* To review and evaluate grant applications.

*Place:* NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Bernard F. Driscoll, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5158, MSC 7844, Bethesda, MD 20892, (301) 435–1242.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel.

*Date:* July 23, 1999.

*Time:* 12 pm to 1 pm.

*Agenda:* To review and evaluate grant applications.

*Place:* Chevy Chase Holiday Inn, 5520 Wisconsin Ave., Chevy Chase, MD 20815.

*Contact Person:* Nancy Hicks, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive Room 3158, MSC 7770, Bethesda, MD 20892, (301) 435–0695.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel.

*Date:* July 23, 1999.

*Time:* 12 pm to 1:30 pm.

*Agenda:* to review and evaluate grant applications.

*Place:* NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Chhanda L. Ganguly, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5156, MSC 7842, Bethesda, MD 20892, (301) 435–1739.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel.

*Date:* July 24, 1999.

*Time:* 8 am to 5 pm.

*Agenda:* To review and evaluate grant applications.

*Place:* Opryland Hotel, 2800 Opryland Drive, Nashville, TN 37214.

*Contact Person:* Paul K. Strudler, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4100, MSC 7804, Bethesda, MD 20892, (301) 435–1716.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, SSS–Z ZRG1 (4).

*Date:* July 26–28, 1999.

*Time:* 8 am to 5 pm.

*Agenda:* To review and evaluate grant applications.

*Place:* The Best Western Boston-The Inn at Longbeach Medic, 342 Longwood Avenue, Boston, MA 02115.

*Contact Person:* Ron Manning, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4158, MSC 7806, Bethesda, MD 20892, (301) 435–1723.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel.

*Date:* July 26–27, 1999.

*Time:* 8 am to 6 pm.

*Agenda:* To review and evaluate grant applications.

*Place:* Georgetown Holiday Inn, 2101 Wisconsin Avenue, NW, Washington, DC 20007.

*Contact Person:* Martin L. Padarathsingh, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4146, MSC 7804, Bethesda, MD 20892, (301) 435–1717.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel ZRG–1 VACC (03).

*Date:* July 26, 1999.

*Time:* 8 am to 7 pm.

*Agenda:* To review and evaluate grant applications.

*Place:* Hyatt Regency, One Metro Center, Bethesda, MD 20814.

*Contact Person:* Mary Clare Walker, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5104, MSC 7852, Bethesda, MD 20892, (301) 435–1165.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel.

*Date:* July 26–27, 1999.

*Time:* 8:30 am to 5 pm.

*Agenda:* To review and evaluate grant applications.

*Place:* Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20853.

*Contact Person:* Sooja K. Kim, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6158, MSC 7892, Bethesda, MD 20892, (301) 435–1780.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel.

*Date:* July 26–27, 1999.

*Time:* 8:30 am to 5 pm.

*Agenda:* To review and evaluate grant applications.

*Place:* Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

*Contact Person:* Sooja K. Kim, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6158, MSC 7892, Bethesda, MD 20892, (301) 435–1780.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel.

*Date:* July 26, 1999.

*Time:* 9:30 am to 5 pm.

*Agenda:* To review and evaluate grant applications.

*Place:* The River Inn, 924 25th Street, Washington, DC 20037.

*Contact Person:* Gloria B. Levin, Scientific review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3166, MSC 7848, Bethesda, MD 20892, (301) 435–1017, leving@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel.

*Date:* July 26, 1999.

*Time:* 10 am to 11:30 am.

*Agenda:* To review and evaluate grant applications.

*Place:* NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* William C. Branche, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4182, MSC 7808, Bethesda, MD 20892, (301) 435–1148.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel.

*Date:* July 26, 1999.

*Time:* 2:30 PM to 3:30 PM.

*Agenda:* To review and evaluate grant applications.

*Place:* NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Anita Miller Sostek, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3176, MSC 7848 Bethesda, MD 20892, (301) 435–0910.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Center for Scientific Review Special Emphasis Pane,l ZRG–1 VACC (01).

*Date:* July 27, 1999.

*Time:* 8:30 AM to 7 PM.

*Agenda:* To review and evaluate grant applications.

*Place:* Hyatt Regency, One Metro Center, Bethesda, MD 20814.

*Contact Person:* Mary Clare Walker, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5104, MSC 7852 Bethesda, MD 20892, (301) 435–1165.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, ZRG1 IFCN–7 (04).

*Date:* July 27, 1999.

*Time:* 11 AM to 12:30 PM.

*Agenda:* To review and evaluate grant applications.

*Place:* NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Bernard F. Driscoll, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5158, MSC 7844, Bethesda, MD 20892, (301) 435–1242.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel.

*Date:* July 27, 1999.

*Time:* 2:30 PM to 3:30 PM.

*Agenda:* To review and evaluate grant applications.

*Place:* NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Marcia Litwack, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4150, MSC 7804, Bethesda, MD 20892, (301) 435–1719.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: July 15, 1999.

**LaVerne Y. Stringfield,**

*Committee Management Officer, NIH.*

[FR Doc. 99–18901 Filed 7–22–99; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–4445–N–19]**

### Proposed Information Collection: Comment Request; Multifamily Insurance Benefits Claim Package

**AGENCY:** Office of the Assistant Secretary for Housing, HUD.

**ACTION:** Notice.

**SUMMARY:** The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

**DATES:** *Comments Due Date:* September 21, 1999.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW, Room 4176, Washington, DC 20410.

**FOR FURTHER INFORMATION CONTACT:** Betty A. Belin, Systems Accountant, Office of Financial Services, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410, telephone (202) 401–2168 (this is not a toll free number) for copies of the proposed forms and other available information.

**SUPPLEMENTARY INFORMATION:** The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

*Title of Proposal:* Multifamily Insurance Benefits Claim Package.

*OMB Control Number, if applicable:* 2502–0415.

*Description of he need for the information and proposed use:* The Claim package requests from mortgagees the necessary fiscal data required for HUD to determine insurance owed to mortgagees that filed an insurance claim. When terms of a Multifamily contract are breached or when a mortgage meets conditions stated within the Multifamily contract for an automated assignment, the holder of the mortgage may file for insurance benefits. The law which supports this action is Statute 12 USC 1713(g) and Title II, Section 207(g) of the National Housing Act. This Act provides in the part ''. . . the mortgagee shall be entitled to receive the benefits of the insurance as hereinafter provided, upon assignment, transfer, and delivery to the Secretary, within a period and in accordance with rules and regulations to be prescribed by the Secretary of (1) all rights and interest arising under the mortgage so in default; (2) all claims of the mortgagee against the mortgagor or others, arising under the mortgage transaction; (3) all policies of title or other insurance or surety bonds or guaranties and any or all claims thereunder; (4) any balance of the mortgage loan not advanced to the mortgagor; (5) any cash or property held by the mortgagee, or to which it is entitled, as deposits made for account of the mortgagor and which have been applied in reduction of the principal of the mortgage indebtedness; and (6) all records, documents, books, papers and accounts relating to the mortgage transaction.'' These provisions are further spelled out in CFR 24 Part 207—Subpart B—Contract Rights and Obligations. To receive these benefits, the mortgagee must prepare and submit to HUD the Multifamily Insurance Benefits Claim Package.

*Agency form numbers, if applicable:* HUD–2742, 2744A, 2744B, 2744C, 2744D, and 2744E.

*Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response:* The estimated number of respondents is 118, frequency of responses is one per claim submission, and the total annual burden hours requested are 411.

*Status of the proposed information collection:* Extension of a currently approved collection.

**Authority:** The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: July 20, 1999.

**William C. Apgar,**

*Assistant Secretary for Housing-Federal Housing Commissioner.*

[FR Doc. 99–18879 Filed 7–22–99; 8:45 am]

BILLING CODE 4210–27–M

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–4441–N–37]**

### Submission of Proposed Information Collection to OMB; Emergency Comment Request; Single Family Property Disposition Teacher Next Door Initiative

**AGENCY:** Office of the Assistant Secretary for Administration, HUD.

**ACTION:** Notice.

**SUMMARY:** The collection information is needed in order to provide a binding contract between the property purchaser and HUD. The respondents are teachers, school districts, nonprofit organizations and governmental entities.

**DATES:** *Comments Due Date:* July 30, 1999.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Approval number (2502–0306) and should be sent to: Joseph F. Lackey, Jr., HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410, telephone (202) 708–2374. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Mr. Eddins.

**SUPPLEMENTARY INFORMATION:** This Notice informs the public that the Department of Housing and Urban Development (HUD) has submitted to OMB, for emergency processing, an information collection package with respect to a Notice ''Teacher Next Door Initiative; Notice.'' This emergency processing is essential to the Department's mission to expand homeownership opportunities and strengthen neighborhoods and communities by making properties available to teachers, who will have an incentive to live and work in urban school districts where they are needed most. The Teacher Next Door Initiative is critical to the Cities 2000 Agenda which was announced by Secretary Cuomo on June 12, 1999 to boost homeownership in America's cities.

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

*Title of Proposal:* Teacher Next Door Initiative; Notice.

*OMB Control Number, if applicable:* 2502–0306.

*Agency form numbers, if applicable:* HUD9548–A, HUD–9548B, HUD–9548–C.

*Members of affected public:* Teachers.

*Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response:* The estimated number of respondents are estimated to be 2,000, an average of 1,020 annual burden hours are estimated, and the frequency of responses is estimated to be once.

**Authority:** The Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: July 19, 1999.

**David S. Cristy,**

*Director, IRM Policy and Management Division.*

[FR Doc. 99–18881 Filed 7–22–99; 8:45 am]

**BILLING CODE 4210–01–M**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–4441–N–36]**

## Submission for OMB Review: Public Housing Assessment System (PHAS) Management Operations Certification

**AGENCY:** Office of the Assistant Secretary for Administration, HUD.

**ACTION:** Notice.

**SUMMARY:** Public Housing Assessment System (PHAS) Management Operations Certification.

**DATES:** Comments Due Date: August 23, 1999.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2535–0106) and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–1305. This is not a toll free number. Copies of the proposed and other available documents submitted to OMB may be obtained from Mr. Eddins.

**SUPPLEMENTARY INFORMATION:** The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information. (1) the title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the names and telephone numbers of any agency official familiar with the proposal and of the OMB Desk Officer for the Department.

**Authority:** Section 3507 of the Paperwork Reduction Act of 1955, 44 U.S.C. 35, as amended.

Dated: July 19, 1999.

**David S. Cristy,**

*Director, IRM Policy and Management Division.*

*Title of Proposal:* Public Housing Assessment System (PHAS) Management Operations Certification.

*Office:* Real Estate Assessment Center.

*OMB Approval Number:* 2535–0106.

*Description of the Need for the Information and Its Proposed Use:* Public Housing Assessment System (PHAS) indicators will be used to assess the management performance of PHAs, designated troubled PHAs and PHAs troubled with respect to the program, for assistance from the Capital Fund..

*Form Number:* HUD–50072.

*Respondents:* State, Local or Tribal Government not-for-profit institutions.

*Frequency of Submission:* Annually.

*Reporting Burden:*

| | Number of respondents | × | Frequency of response | × | Hours per response | = | Burden hours |
|---|---|---|---|---|---|---|---|
| HUD–50072 | 3,268 | | 1 | | 2.2 | | 7,041 |

*Total Estimated Burden Hours:* 7,041.

*Status:* Revision.

*Contact:* Wanda Funk, HUD, (202) 708–4932 ext. 3276, Joseph F. Lackey, Jr., OMB, (202) 395–7316.

[FR Doc. 99–18880 Filed 7–22–99; 8:45 am]

BILLING CODE 4210–01–M

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–4432–N–29]**

### Federal Property Suitable as Facilities To Assist the Homeless

**AGENCY:** Office of the Assistant Secretary for Community Planning and Development, HUD.

**ACTION:** Notice.

**SUMMARY:** This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

**EFFECTIVE DATE:** July 23, 1999.

**FOR FURTHER INFORMATION CONTACT:** Clifford Taffet, Department of Housing and Urban Development, Room 7262, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

**SUPPLEMENTARY INFORMATION:** In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless.

Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: July 15, 1999.

**Fred Karnas, Jr.,**

*Deputy Assistant Secretary for Economic Development.*

[FR Doc. 99–18468 Filed 7–22–99; 8:45 am]

BILLING CODE 4210–29–M

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–4463–N–02]**

### Mortgage and Loan Insurance Programs Under the National Housing Act—Debenture Interest Rates

**AGENCY:** Office of the Assistant Secretary for Housing-Federal Housing Commissioner, (HUD).

**ACTION:** Notice of change in debenture interest rates.

**SUMMARY:** This notice announces changes in the interest rates to be paid on debentures issued with respect to a loan or mortgage insured by the Federal Housing Commissioner under the provisions of the National Housing Act (the ''Act''). The interest rate for debentures issued under Section 221(g)(4) of the Act during the 6-month period beginning July 1, 1999, is 6⅝ percent. The interest rate for debentures issued under any other provision of the Act is the rate in effect on the date that the commitment to insure the loan or mortgage was issued, or the date that the loan or mortgage was endorsed (or initially endorsed if there are two or more endorsements) for insurance, whichever rate is higher. The interest rate for debentures issued under these other provisions with respect to a loan or mortgage committed or endorsed during the 6-month period beginning July 1, 1999, is 6⅛ percent.

**FOR FURTHER INFORMATION CONTACT:** James B. Mitchell, Department of Housing and Urban Development, 451 7th Street, SW, Room 6164, Washington, DC 20410. Telephone (202) 708–3944 extension 2612, or TTY (202) 708–4594 for hearing- or speech-impaired callers. These are not toll-free numbers.

**SUPPLEMENTARY INFORMATION:** Section 224 of the National Housing Act (24 U.S.C. 1715o) provides that debentures issued under the Act with respect to an insured loan or mortgage (except for debentures issued pursuant to Section 221(g)(4) of the Act) will bear interest at the rate in effect on the date the commitment to insure the loan or mortgage was issued, or the date the loan or mortgage was endorsed (or initially endorsed if there are two or more endorsements) for insurance, whichever rate is higher. This provision is implemented in HUD's regulations at 24 CFR 203.405, 203.479, 207.259(e)(6), and 220.830. Each of these regulatory provisions states that the applicable rates of interest will be published twice each year as a notice in the **Federal Register**.

Section 224 further provides that the interest rate on these debentures will be set from time to time by the Secretary of HUD, with the approval of the Secretary of the Treasury, in an amount not in excess of the annual interest rate determined by the Secretary of the Treasury pursuant to a statutory formula based on the average yield of all outstanding marketable Treasury obligations of maturities of 15 or more years.

The Secretary of the Treasury (1) has determined, in accordance with the provisions of Section 224, that the statutory maximum interest rate for the period beginning July 1, 1999, is 6⅛ percent and (2) has approved the establishment of the debenture interest rate by the Secretary of HUD at 6⅛ percent for the 6-month period beginning July 1, 1999. This interest rate will be the rate borne by debentures issued with respect to any insured loan or mortgage (except for debentures issued pursuant to Section 221(g)(4)) with an insurance commitment or endorsement date (as applicable) within the first 6 months of 1999.

For convenience of reference, HUD is publishing the following chart of debenture interest rates applicable to mortgages committed or endorsed since January 1, 1980:

| Effective interest rate | on or after | prior to |
|---|---|---|
| 9½ | Jan. 1, 1980 | July 1, 1980. |
| 9⅞ | July 1, 1980 | Jan. 1, 1981. |
| 11¾ | Jan. 1, 1981 | July 1, 1981. |
| 12⅞ | July 1, 1981 | Jan. 1, 1982. |
| 12¾ | Jan. 1, 1982 | Jan. 1, 1983. |
| 10¼ | Jan. 1, 1983 | July 1, l983. |
| 10⅜ | July 1, l983 | Jan. 1, 1984. |
| 11½ | Jan. 1, 1984 | July 1, 1984. |
| 13⅜ | July 1, 1984 | Jan. 1, 1985. |
| 11⅝ | Jan. 1, 1985 | July 1, 1985. |
| 11⅛ | July 1, 1985 | Jan. 1, 1986. |
| 10¼ | Jan. 1, 1986 | July 1, 1986. |
| 11¼ | July 1, 1986 | Jan. 1, 1987. |
| 8¼ | Jan. 1, 1987 | July 1, 1987. |
| 9 | July 1, 1987 | Jan. 1, 1988. |
| 9⅛ | Jan. 1, 1988 | July 1, 1988. |
| 9⅜ | July 1, 1988 | Jan. 1, 1989. |
| 9¼ | Jan. 1, 1989 | July 1, 1989. |
| 9 | July 1, 1989 | Jan. 1, 1990. |
| 8⅛ | Jan. 1, 1990 | July 1, 1990. |
| 9 | July 1, 1990 | Jan. 1, 1991. |

| Effective interest rate | on or after | prior to |
|---|---|---|
| 8¾ ..... | Jan. 1, 1991 ..... | July 1, 1991. |
| 8½ ..... | July 1, 1991 ..... | Jan. 1, 1992. |
| 8 ..... | Jan. 1, 1992 ..... | July 1, 1992. |
| 8 ..... | July 1, 1992 ..... | Jan. 1, 1993. |
| 7¾ ..... | Jan. 1, 1993 ..... | July 1, 1993. |
| 7 ..... | July 1, 1993 ..... | Jan. 1, 1994. |
| 6⅝ ..... | Jan. 1, 1994 ..... | July 1, 1994. |
| 7¾ ..... | July 1, 1994 ..... | Jan. 1, 1995. |
| 8⅜ ..... | Jan. 1, 1995 ..... | July 1, 1995. |
| 7¼ ..... | July 1, 1995 ..... | Jan. 1, 1996. |
| 6½ ..... | Jan. 1, 1996 ..... | July 1, 1996. |
| 7¼ ..... | July 1, 1996 ..... | Jan. 1, 1997. |
| 6¾ ..... | Jan. 1, 1997 ..... | July 1, 1997. |
| 7⅛ ..... | July 1, 1997 ..... | Jan. 1, 1998. |
| 6⅜ ..... | Jan. 1, 1998 ..... | July 1, 1998. |
| 6⅛ ..... | July 1, 1998 ..... | Jan. 1, 1999. |
| 5½ ..... | Jan. 1, 1999 ..... | July 1, 1999. |
| 6⅛ ..... | July 1, 1999 ..... | Jan. 1, 2000. |

Section 221(g)(4) of the Act provides that debentures issued pursuant to that paragraph (with respect to the assignment of an insured mortgage to the Secretary) will bear interest at the ''going Federal rate'' of interest in effect at the time the debentures are issued. The term ''going Federal rate'' is defined to mean the interest rate that the Secretary of the Treasury determines, pursuant to a statutory formula based on the average yield on all outstanding marketable Treasury obligations of 8- to 12-year maturities, for the 6-month periods of January through June and July through December of each year. Section 221(g)(4) is implemented in the HUD regulations at 24 CFR 221.790.

The Secretary of the Treasury has determined that the interest rate to be borne by debentures issued pursuant to Section 221(g)(4) during the 6-month period beginning July 1, 1999, is 6⅝ percent.

HUD expects to publish its next notice of change in debenture interest rates in December 1999.

The subject matter of this notice falls within the categorical exemption from HUD's environmental clearance procedures set forth in 24 CFR 50.20(l). For that reason, no environmental finding has been prepared for this notice.

(Sections 211, 221, 224, National Housing Act, 12 U.S.C. 1715b, 1715l, 1715o; section 7(d), Department of HUD Act, 42 U.S.C. 3535(d))

Dated: July 16, 1999.

**William C. Apgar,**

*Assistant Secretary for Housing-Federal Housing Commissioner.*

[FR Doc. 99–18878 Filed 7–22–99; 8:45 am]

BILLING CODE 4210–27–P

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. 4456–N–04]**

## Privacy Act; Proposed New Systems of Records

**AGENCY:** Office of the Chief Information Officer, HUD.

**ACTION:** Establish three new privacy Act systems of records.

**SUMMARY:** The Department of Housing and Urban Development (HUD) proposes to establish three new record systems to add to its inventory of systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The proposed new systems of records are: HUD/FHA Lender approval Files, HUD/HS–50, Single Family Insurance System (A33) and Home Equity Conversion Mortgage System (F12), HUD/HS–10 and Single Family Data Warehouse System (D64A), HUD/HS–15. HUD/FHA Lender Approval Files contains information pertaining to individuals who are principals or officers of financial institutions seeking approval or approved to originate, service or hold FHA single family or multifamily insured mortgages, or Title I insured loans. The Single Family Insurance System and Home Equity Conversion Mortgage System contains information on individuals who have obtained a mortgage insured under HUD/FHA's single family mortgage insurance programs and individuals who assumed an insured mortgage. The Single Family Data Warehouse System contains information on individuals who have obtained a mortgage insured under HUD/FHA's Title I and Title II single family mortgage insurance programs, individuals who assumed such a mortgage, and individuals involved in appraising or underwriting the mortgage.

**DATES:** *Effective Date:* This action shall be effective without further notice in 30 calendar days unless comments are received during or before this period that would result in a contrary determination.

*Comments due by:* August 23, 1999.

**ADDRESSES:** Interested persons are invited to submit comments regarding these new systems of records to the Rules Docket Clerk, Office of General Counsel, room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–0500. Communication should refer to the above docket number and title. An original and four copies of comments should be submitted. Facsimile (FAX) comments are not acceptable. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

**FOR FURTHER INFORMATION CONTACT:** Jeanette Smith, Departmental Privacy Act Officer, Telephone Number (202) 708–2374.

**SUPPLEMENTARY INFORMATION:** Pursuant to the Privacy Act of 1974 (5 U.S.C. 552a), as amended notice is given that HUD proposes to establish three new systems of records as identified as Single Family Insurance (A43) and Home Equity Conversion Mortgage System (F12), HUD/HS–10, Single Family Data Warehouse System (D64A), HUD/HS–15, and HUD/FHA Lender Approval Files, HUD/HS–50.

Title 5 U.S.C. 552a(e)(4) and (11) provide that the public be afforded a 30-day period in which to comment on the new systems of records.

The new system report was submitted to the Office of Management and Budget (OMB), the Senate Committee on Governmental Affairs, and the House Committee on Government Operations pursuant to paragraph 4c of Appendix 1 to OMB Circular No. A–130, ''Federal Responsibilities for Maintaining Records About Individuals,'' July 25, 1994; 59 FR 37914.

**Authority:** 5 U.S.C. 552a 88 Stat. 1896; 342 U.S.C. 3535(d).

Dated: July 20, 1999.

**Gloria R. Parker,**

*Chief Information Officer.*

### HUD/HS–50

**SYSTEM NAME:**

HUD/FHA Lender Approval Files.

**SYSTEM LOCATION:**

Headquarters and Single Family Homeownership Centers in Atlanta, Denver, Philadelphia, and Santa Ana.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Individuals who are principals or officers of financial institutions seeking approval or approved to originate, service or hold FHA single family or multifamily insured mortgages, or Title I insured loans.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Manual files contain name, address, social security number, and may contain resumes and credit bureau reports. Automated files contain name and social security number.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

Title I and Title II of the National Housing Act; 12 U.S.C. 1703, 1709 and 1751b; 42 U.S.C. 1436a and 3535(d).

PURPOSE:

The information in this system of records enables HUD/FHA to comply with any orders of the Mortgagee Review Board which disqualify individuals as principals or officers of FHA-approved lenders. It also permits correspondence to be addressed to individuals rather than job titles.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act other routine uses include:

(a) To the FBI to investigate possible fraud revealed in underwriting, insuring or monitoring.

(b) To Department of Justice for prosecution of fraud revealed in underwriting, insuring or monitoring.

(c) To General Accounting Office (GAO) for audit purposes.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Manual records are stored in file folders. Automated records are stored on magnetic tape/disc/drum.

RETRIEVABILITY:

Records are retrieved by name, social security number or other identification number.

SAFEGUARDS:

Manual records are maintained in lockable file cabinets in secure office space. Automated records are maintained in secured areas. Access is limited to authorized personnel.

RETENTION AND DISPOSAL:

Manual records are maintained for 10 years beyond the lender's approval termination. Automated records are maintained for 10 years beyond the individual's replacement.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Lender Approval and Recertification Division, HULL, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410.

NOTIFICATION PROCEDURE:

For information, assistance, or inquiry about existence of records, contact the Privacy Act Officer at the appropriate location in accordance with 24 CFR part 16. A list of all locations is given in appendix A.

RECORD ACCESS PROCEDURES:

The Department's rules for providing access to records to the individual concerned appear in 24 CFR part 16. If additional information or assistance is required, contact the Privacy Act Officer at the appropriate location. A list of all locations is given in appendix A.

CONTESTING RECORD PROCEDURES:

The Department's rules for contesting the contents of records and appealing initial denials, by the individual concerned, appear in 24 CFR part 16. If additional information or assistance is needed, it may be obtained by contacting: (i) In relation to contesting contents of records, the Privacy Act Officer at the appropriate location. A list of all locations is given in appendix A; (ii) in relation to appeals of initial denials, the HUD Departmental Privacy Appeals Officer, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410.

RECORD SOURCE CATEGORIES:

Mortgagee officer or principal.

## HUD/HS–10

SYSTEM NAME:

Single Family Insurance System and Home Equity Conversion Mortgage System.

SYSTEM LOCATION:

Headquarters and Single Family Homeownership Centers in Atlanta, Denver, Philadelphia, and Santa Ana.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have obtained a mortgage insured under HUD/FHA's single family mortgage insurance programs and individuals who assumed an insured mortgage.

CATEGORIES OF RECORDS IN THE SYSTEM:

Automated files contain name, address, and social security number on mortgagors; and data regarding the insured loan such as original terms and status of the mortgage insurance.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sec. 203, National Housing Act, Pub. L. 73–479.

PURPOSE:

The information in this system of records enables HUD/FHA to operate the single family mortgage insurance programs (*e.g.*, refund unearned premiums to homeowners who prepay their mortgage) and respond to inquiries regarding insured mortgages.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act other routine uses include: To General Accounting Office (GAO) for audit purposes.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored on magnetic tape/disc/drum.

RETRIEVABILITY:

Records are retrieved by name, social security number or other identification number.

SAFEGUARDS:

Automated records are maintained in secured areas. Access is limited to authorized personnel.

RETENTION AND DISPOSAL:

Computerized records of insured cases are retained for at least 3 years beyond maturity, prepayment, or claim termination.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Single Family Insurance Operations Division, HFFF, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410.

NOTIFICATION PROCEDURE:

For information, assistance, or inquiry about existence of records, contact the Privacy Act Officer at the appropriate location in accordance with 24 CFR part 16. A list of all locations is given in appendix A.

RECORD ACCESS PROCEDURES:

The Department's rules for providing access to records to the individual concerned appear in 24 CFR part 16. If additional information or assistance is required, contact the Privacy Act Officer at the appropriate location. A list of all locations is given in appendix A.

CONTESTING RECORD PROCEDURES:

The Department's rules for contesting the contents of records and appealing initial denials, by the individual concerned, appear in 24 CFR part 16. If additional information or assistance is needed, it may be obtained by contacting: (i) In relation to contesting contents of records, the Privacy Act Officer at the appropriate location. A list of all locations is given in appendix A; (ii) in relation to appeals of initial denials, the HUD Departmental Privacy Appeals Officer, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410.

RECORD SOURCE CATEGORIES:

Mortgagors, mortgagees.

**HUD/HS–15**

**SYSTEM NAME:**

Single Family Data Warehouse System (D64A).

**SYSTEM LOCATION:**

Headquarters and Single Family Homeownership Centers in Atlanta, Denver, Philadelphia, and Santa Ana.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Individuals who have obtained a mortgage insured under HUD/FHA's single family mortgage insurance programs, individuals who assumed such a mortgage, and individuals involved in appraising or underwriting the mortgage.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Automated files contain name, address, and social security number; racial/ethnic background, if disclosed, on mortgagors; identifying numbers on individuals involved in processing the loan; and data regarding currently and formerly insured mortgages. The loan data includes underwriting data, such as loan-to-value ratios and credit ratios; original terms, such as mortgage amount, interest rate, term in months; status of the mortgage insurance; and history of payment defaults, if any.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

Sec. 203, National Housing Act, Pub. L. 73–479.

**PURPOSE:**

This information aids HUD/FHA's monitoring of the single family mortgage insurance programs; it brings together data regarding the mortgage, its performance and parties involved, which facilitates research and analysis.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act other routine uses include:

(a) To the FBI to investigate possible fraud revealed in underwriting, insuring or monitoring.

(b) To Department of Justice for prosecution of fraud revealed in underwriting, insuring or monitoring.

(c) To General Accounting Office (GAO) for audit purposes.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Records are stored on magnetic tape/disc/drum.

**RETRIEVABILITY:**

Records are retrieved by name, social security number or other identification number, case number, property address, or any other type of stored data.

**SAFEGUARDS:**

Automated records are maintained in secured areas. Access is limited to authorized personnel.

**RETENTION AND DISPOSAL:**

Computerized records of insured cases are retained for at least 10 years beyond maturity, prepayment, or claim termination.

**SYSTEM MANAGER(S) AND ADDRESS:**

Director, Field Management, Office of the Deputy Assistant Secretary for Single Family Housing, HU, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410.

**NOTIFICATION PROCEDURE:**

For information, assistance, or inquiry about existence of records, contact the Privacy Act Officer at the appropriate location in accordance with 24 CFR part 16. A list of all locations is given in appendix A.

**RECORD ACCESS PROCEDURES:**

The Department's rules for providing access to records to the individual concerned appear in 24 CFR part 16. If additional information or assistance is required, contact the Privacy Act Officer at the appropriate location. A list of all locations is given in appendix A.

**CONTESTING RECORD PROCEDURES:**

The Department's rules for contesting the contents of records and appealing initial denials, by the individual concerned, appear in 24 CFR part 16. If additional information or assistance is needed, it may be obtained by contacting: (i) In relation to contesting contents of records, the Privacy Act Officer at the appropriate location. A list of all locations is given in appendix A; (ii) in relation to appeals of initial denials, the HUD Departmental Privacy Appeals Officer, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410.

**RECORD SOURCE CATEGORIES:**

Mortgagors, appraisers, mortgagee staff underwriters, and HUD employees—indirectly, immediate source is the operational system that captures the data (CHUMS, SFIS, SF Claims, SF Default Monitoring System).

[FR Doc. 99–18882 Filed 7–22–99; 8:45 am]

**BILLING CODE 4210–01–M**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[UT–020–09–1060–00]**

### Notice of Intent; Correction

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of Intent; correction.

**SUMMARY:** The Bureau of Land Management (BLM), Salt Lake Field Office, Utah published in the May 13, 1999 issue of the **Federal Register** a notice of intent to prepare a plan amendment to the Pony Express Resource Management Plan (RMP). The notice omitted that a review of the wild horse herd areas may result in boundary changes.

**FOR FURTHER INFORMATION CONTACT:** Alice Stephenson, Environmental Specialist, Salt Lake Field Office, 2370 South 2300 West, Salt Lake City, Utah 84119, (801) 977–4300. Existing planning documents are available at the Salt Lake Field Office.

### Correction

The plan amendment and environmental assessment will evaluate the herd areas as of 1971 (Wild Horse and Burro Act passage) and the herd areas as defined in the RMP. Potential additions to the herd areas are: Onaqui Mountain HMA—Davis Mountain, Davis Knolls, and Riverbed; Cedar Mountain HMA—west side of the Cedar Mountains and within Dugway Proving Grounds.

**LeRoy R. Turner,**

*Acting State Director.*

[FR Doc. 99–18860 Filed 7–22–99; 8:45 am]

**BILLING CODE 4310–DQ–P**

## DEPARTMENT OF THE INTERIOR

### National Park Service

### Record of Decision Final Environmental Impact Statement; General Management Plan; New Orleans Jazz National Historical Park, LA

### Introduction

The National Park Service (NPS) has written a Final General Management Plan/Environmental Impact Statement (FEIS) for New Orleans Jazz National Historical Park, New Orleans, Louisiana. The FEIS is presented in an abbreviated format. The document must be integrated with the Draft General Management Plan, Environmental Impact Statement, New Orleans Jazz National Historical Park, printed in

October, 1998, to be considered a complete document reflecting the full proposal, its alternatives, and all significant environmental impacts. The two documents together compose the complete Final Environmental Impact Statement. The FEIS presents alternatives and environmental consequences for resource management and protection, visitor use and interpretation, and facilities development at the national historical park.

The purpose of the Record of Decision (ROD) is to document the NPS selection of the proposed action for the general management plan for New Orleans Jazz National Historical Park from among the alternatives presented in the FEIS. The ROD highlights information contained in the FEIS. The reader should refer to the FEIS for more details relating to the topics presented below.

**Purpose**

The purpose of this general management plan is to provide a comprehensive plan for the future management and protection of jazz resources, the improved interpretation of jazz and the overall visitor experience, and the provision of necessary and appropriate visitor use facilities.

**Decision (Selected Action)**

The National Park Service will implement alternative C, the propose action described in the final environmental impact statement. Under the proposed action, the National Park Service will provide funding for basic park operations and will work intensely with others to develop partnerships and alternative funding sources for interpretation, visitor use,and experiences, and other activities focusing on preserving the jazz tradition. The proposed action recognizes that a wide variety of personal and nonpersonal interpretive services will be required to fulfill park purposes. In addition, the proposed action will require a strong partnership between the National Park Service and other entities involved in preserving the New Orleans jazz tradition. The extent and success of this alternative will depend on substantial support from partners, especially from the private sector. The role of the National Park Service will be to assist in coordinating efforts to preserve and interpret jazz and to help visitors understand how the diverse environments of jazz influenced its early development.

Interpretation media will be extensively used, and the size and scope of park and educational and preservation programs will be guided by the development of partnerships. Under this alternative, the visitor center will be located at a complex in Louis Armstrong Park. The visitor center will provide a variety of media (with significant audiovisual, experiential, and interactive elements) that would interpret New Orleans jazz and its progression. It will be a major component of visitors' experiences. Resources and activities around the city will also be very important. Personal services will be an important component of the park program as well as orientation and information. This complex will have a small curatorial storage capacity for items used in displays and educational activities. The visitor center will be developed in Armstrong Park on lands provided to the National Park Service under a long-term lease by the city of New Orleans. Facility development will be phased along with interpretive media development.

Education will be a major priority and will be emphasized in both phases of development. Onsite programming will be a principal emphasis, in order to give students access to the multimedia resources at the visitor center. Offsite programming will provide decentralized services close to home and school; programs will be designed to relate not only to park themes and school curricula, but also to explore the local history and personalities of specific neighborhoods. NPS personnel will be involved in all stages of programming, from planning through presentation and evaluation. In addition, the National Park Service will prepare materials relating to the origins and history of jazz that would be distributed on a nationwide basis. Important partners will include the New Orleans Jazz Commission, local musicians, educators, volunteers, and other agencies and organizations.

Preserving historical and cultural resources such as the South Rampart Street properties, will be a high priority. Historic sites could be adaptively used for activities such as music education, seminars, and performances. Historic jazz sites and cultural activities will receive enhanced public interest and involvement as they better appreciate the significance of these resources and activities. The New Orleans Jazz Commission will assist the National Park Service and others in preservation efforts.

Perseverance Hall No. 4 and the Caretaker's House will be rehabilitated. The rehabilitated hall will be expanded to construct a visitor center complex suitable to meet interpretive and educational needs. The Reimann and Rabassa houses will be considered for rehabilitating based on costs; should rehabilitation costs prove excessive, other options will be considered. Offices for NPS staff will also be located in this complex.

**Other Alternatives Considered**

Two other alternatives are presented in the alternatives in the abbreviated FEIS. The emphasis of alternative A is on continuing current conditions at New Orleans Jazz National Historical Park. This alternative would provide a minimal necessary orientation to jazz in New Orleans, as well as information on jazz history and personalities. This concept recognizes the many venues in New Orleans that feature jazz and emphasizes enjoyment through listening more than through interpretation or education. Orientation and information would occur mostly through personal services and partnerships. Visitor experiences would occur mostly at non-Park Service sites.

Alternative B would emphasize conveying the park's interpretive story through such personal programs as interpretive talks and demonstrations, interpreted performances. seminars, and performances. Educational activities would be given maximum emphasis in this alternative. It would allow the park to assist in the adaptive use of structures related to jazz. Interpretive programming would heavily depend on the involvement of local musicians and educators, thus supporting cultural preservation. Under this alternative, the visitor center would be located at the Old U.S. Mint.

**Basis for Decision**

Alternative C is the selected action because it most fully meets the park's purpose and management objectives relating to preserving resources and information associated with the origins and early development of jazz in New Orleans. It provides an enhanced opportunity for visitors to experience and appreciate early jazz and its origins, history and progression. Further, this alternative would promote and assist the education of students in various forms of jazz in order to perpetuate its continued evolution as a true American art form. This alternative more than alternatives A and B will allow the National Park Service to actively seek out partners and maximize federal expenditures in providing preservation and interpretation of jazz resources.

During the public response period for the DEIS, there was considerable support for alternative C, the proposed action, both locally and statewide.

There were a few comments that supported the various proposed programs, but supported the location of the park at the old U.S. Mint. Other concerns expressed by agencies and the general public are addressed in the ''Responses'' section of the abbreviated FEIS.

**Environmentally Preferable Alternative**

The environmentally preferable alternative is alternative C, the selected action. This alternative best protects, preserves, and enhances the historic, cultural, and natural resources relative to the other alternatives analyzed. The emphasis on partnerships in this alternative, which is greater than in alternatives A and B, will result in greater preservation of jazz resources. The area subject to development will not result in any further loss of natural habitat.

**Measures To Minimize Environmental Harm**

All practicable means to avoid or minimize environmental harm from implementation of the selected action have been adopted and will be enacted. The mitigating measures are presented in detail in the FEIS and are summarized below.

*Cultural Resources:* A professional archaeologist will determine the need for archaeological inventory or testing prior to any ground-disturbing activities. Any such studies will meet the needs of the state historic preservation offices and the National Park Service. Any large-scale archeological investigations will be undertaken in consultation with the Louisiana Historic Preservation Office. Decisions on the identification and appropriate treatment of historic properties will follow NPS management policies for cultural resources. The planning and implementation of preservation treatments, such as rehabilitation for adaptive use, will be undertaken in accordance with section 106 of the National Historic Preservation Act of 1966, as amended, and as set forth in the Advisory Council on Historic Preservation guidelines in 30 CFR 800 and the servicewide programmatic agreement among the National Park Service, the Advisory Council on Historic Preservation, and the National Conference of State Historic Preservation Officers. All preservation treatment to historic properties will follow the Secretary of the Interior's Standards and Guidelines for Archaeology and Historic Preservation.

In response to the enabling legislation, a National Historic Landmark theme study was undertaken and sites relating to early jazz were identified and measures for their preservation were addressed in the planning process. However, the National Historic Landmark theme study process has been delayed because required authorization from some landowners to evaluate their properties for integrity has not yet been obtained despite attempts by the National Park Service to gain this permission. If owner concurrence is received in the future the National Historic Landmark evaluation process will proceed.

The park will undertake a historic resource study that will provide a comprehensive context on the evolution of New Orleans Jazz. The historic resource study, prepared in accordance with provisions contained in NPS–28: Cultural Resource Management Guidelines, will not only provide important data to define and identify jazz-related resources and guide interpretation and resource protection, but will also afford management more complete knowledge and direction in its decision-making responsibility. During the implementation phase of the proposed action, archaeological surveys may be required as well as historic structure reports and ethnographic use studies. This will be determined on a case-by-case basis when advance planning is funded and undertaken.

Plan implementation actions that require further review by the Louisiana State Historic Preservation office and the Advisory Council on Historic Preservation to determine the effect on archaeological resources, historic resources, and/or cultural landscapes, are listed in the abbreviated FEIS. The National Park Service will complete an ''Assessment of Actions Having an Effect on Cultural Resources'' form before implementing any proposed action. This will document project impacts, and outline actions that will mitigate impacts.

*National Resources:* In general, natural resources will not be impacted by National Park Service activities. Because of NPS construction activities, there is a potential for short-term impacts on water quality. Strict erosion and sediment controls will be instituted as part of any NPS construction activity in accordance with federal and state laws. The state of Louisiana will be consulted, and the state's nonpoint source pollution coordinator will be contacted to determine whether a sediment or erosion control plan will be required. In addition, any such construction will conform with the NPS Floodplain Management Guidelines, which were issued as NPS Special Directive 93–4 in 1993. Appropriate permits will be obtained prior to beginning work, and all water quality standards will be met.

Impacts on rare, threatened, or endangered species due to construction will be minimal if at all, because the proposed NPS development will be in previously disturbed areas. Potential impacts on soils as a result of NPS construction will be minimal, especially in relation to existing disturbance. Site preparation will result in either removal or addition of earth, altering soil structure. Rehabilitation of severely impacted areas will be attempted wherever possible. Revegetation will be enhanced by conserving and using existing topsoil.

NPS development activities will result in temporary elevated levels of particulate matter and other air pollutants. Appropriate control measures will be used to ensure minimal impacts from air pollution. All federal, state, and local air quality standards will be met.

*Socioeconomic Environment:* The park's development is expected to have minimal effect upon city utilities, such as power lines and sanitary sewer systems. The National Park Service will consult with appropriate city, park, state, and federal offices to minimize impacts.

During the next planning and design phase for the park, the National Park Service will consult with local planning and traffic/transportation management agencies to ensure that minimal impact occurs. In conjunction with local agencies, the National Park Service will ensure adequate directional signs and informational brochures. Local traffic is not expected to be significantly affected by the anticipated increase in visitation. Some congestion could occur during peak use periods. The park will work with local planning and traffic/transportation management agencies and neighborhood groups to develop mitigating measures, if necessary.

**Public and Interagency Involvement**

During the process of creating the general management plan for New Orleans Jazz National Historic Park, newsletters were distributed, public meetings held, press releases were issued, radio interviews given. The draft document was placed on the internet, and the park staff and planning team met with local agencies and on a regular basis with the New Orleans Jazz Commission and other individuals and groups to exchange information and to solicit input and responses from the public.

The Draft New Orleans Jazz National Historical Park, General Management

Plan, Environmental Impact Statement was released on November 21, 1998. More than 800 copies were distributed to local, state, and federal government agencies and to organizations and individuals on the plan's mailing list. Following this, a newsletter was released and six public meetings were held to present the plan and record public comments. Written comments on the document were requested to be received by January 25, 1999. However, some comments were received after that date and were also considered.

Forty-two letters and comment forms were received from government agencies, organizations, and individuals. These letters were reproduced in the ''Comments and Responses'' section of the abbreviated FEIS, and are on file at the New Orleans Jazz National Historical Park headquarters in New Orleans, Louisiana. All comments were considered by the National Park Service in the preparation of the abbreviated FEIS.

A notice of availability for the abbreviated FEIS was published in the **Federal Register** on May 5, 1999. The 30-day no-action period ended on July 6, 1999.

### Conclusion

After careful evaluation of each alternative and its environmental impacts, and consideration of public response, park mission, and park goals, the National Park Service believes that the selected action, alternative C, represents the best course of action in the future preservation of jazz resources and interpretation of the story of New Orleans jazz and its progression.

Approved: July 9, 1999.

**W. Thomas Brown,**

*Acting Regional Director, Southeast Regional Office, National Park Service.*

[FR Doc. 99–18894 Filed 7–22–99; 8:45 am]

BILLING CODE 4310–70–M

## DEPARTMENT OF THE INTERIOR

### Vancouver National Historic Reserve Draft Cooperative Management Plan/ Environmental Impact Statement, Washington

**AGENCY:** National Park Service.

**ACTION:** Notice of availability of draft environmental impact statement.

**SUMMARY:** The National Park Service announces the availability of a Draft Cooperative Management Plan/ Environmental Impact Statement (CMP/ EIS) for Vancouver National Historic Reserve, Washington. This notice also announces public meetings for the purpose of receiving comments on the draft document.

**DATES:** Comments on the draft CMP/EIS should be received no later than September 21, 1999. Public meetings will be held in Vancouver, WA, on August 25, 1999, 6–8 p.m. at the Water Resources Education Center, and in Portland, OR, on August 26, 1999, 11:30 a.m.–1:00 p.m. at the Oregon Historical Society.

**SUPPLEMENTARY INFORMATION:** This plan provides for the cooperative administration of the Vancouver National Historic Reserve as directed by the legislation establishing the Historic Reserve. The 366-acre Reserve includes Fort Vancouver National Historic Site, the U.S. Army's Vancouver Barracks, Officers Row, Pearson Field, the Water Resources Education Center, and portions of the Columbia River waterfront. This plan is a statement of a shared vision by four public agencies and their partners in the coordinated management of the Historic Reserve for public benefit. The Historic Reserve will be administered through this plan by a partnership composed of the National Park Service, the Department of the Army, the Office of Archaeology and Historic Preservation of the State of Washington, and the City of Vancouver, Washington.

The plan analyzes three possible alternatives for future management and recommends a preferred alternative. The shared vision presented in the preferred alternative can be summarized in three broad goals:

—*Preservation* of historic structures, physical assets, and cultural landscapes,

—*Education* and interpretation of the significance and history of the area for public benefit,

—*Public use* of and accessibility to the Historic Reserve.

The primary consideration for the Vancouver Barracks would be to adaptively use the historic structures for sustainable public use and enjoyment, interpretation, and preservation of the historic scene. A new interpretive center would be developed for the barracks to focus on their history. Barracks structures would be adaptively used for a mix of public, nonprofit, and commercial uses. For the Parade Ground, a variety of theme-related activities would be encouraged.

Reconstruction of Fort Vancouver would continue, consistent with interpretative objectives, and the portions of the cultural landscape adjacent to the fort would be rehabilitated. The National Park Service would prepare a general management plan for the national historic site to address visitor center needs and location, further reconstruction of the fort, access, parking, interpretation, and other issues.

The Pearson Field visitor experience would provide interwar period civilian and U.S. Army aviation history and ambiance. The ongoing adaptive use of historic structures would continue, and older, nonhistoric hangars would be removed. Along the Columbia River Waterfront there would be expanded interpretation of the historic activities that link the waterfront with the Historic Reserve.

The CMP/EIS includes a no-action alternative and another alternative that would restore historic structures and landscapes to a condition representative of the most significant period of the structures and landscape. The DEIS presents a full discussion of the environmental impacts associated with implementing each alternative.

**ADDRESSES:** Comments on the draft CMP/EIS should be submitted to: Larry Beal, Denver Service Center, 12795 W. Alameada Parkway, Denver, CO 80225–0287. Copies of the draft CMP/EIS are available by request from the aforementioned address. The document will also be available on the Internet at www.nps.gov.

**FOR FURTHER INFORMATION CONTACT:** Larry Beal, Job Captain, Denver Service Center, phone (303) 969–2454, or E-mail: larry__beal@nps.gov.

Dated: July 13, 1999.

**William C. Walters,**

*Deputy Regional Director, Pacific West Region.*

[FR Doc. 99–18892 Filed 7–22–99; 8:45 am]

BILLING CODE 4310–70–P

## DEPARTMENT OF THE INTERIOR

### National Park Service

### Extension of Public Scoping Comment Period for Merced Wild and Scenic River Management Plan, Yosemite National Park, Mariposa and Madera Counties, CA

**SUMMARY:** Pursuant to provisions of the National Environmental Policy Act (Pub. L. 91–190) and the Wild and Scenic Rivers Act (Pub. L. 90–542), the National Park Service is initiating a conservation planning and environmental impact analysis process for a Merced River Management Plan for river segments within Yosemite National Park. In deference to public interest expressed to date during the scoping effort, the original period

expiring on July 14 has been extended through July 30, 1999.

**SUPPLEMENTARY INFORMATION:** Written comments must now be post-marked not later than July 30, 1999, and should be directed to the Superintendent, Yosemite National Park, P.O. Box 577, Yosemite National Park, California 95389 (or if sent via e-mail, transmitted by that date to ''Yose__Merced__River@nps.gov'').

Dated: July 19, 1999.

**James R. Shevock,**

*Acting Regional Director, Pacific West Region.*

[FR Doc. 99–18893 Filed 7–22–99; 8:45 am]

**BILLING CODE 4310–70–P**

## DEPARTMENT OF THE INTERIOR

### National Park Service

### Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects from Cuyamaca Rancho State Park, CA in the Possession of the California Department of Parks and Recreation, Sacramento, CA

**AGENCY:** National Park Service

**ACTION:** Notice

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects from Cuyamaca Rancho State Park, CA in the possession of the California Department of Parks and Recreation, Sacramento, CA.

A detailed assessment of the human remains was made by California Department of Parks and Recreation professional staff in consultation with representatives of the Campo Band of Diegueno Mission Indians of the Campo Indian Reservation, the Capitan Grande Band of Diegueno Mission Indians, the Manzanita Band of Diegueno Mission Indians of the Manzanita Reservation, the Cuyapaipe Community of Diegueno Mission Indians of the Cuyapaipe Reservation, the Inaja Band of Diegueno Mission Indians of the Inaja and Cosmit Reservation, the Jamul Indian Village, the La Posta Band of Diegueno Mission Indians of the La Posta Indian Reservation, the Mesa Grande Band of Diegueno Mission Indians of the Mesa Grande Reservation, the San Pasqual Band of Diegueno Mission Indians, the Santa Ysabel Band of Diegueno Mission Indians of the Santa Ysabel Reservation, the Sycuan Band of Diegueno Mission Indians, and the Viejas Band of Mission Indians.

In 1937, human remains representing 30 individuals were recovered from site CA-SDI-901, San Diego County, CA during excavations supervised by George F. Carter and Malcolm J. Rogers of the San Diego Museum of Man. No known individuals were identified. The 2,827 associated funerary objects include burial urns (plainware ollas and Tizon brown jars), olivella beads, a steatite bead, a bowl, a quartz flake, a projectile point, sherds, pieces of shell, mammal bones, bird bones, fish bones, seeds, charcoal pieces, small pieces of rock, and melted glass beads.

Based on manner of interment and associated funerary objects, these human remains have been identified as Native American dating to the late prehistoric to historic period (700 A.D.-1400 A.D.). Archeological evidence indicates this area of western San Diego County was occupied by Kumeyaay (Diegueno) peoples from 500 A.D. through the historic post-contact period.

In 1934, human remains representing a minimum of one individual were recovered from Arrow Makers Ridge, Arrowmakers Camp, Hapcha, West Mesa, San Diego County, CA under the direction of M. Rogers of the San Diego Museum of Man. In 1981 and 1983, portions of this collection were reburied prior to NAGPRA. No known individual was identified. The one associated funerary object is a stone bead.

Based on the manner of interment and associated funerary objects, these human remains have been identified as Native American dating to the late pre-contact to contact period (500-1500 A.D.). Archeological evidence indicates this area of San Diego county was occupied by Kumeyaay (Diegueno) peoples from 500 A.D. through the historic contact period.

Based on the above mentioned information, officials of the California Department of Parks and Recreation have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of a minimum of 31 individuals of Native American ancestry. Officials of the California Department of Parks and Recreation have also determined that, pursuant to 43 CFR 10.2 (d)(2), the 2,828 objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the California Department of Parks and Recreation have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity which can be reasonably traced between these Native American human remains and associated funerary objects and the Campo Band of Diegueno Mission Indians of the Campo Indian Reservation, the Capitan Grande Band of Diegueno Mission Indians, the Manzanita Band of Diegueno Mission Indians of the Manzanita Reservation, the Cuyapaipe Community of Diegueno Mission Indians of the Cuyapaipe Reservation, the Inaja Band of Diegueno Mission Indians of the Inaja and Cosmit Reservation, the Jamul Indian Village, the La Posta Band of Diegueno Mission Indians of the La Posta Indian Reservation, the Mesa Grande Band of Diegueno Mission Indians of the Mesa Grande Reservation, the San Pasqual Band of Diegueno Mission Indians, the Santa Ysabel Band of Diegueno Mission Indians of the Santa Ysabel Reservation, the Sycuan Band of Diegueno Mission Indians, and the Viejas Band of Mission Indians.

This notice has been sent to officials of the Campo Band of Diegueno Mission Indians of the Campo Indian Reservation, the Capitan Grande Band of Diegueno Mission Indians, the Manzanita Band of Diegueno Mission Indians of the Manzanita Reservation, the Cuyapaipe Community of Diegueno Mission Indians of the Cuyapaipe Reservation, the Inaja Band of Diegueno Mission Indians of the Inaja and Cosmit Reservation, the Jamul Indian Village, the La Posta Band of Diegueno Mission Indians of the La Posta Indian Reservation, the Mesa Grande Band of Diegueno Mission Indians of the Mesa Grande Reservation, the San Pasqual Band of Diegueno Mission Indians, the Santa Ysabel Band of Diegueno Mission Indians of the Santa Ysabel Reservation, the Sycuan Band of Diegueno Mission Indians, and the Viejas Band of Mission Indians. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Paulette Hennum, NAGPRA Coordinator, California Department of Parks and Recreation, 1416-9th Street, Room 1431, Sacramento, CA 95814; telephone: (916) 653-7976, before August 23, 1999. Repatriation of the human remains and associated funerary objects to the culturally affiliated tribes may begin after that date if no additional claimants come forward.

Dated: July 16, 1999.

**Francis P. McManamon,**

*Departmental Consulting Archeologist, Manager, Archeology and Ethnography Program.*

[FR Doc. 99–18889 Filed 7–22–99; 8:45 am]

**BILLING CODE 4310–70–F**

## DEPARTMENT OF THE INTERIOR

### National Park Service

### Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Possession of the Minnesota Indian Affairs Council, St. Paul and Bemidji, MN

**AGENCY:** National Park Service

**ACTION:** Notice

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects in the possession of the Minnesota Indian Affairs Council, St. Paul and Bemidji, MN.

A detailed assessment of the human remains was made by Minnesota Indian Affairs Council professional staff in consultation with representatives of the Iowa Tribe of Kansas and Nebraska, the Iowa Tribe of Oklahoma, and the Otoe-Missouria Tribe of Indians, Oklahoma.

In 1979, human remains representing three individuals were collected from site 21-HU-26, Houston County, MN during an archeological survey conducted by Tom Trow of the Minnesota Historical Society. In 1987, two of these individuals were turned over to the Minnesota Indian Affairs Council. In 1993, the third individual was turned over to the Minnesota Indian Affairs Council. No known individuals were identified. No associated funerary objects are present.

Based on archeological surveys, ethnohistoric evidence, material culture, and types of associated funerary objects, site 21-HU-26 has been identified as an Oneota/Orr phase Mississippian site. Based on continuities of material culture, historical documents, and oral history, the Oneota/Orr phase of the Mississippian archeological culture has been determined to be ancestral to the present-day Ioway tribes.

In 1935, human remains representing seven individuals were removed from site 21-FL-09, Rushford Mound site, Fillmore County, near Rushford, MN during an archeological excavation conducted by A.E. Jenks of the University of Minnesota. After 1987, these human remains were turned over to the Minnesota Indian Affairs Council. No known individuals were identified. The two associated funerary objects are two mortuary ceramic vessels.

Based on archeological surveys, material culture, and types of associated funerary objects, site 21-FL-09 has been identified as an Oneota/Orr phase Mississippian site. Based on continuities of material culture, historical documents, and oral history, the Oneota/Orr phase of the Mississippian archeological culture has been determined to be ancestral to the present-day Ioway tribes.

In 1942, human remains representing 12 individuals were removed from site 21-HU-04, Wilsey site, Houston County, MN during archeological excavations conducted by L.A. Wilford of the University of Minnesota. At a later date, these human remains were turned over to the Minnesota Indian Affairs Council. No known individuals were identified. The five associated funerary objects include flint chips, a catlinite pipe, an end scraper, a pottery vessel, and a notched arrowhead.

In 1947, human remains representing 16 individuals were recovered from site 21-HU-04, Wilsey site, Houston County, MN during further archeological excavations conducted by L.A. Wilford of the University of Minnesota. At a later date, these human remains were turned over to the Minnesota Indian Affairs Council. No known individuals were identified. The six associated funerary objects include flint flakes, a quartzite knife, tip of a flint knife, a pottery vessel, copper beads with leather, and a copper bead.

Based on archeological surveys, material culture, and types of associated funerary objects, site 21-HU-04 has been identified as an Oneota/Orr phase Mississippian site. Based on continuities of material culture, historical documents, and oral history, the Oneota/Orr phase of the Mississippian archeological culture has been determined to be ancestral to the present-day Ioway tribes.

In 1942 and 1947, human remains representing three individuals were removed from 21-HU-01, Hogback site, Houston County, MN during salvage and archeological excavations conducted by L.A. Wilford of the University of Minnesota. No known individuals were identified. The six associated funerary objects include flint chips, one ceramic sherd, one copper bead, a projectile point, a pottery vessel, and a catlinite pipe.

In 1953, human remains representing 52 individuals were removed from site 21-HU-01, Hogback site, Houston County, MN during archeological excavations conducted by L.A. Wilford of the University of Minnesota. No known individuals were identified. The 22 associated funerary objects include bark/leather fragments, two polished bird metapodials, mortuary vessels, a bone fish hook, shell and copper beads, a catlinite pipe, spiral copper beads, shell and bark/fabric, spiral copper beads and a large clamshell, a necklace of copper, shell, and glass beads, a necklace of copper beads and springs, an end scraper, a grooved axe, a triangular projectile point, a bear claw necklace with copper spring and shell beads, a bone awl, a flint knife, copper bead and beaver teeth, worked bone with drilled holes, and a clamshell.

Based on archeological surveys, material culture, and types of associated funerary objects, site 21-HU-01 has been identified as an Oneota/Orr phase Mississippian site. Based on continuities of material culture, historical documents, and oral history, the Oneota/Orr phase of the Mississippian archeological culture has been determined to be ancestral to the present-day Ioway tribes.

In 1948, human remains representing one individual were removed from site 21-FL-08, Riehl Mound site, Fillmore County, MN during archeological excavations conducted by L.A. Wilford of the University of Minnesota. No known individual was identified. The three associated funerary objects include a base of a biface, a crescent chert knife, and a projectile point.

Based on archeological surveys, material culture, and types of associated funerary objects, site 21-FL-08 has been identified as an Oneota/Orr phase Mississippian site. Based on continuities of material culture, historical documents, and oral history, the Oneota/Orr phase of the Mississippian archeological culture has been determined to be ancestral to the present-day Ioway tribes.

In 1954, human remains representing two individuals were removed from site 21-GD-04, Bryan site, Goodhue County, MN during archeological excavations conducted by L.A. Wilford of the University of Minnesota. In 1991, these human remains were transferred to the Minnesota Indian Affairs Council. No known individuals were identified. No associated funerary objects are present.

In 1984, human remains representing three individuals were removed from site 21-GD-04, the Bryan site, Goodhue County, MN during archeological excavations conducted by Clark Dobbs of the Institute for Minnesota Archaeology and the University of Minnesota. In 1994, these human remains were transferred to the Minnesota Indian Affairs Council. No known individuals were identified. The eight associated funerary objects include ceramice sherds, burned bone, charcoal, rock, ochre, shell, a lithic flake and a possible hammerstone.

At an unknown date, human remains representing one individual were removed from site 21-GD-04, the Bryan site, Goodhue County, MN by an unknown person who donated the remains to the University of Minnesota. No known individual was identified. No associated funerary objects are present.

During 1970-1971, human remains representing one individual were removed from site 21-GD-04, the Bryan site, Goodhue County, MN by David Nystuen of the Minnesota Historical Society. In 1987, these human remains were transferred to the Minnesota Indian Affairs Council. No known individual was identified. No associated funerary objects are present.

At an unknown date, human remains representing one individual were removed from site 21-GD-04, the Bryan site, Goodhue County, MN by Heinz Weisse. In 1979, these human remains were donated to the Minnesota Historical Society by Tom Igwn. In 1987, these human remains were transferred to the Minnesota Indian Affairs Council. No known individual was identified. No associated funerary objects are present.

In 1952, human remains representing four individuals were removed from site 21-GD-04, the Bryan site, Goodhue County, MN during archeological excavations conducted by L.A. Wilford of the University of Minnesota. No known individuals were identified. The three associated funerary objects are an animal bone, a scapula hoe, and clam shells.

In 1955, human remains representing three individuals were removed from site 21-GD-04, the Bryan site, Goodhue County, MN during archeological investigations conducted by L.A. Wilford of the University of Minnesota. No known individuals were identified. No associated funerary objects were present.

During the 1950s, human remains representing four individuals were removed from site FL-8, Riehl Mounds, Fillmore County, MN by person(s) unknown. In 1992, these human remains were turned over to J. Oothoudt who turned them over to the Minnesota Indian Affairs Council. No known individual was identified. No associated funerary objects are present.

Based on archeological surveys, material culture, and types of associated funerary objects, site 21-GD-04 has been identified as Mississippian, Oneota/Blue Earth and Silvernale phases. Based on continuities of material culture, historical documents, and oral history, the Oneota/Blue Earth phase of the Mississippian archeological culture has been determined to be ancestral to the present-day Otoe. Based on continuities of material culture, historical documents, and oral history, the Silvernale phase of the Mississippian archeological culture has been determined to be ancestral to the present-day Ioway.

In 1950, human remains representing one individual were removed from site 21-GD-05, Eggleston Mound Group site, Goodhue County, MN during archeological excavations conducted by L.A. Wilford of the University of Minnesota. No known individuals were identified. The two associated funerary objects are a lithic flake/scraper, and clam shells.

Based on archeological surveys, material culture, and types of associated funerary objects, site 21-GD-05 has been identified as Mississippian, Oneota phase. Based on continuities of material culture, historical documents, and oral history, the Oneota phase of the Mississippian archeological culture has been determined to be ancestral to the present-day Otoe and Ioway.

In 1955, human remains representing two individuals were removed from site 21-SB-01, High Island Mound site/Black Tortoise Mound, Sibley County, MN during archeological excavations conducted by L.A. Wilford of the University of Minnesota. No known individuals were identified. No associated funerary objects were present.

Based on archeological surveys, material culture, and types of associated funerary objects, site 21-SB-01 has been identified as Mississippian, Oneota phase. Based on continuities of material culture, historical documents, and oral history, the Oneota phase of the Mississippian archeological culture has been determined to be ancestral to the present-day Otoe and Ioway.

In 1952, human remains representing three individuals were removed from site 21-WL-02, McCauleyville Mound site, Wilkin County, MN during excavations conducted by L.A. Wilford of the University of Minnesota. No known individuals were identified. No associated funerary objects were present.

Based on archeological surveys, material culture, and types of associated funerary objects, site 21-WL-02 has been identified as Mississippian, Oneota phase. Based on continuities of material culture, historical documents, and oral history, the Oneota phase of the Mississippian archeological culture has been determined to be ancestral to the present-day Otoe and Ioway.

Based on the above mentioned information, officials of the Minnesota Indian Affairs Council have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of 117 individuals of Native American ancestry. Officials of the Minnesota Indian Affairs Council have also determined that, pursuant to 43 CFR 10.2 (d)(2), the 57 objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the Minnesota Indian Affairs Council have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity which can be reasonably traced between these Native American human remains and associated funerary objects and the Iowa Tribe of Kansas and Nebraska, the Iowa Tribe of Oklahoma, and the Otoe-Missouria Tribe of Indians, Oklahoma.

This notice has been sent to officials of the Iowa Tribe of Kansas and Nebraska, the Iowa Tribe of Oklahoma, and the Otoe-Missouria Tribe of Indians, Oklahoma. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Mr. James L. (Jim) Jones, Cultural Resource Specialist, Minnesota Indian Affairs Council, 1819 Bemidji Ave. Bemidji, MN 56601; telephone: (218) 755-3825, before August 23, 1999. Repatriation of the human remains and associated funerary objects to the Iowa Tribe of Kansas and Nebraska, the Iowa Tribe of Oklahoma, and the Otoe-Missouria Tribe of Indians, Oklahoma may begin after that date if no additional claimants come forward.

Dated: July 16, 1999.

**Francis P. McManamon,**

*Departmental Consulting Archeologist, Manager, Archeology and Ethnography Program.*

[FR Doc. 99–18890 Filed 7–22–99; 8:45 am]

BILLING CODE 4310–70–F

## DEPARTMENT OF THE INTERIOR

### National Park Service

### Notice of Intent to Repatriate Cultural Items in the Possession of the University Museum, University of Arkansas, Fayetteville, AR

**AGENCY:** National Park Service

**ACTION:** Notice

Notice is hereby given under the Native American Graves Protection and Repatriation Act, 43 CFR 10.10 (a)(3), of the intent to repatriate cultural items in the possession of the University Museum, University of Arkansas,

Fayetteville, AR which meet the definition of ''unassociated funerary objects'' under Section 2 of the Act.

The four cultural items consist of a small shell-tempered pottery vessel and three animal bone tools.

At an unknown date, these cultural items were found with a human burial in the Kohler Mound, Alexander County, IL. In 1947, these cultural items were acquired by the University Museum as part of the purchase of the artifact collection of Fain White King.

Based on the temper and character of the pottery, these cultural items have been determined to relate to the Middle Mississippian Culture of the Mississippi Period (800-1600 A.D.). Based on geographical continuity, the University Museum has identified the Peoria Tribe of Indians of Oklahoma as the likely descendant of the Mississippian culture in that part of Illinois.

Based on the above mentioned information, officials of the University Museum, University of Arkansas have determined that, pursuant to 43 CFR 10.2 (d)(2)(ii), these four cultural items are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from a specific burial site of an Native American individual. Officials of the University Museum, University of Arkansas have also determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity which can be reasonably traced between these items and the Peoria Tribe of Indians of Oklahoma.

This notice has been sent to officials of the Peoria Tribe of Indians of Oklahoma. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these objects should contact Michael P. Hoffman, Curator of Anthropology, University Museum, University of Arkansas, Fayetteville, AR 72702; telephone: (501) 575-3855 before August 23, 1999. Repatriation of these objects to the Peoria Tribe of Indians of Oklahoma may begin after that date if no additional claimants come forward.

Dated: July 13, 1999.

**Francis P. McManamon,**

*Departmental Consulting Archeologist, Manager, Archeology and Ethnography Program.*

[FR Doc. 99–18886 Filed 7–22–99; 8:45 am]

**BILLING CODE 4310–70–F**

## DEPARTMENT OF THE INTERIOR

### National Park Service

### Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects from Montgomery County, IL in the Possession of the University Museum, University of Arkansas, Fayetteville, AR

**AGENCY:** National Park Service

**ACTION:** Notice

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects from Montgomery County, IL in the possession of the University Museum, University of Arkansas, Fayetteville, AR.

A detailed assessment of the human remains was made by University Museum professional staff in consultation with representatives of the Peoria Tribe of Indians of Oklahoma.

In 1963, human remains representing 11 individuals were recovered from site CIPS 5 Dam site during salvage excavations conducted by Michael P. Hoffman, a graduate student at Harvard University and a crew of students. No known individuals were identified. The 103 associated funerary objects include ceramic sherds, stone flakes, deer bones, ground stone tools and stone core fragments.

Based on the associated funerary objects, these individuals have been identified as Native American. Based on ceramic temper and styles, these burials date to the Bluff Culture of the Late Woodland Period (700-900 A.D.). The Bluff Culture is at least partially ancestral to the Middle Mississippian Culture of southern Illinois. Based on geographical continuity, the Peoria Tribe of Indians of Oklahoma is likely to be descendant of archeological cultures of the Woodland and Mississippian periods in central and southern Illinois.

Based on the above mentioned information, officials of the University Museum have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of 11 individuals of Native American ancestry. Officials of the University Museum have also determined that, pursuant to 43 CFR 10.2 (d)(2), the 103 objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the University Museum have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity which can be reasonably traced between these Native American human remains and associated funerary objects and the Peoria Tribe of Indians of Oklahoma.

This notice has been sent to officials of the Peoria Tribe of Indians of Oklahoma. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Michael P. Hoffman, Curator of Anthropology, University Museum, University of Arkansas, Fayetteville, AR 72702; telephone: (501) 575-3855, before August 23, 1999. Repatriation of the human remains and associated funerary objects to the Peoria Tribe of Indians of Oklahoma may begin after that date if no additional claimants come forward.

Dated: July 15, 1999.

**Francis P. McManamon,**

*Departmental Consulting Archeologist, Manager, Archeology and Ethnography Program.*

[FR Doc. 99–18887 Filed 7–22–99; 8:45 am]

**BILLING CODE 4310–70–F**

## DEPARTMENT OF THE INTERIOR

### National Park Service

### Notice of Inventory Completion for Native American Human Remains in the Possession of the University of Pennsylvania Museum of Archaeology and Anthropology, University of Pennsylvania, Philadelphia, PA

**AGENCY:** National Park Service

**ACTION:** Notice

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains in the possession of the University of Pennsylvania Museum of Archaeology and Anthropology, University of Pennsylvania, Philadelphia, PA.

A detailed assessment of the human remains was made by University of Pennsylvania Museum professional staff in consultation with representatives of the Pawnee Indian Tribe of Oklahoma.

At an unknown date, human remains representing one individual were removed from an unknown site by person(s) unknown. At an unknown date, these human remains were donated to the University of

Pennsylvania Museum by person(s) unknown. No known individual was identified. No associated funerary objects are present.

Based on the label on this skull, this individual has been identified as Native American of Pawnee affiliation. The skull is incised with symbols or pictures, and two man-made holes are present at either side of its base. The cranium also exhibits parietal flattening (artificial deformation). No further information exists for this individual.

Based on the above mentioned information, officials of the University of Pennsylvania Museum have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of one individual of Native American ancestry. Officials of the University of Pennsylvania Museum have also determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity which can be reasonably traced between these Native American human remains and the Pawnee Indian Tribe of Oklahoma.

This notice has been sent to officials of the Pawnee Indian Tribe of Oklahoma. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains should contact Dr. Jeremy Sabloff, the Williams Director, University of Pennsylvania Museum of Archaeology and Anthropology, 33rd and Spruce Streets, Philadelphia, PA 19104-6324; telephone: (215) 898-4051, fax (215) 898-0657, before August 23, 1999. Repatriation of the human remains to the Pawnee Indian Tribe of Oklahoma may begin after that date if no additional claimants come forward.

Dated: July 12, 1999.

**Francis P. McManamon,**

*Departmental Consulting Archeologist, Manager, Archeology and Ethnography Program.*

[FR Doc. 99–18888 Filed 7–22–99; 8:45 am]

**BILLING CODE 4310–70–F**

## DEPARTMENT OF THE INTERIOR

### National Park Service

### Availability of Revised Guidance on All Requests for Wireless Telecommunication; Facilities in Units of the National Park System, Reference Manual 53, Appendix 5, Exhibit 6

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice of availability.

**SUMMARY:** The National Park Service (NPS) announces the availability of the revised guidance document for all requests for Wireless Telecommunication Facilities in units of the NPS. This document revises existing guidance to park managers concerning all aspects of requests for Wireless Telecommunications Facilities in the National Park System, from the initial contact, through on-scene protection of resources, and ending with complete recovery and restoration of the site. This document supersedes and replaces the existing NPS–53, Appendix 8, Exhibit 6 dealing with the same subject.

Copies of the guidance document will be made available upon request by writing: National Park Service, Ranger Activities Division-Telecom, 1849 C St. NW, Suite 7408, Washington, DC 20240, or by calling 202–208–4874.

**FOR FURTHER INFORMATION CONTACT:** Dick Young at 757–898–7846, or 757–898–3400, ext. 51.

Dated: July 20, 1999.

**Dennis Burnett,**

*Acting Chief, Ranger Activities Division, National Park Service.*

[FR Doc. 99–18891 Filed 7–22–99; 8:45 am]

**BILLING CODE 4310–70–P**

## INTERNATIONAL TRADE COMMISSION

**[Inv. No. 337–TA–412]**

### Certain Video Graphics Display Controllers and Products Containing SAME; Commission Determination Not To Review the Bulk of an Initial Determination Finding No Violation of Section 337 of the Tariff Act of 1930

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has determined not to review, as explained below, the presiding administrative law judge's final initial determination (ID) and has thereby made a final determination of no violation of section 337 of the Tariff Act of 1930, as amended, in the above-captioned investigation.

**FOR FURTHER INFORMATION CONTACT:** Clara Kuehn, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW, Washington, DC 20436, telephone (202) 205–3012. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (http://www.usitc.gov).

**SUPPLEMENTARY INFORMATION:** The Commission ordered the institution of this investigation on July 27, 1998, based on a complaint filed on behalf of Cirrus Logic, Inc., Fremont, California (''Cirrus'' or ''complainant''). 63 FR 40932 (1998). The notice of investigation was published in the **Federal Register** on July 31, 1998. *Id.* The complaint alleged that ATI Technologies, Inc., Thornhill, Ontario, Canada (''ATI'' or ''respondent'') violated section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337, by importing, selling for importation, and selling in the United States after importation certain video graphics display controllers that infringe claims 37 and 43 of Cirrus' U.S. Letters Patent 5,598,525 (''the ''525 patent''). Id. On October 29, 1998, the presiding administrative law judge (ALJ) issued an ID (ALJ Order No. 14) granting Cirrus' motion to amend the complaint and notice of investigation to add allegations of infringement of claims 1–10, 12–21, and 23–24 of the ''525 patent, and that ID was not reviewed by the Commission. 63 FR 66581 (1998).

The ALJ held a tutorial on the technology for displaying video and graphics data on personal computers on January 7, 1999. On January 20, 1999, Cirrus filed a notice of withdrawal of certain disputed claims, indicating that only claims 13, 15, 16, 17, 23, and 37 remained in dispute. An evidentiary hearing was held from January 21, 1999, to January 29, 1999.

The ALJ issued her final ID on April 30, 1999, concluding that there was no violation of section 337, based on the following findings: (a) complainant failed to establish the requisite domestic industry; (b) the asserted claims of the ''525 patent, claims 13, 15, 16, 17, 23, and 37, are invalid; and (c) assuming, *arguendo,* the validity of the asserted claims, respondent's accused devices do not infringe the asserted claims. On May 11, 1999, the ALJ issued her recommended determination on remedy and bonding, in the event the Commission were to conclude there is a violation of section 337.

On May 13, 1999, complainant filed a petition for review of the ID, arguing that the ALJ erred in construing specific terms in claims 13, 15, 16, 17, and 23, erred in her invalidity and infringement analyses of those claims, and erred in concluding that complainant did not satisfy the domestic industry requirement. Complainant's petition included a request for contingent review of the ALJ's conclusions concerning

certain prior art and her construction of additional terms in these claims, should the Commission adopt complainant's claim construction over the ALJ's. Complainant did not petition for review of the ALJ's conclusions as to claim 37. Respondent filed a contingent petition for review identifying as issues for consideration should the Commission decide to review the ID certain aspects of the ALJ's construction of claims 13, 15, 16, 17, 23, and 37, application of the doctrine of equivalents, and conclusions as to invalidity and inequitable conduct. The Commission investigative attorney (IA) petitioned for review of the ALJ's alternative basis for finding no domestic industry as erroneous as a matter of law. On May 20, 1999, respondent, complainant, and the IA filed responses to the petitions for review.

Having reviewed the record in this investigation, including the parties' written submissions, the Commission determined not to review the ID, except that the Commission determined to take no position as to the ALJ's findings as to the following issues: (1) The invention date of the 525 patent; (2) the prior art status of the Oak/Brooktree combination under 35 U.S.C. 102(a); (3) the prior art status of the Bindlish 864 patent under 35 U.S.C. 102(e); (4) the invalidity of claim 37 of the 525 patent as anticipated by the Bindlish 864 prior art patent under 35 U.S.C. 102(e); and (5) the non-enablement of claims 13, 15, 16, 17, and 23. With respect to the ID's finding that complainant failed to satisfy the technical prong of the domestic industry requirement in part because claim 13 is invalid for indefiniteness, the Commission clarifies that it understands the ID to mean that complainant cannot meet the burden of demonstrating the practice of an indefinite claim. The Commission thereby adopted the ID, with the exceptions noted, as its final determination.

The authority for the Commission's determinations is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in sections 210.42–210.43 of the Commission's Rules of Practice and Procedure (19 C.F.R. 210.42–.43).

Copies of the public version of the ALJ's ID 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, SW, Washington, DC 20436, telephone 202–205–2000.

Issued: July 19, 1999.

By order of the Commission.

**Donna R. Koehnke,**

*Secretary.*

[FR Doc. 99–18843 Filed 7–22–99; 8:45 am]

BILLING CODE 7020–02–P

## DEPARTMENT OF JUSTICE

### Lodging of Consent Decree Pursuant to the Clean Water Act and Oil Pollution Act of 1990

Notice is hereby given that a consent decree in *United States* v. *Carlos R. Leffler, Inc.*, Civil Action No. 99–3027 (E.D. Pa) was lodged with the court on June 15, 1999.

The proposed decree resolves claims of the United States against Carlos R. Leffler, Inc. under Section 311 of the Clean Water Act, as amended by the Oil Pollution Act of 1990, 33 U.S.C. 1321, for failure to timely prepare and submit EPA plans for the prevention, control and cleanup of potential oil spills for twelve of its oil storage facilities in Pennsylvania. The decree requires Carlos R. Leffler to pay a penalty of $435,000.00 to the Oil Spill Liability Trust Fund and to spend a minimum of $110,000.00 for the donation and enhancement of approximately fifteen acres of wetlands and uplands in Walker Township, Juaniata County, Pennsylvania.

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. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice. Washington, DC 20530, and should refer to *United States* v. *Carlos R. Leffler, Inc.*, Civil Action No. 99–3027, DOJ Ref. #90–5–1–1–4452.

The proposed consent decree may be examined at the United States Department of Justice, Environment and Natural Resources Division, Consent Decree Library, 1120 G Street, NW, 4th floor, Washington, DC 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, NW, 4th floor, Washington, DC 20005. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $7.50 (25 cent per page reproduction cost), payable to the Consent Decree Library.

**Walker Smith,**

*Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 99–18812 Filed 7–22–99; 8:45 am]

BILLING CODE 4410–15–M

## DEPARTMENT OF JUSTICE

### Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *FMC Corporation*, Civil Action No. 5:99–CV–0054, was lodged on July 9, 1999 with the United States District Court for the Western District of Virginia. The United States filed this action pursuant to Sections 106 & 107 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9606 & 9607 at the Avtex Fibers Superfund Site in Front Royal, Virginia.

Before it closed in 1989, the Avtex plant in Front Royal was the largest rayon manufacturing facility in the United States and is now the largest Superfund site in the Commonwealth of Virginia. The plant is a 440 acre facility that is located directly adjacent to the Shenandoah River in the town of Front Royal. The site is contaminated with a variety of hazardous substances including PCBs, arsenic, lead, cadmium, chromium, zinc and carbon disulfide as the result of rayon manufacturing operations conducted at the site over the course of 50 years. The consent decree requires FMC to pay $9.1 million for past and interim responses costs incurred by EPA at the Avtex Site. In addition, FMC has agreed to perform future response work at the site, with a value of $62.7 million (in 1998 dollars) and pay for EPA's oversight of the clean up. Finally, FMC has agreed to oversee and participate in the removal of abandoned buildings and structures at the Avtex plant. This additional future work is not covered under CERCLA but will enable the property to be redeveloped or reused.

The Department of Justice will receive, for a period of 30 days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environmental and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to: *United States* v. *FMC Corporation*, DOJ Ref. #90–11–3–372A.

The proposed consent decree may be examined at the Office of the United States Attorney, Western District of Virginia, Office of the U.S. Environmental Protection Agency, Region 3, 1650 Arch Street, Philadelphia, Pa., and at the Consent Decree Library, 1120 G Street, NW, 3rd

Floor, Washington, DC 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, NW, 3rd Floor, Washington, DC 2005. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $37.50 (25 cents per page reproduction costs), payable to the Consent Decree Library.

**Joel Gross,**

*Chief, Environmental Enforcement Section Environment and Natural Resources Division.*

[FR Doc. 99–18810 Filed 7–22–99; 8:45 am]

**BILLING CODE 4410–15–M**

## DEPARTMENT OF JUSTICE

### Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that on July 9, 1999 a proposed Consent Decree in *United States and Cheyenne River Sioux Tribe* v. *Homestake Mining Company of California,* Civil Action No. 97–5100, and *State of South Dakota* v. *Homestake Mining Company of California,* Civil Action No. 97–5078 (consolidated) was lodged with the United States District Court for the District of South Dakota in Rapid City.

The Consent Decree settled federal, state, and tribal natural resource damage and trustee response costs claims associated with contamination resulting from deposits of millions of tons of tailings from Homestake's mining operations. Since the late 1870's Homestake has operated a gold mine in Lead, South Dakota. In their respective claims, the United States, the Cheyenne River Sioux Tribe, and the State of South Dakota alleged that tailings deposited into Whitewood Creek caused injuries to natural resources in the Cheyenne River Basin, and sued Homestake under CERCLA Section 107, 42 U.S.C. 9607, the Clean Water Act Section 311(f), 33 U.S.C. 1321(f), and state nuisance law. Homestake asserted a variety of counterclaims against all plaintiffs, including the United States. This global settlement reached among Homestake, the United States, the Cheyenne River Sioux Tribe and the State of South Dakota, provides $4 million to be shared equally among the United States, the State, and the Tribe, to be used for natural resource restoration. Additionally, the Tribe will receive 400 acres in the Black Hills to be used for non-commercial purposes, and $500,000 for environmental monitoring on the reservation, and the State will receive water rights in the Black Hills. The United States will receive $500,000 for damage assessment costs and will enter into an agreement with Homestake to exchange BLM mine-contaminated land for clean land. All EPA response cost claims have been specifically reserved. In exchange for the covenants and releases provided to Homestake, Homestake will dismiss all of its counterclaims.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the consent decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States and Cheyenne River Sioux Tribe* v. *Homestake Mining Company of California,* D.J. Ref. 90–11–3–1718.

The Consent Decree may be examined at the Office of the United States Attorney, 230 Phillips Avenue, Suite 600, Sioux Falls, South Dakota 57104–6321, the United States Attorney's Office, District of South Dakota, 515 9th Street, Rapid City, South Dakota 55701, the Office of the Attorney General, State of South Dakota, 500 East Capitol, Pierre, South Dakota, the Office of the Secretary of the Chairman of the Cheyenne Sioux River Tribe, Eagle Butte, South Dakota, and at the Consent Decree Library, 1120 G Street, NW, 3rd Floor, Washington, DC 20005, (202) 624–0892. A copy of the Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW, 3rd Floor, Washington, DC 20005, (202) 624–0852. In requesting a copy, please enclose a check for the copy production of the decree (25 cents per page) payable to the Consent Decree Library.

**Joel M. Gross,**

*Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 99–18811 Filed 7–22–99; 8:45 am]

**BILLING CODE 4410–15–M**

## DEPARTMENT OF JUSTICE

### Lodging of Consent Decree Pursuant to the Clean Air Act

In accordance with Departmental policy, 28 C.F.R. 50.7, and section 113(g) of the Clean Air Act, 42 U.S.C. 7413(g), notice is hereby given that a proposed consent decree in *United States* v. *Department of Housing Preservation and Development of the City of New York,* Civil Action No. CV–99–3781, was lodged on July 6, 1999, with the United States District Court for the Eastern District of New York. The proposed consent decree would settle a civil action that the United States brought on behalf of the United States Environmental Protection Agency under Section 113 of the Clean Air Act, 42 U.S.C. 7413, against the Department of Housing Preservation and Development of the City of New York (''the defendant'') seeking civil penalties and injunctive relief to redress the defendant's alleged violations of Sections 112 and 114 of the Clean Air Act, 42 U.S.C. 7412, 7414, and the National Emission Standard for Hazardous Air Pollutants for asbestos, 40 C.F.R. part 61, subpart M (''the asbestos NESHAP''). Specifically, the United States' complaint alleged that the defendant violated these provisions by failing to notify EPA of the removal of asbestos during demolition operations the defendant contracted to have performed at 272 sites throughout New York City in or about 1993–95.

Under the terms of the proposed consent decree, the defendant (1) Must pay a civil penalty of $110,000, and (2) will be enjoined to comply with the Clean Air Act and the asbestos NESHAP.

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. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Department of Housing Preservation and Development of the City of New York,* DOJ Ref, No. 90–5–2–1–2085.

The proposed consent decree may be examined at the office of the United States Attorney for the Eastern District of New York, One Pierrepont Plaza, 14th Floor, Brooklyn, New York 11201; the Region II Office of the Environmental Protection Agency, 290 Broadway, New York, New York 10007–1866; and at the Consent Decree Library, 1120 G Street, NW, 3rd Floor, Washington, D.C. (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, NW, 3rd Floor, Washington, D.C. 20005. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $3.50 (25 cents

per page reproduction costs) payable to the Consent Decree Library.

**Joel M. Gross,**

*Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 99–18813 Filed 7–22–99; 8:45 am]

BILLING CODE 4410–15–M

## DEPARTMENT OF JUSTICE

### National Institute of Corrections

### Solicitation for a Cooperative Agreement

*Summary:* The Department of Justice (DOJ), National Institute of Corrections (NIC), announces the availability of funds in FY 1999 for a cooperative agreement to fund the ''Development of a Training Curriculum for Investigation Allegations of Staff Sexual Misconduct With Inmates.''

The National Institute of Corrections (NIC) invites applications for a cooperative agreement to develop a standard, core curriculum for training persons responsible for the investigations of staff sexual misconduct in correctional settings. To enable the Institute to offer state of the art investigative training in addressing staff sexual misconduct, the award recipient will develop a 24 hour training curriculum with a faculty guide and a participant workbook. The 24 hour training program will provide an overview of the national scope of correctional staff sexual misconduct while providing information and an interactive training experience that will enhance the knowledge and skills of investigators and administrators from state and local jurisdictions specifically charged with investigating staff sexual misconduct with inmates. (It is not within the scope of this cooperative agreement to provide skill development for individual investigative techniques requiring extensive technical application).

The award recipient will become familiar with the work currently being done at NIC on issues related to staff sexual misconduct and will contribute to the development of information on current investigative practices in this sensitive subject matter area.

As a collaborative venture with the NIC Prisons Division, the recipient will develop training outcomes for the project in partnership with the NIC project manager. A total of $60,000 is reserved for the project which will support one cooperative agreement for a 10 month period. The recipient of the award will be selected through a competitive solicitation process. Andie Moss is the designated NIC project manager.

**Background**

The fine balance in the relationship of staff and inmates is critical to the well being of healthy institutional and organizational cultures in corrections. The need for effective investigations into allegations of staff sexual misconduct is at the core of the correctional management response to the issue of staff sexual misconduct. Investigations must be objective and professional and serve as a tool to support and protect both staff and inmates from individuals who compromise security and create personal and professional disruption through misconduct. Since the mid nineties NIC has provided leadership in addressing the issues of staff sexual misconduct through training seminars and on-site technical assistance to state and local departments of corrections. The Institute has developed training materials for state prison systems that address policy and practice, the importance of state law, the investigative process, staff training and responses to the media. Through this work, NIC recognizes the need for a training curriculum that specifically addresses the training of investigators in more depth.

**Purpose**

This project is intended to provide agency investigators and administrators with:

- A training curriculum that provides investigators with an in depth understanding of the dynamics of staff sexual misconduct and the most effective investigative responses identified through experienced investigators and subject matter experts.
- An interactive training format minimally using a trainer's guide and a participant notebook that provides participants with a record of core principles and concepts learned in the training experience.

**Project Content**

The award recipient will propose a strategy for identifying effective models for investigating staff sexual misconduct and demonstrate knowledge of the legal and administrative considerations in the use of investigative practices and techniques in prison and/or jail settings. The award recipient will develop case studies clearly demonstrating the fact patterns of a variety of cases and the investigative techniques applied. Additional topics for development may include, though not limited to: legal issues and case law; the potential role of the medical and mental health staff; the human resource personnel in the administrative review of investigations; the role of external law enforcement; the dynamics of staff-offender relationships when sexual misconduct develops; examples of organizational structure of investigative units; and the tracking and analysis of incidents within the institutional setting. The overall development of a strong investigative policy should be addressed in the training curriculum.

*A. Required Activity*

- Initial meeting with NIC staff for an overview of the Institute's training and technical assistance activities that are relevant to the development of an investigative training curriculum.

*B. Other Possible Activities*

- Interviews or focus groups with key personnel in state and local jurisdictions with experience in the management of or investigative response to sexual misconduct.
- Review of current investigative policies, case law and other related written materials and reports.
- Development and presentation of case examples involving staff misconduct that lead to or conclude with inappropriate involvement with inmates.

**Authority:** Public Law 93–415.

*Funds Available:* The award will be limited to a maximum total of $60,000 (direct and indirect costs) and project activity must be completed within 10 months of the date of the award. Funds may only be used for the activities that are linked to the desired outcomes of the project.

All products from this funding effort will be in the public domain and available to interested agencies through the National Institute of Corrections.

*Deadline for Receipt of Applications:* Applications must be received by 4:00 p.m. on Tuesday, August 27, 1999. They should be addressed to: National Institute of Corrections, 320 First Street, NW, Room 5007, Washington, DC 20534, Attention: Administrative Officer. Hand delivered applications can be brought to 500 First Street, NW, Washington, DC 20534. The front desk will call Bobbi Tinsley at (202) 307–3106, extension 0 for pickup.

*Addresses and further information:* Requests for the application kit, which consists of a copy of this announcement and copies of the required forms, should be directed to Judy Evens, Cooperative Agreement Control Office, National Institute of Corrections, 320 First Street, NW, Room 5007, Washington, DC 20534

or by calling (800) 995–6423, extension 159 or (202) 307–3106, extension 159. She can also be contacted by E-mail via *jevens@bop.gov.* All technical and/or programmatic questions concerning this announcement should be directed to Andi Moss at the above address or by calling (800) 995–6423, or (202 307–3106, extension 140, or by E-mail via *amoss@bop.gov.* Application forms may also be obtained though the NIC website: *http://www.nicic.org.* (Click on ''What's New'' and ''cooperative agreements.''

*Eligible Applicants:* An eligible applicant is any private or non-profit organization, institution, individual, or team with expertise in production of training videos and related training materials.

*Review Considerations:* Applications received under this announcement will be subjected to an NIC three to five member Peer Review Process.

*Number of Awards:* One (1).

*NIC Application Number:* (99P13) This number would appear as a reference line in the cover letter and also in box 11 of Standard Form 424.

(The Catalog of Federal Domestic Assistance number is: 16.601)

**Morris. L. Thigpen,**

*Director, National Institute of Corrections.*

[FR Doc. 99–18775 Filed 7–22–99; 8:45 am]

BILLING CODE 4410–36–M

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–35,535]**

### American Silicon Technologies, Rock Island, WA; Revised Determination on Reconsideration

By letter of May 5, 1999, the United States Steelworkers of America, Local #3661, requested administrative reconsideration of the Department's denial of eligibility to apply for trade adjustment assistance applicable to workers and former workers of the subject firm.

The initial investigation resulted in a negative determination issued on April 2, 1999, based on the finding that during the time period relevant to the petition investigation, customers of American Silicon Technologies did not increase reliance on imports of articles like or directly competitive with silicon produced by workers at the Rock Island plant. The denial notice was published in the **Federal Register** on April 27, 1999 (64 FR 22647).

On reconsideration, additional customer survey was conducted. New investigation findings show that from 1997 to 1998 a major declining customer increased import purchases of silicon while decreasing purchases from the subject firm.

Sales, production and employment declined during the relevant period.

**Conclusion**

After careful review of the additional facts obtained on reopening, I conclude that increased imports of articles like or directly competitive with silicon contributed importantly to the decline in sales or production and to the total or partial separation of workers of American Silicon Technologies, Rock Island, Washington. In accordance with the provisions of the Act, I make the following certification:

All workers of American Silicon Technologies, Rock Island, Washington who became totally or partially separated from employment on or after January 6, 1998 through two years from the date of this certification are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed in Washington, DC this 8th day of July, 1999.

**Grant D. Beale,**

*Program Manager, Office of Trade Adjustment Assistance.*

[FR Doc. 99–18841 Filed 7–22–99; 8:45 am]

BILLING CODE 4510–30–M

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–35,899]**

### Consolidated Coal Company, Humphrey #7 Mine, Osage, WV; Negative Determination on Reconsideration

On June 8, 1999, the Department issued an Affirmative Determination Regarding Application for Reconsideration for the workers and former workers of the subject firm. The notice was published in the **Federal Register** on June 23, 1999 (64 FR 33523).

The Department initially denied TAA to workers of Consolidated Coal's Humphrey #7 Mine because the ''contributed importantly'' group eligibility requirement of Section 222(3) of the Trade Act of 1974, as amended, was not met. Aggregate U.S. imports of bituminous coal were negligible during the relevant time period. The workers at the subject firm were engaged in employment related to the production of bituminous coal.

The petitioner asserted that increased foreign competition was a major factor in the closing of the facility and provided additional information which warranted reconsideration of the Department's previous denial.

On reconsideration, the Department conducted a survey of the major customers of Humphrey #7 Mine and found that the customers had not increased their reliance on imports of coal; one customer reported no imports, another reported declining imports.

**Conclusion**

After reconsideration, I affirm the original notice of negative determination of eligibility to apply for worker adjustment assistance for workers and former workers of Consolidated Coal, Humphrey #7 Mine, Osage, West Virginia.

Signed at Washington, DC, this 6th day of July 1999.

**Grant D. Beale,**

*Acting Director, Office of Trade Adjustment Assistance.*

[FR Doc. 99–18840 Filed 7–22–99; 8:45 am]

BILLING CODE 4510–30–M

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–35,322]**

### International Paper Corporation; Containerboard Division, Gardiner, Oregon; Revised Determination on Reconsideration

On May 12, 1999, the Department issued a Notice of Affirmative Determination Regarding Application for Reconsideration regarding the petition for workers of the subject firm.

The initial investigation resulted in a negative determination issued on February 8, 1999, based on the finding that during the time period relevant to the petition investigation, customers of International Paper Corporation, Containerboard Division did not increase reliance on imports of articles like or directly competitive with liner board produced at the Gardiner plant. The denial notice was published in the **Federal Register** on April 6, 1999 (64 FR 16752).

On reconsideration further customer survey was conducted. New investigation findings show that from 1997 to 1998 a major declining customer increased import purchases of liner board while decreasing purchases from the Gardiner, Oregon Plant.

Sales, production and employment declined during the relevant period.

**Conclusion**

After careful review of the additional facts obtained on reopening, I conclude that increased imports of articles like or directly competitive with liner board contributed importantly to the declines in sales or production and to the total or partial separation of workers of International Paper Company, Containerboard Division, Gardiner, Oregon. In accordance with the provisions of the Act, I make the following certification:

''All workers of International Paper Corporation, Containerboard Division, Gardiner, Oregon who became totally or partially separated from employment on or after November 23, 1997 through two years from the date of this certification are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.''

Signed in Washington, DC, this 8th day of July, 1999.

**Grant D. Beale,**

*Program Manager, Office of Trade Adjustment Assistance.*

[FR Doc. 99–18842 Filed 7–22–99; 8:45 am]

BILLING CODE 4510–30–M

## DEPARTMENT OF LABOR

### Employment and Training Administration

### Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221 (a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221 (a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address show below, not later than August 2, 1999.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than August 2, 1999.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210.

Signed at Washington, DC this 28th day of June, 1999.

**Grant D. Beale,**

*Program Manager, Office of Trade Adjustment Assistance.*

APPENDIX

[Petitions instituted on 06/28/1999]

| TA–W | Subject firm (petitioners) | Location | Date of petition | Product(s) |
|---|---|---|---|---|
| 36,460 | Maine Rubber Int'l (Comp) | Scarborough, ME | 06/12/1999 | Tire Base Bands. |
| 36,461 | J.R. Simplot Co. (Wkrs) | Caldwell, ID | 06/10/1999 | Potato Processing. |
| 36,462 | Lee County Textiles (Wkrs) | Giddings, TX | 05/28/1999 | Baby Bids, Hooded Towels, Pants. |
| 36,463 | I.T.T. Cannon (Wkrs) | New Britain, CT | 06/01/1999 | Radio Frequency Connectors. |
| 36,464 | Giro Sport Design (Wkrs) | Santa Cruz, CA | 06/15/1999 | Bike and Ski Helmets. |
| 36,465 | ABC NACO, Inc. (UAW) | Anderson, IN | 06/15/1999 | Steel Trackwork Castings. |
| 36,466 | Dalta Tanning Corp. (Comp) | North Bergen, NJ | 06/08/1999 | Leather. |
| 36,467 | Kimberly Clark (Comp) | Mobile, AL | 06/14/1999 | Tissue and Towel Products. |
| 36,468 | DHV International, Inc. (Comp) | Ventura, CA | 06/08/1999 | Downhole Video Service. |
| 36,469 | Insurdata Imaging Service (Comp) | Price, UT | 06/10/1999 | Process Medical Claims. |
| 36,470 | Cable Repair of Hobbs (Comp) | Hobbs, NM | 06/14/1999 | Electrical Submersible Pump Cable. |
| 36,471 | Fort James Corp. (AWPPN) | Portland, OR | 06/10/1999 | Paper Bags. |
| 36,472 | International Paper (Wkrs) | Spring Hope, NC | 06/14/1999 | Fiberboard. |
| 36,473 | A.H.B. International (Wkrs) | New York, NY | 06/08/1999 | Ladies' Sportswear. |
| 36,474 | Weyerhauser Export Serv. (IAM) | North Bend, OR | 06/07/1999 | Receive, Store, Export Wood Chips. |
| 36,475 | Unitog (Cintas) (UFCW) | Concordra, MO | 06/07/1999 | Rental Uniforms and Denim Jeans. |
| 36,476 | Macha International (Comp) | Houston, TX | 06/14/1999 | Seismic Field Instrumentation. |
| 36,477 | Thomson Precision Ball (Comp) | Unionville, CT | 06/16/1999 | Precision Steel Balls. |
| 36,478 | Weatherford, Arrow Comp. (Wkrs) | Midland, TX | 06/14/1999 | Packers for Oil and Gas. |
| 36,479 | Diamond Products Int'l (Wkrs) | Corpus Christi, TX | 06/10/1999 | Drill Bits. |
| 36,480 | Casablanca Group (Wkrs) | Secaucus, NJ | 05/26/1999 | Ladies Apparel. |
| 36,481 | Wyman Gordon Forgings (Comp) | Houston, TX | 06/07/1999 | Aircraft Parts. |
| 36,482 | Weatherford A.L.S. (Wkrs) | Odessa, TX | 01/06/1999 | Builds Pump Jack Oil. |
| 36,483 | Brookman Cast Industries (Comp) | Salem, OR | 06/02/1999 | Valves. |
| 36,484 | Syntron, Inc. (Wkrs) | Houston, TX | 06/16/1999 | Seismic Modules. |
| 36,485 | Emhart Glass Machinery (Comp) | Windsor, CT | 06/14/1999 | Glass Container Refractory. |
| 36,486 | Roxobel Curtain Co. (Comp) | Roxobel, NC | 06/17/1999 | Curtains. |
| 36,487 | Praegitzer Industries (Comp) | Madison, AL | 06/18/1999 | Printed Circuit Boards. |
| 36,488 | Overly Raker, Inc. (Comp) | McConnellsburg, PA | 06/17/1999 | Stuffed Cloth Items. |
| 36,489 | Kirkpatrick Energy Assoc. (Wkrs) | Denver, CO | 06/17/1999 | Oil & Gas Financial Research Reports. |
| 36,490 | Trans Texas Corp. (Wkrs) | Laredo, TX | 06/14/1999 | Compressor Station Gagers. |
| 36,491 | Pittencrieff America (Wkrs) | Abilene, TX | 06/18/1999 | Crude Oil and Natural Gas. |
| 36,492 | Banko Petroleum (Comp) | Denver, CO | 06/18/1999 | Crude Oil. |
| 36,493 | Apex Engineering (Comp) | Evanston, WY | 06/14/1999 | Drilling Fluid Additives. |
| 36,494 | FWA—JSM Drilling Co. (Wkrs) | Odessa, TX | 06/14/1999 | Oil and Gas Services. |
| 36,495 | Enron Oil and Gas Co. (Wkrs) | Tyler, TX | 06/15/1999 | Oil and Gas. |

APPENDIX

[Petitions instituted on 06/28/1999]

| TA–W | Subject firm (petitioners) | Location | Date of petition | Product(s) |
|---|---|---|---|---|
| 36,496 ..... | Core Laboratories R.P. (Comp) ..... | Casper, WY ..... | 06/15/1999 | Examine Core Samples. |
| 36,497 ..... | Power Exploration, Inc. (Wkrs) ..... | Tyler, TX ..... | 06/04/1999 | Oil and Gas. |
| 36,498 ..... | Trace Ventures Explor. (Wkrs) ..... | Midland, TX ..... | 06/14/1999 | Seismic Data Exploration. |
| 36,499 ..... | ARCO Alaska, Inc. (Comp) ..... | Anchorage, AK ..... | 06/17/1999 | Oil and Gas. |

[FR Doc. 99–18839 Filed 7–22–99; 8:45 am]

BILLING CODE 4510–30–M

## DEPARTMENT OF LABOR

### Employment and Training Administration

### Job Corps: Final Finding of No Significant Impact (FONSI) for the Relocation of the Jacksonville Job Corps Center to a Property Located off of Walgreen Road in Jacksonville, FL

**AGENCY:** Employment and Training Administration, Labor.

**ACTION:** Notice of final finding of no significant impact (FONSI) for the relocation of the Jacksonville Job Corps Center to a property located off of Walgreen Road in Jacksonville, Florida.

**SUMMARY:** Pursuant to the Council on Environmental Quality Regulations (40 CFR Part 1500–08) implementing procedural provisions of the National Environmental Policy Act (NEPA), the Department of Labor, Employment and Training Administration, Office of Job Corps, gives final notice of the proposed relocation of the Jacksonville Job Corps Center to a property located off of Walgreen Road in Jacksonville, Florida, and final notice that the construction of the new center will not have a significant adverse impact on the environment. In accordance with 29 CFR 11.11(d) and 40 CFR 1501.4(e)(2), a preliminary FONSI for the relocation of the Jacksonville Job Corps Center was published in the April 12, 1999, **Federal Register** (64 FR 17685). No comments were received regarding the preliminary FONSI. The Employment and Training Administration has reviewed the conclusions of the environmental assessment (EA), and agrees with the finding of no significant impact. This notice serves as the Final Finding of No Significant Impact for the relocation of the Jacksonville Job Corps Center to a property located off of Walgreen Road in Jacksonville, Florida. The preliminary FONSI and the EA are adopted in final with no change.

**EFFECTIVE DATE:** August 23, 1999.

**ADDRESSES:** Copies of the EA and additional information are available to interested parties by contacting Melvin R. Collins, Regional Director, Region IV (Four), Office of Job Corps, 1371 Peachtree Street, NE, Room 405, Atlanta, GA 30309, (404) 347–3178 (This is not a toll-free number).

**FOR FURTHER INFORMATION CONTACT:** Amy Knight, Department of Labor, Office of Management Information and Support, 200 Constitution Avenue, NW, Room N4659, Washington, DC 20210, (202) 219–5468 (This is not a toll-free number).

Dated at Washington, DC, this 19th day of July 1999.

**Mary Silva,**

*Director of Job Corps.*

[FR Doc. 99–18837 Filed 7–22–99; 8:45 am]

BILLING CODE 4510–30–P

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[NAFTA–003132]**

### Fairfield Industries Incorporated, Sugar Land, TX; Termination

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–1) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2331), an investigation was initiated on April 29, 1999, in response to a petition filed on behalf of workers at Fairfield Industries Incorporated, Sugar Land, Texas. Workers produce digital telemetry systems used in oil and gas exploration.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 15th day of July 1999.

**Grant D. Beale,**

*Program Manager, Office of Trade Adjustment Assistance.*

[FR Doc. 99–18838 Filed 7–22–99; 8:45 am]

BILLING CODE 4510–30–M

## DEPARTMENT OF LABOR

### Employment Standards Administration

### 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 Employment Standards Administration is soliciting comments concerning the revised Representative Fee Request. A copy of the proposed information collection request 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 September 23, 1999. 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 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.

**ADDRESSES:** Ms. Patricia A. Forkel, U.S. Department of Labor, 200 Constitution Ave., NW, Room S–3201, Washington, DC 20210, telephone (202) 693–0339 (this is not a toll-free number), fax (202) 693–1451.

**SUPPLEMENTARY INFORMATION:**

### I. Background

The Office of Workers' Compensation Programs (OWCP) administers the Federal Employees' Compensation Act and the Longshore and Harbor Workers' Compensation Act. Individuals filing for compensation benefits with OWCP may be represented by an attorney or other representative. The representative is entitled to request a fee for services, and this fee must be approved by the OWCP before any demand for payment can be made by the representative. This information collection is reviewed by OWCP for approval of the fee.

### II. Current Actions

The Department of Labor seeks a revision of the currently approved information collection. Requirements for the submission of information have been changed to comply with new regulations under the Federal Employees' Compensation Act. These regulations are found at 20 CFR 10.700 through 703. Regulations under the Longshore and Harbor Workers' Act remain unchanged. These regulations are found at 20 CFR 702.132.

*Type of Review:* Revision.

*Agency:* Employment Standards Administration.

*Title:* Representative Fee Request.

*OMB Number:* 1215–0078.

*Affected Public:* Business of other for-profit; individuals or households.

*Total Respondents:* 13,720.

*Frequency:* On occasion.

*Total Responses:* 13,720.

*Time per Response:* 30–90 minutes.

*Estimated Total Burden Hours:* 9,860.

*Total Burden Cost (capital/startup):* $0.

*Total Burden Cost (operating/maintenance):* $17,000.

Dated: July 19, 1999.

**Margaret J. Sherrill,**

*Chief, Branch of Management Review and Internal Control, Division of Financial Management, Office of Management, Administration and Planning, Employment Standards Administration.*

[FR Doc. 99–18836 Filed 7–22–99; 8:45 am]

**BILLING CODE 4510–27–P**

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## DEPARTMENT OF LABOR

### Employment Standards Administration; Wage and Hour Division

### Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276(a) and of other Federal statutes referred to in 29 CFR part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions, thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon And Related Act,'' shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the US Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW, Room S–3014, Washington, DC 20210.

### Modifications to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled ''General Wage Determination Issued Under the Davis-Bacon and Related Acts'' being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

*Volume I*

Maine
ME990022 (Mar. 12, 1999)

*Volume II*

Pennsylvania
PA0001 (Mar. 12, 1999)
PA0002 (Mar. 12, 1999)
PA0003 (Mar. 12, 1999)
PA0004 (Mar. 12, 1999)
PA0005 (Mar. 12, 1999)

PA0006 (Mar. 12, 1999)
PA0008 (Mar. 12, 1999)
PA0011 (Mar. 12, 1999)
PA0016 (Mar. 12, 1999)
PA0017 (Mar. 12, 1999)
PA0020 (Mar. 12, 1999)
PA0025 (Mar. 12, 1999)
PA0026 (Mar. 12, 1999)
PA0027 (Mar. 12, 1999)
PA0031 (Mar. 12, 1999)
PA0032 (Mar. 12, 1999)
PA0038 (Mar. 12, 1999)
PA0042 (Mar. 12, 1999)
PA0051 (Mar. 12, 1999)
PA0053 (Mar. 12, 1999)
PA0065 (Mar. 12, 1999)
West Virginia
WV990002 (Mar. 12, 1999)
WV990006 (Mar. 12, 1999)

*Volume III*

Florida
FL990001 (Mar. 12, 1999)
FL990002 (Mar. 12, 1999)
FL990032 (Mar. 12, 1999)
Georgia
GA990089 (Mar. 12, 1999)

*Volume IV*

Indiana
IN990001 (Mar. 12, 1999)
IN990002 (Mar. 12, 1999)
IN990003 (Mar. 12, 1999)
IN990004 (Mar. 12, 1999)
IN990005 (Mar. 12, 1999)
IN990006 (Mar. 12, 1999)
IN990017 (Mar. 12, 1999)
IN990018 (Mar. 12, 1999)
IN990020 (Mar. 12, 1999)
IN990021 (Mar. 12, 1999)
IN990060 (Mar. 12, 1999)
Michigan
MI990001 (Mar. 12, 1999)
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MI990005 (Mar. 12, 1999)
MI990007 (Mar. 12, 1999)
MI990012 (Mar. 12, 1999)
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MI990031 (Mar. 12, 1999)
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MI990080 (Mar. 12, 1999)
MI990081 (Mar. 12, 1999)
MI990082 (Mar. 12, 1999)
MI990083 (Mar. 12, 1999)
MI990084 (Mar. 12, 1999)
Wisconsin
WI990019 (Mar. 12, 1999)

*Volume V*

Iowa
IA990006 (Mar. 12, 1999)
IA990010 (Mar. 12, 1999)
IA990013 (Mar. 12, 1999)
IA990014 (Mar. 12, 1999)
IA990016 (Mar. 12, 1999)
IA990018 (Mar. 12, 1999)
IA990019 (Mar. 12, 1999)
IA990024 (Mar. 12, 1999)
IA990032 (Mar. 12, 1999)
IA990067 (Mar. 12, 1999)
IA990070 (Mar. 12, 1999)
IA990072 (Mar. 12, 1999)
IA990079 (Mar. 12, 1999)
IA990080 (Mar. 12, 1999)
Nebraska
NE990001 (Mar. 12, 1999)
NE990003 (Mar. 12, 1999)
NE990009 (Mar. 12, 1999)
NE990010 (Mar. 12, 1999)
NE990011 (Mar. 12, 1999)
NE990019 (Mar. 12, 1999)
NE990044 (Mar. 12, 1999)

*Volume VI*

Alaska
AK990007 (Mar. 12, 1999)
AK990008 (Mar. 12, 1999)
AK990009 (Mar. 12, 1999)
Utah
UT990004 (Mar. 12, 1999)
UT990006 (Mar. 12, 1999)
UT990007 (Mar. 12, 1999)
UT990009 (Mar. 12, 1999)
UT990011 (Mar. 12, 1999)
UT990015 (Mar. 12, 1999)
UT990023 (Mar. 12, 1999)
UT990024 (Mar. 12, 1999)
UT990025 (Mar. 12, 1999)
UT990027 (Mar. 12, 1999)
UT990028 (Mar. 12, 1999)
UT990029 (Mar. 12, 1999)
UT990030 (Mar. 12, 1999)
UT990031 (Mar. 12, 1999)
UT990034 (Mar. 12, 1999)

*Volume VII*

Nevada
NV990001 (Mar. 12, 1999)
NV990004 (Mar. 12, 1999)
NV990005 (Mar. 12, 1999)
NV990007 (Mar. 12, 1999)
NV990008 (Mar. 12, 1999)
NV990009 (Mar. 12, 1999)

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon and Related Acts.'' This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

The general wage determinations issued under the Davis-Bacon and related Acts are available electronically by subscription to the FedWorld Bulletin Board System of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2068

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the seven separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates are distributed to subscribers.

Signed at Washington, DC, this 15th day of July 1999.

**Carl J. Poleskey,**

*Chief, Branch of Construction Wage Determinations.*

[FR Doc. 99–18599 Filed 7–22–99; 8:45 am]

**BILLING CODE 4510–27–M**

## NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

### Institute of Museum and Library Services, Office of Museum Services; Proposed Collection, Comment Request; Professional Services Program (PSP) Evaluation

**AGENCY:** Institute of Museum and Library Services.

**ACTION:** Notice.

**SUMMARY:** The Institute of Museum and Library Services as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance 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 (PRA 95) [44 U.S.C. 3508(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. The Institute of Museum and Library Services is currently soliciting comments concerning the proposed Professional Services Program (PSP) Evaluation. A copy of the proposed information collection request can be obtained by contacting the individual

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 September 21, 1999. IMLS is particularly interested in comments that help the agency 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 collocation 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.

**ADDRESSES:** Send comments to: Dr. Rebecca Danvers, Director of the Office of Research and Technology, Institute of Museum and Library Services, 1100 Pennsylvania Ave., NW, Room 802, Washington, DC 20506. Dr. Danvers can be reached at telephone: 202–606–2478; fax: 202–606–1077; or e-mail:rdanvers@imls.fed.us.

**SUPPLEMENTARY INFORMATION:**

### I. Background

The Institute of Museum and Library Services (IMLS) is an independent Federal grant-making agency authorized by the Museum and Library Services Act, Public Law 104–208. The Institute of Museum and Library Service is seeking to collect and analyze information related to the Professional Services Program (PSP), which provides grants to museum organizations for programs that address core museum issues, such as improving services to the public, professional training, and leadership development. The research evaluation will help IMLS evaluate the direct and indirect outcomes for museums and other participants in PSP-funded projects, evaluate the effectiveness and efficiency of PSP, identify potential areas for improvement, determine the level of need/interest for the program within the key stakeholder groups, and assess the program's contribution to meeting the agency mission.

### II. Current Actions

IMLS seeks to collect, analyze and report on basic information about the effectiveness of the Professional Services Program. From this evaluation, IMLS will be able to asses the strengths, weaknesses, and overall success of the PSP program, and make improvements on the program.

*Agency:* Institute of Museum and Library Services.

*Title:* Professional Service Program Evaluation.

*OMB Number:* Agency Number 3137.

*Frequency:* Once.

*Affected Public:* Museums and museum organizations.

*Number of Respondents:* 400.

*Estimated Time Per Respondent:* 30 minutes or less.

*Total Burden Hours:* 200 hours.

*Total Annualized capital/startup costs:* 0.

*Total Annual costs:* 0.

**FOR FURTHER INFORMATION CONTACT:** Mamie Bittner, Director of Public and Legislative Affairs, Institute of Museum and Library Services, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, telephone (202) 606–4648.

Dated: July 19, 1999.

**Mamie Bittner,**

*Director of Public and Legislative Affairs.*

[FR Doc. 99–18800 Filed 7–22–99; 8:45 am]

**BILLING CODE 7036–01–M**

## NEIGHBORHOOD REINVESTMENT CORPORATION

### Regular Meeting of the Board of Directors

**TIME & DATE:** 2:00 p.m., Tuesday, August 3, 1999.

**PLACE:** Neighborhood Reinvestment Corporation, 1325 G Street, NW, Suite 800, Board Room, Washington, DC 20005.

**STATUS:** Open.

**CONTACT PERSON FOR MORE INFORMATION:** Jeffrey T. Bryson, General Counsel/ Secretary, (202) 220–2372.

**AGENDA:**

I. Call to Order.

II. Approval of Minutes: May 24, 1999, Annual Meeting.

III. Budget Committee Report, July 12, 1999:

a. Proposed FY 1999 Budget Reallocation.

b. Proposed FY 2000 Budget Request.

c. Proposed FY 2001 OMB Submission.

IV. Treasurer's Report.

V. Executive Director's Quarterly Management Report.

VI. Adjourn.

**Jeffrey T. Bryson,**

*General Counsel/Secretary.*

[FR Doc. 99–18922 Filed 7–20–99; 4:07 pm]

**BILLING CODE 7570–01–M**

## POSTAL SERVICE

### Sunshine Act Meeting

### United States Postal Service Board of Governors

**TIMES AND DATES:** 12:30 p.m., Monday, August 2, 1999; 8:30 a.m., Tuesday, August 3, 1999.

**PLACE:** Seattle, Washington, at the U.S. Postal Service Processing and Distribution Center, 10700 27th Avenue South, in the Second Floor Large Conference Room.

**STATUS:** August 2 (Closed); August 3 (Open).

**MATTERS TO BE CONSIDERED:**

*Monday, August 2—12:30 p.m. (Closed)*

1. Postal Rate Commission Opinion and Recommended Decision in Docket No. MC99–2, Weight-Averaged, Nonletter-Size Business Reply Mail.
2. Postal Rate Commission Opinion and Recommended Decision in Docket No. MC99–4, Bulk Parcel Return Service (BPRS).
3. Rate Case Briefing.
4. Financial Performance.
5. Budget Outlook.
6. Personal Matters.

*Tuesday, August 3—8:30 a.m. (Open)*

1. Minutes of the Previous Meeting, July 12–13, 1999.
2. Remarks of the Postmaster General/ Chief Executive Officer.
3. Fiscal Year 2000 Operating Budget.
4. Review of the Five-Year Capital Investment Program.
5. Fiscal Year 2000 Financing Plan.
6. Preliminary FY 2001 Appropriation Request.
7. Capital Investments.
   a. Mail Cartridge System Pre-Production.
   b. 100 Robotics Containerization Systems (RCS) Loading Robot Program.
   c. 123 Automatic Tray Sleevers.
   d. 11,775 Flex Fuel, Alaskan, and Electric Carrier Route Vehicles.
   e. Greensboro, North Carolina, Processing and Distribution Center.
   f. Columbus, Ohio, Processing and Distribution Center.
8. Report on the Western Area and Seattle Performance Cluster.
9. Tentative Agenda for the August 30–31, meeting in Washington, D.C.

**CONTACT PERSON FOR MORE INFORMATION:** Thomas J. Koerber, Secretary of the

Board, U.S. Postal Service, 475 L'Enfant Plaza, S.W., Washington, D.C. 20260–1000. Telephone (202) 268–4800.

**Thomas J. Koerber,**

*Secretary.*

[FR Doc. 99–18995 Filed 7–21–99; 1:09 pm]

**BILLING CODE 7710–12–M**

## SECURITIES AND EXCHANGE COMMISSION

**[Rel. No. IC–23904; 812–11550 ]**

## Colchester Street Trust, et al., Notice of Application

July 16, 1999.

**AGENCY:** Securities and Exchange Commission (''SEC'' or ''Commission'').

**ACTION:** Notice of application for an order under sections 6(c), 12(d)(1)(J) and 17(b) of the Investment Company Act of 1940 (the ''Act'') for exemptions from sections 12(d)(1) and 17(a) and under section 17(d) of the Act and rule 17d–1 under the Act to permit certain joint transactions.

*Summary of Application:* Applicants seek an order that would amend a prior order (''Prior Order'') [1] to permit certain registered investment companies and other entities (''Participating Funds'') to investment uninvested cash (''Uninvested Cash'') and cash collateral received in connection with a securities lending program (''Cash Collateral'') in shares of affiliated money market funds and/or short-term bond funds (''Investment Funds'').

*Applicants:* Colchester Street Trust, Fidelity Aberdeen Street Trust, Fidelity Advisor Korea Fund, Inc., Fidelity Advisor Emerging Asia Fund, Inc., Fidelity Advisor Series I, Fidelity Advisor Series II, Fidelity Advisor Series III, Fidelity Advisor Series IV, Fidelity Advisor Series V, Fidelity Advisor Series VI, Fidelity Advisor Series VII, Fidelity Advisor Series VIII, Fidelity Beacon Street Fund, Fidelity Boston Street Trust, Fidelity California Municipal Trust, Fidelity California Municipal Trust II, Fidelity Capital Trust, Fidelity Charles Street Trust, Fidelity Commonwealth Trust, Fidelity Concord Street Trust, Fidelity Congress Street Fund, Fidelity Contrafund, Fidelity Court Street Trust, Fidelity Court Street Trust II, Fidelity Covington Trust, Fidelity Destiny Portfolios, Fidelity Devonshire Trust, Fidelity Exchange Fund, Fidelity Financial Trust, Fidelity Fixed-Income Trust, Fidelity Hastings Street Trust, Fidelity Hereford Street Trust, Fidelity Income Fund, Fidelity Investment Trust, Fidelity Magellan Fund, Fidelity Massachusetts Municipal Trust, Fidelity Money Market Trust, Fidelity Mt. Vernon Street Trust, Fidelity Municipal Trust, Fidelity Municipal Trust II, Fidelity New York Municipal Trust, Fidelity New York Municipal Trust II, Fidelity Oxford Street Trust, Fidelity Phillips Street Trust, Fidelity Puritan Trust, Fidelity Revere Street Trust, Fidelity School Street Trust, Fidelity Securities Fund, Fidelity Select Portfolios, Fidelity Summer Street Trust, Fidelity Trend Fund, Fidelity Union Street Trust, Fidelity Union Street Trust II, Fidelity U.S. Investment-Bond Fund, L.P., Fidelity Investments-Government Securities Fund, L.P., Newbury Street Trust, Variable Insurance Products Fund, Variable Insurance Products Fund II, Variable Insurance Products Fund III (collectively, the ''Trust''); Fidelity Advisor World Global High Income Fund (Bermuda) Ltd., Fidelity Advisor World U.S. Intermediate Bond Fund (Bermuda) Ltd., Fidelity Advisor World International Bond Fund (Bermuda) Ltd., Fidelity Advisor World U.S. Large-Cap Stock Fund (Bermuda) Ltd., Fidelity Advisor World Europe Fund (Bermuda) Ltd., Fidelity Advisor World Southeast Asia Fund (Bermuda) Ltd., Fidelity Advisor World U.S. Treasury Money Fund (Bermuda) Ltd. (collectively, the ''World Funds''), Fidelity Management & Research Company (''FMR''); Fidelity Group Trust for Employee Benefit Plans (''Group Trust'')' Fidelity Management Trust Company (''FMTC''); Fidelity Service Company, Inc. (''FSC''); Fidelity Investments Institutional Operations Company, Inc. (''FIIOC''); Fidelity Investments Money Management, Inc. (''FIMM''); all other registered investment companies and series thereof that are advised by FMR or a person controlling, controlled by, or under common control with FMR (collectively, the ''Adviser'') and all other registered investment companies and series thereof for which the Adviser in the future acts as investment adviser (collectively, the ''Registered Funds''); the World Funds, and other pooled investment funds advised or in the future advised by the Adviser, or a person controlling, controlled by, or under common control with the Adviser, offered exclusively outside the United States to non-U.S. residents (the ''Off-Shore Funds''); state and local entities or accounts thereof advised or in the future advised by the Adviser that are exempt from regulation under the Act pursuant to section 2(b) of the Act (the ''2(b) Entities''); collective trust funds of the Group Trust, the trustee for which, or in the future the trustee for which, is FMTC, that are excepted from the definition of investment company by section 3(c)(11) of the Act (the ''3(c)(11) Entities''); and individual institutional accounts advised by the Adviser (''Institutional Accounts'').[2]

*Filing Dates:* The application was filed on March 26, 1999. Applicants have agreed to file an amendment, the substance of which is reflected in this notice, period.

*Hearing or Notification of Hearing:* An order granting the application will be issued unless the SEC orders a hearing. Interested person may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on August 10, 1999, and should be accompanied by proof of service on applicants, 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 who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

**ADDRESSES:** Secretary, SEC, 450 Fifth Street, NW, Washington, DC 20549–0609. Applicants, 82 Devonshire Street, Boston, Massachusetts 02109.

**FOR FURTHER INFORMATION CONTACT:** Elaine M. Boggs, Senior Counsel, at (202) 942–0572, or Nadya B. Roytblat, Assistant Director, 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 at the SEC's Public Reference Branch, 450 5th Street, NW, Washington, DC 20549–0102 (tel. (202) 942–8090).

### Applicants' Representations

1. Each of the Registered Funds is registered under the Act and most of the Trusts are series companies. The Participating Funds include the Registered Funds (''Participating Registered Funds''), Off-Shore Funds, 2(b) Entities, 3(c)(11) Entities, and Institutional Accounts. The current Off-Shore Funds are established under the

[1] *Daily Money Fund, et al.*, Investment Company Act Release Nos. 22236 (Sept. 20, 1996) (notice) and 22285 (Oct. 16, 1996)(order).

[2] All existing entities that currently intend to rely on the requested order are named as applicants. Any other existing entity and future entity will rely on the requested order only in accordance with the terms and conditions of the application.

laws of Bermuda. Each 3(c)(11) Entity is organized as a separate pooled account under the Fidelity Group Trust, for which FMTC acts as trustee. FMR, an investment adivser registered under the Investment Advisers Act of 1940, acts as each Participating Fund's investment manager and provides the Participating Funds with administrative services.

2. Certain of the Investment Funds (the ''Central Funds'') are series of Fidelity Revere Street Trust, an open-end management investment company registered under the Act. The Central Funds have not registered their shares under the Securities Act of 1933 (''Securities Act''). Shares of the Central Funds will be sold only to the Participating Funds. FIMM, a wholly-owned subsidiary of FMR, serves as investment adviser to the Central Funds. The other Investment Funds are open-end management investment companies registered under the Act, and their shares are registered under the Securities Act. These Investment Funds are advised by FMR. All Investment Funds will be taxable or tax-exempt money market funds or short-term bond funds with a portfolio maturity of three years or less.

3. Approximately 45 Registered Funds participate in a securities lending program in which they earn additional income by lending their portfolio securities. Cash Collateral received by the Registered Funds may be invested in shares of investment companies approved by the board of trustees of the Registered Fund and that have investment objectives that are consistent with the investment restrictions and guidelines of the Registered Fund.

4. The Prior Order permits Participating Funds to invest cash that has otherwise not been invested in portfolio securities in the Central Funds. In addition, the Prior Order permits the Participating Funds and the Central Funds to engage in interfund purchase and sale transactions in securities that would otherwise be effected in reliance on rule 17a–7 under the Act (''Interfund Transactions'').

5. Applicants request an order amending the Prior Order to permit the Participating Funds to invest Cash Collateral and Uninvested Cash in other Investment Funds in addition to the Central Funds. The requested relief would permit (a) the Participating Funds to use Cash Collateral and Uninvested Cash to purchase shares of the Investment Funds; (b) the Investment Funds to sell their shares to the Participating Funds; (c) the Investment Funds to redeem their shares from the Participating Funds; and (d) the Adviser to effect these purchases and sales (collectively, these transactions are the ''Cash Transactions'').

6. The board of trustees of the Participating Registered Funds has or will approve the Investment Funds as vehicles for the investment of Cash Collateral and Uninvested Cash. The investment by each Participating Registered Fund in shares of the Investment Funds will be in accordance with that Registered Fund's investment policies and restrictions as set forth in its registration statement. A Participating Registered Fund that is a money market fund will not invest its Uninvested Cash or Cash Collateral in an Investment Fund that does not comply with the requirements of rule 2a–7 under the Act.

**Applicants' Legal Analysis**

*A. Section 12(d)(1)*

1. Section 12(d)(1)(A) of the Act provides, in relevant part, that no investment company may acquire securities of a registered investment company if such securities represent more than 3% of the acquired company's outstanding voting stock, more than 5% of the acquiring company's total assets, or if such securities, together with the securities of other acquired investment companies, represent more than 10% of the acquiring company's outstanding total assets. Section 12(d)(1)(B) of the Act provides that no registered open-end investment company may sell its securities to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale will cause more than 10% of the acquired company's voting stock to be owned by the investment company. Applicants state that the investment of Uninvested Cash and Cash Collateral by the Registered Funds and Off-Shore Funds in shares of the Investment Funds is subject to the limits in sections 12(d)(1)(A) and (B).

2. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person, security, or transaction from any provision of section 12(d)(1) if and to the extent that such exemption is consistent with the public interest and the protection of investors. Applicants request relief under section 12(d)(1)(J) to permit the Registered Funds and the Off-Shore Funds to invest in the Investment Funds in excess of the limits in sections 12(d)(1)(A) and (B).

3. Applicants state that the proposed arrangement will not result in the abuses that sections 12(d)(1)(A) and (B) were intended to prevent. Applicants state that the proposed arrangement will not result in inappropriate layering of either sales charges or investment advisory fees. Shares of the Investment Funds sold to the Participating Funds will not be subject to a sales load, redemption fee, asset-based distribution fee or service fee. Applicants state that since investment advisory fees are calculated on the net, rather than the total, assets of the Participating Registered Funds, and since Cash Collateral does not increase net assets, the Participating Registered Funds would not pay duplicative advisory fees with respect to investments made with Cash Collateral. Applicants further state advisory fees with respect to an investment of Uninvested Cash will be subject to condition 2 below. Applicants also state that because each Participating Fund will invest in an Investment Fund on the same basis as each other Participating Fund, there is no risk that the Adviser would exercise undue influence to advantage any Participating Funds to the detriment of others.

*B. Section 17(a)*

1. Section 17(a) of the Act makes it unlawful for any affiliated person of a registered investment company, or any affiliated person of such affiliated person, acting as principal, to sell or purchase any security to or from such investment company. Section 2(a)(3) of the Act defines an affiliated person to include any person directly or indirectly controlling, controlled by, or under common control with, the other person or the investment adviser to an investment company. The Adviser is an affiliated person of each Registered Fund under section 2(a)(3). Because the Participating Funds either share a common investment adviser or have an investment adviser that is under common control with the investment adviser to another Participating Fund, and most Registered Funds also share a common board of trustees, the Participating Funds may be deemed to be under ''common control'' and therefore affiliated persons of each other. As a result, applicants state that section 17(a) would prohibit the Cash Transactions.

2. Section 17(b) of the Act authorizes the SEC to exempt a transaction from section 17(a) if the term of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, the proposed transaction is consistent with the policy of each registered investment company

concerned, and the proposed transaction is consistent with the general policy of the Act. Section 6(c) under the Act permits the SEC to exempt any person or transaction from any provision of the Act, if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies of the Act.

3. Applicants submit that the requested relief satisfies the standards for relief in sections 6(c) and 17(b). Applicants state that the Cash Transactions will provide the Participating Funds and their shareholders with a means of obtaining high current rates of return on Cash Collateral and Uninvested Cash, reducing aggregate counterparty exposure on repurchase agreements, protecting liquidity, reducing credit exposure to custodian banks, reducing transaction costs, and diversifying risk. In addition, applicants state that the Cash Transactions will be effected in accordance with each Participating Fund's investment restrictions and will be consistent with each Participating Registered Fund's policies as set forth in its registration statement.

*C. Section 17(d) and Rule 17d–1*

1. Section 17(d) of the Act and rule 17d–1 under the Act prohibit any affiliated person of or principal underwriter for a registered investment company or any affiliated person of such person or principal underwriter, acting as principal, from effecting any transaction in connection with any joint enterprise or other joint arrangement or profit sharing plan, in which the investment company participates. As noted above, applicants are affiliated persons of each other. Applicants state that Cash Transactions may be deemed a joint enterprise for the purposes of section 17(d) and rule 17d–1.

2. Rule 17d–1 permits the SEC to approve a proposed joint transaction covered by the terms of section 17(d). In determining whether to approve a transaction, the SEC is to consider whether the proposed transaction is consistent with the provisions, policies, and purposes of the Act, and the extent to which the participation of the investment companies is on a basis different from or less advantageous than that of the other participants. Applicants state that investments by the Participating Registered Funds in the Investment Funds will be on the same basis as other participants.

**Applicants' Conditions**

Applicants agree that any order of the SEC granting the requested relief will be subject to the following conditions:

1. The shares of the Investment Funds that are sold to and redeemed from the Registered Funds will not be subject to a sales load, redemption fee, distribution fee under a plan adopted in accordance with rule 12b–1, or service fee (as defined in rule 2830(b)(9) of the National Association of Securities Dealers' Rules of Conduct).

2. If the Adviser to an Investment Fund collects a fee from the Investment Fund for acting as its investment adviser, and unless the fee payable to the Adviser for acting as the adviser of the Registered Fund is reduced by the amount of such other fee paid with respect to the investment of the Registered Fund's Uninvested Cash, before the next meeting of the board of trustees of a Registered Fund (''Board'') that invests in the Investment Fund is held for the purpose of voting on an advisory contract under section 15 of the Act, the Adviser to the Registered Fund will provide the board with specific information regarding the approximate cost to the Adviser for managing the Uninvested Cash that can be expected to be invested in such Investment Fund. Before approving any advisory contract under section 15, the Board, including a majority of the trustees who are not ''interested persons,'' as defined in section 2(a)(19) of the Act, shall consider to what extent, if any, the advisory fees charged to the Registered Fund by the Adviser should be reduced to account for the fee indirectly paid by the Registered Fund because of the advisory fee paid by the Investment Fund, to the extent that the latter fee is not credited against the advisory fee payable by the Registered Fund. The minute books of the Registered Fund will record fully the Board's consideration in approving the advisory contract, including the considerations relating to fees referred to above.

3. Each Participating Fund, each Investment Fund, and any future fund that may rely on the order shall be advised by or, in the case of a 3(c)(11) Entity, shall have as its trustee, FMR or a person controlling, controlled by, or under common control with FMR.

4. Investment in shares of the Investment Funds will be in accordance with each Registered Fund's respective investment restrictions and will be consistent with each Registered Fund's policies as set forth in its prospectus and statement of additional information.

5. No Investment Fund in which a Registered Fund invests shall acquire securities of any other investment company in excess of the limits contained in section 12(d)(1)(A) of the Act, except as permitted by a Commission order concerning an interfund lending and borrowing facility.

6. Each of the Registered Funds will invest Uninvested Cash in, and hold shares of, the Investment Funds only to the extent that a Registered Fund's aggregate investment of Uninvested Cash in the Investment Funds at the time the investment is made does not exceed 25% of the Registered Fund's total net assets. For purposes of this limitation, each Registered Fund or series thereof will be treated as a separate investment company.

7. To engage in Interfund Transactions, the Participating Funds will comply with rule 17a–7 under the Act in all respects other than the requirement that the parties to the transaction be affiliated persons (or affiliated persons of affiliated persons) of each other solely by reason of having a common investment adviser or investment advisers which are affiliated persons of each other, common officers, and/or common directors.

8. A Registered Fund that is a money market fund will not invest its Uninvested Cash or Cash Collateral in an Investment Fund that does not comply with the requirements of rule 2a–7 under the Act.

For the Commission, by the Division of Investment Management, under delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 99–18777 Filed 7–22–99; 8:45 am]

BILLING CODE 8010–01–M

## SECURITIES AND EXCHANGE COMMISSION

### Sunshine Act Meetings

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of July 26, 1999.

An open meeting will be held on Tuesday, July 27, 1999, at 10 a.m. A closed meeting will be held on Wednesday, July 28, 1999 at 11 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meetings. Certain staff members who have an interest in the matters will be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at the closed meetings.

Commissioner Carey, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject of the open meeting scheduled for Tuesday, July 27, 1999, at 10 a.m., will be:

The Commission will consider adopting temporary Rules 15b7–3T, 17Ad–21T, and 17a–9T regarding operational capability of non-bank transfer agents and broker-dealers in the Year 2000. These rules are designed to protect the securities markets from non-bank transfer agents and broker-dealers that are not Year 2000 compliant. For further information, contact Lori Bucci, Special Counsel, at (202) 942–0742 (Rule 17Ad–21T), Robert Long, Staff Attorney, at (202) 942–0097 (Rule 15b7–3T), and Deana La Barbera, Staff Attorney, at (202) 942–0734 (Rule 17a–9T), Office of Market Supervision, Division of Market Regulation.

The subject matter of the closed meeting scheduled for Wednesday, July 28, 1999, at 11:00 a.m., will be:

Institution of injunctive actions.
Institution and settlement of administrative proceedings of an enforcement nature.
Institution of administrative proceedings of an enforcement nature.
Institution and settlement of injunctive actions.

Commissioner Carey, as duty officer, determined that no earlier notice thereof was possible.

At times, changes in Commission priorities require alternations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 942–7070.

Dated: July 20, 1999.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 99–19068 Filed 7–21–99; 3:56 pm]

BILLING CODE 8010–01–M

## SOCIAL SECURITY ADMINISTRATION

### Agency Information Collection Activities: Proposed Request

In compliance with Public Law 104–13, the Paperwork Reduction Act of 1995, SSA is providing notice of its information collections that require submission to the Office of Management and Budget (OMB). SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility and clarity; and on ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology.

The information collection listed below will be submitted to OMB within 60 days from the date of this notice. Therefore, comments and recommendations regarding the information collection would be most useful if received by the Agency within 60 days from the date of this notice. Comments should be directed to the SSA Reports Clearance Officer at the address listed at the end of the notices. You can obtain a copy of the collection instrument by calling the SSA Reports Clearance Officer on (410) 965–4145, or by writing to him.

Social Security Card Fee Survey–0960–NEW. The Social Security Administration (SSA) processes over 11 million applications per year for replacement Social Security Number (SSN) cards. SSA is proposing to conduct a survey of a random sample of applicants who request a replacement SSN card to obtain information on reasons for replacing the SSN card and willingness to pay a fee for a replacement card. SSA is evaluating whether to charge a fee for replacements cards (other than for a name change) and will use the information from the survey to develop policy on when it would be appropriate to charge a fee for a replacement SSN card.

*Number of Respondents:* 3,600.

*Frequency of Response:* Once.

*Average Burden Per Response:* 5 minutes.

*Estimated Annual Burden:* 300 hours.

SSA Address—Social Security Administration, DCFAM, Attn: Frederick W. Brickenkamp, 6401 Security Blvd., 1–A–21 Operations Bldg., Baltimore, MD 21235

OMB Address—Office of Management and Budget, OIRA, Attn: Desk Officer for SSA, New Executive Office Building, Room 10230, 725 17th St., NW, Washington, D.C. 20503.

Dated: July 16, 1999.

**Frederick W. Brickenkamp,**

*Reports Clearance Officer, Social Security Administration.*

[FR Doc. 99–18825 Filed 7–22–99; 8:45 am]

BILLING CODE 4190–29–P

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

### Passenger Facility Charge (PFC) Approvals and Disapprovals

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Monthly notice of PFC approvals and disapprovals. In June 1999, there were five applications approved. Additionally, nine approved amendments to previously approved applications are listed.

**SUMMARY:** The FAA publishes a monthly notice, as appropriate, of PFC approvals and disapprovals under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of the 1990) (Pub. L 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158). This notice is published pursuant to paragraph d of § 158.29.

**PFC Applications Approved**

*Public Agency:* Port of Oakland, Oakland, California.

*Application Number:* 99–08–C–00–OAK.

*Application Type:* Impose and use a PFC.

*PFC Level:* $3.00.

*Total PFC Revenue Approved in This Decision:* $12,251,844.

*Earliest Charge Effective Date:* September 1, 1999.

*Estimated Charge Expiration Date:* July 1, 2000.

*Class of Air Carriers Not Required To Collect PFC's:* None.

*Brief Description of Projects Approved for Collection and Use:*

Multi-user system equipment/common use terminal equipment.
Rehabilitate apron at Building L820 and a portion of taxiway D.
Reconstruct concrete apron southeast of Building L812.
Year 2000 compliance program.
Overlay taxiway R.
Upgrade security access system.
Threshold improvement of runway 11/19.
Noise insulation program.

*Brief Description of Projects Disapproved:*

Airport facilities complex.

*Determination:* The FAA has determined that this project is not Airport Improvement Program (AIP) eligible in accordance with Appendix 2 of FAA Order 5100.38A, AIP Handbook (October 24, 1989). Therefore, this project does not meet the requirements of § 158.15(b) and is disapproved.

Airport comprehensive management system.

*Determination:* The FAA has determined that this project is not AIP eligible in accordance with Appendix 2 of FAA Order 5100.38A, AIP Handbook (October 24, 1989). Therefore, this project does not meet the requirements of § 158.15(b) and is disapproved.

*Decision Date:* June 18, 1999.

*For Further Information Contact:* Marlys Vandervelde, San Francisco Airports District Office, (650) 876–2806.

*Public Agency:* Waterloo Airport Commission, Waterloo, Iowa.

*Application Number:* 99–03–C–00–ALO

*Application Type:* Impose and use a PFC.

*PFC Level:* $3.00.

*Total PFC Revenue Approved in This Decision:* $763,830.

*Earliest Charge Effective Date:* September 1, 1999.

*Estimated Charge Expiration Date:* November 1, 2003.

*Class of Air Carriers Not Required To Collect PFC's:* None.

*Brief Description of Projects Approved for Collection and Use:*

Rehabilitate east general aviation apron.
Terminal building modernization—conceptual plan.
Terminal building modernization—architectural design.
Reconstruct taxiway D.

*Brief Description of Project Approved for Collection Only:* Terminal building modernization—construction.

*Decision Date:* June 18, 1999.

*For Further Information Contact:* Lorna Sandridge, Central Region Airports Division, (816) 426–4730.

*Public Agency:* City of Lubbock, Texas.

*Application Number:* 99–03–C–00–LBB.

*Application Type:* Impose and use a PFC.

*PFC Level:* $3.00.

*Total PFC Revenue Approved in This Decision:* $4,527,023.

*Earliest Charge Effective Date:* April 1, 2000.

*Estimated Charge Expiration Date:* August 1, 2002.

*Class of Air Carriers Not Required To Collect PFC's:* Part 135 charter operators who operate aircraft with a seating capacity of less than 10 passengers.

*Determination:* Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Lubbock International Airport.

*Brief Description of Projects Approved for Collection and Use:*

Signs and graphics improvements.
PFC application.
Entrance road and canopy improvements.
Westport access road.
Reconstruct/repair runway 17R–35L.

*Brief Description of Projects Approved for Collection Only:*

Americans with Disabilities Act (ADA)/maintenance elevator.
Westport apron and taxiway expansion—south.
Taxiway B–1.
ADA aircraft access.

*Decision Date:* June 29, 1999.

*For Further Information Contact:* Ben Guttery, Southwest Region Airports Division, (817) 222–5614.

*Public Agency:* Board of Trustees of the University of Illinois, Savoy, Illinois.

*Application Number:* 99–02–C–00–CMI.

*Application Type:* Impose and use a PFC.

*PFC Level:* $3.00

*Total PFC Revenue Approved in This Decision:* $1,418,400.

*Earliest Charge Effective Date:* November 1, 1999.

*Estimated Charge Expiration Date:* April 1, 2003.

*Class of Air Carriers Not Required To Collect PFC's:* Air taxi/commercial operators filing FAA Form 1800–31.

*Determination:* Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at University of Illinois—Willard Airport.

*Brief Description of Projects Approved for Collection and Use:*

North quadrant site development—phase 1.
PFC application reimbursement.
Phase 5 of rehabilitation of runway 14R/32L.
Airport layout plan update.
Improve airfield lighting—phase I.
Acquire snow removal equipment.
North quadrant site development—phase 2.
Acquire aircraft rescue and firefighting vehicle.
Acquire snow removal truck and plow.
Acquire ADA passenger lift device.
Improve airfield lighting—phase II.
Security fencing—phase I.
Construct exit taxiway on runway 14R/32L.
Security fencing—phase II.
Security fencing—phase III.
Terminal security system revisions.

*Decision Date:* June 30, 1999.

*For Further Information Contact:* Gary K. Regan, Chicago Airports District Office, (847) 294–7525.

*Public Agency:* County of Clinton, Plattsburgh, New York.

*Application Number:* 99–03–C–00–PLB.

*Application Type:* Impose and use a PFC.

*PFC Level:* $3.00.

*total PFC Revenue Approved in This Decision:* $63,764.

*Earliest Charge Effective Date:* July 1, 1999.

*Estimated Charge Expiration Date:* October 1, 2000.

*Class of Air Carriers Not Required to Collect PFC's:* Air taxi and charter carriers filing FAA Form 1800–31.

*Determination:* Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Clinton County Airport.

*Brief Description of Projects Approved for Collection and Use:*

Obstruction evaluation and mapping.
Airport master plan.

*Brief Description of Projects Approved for Collection Only:*

Off airport obstruction removal (phase I).
Easement acquisition.
Off airport obstruction removal (phase II).
Terminal expansion and renovation.

*Decision Date:* June 30, 1999.

*For Further Information Contact:* Robert Levine, New York Airports District Office, (516) 227–3807.

## AMENDMENTS TO PFC APPROVALS

| Amendment No. city, state | Amendment approved date | Original approved net PFC revenue | Amendment approved net PFC revenue | Original estimated charge exp. date | Amended estimated charge exp. date |
|---|---|---|---|---|---|
| 97–01–C–01–COD, Cody, WY | 05/13/99 | $102,662 | $123,662 | 10/01/99 | 08/01/99 |

AMENDMENTS TO PFC APPROVALS—Continued

| Amendment No. city, state | Amendment approved date | Original approved net PFC revenue | Amendment approved net PFC revenue | Original estimated charge exp. date | Amended estimated charge exp. date |
|---|---|---|---|---|---|
| 98–01–C–02–PHL, Philadelphia, PA | 06/04/99 | 26,150,000 | 29,650,000 | 01/01/99 | 03/01/99 |
| 93–01–C–02–TPA, Tampa, FL | 06/14/99 | 93,007,614 | 97,132,614 | 08/01/99 | 10/01/99 |
| 94–02–U–01–TPA, Tampa, FL | 06/14/99 | 17,500,000 | 20,125,000 | 08/01/99 | 10/01/99 |
| 92–01–I–03–ABE, Allentown, PA | 06/15/99 | 8,700,000 | 9,592,349 | 03/01/00 | 12/01/99 |
| 94–03–U–02–ABE, Allentown, PA | 06/15/99 | 8,700,000 | 9,592,349 | 03/01/00 | 12/01/99 |
| 94–02–C–05–PDX, Portland, OR | 06/21/99 | 36,681,708 | 42,526,708 | 09/01/15 | 05/01/16 |
| 97–05–U–01–PDX, Portland, OR | 06/21/99 | 12,824,000 | 18,669,000 | 09/01/15 | 05/01/16 |
| 94–01–I–01–CBE, Cumberland, MD | 06/23/99 | 150,000 | 150,000 | 07/01/99 | 0701//99 |

Issued in Washington, DC on July 12, 1999.

**Eric Gabler,**

*Manager, Passenger Facility Charge Branch.*

[FR Doc. 99–18821 Filed 7–22–99; 8:45 am]

**BILLING CODE 4910–13–M**

## DEPARTMENT OF TRANSPORTATION

### Research and Special Programs Administration

### Office of Hazardous Materials Safety; Applications for Exemptions

**AGENCY:** Research and Special Programs Administration, DOT.

**ACTION:** List of applicants for exemptions.

**SUMMARY:** In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. Each mode of transportation for which a particular exemption is requested is indicated by a number in the ''Nature of Application'' portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

**DATES:** Comments must be received on or before (30 days after publication).

**ADDRESS COMMENTS TO:** Records Center, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption application number.

**FOR FURTHER INFORMATION:** Copies of the applications (See Docket Number) are available for inspection at the New Docket Management Facility, PL–401, at the U.S. Department of Transportation, Nassif Building, 400 7th Street, SW., Washington, DC 20590.

This notice of receipt of applications for new exemptions is published in accordance with Part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on July 20, 1999.

**J. Suzanne Hedgepeth,**

*Director, Office of Hazardous Materials, Exemptions and Approvals.*

NEW EXEMPTIONS

| Application No. | Docket No. | Applicant | Regulation(s) affected | Nature of exemption thereof |
|---|---|---|---|---|
| 12279–N | RSPA–1999–5763. | Toyota Motor Sales, USA, Inc., Torrance, CA. | 49 CFR 100–180. | To authorize the transportation in commerce of small quantities of Class 3 material in inner packaging consisting of a non-refillable receptacle enclosed in a sealed, leakproof 2 mil polyethylene bag overpacked in plastic bins or suitable strong outer packagings. (mode 1) |
| 12288–N | RSPA–1999–5853. | Huntsman Chemical Company, West Footscray VIC 3012, AU. | 49 CFR 178.245–7(a). | To authorize the transportation in commerce of Ethyl chloride, Division 2.1, in non–DOT specification steel portable tanks permanently fitted within an ISO frame. (modes 1, 2, 3) |
| 12289–N | RSPA–1999–5855. | Arbel Fauvet Rail (AFR), Cedex, FR. | 49 CFR 178.245–1(a). | To authorize the manufacturing, marking, sale and use of DOT Specification 51 steel portable tanks permanently enclosed within a ISO frame for use in transporting Division 2.1 and 2.2 materials as presently authorized. (modes 1, 2, 3) |
| 12290–N | RSPA–1999–5858. | Savage Industries Inc., Pottstown, PA. | 49 CFR 174.67(a)2. | To authorize an alternative blocking method of rail cars while transferring various classes of hazardous materials. (mode 2) |
| 12291–N | RSPA–1999–5856. | Jean Philippe Fragrances, Inc., New York, NY. | 49 CFR 173.306, 173.306(1). | To authorize the transportation in commerce of aerosol fragrance products not to exceed 5 ounces to be transported in aluminum containers with overpack. (modes 1, 2) |
| 12292–N | RSPA–1999–5854. | Westway Trading Corporation, New Orleans, LA. | 49 CFR 179.12. | To authorize the one-time transportation in commerce of loaded non-hazardous material railcars containing broken interior steam coils. (mode 2) |

NEW EXEMPTIONS—Continued

| Application No. | Docket No. | Applicant | Regulation(s) affected | Nature of exemption thereof |
|---|---|---|---|---|
| 12293–N ..... | RSPA–1999–5875. | Intercontinental Packaging Corp., Tuckahoe, NY. | 49 CFR 173.306(a)(3)(v), 178.33a–2 & 8. | To authorize the manufacture, marking, and sale of non-DOT specification non-refillable metal and plastic aerosol containers filled with a propellant gas. (modes 1, 2, 3, 4) |
| 12295–N ..... | RSPA–1999–5878. | Uniroyal Chemical Co., Middlebury, CT. | 49 CFR 172.101, SP T15. | To authorize the transportation in commerce of a Division 6.1 material in IM–tanks equipped with bottom outlets. (modes 2, 3) |
| 12296–N ..... | RSPA–1999–5879. | Clean Earth Systems, Inc., Tampa, FL. | 49 CFR 173.12(b)(2)(i). | To authorize the manufacture, marking and sale of UN 11G IBC for use as the outer packaging for lab packs for transporting various classes of hazardous materials. (mode 1) |
| 12297–N ..... | RSPA–1999–5877. | Applied Companies, Valencia, CA. | 49 CFR 178.53. | To authorize the transportation in commerce of non-DOT specification cylinders for aircraft use constructed of stainless steel with a psi maximum service pressure that exceeds the requirement for use in transporting Division 2.2 material. (mode 4) |
| 12299–N ..... | RSPA–1999–5904. | Minnesota School of Diving, Inc., Brainerd, MN. | 49 CFR 177.870(e). | To authorize the transportation in commerce of Division 2.2, compressed air in DOT-Specification scuba cylinders that exceed the quantity limitations to be transported aboard passenger-carrying vehicle. (mode 1) |
| 12300–N ..... | RSPA–1999–5905. | Container Products Corp., Wilmington, NC. | 49 CFR 178.800. | To authorize the manufacture, marking and sale of intermediate bulk containers which exceed the quantity limitations presently authorized for use in transporting Packing Groups II and III liquid hazardous materials and Packing Groups I, II, & III solid hazardous materials. (modes 1, 2, 3) |
| 12301–N ..... | RSPA–1999–5903. | Niklor Chemical Co., Long Beach, CA. | 49 CFR 173.193(b). | To authorize the transportation in commerce of Division 2.3 and 6.1 materials in DOT-Specification 4BW cylinders that exceed the presently authorized quantity limitations. (modes 1, 2, 3) |
| 12303–N ..... | RSPA–1999–5954. | Halliburton Energy Services, Duncan, OK. | 49 CFR 173.201, 173.302, 173.304, 178.35(e), 178.35(f), 178.36. | To authorize the transportation in commerce of certain Division 2.1, 2.2 and Class 3 materials in non-DOT specification cylinders used for oil well sampling. (modes 1, 2, 3, 4) |
| 12305–N ..... | RSPA–1999–5955. | Fragrance Materials Association of the U.S., Washington, DC. | 49 CFR 172, Subparts C, D, E, 175. | To authorize the transportation of samples of flavor and fragrance materials in Class 3, 9 and Division 6.1 to be transported without required marking, labeling and shipping papers. (modes 1, 2, 3, 4, 5) |
| 12306–N ..... | RSPA–1999–5956. | Griffin Pipe Products Co., Lynchburg, VA. | 49 CFR 172 Subpart C & F. | To authorize the transportation of closed head 1A1 55 gallon drums from a storage yard into the main plant via fork trucks, without required bill of lading or placards. (mode 1) |
| 12307–N ..... | RSPA–1999–5957. | Kern County Dept. of Weights & Measures, Bakersfield, CA. | 49 CFR 173.24, 173.24(b). | To authorize the transportation of specially designed equipment used for meter proving purposes and transportation of various Class 3 petroleum products to offloading sites. (mode 1) |
| 12308–N ..... | RSPA–1999–5958. | AlliedSignal Inc. Morristown, NJ. | 49 CFR 173.243(b)(1), 173.33(d)(1), 178.345–10, 178.346–3. | To authorize the transportation in commerce of a Class 8 and Division 6.1 material in MC–412 cargo tank trucks equipped with an alternative pressure relief device. (mode 1) |

[FR Doc. 99–18917 Filed 7–22–99; 8:45 am]
BILLING CODE 4910–60–M

## DEPARTMENT OF TRANSPORTATION

### Research and Special Programs Administration

### Office of Hazardous Materials Safety; Applications for Modification of Exemption

**AGENCY:** Research and Special Programs Administration, DOT.

**ACTION:** List of Applications for Modification of Exemptions.

**SUMMARY:** In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier **Federal Register** publications, they are not repeated here. Requests for modifications of exemptions (e.g. to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.) are described in footnotes to the application number. Application numbers with the suffix ''M'' denote a modification request. These applications have been separated from the new applications for exemptions to facilitate processing.

**DATES:** Comments must be received on or before August 9, 1999.

**ADDRESS COMMENTS TO:** Records Center, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption number.

**FOR FURTHER INFORMATION CONTACT:** Copies of the applications are available for inspection in the Records Center, Nassif Building, 400 7th Street SW, Washington, DC.

| Application No. | Docket No. | Applicant | Modification of exemption |
|---|---|---|---|
| 8723–M | | Dyno Noble, Inc., Salt Lake City, UT (See Footnote 1) | 8723 |
| 9672–M | | Albermarle Corporation, Baton Rouge, LA (See Footnote 2) | 9672 |
| 10427–M | | Astrotech Space Operations, Inc., Titusville, FL (See Footnote 3) | 10427 |
| 10656–M | | Conf. of Radiation Control Program Directors, Inc., Frankfort, KY (See Footnote 4). | 10656 |
| 10945–M | | Structural Composites Industries (SCI), Pomona, CA (See Footnote 5) | 10945 |
| 10987–M | | Air Products and Chemical, Inc., Allentown, PA (See Footnote 6) | 10987 |
| 11263–M | | Koopers Industries, Inc., Pittsburgh, PA (See Footnote 7) | 11263 |
| 11329–M | | Degesch America, Inc., Weyers Cave, VA (See Footnote 8) | 11329 |
| 11406–M | | Conf. of Radiation Control Program Directors, Inc., Frankfort, KY (See Footnote 9). | 11406 |
| 11753–M | | Ashland Specialty Chemical Company, Columbus, OH (See Footnote 10). | 11753 |
| 12283–M | | RSPA–1999–5767 AT&T ALASCOM, Anchorage, AK (See Footnote 11) | 12283 |
| 12284–M | | RSPA–1999–5935 L&D Safety Marking Corp., Barre, VT (See Footnote 12). | 12284 |

[1] To modify the exemption to allow for an additional emulsion tote bin design for shipments of certain Division 1.5 explosives and/or Division 5.1 oxidizers.
[2] To modify the exemption to allow for additional shipping descriptions, classed as Division 4.2 materials, in DOT Specification MC–330 or MC–331 cargo tanks.
[3] To modify the exemption to delete the midnight to 6:00 am transport requirement for shipment of ''Flight-ready'' spacecraft containing hazardous materials in specially designed non-DOT specification transport containers.
[4] To modify the exemption to revise approval provisions and documentation required for shipments of metal containing unknown amounts of unidentified radionuclides.
[5] To modify the exemption to authorize an addition Division 2.2 material in a non-DOT specification fully wrapped carbon-fiber reinforced aluminum lined cylinder.
[6] To modify the exemption to extend the requalification and inspection period to once every five years for non-DOT specification open heal, steel salvage cylinders containing gases and mixtures of gases.
[7] To modify the exemption to authorize the use of non-DOT specification fiber drums for the transportation of solid coal tar pitch compounds, Class 9, that exceed reportable quantities.
[8] To modify the exemption to authorize an additional Division 4.3 material transported by private motor vehicle in specifically designed packages.
[9] To modify the exemption to revise approval provisions and documentation required for shipments of waste or recycled materials, Class 7.
[10] To modify the exemption to include an additional UN1H1 drum as authorized packaging for the transportation of certain Class 8 materials.
[11] To reissue the exemption originally issued on an emergency basis for the transportation in commerce of large wet storage batteries in non-DOT specification packages.
[12] To reissue the exemption originally issued on an emergency basis for the transportation of certain non-DOT specification cargo tanks used for roadway striping.

This notice of receipt of applications for modification of exemptions is published in accordance with Part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on July 20, 1999.

**J. Suzanne Hedgepeth,**

*Director, Office of Hazardous Materials, Exemptions and Approvals.*

[FR Doc. 99–18918 Filed 7–22–99; 8:45 am]
BILLING CODE 4910–60–M

## DEPARTMENT OF THE TREASURY

### Submission for OMB Review; Comment Request

July 16, 1999.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the

Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW, Washington, DC 20220.

**DATES:** Written comments should be received on or before August 23, 1999 to be assured of consideration.

**Internal Revenue Service (IRS)**

*OMB Number:* 1545–0049.

*Form Number:* IRS Form 990–BL, Schedule A (Form 990–BL), Form 6069.

*Type of Review:* Extension.

*Title:* Form 990–BL, Information and Initial Excise Tax Return for Black Lung Benefit Trusts and Certain Related Persons; Schedule A, (Form 990–BL), Initial Excise Taxes on Black Lung Benefit Trusts and Certain Related Persons Under sections 4951 and 4952 of the Internal Revenue Code; and Form 6069, Return of Excise Tax on Excess Contributions to Black Lung Benefit Trust Under Section 4953 and Computation of Section 192 Deduction.

*Description:* IRS uses Form 990–BL to monitor activities of black lung benefit trusts, and to collect excise taxes on these trusts and certain related persons if they engage in proscribed activities. The tax is figured on Schedule A and attached to Form 990–BL. Form 6069 is used by coal mine operators to figure the maximum deduction to a black lung benefit trust. If excess contributions are made, IRS uses the form to figure and collect the tax on excess contributions.

*Respondents:* Business or other for-profit, Individuals or households, Not-for-profit institutions.

*Estimated Number of Respondents/ Recordkeepers:* 22.

*Estimated Burden Hours Per Respondent/Recordkeeper:*

| | Form 990–BL | Schedule A |
|---|---|---|
| Recordkeeping | 16 hr., 44 min | 6 hr., 56 min. |
| Learning about the law or the form | 3 hr., 28 min | 18 min. |
| Preparing and sending the form to the IRS | 3 hr., 55 min | 25 min. |

*Frequency of Response:* Annually.

*Estimated Total Reporting/ Recordkeeping Burden:* 573 hours.

*Clearance Officer:* Garrick Shear, Internal Revenue Service, Room 5244, 1111 Constitution Avenue, NW, Washington, DC 20224.

*OMB Reviewer:* Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

**Dale A. Morgan,**

*Departmental Reports Management Officer.*

[FR Doc. 99–18784 Filed 7–22–99; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

### Customs Service

**[T.D. 99–55]**

### Treasury Decisions; Retraction of Revocations of Customs Brokers' Licenses

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

**ACTION:** Brokers' licenses revocations retraction.

The following Customs brokers' licenses were erroneously included on a list of revoked Customs brokers' licenses published in the **Federal Register**. The licenses listed below are valid.

| Port | Individual | License No. |
|---|---|---|
| New York | Robert W. Hardy | 11294 |
| New York | Michael J. Hubert | 03355 |
| New York | Norman Isacoff | 04970 |
| New York | Daniel L. Kotcher | 09515 |
| New York | Ignacio Sapot | 04320 |
| New York | Newell C. Shannon | 10276 |
| New York | Matthew G. Shaw | 12656 |
| New York | Barbara E. Vatier | 07138 |
| New York | Robert P. Weinrib | 06455 |
| New York | Stateside Customs Brokerage, Inc | 06692 |

Dated: July 19, 1999.

**Raymond W. Kelly,**

*Commissioner.*

[FR Doc. 99–18807 Filed 7–22–99; 8:45 am]

**BILLING CODE 4820–02–P**

## DEPARTMENT OF THE TREASURY

### U.S. Customs Service

**[T.D. 99–56]**

### Treasury Decisions; Cancellations of Customs Brokers' Licenses

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

**ACTION:** Brokers' licenses cancellations.

I, as Commissioner, hereby pursuant to section 641(f), Tariff Act of 1930, as amended (19 U.S.C. 1641(f)) and section 111.51(a) of the Customs Regulations (19 CFR 111.51(a)), cancel the following Customs brokers' licenses without prejudice.

| Port | Individual | License No. # |
|---|---|---|
| Dallas | Sterling International | 13809 |
| San Francisco | Alrod International, Inc | 07867 |
| San Francisco | Armen Cargo Services, Inc | 10909 |
| San Francisco | Columbia Shipping Inc | 12259 |
| San Francisco | Cosdel International Co., Inc | 07736 |
| San Francisco | G.M. Miller & Company International | 04936 |

Dated: July 19, 1999.

**Raymond W. Kelly,**

*Commissioner.*

[FR Doc. 99–18808 Filed 7–22–99; 8:45 am]

BILLING CODE 4820–02–P

## UNITED STATES INFORMATION AGENCY

### Meeting of the Cultural Property Advisory Committee

**AGENCY:** United States Information Agency.

**ACTION:** Notice of meeting of the Cultural Property Advisory Committee.

The Cultural Property Advisory Committee will meet on Friday, August 6, 1999, from approximately 9 a.m. to 5 p.m. at the Woodrow Wilson International Center for Scholars, Ronald Reagan Building, The Board Room, 6th Floor, 1300 Pennsylvania Ave., NW, Washington, DC, to review the bilateral cultural property agreements the U.S. entered into with Canada and Peru pursuant to the Convention on Cultural Property Implementation Act (19 U.S.C. 2601 *et seq.*, Public Law 97–446). A portion of the meeting, from approximately 1 p.m. to 2:30 p.m. will be open to interested parties wishing to provide comment to the Committee that may have relevance to these agreements. The texts of the agreements and the designated lists of artifacts from these countries that are restricted from importation by U.S. customs may be found at www.usia.gov/education/culprop, or copies may be requested by calling the telephone number listed below. The agreements, entered into with Canada on April 10, 1997, and with Peru on June 9, 1997, will be reviewed pursuant to the Act. Since review of this matter by the Committee will involve information the premature disclosure of which would be likely to significantly frustrate implementation of proposed action, the meeting from approximately 9 a.m. to approximately 12 Noon, and from approximately 2:30 p.m. to approximately 5 p.m. will be closed pursuant to 5 U.S.C. 552b(c)(9)(B) and 19 U.S.C. 2605(h). Persons wishing to attend the open portion of the meeting, must notify the Cultural Property Office at (202) 619–6612 no later than 5 p.m. (EDT) Wednesday, August 4, 1999, to arrange for admission.

Dated: July 16, 1999.

**William B. Bader,**

*Associate Director for Educational and Cultural Affairs, United States Information Agency.*

### Determination To Close Portion of the Meeting of the Cultural Property Advisory Committee, August 6, 1999

In accordance with 5 U.S.C. 552b(c)(9)(B), and 19 U.S.C. 2605(h), I hereby determine that the portions of the Cultural Property Advisory Committee meeting on August 6, 1999, from approximately 9 a.m. to approximately 12 Noon and from approximately 2:30 p.m. to approximately 5 p.m., will be closed in order to discuss information the premature disclosure of which would be likely to significantly frustrate implementation of proposed actions.

Dated: July 16, 1999.

**William B. Bader,**

*Associate Director for Educational and Cultural Affairs, United States Information Agency.*

[FR Doc. 99–18778 Filed 7–22–99; 8:45 am]

BILLING CODE 8230–01–M

Friday
July 23, 1999

# Part II

# Environmental Protection Agency

**40 CFR Parts 35 and 745**

**Environmental Program Grants—State, Interstate, and Local Government Agencies; Proposed Rule**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 35 and 745

**[FRL–6373–1]**

**RIN 2030–AA55**

### Environmental Program Grants—State, Interstate, and Local Government Agencies

**AGENCY:** Environmental Protection Agency.

**ACTION:** Proposed rule.

**SUMMARY:** This regulation proposes to revise and update requirements in several Environmental Protection Agency regulations, particularly subpart A of part 35, governing grants to State, interstate and local government agencies from EPA under several environmental programs. The regulation advances ongoing efforts to build more effective State-EPA partnerships and to improve environmental conditions by providing States with increased flexibility to direct resources where they are needed most to address environmental and public health needs. This regulation: updates, clarifies, and streamlines requirements governing environmental program grants; establishes requirements for the new Performance Partnership Grant (PPG) program; and establishes requirements for grant programs that began after the original rule was published. (A regulation governing environmental program grants to Indian Tribes and Tribal Consortia is published elsewhere in this issue of the **Federal Register**.)

**DATES:** Please submit comments on this proposed rule by September 7, 1999.

**ADDRESSES:** Written comments should be submitted to: Performance Partnership Grants—State Comment Clerk (Docket #WD–98–9); Water Docket (MC–4104); U.S. Environmental Protection Agency; 401 M Street, SW; Washington, DC 20460. Comments may be hand-delivered to the Water Docket; U.S. Environmental Protection Agency; 401 M Street, SW; East Tower Basement; Washington, DC 20460. Comments may be submitted electronically to owdocket@epamail.epa.gov.

**FOR FURTHER INFORMATION CONTACT:** W. Scott McMoran, Grants Operations Branch B (3903R), United States Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460, (202) 564–5376.

**SUPPLEMENTARY INFORMATION:**

## I. Regulated Entities

Entities eligible to receive the environmental grants listed in 40 CFR 35.100 are regulated by this rule. Regulated categories and entities include:

| Category | Regulated entities |
|---|---|
| Government | State Governments/Agencies.<br>Local Governments/Agencies.<br>Interstate Agencies. |

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities eligible under EPA's authorizing and appropriations statutes that EPA is now aware could potentially be regulated by this action. Other types of entities could also be regulated. To determine whether your organization is regulated by this action, you should carefully examine the applicability criteria in § 35.134 and the program-specific provision in §§ 35.140 through 35.418 of the rule. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

## II. Comments and Record

Please submit an original and three copies of your comments and enclosures (including references). The Agency requests that commenters follow the following format: Type or print comments in ink, and cite, where possible, the paragraphs in this notice to which each comment refers. Electronic comments must be submitted as a WP5.1 or WP6.1 file or as an ASCII file avoiding the use of special characters. Comments and data will also be accepted on disks in the formats above. Electronic comments may be filed online at many Federal Depository Libraries. Commenters who want EPA to acknowledge receipt of their comments should include a self-addressed, stamped envelope. No facsimiles (faxes) will be accepted.

Availability of Record: The record for this Notice, which includes supporting documentation as well as printed, paper versions of electronic comments, is available for inspection from 9 a.m. to 4 p.m. (Eastern Time), Monday through Friday, excluding legal holidays, at the Water Docket, U.S. EPA Headquarters, 401 M Street, SW; East Tower Basement; Washington, DC 20460. For access to docket materials, please call (202) 260–3027 to schedule an appointment.

## III. Background

Since EPA was formed in 1970, State capacity and responsibility for implementing environmental and public health protection programs has grown steadily. Meanwhile, environmental problems and their solutions have grown more complex. In light of these changes, State and EPA leaders recognized that continued environmental progress could be best achieved if EPA and States worked together more effectively—as partners.

In 1995, they agreed to develop and implement the National Environmental Performance Partnership System (NEPPS). NEPPS is designed to: promote joint planning and priority setting by EPA and the States; provide States with greater flexibility to direct resources where they are needed most; foster use of integrated and innovative strategies for solving water, air, and waste problems; achieve a better balance in the use of environmental indicators and traditional activity measures for managing programs; and improve public understanding of environmental conditions and the strategies being used to address them.

The changes proposed in this rule are intended to promote State-EPA collaboration; provide opportunities for innovation; and reduce paperwork—while ensuring sound fiscal management and accountability for environmental performance—in a manner consistent with NEPPS. For example, EPA hopes to foster joint planning and priority-setting by explicitly requiring that State priorities and needs be considered, along with national and regional guidance, in negotiating grant work plans. Under this rule, a State can choose to organize its grant work plans in accordance with environmental goals and objectives or in other new ways rather than using categories pre-defined by EPA. The length of a grant budget period will be negotiable. These flexibilities are available to all States, regardless of whether they are actively participating in other aspects of NEPPS.

More than half of the States have elected to negotiate and enter into

Performance Partnership Agreements (PPAs) with EPA as the primary mechanism for implementing NEPPS. Although each PPA is different, PPAs typically set out jointly developed goals, objectives, and priorities; the strategies to be used in meeting them; the roles and responsibilities of the State and EPA; and the measures to be used in assessing progress. (In some cases, comparable negotiated agreements are given a different name, such as Environmental Performance Agreements.) A PPA is generally based on information about the environmental and program conditions of the State as well as national and regional priorities and concerns. A State may apply for and receive any grant, including a PPG, without negotiating a PPA. However, a PPA can provide the strategic underpinning for the work a State plans to carry out with EPA financial assistance and the PPA can serve as a grant work plan if it meets other grant-related statutory and regulatory requirements.

Recognizing the limitations of traditional categorical grants to allow full achievement of the NEPPS goals, EPA asked Congress for new authority that would give States greater flexibility in the use of federal grant funds. In the Omnibus Consolidated Rescissions and Appropriations Act of 1996 (Pub. L. 104–134) and EPA's FY 1998 Appropriation Act (Pub. L. 105–65), Congress authorized the award of Performance Partnership Grants (PPGs), in which State and interstate agencies (and Tribes and Intertribal Consortia) can choose to combine two or more environmental program grants.

Under a PPG, a recipient can achieve cost and administrative savings by reductions in the amount of grant paperwork as well as simplified accounting requirements that do not require the recipient to account for expenditures in accordance with their original funding sources. With PPGs, recipients can negotiate work plans with EPA that direct federal funds where the recipients need them most to address environmental and public health problems. Recipients can also try new multi-media approaches and initiatives, such as children's health protection programs, multi-media inspections, compliance assistance programs, and ecosystem management, that were difficult to fund under traditional categorical grants.

This rule is designed to accommodate all potential variations in how EPA and individual States may work to build partnerships. The rule is also designed to minimize duplicative effort by allowing for multiple uses of information or processes wherever appropriate. A State may choose to negotiate a PPA or comparable strategic agreement with EPA. Where a State negotiates both a PPA and PPG, the processes and documentation can be integrated and, if appropriate, identical. Also, a State can receive a separate categorical grant for each environmental program, a PPG covering all programs eligible for inclusion, or a combination of separate categorical grants and PPGs covering only some programs.

These regulations will be codified in 40 CFR part 35 as EPA's Environmental Program Grant regulations. Subpart A applies to State, interstate, and local agencies. EPA is proposing to add to the existing subpart A provisions for the following programs: Performance Partnership Grants, Lead-Based Paint Grant Program; State Indoor Radon Grants; Toxic Substances Enforcement Grants; State Underground Storage Tank Grants; Pollution Prevention Incentives Grants for States; Water Quality Cooperative Agreements; and Wetlands Development Grant Program. EPA is also publishing subpart B in this issue of the **Federal Register**, which applies to Tribes and Intertribal Consortia.

These regulations supplement EPA's Grants and Cooperative Agreements to State and Local Governments regulations (40 CFR part 31). Part 31 applies to grants and subawards to State governments, interstate agencies, and local governments, including a council of governments (whether or not incorporated as a nonprofit under State law), and any other regional or interstate government entity.

This rule proposes to delete 40 CFR 745.330, which authorizes EPA to make grants to States and Indian Tribes under section 404(g) of the Toxic Substances Control Act for lead-based paint programs. Provisions governing those grants are included in this proposed subpart A and in proposed subpart B of 40 CFR part 35.

## IV. Requirements for Environmental Program Grants

Sections 35.100 through 35.118 of the proposed rule apply to all environmental program grants covered by subpart A of part 35, including PPGs. This rule contains changes to foster State-EPA partnerships, improve accountability for environmental and program performance, and streamline administrative requirements. Some of the proposed rule's key features are discussed below.

### *State-EPA Partnerships*

To foster joint planning and priority setting, the rule explicitly requires consideration of State priorities along with national and regional guidance in negotiating grants. However, the EPA Regional Administrator must consult with the National Program Manager before agreeing to a State work plan that differs substantially from national guidance. A State is provided flexibility through the work plan negotiation process, and in particular through its ability to organize work plan components in whatever way fits best. States applying for PPGs will have still greater flexibility as described in the PPG discussion below. Where appropriate, the grant work plan will reflect both EPA and State roles and responsibilities and there will be a negotiated joint performance evaluation process.

### *Accountability*

The rule has been updated to accommodate results-oriented approaches to planning and managing environmental programs. Definitions and other aspects of the rule dovetail with the new Government Performance and Results Act (GPRA) and reflect efforts to establish goals and objectives as well as environmental and program performance measures at both the national and State levels. The rule recognizes the need for a mix of outcome (results) and output (activity) measures for management purposes. While the revised rule encourages States to organize their work plans around goals and objectives, States may continue to use existing structures if they wish.

### *Administrative Changes*

Under the rule, States can negotiate budget periods of one or more years with EPA. EPA recommends, however, that budget periods not exceed five years because it is difficult to account for funds and maintain records for longer periods.

The rule streamlines some requirements and eliminates other requirements associated with changes made to grant work plan commitments and budgets. These requirements replace those found in 40 CFR 31.30. Prior written approval from EPA is still required for significant changes in a grantee's work plan commitments. Written, but not prior, approval is required for changes requiring increases in grant amounts and extensions of the budget period. EPA approval is no longer required for other changes in the work plan or budget, changes in key persons or decisions to carry out portions of the work through subgrants or contracts unless the Regional Administrator determines, on a case-by-

case basis, that circumstances warrant imposing additional approval requirements on a particular recipient.

*Pre-award Costs*

Pre-award costs may be reimbursed under the grants without prior approval so long as they are incurred within the budget period, identified in the approved grant application, and would have been allowable if incurred after the award.

*Insular Areas*

EPA is proposing conforming changes in the rule to reflect the change in status of the Marshall Islands, the Federated States of Micronesia, and Palau. They were previously entities within the Trust Territory of the Pacific Islands, but they have entered into Compacts of Free Association with the Government of the United States. As a result, each is now a sovereign, self-governing State and as such is no longer eligible to receive grants as a territory or possession of the United States. Because the Trust Territory of the Pacific Islands no longer exists, the rule's provisions regarding allotments omit any reference to the Trust Territory and references to the Trust Territory in environmental program grant statutes, including the references in the definitions of ''State,'' no longer have legal effect.

The Administrator of EPA is authorized to consolidate grants and waive administrative requirements for grants made to certain insular areas. 48 U.S. C. 1469a. Through this regulation that authority is delegated to the Regional Administrators.

**V. Performance Partnership Grants**

Sections 35.130 through 35.138 contain requirements that apply only to Performance Partnership Grant (PPGs). In a Performance Partnership Grant, the recipient can combine funds from two or more environmental program grants into a single grant under streamlined administrative requirements. Funds may be used for eligible cross-media activities or strategies and do not need to be accounted for in accordance with their original program sources. Key features of the PPG rule are discussed below.

*Funds and Activities Eligible for Inclusion in a PPG*

Funds for any particular environmental program grant may be included in a PPG only if the funds for that grant are appropriated in the same specific appropriation (earmark) as the funds for PPGs. EPA will announce any changes in its appropriation acts that affect the list of programs in § 35.101. Currently, funds from all but two of the environmental program grants listed in § 35.101 are eligible for inclusion in a PPG. Funds for Water Quality Management Planning grants under section 205(j)(2) of the Clean Water Act are not available for inclusion in PPGs because funds for these grants are reserved from a different earmark in the Agency's appropriation act. In addition, there are no funds appropriated for State Administration grants under section 205(g) of the Clean Water Act.

A PPG recipient may use PPG funds to carry out any activity that would be authorized under at least one of the environmental program grants from which funds are combined in the PPG. This means that a PPG recipient may not spend PPG funds on an activity unless the PPG includes some funds from an environmental program grant under which that activity would be eligible. For example, a PPG recipient could not use PPG funds for an activity that is authorized only under sections 205(g) or 205(j)(2) of the Clean Water Act because no section 205(g) or 205(j)(2) funds will have been included in the PPG. On the other hand, if an activity would be authorized under section 106 of the Clean Water Act, and the PPG includes section 106 funds, then the activity may be funded by the PPG.

A State or interstate agency must meet the requirements for award of each of the environmental programs from which funds are combined in the PPG, with a few specified exceptions. The exceptions are requirements that restrict how a specific environmental program grant can be used after award. These requirements are not appropriate to be carried over to Performance Partnership Grants because after funds are awarded in a Performance Partnership Grant they may be used for cross-media purposes and States interstate agencies do not need to account for the funds in accordance with their original program sources.

*Entities Eligible for PPGs*

The types of organizations eligible for PPGs are determined by the authorizing statutes for the PPG program, which are EPA's FY 1996 and 1998 appropriation acts, (Omnibus Consolidated Rescissions and Appropriations Act of 1996, Public Law 104–134, 110 Stat. 1321, 1321–299 (1996); Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1998, Pubic Law 105–65, 111 Stat. 1344, 1373 (1997)). Consistent with those statutes, only States and interstate agencies will be eligible for PPGs under this proposed rule. Interstate agencies are only eligible for PPGs that combine funds from a few existing grant programs because interstate agencies are only authorized to receive grants under those few environmental programs. Specifically, interstate agencies are eligible for PPGs that include funds from the following programs: Air Pollution Control (section 105 of the Clean Air Act); Water Pollution Control (section 106 of the Clean Water Act); Wetlands Development Grants (section 104(b)(3) of the Clean Water Act); and Water Quality Cooperative Agreements (section 104(b)(3) of the Clean Water Act). Recipients must be interstate agencies as defined by either the Clean Water Act, the Clean Air Act, or both, depending on which funds are included in the PPG. Congress authorized EPA to award PPGs to interstate agencies, but only as provided in authorizing statutes; Congress did not intend to change any of the existing program grant eligibility requirements, including the definition of interstate agency. The ability of recipients to make subgrants will not be affected by combining funds into a PPG.

*Competitive Grants and PPGs*

States must compete for some of the environmental programs eligible for a PPG (*e.g.*, pollution prevention incentives for States, wetlands program development, and water quality cooperative agreements). States must first be selected in the competitive process in order to include these competitive grants in a PPG. In some programs, this process may include the awarding of funds to a State agency through decisions made during a joint planning process. To maintain the integrity of the competitive process and ensure that the work that was the basis for EPA's selection of the proposal is performed, the State must include the work plan commitments proposed in the competitive grant application in the PPG work plan. However, as with other program funds included in a PPG, the State does not need to account for these funds in accordance with the funds' original environmental program source. Although a State must agree to complete the work plan commitments proposed in the competitive work plan, it need not account for the funds spent on a specific environmental program or activity. Also, if the time required to complete work under the competitive program is longer than the budget period for the States' PPG, States must make provisions to carry the activities (and funds, if appropriate) to subsequent PPG budget periods to complete them.

*Administrative Flexibility*

A primary advantage of PPGs is the administrative flexibility provided to all PPG recipients. A PPG requires only a single application, work plan, and budget regardless of how many environmental programs provide the funds for the PPG. Once funds are awarded in a PPG, recipients can direct the funds as needed to achieve work plan commitments and need not account for funds in accordance with their original funding program sources. The minimum cost share required for a PPG is the sum of the cost share amounts required for each of the environmental program grants combined in the PPG. If a program has both a match and a maintenance of effort requirement, the greater of the two amounts will be used to calculate the minimum cost share attributed to that program. Just as federal funds in the PPG do not need to be accounted for on the basis of their original program source, the non-federal share of a PPG may be expended on work plan commitments without regard to the original source of the cost share requirement. These administrative features also make it possible for States to negotiate a work plan that includes cross-media or innovative strategies for addressing environmental problems.

*Programmatic Flexibility*

If approved by the EPA Regional Administrator, a PPG can also provide the State with programmatic flexibility to increase efforts in some program areas where the State's needs are greater and decrease them in others where the State's needs are less. In applying for programmatic flexibility, the State agency must provide a rationale commensurate with the type and amount of flexibility being proposed, explaining the basis for the State's priorities and the environmental or other benefits it expects to achieve. The State must also assure that basic programs are maintained for all programs combined in the grant. The Regional Administrator and State agency will negotiate regarding the environmental and other information that EPA needs to make a decision regarding the application for flexibility. Information useful in supporting a State's proposal for programmatic flexibility may already exist, such as in a PPA, a recent water quality report, or a previous grant evaluation. Such information should be used to the extent possible to minimize duplication of effort.

*Performance Incentives*

One goal of the performance partnership grant program is to find ways to encourage and reward outstanding State recipient performance. EPA believes this regulation will establish the foundation for such an incentive program by assuring—

- States and EPA's regions agree to measurable outcomes and outputs when awards are signed in accordance with the agreement on core measures.
- Outcome and output accomplishments are measured and documented through the joint evaluation process developed and agreed to by the States and EPA under the rule.

We would expect such a program to be based on each year's performance evaluation. We are considering incentive approaches such as—

- Using a part of each year's funds to provide incentive bonuses to States which are most successful in meeting commitments, and
- Using a part of each year's funds to provide bonuses to States which assume primacy/authorization for programs such as drinking water and hazardous waste.

There may be many other possible incentive approaches and we are soliciting recommendations for them. We also request your comments on the options suggested above.

**VI. Implementing GPRA**

The Agency has developed an approach toward the integrated implementation of GPRA, the Chief Financial Officers Act (CFOA), and the Federal Financial Management Improvement Act of 1996 (FFMIA). These laws provide EPA with a framework to demonstrate to Congress and the taxpayers the costs to the federal government of EPA's program goals and objectives. The States, by virtue of delegated program authorities and as recipients of EPA grant funds, play an integral part in achieving those goals and objectives. Thus EPA's reports of Agency resources associated with outcomes and outputs will incorporate—at some level—expenditures incurred in the form of payments under grants and cooperative agreements . In order to comply with the Paperwork Reduction Act and the federal government's general grant regulations, EPA also has a responsibility to minimize additional administrative reporting requirements and costs borne by the States. In addition, under current regulations EPA generally may not impose accounting requirements on States beyond those currently required by 40 CFR part 31.

EPA will therefore use the budget information that States provide in grant applications as a basis for linking the Agency's actual expenditures with outcomes. EPA will be able to rely on State budget information to determine the costs of EPA's outcomes, as long as the following three conditions exist, which are all required by the proposed regulation:

(1) States provide the program budget information required as part of the application;

(2) EPA and the States explicitly define work plan activities, outcomes, and outputs, as well as the program flexibility contained in the work plan; and

(3) States report back on work plan accomplishments.

The proposed rule ensures that States will meet these three conditions, thus providing a reasonable basis for using State grant program budgets to estimate State contributions to the costs of achieving EPA's outcomes.

EPA's regional offices, with necessary consultation with recipients, will be responsible for cross-walking the State budget information (grant application and work plan data) into the GPRA goals and objectives architecture. If a grant is subsequently amended to reflect significant adjustments to work plan commitments, the region will consult with the State to develop an estimate of the budget associated with the revision so that it can be reflected in regional GPRA reporting. The Office of the Chief Financial Officer will provide regions with guidance on the approach to use for the cross-walk process to ensure that the results achieved by States with EPA funds are captured in the Agency's Annual Performance Reports.

**VII. Program Specific Provisions**

Requirements applicable to each environmental grant program are located in §§ 35.140 through 35.418.

*Eligibility*

The requirements that recipients must meet to qualify to receive funds under specific environmental programs are included in the program-specific provisions (see §§ 35.140 through 35.418).

*Cost Share*

The required cost share for each environmental program is identified in the program specific sections. Some programs do not have cost share requirements, while others have percentage matching share

requirements, level of effort requirements, or both.

**VIII. Conclusion**

This regulation will be the foundation for continuing efforts to improve partnerships between EPA and its State, interstate, and local environmental protection partners. All recipients will benefit from the streamlined and simplified requirements of the regulation. In addition, it will provide recipients choosing to participate in the PPG program with programmatic flexibility to better use funds to address environmental priorities.

*Regulatory Flexibility Act*

The Agency has determined that the requirement in the Regulatory Flexibility Act (RFA) to prepare a regulatory flexibility analysis does not apply to this rule. A regulatory flexibility analysis must be prepared only where the Agency is required by Administrative Procedure Act (APA) or another statute to publish a general notice of proposed rulemaking. 5 U.S.C. 603. Grant making matters, such this rule, are not subject to the notice and comment requirements of the APA (5 U.S.C. 553(a)(1)). Nor is this rule required to undergo notice and comment rulemaking under any other statute.

*Unfunded Mandates Reform Act*

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, 2 U.S.C. 1501 *et seq.*, 109 Stat. 48 (1995), establishes requirements for federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''federal mandates'' that may result in expenditures by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. This regulation contains no federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or Tribal governments or the private sector. The UMRA excludes from the definitions of ''federal intergovernmental mandate'' and ''federal private sector mandates'' duties that arise from conditions of federal assistance.

*National Technology Transfer and Advancement Act*

Under section 12(d) of the National Technology Transfer and Advancement Act (NTTAA), EPA is required to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impracticable. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, business practices, etc.) that are developed or adopted by voluntary consensus standards bodies. Where available and potentially applicable voluntary consensus standards are not used, the Act requires EPA to provide Congress, through the Office of Management and Budget, an explanation of the reasons for not using such standards.

This proposed rule does not involve any technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards. Commenters who disagree with this conclusion should indicate how the Notice is subject to the Act and identify any potentially applicable voluntary consensus standards.

*Executive Order 13045*

Executive Order 13045 applies to any rule that is determined to be: (1) ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, EPA must evaluate the environmental health or safety effects of the planned rule on children; and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

EPA has determined that the proposed rule is not a covered regulatory action because it is not economically significant and it does not involve decisions based on environmental health or safety risks. As a result, the proposed rule is not subject to the requirements of the Executive Order.

*Executive Order 12866*

Under Executive Order 12866, (58 FR 51735 (October 4, 1993)) a significant regulatory action is 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.

It has been determined that this rule is a ''significant regulatory action'' under the terms of Executive Order 12866 because the Performance Partnership Grant authority is a new type of grant authority and therefore raises novel policy issues. As such, this action was submitted to the Office of Management and Budget (OMB) for review. Changes made in response to OMB suggestions and recommendations are documented in the public record.

*Paperwork Reduction Act*

In keeping with the requirements of the Paperwork Reduction Act (PRA), as amended, 44 U.S.C. 3501 *et seq.*, the information collection requirements contained in this rule have been approved by OMB under information collection request number 0938.06 (OMB Control Number 2030–0020) and Quality Assurance Specifications and Requirements information request number 0866.05 (OMB Control Number 2080–033). This rule does not contain any collection of information requirements beyond those already approved. Since this action imposes no new or additional information collection, reporting or record-keeping requirements subject to the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, no information request will be submitted to the Office of Management and Budget for review.

*Executive Order 12875*

Under Executive Order 12875, Enhancing Intergovernmental Partnerships, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the federal government provides the funds necessary to pay the direct compliance costs incurred by those governments or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and Tribal governments, the nature of their concerns, any written communications

from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and Tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.''

This proposed rule does not create a mandate on State, local or Tribal governments nor does it impose any enforceable duties on these entities as it governs the award of financial assistance. Instead, this proposed rule is designed to reduce the administrative burden associated with grants for environmental programs. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply.

*Executive Order 13084*

Under Executive Order 13084, Consultation and Coordination with Indian Tribal Governments, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian Tribal governments, and that imposes substantial direct compliance costs on those communities, unless the federal government provides the funds necessary to pay the direct compliance costs incurred by the Tribal governments. If a regulatory mandate is necessary, EPA must provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected Tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian Tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

This proposed rule does not affect the communities of Indian Tribal governments, because environmental program grants to Tribes and intertribal consortia are not covered in this rule; they are covered under 40 CFR part 35, subpart B, published elsewhere in this **Federal Register**. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply.

**List of Subjects**

*40 CFR Part 35*

Environmental protection, Administrative practice and procedures, Evaluation of performance, Performance partnership grants, Requirements for specific grant programs, Work plan requirements.

*40 CFR Part 745*

Environmental protection, Administrative practice and procedures, Hazardous substances.

Dated: June 30, 1999.

**Carol M. Browner,**

*Administrator.*

For the reasons set forth in this preamble, title 40, chapter I of the Code of Federal Regulations is proposed to be amended as follows:

## PART 35—[AMENDED]

1. The authority citation for Part 35 is revised to read as follows:

**Authority:** 42 U.S.C. 4368b unless otherwise noted.

2. Revise § 35.001 to read as follows:

**§ 35.001 Applicability.**

This part codifies policies and procedures for financial assistance awarded by the Environmental Protection Agency (EPA) to State, interstate, and local agencies, Indian Tribes and Intertribal Consortia for pollution abatement and control programs. These provisions supplement the EPA general assistance regulations in 40 CFR part 31.

3. Revise Subpart A to read as follows:

**Subpart A—Environmental Program Grants**

**All Grants—General**

Sec.
35.100 Purpose of the subpart.
35.101 Environmental programs covered by the subpart.
35.102 Definition of terms.

**Preparing an Application**

35.104 Components of a complete application.
35.105 Time frame for submitting an application.
35.107 Work plans.
35.108 Budget period.
35.109 Consolidated grants.

**EPA Action on Application**

35.110 Time frame for EPA action.
35.111 Criteria for approving an application.
35.112 Factors considered in determining award amount.
35.113 Reimbursement for pre-award costs.

**Post-Award Requirements**

35.114 Amendments and other changes.
35.115 Evaluation of performance.
35.116 Direct implementation.
35.117 Unused funds.
35.118 Unexpended balances.

**Performance Partnership Grants**

35.130 Purpose of Performance Partnership Grants.
35.132 Requirements summary.
35.133 Programs eligible for inclusion.
35.134 Eligible recipients.
35.135 Activities eligible for funding.
5.136 Cost share requirements.
35.137 Application requirements.
35.138 Competitive grants.

**Air Pollution Control (Section 105)**

35.140 Purpose.
35.141 Definitions.
35.143 Allotment.
35.145 Maximum Federal share.
35.146 Maintenance of effort.
35.147 Minimum cost share for a Performance Partnership Grant.
35.148 Award limitations.

**Water Pollution Control (Section 106)**

35.160 Purpose.
35.161 Definition.
35.162 Basis for allotment.
35.165 Maintenance of effort.
35.168 Award limitations.

**Public Water System Supervision (Section 1443(a))**

35.170 Purpose.
35.172 Allotment.
35.175 Maximum Federal share.
35.178 Award limitations.

**Underground Water Source Protection (Section 1443(b))**

35.190 Purpose.
35.192 Basis for allotment.
35.195 Maximum Federal share.
35.198 Award limitation.

**Hazardous Waste Management (Section 3011(a))**

35.210 Purpose.
35.212 Basis for allotment.
35.215 Maximum Federal share.
35.218 Award limitation.

**Pesticide Cooperative Enforcement (Section 23(a)(1))**

35.230 Purpose.
35.232 Basis for allotment.
35.235 Maximum Federal share.

**Pesticide Applicator Certification and Training (Section 23(a)(2))**

35.240 Purpose.
35.242 Basis for allotment.
35.245 Maximum Federal share.

**Pesticide Program Implementation (Section 23(a)(1))**

35.250 Purpose.
35.251 Basis for allotment.
35.252 Maximum Federal share.

**Nonpoint Source Management (Section 319(h))**

35.260 Purpose.
35.265 Maximum Federal share.
35.266 Maintenance of effort.
35.268 Award limitations.

**Lead-Based Paint Program (Section 404(g))**

35.270 Purpose.
35.272 Funding coordination.

**State Indoor Radon Grants (Section 306)**

35.290 Purpose.
35.292 Basis for allotment.
35.295 Maximum Federal share.
35.298 Award limitations.

**Toxic Substances Compliance Monitoring (Section 28)**

35.310 Purpose.
35.312 Competitive process.
35.315 Maximum Federal share.
35.318 Award limitation.

**State Underground Storage Tanks (Section 2007(f)(2))**

35.330 Purpose.
35.332 Basis for allotment.
35.335 Maximum Federal share.

**Pollution Prevention Incentives for States (Section 6605)**

35.340 Purpose.
35.342 Competitive process.
35.343 Definitions.
35.345 Eligible applicants.
35.348 Award limitation.
35.349 Maximum Federal share.

**Water Quality Cooperative Agreements (Section 104(b)(3))**

35.360 Purpose.
35.362 Competitive process.
35.364 Maximum Federal share.

**Wetlands Development Grant Program (Section 104(b)(3))**

35.380 Purpose.
35.382 Competitive process.
35.385 Maximum Federal share.

**State Administration (Section 205(g))**

35.400 Purpose.
35.402 Allotment.
35.405 Maintenance of effort.
35.408 Award limitations.

**Water Quality Management Planning (Section 205(j)(2))**

35.410 Purpose.
35.412 Allotment.
35.415 Maximum Federal share.
35.418 Award limitations.

## Subpart A—Environmental Program Grants

**Authority:** 42 U.S.C. 7401 *et seq.*; 33 U.S.C. 1251 *et seq.*; 42 U.S.C. 300f *et seq.*; 42 U.S.C. 6901 *et seq.*; 7 U.S.C. 136 *et seq.*; 15 U.S.C. 2601 *et seq.*; 42 U.S.C. 13101 *et seq.*; Pub. L. 104–134, 110 Stat. 1321, 1321–299 (1996); Pub. L. 105–65, 111 Stat. 1344, 1373 (1997).

## All Grants—General

### § 35.100 Purpose of the subpart.

This subpart establishes administrative requirements for grants awarded to State, interstate, and local agencies and other entities for the environmental programs listed in § 35.101. This subpart supplements requirements in EPA's general grant regulations found at 40 CFR part 31. Sections 35.100–35.118 contain administrative requirements that apply to all environmental program grants included in this subpart. Sections 35.130 through 35.418 contain requirements that apply to specified environmental program grants. Many of these environmental programs also have programmatic and technical requirements that are published elsewhere in the Code of Federal Regulations.

### § 35.101 Environmental programs covered by the subpart.

(a) The requirements in this subpart apply to grants awarded for the following programs:

(1) Performance partnership grants (Omnibus Consolidated Rescissions and Appropriations Act of 1996, Public Law 104–134, 110 Stat. 1321, 1321–299 (1996) and Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1998, Public Law 105–65, 111 Stat. 1344, 1373 (1997)).

(2) Air pollution control (section 105 of the Clean Air Act).

(3) Water pollution control (section 106 of the Clean Water Act).

(4) Public water system supervision (section 1443(a) of the Safe Drinking Water Act).

(5) Underground water source protection (section 1443(b) of the Safe Drinking Water Act).

(6) Hazardous waste management (section 3011(a) of the Solid Waste Disposal Act).

(7) Pesticide cooperative enforcement (section 23(a)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act).

(8) Pesticide applicator certification and training (section 23(a)(2) of the Federal Insecticide, Fungicide, and Rodenticide Act).

(9) Pesticide program implementation (section 23(a)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act).

(10) Nonpoint source management (sections 205(j)(5) and 319(h) of the Clean Water Act).

(11) Lead-based paint program (section 404(g) of the Toxic Substances Control Act).

(12) State indoor radon grants (section 306 of the Toxic Substances Control Act).

(13) Toxic substances compliance monitoring (section 28 of the Toxic Substances Control Act).

(14) State underground storage tanks (section 2007(f)(2) of the Solid Waste Disposal Act).

(15) Pollution prevention incentives for states (section 6605 of the Pollution Prevention Act of 1990).

(16) Water quality cooperative agreements (section 104(b)(3) of the Clean Water Act).

(17) Wetlands development grants program (section 104(b)(3) of the Clean Water Act).

(18) State administration of construction grant, permit, and planning programs (section 205(g) of the Clean Water Act).

(19) Water quality management planning (section 205(j)(2) of the Clean Water Act).

(b) Unless otherwise prohibited by statute or regulation, the requirements in § 35.100 through § 35.118 of this subpart also apply to grants under environmental programs established after this subpart becomes effective if specified in Agency guidance for such programs.

### § 35.102 Definitions of terms.

Terms are defined as follows when they are used in this subpart.

*Allotment.* EPA's calculation of the funds that may be available to an eligible recipient for an environmental program grant. An allotment is not an entitlement.

*Budget period.* The period specified in the grant agreement during which the recipient may expend or obligate funds for the purposes specified in the agreement.

*Consolidated grant.* A single grant made to a recipient consolidating funds from more than one environmental grant program. After the award is made, recipients must account for grant funds in accordance with the funds' original environmental program sources. Consolidated grants are not Performance Partnership Grants.

*Environmental program.* A program for which EPA awards grants under the authorities listed in § 35.101. The grants are subject to the requirements of this subpart.

*National program guidance.* Guidance issued by EPA's National Program Managers for establishing and maintaining effective environmental programs. This guidance establishes national goals, objectives, and priorities as well as the core performance measures and other information to be used in monitoring progress. The guidance may also set out specific environmental strategies, criteria for evaluating programs, and other elements of program implementation.

*Outcome.* The environmental result, effect, or consequence that will occur from carrying out an environmental program or activity that is related to an

environmental or programmatic goal or objective. Outcomes must be quantitative, and they may not necessarily be achievable during a grant budget period. See ''output.''

*Output.* An environmental activity or effort and associated work products related to an environmental goal or objective that will be produced or provided over a period of time or by a specified date. Outputs may be quantitative or qualitative but must be measurable during a grant budget period. See ''outcome.''

*Performance Partnership Agreement.* A negotiated agreement signed by the EPA Regional Administrator and an appropriate official of a State agency and designated as a Performance Partnership Agreement. Such agreements typically set out jointly developed goals, objectives, and priorities; the strategies to be used in meeting them; the roles and responsibilities of the State and EPA; and the measures to be used in assessing progress. A Performance Partnership Agreement may be used as all or part of a work plan for a grant if it meets the requirements for a work plan set out in § 35.107.

*Performance Partnership Grant.* A single grant combining funds from more than one environmental program. A Performance Partnership Grant may provide for administrative savings or programmatic flexibility to direct grant resources where they are most needed to address public health and environmental priorities (see also § 35.130). Each Performance Partnership Grant has a single, integrated budget and recipients do not need to account for grant funds in accordance with the funds' original environmental program sources.

*Planning target.* The amount of funds that the Regional Administrator suggests a grant applicant consider in developing its application, including the work plan, for an environmental program.

*Regional supplemental guidance.* Guidance to environmental program applicants prepared by the Regional Administrator, based on the national program guidance and specific regional and applicant circumstances, for use in preparing a grant application.

*Work plan commitments.* The outputs and outcomes associated with each work plan component, as established in the grant agreement.

*Work plan component.* A negotiated set or group of work plan commitments established in the grant agreement. A work plan may have one or more work plan components.

## Preparing an Application

### § 35.104 Components of a complete application.

A complete application for an environmental program must:

(a) Meet the requirements in 40 CFR part 31, subpart B;

(b) Include a proposed work plan (§ 35.107); and

(c) Specify the environmental program and the amount of funds requested.

### § 35.105 Time frame for submitting an application.

An applicant should submit a complete application to EPA at least 60 days before the beginning of the proposed budget period.

### § 35.107 Work plans.

(a) *Bases for negotiating work plans.* The work plan is negotiated between the applicant and the Regional Administrator and reflects consideration of national, regional, and State environmental and programmatic needs and priorities.

(1) *Negotiation considerations.* In negotiating the work plan, the Regional Administrator and applicant will consider such factors as national program guidance; any regional supplemental guidance; goals, objectives, and priorities proposed by the applicant; other jointly identified needs or priorities; and the planning target.

(2) *National program guidance.* If an applicant proposes a work plan that differs significantly from the goals and objectives, priorities, or core performance measures in the national program guidance associated with the proposed activities, the Regional Administrator must consult with the appropriate National Program Manager before agreeing to the work plan.

(3) *Use of existing guidance.* An applicant should base the grant application on the national program guidance in place at the time the application is being prepared.

(b) *Work plan requirements.*

(1) The work plan is the basis for the management and evaluation of performance under the grant agreement.

(2) An approvable work plan must specify:

(i) The work plan components to be funded under the grant;

(ii) The estimated work years and funding amounts for each work plan component;

(iii) The work plan commitments for each work plan component and a time frame for their accomplishment;

(iv) A performance evaluation process and reporting schedule in accordance with § 35.115 of this subpart; and

(v) The roles and responsibilities of the recipient and EPA in carrying out the work plan commitments.

(3) The work plan must be consistent with applicable federal statutes, regulations, circulars, executive orders, and delegation or authorization agreements.

(c) *Performance Partnership Agreement as work plan.* An applicant may use a Performance Partnership Agreement or a portion of a Performance Partnership Agreement as the work plan for an environmental program grant if the portions of the Performance Partnership Agreement that can serve as all or part of the grant work plan:

(1) Are clearly identified and distinguished from other portions of the Performance Partnership Agreement; and

(2) Meet the requirements in § 35.107(b).

### § 35.108 Budget period.

The Regional Administrator and applicant may negotiate the length of the budget period for environmental program grants, subject to limitations in appropriations acts.

### § 35.109 Consolidated grants.

(a) Any applicant eligible to receive funds from more than one environmental program may submit an application for a consolidated grant. For consolidated grants, an applicant prepares a single budget and work plan covering all of the environmental programs included in the application. The consolidated budget must identify each environmental program to be included, the amount of each program's funds, and the extent to which each program's funds support each work plan component. Recipients of consolidated grants must account for grant funds in accordance with the funds' environmental program sources; funds included in a consolidated grant from a particular environmental program may be used only for that program.

(b) Insular areas that choose to consolidate environmental program grants may be exempted by the Regional Administrator from requirements of this subpart in accordance with 48 U.S.C. 1469a.

## EPA Action on Application

### § 35.110 Time frame for EPA action.

The Regional Administrator will review a complete application and either approve, conditionally approve, or disapprove it within 60 days of receipt. This period may be extended by

mutual agreement between EPA and the applicant. The Regional Administrator will award the funds for approved or conditionally approved applications when the funds are available.

**§ 35.111 Criteria for approving an application.**

(a) The Regional Administrator may approve an application if he or she determines, that:

(1) The application meets the requirements of this subpart and 40 CFR part 31;

(2) The application meets the requirements of all applicable federal statutes, regulations, circulars, executive orders, and delegation or authorization agreements;

(3) The proposed work plan complies with the requirements of § 35.107; and

(4) The achievement of the proposed work plan is feasible, considering such factors as the applicant's existing circumstances, past performance, program authority, organization, resources, and procedures.

(b) If the Regional Administrator finds the application does not satisfy the criteria in paragraph (a) of this section, the Regional Administrator may either:

(1) Conditionally approve the application if only minor changes are required, with grant conditions necessary to ensure compliance with the criteria, or

(2) Disapprove the application in writing.

**§ 35.112 Factors considered in determining award amount.**

(a) After approving an application under § 35.111, the Regional Administrator will consider such factors as the applicant's allotment, the extent to which the proposed work plan is consistent with EPA guidance and mutually agreed upon priorities, and the anticipated cost of the work plan relative to the proposed work plan components, to determine the amount of funds to be awarded.

(b) If the Regional Administrator finds the requested level of funding is not justified or that the work plan does not comply with the requirements of § 35.107, he or she will attempt to negotiate a resolution of the issues with the applicant before determining the award amount. The Regional Administrator may determine that the award amount will be less than the amount allotted or requested.

**§ 35.113 Reimbursement for pre-award costs.**

(a) Notwithstanding the requirements of 40 CFR 31.23(a) and OMB cost principles, EPA may reimburse recipients for pre-award costs incurred from the beginning of the budget period established in the grant agreement if such costs would have been allowable if incurred after the award and the recipients submitted complete grant applications before the beginning of the budget period. Such costs must be identified in the grant application EPA approves.

(b) The applicant incurs pre-award costs at its own risk. EPA is under no obligation to reimburse such costs unless they are included in an approved grant award.

**Post-Award Requirements**

**§ 35.114 Amendments and other changes.**

The provisions of 40 CFR 31.30 do not apply to environmental program grants awarded under this subpart. The following provisions govern amendments and other changes to grant work plans and budgets after the work plan is negotiated and a grant awarded.

(a) *Changes requiring prior approval.* Recipients may make significant changes in work plan commitments only after obtaining the Regional Administrator's prior written approval. The regional office, in consultation with the recipient, will document these revisions including budgeted amounts associated with the revisions.

(b) *Changes requiring approval.* Recipients must request, in writing, grant amendments for changes requiring increases in environmental program grant amounts and extensions of the budget period. Recipients may begin implementing a change before the amendment has been approved by EPA, but do so at their own risk. If EPA approves the change, EPA will issue a grant amendment. EPA will notify the recipient in writing if the change is disapproved.

(c) *Changes not requiring approval.* Other than those situations described in paragraphs (a) and (b) of this section, recipients do not need to obtain approval for changes, including changes in grant work plans, budgets, or other components of grant agreements, unless the Regional Administrator determines approval requirements should be imposed on a specific recipient for a specified period of time.

(d) *OMB cost principles.* The Regional Administrator may waive in writing approval requirements for specific recipients and costs contained in OMB cost principles.

(e) *Changes in consolidated grants.* Recipients of consolidated grants under § 35.109 may not transfer funds among environmental programs.

(f) *Subgrants.* Subgrantees must request required approvals in writing from the recipient and the recipient shall approve or disapprove the request in writing. A recipient will not approve any work plan or budget revision which is inconsistent with the purpose or terms and conditions of the federal grant to the recipient. If the revision requested by the subgrantee would result in a significant change to the recipient's approved grant which requires EPA approval, the recipient will obtain EPA's approval before approving the subgrantee's request.

**§ 35.115 Evaluation of performance.**

(a) *Joint evaluation process.* The applicant and the Regional Administrator will develop a process for jointly evaluating and reporting progress and accomplishments under the work plan. A description of the evaluation process and a reporting schedule must be included in the work plan. The schedule must require the recipient to report at least annually and must satisfy the requirements for progress reporting under 40 CFR 31.40(b).

(b) *Elements of the evaluation process.* The evaluation process must provide for:

(1) A discussion of accomplishments as measured against work plan commitments;

(2) A discussion of the cumulative effectiveness of the work performed under all work plan components;

(3) A discussion of existing and potential problem areas; and

(4) Suggestions for improvement, including, where feasible, schedules for making improvements.

(c) *Resolution of issues.* If the joint evaluation reveals that the recipient has not made sufficient progress under the work plan, the Regional Administrator and the recipient will negotiate a resolution that addresses the issues. If the issues cannot be resolved through negotiation, the Regional Administrator may take appropriate measures under 40 CFR 31.43. The recipient may request review of the Regional Administrator's decision under the dispute processes in 40 CFR 31.70.

(d) *Evaluation reports.* The Regional Administrator will ensure that the required evaluations are performed according to the negotiated schedule and that copies of evaluation reports are placed in the official files and provided to the recipient.

**§ 35.116 Direct implementation.**

If funds remain in a State's allotment for an environmental program grant either after grants for that environmental program have been made or because no grant was made, the Regional Administrator may, subject to any

limitations contained in appropriation acts, use all or part of the funds to support a federal program required by law in the State in the absence of an acceptable State program.

**§ 35.117 Unused funds.**

If funds for an environmental program grant remain in a State's allotment either after an initial environmental program grant has been made or because no grant was made, and the Regional Administrator does not use the funds under § 35.116 of this subpart, the Regional Administrator may award the funds to any eligible recipient in the region, including the same State or an Indian Tribe or Tribal consortium, for the same environmental program or for a Performance Partnership Grant, subject to any limitations in appropriation acts.

**§ 35.118 Unexpended balances.**

Subject to any relevant provisions of law, if a recipient's Financial Status Report shows unexpended balances, the Regional Administrator will deobligate the unexpended balances and make them available, to either the same recipient in the same region or other eligible recipients, including Indian Tribes and Tribal Consortia, for environmental program grants.

## Performance Partnership Grants

**§ 35.130 Purpose of Performance Partnership Grants.**

(a) *Purpose of section.* Sections 35.130 through 35.138 govern Performance Partnership Grants to States and interstate agencies authorized in the Omnibus Consolidated Rescissions and Appropriations Act of 1996, (Pub. L. 104–134, 110 Stat. 1321, 1321–299 (1996)) and the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1998, (Pub. L. 105–65, 111 Stat. 1344, 1373 (1997).

(b) *Purpose of program.* Performance Partnership Grants enable States and interstate agencies to combine funds from more than one environmental program grant into a single grant with a single budget. Recipients do not need to account for Performance Partnership Grant funds in accordance with the funds' original environmental program sources; they need only account for total Performance Partnership Grant expenditures subject to the requirements of this subpart. The Performance Partnership Grant program is designed to:

(1) Strengthen partnerships between EPA and State and interstate agencies through joint planning and priority-setting and better deployment of resources;

(2) Provide State and interstate agencies with flexibility to direct resources where they are most needed to address environmental and public health priorities;

(3) Link program activities more effectively with environmental and public health goals and program outcomes;

(4) Foster development and implementation of innovative approaches such as pollution prevention, ecosystem management, and community-based environmental protection strategies; and

(5) Provide savings by streamlining administrative requirements.

**§ 35.132 Requirements summary.**

Applicants and recipients of Performance Partnership Grants must meet:

(a) The requirements in §§ 35.100 to 35.118, which apply to all environmental program grants, including Performance Partnership Grants; and

(b) The requirements in §§ 35.130 to 35.138, which apply only to Performance Partnership Grants.

**§ 35.133 Programs eligible for inclusion.**

(a) *Eligible programs.* Except as provided in paragraph (b) of this section, the environmental programs eligible, in accordance with appropriation acts, for inclusion in a Performance Partnership Grant are listed in § 35.101(a)(2) through (17). (Funds available from the section 205(g) State Administration Grants program (§ 35.100(b)(18)) and the Water Quality Management Planning Grant program (§ 35.100(b)(19)) may not be included in Performance Partnership Grants.)

(b) *Changes in eligible programs.* The Administrator may, in guidance or regulation, describe subsequent additions, deletions, or changes to the list of environmental programs eligible for inclusion in Performance Partnership Grants.

**§ 35.134 Eligible recipients.**

(a) *Eligible agencies.* All State agencies (including environmental, health, agriculture, and other agencies) and interstate agencies eligible to receive funds from more than one environmental program may receive Performance Partnership Grants.

(b) *Designated agency.* A State agency must be designated by a Governor, State legislature, or other authorized State process to receive grants under each of the environmental programs to be combined in the Performance Partnership Grant. If it is not the designated agency for a particular grant program to be included in the Performance Partnership Grant, the State agency must have an agreement with the State agency that does have the designation regarding how the funds will be shared between the agencies.

(c) *Programmatic requirements.* A State or interstate agency must meet the requirements for award of each of the environmental programs from which funds are combined in the agency's Performance Partnership Grant, except the requirements at §§ 35.268(b) and (c), 35.272, and 35.298 (c),(d),(e), and (g). These requirements can be found in this regulation beginning at § 35.140.

**§ 35.135 Activities eligible for funding.**

(a) A recipient may use a Performance Partnership Grant, subject to the requirements of paragraph (c) of this section, to fund any activity that is eligible for funding under at least one of the environmental programs from which funds are combined into the grant.

(b) A recipient may also use a Performance Partnership Grant to fund multi-media activities that are eligible in accordance with paragraph (a) of this section and have been agreed to by the Regional Administrator. Such activities may include multi-media permitting and enforcement and pollution prevention, ecosystem management, community-based environmental protection, and other innovative approaches.

(c) A recipient may not use a Performance Partnership Grant to fund activities eligible only under a specific environmental program grant unless some or all of the recipient's allotted funds for that program have been included in the Performance Partnership Grant.

**§ 35.136 Cost share requirements.**

(a) An applicant for a Performance Partnership Grant must provide a non-federal cost share that is not less than the sum of the minimum non-federal cost share required under each of the environmental programs that are combined in the Performance Partnership Grant. Cost share requirements for the individual environmental programs are described in §§ 35.140 to 35.418.

(b) When an environmental program included in the Performance Partnership Grant has both a matching and maintenance of effort requirement, the greater of the two amounts will be used to calculate the minimum cost share attributed to that environmental program.

**§ 35.137 Application requirements.**

(a) An application for a Performance Partnership Grant must contain:

(1) A list of the environmental programs and the amount of funds from each program to be combined in the Performance Partnership Grant;

(2) A consolidated budget;

(3) A consolidated work plan that addresses each program being combined in the grant and that meets the requirements of § 35.107; and,

(4) A rationale, commensurate with the extent of any programmatic flexibility (i.e., increased effort in some programs and decreased effort in others) indicated in the work plan, that explains the basis for the applicant's priorities, the expected environmental or other benefits to be achieved, and the anticipated impact on any environmental programs or program areas proposed for reduced effort.

(b) The applicant and the Regional Administrator will negotiate regarding the information necessary to support the rationale for programmatic flexibility required in paragraph (a)(4) of this section. The rationale may be supported by information from a variety of sources, including a Performance Partnership Agreement or comparable negotiated document, the evaluation report required in § 35.125, and other environmental and programmatic data sources.

(c) A State agency seeking programmatic flexibility is encouraged to include a description of efforts to involve the public in developing the State agency's priorities.

**§ 35.138 Competitive grants.**

(a) Some environmental program grants are awarded through a competitive process. An applicant and the Regional Administrator may agree to add funds available for a competitive grant to a Performance Partnership Grant. If this is done, the work plan commitments that would have been included in the competitive grant must be included in the Performance Partnership Grant work plan. After the funds have been added to the Performance Partnership Grant, the recipient does not need to account for these funds in accordance with the funds' original environmental program source.

(b) If the projected completion date for competitive grant work plan commitments added to a Performance Partnership Grant is after the end of the Performance Partnership Grant budget period, the Regional Administrator and the applicant will agree in writing as to how the work plan commitments will be carried over into future work plans.

## Air Pollution Control (Section 105)

**§ 35.140 Purpose.**

(a) *Purpose of section.* Sections 35.140 through 35.148 govern Air Pollution Control Grants to State, local, interstate, or intermunicipal air pollution control agencies (as defined in section 302(b) of the Clean Air Act) authorized under section 105 of the Act.

(b) *Purpose of program.* Air Pollution Control Grants are awarded to administer programs that prevent and control air pollution or implement national ambient air quality standards.

(c) *Program regulations.* Refer to 40 CFR parts 49, 50, 51, 52, 58, 60, 61, 62, and 81 for associated program regulations.

**§ 35.141 Definitions.**

In addition to the definitions in § 35.102, the following definitions apply to the Clean Air Act's section 105 grant program:

*Implementing* means any activity related to planning, developing, establishing, carrying-out, improving, or maintaining programs for the prevention and control of air pollution or implementation of national primary and secondary ambient air quality standards.

*Nonrecurrent expenditures* are those expenditures which are shown by the recipient to be of a nonrepetitive, unusual, or singular nature such as would not reasonably be expected to recur in the foreseeable future. Costs categorized as nonrecurrent must be approved in the grant agreement or an amendment thereto.

*Recurrent expenditures* are those expenses associated with the activities of a continuing environmental program. All expenditures are considered recurrent unless justified by the applicant as nonrecurrent and approved as such in the grant award or an amendment thereto.

**§ 35.143 Allotment.**

(a) The Administrator allots air pollution control funds under section 105 of the Clean Air Act based on a number of factors, including:

(1) Population;

(2) The extent of actual or potential air pollution problems; and

(3) The financial need of each agency.

(b) The Regional Administrator shall allot to a State not less than one-half of one percent nor more than 10 percent of the annual section 105 grant appropriation.

(c) The Administrator may award funds on a competitive basis.

**§ 35.145 Maximum Federal share.**

(a) The Regional Administrator may provide air pollution control agencies, as defined in section 302(b) of the Clean Air Act, up to three-fifths of the approved costs of implementing programs for the prevention and control of air pollution or implementing national primary and secondary ambient air quality standards.

(b) Subject to the conditions set forth below, the Regional Administrator may, at the request of the Governor of a State or the Governor's designee, or in the case of a local jurisdiction, the authorized local official, waive, for a one year period, all or a portion of the cost-sharing requirement of paragraph (a) of this section. The Regional Administrator may renew the waiver for no more than two years so long as the total waiver period does not exceed three years from the approval date of a State's permit program required under section 502 of the Clean Air Act.

(1) The waiver may be approved on a case-by-case basis and only when a State or local government's non-federal contribution is reduced below the required two-fifths minimum as a result of the redirection of its non-federal air resources to meet the requirements of section 502(b) of the Act.

(2) In applying for a waiver, the Governor or the Governor's designee, or in the case of a local jurisdiction, the authorized local official, must:

(i) Describe the extent of fiscal and programmatic impact on the agency's section 105 program as a result of the transfer of non-federal resources to support the program approved by EPA under section 502(b) of the Clean Air Act;

(ii) Provide documentation of the amount of the cost-sharing shortfall and the programmatic activities that would not be able to be carried out if the section 105 grant is reduced or not awarded as a result of a State or local air pollution control agency's inability to meet the cost-sharing requirements;

(iii) Assure that there is no source of funding that may reasonably be used to meet the cost-sharing requirement for the affected grant budget period; and

(iv) Assure that during the section 105 grant period the non-federal share of the program costs will not be reduced in an amount greater than that authorized by the waiver.

**§ 35.146 Maintenance of effort.**

(a) To receive funds under section 105, an agency must expend annually, for recurrent section 105 program expenditures, an amount of non-federal funds at least equal to such expenditures during the preceding fiscal year.

(b) In order to award grants in a timely manner each fiscal year, the

Regional Administrator shall compare an agency's proposed expenditure level, as detailed in the agency's grant application, to that agency's expenditure level in the second preceding fiscal year.

(c) The Regional Administrator may grant an exception to 40 CFR 35.146(a) if, after notice and opportunity for a public hearing, the Regional Administrator determines that the reduction is attributable to a non-selective reduction of the programs of all executive branch agencies of the applicable unit of government.

(d) The Regional Administrator will not award section 105 funds unless the applicant provides assurance that the grant will not supplant non-federal funds that would otherwise be available for maintaining the section 105 program.

#### § 35.147 Minimum cost share for a Performance Partnership Grant.

(a)(1) To calculate the cost share for a Performance Partnership Grant (see §§ 35.130 through 35.138) that includes section 105 funds, the minimum cost share contribution for the section 105 program will be the match requirement set forth in § 35.145 or the maintenance of effort established under § 35.146, whichever is greater.

(2) The maintenance of effort established under § 35.146 of this subpart in the first year that the section 105 grant is included in a Performance Partnership Grant will be the maintenance of effort amount used to calculate the cost share in subsequent years in which the section 105 funds are included in a Performance Partnership Grant.

(b) If an air pollution control agency includes section 105 air program funding in a Performance Partnership Grant and subsequently withdraws that program from the grant, the maintenance of effort amount for the section 105 grant in the first year after the grant is withdrawn will be equal to the amount required in the year before the agency included the section 105 program in the Performance Partnership Grant.

(c) The Regional Administrator may approve an exception from paragraph (b) of this section if the Regional Administrator determines that exceptional circumstances justify a reduction in the maintenance of effort, including when an air pollution control agency reduces section 105 funding as part of a non-selective reduction of the programs of all executive branch agencies of the applicable unit of government.

#### § 35.148 Award limitations.

(a) The Regional Administrator will not award section 105 funds to an interstate or intermunicipal agency:

(1) That does not provide assurance that it can develop a comprehensive plan for the air quality control region which includes representation of appropriate State, interstate, local, Tribal, and international interests; and

(2) Without consulting with the appropriate official designated by the Governor or Governors of the State or States affected or the appropriate official of any affected Indian Tribe or Tribes.

(b) The Regional Administrator will not disapprove an application for or terminate or annul a section 105 grant without prior notice and opportunity for a public hearing in the affected State or States.

### Water Pollution Control (Section 106)

#### § 35.160 Purpose.

(a) *Purpose of section.* Sections 35.160 through 35.168 govern Water Pollution Control Grants to State and interstate agencies (as defined in section 502 of the Clean Water Act) authorized under section 106 of the Clean Water Act.

(b) *Purpose of program.* Water Pollution Control Grants are awarded to assist in administering programs for the prevention, reduction, and elimination of water pollution, including programs for the development and implementation of ground-water protection strategies. Some of these activities may also be eligible for funding under sections 104(b)(3) (Water Quality Cooperative Agreements and Wetlands Development Grants), 205(j)(2) (Water Quality Management Planning), and section 205(g) (State Administration Grants) of the Clean Water Act. (See §§ 35.160, 35.360, 35.380, 35.400, and 35.410.)

(c) *Associated program requirements.* Program requirements for water quality planning and management activities are provided in 40 CFR part 130.

#### § 35.161 Definition.

*Recurrent expenditures* are those expenditures associated with the activities of a continuing environmental program. All expenditures, except those for equipment purchases of $5,000 or more, are considered recurrent unless justified by the applicant as nonrecurrent and approved as such in the grant award or an amendment thereto.

#### § 35.162 Basis for allotment.

The Administrator allots funds for Water Pollution Control Grants to States and interstate agencies based on the extent of the pollution problems in the respective States.

#### § 35.165 Maintenance of effort.

To receive section 106 funds, a State or interstate agency must expend annually for recurrent section 106 program expenditures an amount of non-federal funds at least equal to expenditures during the fiscal year ending June 30, 1971.

#### § 35.168 Award limitations.

(a) The Regional Administrator may award section 106 funds to a State only if:

(1) The State monitors and compiles, analyzes, and reports water quality data as described in section 106(e)(1) of the Clean Water Act;

(2) The State has authority comparable to that in section 504 of the Clean Water Act and adequate contingency plans to implement such authority;

(3) There is no federally assumed enforcement as defined in section 309(a)(2) of the Clean Water Act in effect with respect to the State agency; and

(4) The State's work plan shows that the activities to be funded are coordinated, as appropriate, with activities proposed for funding under sections 205 (g) and (j) of the Clean Water Act.

(5) The State filed with the Administrator within one hundred and twenty days after October 18, 1972, a summary report of the current status of the State pollution control program, including the criteria used by the State in determining priority of treatment works.

(b) The Regional Administrator may award section 106 funds to an interstate agency only if:

(1) The interstate agency filed with the Administrator within one hundred and twenty days after October 18, 1972, a summary report of the current status of the State pollution control program, including the criteria used by the State in determining priority of treatment works.

(2) There is no federally assumed enforcement as defined in section 309(a)(2) of the Clean Water Act in effect with respect to the interstate agency.

### Public Water System Supervision (Section 1443(a))

#### § 35.170 Purpose.

(a) *Purpose of section.* Sections 35.170 through 35.178 govern Public Water System Supervision Grants to States (as defined in section 1401(13)(A) of the

Safe Drinking Water Act) authorized under section 1443(a) of the Act.

(b) *Purpose of program.* Public Water System Supervision Grants are awarded to carry out public water system supervision programs including implementation and enforcement of the requirements of the Act that apply to public water systems.

(c) *Associated program regulations.* Associated program regulations are found in 40 CFR parts 141, 142, and 143.

**§ 35.172 Allotment.**

(a) *Basis for allotment.* The Administrator allots funds for grants to support States' Public Water System Supervision programs based on each State's population, geographic area, numbers of community and non-community water systems, and other relevant factors.

(b) *Allotment limitation.* No State, except American Samoa, Guam, the Virgin Islands, and the Commonwealth of the Northern Mariana Islands, shall be allotted less than $334,500 (which is one percent of the FY 1989 appropriation).

**§ 35.175 Maximum Federal share.**

The Regional Administrator may provide a maximum of 75 percent of the State's approved work plan costs.

**§ 35.178 Award limitations.**

(a) *Initial Grants:* The Regional Administrator will not make an initial award unless the applicant has an approved Public Water System Supervision program or agrees to establish an approvable program within one year of the initial award.

(b) *Subsequent Grants:* The Regional Administrator will not award a grant to a State after the initial award unless the applicant has assumed and maintained primary enforcement responsibility for the State's Public Water System Supervision program.

**Underground Water Source Protection (Section 1443(b))**

**§ 35.190 Purpose.**

(a) *Purpose of section.* Sections 35.190 through 35.198 govern Underground Water Source Protection Grants to States (as defined in section 1401(13)(A) of the Safe Drinking Water Act) authorized under section 1443(b) of the Act.

(b) *Purpose of program.* The Underground Water Source Protection Grants are awarded to carry out underground water source protection programs.

(c) *Associated program regulations.* Associated program regulations are found in 40 CFR parts 124, 144, 145, 146, and 147.

**§ 35.192 Basis for allotment.**

The Administrator allots funds for grants to support States' underground water source protection programs based on such factors as population, geographic area, extent of underground injection practices, and other relevant factors.

**§ 35.195 Maximum Federal share.**

The Regional Administrator may provide a maximum of seventy-five percent of a State's approved work plan costs.

**§ 35.198 Award limitation.**

The Regional Administrator will only award section 1443(b) funds to States that have primary enforcement responsibility for the underground water source protection program.

**Hazardous Waste Management (Section 3011(a))**

**§ 35.210 Purpose.**

(a) *Purpose of section.* Sections 35.210 through 35.218 govern Hazardous Waste Management Grants to States (as defined in section 1004 of the Solid Waste Disposal Act) under section 3011(a) of the Act.

(b) *Purpose of program.* Hazardous Waste Management Grants are awarded to assist States in the development and implementation of authorized State hazardous waste management programs.

(c) *Associated program regulations.* Associated program regulations are at 40 CFR part 124, subparts B, E, and F; 40 CFR parts 260 through 266; 40 CFR parts 268 through 273; and 40 CFR part 279.

**§ 35.212 Basis for allotment.**

The Administrator allots funds for Hazardous Waste Management Grants under section 3011(b) of the Solid Waste Disposal Act based on factors including:

(a) The extent to which hazardous waste is generated, transported, treated, stored, and disposed of in the State;

(b) The extent to which human beings and the environment in the State are exposed to such waste, and;

(c) Other factors the Administrator deems appropriate.

**§ 35.215 Maximum Federal share.**

The Regional Administrator may provide up to 75 percent of the approved work plan costs.

**§ 35.218 Award limitation.**

The Regional Administrator will not award Hazardous Waste Management Grants to a State with interim or final hazardous waste authorization unless the applicant is the lead agency designated in the authorization agreement.

**Pesticide Cooperative Enforcement (Section 23(a)(1))**

**§ 35.230 Purpose.**

(a) *Purpose of section.* Sections 35.230 through 35.235 govern Pesticide Enforcement Cooperative Agreements to States (as defined in section 2 of Federal Insecticide, Fungicide, and Rodenticide Act) under section 23(a)(1) of the Act.

(b) *Purpose of program.* Pesticides Enforcement Cooperative Agreements are awarded to assist States to implement pesticide enforcement programs.

(c) *Program regulations.* Associated program regulations are at 40 CFR parts 150 through 189 and 19 CFR part 12.

**§ 35.232 Basis for allotment.**

(a) *Factors for FIFRA enforcement program funding.* The factors considered in allotment of funds for enforcement of FIFRA are:

(1) The State's population,

(2) The number of pesticide-producing establishments,

(3) The numbers of certified private and commercial pesticide applicators,

(4) The number of farms and their acreage, and

(5) As appropriate, the State's potential farm worker protection concerns.

(b) *Final allotments.* Final allotments are negotiated between each State and the appropriate Regional Administrator.

**§ 35.235 Maximum Federal share.**

The Regional Administrator may provide up to 100 percent of the approved work plan costs.

**Pesticide Applicator Certification and Training (Section 23(a)(2))**

**§ 35.240 Purpose.**

(a) *Purpose of section.* Sections 35.240 through 35.245 govern Pesticide Applicator Certification and Training Grants to States (as defined in section 2 of Federal Insecticide, Fungicide, and Rodenticide Act) under section 23(a)(2) of the Act.

(b) *Purpose of program.* Pesticide Applicator Certification and Training Grants are awarded to train and certify restricted use pesticide applicators.

(c) *Associated program regulations.* Associated program regulations are found in 40 CFR parts 162, 170, and 171.

**§ 35.242 Basis for allotment.**

The Regional Administrator considers two factors in allotting pesticides

applicator certification and training funds:

(a) The number of farms in each State; and

(b) The numbers of private and commercial applicators requiring certification and recertification in each State.

**§ 35.245 Maximum Federal share.**

The Regional Administrator may provide up to 50 percent of the approved work plan costs.

**Pesticide Program Implementation (Section 23(a)(1))**

**§ 35.250 Purpose.**

(a) *Purpose of section.* Sections 35.250 through 35.259 govern Pesticide Program Implementation Cooperative Agreements to States (as defined in section 2 of Federal Insecticide, Fungicide, and Rodenticide Act) under section 23(a)(1) of the Act.

(b) *Purpose of program.* Pesticide Program Implementation Cooperative Agreements are awarded to assist States to develop and implement pesticide programs, including programs that protect farm workers, groundwater, and endangered species from pesticide risks and for other pesticide management programs designated by the Administrator.

(c) *Program regulations.* Associated program regulations are at 40 CFR parts 150 through 189 and 19 CFR part 12.

**§ 35.251 Basis for allotment.**

(a) *Factors for pesticide program implementation funding.* The factors considered in allotment of funds for pesticide program implementation are based upon potential ground water, endangered species, and worker protection concerns in each State relative to other States and on other factors the Administrator deems appropriate for these or other pesticide program implementation activities.

(b) *Final allotments.* Final allotments are negotiated between each State and the appropriate Regional Administrator.

**§ 35.252 Maximum Federal share.**

The Regional Administrator may provide up to 100 percent of the approved work plan costs.

**Nonpoint Source Management (Section 319(h))**

**§ 35.260 Purpose.**

(a) *Purpose of section.* Sections 35.260 through 35.268 govern Nonpoint Source Management Grants to States (as defined in section 502 of the Clean Water Act) authorized under section 319 of the Act.

(b) *Purpose of program.* Nonpoint Source Management Grants may be awarded for the implementation of EPA-approved nonpoint source management programs, including ground-water quality protection activities, that will advance the implementation of a comprehensive approved nonpoint source management program.

**§ 35.265 Maximum Federal share.**

The Regional Administrator may provide up to 60 percent of the approved work plan costs in any fiscal year. The non-federal share of costs must be provided from non-federal sources.

**§ 35.266 Maintenance of effort.**

To receive section 319 funds in any fiscal year, a State must agree to maintain its aggregate expenditures from all other sources for programs for controlling nonpoint pollution and improving the quality of the State's waters at or above the average level of such expenditures in Fiscal Years 1985 and 1986.

**§ 35.268 Award limitations.**

The following limitations apply to funds appropriated and awarded under section 319(h) of the Act in any fiscal year.

(a) *Award amount.* The Regional Administrator will award no more than 15 percent of the amount appropriated to carry out section 319(h) of the Act to any one State. This amount includes any grants to any local public agency or organization with authority to control pollution from nonpoint sources in any area of the State.

(b) *Financial assistance to persons.* States may use funds for financial assistance to persons only to the extent that such assistance is related to the cost of demonstration projects.

(c) *Administrative costs.* Administrative costs in the form of salaries, overhead, or indirect costs for services provided and charged against activities and programs carried out with these funds shall not exceed 10 percent of the funds the State receives in any fiscal year. The cost of implementing enforcement and regulatory activities, education, training, technical assistance, demonstration projects, and technology transfer programs are not subject to this limitation.

(d) *Requirements.* The Regional Administrator will not award section 319(h) funds to a State unless:

(1) *Approved assessment report.* EPA has approved the State's assessment report on nonpoint sources, prepared in accordance with section 319(a) of the Act;

(2) *Approved State management program.* EPA has approved the State's management program for nonpoint sources, prepared in accordance with section 319(b) of the Act;

(3) *Progress on reducing pollutant loadings.* The Regional Administrator determines that the State made satisfactory progress in the preceding fiscal year in meeting its schedule for achieving implementation of best management practices to reduce pollutant loadings from categories of nonpoint sources, or particular nonpoint sources, designated in the State's management program. The State must have developed this schedule in accordance with section 319(b)(2)(C) of the Act;

(4) *Activity and output descriptions.* The work plan briefly describes each significant category of nonpoint source activity and the work plan commitments to be produced for each category; and

*(5) Significant watershed projects.* For watershed projects whose costs exceed $50,000, the work plan also contains:

(i) A brief synopsis of the watershed implementation plan outlining the problem(s) to be addressed;

(ii) The project's goals and objectives; and

(iii) The performance measures or environmental indicators that will be used to evaluate the results of the project.

**Lead-Based Paint Program (Section 404(g))**

**§ 35.270 Purpose.**

(a) *Purpose of section.* Sections 35.270 through 35.278 govern Lead-Based Paint Program Grants to States (as defined in section 3 of the Toxic Substances Control Act), under section 404(g) of the Act.

(b) *Purpose of program.* Lead-Based Paint Program Grants are awarded to develop and carry out authorized programs to ensure that individuals employed in lead-based paint activities are properly trained; that training programs are accredited; and that contractors employed in such activities are certified.

(c) *Associated program regulations.* Associated program regulations are found in 40 CFR part 745.

**§ 35.272 Funding coordination.**

Recipients must use the lead-based paint program funding in a way that complements any related assistance they receive from other federal sources for lead-based paint activities.

**State Indoor Radon Grants (Section 306)**

**§ 35.290 Purpose.**

(a) *Purpose of section.* Sections 35.290 through 35.298 govern Indoor Radon

Grants to States (as defined in section 3 of the Toxic Substances Control Act, which include territories and the District of Columbia) under section 306 of the Toxic Substances Control Act.

(b) *Purpose of program.* (1) State Indoor Radon Grants are awarded to assist States with the development and implementation of programs that assess and mitigate radon and that aim at reducing radon health risks. State Indoor Radon Grant funds may be used for the following eligible activities:

(i) Survey of radon levels, including special surveys of geographic areas or classes of buildings (such as public buildings, school buildings, high-risk residential construction types);

(ii) Development of public information and education materials concerning radon assessment, mitigation, and control programs;

(iii) Implementation of programs to control radon on existing and new structures;

(iv) Purchase by the State of radon measurement equipment and devices;

(v) Purchase and maintenance of analytical equipment connected to radon measurement and analysis, including costs of calibration of such equipment;

(vi) Payment of costs of Environmental Protection Agency-approved training programs related to radon for permanent State or local employees;

(vii) Payment of general overhead and program administration costs in accordance with § 35.298(d);

(viii) Development of a data storage and management system for information concerning radon occurrence, levels, and programs;

(ix) Payment of costs of demonstration of radon mitigation methods and technologies as approved by EPA, including State participation in the Environmental Protection Agency Home Evaluation Program; and

(x) A toll-free radon hotline to provide information and technical assistance.

(2) States may use grant funds to assist local governments in implementation of activities eligible for assistance under paragraphs (b)(1)(ii), (iii), and (vi) of this section.

(3) In implementing paragraphs (b)(1)(iv) and (ix) of this section, a State should make every effort, consistent with the goals and successful operation of the State radon program, to give preference to low-income persons.

(4) Recipients may not use State Radon Program Grant funds to cover the costs of proficiency rating programs under section 305(a)(2) of the Act.

**§ 35.292 Basis for allotment.**

(a) The Regional Administrator will allot State Indoor Radon Grant funds based on the criteria in EPA Guidance in accordance with section 306(d) and (e) of the Toxic Substances Control Act.

(b) No State may receive a State Indoor Radon Grant in excess of 10 percent of the total appropriated amount made available each fiscal year.

**§ 35.295 Maximum Federal share.**

The Regional Administrator may provide State agencies up to 50 percent of the approved costs for the development and implementation of radon program activities.

**§ 35.298 Award limitations.**

(a) The Regional Administrator shall not include State Indoor Radon funds in a Performance Partnership Grant awarded to another State Agency without consulting with the State Agency which has the primary responsibility for radon programs as designated by the Governor of the affected State.

(b) No grant may be made in any fiscal year to a State which in the preceding fiscal year did not satisfactorily implement the activities funded by the grant in the preceding fiscal year.

(c) The costs of radon measurement equipment or devices (see § 35.290(b)(1)(iv)) and demonstration of radon mitigation, methods, and technologies (see § 35.290(b)(1)(ix)) shall not, in the aggregate, exceed 50 percent of a State's radon grant award in a fiscal year.

(d) The costs of general overhead and program administration (see § 35.290(b)(1)(vii)) of a State Indoor Radon grant shall not exceed 25 percent of the amount of a State's Indoor Radon Grant in a fiscal year.

(e) A State may use funds for financial assistance to persons only to the extent such assistance is related to demonstration projects or the purchase and analysis of radon measurement devices.

(f) Recipients must provide the Regional Administrator all radon-related information generated in its grant supported activities, including the results of radon surveys, mitigation demonstration projects, and risk communication studies.

(g) Recipients must maintain and make available to the public, a list of firms and individuals in the State that have received a passing rating under the EPA proficiency rating program under section 305(a)(2) of the Act.

**Toxic Substances Compliance Monitoring (Section 28)**

**§ 35.310 Purpose.**

(a) *Purpose of section.* Sections 35.310 through 35.315 govern Toxic Substances Compliance Monitoring Grants to States (as defined in section 3(13) of the Toxic Substances Control Act) under section 28(a) of the Act.

(b) *Purpose of program.* Toxic Substances Compliance Monitoring Grants are awarded to establish and operate compliance monitoring programs to prevent or eliminate unreasonable risks to health or the environment associated with chemical substances or mixtures within the States with respect to which the Administrator is unable or not likely to take action for their prevention or elimination.

(c) *Associated program regulations.* Associated program regulations are at 40 CFR parts 700 through 799.

**§ 35.312 Competitive process.**

EPA will award Toxic Substances Control Act Compliance Monitoring grant funds to States through a competitive process in accordance with national program guidance.

**§ 35.315 Maximum Federal share.**

The Regional Administrator may provide up to 75 percent of the approved work plan costs.

**§ 35.318 Award limitation.**

If the toxic substances compliance monitoring grant funds are included in a Performance Partnership Grant, the toxic substances compliance monitoring work plan commitments must be included in the Performance Partnership Grant work plan.

**State Underground Storage Tanks (Section 2007(f)(2))**

**§ 35.330 Purpose.**

(a) *Purpose of section.* Sections 35.330 through 35.335 govern Underground Storage Tank Grants to States (as defined in section 1004 of the Solid Waste Disposal Act) under section 2007(f)(2) of the Act.

(b) *Purpose of program.* State Underground Storage Tank Grants are awarded to States to develop and implement a State underground storage tank release detection, prevention, and corrective action program under Subtitle I of the Resource Conservation and Recovery Act.

(c) *Associated program regulations.* Associated program regulations are found in 40 CFR parts 280 through 282.

**§ 35.332 Basis for allotment.**

The Administrator allots State Underground Storage Tank Grant funds

to each regional office. Regional offices award funds to States based on their programmatic needs and applicable EPA guidance.

**§ 35.335 Maximum Federal share.**

The Regional Administrator may provide up to 75 percent of the approved work plan costs.

**Pollution Prevention Incentives for States (Section 6605)**

**§ 35.340 Purpose.**

(a) *Purpose of section.* Sections 35.340 through 35.349 govern Pollution Prevention Incentive for States Grants under section 6605 of the Pollution Prevention Act.

(b) *Purpose of program.* Pollution Prevention Incentives for States Grants are awarded to promote the use of source reduction techniques by businesses.

**§ 35.342 Competitive Process.**

EPA regions award Pollution Prevention Incentives for States Grants to State programs through a competitive process in accordance with EPA guidance. When evaluating State applications, EPA must consider, among other criteria, whether the proposed State program would:

(a) Make specific technical assistance available to businesses seeking information about source reduction opportunities, including funding for experts to provide onsite technical advice to businesses seeking assistance in the development of source reduction plans;

(b) Target assistance to businesses for whom lack of information is an impediment to source reduction; and

(c) Provide training in source reduction techniques. Such training may be provided through local engineering schools or other appropriate means.

**§ 35.343 Definitions.**

In addition to the definitions in § 35.102, the following definition, Pollution prevention/Source reduction, applies to the Pollution Prevention Incentives for States Grants program and to §§ 35.340 through 35.349:

(a) Pollution prevention/source reduction is any practice that:

(1) Reduces the amount of any hazardous substance, pollutant, or contaminant entering any waste stream or otherwise released into the environment (including fugitive emissions) prior to recycling, treatment, or disposal;

(2) Reduces the hazards to public health and the environment associated with the release of such substances, pollutants, or contaminants; or

(3) Reduces or eliminates the creation of pollutants through

(i) Increased efficiency in the use of raw materials, energy, water, or other resources; or

(ii) Protection of natural resources by conservation.

(b) Pollution prevention/source reduction does not include any practice which alters the physical, chemical, or biological characteristics or the volume of a hazardous substance, pollutant, or contaminant through a process or activity which itself is not integral to and necessary for the production of a product or the providing of a service.

**§ 35.345 Eligible applicants.**

Applicants eligible for funding under this grant program include any agency or instrumentality, including State universities, of the 50 States, the District of Columbia, the U.S. Virgin Islands, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

**§ 35.348 Award limitation.**

If the Pollution Prevention Incentives for States Grants are included in a Performance Partnership Grant, the work plan commitments must be included in the Performance Partnership Grant work plan (see § 35.138).

**§ 35.349 Maximum Federal share.**

The Federal share for Pollution Prevention Incentives for States Grants will not exceed 50 percent of the allowable pollution prevention incentives to States project cost.

**Water Quality Cooperative Agreements (Section 104(b)(3))**

**§ 35.360 Purpose.**

(a) *Purpose of section.* Sections 35.360 through 35.364 govern Water Quality Cooperative Agreements to State water pollution control agencies and interstate agencies (as defined in section 502 of the Clean Water Act) and local government agencies under section 104(b)(3) of the Act. These sections do not govern Water Quality Cooperative Agreements to other entities eligible under sections 104(b)(3); those cooperative agreements generally are subject to the uniform administrative requirements of 40 CFR part 30.

(b) *Purpose of program.* EPA awards Water Quality Cooperative Agreements for investigations, experiments, training, demonstrations, surveys, and studies relating to the causes, effects, extent, prevention, reduction, and elimination of water pollution. EPA issues guidance each year advising EPA regions and headquarters regarding appropriate priorities for funding for this program. This guidance may include such focus areas as National Pollutant Discharge Elimination System watershed permitting, urban wet weather programs, or innovative pretreatment program or biosolids projects.

**§ 35.362 Competitive process.**

EPA will award Water Quality Cooperative Agreement funds through a competitive process in accordance with national program guidance.

**§ 35.364 Maximum Federal share.**

The Regional Administrator may provide up to 100 percent of approved work plan costs.

**State Wetlands Development Grants (Section 104(b)(3))**

**§ 35.380 Purpose.**

(a) *Purpose of section.* Sections 35.380 through 35.385 govern State Wetlands Development Grants for State and interstate agencies (as defined in section 502 of the Clean Water Act) and local government agencies under section 104(b)(3) of the Act. These sections do not govern wetlands development grants to other entities eligible under section 104(b)(3); those grants generally are subject to the uniform administrative requirements of 40 CFR part 30.

(b) *Purpose of program.* EPA awards State Wetlands Development Grants to to assist in the development of new, or refinement of existing, wetlands protection and management programs.

**§ 35.382 Competitive process.**

State Wetlands Development Grants are awarded on a competitive basis. EPA annually establishes a deadline for receipt of proposed grant project applications. EPA reviews applications and decides which grant projects to fund in a given year based on criteria established by EPA. After the competitive process is complete, the recipient can, at its discretion, accept the award as a State Wetlands Development Grant or add the funds to a Performance Partnership Grant. If the recipient chooses to add the funds to a Performance Partnership Grant, the wetlands development program work plan commitments must be included in the Performance Partnership Grant work plan.

**§ 35.385 Maximum Federal share.**

EPA may provide up to 75 percent of the approved work plan costs for the development or refinement of a wetlands protection and management program.

**State Administration (Section 205(g))**

**§ 35.400 Purpose.**

(a) *Purpose of section.* Sections 35.400 through 35.408 govern State Administration Grants to States (as defined in section 502 of the Clean Water Act) authorized under section 205(g) of the Act.

(b) *Purpose of program.* EPA awards these grants for the following two purposes:

(1) *Construction management grants.* A State may use section 205(g) funds for administering elements of the construction grant program under sections 201, 203, 204, and 212 of the Clean Water Act and for managing waste treatment construction grants for small communities. A State may also use construction management assistance funds for administering elements of a State's construction grant program which are implemented without federal grants, if the Regional Administrator determines that those elements are consistent with 40 CFR part 35, subpart I.

(2) *Permit and planning grants.* A State may use section 205(g) funds for administering permit programs under sections 402 and 404, including Municipal Wastewater Pollution Prevention activities under an approved section 402 program and State operator training programs, and for administering statewide waste treatment management planning programs, including the development of State biosolids management programs, under section 208(b)(4). Some of these activities may also be eligible for funding under sections 106 (Water Pollution Control), 205(j)(2) (Water Quality Management Planning), and 104(b)(3) (Water Quality Cooperative Agreements and Wetlands Development Grants) of the Clean Water Act. (See §§ 35.160, 35.410, 35.360, and 35.380.)

(c) *Associated program requirements.* Program requirements for State construction management activities under delegation are provided in 40 CFR part 35, subparts I and J. Program requirements for water quality management activities are provided in 40 CFR part 130.

**§ 35.402 Allotment.**

Each State may reserve up to four percent of the State's authorized construction grant allotment as determined by Congress or $400,000, whichever is greater for section 205(g) grants.

**§ 35.405 Maintenance of effort.**

To receive funds under section 205(g), a State agency must expend annually for recurrent section 106 program expenditures an amount of non-federal funds at least equal to such expenditures during fiscal year 1977, unless the Regional Administrator determines that the reduction is attributable to a non-selective reduction of expenditures in State executive branch agencies (see § 35.165).

**§ 35.408 Award limitations.**

The Regional Administrator will not award section 205(g) funds:

(a) For construction management grants unless there is a signed agreement delegating responsibility for administration of those activities to the State.

(b) For permit and planning grants before awarding funds providing for the management of a substantial portion of the State's construction grants program. The maximum amount of permit and planning grants a State may receive is limited to the amount remaining in its reserve after the Regional Administrator allows for full funding of the management of the construction grant program under full delegation.

(c) For permit and planning grants unless the work plan submitted with the application shows that the activities to be funded are coordinated, as appropriate, with activities proposed for funding under sections 106 (Water Pollution Control) and 205(j) (Water Quality Management Planning) of the Clean Water Act.

**Water Quality Management Planning Grants (Section 205(j)(2))**

**§ 35.410 Purpose.**

(a) *Purpose of section.* Sections 35.410 through 35.418 govern Water Quality Management Planning Grants to States (as defined in section 502 of the Clean Water Act) authorized under section 205(j)(2) of the Act.

(b) *Purpose of program.* EPA awards Water Quality Management Planning Grants to carry out water quality management planning activities. Some of these activities may also be eligible for funding under sections 106 (Water Pollution Control), 104(b)(3) (Water Quality Cooperative Agreements and Wetlands Development Grants) and section 205(g) (State Administration Grants) of the Clean Water Act. (See §§ 35.160, 35.360, 35.380, and 35.400.) EPA awards these grants for purposes such as:

(1) Identification of the most cost-effective and locally acceptable facility and nonpoint measures to meet and maintain water quality standards.

(2) Development of an implementation plan to obtain State and local financial and regulatory commitments to implement measures developed under paragraph (b)(1) of this section.

(3) Determination of the nature, extent, and causes of water quality problems in various areas of the State and interstate region.

(4) Determination of those publicly owned treatment works which should be constructed with State Revolving Fund assistance. This determination should take into account the relative degree of effluent reduction attained, the relative contributions to water quality of other point or nonpoint sources, and the consideration of alternatives to such construction.

(5) Implementation of section 303(e) of the Clean Water Act.

(c) Program requirements for water quality management planning activities are provided in 40 CFR part 130.

**§ 35.412 Allotment.**

States must reserve, each fiscal year, not less than $100,000 nor more than one percent of the State's construction grant allotment as determined by Congress for Water Quality Management Planning Grants under section 205(j)(2). However, Guam, the Virgin Islands, American Samoa and the Commonwealth of the Northern Mariana Islands must reserve a reasonable amount for this purpose. (See 40 CFR 35.3110(g)(4) regarding reserves from State allotments under Title VI of the Clean Water Act for section 205(j) grants.)

**§ 35.415 Maximum Federal share.**

The Regional Administrator may provide up to 100 percent of the approved work plan costs.

**§ 35.418 Award limitations.**

The following limitations apply to funds awarded under section 205(j)(2) of the Clean Water Act. The Regional Administrator will not award these grants to a State agency:

(a) Unless the agency develops its work plan jointly with local, regional and interstate agencies and gives funding priority to such agencies and designated or undesignated public comprehensive planning organizations to carry out portions of that work plan.

(b) Unless the agency reports annually on the nature, extent, and causes of water quality problems in various areas of the State and interstate region.

(c) Unless the work plan submitted with the application shows that the activities to be funded are coordinated, as appropriate, with activities proposed for funding under section 106 (Water Pollution Control) of the Clean Water Act.

## PART 745—[AMENDED]

4. The authority citation for Part 745 continues to read as follows:

**Authority:** 15 U.S.C. 2605, 2607, 2681–2692, and 42 U.S.C. 4852d.

5. EPA is proposing to remove 40 CFR 745.330.

[FR Doc. 99–17341 Filed 7–22–99; 8:45 am]
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Friday
July 23, 1999

# Part III

# Environmental Protection Agency

**40 CFR Part 35**

**Environmental Program Grants for Indian Tribes; Proposed Rule**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 35**

**[FRL–6373–2]**

**RIN 2030–AA56**

## Environmental Program Grants for Indian Tribes

**AGENCY:** Environmental Protection Agency.

**ACTION:** Proposed rule.

**SUMMARY:** This rule proposes to revise and update requirements in several Environmental Protection Agency (EPA) regulations, particularly subpart A of 40 CFR part 35, governing grants to Indian Tribes and Intertribal Consortia. It creates a new Tribal-specific subpart which contains only the provisions for environmental program grants that apply to Tribes; simplifies, clarifies, and streamlines current provisions for environmental program grants to Tribes, and addresses the Performance Partnership Grant (PPG) program for Tribes. The PPG program fosters EPA's continuing efforts to improve partnerships with its Tribal recipients by increasing flexibility in using environmental program funding. The regulation reflects efforts by EPA and its Tribal partners to increase administrative and programmatic flexibility for Tribes while moving toward improved environmental protection.

**DATES:** Please submit comments on this proposed rule by September 7, 1999.

**ADDRESSES:** Written comments should be submitted to: Performance Partnership Grants—Tribal Comment Clerk (Docket #WD–98–16); Water Docket (MC–4104); U.S. Environmental Protection Agency; 401 M Street, SW; Washington, DC 20460. Comments may be hand-delivered to the Water Docket; U.S. Environmental Protection Agency; 401 M Street, SW; East Tower Basement; Washington, DC 20460. Comments may be submitted electronically to owdocket@epamail.epa.gov.

**FOR FURTHER INFORMATION CONTACT:** Maureen J. Ross, Grants Policy, Information, and Training Branch (3903R), United States Environmental Protection Agency, 401 M. Street, SW, Washington, DC 20460 (202) 564–5356.

**SUPPLEMENTARY INFORMATION:**

### I. Regulated Entities

Entities regulated by this action are eligible to receive the environmental grants listed in 40 CFR 35.501. Regulated categories and entities include:

| Category | Regulated entities |
|---|---|
| Government ... | Federally recognized Indian Tribal Governments. |
| Other Entities | Intertribal Consortia. |

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 could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your organization is regulated by this action, you should carefully examine the definitions of Tribe and Intertribal Consortium in § 35.502 and in the specific program rules found following § 35.540 of the proposed 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.

### II. Comments and Record

Please submit an original and three copies of your comments and enclosures (including references). The Agency requests that commenters follow the following format: Type or print comments in ink, and cite, where possible, the paragraphs in this notice to which each comment refers. Electronic comments must be submitted as a WP5.1 or WP6.1 file or as an ASCII file avoiding the use of special characters. Comments and data will also be accepted on disks in the formats above. Electronic comments may be filed online at many Federal Depository Libraries. Commenters who want EPA to acknowledge receipt of their comments should include a self-addressed, stamped envelope. No facsimiles (faxes) will be accepted.

The record for this Notice, which includes supporting documentation as well as printed, paper versions of electronic comments, is available for inspection from 9 to 4 p.m. (Eastern Time), Monday through Friday, excluding legal holidays, at the Water Docket, U.S. EPA Headquarters, 401 M Street, SW; East Tower Basement; Washington, DC 20460. For access to docket materials, please call 202–260–3027 to schedule an appointment.

### III. Background

The United States Government has a unique legal relationship with Tribal governments as set forth in the United States Constitution, treaties, statutes, executive orders, and court decisions. EPA recognized this uniqueness of Tribal governments by issuing and reaffirming its 1984 policy on the ''Administration of Environmental Programs on Indian Reservations.'' Specifically, EPA recognizes the existence of the trust responsibility in Principle Number 5 of its Indian Policy, which states that the Agency will assure that Tribal concerns and interests will be considered when Agency actions may affect Tribal environments. Additionally, in 1994, the President of the United States issued a presidential memorandum for the heads of Executive Departments and Agencies reaffirming the government-to-government relationships with Native American Tribal Governments. Most recently, on May 14, 1998, the President issued Executive Order 13084, ''Consultation and Coordination With Tribal Governments.'' The Executive Order addresses regular and meaningful consultation and collaboration with Indian Tribal governments in developing regulatory policies on federal matters affecting their communities, reducing the imposition of unfunded mandates on Indian Tribal governments, and streamlining the application process and increasing the availability of statutory or regulatory waivers for Indian Tribal governments. Consistent with these principles, this regulation provides an easy-to-use Tribal-specific subpart to optimize the administration of Tribal assistance programs through increased flexibility and to remove procedural impediments to effective environmental programs for Indian Tribes.

In various program specific regulations in this subpart we have used terms such as ''treatment as a State'' or ''treatment in a manner similar to a State.'' We have used those terms because they are in the statutes authorizing awards to Tribes. EPA recognizes that Tribes are sovereign nations with a unique legal status and a relationship to the federal government that is significantly different than that of States. EPA believes that Congress did not intend to alter this when it authorized treatment of Tribes ''as States;'' rather, the purpose was to reflect an intent that, insofar as possible, Tribes should assume a role in implementing the environmental statutes on Tribal land comparable to the role States play on State land.

Generally, the administration of financial assistance to Tribes is the same as the administration of financial assistance to States. However, there are provisions in some assistance programs unique to Indian Tribes. For example, Indian Tribes currently compete with each other for limited financial resources in many of the Tribal environmental grant programs listed

under § 35.501(a) of the proposed rule. Thus, the stability of annual grant funding for State, interstate, and local environmental programs grants (see 40 CFR part 35, subpart A) is not shared by Tribes. Indian Tribes do not currently receive and cannot rely on continuity of funding from year to year. This uncertainty in financial assistance makes long-term environmental planning difficult. Therefore, the administration of these programs by EPA requires a different approach compared to the approach used when administering an environmental program for State, interstate, or local government agencies.

EPA and many Indian Tribal governments have forged partnerships on a government-to-government basis . An important mechanism to further support these relationships was established when EPA requested and received authorization for a Performance Partnership Grants (PPG) program for Indian Tribes and Intertribal Consortia. (Omnibus Consolidated Rescissions and Appropriations Act of 1996, Public Law 104–134, 110 Stat. 1321, 1321–299 (1996); Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1998, Public Law 105–65, 111 Stat. 1344, 1373 (1997)). PPGs allow eligible Tribes and Intertribal Consortia to combine environmental program grants into a single grant in order to improve environmental performance, increase programmatic flexibility, achieve administrative savings, and strengthen the partnerships between States, Indian Tribes, and EPA. Environmental program grants that may be included in PPGs are listed in 40 CFR 35.501(a) and funded under EPA's State and Tribal Assistance Grant (STAG) appropriation.

This regulation will be codified in 40 CFR part 35, subpart B, as ''Environmental Program Grants for Indian Tribes.'' Subpart B incorporates administrative provisions for grants formerly included in 40 CFR part 35, subparts A and Q. This regulation supplements EPA's regulation, ''Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments,'' contained in 40 CFR part 31, which will apply to grants awarded under this regulation (including grants to Intertribal Consortia as defined in § 35.502, regardless of whether the Consortia are organized as nonprofit corporations).

We have used the terms ''Tribe'' and ''Intertribal Consortium'' to refer to the entities eligible to receive grants throughout this subpart. Those terms are defined in § 35.502 for environmental programs that do not include their own program-specific definitions. When the definition of either term is different in a specific program provision in §§ 35.540 through 35.718 of the rule, the specific definition will determine the entities eligible for a grant under such programs.

## IV. Requirements for All Environmental Program Grants

Sections 35.500 through 35.518 apply to all environmental program grants covered by 40 CFR part 35, subpart B, including PPGs. This rule contains changes to foster Tribal-EPA partnerships, improve accountability for environmental and program performance, and streamline administrative requirements. Some of the rule's key features are discussed below.

*Tribal-EPA Partnerships*

To foster joint planning and priority setting, the rule explicitly requires consideration of Tribal priorities along with national and regional guidance in negotiating all grant work plans. All Tribes are provided flexibility through the work plan negotiation process, and, in particular, through their ability to organize work plan components in whatever way fits the Tribe best. Tribes applying for PPGs will have still greater flexibility as described in the PPG discussion below. The EPA Regional Administrator must consult with the National Program Manager before agreeing to a Tribal work plan that deviates significantly from national program guidance. Where appropriate, the grant work plan will reflect both EPA and Tribal roles and responsibilities in carrying out work plan commitments and there will be a negotiated process for jointly evaluating performance.

*Core Performance Measures*

Core performance measures for Tribal programs are still evolving and may be different from those negotiated by EPA National Program Managers with the States. When EPA has negotiated these measures with the Tribes, they will be included in national program guidance and incorporated, as appropriate, into Tribal/EPA Environmental Agreements and grant work plans as the basis for reporting requirements. Until the Tribal core performance measures are further developed, the regions should use significant work plan goals, objectives or commitments for measuring performance, as appropriate.

*Accountability*

The proposed rule accommodates results-oriented approaches to planning and managing environmental programs. Definitions and other aspects of the rule dovetail with the new Government Performance and Results Act (GPRA) and reflect efforts to establish goals and objectives as well as environmental and program performance measures at both the national and Tribal levels. The rule recognizes the need for a mix of outcome (results) and output (activity) measures for management purposes. The rule encourages Tribes and Intertribal Consortia to organize their work plans around goals and objectives to reflect the new GPRA requirements.

*Administrative Changes*

Under the proposed rule, Tribes can negotiate budget periods of more than one year with EPA thereby improving stability in the programs. EPA recommends, however, that budget periods not exceed five years because it is difficult to account for funds and maintain records for longer periods. (The budget period of a General Assistance Program (GAP) grant cannot exceed four years.)

The rule streamlines some requirements and eliminates other requirements associated with post-award changes to grant work plan commitments and budgets. It replaces the requirements regarding changes found in 40 CFR 31.30. Prior written approval from EPA is still required for significant changes in a recipient's work plan commitments. Written, but not prior, approval is required for work that will result in a need for increases in grant amounts and extensions of the budget period. However, recipients beginning such work without prior, written approval do so at their own risk. EPA approval is no longer required for other changes in the work plan, budget, key persons, or to carry out portions of the work through subgrants or contracts unless the Regional Administrator determines, on a case-by-case basis, that circumstances warrant imposing additional approval requirements on a particular recipient.

*Pre-Award Costs*

Pre-award costs may be reimbursed under the grants without prior approval so long as they are incurred within the budget period, identified in the approved grant application, and would have been allowable if incurred after the award.

*Intertribal Consortia*

Under this rule, EPA will treat a group of Tribes that applies for a grant

(called an Intertribal Consortium in the rule) in the same manner as a single Tribe. Thus, in the absence of clear Congressional intent to the contrary, if a Tribe is eligible for a particular grant, EPA will also treat a group of individually eligible Tribes as eligible for the grant. EPA believes this approach is a practical, reasonable and prudent way to help interested Tribes strengthen environmental protection when limited funding is available to support Tribal environmental programs. Tribes that form Consortia may be able to use their limited resources more efficiently and address environmental issues more effectively than they could if each Tribe separately developed and maintained separate environmental programs Accordingly, Intertribal Consortia as defined in § 35.502, will be eligible to receive grants under the programs listed in 40 CFR 35.501.

For all grants except General Assistance Program (GAP) grants, all members of an Intertribal Consortium must be eligible to receive the grant and must authorize the Consortium to apply for and receive the grant. This means, for example, that for a Consortium to be eligible for a Clean Water Act section 106 grant, each member of the Consortium must establish that it is a federally recognized Tribe and that it has met the requirement for treatment in a manner similar to a State, because that is required for individual Tribes seeking section 106 grants. If a grant authority does not require Tribes to establish eligibility for treatment in a manner similar to a State to receive a grant, then the authorizing members of a Consortium need not satisfy that prerequisite.

For GAP grants, an Intertribal Consortium will be eligible if (1) a majority of the Consortium's members meet the eligibility requirements for the grant; (2) all members that meet the eligibility requirements authorize the Consortium to apply for and receive the grant; and (3) only the members that meet the eligibility requirements will benefit directly from the grant project and the Consortium agrees to a grant condition to that effect. This means that a Consortium may receive a GAP grant even if the Consortium includes Tribal governments that are not recognized as eligible for the special services provided by the United States to Indians because of their status as Indians so long as the Consortium meets the three requirements specified above. EPA decided to impose somewhat less restrictive requirements on Intertribal Consortia seeking GAP grants because the Indian Environmental General Assistance Program Act of 1992, 42 U.S.C. 4368b (IEGAPA), explicitly authorizes GAP grants to an ''intertribal consortium,'' which it defines as ''a partnership of two or more Indian Tribal governments authorized by the governing bodies of those Tribes to apply for and receive assistance pursuant to this section.'' This definition may reasonably be interpreted to include a Consortium comprised of a majority of federally recognized Tribes and a few non-recognized Tribal governments. Such a Consortium would be a partnership of federally recognized Tribes, although it would not be a partnership of only federally recognized Tribes. In effect, the recipient of the GAP grant to such an Intertribal Consortium would be a subset of the original Consortium consisting only of those individually eligible Tribes. The Agency is adopting this approach to meet those very rare circumstances where awarding a GAP grant to such a Consortium would be consistent with the intent of the IEGAPA.

EPA believes its proposed approach for making environmental program grants available to Intertribal Consortia is consistent with President Clinton's Executive Order 13084, which encourages agencies to adopt ''flexible policy approaches'' and to respect the principle of Indian self-government and sovereignty.

*Preferences for Indians, Indian Organizations, and Indian-Owned Economic Enterprises*

Section 450e(b) of the Indian Self Determination Act (25 U.S.C. 450 *et seq.*) provides:

> Any contract, subcontract, grant, or subgrant pursuant to this Act, the Act of April 16, 1934 (48 Stat. 596), as amended [25 USCS 452 *et seq.*], or any other Act authorizing Federal contracts with or grants to Indian organizations or for the benefit of Indians shall require to the extent feasible'
>
> (1) Preferences and opportunities for training and employment in connection with the administration of such contracts or grants shall be given to Indians; and
>
> (2) Preference in the award of subcontracts and subgrants in connection with the administration of such contracts or grants shall be given to Indian organizations and to Indian-owned economic enterprises as defined in section 3 of the Indian Financing Act of 1974 (88 Stat. 77) [25 USCS § 1452].

EPA has determined that these preference requirements of the Indian Self-Determination Act apply to the award of grants, contracts, subcontracts and subgrants under the grant programs covered by this subpart. EPA seeks comments on implementing this provision. In particular, EPA seeks comments on adapting the requirements at 40 CFR 31.36(c) (governing competition in procuring property and services under a grant) to reflect the preference requirements of the Indian Self-Determination Act.

**V. Performance Partnership Grants**

Sections 35.530 through 35.538 contain the requirements that apply only to Performance Partnership Grants (PPGs) to Tribes or Intertribal Consortia. In a PPG, the recipient can combine funds from two or more environmental program grants into a single grant under streamlined administrative requirements. Before a Tribe or Intertribal Consortium can include funds from an EPA environmental program in a PPG, the Tribe or Intertribal Consortium must meet the requirements for that program with a few specified exceptions. For example, if a program requires treatment in a manner similar to a State, the Tribe or Tribal members of a Consortium must satisfy that requirement in order to include that program's funds in a PPG. The exceptions are requirements that restrict how a specific environmental program grant can be used after award. These requirements are not appropriate to be carried over to PPGs because after funds are awarded in a PPG, they may be used for cross-media activities or strategies and do not need to be accounted for in accordance with their original program sources. However, the source of the funds is considered by the Regional Administrator in negotiating a work plan with the applicant. See §§ 35.507(a) and 35.535. Key features of the PPG rule are discussed below.

*Funds and Activities Eligible for Inclusion in a PPG*

Funds for any environmental program grant listed in § 35.501 may be included in a PPG if the funds for that grant were appropriated in the same specific appropriation as the funds for PPGs. EPA will announce any changes in its appropriation acts that affect the list of programs in § 35.501.

Unlike the rule governing PPGs to States, § 35.535 of this rule allows Tribes and Intertribal Consortia to use PPG funds for any environmental activity that is eligible under the environmental programs listed in § 35.501 (except EPA-delegated or EPA-authorized activities, which still require delegation or authorization), regardless of whether a Tribe applied for or was selected for funding for that particular activity, provided that the Regional Administrator consults with the appropriate National Program Managers. The National Program Manager may expressly waive or modify the

consultation requirement in national program guidance. For example, if EPA found that a Tribe was not eligible for a Clean Air Act section 105 grant, but the Tribe wanted to perform air program monitoring or inspections, the Tribe could pay for those activities with PPG funds, provided that: (1) the Regional Administrator consulted with the National Program Managers for the sources of the PPG funds (unless waived in national program guidance) and (2) the activity was included in the approved PPG work plan. The Tribe would perform these air activities using Tribal authority. To implement an EPA-delegated or authorized program under a PPG, a Tribe would need the delegation(s) or authorization(s) as required under § 35.535(a). Given the wide variety of environmental activities eligible under the General Assistance Program (GAP) (see §§ 35.540—35.548), this will allow Tribes, as determined by the Regional Administrator, to use funds from other programs that are put into a PPG for the same wide variety of activities. Furthermore, this will allow Tribes to use GAP funds, if they are included in a PPG, to implement as well as develop environmental programs.

Within the framework of EPA oversight established by §§ 35.507, 35.514(a), 35.535 and national program guidance, EPA is proposing that Tribes have considerable flexibility to use PPG funds for a broad variety of activities. EPA is proposing this approach because Tribes need to address a broad range of environmental issues, but do not have the same access to diverse funding sources as States and, generally, Tribes must compete annually for their funds while States do not. EPA believes this approach will help achieve a key purpose of the PPG program: to provide Tribes and Intertribal Consortia with the flexibility to direct resources where they are most needed to address environmental and public health priorities. EPA will retain sufficient programmatic control because § 35.535(b) requires the Regional Administrator to consult with the appropriate National Program Managers before agreeing to a work plan that would differ significantly from any of the proposed work plans submitted with the Tribe's or the Consortium's applications for funds. For example, if a Tribe or Intertribal Consortium was selected for funding in a competition based on its proposed work plan for that grant and the Tribe or Consortium proposed a PPG work plan that would significantly modify those proposed work plan activities, then the Regional Administrator would have to consult with the National Program Manager associated with the funding source (unless waived in national program guidance). Accordingly, the Regional Administrator will be responsible for ensuring that the Tribes and Intertribal Consortia meet the basic requirements of programs which provide funds for the PPG before the Tribes use funds for other important activities.

EPA intends to evaluate the flexibility provided under the rule regarding the activities eligible for funding under a PPG. After the third year of implementing the program, but before the end of the fifth year, the Agency will evaluate the environmental benefits of this flexibility as compared to the costs, which may include reduced accountability for funds and outcomes. Based on that evaluation, the Agency will determine whether to continue to allow Tribes to use PPG funds to perform activities under programs for which they are not eligible to receive a grant. If the Agency determines that a change in the regulation is appropriate, it will undertake a rulemaking to make such a change.

*Administrative Flexibility*

A primary advantage of PPGs is the administrative flexibility provided to all PPG recipients. A PPG requires only a single application, work plan, and budget. Once funds are awarded in a PPG, the Tribe or Intertribal Consortium can direct the funds as needed to achieve work plan commitments and does not need to account for funds in accordance with their original program sources. These administrative features also make it possible for Tribes to negotiate a work plan that includes cross-media or innovative strategies for addressing environmental problems.

*Cost Share*

The PPG cost share is the sum of the cost shares required for all individual program grants included in the PPG in accordance with 40 CFR 35.536(b) and (c) for each individual program grant included in the PPG. EPA will not require Tribes and Intertribal Consortia to provide a PPG cost share for funds from programs which do not require cost shares, such as GAP. (Cost sharing requirements for individual programs are found under §§ 35.540 through 35.718.) For funds from programs with a cost share requirement of five percent or less under the provisions of §§ 35.540 through 35.718, the PPG cost share will be the same as the cost share for the individual programs, as identified in §§ 35.540 through 35.718. For funds from programs with a required cost share greater than five percent, EPA is proposing a PPG cost share similar to that required under the Tribal Air Pollution Control program provision found at § 35.575. For funds from such programs, EPA will require Tribes to provide a cost share of five percent; however, after the first two years, the Regional Administrator will determine through an objective assessment whether the Tribe or the members of an Intertribal Consortium meet socio-economic indicators that demonstrate the ability of the Tribe or the Intertribal Consortium to provide a cost share greater than five percent. If the Regional Administrator determines that the Tribe or members of the Intertribal Consortium meet such indicators, then the Regional Administrator shall increase the required cost share up to a maximum of 10 percent. If the Regional Administrator determines that the Tribe or the members of the Intertribal Consortium do not meet such indicators, then the cost share will remain at five percent. (The required cost share for the Tribal Water Pollution Control Grant Program (Clean Water Act, section 106) is five percent. Thus, this program is not included in the grant programs whose cost share could be raised to 10 percent through the Regional Administrator assessment and determination process.)

Further, the Regional Administrator may waive the required PPG cost share at the request of the Tribe or Intertribal Consortium if the Regional Administrator determines, based on an objective assessment of socio-economic indicators that fulfilling the cost share requirement would impose undue hardship on the Tribe or members of the Intertribal Consortium.

EPA invites suggestions for the socio-economic indicators for approval of the lower cost share and waiver of cost share, as well as suggestions for how the cost share for Intertribal Consortia should be calculated.

## VI. Indian Environmental General Assistance Program (GAP) and Performance Partnership Grants

An important and unique environmental program available only to Tribes and Intertribal Consortia is the Indian Environmental General Assistance Program (GAP) (40 CFR 35.540 *et seq.*) This program was created to assist Indian Tribes in developing the capacity to manage their own environmental programs. GAP offers the opportunity for Tribes to develop integrated environmental programs, to develop capacity to manage specific programs that can be delegated by EPA, and to plan and establish a core program for environmental protection. It also

provides the opportunity for Tribes to define and develop administrative and legal infrastructures, to conduct assessments, monitoring, and planning, and to undertake additional activities to develop environmental programs within a simplified administrative framework.

GAP funds can be used more flexibly than categorical environmental program funds. EPA recognizes the Tribes' need for flexibility in using limited resources available for protecting Tribal environments, but believes that this need for flexibility must be balanced with the Agency's goals of establishing a strong Tribal environmental presence throughout Indian country and of diversifying financial resources available to Tribes for the administration of comprehensive environmental programs. GAP funds are primarily available for and critical to the development of sustainable, integrated Tribal environmental programs. The long-term goal of developing and maintaining an adequate level of funding for Tribal environmental programs will be best served not by increasing the number of activities that are funded by GAP, but rather by expanding and diversifying the use of various categorical environmental programs funds, in addition to the use of GAP funds.

When Congress authorized the PPG program, it allowed GAP funds to be included in such a grant. However, to balance competing interests in the use of GAP funds, EPA encourages Tribes and Intertribal Consortia to continue to use GAP funds, at least in the first instance, for the development of Tribal capacity to manage environmental programs and not to use these funds for environmental media activities. EPA believes that the overriding value of the General Assistance Program lies in its ability to assist Tribes in the development of their environmental capacity. This original and primary purpose of GAP has not been fully realized since some Tribes have not yet developed an environmental program capacity. Including a GAP grant in a PPG should not result in a reduction of EPA media-specific environmental program assistance available to Indian Tribes and Tribal Consortia.

## VII. Implementing GPRA

EPA has developed an approach toward the integrated implementation of GPRA, the Chief Financial Officers Act (CFOA), and the Federal Financial Management Improvement Act of 1996 (FFMIA). These laws provide EPA with a framework to demonstrate to Congress and the taxpayers the costs to the federal government of EPA's program accomplishments or outcomes. Tribes and Intertribal Consortia, by virtue of delegated program authorities and as recipients of EPA grant funds, play an integral part in achieving those goals and objectives. Thus EPA's reports of Agency resources associated with results-based outcomes will incorporate—at some level—expenditures incurred in the form of payments to the Tribes under grants and cooperative agreements. In order to comply with the Paperwork Reduction Act and the federal government's general grant regulations, EPA also has a responsibility to minimize additional administrative reporting requirements and costs borne by the Tribes. In addition, under current regulations EPA generally may not impose accounting requirements on Tribes beyond those currently required by 40 CFR part 31.

EPA will therefore use the budget information that Tribes and Intertribal Consortia provide in grant applications as a basis for linking the Agency's actual expenditures with EPA's results-based accomplishments or outcomes. EPA will be able to sufficiently rely on Tribal budget information to determine the costs of EPA's results-based outcomes based on the following three requirements of the proposed regulation:

(1) Tribes and Intertribal Consortia provide the program budget information required as part of the application;

(2) EPA and the recipients explicitly define work plan goals, objectives, outcomes, and outputs, as well as the program flexibility contained in the work plan; and

(3) Recipients report back on work plan accomplishments.

The proposed rule ensures that Tribes and Intertribal Consortia will meet these three conditions. EPA will thus have a reasonable basis for associating the costs of its grants with the Agency's results-based outcomes.

EPA's Regional offices, with necessary consultation with recipients, will be responsible for cross-walking the State budget information (grant application and work plan data) into the GPRA goals and objectives architecture. If a grant is subsequently amended to reflect significant adjustments to work plan commitments, the region will consult with the State to develop an estimate of the budget associated with the revision so that it can be reflected in regional GPRA reporting. The Office of the Chief Financial Officer will provide regions with guidance on the approach to use for the cross-walk process to ensure that the results achieved by States with EPA funds are captured in the Agency's Annual Performance Reports.

## VIII. Program Specific Provisions

Requirements applicable to each environmental grant program, such as the requirements regarding eligibility and cost share, are located in 40 CFR 35.540 through 35.718.

*Programs Not Specifically Available to Tribes*

Sections 28 and 306 of the Toxic Substances Control Act (TSCA) and section 6605 of the Pollution Prevention Act (PPA) provide explicit authority for grants to States, but are silent regarding grants to Tribes. This rule reflects EPA's determination that those statutes may also be interpreted to authorize grants to Tribes for radon abatement (TSCA section 306) and toxic substances compliance monitoring programs (TSCA sections 28), and reaffirms EPA's determination that Tribes are eligible for Pollution Prevention Incentive grants under section 6605 of the PPA (*see, e.g.,* 56 FR 11553 (1991)).

Previously, EPA determined that it has the authority to approve Tribal lead-based paint abatement certification and training programs and make grants to Tribes under section 404(g) of TSCA for the development and implementation of such programs even though TSCA makes no mention of Tribes. 61 FR 45778, 45805–808 (1996). The Agency reasoned that its interpretation of TSCA is governed by the principles of *Chevron, U.S.A., Inc.* v. *Natural Resources Defense Council,* 467 U.S. 837 (1984) and that because Congress had not explicitly stated its intent in adopting the statutory provision, the Agency could adopt an interpretation which in its expert judgment is reasonable in light of the goals and purposes of the statute. EPA opined further that since TSCA did not define a role for Tribes, there was an ambiguity in Congressional intent and therefore, the Agency's interpretation of TSCA to allow Tribes to apply for program authorization was permissible under Chevron. EPA reasoned further that this interpretation is consistent with Supreme Court precedent holding that limitations on Tribal sovereignty must be ''unmistakably clear,'' *Montana* v. *Blackfeet Indian Tribe,* 471 U.S. 759 (1985), and that statutes are to be construed liberally in favor of the Indians, with ambiguous provisions interpreted for their benefit. *County of Yakima* v. *Yakima Indian Nation,* 502 U.S. 251, 268 (1992). Finally, EPA noted that allowing Tribes to apply for program authorization is consistent with the general principles of federal Indian law ''encouraging tribal independence,'' *Ramah Navaho Sch. Bd.* v. *Bureau of*

*Revenue,* 458 U.S. 832, 846 (1985), and the Agency's Indian policy which states that environmental programs in Indian country will be implemented to the maximum extent possible by Tribal governments. In light of these principles, EPA reasoned that Tribes are also eligible for grants to develop and implement lead-based paint certification and training programs under section 404(g) of TSCA.

Consistent with the reasoning that warranted EPA's determination with respect to Tribal lead program approval and grant authority, EPA interprets sections 28 and 306 of TSCA and section 6605 of PPA to authorize grants to Tribes as well as States, even though there is no program approval or authorization associated with the grant programs for radon abatement, toxics substance compliance monitoring, or pollution prevention incentives. While Congress did not expressly provide a role for Tribes in either TSCA or PPA, both statutes were clearly intended to have comprehensive, nationwide coverage—including the provisions regarding financial assistance for these programs. EPA does not believe that Congress intended the Agency to provide grants exclusively to States and thereby leave Tribal lands without the benefit of the grant assistance for these programs, since the problems and goals they address—toxic substances, radon abatement and pollution prevention—are relevant throughout the nation in both State and Tribal areas. Therefore, EPA has determined that it is appropriate to provide grants to Tribes for Radon Abatement programs under section 306 of TSCA, Toxics Substances Compliance Monitoring programs under section 28 of TSCA, and Pollution Prevention Incentives programs under section 6605 of PPA, EPA invites comments on this issue.

In order to be eligible for a grant under TSCA section 28, TSCA section 306, or PPA section 6605, a Tribe or each member of an Intertribal Consortium must establish eligibility for treatment in a manner similar to a State by demonstrating that it:

(1) Is recognized by the Secretary of Interior;

(2) Has an existing government exercising substantial governmental duties and powers;

(3) Has adequate authority to carry out the grant activities; and,

(4) Is reasonably expected to be capable, in the Regional Administrator's judgment, of administering the grant program.

If the Administrator has previously determined that an Indian Tribe has met the prerequisites in (1) and (2) for another EPA program, the Tribe need provide only that information unique to the particular program required by paragraph (3) and (4).

*Public Water System Supervision Tribal Reserve*

The current regulation (40 CFR 35.115(g)) provides that the EPA shall annually reserve up to three percent of each year's Public Water System Supervision (PWSS) funds for use on Indian lands. The Agency is proposing to increase the authorized amount of the reserve to up to seven percent. This increase will provide needed funds for the Tribal PWSS program without affecting States' current funding.

The Tribal reserve is used for two purposes: to allow EPA to directly implement the PWSS program on Tribal lands; and to assist Tribes with developing PWSS primacy programs. The three percent ceiling, established in 1988, was EPA's estimate of the amount that would be needed to achieve both of these purposes. Over the past 10 years, we have realized that three percent is not adequate to achieve both purposes. To date, only the Navajo Nation has submitted a complete PWSS primacy package and only three other Tribes have taken steps toward primacy. We believe that there are more Tribes which may be interested in the program but have not yet voiced that interest because they do not have the capacity to develop an adequate program. We also believe more Tribes would take interest in the program if sufficient funds were available.

In addition, the current Tribal reserve is insufficient to cover basic direct implementation needs. Tribal systems have a high number of monitoring/reporting and maximum contaminant level violations. These same systems will need to abide by upcoming drinking water regulations and will be asked to partake in several new initiatives outlined in the revised SDWA, including source water protection, capacity development, and operator certification. Although these initiatives are not required of Tribes, we believe that EPA, as the primary enforcement authority of non primacy Tribal systems, should address these initiatives on Tribal lands. Additional Tribal funding can help EPA and Tribes respond to Tribal safe drinking water needs.

EPA requested Congress to provide for funding in excess of an amount necessary for the traditional three percent reserve in fiscal year 1998 to assist Tribes in developing capacity, maintaining their own PWSS programs and to provide additional support to the Tribal PWSS Direct Implementation program. In fiscal years 1998 and 1999, EPA received an additional $3,780,500 for these purposes. In order to use those funds for Tribes, EPA needed to deviate from the regulation at 40 CFR 35.115(g), which limits EPA's Tribal PWSS reserve to three percent. Instead of continuing to deviate from the regulations, EPA proposes to raise the ceiling of our annual Tribal reserve to Aup to seven percent. With the additional $3.78M PWSS program appropriation, the ceiling of funding for Tribes can be raised to 6.91 percent (the amount we propose to give Tribes in FY–00) without taking away from States' current funding levels.

*Safe Drinking Water Act and Alaska Native Villages*

EPA is proposing a new interpretation of the definition of ''Indian Tribe'' in 42 U.S.C. 300f(14) that would include eligible Alaska Native Villages (ANVs) in that definition for purposes of PWSS and Underground Water Source Protection (also known as underground injection control (UIC)) grants under 42 U.S.C . 300j–2(a) and (b), and primacy for PWSS and UIC programs under 42 U.S.C. 300g–2, 300h–1 and 300h–4. Under this proposed approach, a federally-recognized Tribe in Alaska could seek to demonstrate that it is eligible for treatment in the same manner as a State according to the criteria established by Congress in 42 U.S.C . 300j–11 and in EPA's regulations at 40 CFR 142.72 and 145.52.

In 1988, EPA announced its interpretation that the term ''Indian Tribe'' in 42 U.S.C . 300(f)(14) does not include ANVs. 53 FR 37396, 37407. This interpretation was based on the Agency's reading of legislative history and EPA's view that Congress would have explicitly mentioned ANVs if it intended to include ANVs in the definition of Indian Tribes. EPA now believes it is more consistent with Congressional intent and federal Indian law and policy to interpret the term ''Indian Tribe'' in 42 U.S.C . 300f(14) to include Indian Tribes located in Alaska (i.e., ANVs) that otherwise meet the SDWA's definition of Indian Tribe.

Under the SDWA, the term ''Indian Tribe'' means ''any Indian Tribe having a federally recognized governing body carrying out substantial governmental duties and powers over any area.'' 42 U.S.C . 300(f)(14). In 1993, the Department of the Interior (DOI) clarified that the Alaska Native entities listed on DOI's list of federally-recognized Tribes

have the same governmental status as other federally acknowledged Indian Tribes by

virtue of their status as Indian Tribes with a government-to-government relationship with the United States; are entitled to the same protection, immunities, privileges as other acknowledged Tribes; have the right, subject to general principles of federal Indian law, to exercise the same inherent and delegated authorities available to other Tribes; and are subject to the same limitations imposed by law on other Tribes. 58 FR 54364, 54366 (1993).

Thus, because DOI has clarified that federally-recognized Tribes in Alaska have the same status as other federally-recognized Tribes, EPA believes that ANVs that otherwise meet the SDWA's definition of Indian Tribe should not be excluded from seeking PWSS and UIC program primacy or related program grants. This interpretation is consistent with the plain language of the SDWA's definition of ''Indian Tribe'' and EPA's policy that Indian Tribes are the appropriate entities to set environmental standards and manage their environments where they have the authority and capability to do so. *See* EPA's 1984 Indian Policy. It is also consistent with Supreme Court precedent holding that any statutory limitations on Tribal sovereignty must be stated explicitly, *Santa Clara Pueblo* v. *Martinez,* 436 U.S. 49 (1978); *Montana* v. *Blackfeet Indian Tribe,* 471 U.S. 759 (1985), and that statutes are to be construed liberally in favor of the Indians, with ambiguous provisions interpreted for their benefit. *County of Yakima* v. *Yakima Indian Nation,* 502 U.S. 251, 268 (1992).

EPA notes that, while this change in interpretation would include ANVs that otherwise meet the SDWA's definition of Indian Tribe within the context of the PWSS and UIC programs, any ANV wishing to seek primacy, or a primacy development grant, for either the PWSS or UIC programs would still need to demonstrate that it meets the relevant statutory and regulatory eligibility criteria, including the jurisdictional requirements contained in 42 U.S.C. 300j–11, 40 CFR 142.72 and 145.52, 40 CFR 35.676 and 35.686 of this subpart. The Agency also wants to clarify that under this proposal, EPA would evaluate, on a case-by-case basis (when requested to do so by an Alaska Tribe in an application for grant or primacy eligibility) whether an Alaska Tribe meets the criteria for program primacy or a related program grant. The State of Alaska currently has primacy for PWSS and UIC (Class II wells) for all areas in Alaska except Indian country. EPA is not proposing to amend the extent of the State's primacy through this notice.

In the 1996 amendments to the Safe Drinking Water Act, Congress added a sentence to the definition of Indian Tribe explicitly noting that the term ''Indian Tribe'' for purposes of the State Revolving Fund (SRF) program includes ''any Native village.'' 42 U.S.C. 300f(14) (emphasis added). EPA believes that, through this change, Congress only intended to ensure that all Native villages may receive SRF grants. EPA believes that this provision was not intended to mean that federally-recognized Tribes carrying out substantial governmental duties and powers in Alaska are excluded from the definition of Indian Tribe for purposes other than SRF.

EPA requests comments on this change in interpretation of the definition of an Indian Tribe.

*Regulations for Programs To Manage Hazardous Waste and Underground Storage Tanks*

After the EPA workgroup reached closure on this proposed rulemaking, Congress authorized the Agency to award grants to Tribes ''for the development and implementation of programs to manage hazardous waste, and underground storage tanks.'' Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1999, Pub. L. 105–276, 112 Stat. 2461, 2499 (1998). EPA intends to include regulations for these programs in the final rule. Therefore, EPA seeks comments on providing financial assistance to Tribes for programs to manage hazardous waste and underground storage tanks.

## IX. Conclusion

This Tribal-specific subpart reflects EPA's regulatory and budgetary efforts to improve the continuity and stability of financial assistance for Tribal environmental programs. Recipients will benefit from the streamlined and simplified requirements of the regulation. In addition, it will provide Tribes and Intertribal Consortia choosing to participate in the PPG program with the flexibility to better use funds to address their environmental priorities.

*Regulatory Flexibility Act*

The Agency has determined that the requirement in the Regulatory Flexibility Act (RFA) to prepare a regulatory flexibility analysis does not apply to this rule. A regulatory flexibility analysis must be prepared only where the Agency is required by the Administrative Procedure Act (APA) or any other statute to publish a general notice of proposed rule making (5 U.S.C. 603). Grant-related matters, such as this rule, are not subject to the notice and comment requirements of the APA (5 U.S.C. 553(a)(1)). Nor is this rule required to undergo notice and comment rule making by any other statute.

*Unfunded Mandates Reform Act*

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''federal mandates'' that may result in expenditures by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. This regulation contains no federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or Tribal governments or the private sector. The UMRA excludes from the definitions of ''federal intergovernmental mandate'' and federal participation mandates'' duties that arise from conditions of federal assistance.

*National Technology Transfer and Advancement Act*

Under section 12(d) of the National Technology Transfer and Advancement Act (NTTAA), EPA is required to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impracticable. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, business practices, etc.) that are developed or adopted by voluntary consensus standards bodies. Where available and potentially applicable voluntary consensus standards are not used, the Act requires EPA to provide Congress, through the Office of Management and Budget, an explanation of the reasons for not using such standards.

This proposed rule does not involve any technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards. Commenters who disagree with this conclusion should indicate how the Notice is subject to the Act and identify any potentially applicable voluntary consensus standards.

*Executive Order 13045*

Executive Order 13045 applies to any rule that is determined to be: (1) ''economically significant'' as defined

under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, EPA must evaluate the environmental health or safety effects of the planned rule on children; and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

EPA has determined that the proposed rule is not a covered regulatory action because it is not economically significant and it does not involve decisions based on environmental health and safety risks. As such, the proposed rule is not subject to the requirements of the Executive Order.

*Executive Order 12866*

Under Executive Order 12866, (58 FR 51735 (October 4, 1993)) a significant regulatory action is 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.

It has been determined that this rule is a ''significant regulatory action'' under the terms of Executive Order 12866 because the Performance Partnership Grant authority is a new type of grant authority and therefore raises novel policy issues. As such, this action was submitted to the Office of Management and Budget (OMB) for review. Changes made in response to OMB suggestions and recommendations will be documented in the public record.

*Paperwork Reduction Act*

In keeping with the requirements of the Paperwork Reduction Act ( PRA), as amended, 44 U.S.C. 3501 *et seq.*, the information collection requirements contained in this rule have been approved by OMB under General Administrative Requirements for Assistance Programs information collection request number 0938.06 (OMB Control Number 2030–0020) and Quality Assurance Specifications and Requirements information request number 0866.05 (OMB Control Number 2080–0033). This rule does not contain any collection of information requirements beyond those already approved. Since this action imposes no new or additional information collection, reporting, or record-keeping requirements subject to the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, no information request will be submitted to the Office of Management and Budget for review.

*Executive Order 12875*

Under Executive Order 12875, Enhancing Intergovernmental Partnerships, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or Tribal government, unless the federal government provides the funds necessary to pay the direct compliance costs incurred by those governments or EPA consults with these governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and Tribal governments, the nature of their concerns, any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and Tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.''

This proposed rule does not create a mandate on State, local or Tribal governments nor does it impose any enforceable duties on these entities as it governs the award of financial assistance. Instead, this proposed rule is designed to reduce the administrative burden associated with grants for environmental programs. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply.

*Executive Order 13084*

Under Executive Order 13084, Consultation and Coordination with Indian Tribal Governments, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian Tribal governments, and that imposes substantial direct compliance costs on those communities, unless the federal government provides the funds necessary to pay the direct compliance costs incurred by the Tribal governments or consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected Tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian Tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

This rule may significantly or uniquely affect the communities of Indian Tribal governments, but it will not impose substantial direct compliance costs on such communities. This rule governs financial assistance to Tribes. Any costs associated with this regulation will be incurred by a Tribe as a result of its discretionary decision to seek financial assistance. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply.

**List of Subjects in 40 CFR Part 35**

Environmental protection, Administrative practice and procedures, Evaluation of performance, Performance partnership grants, Requirements for specific grant programs, Work plan requirements.

Dated: June 30, 1999.

**Carol M. Browner,**

*Administrator.*

For the reasons set forth in this preamble, title 40, chapter I of the Code of Federal Regulations is proposed to be amended as follows:

## PART 35—[AMENDED]

1. The authority citation for part 35 continues to read as follows:

**Authority:** 42 U.S.C. 4368b.

2. EPA is proposing to remove subpart Q.

3. EPA is proposing to add a new subpart B to read as follows.

**Subpart B—Environmental Program Grants for Indian Tribes**

**All Grants—General**

Sec.
35.500 Purpose of the subpart.
35.501 Environmental programs covered by the subpart.
35.502 Definition of terms.
35.503 Deviation from this subpart.
35.504 Eligibility of an Intertribal Consortium.

**Preparing an Application**

35.505 Components of a complete application.
35.506 Time frame for submitting an application.
35.507 Work plans.
35.508 Budget period.
35.509 Consolidated grants.

**EPA Action on Application**

35.510 Time frame for EPA action.
35.511 Criteria for approving an application.
35.512 Factors considered in determining award amount.
35.513 Reimbursement for pre-award costs.

**Post-Award Requirements**

35.514 Amendments and other changes.
35.515 Evaluation of performance.
35.516 Direct implementation.
35.517 Unused funds.
35.518 Unexpended balances.
35.519 Preferences for Indians, Indian organizations, and Indian-owned economic enterprises.

**Performance Partnership Grants**

35.530 Purpose of Performance Partnership Grants.
35.532 Requirements summary.
35.533 Programs eligible for inclusion.
35.534 Eligible recipients.
35.535 Activities eligible for funding.
35.536 Cost share requirements.
35.537 Application requirements.
35.538 Project period.

**Indian Environmental General Assistance Program (GAP)**

35.540 Purpose.
35.542 Definitions.
35.543 Eligible recipients.
35.545 Eligible activities.
35.548 Award limitations.

**Air Pollution Control (Section 105)**

35.570 Purpose.
35.572 Definition.
35.573 Eligible tribe.
35.575 Maximum Federal share.
35.576 Maintenance of effort.
35.578 Award limitation.

**Water Pollution Control (Sections 106 and 518)**

35.580 Purpose.
35.582 Definitions.
35.583 Eligible recipients.
35.585 Maximum Federal share.
35.588 Award limitations.

**Water Quality Cooperative Agreements (Section 104(b)(3))**

35.600 Purpose.
35.603 Competitive process.
35.604 Maximum Federal share.

**Wetlands Development Grant Program (Section 104(b)(3))**

35.610 Purpose.
35.613 Competitive process.
35.615 Maximum Federal share.

**Nonpoint Source Management Grants (Sections 319(h) and 518(f))**

35.630 Purpose.
35.632 Definition.
35.633 Eligibility requirements.
35.635 Maximum Federal share.
35.636 Maintenance of effort.
35.638 Award limitations.

**Pesticide Cooperative Enforcement (Section 23 (a)(1))**

35.640 Purpose.
35.641 Eligible recipients.
35.642 Maximum Federal share.
35.645 Basis for allotment.

**Pesticide Applicator Certification and Training (Section 23(a)(2))**

35.646 Purpose.
35.649 Maximum Federal share.

**Pesticide Program Implementation (Section 23(a)(1))**

35.650 Purpose.
35.653 Eligible recipients.
35.655 Basis for allotment.
35.659 Maximum Federal share.

**Pollution Prevention Incentive Grants (Section 6605)**

35.660 Purpose.
35.661 Competitive process.
35.662 Definitions.
35.663 Eligible recipients.
35.668 Award limitations.
35.669 Maximum Federal share.

**Public Water System Supervision (Sections 1443(a) and 1451)**

35.670 Purpose.
35.672 Definition.
35.673 Annual amount reserved by EPA.
35.675 Maximum Federal share.
35.676 Eligible recipients.
35.678 Award limitations.

**Underground Water Source Protection (Section 1443(b))**

35.680 Purpose.
35.682 Definition.
35.683 Annual amount reserved by EPA.
35.685 Maximum Federal share.
35.686 Eligible recipients
35.688 Award limitations.

**Lead-Based Paint Program (Section 404(g))**

35.690 Purpose.
35.691 Funding coordination.
35.693 Eligible recipients.

**Indoor Radon Grants (Section 306)**

35.700 Purpose.
35.702 Basis for allotment.
35.703 Eligible recipients.
35.705 Maximum Federal share.
35.708 Award limitations.

**Toxic Substances Compliance Monitoring (Section 28)**

35.710 Purpose.
35.712 Competitive process.
35.713 Eligible recipients.
35.715 Maximum Federal share.
35.718 Award limitation.

## Subpart B—Environmental Program Grants—Indian Tribes

**Authority:** 42 U.S.C. 300f *et seq. 6901 et seq.*, 7401 *et seq.*, 13101 *et seq* 33 U.S.C. 1251 *et seq.*; 7 U.S.C. 136 *et seq.*; 15 U.S.C. 2601 *et seq.*; Pub. L. 104-134, 110 Stat. 1321, 1321–299 (1996); Pub. L. 105–65, 111 Stat. 1344, 1373 (1997).

## All Grants—General

### § 35.500 Purpose of the subpart.

This subpart establishes administrative requirements for grants awarded to Indian Tribes and Intertribal Consortia for the environmental programs listed in § 35.501. This subpart supplements requirements in EPA's general grant regulations found at 40 CFR part 31. Sections 35.500 through 35.518 contain administrative requirements that apply to all environmental program grants included in this subpart. Sections 35.530 through 35.718 contain requirements that apply to specified environmental program grants. Many of these environmental programs also have programmatic and technical requirements that are published elsewhere in the Code of Federal Regulations.

### § 35.501 Environmental programs covered by the subpart.

(a) The requirements in this subpart apply to grants awarded for the following programs:

(1) Performance Partnership Grants (1996 Omnibus Consolidated Rescissions and Appropriations Act of 1996, Public Law 104–134, 110 Stat. 1321, 1321–299 (1996) and Departments of Veterans Affairs, Housing and Urban Development, and Independent Agencies Appropriations Act of 1998, Public Law 105–65, 111 Stat. 1344, 1373 (1997)).

(2) The Indian Environmental General Assistance Program Act of 1992, 42 U.S.C. 4368b.

(3) Clean Air Act. Air pollution control (section 105).

(4) Clean Water Act.

(i) Water pollution control (section 106 and 518).

(ii) Water quality cooperative agreements (section 104(b)(3)).

(iii) Wetlands development grant program (section 104(b)(3)).

(iv) Nonpoint source management (section 319(h)).

(5) Federal Insecticide, Fungicide, and Rodenticide Act.

(i) Pesticide cooperative enforcement (section 23(a)(1)).

(ii) Pesticide applicator certification and training (section 23(a)(2)).

(iii) Pesticide program implementation (section 23(a)(1)).

(6) Pollution Prevention Act of 1990. Pollution prevention incentives for Tribes (section 6605).

(7) Safe Drinking Water Act.

(i) Public water system supervision (section 1443(a)).

(ii) Underground water source protection (section 1443(b)).

(8) Toxic Substances Control Act.

(i) Lead-based paint program (section 404(g)).

(ii) Indoor radon grants (section 306).

(iii) Toxic substances compliance monitoring (section 28).

(b) Unless otherwise prohibited by statute or regulation, the requirements in § 35.500 through § 35.518 of this subpart also apply to grants to Indian Tribes and Intertribal Consortia under environmental programs established after this subpart becomes effective, if specified in Agency guidance for such programs.

### § 35.502 Definition of terms.

Terms are defined as follows when they are used in this regulation.

*Budget period.* The period specified in the grant agreement during which the recipient may expend or obligate funds for the purposes specified in the agreement.

*Consolidated grant.* A single grant made to a recipient consolidating funds from more than one environmental grant program. After the award is made, recipients must account for grant funds in accordance with the funds' original environmental program sources. Consolidated grants are not Performance Partnership Grants.

*Environmental program.* A program for which EPA awards grants under the authorities listed in § 35.501. The grants are subject to the requirements of this subpart.

*Federal Indian reservation.* 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.

*Indian country.* (1) All land within the limits of any Indian reservation under the jurisdiction of the United States government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation;

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

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

*Intertribal Consortium or Consortia.* A partnership between two or more Tribes that is authorized by the governing bodies of those Tribes to apply for and receive assistance under one or more of the programs listed in § 35.501. A Consortium must have adequate documentation of the existence of the partnership and the authorization to apply for and receive assistance.

*National program guidance.* Guidance issued by EPA's National Program Managers for establishing and maintaining effective environmental programs. This guidance establishes national goals, objectives, and priorities as well as other information to be used in monitoring progress. The guidance may also set out specific environmental strategies, core performance measures, criteria for evaluating programs, and other elements of program implementation.

*Outcome.* The environmental result, effect, or consequence that will occur from carrying out an environmental program or activity that is related to an environmental or programmatic goal or objective. Outcomes must be quantitative, and they may not necessarily be achievable during a grant budget period. *See* ''output.''

*Output.* An environmental activity or effort and associated work products related to an environmental goal or objective that will be produced or provided over a period of time or by a specified date. Outputs may be quantitative or qualitative but must be measurable during a grant budget period. See ''outcome.''

*Performance Partnership Grant.* A single grant combining funds from more than one environmental program. A Performance Partnership Grant may provide for administrative savings or programmatic flexibility to direct grant resources where they are most needed to address public health and environmental priorities (see also § 35.530). Each Performance Partnership Grant has a single, integrated budget and recipients do not need to account for grant funds in accordance with the funds' original environmental program sources.

*Planning target.* The amount of funds that the Regional Administrator suggests a grant applicant consider in developing its application, including the work plan, for an environmental program.

*Regional supplemental guidance.* Guidance to environmental program grant applicants prepared by the Regional Administrator, based on the national program guidance and specific regional and applicant circumstances, for use in preparing a grant application.

*Tribal Environmental Agreement* (TEA). A strategic planning document designated as a TEA and signed by the Regional Administrator and an appropriate Tribal official that sets out negotiated environmental goals, objectives, outcomes, outputs, priorities, actions to be taken, and measures of performance.

*Tribe.* Except as otherwise defined in statute or this subpart, Indian Tribal Government (Tribe) means: any Indian Tribe, band, nation, or other organized group or community, including any Alaska Native village, which is recognized as eligible by the United States Department of the Interior for the special services provided by the United States to Indians because of their status as Indians.

*Work plan.* The document which identifies how and when the applicant will use funds from environmental program grants and is the basis for management and evaluation of performance under the grant agreement to produce specific outputs and outcomes (see 35.507). The work plan must be consistent with applicable statutes, regulations, and delegation or authorization agreements.

*Work plan commitments.* The outputs and outcomes associated with each work plan component, as established in the grant agreement.

*Work plan component.* A negotiated set or group of work plan commitments established in the grant agreement. A work plan may have one or more work plan components.

### § 35.503 Deviation from this subpart.

EPA will consider and may approve requests for an official deviation from non-statutory provisions of this regulation in accordance with 40 CFR 31.6.

### § 35.504 Eligibility of an Intertribal Consortium.

(a) An Intertribal Consortium is eligible to receive grants under the authorities listed in § 35.501 only if the Consortium demonstrates that all members of the Consortium meet the eligibility requirements for the grant and authorize the Consortium to apply for and receive assistance, except as provided in paragraph (b) of this section.

(b) An Intertribal Consortium is eligible to receive a grant under the

Indian Environmental General Assistance Program Act, in accordance with § 35.540, if the Consortium demonstrates that:

(1) A majority of its members meets the eligibility requirements for the grant;

(2) All members that meet the eligibility requirements authorize the Consortium to apply for and receive assistance; and

(3) Only members that meet the eligibility requirements will benefit directly from the grant project and the Consortium agrees to a grant condition to that effect.

## Preparing an Application

### § 35.505 Components of a complete application.

A complete application for an environmental program grant must:

(a) Meet the requirements in 40 CFR part 31, subpart B;

(b) Include a proposed work plan (§ 35.507 of this subpart); and

(c) Specify the environmental program and the amount of funds requested.

### § 35.506 Time frame for submitting an application.

An applicant should submit a complete application to EPA at least 60 days before the beginning of the proposed budget period.

### § 35.507 Work plans.

(a) *Bases for negotiating work plans.* The work plan is negotiated between the applicant and the Regional Administrator and reflects consideration of national, regional, and Tribal environmental and programmatic needs and priorities.

(1) *Negotiation considerations.* In negotiating the work plan, the Regional Administrator and applicant will consider such factors as national program guidance; any regional supplemental guidance; goals, objectives, and priorities proposed by the applicant; other jointly identified needs or priorities; and the planning target.

(2) *National program guidance.* If an applicant proposes a work plan that differs significantly from the goals and objectives, priorities, or performance measures in the national program guidance associated with the proposed work plan activities, the Regional Administrator must consult with the appropriate National Program Manager before agreeing to the work plan.

(3) *Use of existing guidance.* An applicant should base the grant application on the national program guidance in place at the time the application is being prepared.

(b) *Work plan requirements.*

(1) The work plan is the basis for the management and evaluation of performance under the grant agreement.

(2) An approvable work plan must specify:

(i) The work plan components to be funded under the grant;

(ii) The estimated work years and funding amounts for each work plan component;

(iii) The work plan commitments for each work plan component, and a time frame for their accomplishment;

(iv) A performance evaluation process and reporting schedule in accordance with § 35.515 of this subpart; and

(v) The roles and responsibilities of the recipient and EPA in carrying out the work plan commitments.

(3) The work plan must be consistent with applicable federal statutes, regulations, circulars, executive orders, and delegation or authorization agreements.

(c) *Tribal Environmental Agreement as work plan.* An applicant may use a Tribal Environmental Agreement (TEA) or a portion of the TEA as the work plan or part of the work plan for an environmental program grant if the portion of the TEA that is to serve as the grant work plan:

(1) Is clearly identified and distinguished from other portions of the TEA; and

(2) Meets the requirements in § 35.507(b).

### § 35.508 Budget period.

The Regional Administrator and applicant may negotiate the length of the budget period for environmental program grants, subject to limitations in appropriations and authorizing statutes.

### § 35.509 Consolidated grants.

Any applicant eligible to receive funds from more than one environmental program may submit an application for a consolidated grant. For consolidated grants, an applicant prepares a single budget and work plan covering all of the environmental programs included in the application. The consolidated budget must identify each environmental program to be included, the amount of each program's funds, and the extent to which each program's funds support each work plan component. Recipients of consolidated grants must account for grant funds in accordance with the funds' environmental program sources; funds included in a consolidated grant from a particular environmental program may be used only for that program.

## EPA Action on Application

### § 35.510 Time frame for EPA action.

The Regional Administrator will review a complete application and either approve, conditionally approve, or disapprove it within 60 days of receipt. The Regional Administrator will award grants for approved or conditionally approved applications if funds are available.

### § 35.511 Criteria for approving an application.

(a) After evaluating other applications as appropriate, the Regional Administrator may approve an application if he or she determines that:

(1) The application meets the requirements of this subpart and 40 CFR part 31;

(2) The application meets the requirements of all applicable federal statutes, regulations, circulars, executive orders, and delegation or authorization agreements;

(3) The proposed work plan complies with the requirements of § 35.507 of this subpart; and

(4) The achievement of the proposed work plan is feasible, considering such factors as the applicant's existing circumstances, past performance, program authority, organization, resources, and procedures.

(b) If the Regional Administrator finds the application does not satisfy the criteria in paragraph (a) of this section, the Regional Administrator may either:

(1) Conditionally approve the application if only minor changes are required, with grant conditions necessary to ensure compliance with the criteria, or

(2) Disapprove the application in writing.

### § 35.512 Factors considered in determining award amount.

(a) After approving an application under § 35.511, the Regional Administrator will consider such factors as the amount of funds available for award to Indian Tribes and Intertribal Consortia, the extent to which the proposed work plan is consistent with EPA guidance and mutually agreed upon priorities, and the anticipated cost of the work plan relative to the proposed work plan components to determine the amount of funds to be awarded.

(b) If the Regional Administrator finds that the requested level of funding is not justified, he or she will attempt to negotiate a resolution of the issues with the applicant before determining the award amount.

**§ 35.513 Reimbursement for pre-award costs.**

(a) Notwithstanding the requirements of 40 CFR 31.23(a) (Period of availability of funds), and OMB cost principles, EPA may reimburse recipients for pre-award costs incurred from the beginning of the budget period established in the grant agreement if such costs would have been allowable if incurred after the award. Such costs must be specifically identified in the grant application EPA approves.

(b) The applicant incurs pre-award costs at its own risk. EPA is under no obligation to reimburse such costs unless they are included in an approved grant application .

**Post-Award Requirements**

**§ 35.514 Amendments and other changes.**

The provisions of 40 CFR 31.30 do not apply to environmental program grants awarded under this subpart. The following provisions govern amendments and other changes to grant work plans and budgets after the work plan is negotiated and a grant awarded.

(a) *Changes requiring prior approval.* The recipient needs the Regional Administrator's prior written approval to make significant post-award changes to work plan commitments. The Regional Office, in consultation with the recipient, will document approval of these changes including budgeted amounts associated with the revisions.

(b) *Changes requiring approval.* Recipients must request, in writing, grant amendments for changes requiring increases in environmental program grant amounts and extensions of the budget period. Recipients may begin implementing a change before the amendment has been approved by EPA, but do so at their own risk. If EPA approves the change, EPA will issue a grant amendment. EPA will notify the recipient in writing if the change is disapproved.

(c) *Changes not requiring approval.* Other than those situations described in paragraphs (a) and (b) of this section, recipients do not need to obtain approval for changes, including changes in grant work plans, budgets, or other parts of grant agreements, unless the Regional Administrator determines approval requirements should be imposed on a specific recipient for a specified period of time.

(d) *OMB cost principles.* The Regional Administrator may waive, in writing, approval requirements for specific recipients and costs contained in OMB cost principles.

(e) *Changes in consolidated grants.* Recipients of consolidated grants under § 35.509 may not transfer funds among environmental programs.

(f) *Subgrants.* Subgrantees must request required approvals in writing from the recipient and the recipient shall approve or disapprove the request in writing. A recipient will not approve any work plan or budget revision which is inconsistent with the purpose or terms and conditions of the federal grant to the recipient. If the revision requested by the subgrantee would result in a significant change to the recipient's approved grant which requires EPA approval, the recipient will obtain EPA's approval before approving the subgrantee's request.

**§ 35.515 Evaluation of performance.**

(a) *Joint evaluation process.* The applicant and the Regional Administrator will develop a process for jointly evaluating and reporting progress and accomplishments under the work plan. A description of the evaluation process and reporting schedule must be included in the work plan. The schedule must require the recipient to report at least annually and must satisfy the requirements for progress reporting under 40 CFR 31.40(b).

(b) *Elements of the evaluation process.* The evaluation process must provide for:

(1) A discussion of accomplishments as measured against work plan commitments;

(2) A discussion of the cumulative effectiveness of the work performed under all work plan components;

(3) A discussion of existing and potential problem areas; and

(4) Suggestions for improvement, including, where feasible, schedules for making improvements.

(c) *Resolution of issues.* If the joint evaluation reveals that the recipient has not made sufficient progress under the work plan, the Regional Administrator and the recipient will negotiate a resolution that addresses the issues. If the issues cannot be resolved through negotiation, the Regional Administrator may take appropriate measures under 40 CFR 31.43. The recipient may request review of the Regional Administrator's decision under the dispute processes in 40 CFR 31.70.

(d) *Evaluation reports.* The Regional Administrator will ensure that the required evaluations are performed according to the negotiated schedule and that copies of evaluation reports are placed in the official files and provided to the recipient.

**§ 35.516 Direct implementation.**

If funds for an environmental program remain after Tribal and Intertribal Consortia environmental program grants for that program have been awarded or because no grants were awarded, the Regional Administrator may, subject to any limitations contained in appropriation acts, use all or part of the funds to support a federal program required by law in Indian country in the absence of an acceptable Tribal program.

**§ 35.517 Unused funds.**

If funds for an environmental program remain after Tribal and Intertribal Consortia grants for that program have been awarded or because no grants were awarded, and the Regional Administrator does not use the funds under § 35.516 of this subpart, the Regional Administrator may award the funds to any eligible Indian Tribe or Intertribal Consortium in the region (including a Tribe or Intertribal Consortium that has already received funds) for the same environmental program or for a Performance Partnership Grant, subject to any limitations in appropriation acts.

**§ 35.518 Unexpended balances.**

Subject to any relevant provisions of law, if a recipient's final Financial Status Report shows unexpended balances, the Regional Administrator will deobligate the unexpended balances and make them available, either to the same recipient or other Tribes or Intertribal Consortia in the region, for environmental program grants.

**§ 35.519 Preferences for Indians, Indian organizations, and Indian-owned economic enterprises.**

Any grant awarded under this subpart, and any subgrant, contract, or subcontract under such grant, shall require that to the greatest extent feasible:

(a) Preferences and opportunities for training and employment in connection with the administration of such contracts or grants be given to Indians; and

(b) Preference in the award of subcontracts and subgrants in connection with the administration of such contracts or grants be given to Indian organizations and to Indian-owned economic enterprises as defined in section 3 of the Indian Financing Act of 1974 (88 Stat. 77) [25 USCS 1452].

**Performance Partnership Grants**

**§ 35.530 Purpose of Performance Partnership Grants.**

(a) *Purpose of section.* Sections 35.530 through 35.538 govern Performance Partnership Grants to Tribes and

Intertribal Consortia authorized in the Omnibus Consolidated Rescissions and Appropriations Act of 1996, Public Law 104–134, 110 Stat. 1321, 1321–299 (1996) and Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1998, Public Law 105–65, 111 Stat. 1344, 1373 (1997).

(b) *Purpose of program.* Performance Partnership Grants enable Tribes and Intertribal Consortia to combine funds from more than one environmental program grant into a single grant with a single budget. Recipients do not need to account for Performance Partnership Grant funds in accordance with the funds' original environmental program sources; they need only account for total Performance Partnership Grant expenditures. Subject to the requirements of this subpart, the Performance Partnership Grant program is designed to:

(1) Strengthen partnerships between EPA and Tribes and Intertribal Consortia through joint planning and priority-setting and better deployment of resources;

(2) Provide Tribes and Intertribal Consortia with flexibility to direct resources where they are most needed to address environmental and public health priorities;

(3) Link program activities more effectively with environmental and public health goals and program outcomes;

(4) Foster development and implementation of innovative approaches, such as pollution prevention, ecosystem management, and community-based environmental protection strategies; and

(5) Provide savings by streamlining administrative requirements.

**§ 35.532 Requirements summary.**

(a) Applicants and recipients of Performance Partnership Grants must meet:

(1) The requirements in §§ 35.500 to 35.518 of this subpart which apply to all environmental program grants, including Performance Partnership Grants; and

(2) The requirements in §§ 35.530 to 35.538 of this subpart which apply only to Performance Partnership Grants.

(b) In order to include funds from an environmental program grant listed in § 35.501(a) of this subpart in a Performance Partnership Grant, applicants must:

(1) Meet the requirements for award of each environmental program from which funds are included in the Performance Partnership Grant, except the requirements at §§ 35.548(c), 35.638(b) and (c), 35.691, and 35.708 (c), (d), (e), and (g). These requirements can be found in this regulation beginning at § 35.540. If the applicant is an Intertribal Consortium, each Tribe that is a member of the Consortium must meet the requirements.

(2) Apply for the environmental program grant.

(3) Obtain the Regional Administrator's approval of the application for that grant.

(c) If funds from an environmental program are not included in a Performance Partnership Grant, an applicant is not required to meet the requirements of that environmental program in order to carry out activities eligible under that program as provided in § 35.535.

**§ 35.533 Programs eligible for inclusion.**

(a) *Eligible programs.* Except as provided in paragraph (b) of this section, the environmental program grants eligible for inclusion in a Performance Partnership Grant are listed in § 35.501(a)(2) through (8) of this subpart.

(b) *Changes in eligible programs.* The Administrator may, in guidance or regulation, describe subsequent additions, deletions, or changes to the list of environmental programs eligible for inclusion in Performance Partnership Grants.

**§ 35.534 Eligible recipients.**

(a) A Tribe or Intertribal Consortium is eligible for a Performance Partnership Grant if the Tribe or each member of the Intertribal Consortium is eligible for, and the Tribe or Intertribal Consortium receives funding from, more than one of the environmental program grants listed in § 35.501(a) in accordance with the requirements for those environmental programs.

(b) For grants to Tribes, a Tribal agency must be designated by a Tribal government or other authorized Tribal process to receive grants under each of the environmental programs to be combined in the Performance Partnership Grant.

**§ 35.535 Activities eligible for funding.**

(a) *Delegated or authorized activities.* A Tribe or Intertribal Consortium may use Performance Partnership Grant funds to carry out EPA-delegated or EPA-authorized activities, such as permitting and primary enforcement responsibility only if the Tribe or each member of the Intertribal Consortium receives from the Regional Administrator the delegations or authorizations to conduct such activities.

(b) *Other program activities.* Except for the limitation in paragraph (a) of this section, a Tribe or Intertribal Consortium may use Performance Partnership Grant funds for any activity that is eligible under the environmental programs listed in § 35.501(a) of this subpart, as determined by the Regional Administrator. If an applicant proposes a Performance Partnership Grant work plan that differs significantly from any of the proposed work plans approved for funding that the applicant now proposes to move into a Performance Partnership Grant, the Regional Administrator must consult with the appropriate National Program Managers before agreeing to the Performance Partnership Grant work plan. National Program Managers may expressly waive or modify this requirement for consultation in national program guidance. National Program Managers may also define in national program guidance ''significant'' deviations from a work plan submitted with a Tribe's or a Consortium's application for funds.

**§ 35.536 Cost share requirements.**

(a) The Performance Partnership Grant cost share shall be the sum of the amounts required for each environmental program grant included in the Performance Partnership Grant, as determined in accordance with paragraphs (b) and (c) of this section, unless waived under paragraph (d) of this section.

(b) For each environmental program grant included in the Performance Partnership Grant that has a cost share of five percent or less under the provisions of §§ 35.540 through 35.718, the required cost share shall be that identified in §§ 35.540 through 35.718 of this subpart.

(c) For each environmental program grant included in the Performance Partnership Grant that has a cost share of greater than five percent under the provisions of §§ 35.540 through 35.718 of this subpart, the required cost share shall be five percent of the allowable cost of the work plan budget for that program. However, after the first two years in which a Tribe or Intertribal Consortium receives a Performance Partnership Grant, the Regional Administrator must determine through objective assessment whether the Tribe or the members of an Intertribal Consortium meet socio-economic indicators that demonstrate the ability of the Tribe or the Intertribal Consortium to provide a cost share greater than five percent. If the regional Administrator determines that the Tribe or the members of Intertribal Consortium meets such indicators, then

he or she shall increase the required cost share up to a maximum of 10 percent of the allowable cost of the work plan budget.

(d) The Regional Administrator may waive the cost share required under this section upon request of the Tribe or Intertribal Consortium, if he or she determines, based on an objective assessment of socio-economic indicators, that meeting the cost share would impose undue hardship.

**§ 35.537 Application requirements.**

An application for a Performance Partnership Grant must contain:

(a) A list of the environmental programs and the amount of funds from each program to be combined in the Performance Partnership Grant;

(b) A consolidated budget;

(c) A consolidated work plan that addresses each program being combined in the grant and which meets the requirements of § 35.507.

**§ 35.538 Project period.**

If the projected completion date for a work plan commitment funded under an environmental program grant that is added to a Performance Partnership Grant extends beyond the end of the project period for the Performance Partnership Grant, the Regional Administrator and the recipient will agree in writing as to how and when the work plan commitment will be completed.

## Indian Environmental General Assistance Program (GAP)

**§ 35.540 Purpose.**

(a) *Purpose of section.* Sections 35.540 through 35.547 govern grants to Tribes and Intertribal Consortia under the Indian Environmental General Assistance Program Act of 1992 (42 U.S.C. 4368b.)

(b) *Purpose of program.* Indian Environmental General Assistance Program grants are awarded to build capacity to administer environmental programs on Indian lands by providing general assistance to plan, develop, and establish the capability to implement environmental protection programs in Indian country.

**§ 35.542 Definitions.**

*Tribe.* Any Indian Tribe, band, nation, or other organized group or community including any Alaska Native village or regional or village corporation (as defined in, or established pursuant to, the Alaska Native Claims Settlement Act (43 U.S.C.A. 1601, *et seq.*)), which is recognized as eligible for the special services provided by the United States to Indians because of their status as Indians.

**§ 35.543 Eligible recipients.**

The following entities are eligible to receive grants under this program:

(a) Tribes and

(b) Intertribal Consortia as provided in § 35.504.

**§ 35.545 Eligible activities.**

Tribes and Intertribal Consortia may use General Assistance Program funds for planning, developing, and establishing capability to implement environmental protection programs and to develop and implement solid and hazardous waste programs on Indian lands.

**§ 35.548 Award limitations.**

(a) Each grant awarded under the General Assistance Program shall be not less than $75,000. This limitation does not apply to additional funds that may become available for award to the same Tribe or Intertribal Consortium.

(b) The Regional Administrator shall not award a grant to a single Tribe or Intertribal Consortium of more than 10 percent of the total annual funds appropriated under the Act.

(c) The project period of a General Assistance Program award may not exceed four years.

(d) No award under this program shall result in reduction of total EPA grants for environmental programs to the recipient.

## Air Pollution Control (Section 105)

**§ 35.570 Purpose.**

(a) *Purpose of section.* Sections 35.570 through 35.577 govern air pollution control grants to Tribes (as defined in section 302(r) of the Clean Air Act (CAA)) authorized under sections 105 and 301(d) of the Act and Intertribal Consortia.

(b) *Purpose of program.* Air pollution control grants are awarded to develop and administer programs that prevent and control air pollution or implement national air quality standards in Indian country.

(c) *Associated program regulations.* Refer to 40 CFR parts 49, 50, 51, 52, 58, 60, 61, 62, and 81 for associated program regulations.

**§ 35.572 Definitions.**

In addition to the definitions in § 35.502, the following definitions apply to the Clean Air Act's section 105 grant program:

*Nonrecurrent expenditures* are those expenditures which are shown by the recipient to be of a nonrepetitive, unusual, or singular nature such as would not reasonably be expected to recur in the foreseeable future. Costs categorized as nonrecurrent must be approved in the grant agreement or an amendment thereto.

*Recurrent expenditures* are those expenses associated with the activities of a continuing environmental program. All expenditures are considered recurrent unless justified by the applicant as nonrecurrent and approved as such in the grant award or an amendment thereto.

**§ 35.573 Eligible tribe.**

(a) A Tribe is eligible to receive financial assistance if it has demonstrated eligibility to be treated as a State under 40 CFR 49.6. An Intertribal Consortium consisting of Tribes that have demonstrated eligibility to be treated as States under 40 CFR 49.6 is eligible for financial assistance under this paragraph.

(b) A Tribe that has not made a demonstration under 40 CFR 49.6 is eligible for financial assistance under sections 105 and 302(b)(5) of the Clean Air Act. An Intertribal Consortium consisting of Tribes that have not demonstrated eligibility to be treated as States under 40 CFR 49.6 is eligible for financial assistance under this paragraph.

**§ 35.575 Maximum Federal share.**

(a) For Tribes and Intertribal Consortia eligible under § 35.573(a), the Regional Administrator may provide financial assistance in an amount up to 95 percent of the approved costs of planning, developing, establishing, or improving an air pollution control program, and up to 95 percent of the approved costs of maintaining that program. After two years from the date of each Tribe's or Intertribal Consortium's initial grant award, the Regional Administrator will reduce the maximum federal share to 90 percent if the Regional Administrator determines that the Tribe or each member of the Intertribal Consortium meets certain economic indicators that would provide an objective assessment of the Tribe's or each of the Intertribal Consortiums member's ability to increase its share. For a Tribe or Intertribal Consortium eligible under § 35.573(a), the Regional Administrator may increase the maximum federal share if the Tribe or Intertribal Consortium can demonstrate in writing to the satisfaction of the Regional Administrator that fiscal circumstances within the Tribe or within the member Tribes of the Intertribal Consortium are constrained to such an extent that fulfilling the

match requirement would impose undue hardship.

(b) For Tribes and Intertribal Consortia eligible under § .573(b), the Regional Administrator may provide financial assistance in an amount up to 60 percent of the approved costs of planning, developing, establishing, or improving an air pollution control program, and up to 60 percent of the approved costs of maintaining that program.

**§ 35.576 Maintenance of effort.**

(a) For Tribes and Intertribal Consortia that are eligible for financial assistance under § 35.573(b) of this subpart, the Tribe or each of the Intertribal Consortium's members must expend annually, for recurrent section 105 program expenditures, an amount of non-federal funds at least equal to such expenditures during the preceding fiscal year.

(b) In order to award grants in a timely manner each fiscal year, the Regional Administrator shall compare a Tribe's or each of the Intertribal Consortiums member's proposed expenditure level, as detailed in the grant application, to its expenditure level in the second preceding fiscal year.

(c) The Regional Administrator may grant an exception to § 35.576(a) if, after notice and opportunity for a public hearing, the Regional Administrator determines that the reduction is attributable to a non-selective reduction of all the Tribe's or each of the Intertribal Consortiums member's programs.

(d) The Regional Administrator will not award section 105 funds unless the applicant provides assurance that the grant will not supplant non-federal funds that would otherwise be available for maintaining the section 105 program.

**§ 35.578 Award limitation.**

The Regional Administrator will not disapprove an application for, or terminate or annul an award of, financial assistance under § 35.573 without prior notice and opportunity for a public hearing within the appropriate jurisdiction or, where more than one area is affected, within one of the affected areas within the jurisdiction

**Water Pollution Control (Sections 106 and 518)**

**§ 35.580 Purpose.**

(a) *Purpose of section.* Sections 35.580 through 35.588 govern water pollution control grants to eligible Tribes and Intertribal Consortia (as defined in § 35.502) authorized under sections 106 and 518 of the Clean Water Act.

(b) *Purpose of program.* Water pollution control grants are awarded to assist Tribes and Intertribal Consortia in administering programs for the prevention, reduction, and elimination of water pollution, including programs for the development and implementation of ground-water protection strategies.

(c) *Associated program requirements.* Program requirements for water quality planning and management activities are provided in 40 CFR part 130.

**§ 35.582 Definitions.**

*Federal Indian reservation.* All lands 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.

*Tribe.* Any Indian Tribe, band, group, or community recognized by the Secretary of the Interior, exercising governmental authority over a federal Indian reservation.

**§ 35.583 Eligible recipients.**

A Tribe, including an Intertribal Consortium, is eligible to receive a section 106 grant if EPA has determined that the Indian Tribe or each member of the Intertribal Consortium meets the requirements for treatment in a manner similar to a State under section 518(e) of the Clean Water Act. (See 40 CFR 130.6(d))

**§ 35.585 Maximum Federal share.**

(a) The Regional Administrator may provide up to 95 percent of the approved work plan costs for Tribes or Intertribal Consortia establishing a section 106 program. Work plan costs include costs of planning, developing, establishing, improving or maintaining a water pollution control program.

(b) The Regional Administrator may increase the maximum federal share if the Tribe or Intertribal Consortium can demonstrate in writing to the satisfaction of the Regional Administrator that fiscal circumstances within the Tribe or within each Tribe that is a member of an Intertribal Consortium are constrained to such an extent that fulfilling the match requirement would impose undue hardship.

**§ 35.588 Award limitations.**

(a) The Regional Administrator will only award section 106 funds or reprogram section 106 funds to a Tribe or Intertribal Consortium if:

(1) All monitoring and analysis activities performed by the Tribe or Intertribal Consortium meets the applicable quality assurance and quality control requirements in 40 CFR 31.45.

(2) The Tribe or each member of the Intertribal Consortium has emergency power authority comparable to that in section 504 of the Clean Water Act and adequate contingency plans to implement such authority.

(3) EPA has not assumed enforcement as defined in section 309(a)(2) of the Clean Water Act in the Tribe's or any Intertribal Consortium member's jurisdiction.

(4) The Tribe or Intertribal Consortium agrees to include a discussion of how the work performed under section 106 addressed water quality problems on Tribal lands in the annual report required under § 35.515(d).

(5) After an initial award of section 106 funds, the Tribe or Intertribal Consortium shows satisfactory progress in meeting its negotiated work plan commitments.

(b) A Tribe or Intertribal Consortium is eligible to receive a section 106 grant or section 106 grant funds even if the Tribe or each of the members of an Intertribal Consortium does not meet the requirements of section 106(e)(1) and 106(f)(1) of the Clean Water Act.

**Water Quality Cooperative Agreements (Section 104(b)(3))**

**§ 35.600 Purpose.**

(a) *Purpose of section.* Sections 35.600 through 35.604 govern Water Quality Cooperative Agreements to Tribes and Intertribal Consortia authorized under section 104(b)(3) of the Clean Water Act. These sections do not govern Water Quality Cooperative Agreements under section 104(b)(3) to organizations that do not meet the definitions of Tribe or Intertribal Consortium in § 35.502; such cooperative agreements generally are subject to the uniform administrative requirements for grants at 40 CFR part 30.

(b) *Purpose of program.* EPA awards Water Quality Cooperative Agreements for investigations, experiments, training, demonstrations, surveys, and studies relating to the causes, effects, extent, prevention, reduction, and elimination of water pollution. EPA issues guidance each year advising EPA regions and headquarters regarding appropriate priorities for funding for this program. This guidance may include such focus areas as National Pollutant Discharge Elimination System watershed permitting, urban wet weather programs, or innovative pretreatment programs and biosolids projects.

**§ 35.603 Competitive process.**

EPA will award water quality cooperative agreement funds through a competitive process in accordance with national program guidance. After the competitive process is complete, the recipient can, at its discretion, accept the award as a separate cooperative agreement or add the funds to a Performance Partnership Grant. If the recipient chooses to add the funds to a Performance Partnership Grant, the water quality work plan commitments must be included in the Performance Partnership Grant work plan.

**§ 35.604 Maximum Federal share.**

The Regional Administrator may provide up to 100 percent of approved work plan costs.

**Wetlands Development Grant Program (Section 104(b)(3))**

**§ 35.610 Purpose.**

(a) *Purpose of section.* Sections 35.610 through 35.615 govern wetlands development grants to Tribes and Intertribal Consortia under section 104(b)(3) of the Clean Water Act. These sections do not govern wetlands development grants under section 104(b)(3) to organizations that do not meet the definitions of Tribe or Intertribal Consortium in § 35.502; such grants generally are subject to the uniform administrative requirements for grants at 40 CFR part 30.

(b) *Purpose of program.* EPA awards wetlands development grants to assist in the development of new, or the refinement of existing, wetlands protection and management programs.

**§ 35.613 Competitive process.**

Wetlands development grants are awarded on a competitive basis. EPA annually establishes a deadline for receipt of grant applications. EPA reviews applications and decides which grant projects to fund based on criteria established by EPA. After the competitive process is complete, the recipient can, at its discretion, accept the award as a wetlands development program grant or add the funds to a Performance Partnership Grant. If the recipient chooses to add the funds to a Performance Partnership Grant, the wetlands development program work plan commitments must be included in the Performance Partnership Grant work plan.

**§ 35.615 Maximum Federal share.**

EPA may provide up to 75 percent of the approved work plan costs for the development or refinement of a wetlands protection and management program.

**Nonpoint Source Management Grants (Sections 319(h) and 518(f))**

**§ 35.630 Purpose.**

(a) *Purpose of section.* Sections 35.630 through 35.638 govern nonpoint source management grants to eligible Tribes and Intertribal Consortia under sections 319(h) and 518(f) of the Clean Water Act.

(b) *Purpose of program.* Nonpoint source management grants may be awarded for the implementation of EPA-approved nonpoint source management programs, including ground-water quality protection activities that will advance the implementation of a comprehensive approved nonpoint source management program.

**§ 35.632 Definition.**

*Tribe.* Any Indian Tribe, band, group, or community recognized by the Secretary of the Interior and exercising governmental authority over a federal Indian reservation.

**§ 35.633 Eligibility requirements.**

A Tribe or Intertribal Consortium is eligible to receive a Nonpoint Source Management grant if EPA has determined that the Tribe or each member of the Intertribal Consortium meets the requirements for treatment in a manner similar to a State under section 518(e) of the Clean Water Act. (See 40 CFR 130.6(d).)

**§ 35.635 Maximum Federal share.**

(a) The Regional Administrator may provide up to 60 percent of the approved work plan costs in any fiscal year. The non-Federal share of costs must be provided from non-Federal sources.

(b) The Regional Administrator may increase the maximum Federal share if the Tribe or Intertribal Consortium can demonstrate in writing to the satisfaction of the Regional Administrator that fiscal circumstances within the Tribe or within each Tribe that is a member of the Intertribal Consortium are constrained to such an extent that fulfilling the match requirement would impose undue hardship. In no case shall the Federal share be greater than 90 percent.

**§ 35.636 Maintenance of effort.**

To receive funds under section 319 in any fiscal year, a Tribe or each member of an Intertribal Consortium must agree that the Tribe or each member of the Intertribal Consortium will maintain its aggregate expenditures from all other sources for programs for controlling nonpoint source pollution and improving the quality of the Tribe's or the Intertribal Consortiums members' waters at or above the average level of such expenditures in Fiscal Years 1985 and 1986.

**§ 35.638 Award limitations.**

(a) *Available funds.* EPA may use no more than the amount authorized under the Clean Water Act section 319 and 518(f) for making grants to Tribes or Intertribal Consortia.

(b) *Financial assistance to persons.* Tribes or Intertribal Consortia may use funds for financial assistance to persons only to the extent that such assistance is related to the cost of demonstration projects.

(c) *Administrative costs.* Administrative costs in the form of salaries, overhead, or indirect costs for services provided and charged against activities and programs carried out with these funds shall not exceed 10 percent of the funds the Tribe or Intertribal Consortium receives in any fiscal year. The cost of implementing enforcement and regulatory activities, education, training, technical assistance, demonstration projects, and technology transfer programs are not subject to this limitation.

(d) The Regional Administrator will not award section 319(h) funds to any Tribe or Intertribal Consortium unless:

(1) *Approved assessment report.* EPA has approved the Tribes' or each member of the Intertribal Consortium's Assessment Report on nonpoint sources, prepared in accordance with section 319(a) of the Act;

(2) *Approved Tribe or Intertribal Consortium management program.* EPA has approved the Tribes' or each member of the Intertribal Consortium's management program for nonpoint sources, prepared in accordance with section 319(b) of the Act;

(3) *Progress on reducing pollutant loadings.* The Regional Administrator determines, for a Tribe or Intertribal Consortium that received section 319 funds in the preceding fiscal year, that the Tribe or each member of the Intertribal Consortium made satisfactory progress in meeting its schedule for achieving implementation of best management practices to reduce pollutant loadings from categories of nonpoint sources, or particular nonpoint sources, designated in the Tribe's or each member of the Intertribal Consortium's management program. The Tribe or each member of the Intertribal Consortium must develop this schedule in accordance with section 319(b)(2) of the Act;

(4) *Activity and output descriptions.* The work plan briefly describes each significant category of nonpoint source

activity and the work plan commitments to be produced for each category; and

(5) *Significant watershed projects.* For watershed projects whose costs exceed $50,000, the work plan contains:

(i) A brief synopsis of the watershed implementation plan outlining the problems to be addressed;

(ii) The project's goals and objectives; and

(iii) The performance measures and environmental indicators that will be used to evaluate the results of the project.

**Pesticide Cooperative Enforcement (Section 23(a)(1))**

**§ 35.640 Purpose.**

(a) *Purpose of section.* Sections 35.640 through 35.645 govern cooperative agreements to Tribes and Intertribal Consortia authorized under section 23(a)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act for pesticide enforcement.

(b) *Purpose of program.* Cooperative agreements are awarded to assist Tribes and Intertribal Consortia in implementing pesticide enforcement programs.

(c) *Associated program regulations.* Refer to 19 CFR part 12 and 40 CFR parts 150 through 189 for associated regulations.

**§ 35.641 Eligible recipients.**

Eligible recipients of pesticide enforcement cooperative agreements are Tribes and Intertribal Consortia.

**§ 35.642 Maximum Federal share.**

The Regional Administrator may provide up to 100 percent of the approved work plan costs.

**§ 35.645 Basis for allotment.**

The Administrator allots pesticide enforcement cooperative agreement funds to each regional office. Regional offices award funds to Tribes and Intertribal Consortia based on their programmatic needs and applicable EPA guidance.

**Pesticide Applicator Certification and Training (Section 23(a)(2))**

**§ 35.646 Purpose.**

(a) *Purpose of section.* Sections 35.646 through 35.649 govern pesticide applicator certification and training grants to Tribes and Intertribal Consortia under section 23(a)(2) of the Federal Insecticide, Fungicide, and Rodenticide Act.

(b) *Purpose of program.* Pesticide applicator certification and training grants are awarded to train and certify restricted use pesticide applicators.

(c) *Associated program regulations.* Associated program regulations are found in 40 CFR parts 162, 170, and 171.

**§ 35.649 Maximum Federal share.**

The Regional Administrator may provide up to 50 percent of the approved work plan costs.

**Pesticide Program Implementation (Section 23(a)(1))**

**§ 35.650 Purpose.**

(a) *Purpose of section.* Sections 35.650 through 35.659 govern cooperative agreements to Tribes and Intertribal Consortia for pesticide enforcement and compliance programs under section 23(a)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act.

(b) *Purpose of program.* Cooperative agreements are awarded to assist Tribes and Intertribal Consortia to develop and implement pesticide programs, including programs that protect farm workers, ground water, and endangered species from pesticide risks and other pesticide management programs designated by the Administrator.

(c) *Program regulations.* Refer to 40 CFR parts 150 through 189 and 19 CFR part 12 for associated regulations.

**§ 35.653 Eligible recipients.**

Eligible recipients of pesticide program implementation cooperative agreements are Tribes and Intertribal Consortia.

**§ 35.655 Basis for allotment.**

The Administrator allots pesticide program implementation cooperative agreement funds to each regional office. Regional offices award funds to Tribes and Intertribal Consortia based on their programmatic needs and applicable EPA guidance.

**§ 35.659 Maximum Federal share.**

The Regional Administrator may provide up to 100 percent of the approved work plan costs.

**Pollution Prevention Incentive Grants (Section 6605)**

**§ 35.660 Purpose.**

(a) *Purpose of section.* Sections 35.660 through 35.669 govern grants to Tribes and Intertribal Consortia under section 6605 of the Pollution Prevention Act.

(b) *Purpose of program.* Pollution Prevention Incentive Grants are awarded to promote the use of source reduction techniques by businesses.

**§ 35.661 Competitive process.**

EPA regions award pollution prevention grant funds to Tribes and Intertribal Consortia through a competitive process in accordance with EPA guidance. When evaluating a Tribe's or Intertribal Consortium's application, EPA must consider, among other criteria, whether the proposed program would:

(a) Make specific technical assistance available to businesses seeking information about source reduction opportunities, including funding for experts to provide onsite technical advice to businesses seeking assistance in the development of source reduction plans;

(b) Target assistance to businesses for whom lack of information is an impediment to source reduction; and

(c) Provide training in source reduction techniques. Such training may be provided through local engineering schools or other appropriate means.

**§ 35.662 Definitions.**

The following definition applies to the Pollution Prevention Incentive grant program and to §§ 35.660 through 35.669:

(a) Pollution prevention/source reduction is any practice that:

(1) Reduces the amount of any hazardous substance, pollutant, or contaminant entering any waste stream or otherwise released into the environment (including fugitive emissions) prior to recycling, treatment, or disposal;

(2) Reduces the hazards to public health and the environment associated with the release of such substances, pollutants, or contaminants; and

(3) Reduces or eliminates the creation of pollutants through:

(i) Increased efficiency in the use of raw materials, energy, water, or other resources; or

(ii) Protection of national resources by conservation.

(b) Pollution prevention/source reduction does not include any practice which alters the physical, chemical, or biological characteristics or the volume of a hazardous substance, pollutant, or contaminant through a process or activity which itself is not integral to and necessary for the production of a product or the providing of a service.

**§ 35.663 Eligible recipients.**

(a) The Regional Administrator will treat a Tribe or Intertribal Consortium as eligible to apply for a pollution prevention incentive grant if the Tribe or each member of the Intertribal Consortium:

(1) Is recognized by the Secretary of Interior;

(2) Has an existing government exercising substantial governmental duties and powers;

(3) Has adequate authority to carry out the grant activities; and,

(4) Is reasonably expected to be capable, in the Regional Administrator's judgment, of administering the grant program.

(b) If the Administrator has previously determined that an Indian Tribe has met the prerequisites in paragraph (a)(1) and (2) of this section for another EPA program, the Tribe need provide only that information unique to the pollution prevention incentive grants program required by paragraph (b)(3) and (4) of this section.

**§ 35.668 Award limitations.**

If the Pollution Prevention Incentive grant funds are included in a Performance Partnership Grant the Pollution Prevention Incentive work plan commitments must be included in the Performance Partnership Grant work plan.

**§ 35.669 Maximum Federal share.**

The Federal share for Pollution Prevention Incentive Grants will not exceed 50 percent of the allowable Tribe and Intertribal Consortium Pollution Prevention Incentives project cost.

**Public Water System Supervision (Section 1443(a) and Section 1451)**

**§ 35.670 Purpose.**

(a) *Purpose of section*. Sections 35.670 through 35.678 govern public water system supervision grants to Tribes and Intertribal Consortia authorized under sections 1443(a) and 1451 of the Safe Drinking Water Act.

(b) *Purpose of program*. Public water system supervision grants are awarded to carry out public water system supervision programs including implementation and enforcement of the requirements of the Act that apply to public water systems.

(c) *Associated program regulations*. Associated program regulations are found in 40 CFR parts 141, 142, and 143.

**§ 35.672 Definition.**

*Tribe*. Any Indian Tribe having a federally recognized governing body carrying out substantial governmental duties and powers over any area.

**§ 35.673 Annual amount reserved by EPA.**

Each year, EPA shall reserve up to seven percent of the public water system supervision funds for grants to Tribes and Intertribal Consortia under section 1443(a).

**§ 35.675 Maximum Federal share.**

(a) The Regional Administrator may provide up to 75 percent of the approved work plan costs.

(b) The Regional Administrator may increase the maximum federal share if the Tribe or Intertribal Consortium can demonstrate in writing to the satisfaction of the Regional Administrator that fiscal circumstances within the Tribe or Consortium are constrained to such an extent that fulfilling the match requirement would impose undue hardship, except that the federal share shall not be greater than 90 percent.

**§ 35.676 Eligible recipients.**

A Tribe or Intertribal Consortium is eligible to apply for a public water system supervision grant if the Tribe or each member of the Intertribal Consortium meets the following criteria:

(a) The Tribe or each member of the Intertribal Consortium is recognized by the Secretary of the Interior;

(b) The Tribe or each member of the Intertribal Consortium has a governing body carrying out substantial governmental duties and powers over any area;

(c) The functions to be exercised under the grant are within the area of the Tribal government's jurisdiction; and

(d) The Tribe or each member of the Intertribal Consortium is reasonably expected to be capable, in the Regional Administrator's judgment, of carrying out the functions to be exercised under the grant.

**§ 35.678 Award limitations.**

(a) *Initial grant*. The Regional Administrator will not make an initial award unless the Tribe or each member of the Intertribal Consortium has:

(1) Met the requirements of 40 CFR part 142, subpart H (treatment in a manner similar to a State);

(2) Established an approved public water system supervision program or agrees to establish an approvable program within three years of the initial award and assumed primary enforcement responsibility within this period; and

(3) Agreed to use at least one year of the grant funding to demonstrate program capability to implement the requirements found in 40 CFR 142.10.

(b) *Subsequent grants*. The Regional Administrator will not make a subsequent grant, after the initial award, unless the Tribe or each member of the Intertribal Consortia can demonstrate reasonable progress towards assuming primary enforcement responsibility within the three-year period after initial award. After the three-year period expires, the Regional Administrator will not award section 1443(a) funds to an Indian Tribe or Intertribal Consortium unless the Tribe or each member of the Intertribal Consortia has assumed primary enforcement responsibility for the public water system supervision program.

**Underground Water Source Protection (Section 1443(b))**

**§ 35.680 Purpose.**

(a) *Purpose of section*. Sections 35.680 through 35.688 govern underground water source protection grants to Tribes and Intertribal Consortia under section 1443(b) of the Safe Drinking Water Act.

(b) *Purpose of program*. The Underground Water Source Protection grants are awarded to carry out underground water source protection programs.

(c) *Associated program regulations*. Associated program regulations are found in 40 CFR parts 124, 144, 145, 146, and 147.

**§ 35.682 Definition.**

*Tribe*. Any Indian Tribe having a federally recognized governing body carrying out substantial governmental duties and powers over any area.

**§ 35.683 Annual amount reserved by EPA.**

EPA shall reserve up to five percent of the underground water source protection funds each year for underground water source protection grants to Tribes under section 1443(b) of the Safe Drinking Water Act.

**§ 35.685 Maximum Federal share.**

(a) The Regional Administrator may provide up to 75 percent of the approved work plan costs.

(b) The Regional Administrator may increase the maximum federal share if the Tribe or Intertribal Consortium can demonstrate in writing to the satisfaction of the Regional Administrator that fiscal circumstances within the Tribe or Consortium are constrained to such an extent that fulfilling the match requirement would impose undue hardship, except that the Federal share shall not be greater than 90 percent.

**§ 35.686 Eligible recipients.**

A Tribe or Intertribal Consortium is eligible to apply for an underground water source protection grant if the Tribe or each member of the Intertribal Consortium meets the following criteria:

(a) The Tribe or each member of the Intertribal Consortium is recognized by the Secretary of the Interior;

(b) The Tribe or each member of the Intertribal Consortium has a governing body carrying out substantial governmental duties and powers over any area;

(c) The functions to be exercised under the grant are within the area of the Tribal government's jurisdiction; and

(d) The Tribe or each member of the Intertribal Consortium is reasonably expected to be capable, in the Regional Administrator's judgment, of carrying out the functions to be exercised under the grant.

**§ 35.688 Award limitations.**

(a) *Initial grants.* The Regional Administrator will not make an initial award unless the Tribe or each member of the Intertribal Consortium has:

(1) Met the requirements of 40 CFR part 145, subpart E (treatment in a manner similar to a State); and

(2) Established an approved underground water source protection program or agrees to establish an approvable program within four years of the initial award.

(b) *Subsequent grants.* The Regional Administrator will not make a subsequent grant, after the initial award, unless the Tribe can demonstrate reasonable progress towards assuming primary enforcement responsibility within the four-year period after initial award. After the four-year period expires, the Regional Administrator shall not award section 1443(b) funds to an Indian Tribe unless the Tribe has assumed primary enforcement responsibility for the underground water source protection program.

**Lead-Based Paint Program (Section 404(g))**

**§ 35.690 Purpose.**

(a) *Purpose of section.* Sections 35.690 through 35.693 govern grants to Tribes and Intertribal Consortia under section 404(g) for the Toxic Substances Control Act .

(b) *Purpose of program.* Lead-Based Paint Program grants are awarded to develop and, if the recipient is authorized, to carry out lead-based paint activities programs to ensure that individuals employed in lead-based paint activities are properly trained; that training programs are accredited; and that contractors employed in such activities are certified.

(c) *Associated program regulations.* Associated program regulations are found in 40 CFR part 745.

**§ 35.691 Funding coordination.**

Recipients must use the Lead-Based Paint program funding in a way that complements any related assistance they receive from other federal sources for lead-based paint activities.

**§ 35.693 Eligible recipients.**

(a) The Regional Administrator will treat a Tribe or Intertribal Consortium as eligible to apply for a lead-based paint program grant if the Tribe or each member of the Intertribal Consortium:

(1) Is recognized by the Secretary of Interior;

(2) Has an existing government exercising substantial governmental duties and powers;

(3) Has adequate authority to carry out the grant activities; and,

(4) Is reasonably expected to be capable, in the Regional Administrator's judgment, of administering the grant program.

(b) If the Administrator has previously determined that an Indian Tribe has met the prerequisites in paragraph (a)(1) and (2) of this section for another EPA program, the Tribe need provide only that information unique to the lead-based paint program required by paragraph (b)(3) and (4) of this section.

**Indoor Radon Grants (Section 306)**

**§ 35.700 Purpose.**

(a) *Purpose of section.* Sections 35.700 through 35.708 govern Indoor Radon Grants to Tribes and Intertribal Consortia under section 306 of the Toxic Substances Control Act.

(b) *Purpose of program.* (1) Indoor radon grants are awarded to assist Tribes and Intertribal Consortia with the development and implementation of programs that assess and mitigate radon and that aim at reducing radon health risks. Indoor radon grant funds may be used for the following eligible activities.

(i) Survey of radon levels, including special surveys of geographic areas or classes of buildings (such as public buildings, school buildings, high-risk residential construction types);

(ii) Development of public information and education materials concerning radon assessment, mitigation, and control programs;

(iii) Implementation of programs to control radon on existing and new structures;

(iv) Purchase, by the Tribe or Intertribal Consortium of radon measurement equipment and devices;

(v) Purchase and maintenance of analytical equipment connected to radon measurement and analysis, including costs of calibration of such equipment;

(vi) Payment of costs of Environmental Protection Agency-approved training programs related to radon for permanent Tribal employees;

(vii) Payment of general overhead and program administration costs;

(viii) Development of a data storage and management system for information concerning radon occurrence, levels, and programs;

(ix) Payment of costs of demonstration of radon mitigation methods and technologies as approved by EPA, including Tribal and Intertribal Consortia participation in the Environmental Protection Agency Home Evaluation Program; and

(x) A toll-free radon hotline to provide information and technical assistance.

(2) In implementing paragraphs (b)(1)(iv) and (ix) of this section, a Tribe or Intertribal Consortia should make every effort, consistent with the goals and successful operation of the Tribal radon program, to give preference to low-income persons.

**§ 35.702 Basis for allotment.**

(a) The Regional Administrator will allot indoor radon grant funds based on the criteria in EPA Guidance in accordance with section 306(d) and (e) of the Toxic Substances Control Act.

(b) No Tribe or Intertribal Consortium may receive an indoor radon grant in excess of 10 percent of the total appropriated amount made available each fiscal year.

**§ 35.703 Eligible recipients.**

(a) The Regional Administrator will treat a Tribe or Intertribal Consortium as eligible to apply for an indoor radon grant if the Tribe or each member of the Intertribal Consortium:

(1) Is recognized by the Secretary of Interior;

(2) Has an existing government exercising substantial governmental duties and powers;

(3) Has adequate authority to carry out the grant activities; and,

(4) Is reasonably expected to be capable, in the Regional Administrator's judgment, of administering the grant program.

(b) If the Administrator has previously determined that a Tribe has met the prerequisites in paragraphs (a)(1) and (2) of this section for another EPA program, the Tribe need provide only that information unique to the radon grant program required by paragraphs (a)(3) and (4) of this section.

**§ 35.705 Maximum Federal share.**

The Regional Administrator may provide Tribes and Intertribal Consortia up to 75 percent of the approved costs for the development and implementation of radon program activities incurred by the Tribe in the first year of a grant to the Tribe or Consortium; 60 percent in the second year; and 50 percent in the third and each year thereafter.

**§ 35.708 Award limitations.**

(a) The Regional Administrator shall consult with the Tribal agency which has the primary responsibility for radon programs as designated by the affected Tribe before including indoor funds in a Performance Partnership Grant with another Tribal agency.

(b) No grant may be made in any fiscal year to a Tribe or Intertribal Consortium which did not satisfactorily implement the activities funded by the most recent grant awarded to the Tribe or Intertribal Consortium for an indoor radon program.

(c) The costs of radon measurement equipment or devices (see § 35.820(b)(1)(iv)) and demonstration of radon mitigation, methods, and technologies (see § 35.820(b)(1)(ix)) shall not, in aggregate, exceed 50 percent of a Tribe's or Intertribal Consortium's radon grant award in a fiscal year.

(d) The costs of general overhead and program administration (see § 35.820(b)(1)(vii)) of an indoor radon grant shall not exceed 25 percent of the amount of a Tribe's or Intertribal Consortium's radon grant in a fiscal year.

(e) A Tribe or Intertribal Consortium may use funds for financial assistance to persons only to the extent such assistance is related to demonstration projects or the purchase and analysis of radon measurement devices.

(f) Recipients must provide the Regional Administrator all radon-related information generated in its grant supported activities, including the results of radon surveys, mitigation demonstration projects, and risk communication studies.

(g) Recipients must maintain and make available to the public, a list of firms and individuals that have received a passing rating under the EPA proficiency rating program under section 305(a)(2) of the Act.

(h) Recipients may not use radon program grant funds to cover the costs of proficiency rating programs under section 305(a)(2) of the Act.

## Toxic Substances Compliance Monitoring (Section 28)

**§ 35.710 Purpose.**

(a) *Purpose of section.* Sections 35.710 through 35.715 govern Toxic Substances Compliance Monitoring grants to Tribes and Intertribal Consortia under section 28 of the Toxic Substances Control Act.

(b) *Purpose of program.* Toxic Substances Compliance Monitoring grants are awarded to establish and operate compliance monitoring programs to prevent or eliminate unreasonable risks to health or the environment associated with chemical substances or mixtures on Tribal lands with respect to which the Administrator is unable or not likely to take action for their prevention or elimination.

(c) *Associated program regulations.* Refer to 40 CFR parts 700 through 799 for associated program regulations.

**§ 35.712 Competitive process.**

EPA will award Toxic Substances Control Act Compliance Monitoring grants to Tribes or Intertribal Consortia through a competitive process in accordance with national program guidance.

**§ 35.713 Eligible recipients.**

(a) The Regional Administrator will treat a Tribe or Intertribal Consortium as eligible to apply for a Toxic Substances Compliance Monitoring grant if the Tribe or each member of the Intertribal Consortium:

(1) Is recognized by the Secretary of Interior;

(2) Has an existing government exercising substantial governmental duties and powers;

(3) Has adequate authority to carry out the grant activities; and,

(4) Is reasonably expected to be capable, in the Regional Administrator's judgment, of administering the grant program.

(b) If the Administrator has previously determined that an Indian Tribe has met the prerequisites in paragraphs (a)(1) and (2) of this section for another EPA program, the Tribe need provide only that information unique to the Toxic Substances Compliance Monitoring grant program required by paragraphs (a)(3) and (4) of this section.

**§ 35.715 Maximum Federal share.**

The Regional Administrator may provide up to 75 percent of the approved work plan costs.

**§ 35.718 Award limitation.**

If the Toxic Substances Compliance Monitoring grant funds are included in a Performance Partnership Grant, the toxic substances compliance monitoring work plan commitments must be included in the Performance Partnership Grant work plan.

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Friday
July 23, 1999

# Part IV

# Department of Commerce

## Bureau of Export Administration

**15 CFR Parts 740, 743 and 774**

**Revisions to the Export Administration Regulations; Commerce Control List: Revision to Categories 1, 2, 3, 4, 5, 6, 7, and 9 Based on Wassenaar Arrangement Review; Final Rule**

**DEPARTMENT OF COMMERCE**

**Bureau of Export Administration**

**15 CFR Parts 740, 743 and 774**

**[Docket No. 990625176–9176–01]**

**RIN 0694–AB86**

## Revisions to the Export Administration Regulations; Commerce Control List: Revision to Categories 1, 2, 3, 4, 5, 6, 7, and 9 Based on Wassenaar Arrangement Review

**AGENCY:** Bureau of Export Administration, Commerce.

**ACTION:** Final rule.

**SUMMARY:** The Bureau of Export Administration (BXA) maintains the Commerce Control List (CCL), which identifies those items subject to Department of Commerce export controls. This final rule revises certain entries controlled for national security reasons in Categories 1, 2, 3, 4, 5, 6, 7, and 9 to conform with changes in the Wassenaar Arrangement's List of Dual-Use Goods and Technologies maintained and agreed to by governments participating in the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies (Wassenaar Arrangement). The Wassenaar Arrangement controls strategic items with the objective of improving regional and international security and stability.

**DATES:** This rule is effective July 23, 1999.

**FOR FURTHER INFORMATION CONTACT:** For questions of technical nature, the following persons in the Office of Strategic Trade are available:

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**SUPPLEMENTARY INFORMATION:**

### Background

In July 1996, the United States and thirty-two other countries gave final approval to the establishment of a new multilateral export control arrangement, called the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies (Wassenaar Arrangement). The Wassenaar Arrangement contributes to regional and international security and stability by promoting transparency and greater responsibility in transfers of conventional arms and dual-use goods and technologies, thus preventing destabilizing accumulations of such items. Participating states have committed to exchange information on exports of dual-use goods and technologies to non-participating states for the purposes of enhancing transparency and assisting in developing common understandings of the risks associated with the transfers of these items.

On January 15, 1998, the Bureau of Export Administration (BXA) published an interim rule (63 FR 2452) fulfilling U.S. commitments to the Wassenaar Arrangement by implementing the Wassenaar Arrangement list of dual-use items and imposing reporting requirements for exports of certain items controlled under the Wassenaar Arrangement.

This final rule revises a number of national security controlled entries on the Commerce Control List (CCL) to conform with recent changes in the Wassenaar List of Dual-Use Goods and Technologies. Specifically, this rule makes the following amendments:

*Category 1—Materials, Chemicals, Microorganisms, and Toxins*

1C004—Amended by modifying controls on the elastic limit from 1,250 MPa to 880 MPa (1C004.b).

1C006—Amended by removing national security controls on hydrocarbon oils (1C006.a.1).

*Category 2—Material Processing*

2B001—Amended by modifying the note to 2B001.c to clarify that certain tool or cutter grinding machines are not controlled for national security reasons (decontrol note 2B001.c). In addition, the related controls section has been amended by adding a reference to refer to 1B101.d for cutting equipment designed or modified for removing prepregs and preforms controlled by 9A110 (2B001, related controls).

2B004—Amended by (1) revising the entry heading by removing national security controls on dies, molds and controls specially designed for certain hot isostatic presses (2B004, heading); and (2) revising the related controls section to by adding two new references, as follows: (a) for specially designed dies, molds and tooling refer to 1B001, 9B009, and ML18 of the Munitions List; and (b) in addition, see 1B101.d, 2B104, and 2B204 for controls on dies, molds and tooling (2B004, related controls).

2B005—Amended by correcting an editorial error (2B005.c).

2D001—Amended by modifying the entry heading to read ''software'', other than that controlled by 2D002, specially designed or modified for the ''development'', ''production'' or ''use'' of equipment controlled by 2A001 or 2B001 to 2B009 (2D001, heading). In addition, the related controls section is amended by clarifying that 2D001 controls software not covered by 2D101, that are specially designed or modified for the controllers of flow forming machines described in 2B109 (2D001, related controls).

2E003—Amended by (1) revising the related controls section by adding a reference to refer to 2E001, 2E002 and 2E101 for ''development'', ''production'' and ''use'' technology for equipment that are designed or modified for densification of carbon-carbon composites, structural composite rocket nozzles and reentry vehicle nose tips (2E003, related controls); and (2) revising the Deposition Techniques Table by (1) adding new ''resultant coatings'' technologies for diamond, boron nitride, and beryllium; and (2) updating the ''sensor window materials'' note by including diamond, gallium phosphide, sapphire, zirconium fluoride and hafnium fluoride and by removing potassium iodide, potassium fluoride, thallium bromide and thallium chlorobromide.

*Category 3—Electronics*

3A001—Amended by increasing the gate count from 300 to 3,000 for digital integrated circuits (3A001.a.11).

3A002—Amended by: (1) liberalizing controls for digital video magnetic tape recorders from 180 to 360 Mbits/s (3A002.a.2); (2) modifying the note to 3A002.a.2 by clarifying that 3A001.a.2 does not control digital video magnetic tape recorders specially designed for television recording using a signal format, which may include a compressed signal format, standardized or recommended by the ITU, the IEC, the SMPTE, the EBU or the IEEE for civil television applications (decontrol note to 3A002.a.2); and (3) modifying the note to 3A002.c.2 by clarifying that 3A002 does not control those ''dynamic signal analyzers'' using only constant percentage bandwidth filters (also known as octave or fractional octave filters) (clarification note to 3A002.c.2).

3B001—Amended by: (1) adding controls for molecular beam epitaxial growth equipment using solid sources

(3B001.a.3); (2) liberalizing controls for ion implantaters and adding a new term ''beam energy'' (3B001.b.1 and b.2); and (3) clarifying lithography equipment controls to include direct step on wafer equipment or step and scan (scanner) equipment, relaxing controls on the light source wavelength of lithography equipment from 400 nm to 350 nm and relaxing controls on minimum resolvable feature size on lithography equipment from 0.7 to 0.5 microns or less (3B001.f).

3C002—Amended by relaxing wavelength controls for positive resists for semiconductor lithography from 370 nm to 350 nm (3C002.a).

3E001—Amended by revising the note to 3E001 to indicate that 3E001 does not control integrated circuits using technology of 0.7 microns or more (decontrol note to 3E001).

3E002—Amended by adding new controls for substrates of silicon-on insulator (SOI) for integrated circuits in which the insulator is silicon dioxide (3E002.e) and substrates of silicon carbide for electronic components (3E002.f). In addition the related controls section is amended by adding a reference to refer to 3E001 for silicon-on-insulation technology for the ''development'' or ''production'' related to radiation hardening of integrated circuits (3E002, related controls).

*Category 4—Computers*

4A003—Amended by removing controls for 4A003.f (Equipment containing ''terminal interface equipment'' exceeding the limits in 5A001.b.3). This revision is consistent with consequential changes to 5A001 (i.e., the removal of equipment containing ''network access controllers'' or ''communication channel controllers''. In addition, to avoid possible confusion, the note to 4A003.g has been amended to clarify that ''network access controllers'' or ''communication channel controllers'' are not controlled by this entry (decontrol note to 4A003.g).

Table to Category 4—Amended by revising Note 5 to clarify that aggregation for CTP values do not apply to ''electronic assemblies'' described in 4A003.c (technical note 5 on CTP)

*Category 5—Telecommunications, Part I*

Several sections of Part I, Telecommunications have been removed creating a significant number of changes to the controls on telecommunication equipment. The majority of changes are identified in the following entries.

Note 1 to Category 5—Part 1—Telecommunications: Amended by removing the phrase ''materials'' (Note 1), as 5C001 was deleted from national security controls.

5A001—Amended by:

(1) removing controls on telecommunications equipment or systems containing any of the following:

—Employing digital techniques (5A001.b.1);

—Containing ''network access controllers'' or ''communication channel controllers'' (5A001.b.3);

—employing a laser (5A001.b.4);

—being radio equipment operating at input or output frequencies exceeding 31 GHz (5A001.b.5);

—being radio equipment employing Quadrature Amplitude Modulation (QAM) techniques or other digital modulation techniques and having a spectral efficiency exceeding 3 bit/sec/Hz (5A001.b.6);

(2) removing controls on ''stored program controlled'' switching equipment containing any of the following (5A001.c):

—common channel signalling (5A001.c.1);

—dynamic adaptive routing (5A001.c.2);

—being packet switches, circuit switches and routers (5A001.c.3);

—optical switches (5A001.c.4);

—employing ''Asynchronous Transfer Mode'' (ATM) techniques (5A001.c.5);

(3) modifying controls for optical fiber communication cables (5A001.d); removing controls on optical fiber cables and liberalizing controls on optical fibers from 50 m to 500 m (5A001.d.1); and removing controls for single mode operation (5A001.d.1.a); and

(4) adding a Nota Bene to 5A001.d.2 clarifying that you should review 8A002.a.3 for underwater umbilical cables and connectors therefor.

5B001—Amended by: (1) revising the entry heading to read ''test, inspection and production equipment, see list of items controlled''; (2) redesignating the former entry heading as 5B001.a and by removing the term ''materials''; (3) adding a note to 5B001.a specifying that 5B001.a does not control optical fiber characterization equipment not using semiconductor ''lasers'', formerly described in the Related Controls section. The format changes to the entry heading and to 5B001.a are consistent with the format revisions agreed to by the Wassenaar Arrangement. In addition, 5B001 is amended by creating a new 5B001.b. This new paragraph b adds national security controls for equipment and specially designed components or accessories therefor, specially designed for the ''development'' of certain telecommunication transmission or ''stored program controlled'' switching equipment.

5C001—Amended by removing national security controls for preforms of glass or of any other material optimized for the manufacturer of optical fibers controlled by 5A001.d.

5D001—Amended by: (1) removing controls for software for the use of digital cellular radio equipment or systems (5D001.c.1) and (2) creating a new 5D001.d. This new paragraph d adds national security controls for ''software'' specially designed or modified for the ''development'' of certain telecommunication transmission or ''stored program controlled'' switching equipment (5D001.d).

5E001—Amended by: (1) removing national security controls on certain technology for the ''development'' or ''use'' of laser communication techniques (5E001.b.4, 5E001.b.6, 5E001.b.8, and 5E001.b.9) and (2) creating a new 5E001.c. This new paragraph c adds national security controls for ''technology'' according to the General Technology Note for the ''development'' or ''production'' of certain telecommunication transmission or ''stored program controlled'' equipment functions or features (5E001.c).

*Category 6—Sensors and Lasers*

6A003—Amended by: (1) modifying the term intensifiers to read intensifier tubes (6A003.b.3); and (2) adding a note to 6A003.b.4 clarifying that 6A003.b.4 does not control imaging cameras incorporating linear ''focal plane arrays'' with twelve elements or fewer, not employing time-delay-and-integration within the element, designed for (a) industrial or civilian intrusion alarm, traffic or industrial movement control or counting systems; (b) industrial equipment used for inspection or monitoring of heat flows in buildings, equipment or industrial processes; (c) industrial equipment used for inspection, sorting or analysis of the properties of materials; (d) equipment specially designed for laboratory use; or (e) medical equipment (decontrol note to 6A003.b.4).

6A005—Amended by: (1) adding a note for excimer lasers, specially designed for lithography equipment (related controls); and (2) adding a new control for individual single-transverse mode semiconductor lasers (6A005.b.1).

6C002—Amended by relaxing controls on zinc cadmium telluride (6C005.b).

*Category 7—Navigation and Avionics*

Notes to Category 7A—Amended by revising the ''Note to Category 7A'' as ''Nota Bene (N.B.) 2'' and by revising the existing Nota Bene as ''N.B. 1'' (notes to Category 7 A).

*Category 9—Propulsion Systems, Space Vehicles and Related Equipment*

Parenthetical note to Category 9A—Amended by redesignating the parenthetical phrase as a Nota Bene (N.B.).

Items placed under control will be subject to both national security (NS) and antiterrorism (AT) controls. (see ECCN 3E002.e and f.) These actions are taken in consultation with the Departments of State and Defense and pursuant to agreements reached in the Wassenaar Arrangement.

All items removed from national security (NS) controls as a result of the Wassenaar List of Dual-Use Goods and Technologies will continue to be controlled for antiterrorism (AT) reasons.

BXA is continuing a comprehensive review of the Commerce Control List (CCL) to account for items controlled by the Nuclear Suppliers Group (NSG), the Missile Technology Control Regime (MTCR), and the Australia Group (AG) and to correct errors unavoidably reprinted in this version of the CCL. The review will be based in large part upon the comments received and upon ongoing efforts to harmonize the CCL with the EU's control list.

Although the Export Administration Act (EAA) expired on August 20, 1994, the President invoked the International Emergency Economic Powers Act and continued in effect, to the extent permitted by law, the provisions of the EAA and the EAR in Executive Order 12924 of August 19, 1994, as extended by the President's notices of August 15, 1995 (60 FR 42767), August 14, 1996 (61 FR 42527), August 13, 1997 (62 FR 43629), and August 13, 1998 (63 FR 44121).

**Saving Clause**

Shipments of items removed from eligibility for export or reexport under a particular License Exception authorization or the designator NLR, as a result of this regulatory action, may continue to be exported or reexported under that License Exception authorization or designator until August 23, 1999. In addition, this rule revises the numbering and structure of certain entries on the Commerce Control List. For items under such entries and for October 21, 1999, BXA will accept license applications for items described either by the entries in effect immediately before July 23, 1999 or the entries described in this rule.

**Rulemaking Requirements**

1. This interim rule has been determined to be not significant for purposes of E.O. 12866.

2. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act (PRA), unless that collection of information displays a currently valid OMB Control Number. This rule involves collections of information subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) These collections has been approved by the Office of Management and Budget under control numbers 0694–0073, 0694–0086, and 0694–0088.

3. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military and foreign affairs function of the United States (Sec. 5 U.S.C. 553(a)(1)). Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this interim rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under 5 U.S.C. or by any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.* ) are not applicable.

**List of Subjects**

*15 CFR Part 740*

Administrative practice and procedure, Exports, Foreign trade, Reporting and recordkeeping requirements.

*15 CFR Part 743*

Administrative practice and procedure, Exports, Foreign trade, Reporting and recordkeeping requirements.

*15 CFR Part 774*

Exports, Foreign Trade.

Accordingly, parts 740, 743 and 774 of the Export Administration Regulations (15 CFR parts 730 through 799) are amended as follows:

1. The authority citation for part 740 is revised to read as follows:

**Authority:** 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 12924, 59 FR 43437, 3 CFR, 1994 Comp., p. 917; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228 and of Notice of August 13, 1998 (63 FR 44121, 3 CFR, 1998 Comp., p. 294.

2. The authority citation for part 743 is revised to read as follows:

**Authority:** 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 12924, 59 FR 43437, 3 CFR, 1994 Comp., p. 917; Notice of August 13, 1998, 63 FR 44121, 3 CFR, 1998 Comp., p. 294.

3. The authority citation for part 774 continues to read as follows:

**Authority:** 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 10 U.S.C. 720; 10 U.S.C. 7430(e); 18 U.S.C. 2510 *et seq.*; 22 U.S.C. 287c; 22 U.S.C. 3201 *et seq.*; 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 46 U.S.C. app. 466c; 50 U.S.C. app. 5; E.O. 12924, 59 FR 43437, 3 CFR, 1994 Comp., p. 917; Notice of August 15, 1995, 60 FR 42767, 3 CFR, 1995 Comp., p. 501; Notice of August 14, 1996, 61 FR 42527, 3 CFR, 1996 Comp., p. 298; Notice of August 13, 1997, 62 FR 43629, 3 CFR, 1997 Comp. p., 306; Notice of August 13, 1998, 63 FR 44121, 3 CFR, 1998 Comp., p. 294.

**PART 740—[AMENDED]**

4. Section 740.11 is amended:

a. By revising paragraph (a)(2);

b. By revising Supplement No. 1, as follows:

**§ 740.11 Governments, international organizations, and international inspections under the Chemical Weapons Convention (GOV).**

* * * * *

(a) * * *

(2) The following items controlled for national security (NS) reasons under Export Control Classification Numbers (ECCNs) identified on the Commerce Control List may not be exported or reexported under this License Exception to destinations other than Austria, Belgium, Canada, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, Sweden, and the United Kingdom: 1C001, 1C012, 5A001.b.4, 6A001.a.2.a.1, 6A001.a.2.a.2, 6A001.a.2.a.7, 6A001.a.2.b, 6A001.a.2.e.1, 6A001.a.2.e.2, 6A002.a.1.c, 6A008.l.3., 6B008, 8A001.b., 8A001.d., 8A002.o.3.b., 9A011; and

(i) ''Composite'' structures or laminates controlled by 1A002.a., having an organic ''matrix'' and made from materials listed under 1C010.c. or 1C010.d.; and

(ii) ''Digital'' computers controlled by 4A003.b. and having a CTP exceeding 10,000 MTOPS; and

(iii) ''Electronic assemblies'' controlled by 4A003.c. and capable of enhancing performance by aggregation of ''computing elements'' so that the CTP of the aggregation exceeds 10,000 MTOPS; and

(iv) Processing equipment controlled by 6A001.a.2.c. and specially designed for real time application with towed acoustic hydrophone arrays; and

(v) Bottom or bay cable systems controlled by 6A001.a.2.e.3 and having processing equipment specially designed for real time application with bottom or bay cable systems; and

(vi) ''Software'', as follows:

(A) Controlled by 4D001, specially designed for the ''development'' or ''production'' for items controlled by 4A003.b or .c, as defined by paragraphs (a)(2)(ii) and (iii) of this section; and

(B) Controlled by 5D001.a, specially designed for items controlled by 5A001.b.4; and

(C) Controlled by 6D001 for items controlled by 6A008.l.3 or 6B008; and

(D) Controlled by 6D003.a; and

(E) Controlled by 7D003.a or 7D003.b; and

(F) Controlled by 8D001, specially designed for the ''development'' or ''production'' of equipment controlled by 8A001.b, 8A001.d, or 8A002.o.3.b; and

(G) Controlled by 9D001, specially designed for the ''development'' of equipment or ''technology'' controlled by 9A011, 9E003.a.1, or by 9E003.a.3, for items controlled by 1A002.a, as described in paragraph (a)(2)(i) of this section; and

(H) Controlled by 9D002 for ''software'' specially designed for the ''production'' of equipment controlled by 9A011; and

(I) Controlled by 9D004.a or .c.

* * * * *

**Supplement No. 1 to § 740.11—Additional Restrictions On Use of License Exception GOV.**

(a) Items for official use within national territory by agencies of the U.S. Government. License Exception GOV is available for all items consigned to and for the official use of any agency of a cooperating government within the territory of any cooperating government, except:

(1) Items identified on the Commerce Control List as controlled for national security (NS) reasons under Export Control Classification Numbers (ECCNs) as follows for export or reexport to destinations other than Austria, Belgium, Canada, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, Sweden, or the United Kingdom: 1C001, 1C012, 5A001.b.4, 6A001.a.2.a.1, 6A001.a.2.a.2, 6A001.a.2.a.7, 6A001.a.2.b, 6A001.a.2.e.1, 6A001.a.2.e.2, 6A002.a.1.c, 6A008.l.3., 6B008, 8A001.b., 8A001.d., 8A002.o.3.b., 9A011; and

(i) ''Composite'' structures or laminates controlled by 1A002.a., having an organic ''matrix'' and made from materials listed under 1C010.c. or 1C010.d.; and

(ii) ''Digital'' computers controlled by 4A003.b. and having a CTP exceeding 10,000 MTOPS; and

(iii) ''Electronic assemblies'' controlled by 4A003.c. and capable of enhancing performance by aggregation of ''computing elements'' so that the CTP of the aggregation exceeds 10,000 MTOPS; and

(iv) Processing equipment controlled by 6A001.a.2.c. and specially designed for real time application with towed acoustic hydrophone arrays; and

(v) Bottom or bay cable systems controlled by 6A001.a.2.e.3 and having processing equipment specially designed for real time application with bottom or bay cable systems; and

(vi) ''Software'', as follows:

(A) Controlled by 4D001, specially designed for the ''development'' or ''production'' for items controlled by 4A003.b or .c, as defined by paragraphs (a)(1)(ii) and (iii) of this Supplement; and

(B) Controlled by 5D001.a, specially designed for items controlled by 5A001.b.4; and

(C) Controlled by 6D001 for items controlled by 6A008.l.3 or 6B008; and

(D) Controlled by 6D003.a; and

(E) Controlled by 7D003.a or 7D003.b; and

(F) Controlled by 8D001, specially designed for the ''development'' or ''production'' of equipment controlled by 8A001.b, 8A001.d, or 8A002.o.3.b; and

(G) Controlled by 9D001, specially designed for the ''development'' of equipment or ''technology'' controlled by 9A011, 9E003.a.1, or by 9E003.a.3, for items controlled by 1A002.a, as described in paragraph (a)(1)(i) of this Supplement; and

(H) Controlled by 9D002 for ''software'' specially designed for the ''production'' of equipment controlled by 9A011; and

(I) Controlled by 9D004.a or .c.; and

(vii) ''Technology'', as follows:

(A) Controlled by 5E001.a for items controlled by 5A001.b.4 or 5D001.a; and

(B) Controlled by 1E001 for items controlled by 1A002.a, 1C001, or 1C102 as described by paragraph (a)(1)(i) of this Supplement; and

(C) Controlled by 6E001 for the ''development'' of equipment or ''software'' in 6A001.a.2.a.1, 6A001.a.2.a.2, 6A001.a.2.a.7, 6A001.a.2.b, 6A001.a.2.c, 6A001.a.2, a.3, 6A002.a.1.c, 6A008.l.3, or 6B008, as described in paragraph (a)(1) of this Supplement; and

(D) Controlled by 6E002 for the ''production'' of equipment controlled by 6A001.a.2.a.1, 6A001.a.2.a.2, 6A001.a.2.a.7, 6A001.a.2.b, 6A001.a.2.c, 6A001.a.2.3, 6A002.a.1.c, 6A008.l.3, or 6B008, as described in paragraph (a)(1) of this Supplement; and

(E) Controlled by 8E001 for items controlled by 8A001.b, 8A002.o.3.b, or 8A001.d; and

(F) Controlled by 9E001 for items controlled by 9A011, 9D001, or 9D002; and

(G) Controlled by 9E002 for items controlled by 9A011; and

(H) Controlled by 9E003.a.1; and

(I) Controlled by 9E003.a.3 for items controlled by 1A002.a as described in paragraph (a)(1) of this Supplement;

(2) Items identified on the Commerce Control List as controlled for missile technology (MT), chemical and biological warfare (CB), or nuclear nonproliferation (NP) reasons;

(3) Regional stability items controlled under Export Control Classification Numbers (ECCNs) 6A002, 6A003, 6E001, 6E002, 7D001, 7E001, 7E002, and 7E101 as described in § 742.6(a)(1) of the EAR; or

(4) Encryption items controlled for EI reasons as described in the Commerce Control List.

(b) *Diplomatic and consular missions of a cooperating government.* License Exception GOV is available for all items consigned to and for the official use of a diplomatic or consular mission of a cooperating government located in any country in Country Group B (see Supplement No. 1 to part 740), except:

(1) Items identified on the Commerce Control List as controlled for national security (NS) reasons under Export Control Classification Numbers (ECCNs) as follows for export or reexport to destinations other than Austria, Belgium, Canada, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, Sweden, or the United Kingdom: 1C001, 1C012, 5A001.b.4, 6A001.a.2.a.1, 6A001.a.2.a.2, 6A001.a.2.a.7, 6A001.a.2.b, 6A001.a.2.e.1, 6A001.a.2.e.2, 6A002.a.1.c, 6A008.l.3., 6B008, 8A001.b., 8A001.d., 8A002.o.3.b., 9A011; and

(i) ''Composite'' structures or laminates controlled by 1A002.a., having an organic ''matrix'' and made from materials listed under 1C010.c. or 1C010.d.; and

(ii) ''Digital'' computers controlled by 4A003.b. and having a CTP exceeding 10,000 MTOPS; and

(iii) ''Electronic assemblies'' controlled by 4A003.c. and capable of enhancing performance by aggregation of ''computing elements'' so that the CTP of the aggregation exceeds 10,000 MTOPS; and

(iv) Processing equipment controlled by 6A001.a.2.c. and specially designed for real time application with towed acoustic hydrophone arrays; and

(v) Bottom or bay cable systems controlled by 6A001.a.2.e.3 and having processing equipment specially designed for real time application with bottom or bay cable systems; and

(vi) ''Software'', as follows:

(A) Controlled by 4D001, specially designed for the ''development'' or ''production'' for items controlled by 4A003.b or .c, as defined by paragraphs (b)(1)(ii) or (iii) of this Supplement; and

(B) Controlled by 5D001.a, specially designed for items controlled by 5A001.b.4; and

(C) Controlled by 6D001 for items controlled by 6A008.l.3 or 6B008; and

(D) Controlled by 6D003.a; and

(E) Controlled by 7D003.a or 7D003.b; and

(F) Controlled by 8D001, specially designed for the ''development'' or ''production'' of equipment controlled by 8A001.b, 8A001.d, or 8A002.o.3.b; and

(G) Controlled by 9D001, specially designed for the ''development'' of equipment or ''technology'' controlled by 9A011, 9E003.a.1, or by 9E003.a.3, for items controlled by 1A002.a, as described in paragraph (b)(1)(i) of this Supplement; and

(H) Controlled by 9D002 for ''software'' specially designed for the ''production'' of equipment controlled by 9A011; and

(I) Controlled by 9D004.a or .c; and

(vii) ''Technology'', as follows:

(A) Controlled by 5E001.a for items controlled by 5A001.b.4 or 5D001.a; and

(B) Controlled by 1E001 for items controlled by 1A002.a, 1C001, or 1C102 as described by paragraph (b)(1) of this Supplement; and

(C) Controlled by 6E001 for the ''development'' of equipment or ''software'' in 6A001.a.2.a.1, 6A001.a.2.a.2, 6A001.a.2.a.7, 6A001.a.2.b, 6A001.a.2.c, 6A001.a.2.3, 6A002.a.1.c, 6A008.l.3, or 6B008, as described in paragraph (b)(1) of this Supplement; and

(D) Controlled by 6E002 for the ''production'' of equipment controlled by 6A001.a.2.a.1, 6A001.a.2.a.2, 6A001.a.2.a.7, 6A001.a.2.b, 6A001.a.2.c, 6A001.a.2.3, 6A002.a.1.c, 6A008.l.3, or 6B008, as described in paragraph (b)(1) of this Supplement; and

(E) Controlled by 8E001 for items controlled by 8A001.b, 8A002.o.3.b, or 8A001.d; and

(F) Controlled by 9E001 for items controlled by 9A011, 9D001, or 9D002; and

(G) Controlled by 9E002 for items controlled by 9A011; and

(H) Controlled by 9E003.a.1; and

(I) Controlled by 9E003.a.3 for items controlled by 1A002.a as described in paragraph (b)(1)(i) of this Supplement;

(2) Items identified on the Commerce Control List as controlled for missile technology (MT), chemical and biological warfare (CB), or nuclear nonproliferation (NP) reasons;

(3) Regional stability items controlled under Export Control Classification Numbers (ECCNs) 6A002, 6A003, 6E001, 6E002, 7D001, 7E001, 7E002, and 7E101 as described in § 742.6(a)(1) of the EAR; or

(4) Encryption items controlled for EI reasons as described in the Commerce Control List.

## PART 743—[AMENDED]

5. Section 743.1 is amended by revising (c)(1) to read as follows:

### § 743.1 Wassenaar Arrangement.

* * * * * *

(c) *Items for which reports are required.* (1) You must submit reports to BXA under the provisions of this section only for exports of items controlled under the following ECCNs:

(i) *Category 1:* 1A002, 1C007.c and .d, 1C010.c and .d, 1D002, 1E001, 1E002.e, and 1E002.f.;

(ii) *Category 2:* 2B001.a or .b (certain items only; see Note to this paragraph) 2B001.d and .f, 2B003, 2D001, 2E001, and 2E002;

**Note to paragraph (c)(1)(ii):** The following are not controlled for NP reasons: turning machines controlled by 2B001.a with a capacity equal to or less than 35 mm diameter; bar machines (Swissturn), limited to machining only bar feed through, if maximum bar diameter is equal to or less than 42 mm and there is no capability of mounting chucks (machines may have drilling and/or milling capabilities for machining parts with diameters less than 42 mm); or milling machines controlled by 2B001.b with x-axis travel greater than two meters and overall ''positioning accuracy'' on the x-axis more (worse) than 0.030 mm. Therefore, exports of such items under License Exception GOV are subject to reporting requirements.

(iii) *Category 3:* 3A002.g.2, 3B001.a.2, 3D001, and 3E001;

(iv) *Category 4:* 4A001.a.2 and .b, 4A003.b and .c (see paragraph (c)(2) of this section), 4D001, 4D003.c, and 4E001;

(v) *Category 5:* 5A001.b.3, 5B001 (items specially designed for 5A001.b.3), 5D001.a and .b, and 5E001.a;

(vi) *Category 6:* 6A001.a.1.b, .a.2.c, .a.2.d, and .a.2.e; 6A002.b, 6A004.c and d, 6A006.g and h, 6A008.d, .h, and .k; 6D001, 6D003.a, 6E001, and 6E002;

(vii) *Category 8:* 8A001.c; 8A002.b, .h, .j, .o.3.a, and .p; 8D001, 8D002, 8E001, and 8E002.a; and

(viii) *Category 9:* 9B001.b, 9D001, 9D002, 9D004.a and .c, 9E001, 9E002, 9E003.a.1, 9E003.a.2, .a.3, .a.4, .a.5, .a.8, and .a.9.

* * * * *

## PART 774—[AMENDED]

6. In Supplement No. 1 to part 774 (the Commerce Control List), Category 1—Materials, Chemicals, Microorganisms, and Toxins, Export Control Classification Numbers (ECCNs) are amended:

a. By revising the List of Items Controlled section for ECCNs 1C004 and 1C006; and

b. By adding a new ECCN 1C996, to read as follows:

**1C004 Uranium titanium alloys or tungsten alloys with a ''matrix'' based on iron, nickel or copper, having all of the characteristics (see List of Items Controlled).**

* * * * *

**List of Items Controlled**

*Unit:* Kilograms
*Related Controls:* N/A
*Related Definitions:* N/A
*Items:*

a. A density exceeding 17.5 g/cm$^3$;

b. An elastic limit exceeding 880 MPa;

c. An ultimate tensile strength exceeding 1,270 MPa; *and*

d. An elongation exceeding 8%.

**1C006 Fluids and lubricating materials, as follows (see List of Items Controlled).**

* * * * *

**List of Items Controlled**

*Unit:* Barrels (55 U.S. gallons/ 209 liters)
*Related Controls:* N/A
*Related Definitions:* N/A
*Items:*

a. Hydraulic fluids containing, as their principal ingredients, any of the following compounds or materials:

a.1. Synthetic or silahydrocarbon oils, having all of the following:

**Note:** For the purpose of 1C006.a.1, silahydrocarbon oils contain exclusively silicon, hydrogen and carbon.

a.1.a. A flash point exceeding 477 K (204° C);

a.1.b. A pour point at 239 K (−34° C) or less;

a.1.c. A viscosity index of 75 or more; *and*

a.1.d. A thermal stability at 616 K (343° C); *or*

a.2. Chlorofluorocarbons, having all of the following:

**Note:** For the purpose of 1C006.a.2, chlorofluorocarbons contain exclusively carbon, fluorine and chlorine.

a.2.a. No flash point;

a.2.b. An autogenous ignition temperature exceeding 977 K (704° C);

a.2.c. A pour point at 219 K (−54° C) or less;

a.2.d. A viscosity index of 80 or more; *and*

a.2.e. A boiling point at 473 K (200° C) or higher;

b. Lubricating materials containing, as their principal ingredients, any of the following compounds or materials:

b.1. Phenylene or alkylphenylene ethers or thio-ethers, or their mixtures, containing more than two ether or thio-ether functions or mixtures thereof; *or*

b.2. Fluorinated silicone fluids with a kinematic viscosity of less than 5,000 mm$^2$/s (5,000 centistokes) measured at 298 K (25° C);

c. Damping or flotation fluids with a purity exceeding 99.8%, containing less than 25 particles of 200 µm or larger in size per 100 ml and made from at least 85% of any of the following compounds or materials:

c.1. Dibromotetrafluoroethane;

c.2. Polychlorotrifluoroethylene (oily and waxy modifications only); *or*

c.3. Polybromotrifluoroethylene;

d. Fluorocarbon electronic cooling fluids, having all of the following characteristics:

d.1. Containing 85% by weight or more of any of the following, or mixtures thereof:

d.1.a. Monomeric forms of perfluoropolyalkylether-triazines or perfluoroaliphatic-ethers;
d.1.b. Perfluoroalkylamines;
d.1.c. Perfluorocycloalkanes; *or*
d.1.d. Perfluoroalkanes;
d.2. Density at 298 K (25° C) of 1.5 g/ml or more;
d.3. In a liquid state at 273 K (0° C); *and*
d.4. Containing 60% or more by weight of fluorine.

**Technical Note:** For the purpose of 1C006:

a. Flash point is determined using the Cleveland Open Cup Method described in ASTM D–92 or national equivalents;
b. Pour point is determined using the method described in ASTM D–97 or national equivalents;
c. Viscosity index is determined using the method describe in ASTM D–2270 or national equivalents;
d. Thermal stability is determined by the following test procedure or national equivalents:
Twenty ml of the fluid under test is placed in a 46 ml type 317 stainless steel chamber containing one each of 12.5 mm (nominal) diameter balls of M–10 tool steel, 52100 steel and naval bronze (60% Cu, 39% Zn, 0.75% Sn);
The chamber is purged with nitrogen, sealed at atmospheric pressure and the temperature raised to and maintained at 644 ± 6 K (371 ± 6° C) for six hours;
The specimen will be considered thermally stable if, on completion of the above procedure, all of the following conditions are met:
1. The loss in weight of each ball is less than 10 mg/mm $^2$ of ball surface;
2. The change in original viscosity as determined at 311 K (38° C) is less than 25%; *and*
3. The total acid or base number is less than 0.40;
e. Autogenous ignition temperature is determined using the method described in ASTM E–659 or national equivalents.

**1C996 Hydraulic fluids containing synthetic hydrocarbon oils, having all the following characteristics (see List of Items Controlled).**

**License Requirements**

Reason for Control: *AT*

| *Control(s)* | *Country Chart* |
|---|---|
| AT applies to entire entry | AT Column 1 |

**License Exceptions**

LVS: N/A
GBS: N/A
CIV: N/A

**List of Items Controlled**

*Unit:* Barrels (55 U.S. gallons/209 liters)
*Related Controls:* N/A
*Related Definitions:* N/A
*Items:*
a. A flash point exceeding 477 K (204° C);
b. A pour point at 239 K (-34° C) or less;
c. A viscosity index of 75 or more; *and*
d. A thermal stability at 616 K (343° C).

7. In Supplement No. 1 to part 774 (the Commerce Control List), Category 2—Materials Processing, Export Control Classification Numbers (ECCNs) are amended:
a. By revising ECCN 2B001;
b. By revising the entry heading and the List of Items Controlled section for ECCN 2B004;
c. By revising the List of Items Controlled section for ECCN 2B005;
d. By revising the entry heading and the List of Items Controlled for ECCN 2D001; and
e. By revising the List of Items Controlled section for ECCN 2E003, to read as follows:

**2B001 Machine tools (see List of Items Controlled) and any combination thereof, for removing (or cutting) metals, ceramics or ''composites'', which, according to the manufacturer's technical specification, can be equipped with electronic devices for ''numerical control''.**

**License Requirements**

*Reason for Control:* NS, NP, AT

| *Control(s)* | *Country Chart* |
|---|---|
| NS applies to entire entry | NS Column 2 |
| NP applies to 2B001.a,b,c, and d, EXCEPT:(1) turning machines under 2B001.a with a capacity equal to or less than 35 mm diameter; (2) bar machines (Swissturn), limited to machining only bar feed through, if maximum bar diameter is equal to or less than 42 mm and there is no capability of mounting chucks. (Machines may have drilling and/or milling capabilities for machining parts with diameters less than 42 mm); or (3) milling machines under 2B001.b. with x-axis travel greater than two meters and overall ''positioning accuracy'' on the x-axis more (worse) than 0.030 mm. | NP Column 1 |
| AT applies to entire entry | AT Column 1 |

*License Requirement Notes:* See § 743.1 of the EAR for reporting requirements for exports under License Exceptions.

**License Exceptions**

LVS: N/A
GBS: N/A
CIV: N/A

**List of Items Controlled**

*Unit:* Equipment in number; parts and accessories in $ value
*Related Controls:* (1) See also 2B290 and 2B991; (2) See also 1B101.d for cutting equipment designed or modified for removing prepregs and preforms controlled by 9A110.
*Related Definitions:* N/A
*Items:*
a. Machine tools for turning, having all of the following characteristics:
a.1. Positioning accuracy with ''all compensations available'' of less (better) than 6 μm along any linear axis; *and*
a.2. Two or more axes which can be coordinated simultaneously for ''contouring control'';

**Note:** 2B001.a does not control turning machines specially designed for the production of contact lenses.

b. Machine tools for milling, having any of the following characteristics:
b.1.a. Positioning accuracy with ''all compensations available'' of less (better) than 6 μm along any linear axis; *and*
b.1.b. Three linear axes plus one rotary axis which can be coordinated simultaneously for ''contouring control'';
b.2. Five or more axes which can be coordinated simultaneously for ''contouring control''; *or*
b.3. A positioning accuracy for jig boring machines, with ''all compensations available'', of less (better) than 4 μm along any linear axis;
c. Machine tools for grinding, having any of the following characteristics:
c.1.a. Positioning accuracy with ''all compensations available'' of less (better) than 4 μm along any linear axis; *and*
c.1.b. Three or more axes which can be coordinated simultaneously for ''contouring control''; *or*
c.2. Five or more axes which can be coordinated simultaneously for ''contouring control'';

**Notes:** 2B001.c does not control grinding machines, as follows:

1. Cylindrical external, internal, and external-internal grinding machines having all the following characteristics:
a. Limited to cylindrical grinding; *and*
b. Limited to a maximum workpiece capacity of 150 mm outside diameter or length.
2. Machines designed specifically as jig grinders having any of following characteristics:

a. The c-axis is used to maintain the grinding wheel normal to the work surface; *or*

b. The a-axis is configured to grind barrel cams.

3. Tool or cutter grinding machines limited to the production of tools or cutters.

4. Crank shaft or cam shaft grinding machines.

5. Surface grinders.

d. Electrical discharge machines (EDM) of the non-wire type which have two or more rotary axes which can be coordinated simultaneously for ''contouring control'';

e. Machine tools for removing metals, ceramics or ''composites'':

e.1. By means of:

e.1.a. Water or other liquid jets, including those employing abrasive additives;

e.1.b. Electron beam; *or*

e.1.c. ''Laser'' beam; *and*

e.2. Having two or more rotary axes which:

e.2.a. Can be coordinated simultaneously for ''contouring control''; *and*

e.2.b. Have a positioning accuracy of less (better) than 0.003°;

f. Deep-hole-drilling machines and turning machines modified for deep-hole-drilling, having a maximum depth-of-bore capability exceeding 5,000 mm and specially designed components therefor.

**2B004 Hot ''isostatic presses'', having all of the following characteristics described in the List of Items Controlled, and specially designed components, and accessories therefor.**

* * * * *

**List of Items Controlled**

*Unit:* Equipment in number; parts and accessories in $ value

*Related Controls:* (1) See also 2B104 and 2B204. (2) For specially designed dies, molds and tooling, see 1B003, 9B009 and ML18 (22 CFR part 121). (3) In addition, see 1B101.d, 2B104 and 2B204 for controls on dies, molds and tooling.

*Related Definitions:* N/A

*Items:*

a. A controlled thermal environment within the closed cavity and possessing a chamber cavity with an inside diameter of 406 mm or more; *and*

b. Any of the following:

b.1. A maximum working pressure exceeding 207 MPa;

b.2. A controlled thermal environment exceeding 1,773 K (1,500° C); *or*

b.3. A facility for hydrocarbon impregnation and removal of resultant gaseous degradation products.

**Technical Note:** The inside chamber dimension is that of the chamber in which both the working temperature and the working pressure are achieved and does not include fixtures. That dimension will be the smaller of either the inside diameter of the pressure chamber or the inside diameter of the insulated furnace chamber, depending on which of the two chambers is located inside the other.

**2B005 Equipment specially designed for the deposition, processing and in-process control of inorganic overlays, coatings and surface modifications for non-electronic substrates, by processes shown in the Table and associated Notes following 2E003.f, and specially designed automated handling, positioning, manipulation and control components therefor.**

* * * * *

**List of Items Controlled**

*Unit:* $ value

*Related Controls:* (1) This entry does not control chemical vapor deposition, cathodic arc, sputter deposition, ion plating or ion implantation equipment specially designed for cutting or machining tools. (2) Vapor deposition equipment for the production of filamentary materials are controlled by 1B001 or 1B101. (3) Chemical Vapor Deposition furnaces designed or modified for densification of carbon-carbon composites are controlled by 2B104.

*Related Definitions:* N/A

*Items:*

a. ''Stored program controlled'' chemical vapor deposition (CVD) production equipment having all of the following:

a.1. Process modified for one of the following:

a.1.a. Pulsating CVD;

a.1.b. Controlled nucleation thermal deposition (CNTD); *or*

a.1.c. Plasma enhanced or plasma assisted CVD; *and*

a.2. Any of the following:

a.2.a. Incorporating high vacuum (equal to or less than 0.01 Pa) rotating seals; *or*

a.2.b. Incorporating *in situ* coating thickness control;

b. ''Stored program controlled'' ion implantation production equipment having beam currents of 5 mA or more;

c. ''Stored program controlled'' electron beam physical vapor (EB–PVD) production equipment incorporating power systems rated for over 80 kW, having any of the following:

c.1. A liquid pool level ''laser'' control system which regulates precisely the ingots feed rate; or

c.2. A computer controlled rate monitor operating on the principle of photo-luminescence of the ionized atoms in the evaporant stream to control the deposition rate of a coating containing two or more elements;

d. ''Stored program controlled'' plasma spraying production equipment having any of the following characteristics:

d.1. Operating at reduced pressure controlled atmosphere (equal or less than 10 kPa measured above and within 300 mm of the gun nozzle exit) in a vacuum chamber capable of evacuation down to 0.01 Pa prior to the spraying process; *or*

d.2. Incorporating *in situ* coating thickness control;

e. ''Stored program controlled'' sputter deposition production equipment capable of current densities of 0.1 mA/mm$^2$ or higher at a deposition rate 15 μm/h or more;

f. ''Stored program controlled'' cathodic arc deposition equipment incorporating a grid of electromagnets for steering control of the arc spot on the cathode;

g. ''Stored program controlled'' ion plating production equipment allowing for the *in situ* measurement of any of the following:

g.1. Coating thickness on the substrate and rate control; or

g.2. Optical characteristics.

**2D001 ''Software'', other than that controlled by 2D002, specially designed or modified for the ''development'', ''production'' or ''use'' of equipment controlled by 2A001 or 2B001 to 2B009.**

* * * * *

**List of Items Controlled**

*Unit:* N/A

*Related Controls:* This entry controls software, not covered by 2D101, that are specially designed or modified for the controllers of flow forming machines specified by 2B109.

*Related Definitions:* N/A

*Items:*

The list of items controlled is contained in the ECCN heading.

**2E003 Other ''technology'', as follows (see List of Items Controlled).**

* * * * *

**List of Items Controlled**

*Unit:* N/A

*Related Controls:* See 2E001, 2E002, and 2E101 for ''development'' and ''use'' technology for equipment that are designed or modified for densification of carbon-carbon composites, structural composite rocket nozzles and reentry vehicle nose tips.

*Related Definitions:* N/A

*Items:*

a. ''Technology'' for the ''development'' of interactive graphics as an integrated part in ''numerical control'' units for preparation or modification of part programs;

b. ''Technology'' for metal-working manufacturing processes, as follows:

b.1. ''Technology'' for the design of tools, dies or fixtures specially designed for any of the following processes:

b.1.a. ''Superplastic forming'';

b.1.b. ''Diffusion bonding''; *or*

b.1.c. ''Direct-acting hydraulic pressing'';

b.2. Technical data consisting of process methods or parameters as listed below used to control:

b.2.a. ''Superplastic forming'' of aluminum alloys, titanium alloys or ''superalloys'':

b.2.a.1. Surface preparation;

b.2.a.2. Strain rate;

b.2.a.3. Temperature;

b.2.a.4. Pressure;

b.2.b. ''Diffusion bonding'' of ''superalloys'' or titanium alloys:

b.2.b.1. Surface preparation;

b.2.b.2. Temperature;

b.2.b.3. Pressure;

b.2.c. ''Direct-acting hydraulic pressing'' of aluminum alloys or titanium alloys:

b.2.c.1. Pressure;

b.2.c.2. Cycle time;

b.2.d. ''Hot isostatic densification'' of titanium alloys, aluminum alloys or ''superalloys'':

b.2.d.1. Temperature;

b.2.d.2. Pressure;

b.2.d.3. Cycle time;

c. ''Technology'' for the ''development'' or ''production'' of hydraulic stretch-forming machines and dies therefor, for the manufacture of airframe structures;

d. ''Technology'' for the ''development'' of generators of machine tool instructions (e.g., part programs) from design data residing inside ''numerical control'' units;

e. ''Technology for the development'' of integration ''software'' for incorporation of expert systems for advanced decision support of shop floor operations into ''numerical control'' units;

f. ''Technology'' for the application of inorganic overlay coatings or inorganic surface modification coatings (specified in column 3 of the following table) to non-electronic substrates (specified in column 2 of the following table), by processes specified in column 1 of the following table and defined in the Technical Note.

*N.B.* This table should be read to control the technology of a particular 'Coating Process' only when the 'Resultant Coating' in column 3 is in a paragraph directly across from the relevant 'Substrate' under column 2. For example, Chemical Vapor Deposition (CVD) coating process technical data are controlled for the application of 'silicides' to 'Carbon-carbon, Ceramic and Metal ''matrix'' ''composites'' substrates, but are not controlled for the application of 'silicides' to 'Cemented tungsten carbide (16), Silicon carbide (18)' substrates. In the second case, the 'Resultant Coating' is not listed in the paragraph under column 3 directly across from the paragraph under column 2 listing 'Cemented tungsten carbide (16), Silicon carbide (18)'.

8. In Supplement No. 1 to part 774 (the Commerce Control List), Category 2—Material Processing is amended by revising the Materials Processing Table in Category 2E to read as follows:

CATEGORY 2E.—MATERIALS PROCESSING TABLE; DEPOSITION TECHNIQUES

| 1. Coating process (1) [1] | 2. Substrate | 3. Resultant coating |
|---|---|---|
| A. Chemical Vapor Deposition (CVD) | ''Superalloys'' | Aluminides for internal passages<br>Silicides Carbides<br>Dielectric layers (15) Diamond Diamond-like carbon (17) |
| | Ceramics (19) and Low-expansion glasses (14). | Silicides<br>Carbides<br>Refractory metals,<br>Mixtures thereof (4)<br>Dielectric layers (15) |
| | Carbon-carbon, Ceramic, and Metal ''matrix'' ''composites''. | Aluminides<br>Alloyed aluminides (2)<br>Boron nitride<br>Carbides<br>Tungsten Mixtures thereof (4)<br>Dielectric layers (15) |
| | Cemented tungsten carbide (16), Silicon Carbide (18). | Dielectric Players (15) |
| | Molybdenum and Molybdenum alloys | Dielectric layers (15)<br>Diamond<br>Diamond-like carbon (17) |
| | Beryllium and Beryllium alloys | Dielectric layers (15)<br>Diamond<br>Diamond-like carbon (17) |
| | Sensor window materials (9) | |
| B. Thermal Evaportation Physical Vapor<br>1. Physical Vapor Deposition (PVD): Deposition (TE-PVD) Electron-Beam (EB–PVD). | ''Superalloys'' | Alloyed silicides<br>Alloyed aluminides (2)<br>McrAlX (5)<br>Modified zirconia (12) Silicides<br>Aluminides<br>Mixtures thereof (4) |
| | Ceramics (19) and Low-expansion glasses (14). | Dielectric layers (15) |
| | Corrosion resistant steel (7) | MCrAlX (5)<br>Modified zirconia (12)<br>Mixtures thereof (4) |

CATEGORY 2E.—MATERIALS PROCESSING TABLE; DEPOSITION TECHNIQUES—Continued

| 1. Coating process (1) [1] | 2. Substrate | 3. Resultant coating |
|---|---|---|
| | Carbon-carbon, Ceramic and Metal ''matrix'' ''composites''. | Silicides<br>Carbides<br>Refractory metals<br>Mixtures thereof (4)<br>Dielectric layers (15)<br>Boron nitride |
| | Cemented tungsten carbide (16), Silicon carbide (18). | Carbides<br>Tungsten<br>Mixtures thereof (4)<br>Dielectric layers (15) |
| | Molybdenum and Molybdenum alloys | Dielectric layers (15) |
| | Beryllium and Beryllium alloys | Dielectric layers (15)<br>Borides<br>Beryllium |
| | Sensor window materials (9) | Dielectric layers (15) |
| | Titanium alloys (13) | Borides<br>Nitrides |
| 2. Ion assisted resistive heating. Physical Vapor Deposition (PVD) (Ion Plating). | Ceramics (19) and Low-expansion glasses (14). | Dielectric layers (15)<br>Diamond-like carbon (17) |
| | Carbon-carbon, Ceramic and Metal ''matrix'' ''composites''. | Dielectric layers (15) |
| | Cemented tungsten carbide (16), Silicon carbide. | Dielectric layers (15) |
| | Molybdenum and Molybdenum alloys | Dielectric layers (15) |
| | Beryllium and Beryllium alloys | Dielectric layers (15) |
| | Sensor window materials (9) | Dielectric layers (15)<br>Diamond-like carbon (17) |
| 3. Physical Vapor Deposition (PVD): ''Laser'' Vaporization. | Ceramics (19) and Low-expansion glasses (14). | Silicides<br>Dielectric layers (15)<br>Diamond-like carbon (17) |
| | Carbon-carbon, Ceramic and Metal ''matrix'' ''composites''. | Dielectric layers (15) |
| | Cemented tungsten carbide (16), Silicon carbide. | Dielectric layers (15) |
| | Molybdenum and Molybdenum alloys | Dielectric layers (15) |
| | Beryllium and Beryllium alloys | Dielectric layers (15) |
| | Sensor window materials (9) | Dielectric layers (15)<br>Diamond-like carbon |
| 4. Physical Vapor Deposition (PVD): Cathodic Arc Discharge. | ''Superalloys'' | Alloyed silicides<br>Alloyed Aluminides (2)<br>MCrAlX (5) |
| | Polymers (11) and Organic ''matrix'' ''composites''. | Borides<br>Carbides<br>Nitrides<br>Diamond-like carbon (17) |
| C. Pack cementation (see A above for out-of-pack cementation) (10). | Carbon-carbon, Ceramic and Metal ''matrix'' ''composites''. | Silicides<br>Carbides<br>Mixtures thereof (4) |
| | Titanium alloys (13) | Silicides<br>Aluminides<br>Alloyed aluminides (2) |
| | Refractory metals and alloys (8) | Silicides<br>Oxides |
| D. Plasma spraying | ''Superalloys'' | MCrAlX (5)<br>Modified zirconia (12)<br>Mixtures thereof (4)<br>Abradable Nickel-Graphite<br>Abradable materials containing Ni-Cr-Al<br>Abradable<br>Al-Si-Polyester<br>Alloyed aluminides (2) |
| | Aluminum alloys (6) | MCrAlX (5)<br>Modified zirconia (12)<br>Silicides<br>Mixtures thereof (4) |
| | Refractory metals and alloys (8), Carbides, Corrosion resistant steel (7). | Aluminides<br>Silicides<br>MCrAlX (5)<br>Modified zirconia (12)<br>Mixtures thereof (4) |

CATEGORY 2E.—MATERIALS PROCESSING TABLE; DEPOSITION TECHNIQUES—Continued

| 1. Coating process (1) [1] | 2. Substrate | 3. Resultant coating |
|---|---|---|
| | Titanium alloys (13) | Carbides<br>Aluminides<br>Silicides<br>Alloyed aluminides (2) |
| | Abradable, Nickel-Graphite | Abradable materials containing Ni-Cr-Al<br>Abradable Al-Si-Polyester |
| E. Slurry Deposition | Refractory metals and alloys (8) | Fused silicides<br>Fused aluminides except for resistance heating elements |
| | Carbon-carbon, Ceramic and Metal ''matrix'' ''composites''. | Silicides<br>Carbides<br>Mixtures thereof (4) |
| F. Sputter Deposition | ''Superalloys'' | Alloyed silicides<br>Alloyed aluminides (2)<br>Noble metal modified aluminides (3)<br>McrAlX (5)<br>Modified zirconia (12)<br>Platinum Mixtures thereof (4) |
| | Ceramics and Low-expansion glasses (14) | Silicides<br>Platinum<br>Mixtures thereof (4)<br>Dielectric layers (15)<br>Diamond-like carbon (17) |
| | Titanium alloys (13) | Borides<br>Nitrides<br>Oxides<br>Silicides<br>Aluminides<br>Alloyed aluminides (2)<br>Carbides |
| | Carbon-carbon, Ceramic and Metal ''matrix'' ''Composites''. | Silicides<br>Carbides<br>Refractory metals<br>Mixtures thereof (4)<br>Dielectric layers (15)<br>Boron nitride |
| | Cemented tungsten carbide (16), Silicon carbide (18). | Carbides<br>Tungsten<br>Mixtures thereof (4)<br>Dielectric layers (15)<br>Boron nitride |
| | Molybdenum and Molybdenum alloys | Dielectric layers (15) |
| | Beryllium and Beryllium alloys | Borides<br>Dielectric layers (15)<br>Beryllium |
| | Sensor window materials (9) | Dielectric layers (15)<br>Diamond-like carbon (17) |
| | Refractory metals and alloys (8) | Aluminides<br>Silicides<br>Oxides<br>Carbides |
| G. Ion Implantation | High temperature bearing steels | Additions of Chromium, Tantalum, or Niobium (Columbium) |
| | Titanium alloys (13) | Borides<br>Nitrides |
| | Beryllium and Beryllium alloys | Borides |
| | Cemented tungsten carbide (16) | Carbides<br>Nitrides |

[1] The numbers in parenthesis refer to the Notes following this Table.

**Notes to Table on Deposition Techniques**

1. The term 'coating process' includes coating repair and refurbishing as well as original coating.

2. The term 'alloyed aluminide coating' includes single or multiple-step coatings in which an element or elements are deposited prior to or during application of the aluminide coating, even if these elements are deposited by another coating process. It does not, however, include the multiple use of single-step pack cementation processes to achieve alloyed aluminides.

3. The term 'noble metal modified aluminide' coating includes multiple-step coatings in which the noble metal or noble metals are laid down by some other coating process prior to application of the aluminide coating.

4. The term 'mixtures thereof' includes infiltrated material, graded compositions, co-deposits and multilayer deposits and are obtained by one or more of the coating processes specified in the Table.

5. MCrAlX refers to a coating alloy where M equals cobalt, iron, nickel or combinations thereof and X equals hafnium, yttrium, silicon, tantalum in any amount or other intentional additions over 0.01 weight

percent in various proportions and combinations, except:

a. CoCrAlY coatings which contain less than 22 weight percent of chromium, less than 7 weight percent of aluminum and less than 2 weight percent of yttrium;

b. CoCrAlY coatings which contain 22 to 24 weight percent of chromium, 10 to 12 weight percent of aluminum and 0.5 to 0.7 weight percent of yttrium; *or*

c. NiCrAlY coatings which contain 21 to 23 weight percent of chromium, 10 to 12 weight percent of aluminum and 0.9 to 1.1 weight percent of yttrium.

6. The term 'aluminum alloys' refers to alloys having an ultimate tensile strength of 190 MPa or more measured at 293 K (20° C).

7. The term 'corrosion resistant steel' refers to AISI (American Iron and Steel Institute) 300 series or equivalent national standard steels.

8. 'Refractory metals and alloys' include the following metals and their alloys: niobium (columbium), molybdenum, tungsten and tantalum.

9. 'Sensor window materials', as follows: alumina, silicon, germanium, zinc sulphide, zinc selenide, gallium arsenide, diamond, gallium phosphide, sapphire and the following metal halides: sensor window materials of more than 40 mm diameter for zirconium fluoride and hafnium fluoride.

10. ''Technology'' for single-step pack cementation of solid airfoils is not controlled by this Category.

11. 'Polymers', as follows: polyimide, polyester, polysulfide, polycarbonates and polyurethanes.

12. 'Modified zirconia' refers to additions of other metal oxides, (e.g., calcia, magnesia, yttria, hafnia, rare earth oxides) to zirconia in order to stabilize certain crystallographic phases and phase compositions. Thermal barrier coatings made of zirconia, modified with calcia or magnesia by mixing or fusion, are not controlled.

13. 'Titanium alloys' refers only to aerospace alloys having an ultimate tensile strength of 900 MPa or more measured at 293 K (20° C).

14. 'Low-expansion glasses' refers to glasses which have a coefficient of thermal expansion of 1 x $10^{-7}$ $K^{-1}$ or less measured at 293 K (20° C).

15. 'Dielectric layers' are coatings constructed of multi-layers of insulator materials in which the interference properties of a design composed of materials of various refractive indices are used to reflect, transmit or absorb various wavelength bands. Dielectric layers refers to more than four dielectric layers or dielectric/metal ''composite'' layers.

16. 'Cemented tungsten carbide' does not include cutting and forming tool materials consisting of tungsten carbide/(cobalt, nickel), titanium carbide/(cobalt, nickel), chromium carbide/nickel-chromium and chromium carbide/nickel.

17. ''Technology'' specially designed to deposit diamond-like carbon on any of the following is not controlled: magnetic disk drives and heads, polycarbonate eyeglasses, equipment for the manufacture of disposals, bakery equipment, valves for faucets, acoustic diaphragms for speakers, engine parts for automobiles, cutting tools, punching-pressing dies, high quality lenses designed for cameras or telescopes, office automation equipment, microphones or medical devices.

18. 'Silicon carbide' does not include cutting and forming tool materials.

19. Ceramic substrates, as used in this entry, does not include ceramic materials containing 5% by weight, or greater, clay or cement content, either as separate constituents or in combination.

**Technical Note to Table on Deposition Techniques:** Processes specified in Column 1 of the Table are defined as follows:

a. Chemical Vapor Deposition (CVD) is an overlay coating or surface modification coating process wherein a metal, alloy, ''composite'', dielectric or ceramic is deposited upon a heated substrate. Gaseous reactants are decomposed or combined in the vicinity of a substrate resulting in the deposition of the desired elemental, alloy or compound material on the substrate. Energy for this decomposition or chemical reaction process may be provided by the heat of the substrate, a glow discharge plasma, or ''laser'' irradiation.

**Note 1:** CVD includes the following processes: directed gas flow out-of-pack deposition, pulsating CVD, controlled nucleation thermal decomposition (CNTD), plasma enhanced or plasma assisted CVD processes.

**Note 2:** Pack denotes a substrate immersed in a powder mixture.

**Note 3:** The gaseous reactants used in the out-of-pack process are produced using the same basic reactions and parameters as the pack cementation process, except that the substrate to be coated is not in contact with the powder mixture.

b. Thermal Evaporation-Physical Vapor Deposition (TE–PVD) is an overlay coating process conducted in a vacuum with a pressure less than 0.1 Pa wherein a source of thermal energy is used to vaporize the coating material. This process results in the condensation, or deposition, of the evaporated species onto appropriately positioned substrates. The addition of gases to the vacuum chamber during the coating process to synthesize compound coatings is an ordinary modification of the process. The use of ion or electron beams, or plasma, to activate or assist the coating's deposition is also a common modification in this technique. The use of monitors to provide in-process measurement of optical characteristics and thickness of coatings can be a feature of these processes. Specific TE–PVD processes are as follows:

1. Electron Beam PVD uses an electron beam to heat and evaporate the material which forms the coating;

2. Ion Assisted Resistive Heating PVD employs electrically resistive heating sources in combination with impinging ion beam(s) to produce a controlled and uniform flux of evaporated coating species;

3. ''Laser'' Vaporization uses either pulsed or continuous wave ''laser'' beams to vaporize the material which forms the coating;

4. Cathodic Arc Deposition employs a consumable cathode of the material which forms the coating and has an arc discharge established on the surface by a momentary contact of a ground trigger. Controlled motion of arcing erodes the cathode surface creating a highly ionized plasma. The anode can be either a cone attached to the periphery of the cathode, through an insulator, or the chamber. Substrate biasing is used for non line-of-sight deposition.

**Note:** This definition does not include random cathodic arc deposition with non-biased substrates.

5. Ion Plating is a special modification of a general TE–PVD process in which a plasma or an ion source is used to ionize the species to be deposited, and a negative bias is applied to the substrate in order to facilitate the extraction of the species from the plasma. The introduction of reactive species, evaporation of solids within the process chamber, and the use of monitors to provide in-process measurement of optical characteristics and thicknesses of coatings are ordinary modifications of the process.

c. Pack Cementation is a surface modification coating or overlay coating process wherein a substrate is immersed in a powder mixture (a pack), that consists of:

1. The metallic powders that are to be deposited (usually aluminum, chromium, silicon or combinations thereof);

2. An activator (normally a halide salt); *and*

3. An inert powder, most frequently alumina.

**Note:** The substrate and powder mixture is contained within a retort which is heated to between 1,030 K (757 °C) to 1,375 K (1,102 °C) for sufficient time to deposit the coating.

d. Plasma Spraying is an overlay coating process wherein a gun (spray torch) which produces and controls a plasma accepts powder or wire coating materials, melts them and propels them towards a substrate, whereon an integrally bonded coating is formed. Plasma spraying constitutes either low pressure plasma spraying or high velocity plasma spraying.

**Note 1:** Low pressure means less than ambient atmospheric pressure.

**Note 2:** High velocity refers to nozzle-exit gas velocity exceeding 750 m/s calculated at 293 K (20 °C) at 0.1 MPa.

e. Slurry Deposition is a surface modification coating or overlay coating process wherein a metallic or ceramic powder with an organic binder is suspended in a liquid and is applied to a substrate by either spraying, dipping or painting, subsequent air or oven drying, and heat treatment to obtain the desired coating.

f. Sputter Deposition is an overlay coating process based on a momentum transfer phenomenon, wherein positive ions are accelerated by an electric field towards the surface of a target (coating material). The kinetic energy of the impacting ions is sufficient to cause target surface atoms to be released and deposited on an appropriately positioned substrate.

**Note 1:** The Table refers only to triode, magnetron or reactive sputter deposition which is used to increase adhesion of the coating and rate of deposition and to radio

frequency (RF) augmented sputter deposition used to permit vaporization of non-metallic coating materials.

**Note 2:** Low-energy ion beams (less than 5 keV) can be used to activate the deposition.

g. Ion Implantation is a surface modification coating process in which the element to be alloyed is ionized, accelerated through a potential gradient and implanted into the surface region of the substrate. This includes processes in which ion implantation is performed simultaneously with electron beam physical vapor deposition or sputter deposition.

**Accompanying Technical Information to Table on Deposition Techniques:**

1. ''Technology'' for pretreatments of the substrates listed in the Table, as follows:
a. Chemical stripping and cleaning bath cycle parameters, as follows:
1. Bath composition;
a. For the removal of old or defective coatings corrosion product or foreign deposits;
b. For preparation of virgin substrates;
2. Time in bath;
3. Temperature of bath;
4. Number and sequences of wash cycles;
b. Visual and macroscopic criteria for acceptance of the cleaned part;
c. Heat treatment cycle parameters, as follows:
1. Atmosphere parameters, as follows:
a. Composition of the atmosphere;
b. Pressure of the atmosphere;
2. Temperature for heat treatment;
3. Time of heat treatment;
d. Substrate surface preparation parameters, as follows:
1. Grit blasting parameters, as follows:
a. Grit composition;
b. Grit size and shape;
c. Grit velocity;
2. Time and sequence of cleaning cycle after grit blast;
3. Surface finish parameters;
4. Application of binders to promote adhesion;
e. Masking technique parameters, as follows:
1. Material of mask;
2. Location of mask;
2. ''Technology'' for in situ quality assurance techniques for evaluation of the coating processes listed in the Table, as follows:
a. Atmosphere parameters, as follows:
1. Composition of the atmosphere;
2. Pressure of the atmosphere;
b. Time parameters;
c. Temperature parameters;
d. Thickness parameters;
e. Index of refraction parameters;
f. Control of composition;
3. ''Technology'' for post deposition treatments of the coated substrates listed in the Table, as follows:
a. Shot peening parameters, as follows:
1. Shot composition;
2. Shot size;
3. Shot velocity;
b. Post shot peening cleaning parameters;
c. Heat treatment cycle parameters, as follows:
1. Atmosphere parameters, as follows:
a. Composition of the atmosphere;
b. Pressure of the atmosphere;
2. Time-temperature cycles;
d. Post heat treatment visual and macroscopic criteria for acceptance of the coated substrates;
4. ''Technology'' for quality assurance techniques for the evaluation of the coated substrates listed in the Table, as follows:
a. Statistical sampling criteria;
b. Microscopic criteria for:
1. Magnification;
2. Coating thickness, uniformity;
3. Coating integrity;
4. Coating composition;
5. Coating and substrates bonding;
6. Microstructural uniformity.
c. Criteria for optical properties assessment (measured as a function of wavelength):
1. Reflectance;
2. Transmission;
3. Absorption;
4. Scatter;
5. ''Technology'' and parameters related to specific coating and surface modification processes listed in the Table, as follows:
a. For Chemical Vapor Deposition (CVD):
1. Coating source composition and formulation;
2. Carrier gas composition;
3. Substrate temperature;
4. Time-temperature-pressure cycles;
5. Gas control and part manipulation;
b. For Thermal Evaporation-Physical Vapor Deposition (PVD):
1. Ingot or coating material source composition;
2. Substrate temperature;
3. Reactive gas composition;
4. Ingot feed rate or material vaporization rate;
5. Time-temperature-pressure cycles;
6. Beam and part manipulation;
7. ''Laser'' parameters, as follows:
a. Wave length;
b. Power density;
c. Pulse length;
d. Repetition ratio;
e. Source;
c. For Pack Cementation:
1. Pack composition and formulation;
2. Carrier gas composition;
3. Time-temperature-pressure cycles;
d. For Plasma Spraying:
1. Powder composition, preparation and size distributions;
2. Feed gas composition and parameters;
3. Substrate temperature;
4. Gun power parameters;
5. Spray distance;
6. Spray angle;
7. Cover gas composition, pressure and flow rates;
8. Gun control and part manipulation;
e. For Sputter Deposition:
1. Target composition and fabrication;
2. Geometrical positioning of part and target;
3. Reactive gas composition;
4. Electrical bias;
5. Time-temperature-pressure cycles;
6. Triode power;
7. Part manipulation;
f. For Ion Implantation:
1. Beam control and part manipulation;
2. Ion source design details;
3. Control techniques for ion beam and deposition rate parameters;
4. Time-temperature-pressure cycles.
g. For Ion Plating:
1. Beam control and part manipulation;
2. Ion source design details;
3. Control techniques for ion beam and deposition rate parameters;
4. Time-temperature-pressure cycles;
5. Coating material feed rate and vaporization rate;
6. Substrate temperature;
7. Substrate bias parameters.

9. In Supplement No. 1 to part 774 (the Commerce Control List), Category 3—Electronics, Export Control Classification Numbers (ECCNs), are amended:

a. By revising the List of Items Controlled section for ECCNs 3A001, 3A002, 3A991, 3B001, 3B991, 3C002 and 3E001;

b. By adding a new ECCN 3C992;

c. By revising the License Exceptions section and the List of Items Controlled section for 3E002, to read as follows:

**3A001 Electronic components, as follows (see List of Items Controlled).**

* * * * *

**List of Items Controlled**

*Unit:* Number
*Related Controls:* See also 3A101, 3A201, and 3A991
*Related Definitions:* For the purposes of integrated circuits in 3A001.a.1, 5 x $10^3$ Gy(Si) = 5 x $10^5$ Rads (Si); 5 x $10^6$ Gy (Si)/s = 5 x $10^8$ Rads (Si)/s.
*Items:*
a. General purpose integrated circuits, as follows:

**Note 1:** The control status of wafers (finished or unfinished), in which the function has been determined, is to be evaluated against the parameters of 3A001.a.

**Note 2:** Integrated circuits include the following types:
''Monolithic integrated circuits'';
''Hybrid integrated circuits'';
''Multichip integrated circuits'';
''Film type integrated circuits'', including silicon-on-sapphire integrated circuits;
''Optical integrated circuits''.

a.1. Integrated circuits, designed or rated as radiation hardened to withstand any of the following:

a.1.a. A total dose of 5 x $10^3$ Gy (Si), or higher; *or*

a.1.b. A dose rate upset of 5 x $10^6$ Gy (Si)/s, or higher;

a.2. Integrated circuits described in 3A001.a.3 to 3A001.a.10 or 3A001.a.12, electrical erasable programmable read-only memories (EEPROMs), flash memories and static random-access memories (SRAMs), having any of the following:

a.2.a. Rated for operation at an ambient temperature above 398 K (125° C);

a.2.b. Rated for operation at an ambient temperature below 218 K (−55° C); *or*

a.2.c. Rated for operation over the entire ambient temperature range from 218 K (−55° C) to 398 K (125° C);

**Note:** 3A001.a.2 does not apply to integrated circuits for civil automobiles or railway train applications.

a.3. ''Microprocessor microcircuits'', ''micro-computer microcircuits'' and microcontroller microcircuits, having any of the following characteristics:

**Note:** 3A001.a.3 includes digital signal processors, digital array processors and digital coprocessors.

a.3.a. A ''composite theoretical performance'' (''CTP'') of 260 million theoretical operations per second (Mtops) or more and an arithmetic logic unit with an access width of 32 bit or more;

a.3.b. Manufactured from a compound semiconductor and operating at a clock frequency exceeding 40 MHz; *or*

a.3.c. More than one data or instruction bus or serial communication port for external interconnection in a parallel processor with a transfer rate exceeding 2.5 Mbyte/s;

a.4. Storage integrated circuits manufactured from a compound semiconductor;

a.5. Analog-to-digital and digital-to-analog converter integrated circuits, as follows:

a.5.a. Analog-to-digital converters having any of the following:

a.5.a.1. A resolution of 8 bit or more, but less than 12 bit, with a total conversion time to maximum resolution of less than 10 ns;

a.5.a.2. A resolution of 12 bit with a total conversion time to maximum resolution of less than 200 ns; *or*

a.5.a.3. A resolution of more than 12 bit with a total conversion time to maximum resolution of less than 2 μs;

a.5.b. Digital-to-analog converters with a resolution of 12 bit or more, and a ''settling time'' of less than 10 ns;

a.6. Electro-optical and ''optical integrated circuits'' designed for ''signal processing'' having all of the following:

a.6.a. One or more than one internal ''laser'' diode;

a.6.b. One or more than one internal light detecting element; *and*

a.6.c. Optical waveguides;

a.7. Field programmable gate arrays having any of the following:

a.7.a. An equivalent usable gate count of more than 30,000 (2 input gates); *or*

a.7.b. A typical ''basic gate propagation delay time'' of less than 0.4 ns;

a.8. Field programmable logic arrays having any of the following:

a.8.a. An equivalent usable gate count of more than 30,000 (2 input gates); *or*

a.8.b. A toggle frequency exceeding 133 MHz;

a.9. Neural network integrated circuits;

a.10. Custom integrated circuits for which the function is unknown, or the control status of the equipment in which the integrated circuits will be used is unknown to the manufacturer, having any of the following:

a.10.a. More than 208 terminals;

a.10.b. A typical ''basic gate propagation delay time'' of less than 0.35 ns; or

a.10.c. An operating frequency exceeding 3 GHz;

a.11. Digital integrated circuits, other than those described in 3A001.a.3 to 3A001.a.10 and 3A001.a.12, based upon any compound semiconductor and having any of the following:

a.11.a. An equivalent gate count of more than 3,000 (2 input gates); *or*

a.11.b. A toggle frequency exceeding 1.2 GHz;

a.12. Fast Fourier Transform (FFT) processors having any of the following:

a.12.a. A rated execution time for a 1,024 point complex FFT of less than 1 ms;

a.12.b. A rated execution time for an N-point complex FFT of other than 1,024 points of less than $N \log_2 N$ /10,240 ms, where N is the number of points; *or*

a.12.c. A butterfly throughput of more than 5.12 MHz;

b. Microwave or millimeter wave components, as follows:

b.1. Electronic vacuum tubes and cathodes, as follows:

**Note:** 3A001.b.1 does not control tubes designed or rated to operate in the ITU allocated bands at frequencies not exceeding 31 GHz.

b.1.a. Traveling wave tubes, pulsed or continuous wave, as follows:

b.1.a.1. Operating at frequencies higher than 31 GHz;

b.1.a.2. Having a cathode heater element with a turn on time to rated RF power of less than 3 seconds;

b.1.a.3. Coupled cavity tubes, or derivatives thereof, with an ''instantaneous bandwidth'' of more than 7% or a peak power exceeding 2.5 kW;

b.1.a.4. Helix tubes, or derivatives thereof, with any of the following characteristics:

b.1.a.4.a. An ''instantaneous bandwidth'' of more than one octave, and average power (expressed in kW) times frequency (expressed in GHz) of more than 0.5;

b.1.a.4.b. An ''instantaneous bandwidth'' of one octave or less, and average power (expressed in kW) times frequency (expressed in GHz) of more than 1; *or*

b.1.a.4.c. Being ''space qualified'';

b.1.b. Crossed-field amplifier tubes with a gain of more than 17 dB;

b.1.c. Impregnated cathodes designed for electronic tubes, with any of the following:

b.1.c.1. A turn on time to rated emission of less than 3 seconds; *or*

b.1.c.2. Producing a continuous emission current density at rated operating conditions exceeding 5 A/$cm^2$;

b.2. Microwave integrated circuits or modules having all of the following:

b.2.a. Containing ''monolithic integrated circuits''; and

b.2.b. Operating at frequencies above 3 GHz;

**Note:** 3A001.b.2 does not control circuits or modules for equipment designed or rated to operate in the ITU allocated bands at frequencies not exceeding 31 GHz.

b.3. Microwave transistors rated for operation at frequencies exceeding 31 GHz;

b.4. Microwave solid state amplifiers, having any of the following:

b.4.a. Operating frequencies exceeding 10.5 GHz and an ''instantaneous bandwidth'' of more than half an octave; *or*

b.4.b. Operating frequencies exceeding 31 GHz;

b.5. Electronically or magnetically tunable band-pass or band-stop filters having more than 5 tunable resonators capable of tuning across a 1.5:1 frequency band ($F_{max}/F_{min}$) in less than 10 μs having any of the following:

b.5.a. A band-pass bandwidth of more than 0.5% of center frequency; *or*

b.5.b. A band-stop bandwidth of less than 0.5% of center frequency;

b.6. Microwave ''assemblies'' capable of operating at frequencies exceeding 31 GHz;

b.7. Mixers and converters designed to extend the frequency range of equipment described in 3A002.c, 3A002.e or 3A002.f beyond the limits stated therein;

b.8. Microwave power amplifiers containing tubes controlled by 3A001.b and having all of the following:

b.8.a. Operating frequencies above 3 GHz;

b.8.b. An average output power density exceeding 80 W/kg; *and*

b.8.c. A volume of less than 400 $cm^3$;

**Note:** 3A001.b.8 does not control equipment designed or rated for operation in an ITU allocated band.

c. Acoustic wave devices, as follows, and specially designed components therefor:

c.1. Surface acoustic wave and surface skimming (shallow bulk) acoustic wave devices (i.e., ''signal processing'' devices employing elastic waves in materials), having any of the following:

c.1.a. A carrier frequency exceeding 2.5 GHz;

c.1.b. A carrier frequency exceeding 1 GHz, but not exceeding 2.5 GHz, and having any of the following:

c.1.b.1. A frequency side-lobe rejection exceeding 55 dB;

c.1.b.2. A product of the maximum delay time and the bandwidth (time in μs and bandwidth in MHz) of more than 100;

c.1.b.3. A bandwidth greater than 250 MHz; *or*

c.1.b.4. A dispersive delay of more than 10 μs; *or*

c.1.c. A carrier frequency of 1 GHz or less, having any of the following:

c.1.c.1. A product of the maximum delay time and the bandwidth (time in μs and bandwidth in MHz) of more than 100;

c.1.c.2. A dispersive delay of more than 10 μs; *or*

c.1.c.3. A frequency side-lobe rejection exceeding 55 dB and a bandwidth greater than 50 MHz;

c.2. Bulk (volume) acoustic wave devices (i.e., ''signal processing'' devices employing elastic waves) that permit the direct processing of signals at frequencies exceeding 1 GHz;

c.3. Acoustic-optic ''signal processing'' devices employing interaction between acoustic waves (bulk wave or surface wave) and light waves that permit the direct processing of signals or images, including spectral analysis, correlation or convolution;

d. Electronic devices and circuits containing components, manufactured from ''superconductive'' materials specially designed for operation at temperatures below the ''critical temperature'' of at least one of the ''superconductive'' constituents, with any of the following:

d.1. Electromagnetic amplification:

d.1.a. At frequencies equal to or less than 31 GHz with a noise figure of less than 0.5 dB; *or*

d.1.b. At frequencies exceeding 31 GHz;

d.2. Current switching for digital circuits using ''superconductive'' gates with a product of delay time per gate (in seconds) and power dissipation per gate (in watts) of less than $10^{-14}$J; *or*

d.3. Frequency selection at all frequencies using resonant circuits with Q-values exceeding 10,000;

e. High energy devices, as follows:

e.1. Batteries and photovoltaic arrays, as follows:

**Note:** 3A001.e.1 does not control batteries with volumes equal to or less than 27 $cm^3$ (e.g., standard C-cells or R14 batteries).

e.1.a. Primary cells and batteries having an energy density exceeding 480 Wh/kg and rated for operation in the temperature range from below 243 K (−30° C) to above 343 K (70° C);

e.1.b. Rechargeable cells and batteries having an energy density exceeding 150 Wh/kg after 75 charge/discharge cycles at a discharge current equal to C/5 hours (C being the nominal capacity in ampere hours) when operating in the temperature range from below 253 K (−20° C) to above 333 K (60° C);

**Technical Note:** Energy density is obtained by multiplying the average power in watts (average voltage in volts times average current in amperes) by the duration of the discharge in hours to 75% of the open circuit voltage divided by the total mass of the cell (or battery) in kg.

e.1.c. ''Space qualified'' and radiation hardened photovoltaic arrays with a specific power exceeding 160 W/$m^2$ at an operating temperature of 301 K (28° C) under a tungsten illumination of 1 kW/$m^2$ at 2,800 K (2,527° C);

e.2. High energy storage capacitors, as follows:

N.B.: See also 3A201.a.

e.2.a. Capacitors with a repetition rate of less than 10 Hz (single shot capacitors) having all of the following:

e.2.a.1. A voltage rating equal to or more than 5 kV;

e.2.a.2. An energy density equal to or more than 250 J/kg; *and*

e.2.a.3. A total energy equal to or more than 25 kJ;

e.2.b. Capacitors with a repetition rate of 10 Hz or more (repetition rated capacitors) having all of the following:

e.2.b.1. A voltage rating equal to or more than 5 kV;

e.2.b.2. An energy density equal to or more than 50 J/kg;

e.2.b.3. A total energy equal to or more than 100 J; *and*

e.2.b.4. A charge/discharge cycle life equal to or more than 10,000;

e.3. ''Superconductive'' electromagnets and solenoids specially designed to be fully charged or discharged in less than one second, having all of the following:

N.B.: See also 3A201.b.

e.3.a. Energy delivered during the discharge exceeding 10 kJ in the first second;

e.3.b. Inner diameter of the current carrying windings of more than 250 mm; *and*

e.3.c. Rated for a magnetic induction of more than 8 T or ''overall current density'' in the winding of more than 300 A/$mm^2$;

**Note:** 3A001.e.3 does not control ''superconductive'' electromagnets or solenoids specially designed for Magnetic Resonance Imaging (MRI) medical equipment.

f. Rotary input type shaft absolute position encoders having any of the following:

f.1. A resolution of better than 1 part in 265,000 (18 bit resolution) of full scale; *or*

f.2. An accuracy better than ±2.5 seconds of arc.

**3A002 General purpose electronic equipment, as follows (see List of Items Controlled).**

* * * * *

**List of Items Controlled**

*Unit:* Number

*Related Controls:* See also 3A202 and 3A992

*Related Definitions:* N/A

*Items:*

a. Recording equipment, as follows, and specially designed test tape therefor:

a.1. Analog instrumentation magnetic tape recorders, including those permitting the recording of digital signals (e.g., using a high density digital recording (HDDR) module), having any of the following:

a.1.a. A bandwidth exceeding 4 MHz per electronic channel or track;

a.1.b. A bandwidth exceeding 2 MHz per electronic channel or track and having more than 42 tracks; *or*

a.1.c. A time displacement (base) error, measured in accordance with applicable IRIG or EIA documents, of less than ±0.1 μs;

**Note:** Analog magnetic tape recorders specially designed for civilian video purposes are not considered to be instrumentation tape recorders.

a.2. Digital video magnetic tape recorders having a maximum digital interface transfer rate exceeding 360 Mbit/s;

**Note:** 3A002.a.2 does not control digital video magnetic tape recorders specially designed for television recording using a signal format, which may include a compressed signal format, standardized or recommended by the ITU, the IEC, the SMPTE, the EBU or the IEEE for civil television applications.

a.3. Digital instrumentation magnetic tape data recorders employing helical scan techniques or fixed head techniques, having any of the following:

a.3.a. A maximum digital interface transfer rate exceeding 175 Mbit/s; *or*

a.3.b. Being ''space qualified'';

**Note:** 3A002.a.3 does not control analog magnetic tape recorders equipped with

HDDR conversion electronics and configured to record only digital data.

a.4. Equipment, having a maximum digital interface transfer rate exceeding 175 Mbit/s, designed to convert digital video magnetic tape recorders for use as digital instrumentation data recorders;

a.5. Waveform digitizers and transient recorders having all of the following:

N.B.: See also 3A202.

a.5.a. Digitizing rates equal to or more than 200 million samples per second and a resolution of 10 bits or more; *and*

a.5.b. A continuous throughput of 2 Gbit/s or more;

**Technical Note:** For those instruments with a parallel bus architecture, the continuous throughput rate is the highest word rate multiplied by the number of bits in a word. Continuous throughput is the fastest data rate the instrument can output to mass storage without the loss of any information while sustaining the sampling rate and analog-to-digital conversion.

b. ''Frequency synthesizer'', ''assemblies'' having a ''frequency switching time'' from one selected frequency to another of less than 1 ms;

c. ''Signal analyzers'', as follows:

c.1. ''Signal analyzers'' capable of analyzing frequencies exceeding 31 GHz;

c.2. ''Dynamic signal analyzers'' having a ''real-time bandwidth'' exceeding 25.6 kHz;

**Note:** 3A002.c.2 does not control those ''dynamic signal analyzers'' using only constant percentage bandwidth filters (also known as octave or fractional octave filters).

**Technical Note:** Constant percentage bandwidth filters are also known as octave or fractional octave filters.

d. Frequency synthesized signal generators producing output frequencies, the accuracy and short term and long term stability of which are controlled, derived from or disciplined by the internal master frequency, and having any of the following:

d.1. A maximum synthesized frequency exceeding 31 GHz;

d.2. A ''frequency switching time'' from one selected frequency to another of less than 1 ms; *or*

d.3. A single sideband (SSB) phase noise better than $-(126 + 20 \log_{10}F - 20 \log_{10}f)$ in dBc/Hz, where F is the off-set from the operating frequency in Hz and f is the operating frequency in MHz;

**Note:** 3A002.d does not control equipment in which the output frequency is either produced by the addition or subtraction of two or more crystal oscillator frequencies, or by an addition or subtraction followed by a multiplication of the result.

e. Network analyzers with a maximum operating frequency exceeding 40 GHz;

f. Microwave test receivers having all of the following:

f.1. A maximum operating frequency exceeding 40 GHz; *and*

f.2. Being capable of measuring amplitude and phase simultaneously;

g. Atomic frequency standards having any of the following:

g.1. Long-term stability (aging) less (better) than $1 \times 10^{-11}$/month; *or*

g.2. Being ''space qualified''.

**Note:** 3A002.g.1 does not control non-''space qualified'' rubidium standards.

**3A991 Electronic devices and components not controlled by 3A001.**

* * * * *

**List of Items Controlled**

*Unit:* Equipment in number
*Related Controls:* N/A
*Related Definitions:* N/A
*Items:*

a. ''Microprocessor microcircuits'', ''microcomputer microcircuits'', and microcontroller microcircuits having a clock frequency exceeding 25 MHz;

b. Storage integrated circuits, as follows:

b.1. Electrical erasable programmable read-only memories (EEPROMs) with a storage capacity;

b.1.a. Exceeding 16 Mbits per package for flash memory types; *or*

b.1.b. Exceeding either of the following limits for all other EEPROM types:

b.1.b.1. Exceeding 1 Mbit per package; *or*

b.1.b.2. Exceeding 256 kbit per package and a maximum access time of less than 80 ns;

b.2. Static random access memories (SRAMs) with a storage capacity:

b.2.a. Exceeding 1 Mbit per package; *or*

b.2.b. Exceeding 256 kbit per package and a maximum access time of less than 25 ns;

c. Field programmable logic arrays having either of the following:

c.1. An equivalent gate count of more than 5000 (2 input gates); *or*

c.2. A toggle frequency exceeding 100 MHz;

d. Custom integrated circuits for which either the function is unknown, or the control status of the equipment in which the integrated circuits will be used is unknown to the manufacturer, having any of the following:

d.1. More than 144 terminals; *or*

d.2. A typical ''basic propagation delay time'' of less than 0.4 ns.

e. Travelling wave tubes, pulsed or continuous wave, as follows:

e.1. Coupled cavity tubes, or derivatives thereof;

e.2. Helix tubes, or derivatives thereof, with any of the following:

e.2.a.1. An ''instantaneous bandwidth'' of half an octave or more; *and*

e.2.a.2. The product of the rated average output power (expressed in kW) and the maximum operating frequency (expressed in GHz) of more than 0.2;

e.2.b.1 An ''instantaneous bandwidth'' of less than half an octave; *and*

e.2.b.2. The product of the rated average output power (expressed in kW) and the maximum operating frequency (expressed in GHz) of more than 0.4;

f. Flexible waveguides designed for use at frequencies exceeding 40 GHz;

g. Surface acoustic wave and surface skimming (shallow bulk) acoustic wave devices (i.e., ''signal processing'' devices employing elastic waves in materials), having either of the following:

g.1. A carrier frequency exceeding 1 GHz; *or*

g.2. A carrier frequency of 1 GHz or less; *and*

g.2.a. A frequency side-lobe rejection exceeding 55 dB;

g.2.b. A product of the maximum delay time and bandwidth (time in microseconds and bandwidth in MHz) of more than 100; *or*

g.2.c. A dispersive delay of more than 10 microseconds.

h. Batteries, as follows:

**Note:** 3A991.h does not control batteries with volumes equal to or less than 26 $cm^3$ (e.g., standard C-cells or UM–2 batteries).

h.1. Primary cells and batteries having an energy density exceeding 350 Wh/kg and rated for operation in the temperature range from below 243 K ($-30°$ C) to above 343 K (70° C);

h.2. Rechargeable cells and batteries having an energy density exceeding 150 Wh/kg after 75 charge/discharge cycles at a discharge current equal to C/5 hours (C being the nominal capacity in ampere hours) when operating in the temperature range from below 253 K ($-20°$ C) to above 333 K (60° C);

**Technical Note:** Energy density is obtained by multiplying the average power in watts (average voltage in volts times average current in amperes) by the duration of the discharge in hours to 75 percent of the open circuit voltage divided by the total mass of the cell (or battery) in kg.

i. ''Superconductive'' electromagnets or solenoids specially designed to be fully charged or discharged in less than one minute, having all of the following:

**Note:** 3A991.i does not control ''superconductive'' electromagnets or solenoids designed for Magnetic Resonance Imaging (MRI) medical equipment.

i.1. Maximum energy delivered during the discharge divided by the

duration of the discharge of more than 500 kJ per minute;

i.2. Inner diameter of the current carrying windings of more than 250 mm; *and*

i.3. Rated for a magnetic induction of more than 8T or ''overall current density'' in the winding of more than 300 A/mm.$^2$

j. Circuits or systems for electromagnetic energy storage, containing components manufactured from ''superconductive'' materials specially designed for operation at temperatures below the ''critical temperature'' of at least one of their ''superconductive'' constituents, having all of the following:

j.1. Resonant operating frequencies exceeding 1 MHz;

j.2. A stored energy density of 1 MJ/M$^3$ or more; *and*

j.3. A discharge time of less than 1 ms;

k. Hydrogen/hydrogen-isotope thyratrons of ceramic-metal construction and rate for a peak current of 500 A or more;

l. Digital integrated circuits based on any compound semiconductor having an equivalent gate count of more than 300 (2 input gates).

**3B001 Equipment for the manufacturing of semiconductor devices or materials and specially designed components and accessories therefor.**

* * * * *

**List of Items Controlled**

*Unit:* Number
*Related Controls:* See also 3B991
*Related Definitions:* N/A
*Items:*

a. ''Stored program controlled'' equipment designed for epitaxial growth, as follows:

a.1. Equipment capable of producing a layer thickness uniform to less than ± 2.5% across a distance of 75 mm or more;

a.2. Metal organic chemical vapor deposition (MOCVD) reactors specially designed for compound semiconductor crystal growth by the chemical reaction between materials controlled by 3C003 or 3C004;

a.3. Molecular beam epitaxial growth equipment using gas or solid sources;

b. ''Stored program controlled'' equipment designed for ion implantation, having any of the following:

b.1. A beam energy (accelerating voltage) exceeding 1MeV;

b.2. Being specially designed and optimized to operate at a beam energy (accelerating voltage of less than 2 keV;

b.3. Direct write capability; *or*

b.4. Being capable of high energy oxygen implant into a heated semiconductor material ''substrate'';

c. ''Stored program controlled'' anisotropic plasma dry etching equipment, as follows:

c.1. Equipment with cassette-to-cassette operation and load-locks, and having any of the following:

c.1.a. Magnetic confinement; *or*

c.1.b. Electron cyclotron resonance (ECR);

c.2. Equipment specially designed for equipment controlled by 3B001.e and having any of the following:

c.2.a. Magnetic confinement; *or*

c.2.b. ECR;

d. ''Stored program controlled'' plasma enhanced CVD equipment, as follows:

d.1. Equipment with cassette-to-cassette operation and load-locks, and having any of the following:

d.1.a. Magnetic confinement; *or*

d.1.b. ECR;

d.2. Equipment specially designed for equipment controlled by 3B001.e and having any of the following:

d.2.a. Magnetic confinement; *or*

d.2.b. ECR;

e. ''Stored program controlled'' automatic loading multi-chamber central wafer handling systems, having all of the following:

e.1. Interfaces for wafer input and output, to which more than two pieces of semiconductor processing equipment are to be connected; *and*

e.2. Designed to form an integrated system in a vacuum environment for sequential multiple wafer processing;

**Note:** 3B001.e does not control automatic robotic wafer handling systems not designed to operate in a vacuum environment.

f. ''Stored program controlled'' lithography equipment, as follows:

f.1. Align and expose step and repeat (direct step on wafer) or step and scan (scanner) equipment for wafer processing using photo-optical or X-ray methods, having any of the following:

f.1.a. A light source wavelength shorter than 350 nm; *or*

f.1.b. Capable of producing a pattern with a minimum resolvable feature size of 0.5 μm or less;

**Note:** The minimum resolvable feature size is calculated by the following formula:

$$MRF = \frac{(\text{an exposure light source wavelength in } \mu m) \times (\text{K factor})}{\text{numerical aperture}}$$

Where the K factor = 0.7.
MRF = minimum resolvable feature size.

f.2. Equipment specially designed for mask making or semiconductor device processing using deflected focussed electron beam, ion beam or ''laser'' beam, having any of the following:

f.2.a. A spot size smaller than 0.2 μm;

f.2.b. Being capable of producing a pattern with a feature size of less than 1 μm; *or*

f.2.c. An overlay accuracy of better than ± 0.20 μm (3 sigma);

g. Masks and reticles designed for integrated circuits controlled by 3A001;

h. Multi-layer masks with a phase shift layer.

**3B991 Equipment not controlled by 3B001 for the manufacture of electronic components and materials, and specially designed components and accessories therefor.**

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**List of Items Controlled**

*Unit:* Equipment in number
*Related Controls:* N/A
*Related Definitions:* N/A
*Items:*

a. Equipment specially designed for the manufacture of electron tubes, optical elements and specially designed components therefor controlled by 3A001 or 3A991;

b. Equipment specially designed for the manufacture of semiconductor devices, integrated circuits and ''assemblies'', as follows, and systems incorporating or having the characteristics of such equipment:

**Note:** 3B991.b also controls equipment used or modified for use in the manufacture of other devices, such as imaging devices,

electro-optical devices, acoustic-wave devices.

b.1. Equipment for the processing of materials for the manufacture of devices and components as specified in the heading of 3B991.b, as follows:

**Note:** 3B991 does not control quartz furnace tubes, furnace liners, paddles, boats (except specially designed caged boats), bubblers, cassettes or crucibles specially designed for the processing equipment controlled by 3B991.b.1.

b.1.a. Equipment for producing polycrystalline silicon and materials controlled by 3C001;

b.1.b. Equipment specially designed for purifying or processing III/V and II/VI semiconductor materials controlled by 3C001, 3C002, 3C003, or 3C004, except crystal pullers, for which see 3B991.b.1.c below;

b.1.c. Crystal pullers and furnaces, as follows:

**Note:** 3B991.b.1.c does not control diffusion and oxidation furnaces.

b.1.c.1. Annealing or recrystallizing equipment other than constant temperature furnaces employing high rates of energy transfer capable of processing wafers at a rate exceeding 0.005 $m^2$ per minute;

b.1.c.2. ''Stored program controlled'' crystal pullers having any of the following characteristics:

b.1.c.2.a. Rechargeable without replacing the crucible container;

b.1.c.2.b. Capable of operation at pressures above 2.5 x $10^5$ Pa; *or*

b.1.c.2.c. Capable of pulling crystals of a diameter exceeding 100 mm;

b.1.d. ''Stored program controlled'' equipment for epitaxial growth having any of the following characteristics:

b.1.d.1. Capable of producing a layer thickness uniformity across the wafer of equal to or better than ±3.5%;

b.1.d.2. Rotation of individual wafers during processing; *or*

b.1.e. Molecular beam epitaxial growth equipment;

b.1.f. Magnetically enhanced ''sputtering'' equipment with specially designed integral load locks capable of transferring wafers in an isolated vacuum environment;

b.1.g. Equipment specially designed for ion implantation, ion-enhanced or photo-enhanced diffusion, having any of the following characteristics:

b.1.g.1. Patterning capability;

b.1.g.2. Beam energy (accelerating voltage) exceeding 200 keV;

b.1.g.3 Optimized to operate at a beam energy (accelerating voltage) of less than 10 keV; *or*

b.1.g.4. Capable of high energy oxygen implant into a heated ''substrate'';

b.1.h. ''Stored program controlled'' equipment for the selective removal (etching) by means of anisotropic dry methods (e.g., plasma), as follows:

b.1.h.1. Batch types having either of the following:

b.1.h.1.a. End-point detection, other than optical emission spectroscopy types; *or*

b.1.h.1.b. Reactor operational (etching) pressure of 26.66 Pa or less;

b.1.h.2. Single wafer types having any of the following:

b.1.h.2.a. End-point detection, other than optical emission spectroscopy types;

b.1.h.2.b. Reactor operational (etching) pressure of 26.66 Pa or less; *or*

b.1.h.2.c. Cassette-to-cassette and load locks wafer handling;

**Notes: 1.** ''Batch types'' refers to machines not specially designed for production processing of single wafers. Such machines can process two or more wafers simultaneously with common process parameters, e.g., RF power, temperature, etch gas species, flow rates.

2. ''Single wafer types'' refers to machines specially designed for production processing of single wafers. These machines may use automatic wafer handling techniques to load a single wafer into the equipment for processing. The definition includes equipment that can load and process several wafers but where the etching parameters, e.g., RF power or end point, can be independently determined for each individual wafer.

b.1.i. ''Chemical vapor deposition'' (CVD) equipment, e.g., plasma-enhanced CVD (PECVD) or photo-enhanced CVD, for semiconductor device manufacturing, having either of the following capabilities, for deposition of oxides, nitrides, metals or polysilicon:

b.1.i.1. ''Chemical vapor deposition'' equipment operating below $10^5$ Pa; *or*

b.1.i.2. PECVD equipment operating either below 60 Pa (450 millitorr) or having automatic cassette-to-cassette and load lock wafer handling;

**Note:** 3B991.b.1.i does not control low pressure ''chemical vapor deposition'' (LPCVD) systems or reactive ''sputtering'' equipment.

b.1.j. Electron beam systems specially designed or modified for mask making or semiconductor device processing having any of the following characteristics:

b.1.j.1. Electrostatic beam deflection;

b.1.j.2. Shaped, non-Gaussian beam profile;

b.1.j.3. Digital-to-analog conversion rate exceeding 3 MHz;

b.1.j.4. Digital-to-analog conversion accuracy exceeding 12 bit; *or*

b.1.j.5. Target-to-beam position feedback control precision of 1 micrometer or finer;

**Note:** 3B991.b.1.j does not control electron beam deposition systems or general purpose scanning electron microscopes.

b.1.k. Surface finishing equipment for the processing of semiconductor wafers as follows:

b.1.k.1. Specially designed equipment for backside processing of wafers thinner than 100 micrometer and the subsequent separation thereof; *or*

b.1.k.2. Specially designed equipment for achieving a surface roughness of the active surface of a processed wafer with a two-sigma value of 2 micrometer or less, total indicator reading (TIR);

**Note:** 3B991.b.1.k does not control single-side lapping and polishing equipment for wafer surface finishing.

b.1.l. Interconnection equipment which includes common single or multiple vacuum chambers specially designed to permit the integration of any equipment controlled by 3B991 into a complete system;

b.1.m. ''Stored program controlled'' equipment using ''lasers'' for the repair or trimming of ''monolithic integrated circuits'' with either of the following characteristics:

b.1.m.1. Positioning accuracy less than ± 1 micrometer; *or*

b.1.m.2. Spot size (kerf width) less than 3 micrometer.

b.2. Masks, mask ''substrates'', mask-making equipment and image transfer equipment for the manufacture of devices and components as specified in the heading of 3B991, as follows:

**Note:** The term ''masks'' refers to those used in electron beam lithography, X-ray lithography, and ultraviolet lithography, as well as the usual ultraviolet and visible photo-lithography.

b.2.a. Finished masks, reticles and designs therefor, except:

b.2.a.1. Finished masks or reticles for the production of unembargoed integrated circuits; *or*

b.2.a.2. Masks or reticles, having both of the following characteristics:

b.2.a.2.a. Their design is based on geometries of 2.5 micrometer or more; *and*

b.2.a.2.b. The design does not include special features to alter the intended use by means of production equipment or ''software'';

b.2.b. Mask ''substrates'' as follows:

b.2.b.1. Hard surface (e.g., chromium,silicon, molybdenum) coated ''substrates'' (e.g., glass, quartz, sapphire) for the preparation of masks having dimensions exceeding 125 mm × 125 mm; *or*

b.2.b.2. ''Substrates'' specially designed for X-ray masks;

b.2.c. Equipment, other than general purpose computers, specially designed for computer aided design (CAD) of semiconductor devices or integrated circuits;

b.2.d. Equipment or machines, as follows, for mask or reticle fabrication:

b.2.d.1. Photo-optical step and repeat cameras capable of producing arrays larger than 100 mm × 100 mm, or capable of producing a single exposure larger than 6 mm × 6 mm in the image (i.e., focal) plane, or capable of producing line widths of less than 2.5 micrometer in the photoresist on the ''substrate'';

b.2.d.2. Mask or reticle fabrication equipment using ion or ''laser'' beam lithography capable of producing line widths of less than 2.5 micrometer; *or*

b.2.d.3. Equipment or holders for altering masks or reticles or adding pellicles to remove defects;

**Note:** 3B991.b.2.d.1 and b.2.d.2 do not control mask fabrication equipment using photo-optical methods which was either commercially available before the 1st January, 1980, or has a performance no better than such equipment.

b.2.e. ''Stored program controlled'' equipment for the inspection of masks, reticles or pellicles with:

b.2.e.1. A resolution of 0.25 micrometer or finer; *and*

b.2.e.2. A precision of 0.75 micrometer or finer over a distance in one or two coordinates of 63.5 mm or more;

**Note:** 3B991.b.2.e does not control general purpose scanning electron microscopes except when specially designed and instrumented for automatic pattern inspection.

b.2.f. Align and expose equipment for wafer production using photo-optical or X-ray methods, including both projection image transfer equipment and step and repeat (direct step on wafer) or step and scan (scanner) equipment, capable of performing any of the following functions:

**Note:** 3B991.b.2.f does not control photo-optical contact and proximity mask align and expose equipment or contact image transfer equipment.

b.2.f.1. Production of a pattern size of less than 2.5 micrometer;

b.2.f.2. Alignment with a precision finer than ± 0.25 micrometer (3 sigma);

b.2.f.3. Machine-to-machine overlay no better than ± 0.3 micrometer;

b.2.f.4. A light source wavelength shorter than 400 nm; *or*

b.2.f.5. Capable of producing a pattern with a minimum resolvable feature size of 0.7 microns or less.

b.2.g. Electron beam, ion beam or X-ray equipment for projection image transfer capable of producing patterns less than 2.5 micrometer;

**Note:** For focussed, deflected-beam systems (direct write systems), see 3B991.b.1.j or b.10.

b.2.h. Equipment using ''lasers'' for direct write on wafers capable of producing patterns less than 2.5 micrometer.

b.3. Equipment for the assembly of integrated circuits, as follows:

b.3.a. ''Stored program controlled'' die bonders having all of the following characteristics:

b.3.a.1. Specially designed for ''hybrid integrated circuits'';

b.3.a.2. X–Y stage positioning travel exceeding 37.5 x 37.5 mm; *and*

b.3.a.3. Placement accuracy in the X–Y plane of finer than ± 10 micrometer;

b.3.b. ''Stored program controlled'' equipment for producing multiple bonds in a single operation (e.g., beam lead bonders, chip carrier bonders, tape bonders);

b.3.c. Semi-automatic or automatic hot cap sealers, in which the cap is heated locally to a higher temperature than the body of the package, specially designed for ceramic microcircuit packages controlled by 3A001 and that have a throughput equal to or more than one package per minute.

**Note:** 3B991.b.3 does not control general purpose resistance type spot welders.

b.4. Filters for clean rooms capable of providing an air environment of 10 or less particles of 0.3 micrometer or smaller per 0.02832 $m^3$ and filter materials therefor;

**3C002 Resist material and ''substrates'' coated with controlled resists.**

* * * * *

**List of Items Controlled**

*Unit:* $ value
*Related Controls:* N/A
*Related Definitions:* Silylation techniques are defined as processes incorporating oxidation of the resist surface to enhance performance for both wet and dry developing.
*Items:*

a. Positive resists designed for semiconductor lithography specially adjusted (optimized) for use at wavelengths below 350 nm;

b. All resists designed for use with electron beams or ion beams, with a sensitivity of 0.01 µcoulomb/$mm^2$ or better;

c. All resists designed for use with X-rays, with a sensitivity of 2.5 mJ/$mm^2$ or better;

d. All resists optimized for surface imaging technologies, including silylated resists.

**3C992 Positive resists designed for semiconductor lithography specially adjusted (optimized) for use at wavelengths between 370 and 350 nm.**

**License Requirements**

*Reason for Control:* AT

| *Control(s)* | *Country Chart* |
|---|---|
| AT applies to entire entry | AT Column 1 |

**License Exceptions**

LVS: N/A
GBS: N/A
CIV: N/A

**List of Items Controlled**

*Unit:* $ value
*Related Controls:* N/A
*Related Definitions:* N/A
*Items:*

The list of items controlled is contained in the ECCN heading.

**3E001 ''Technology'' according to the General Technology Note for the ''development'' or ''production'' of equipment or materials controlled by 3A (except 3A292, 3A980, 3A981, 3A991 or 3A992), 3B (except 3B991 and 3B992) or 3C.**

* * * * *

**List of Items Controlled**

*Unit:* N/A
*Related Controls:* (1.) See also 3E101 and 3E201.(2.) 3E001 does not control ''technology'' for the ''development'' or ''production'' of: (a) Microwave transistors operating at frequencies below 31 GHz; (b) Integrated circuits controlled by 3A001.a.3 to a.12, having all of the following: 1. Using ''technology'' of 0.7 micrometer or more, AND 2. Not incorporating multi-layer structures. (3.) The term multi-layer structures in this entry does not include devices incorporating a maximum of two metal layers and two polysilicon layers.
*Related Definition:* N/A
*Items:*

The list of items controlled is contained in the ECCN heading.

**3E002 Other ''technology'' for the ''development'' or ''production'' of items described in the List of Items Controlled.**

* * * * *

**License Exceptions**

CIV: N/A
TSR: Yes, except .e and .f

**List of Items Controlled**

*Unit:* N/A
*Related Controls:* See 3E001 for silicon-on-insulation (SOI) technology for the ''development'' or ''production'' related to radiation hardening of integrated circuits
*Related Definitions:* N/A
*Items:*
a. Vacuum microelectronic devices;
b. Hetero-structure semiconductor devices such as high electron mobility transistors (HEMT), hetero-bipolar transistors (HBT), quantum well and super lattice devices;
c. ''Superconductive'' electronic devices;
d. Substrates of films of diamond for electronic components;
e. Substrates of silicon-on-insulator (SOI) for integrated circuits in which the insulator is silicon dioxide;
f. Substrates of silicon carbide for electronic components.

10. In Supplement No. 1 to part 774 (the Commerce Control List), Category 4—computers is amended by revising Export Control Classification Number (ECCN) 4A003, to read as follows:

**4A003 ''Digital computers'', ''electronic assemblies'', and related equipment therefor, and specially designed components therefor.**

**License Requirements**

*Reason for Control:* NS, MT, CC, AT, NP, XP

| *Control(s)* | *Country Chart* |
|---|---|
| NS applies to 4A003.b and .c. | NS Column 1 |
| NS applies to 4A003.a, .d, .e, and .g. | NS Column 2 |
| MT applies to digital computers used as ancillary equipment for test facilities and equipment that are controlled by 9B005 or 9B006. | MT Column 1 |
| CC applies to digital computers for computerized finger-print equipment. | CC Column 1 |
| AT applies to entire entry (refer to 4A994 for controls on digital computers with a CTP ≥ 6 but ≤ to 2,000 Mtops). | AT Column 1 |

NP applies to digital computers with a CTP greater than 2,000 Mtops, unless a License Exception is available. See § 742.3(b) of the EAR for information on applicable licensing review policies.

XP applies to digital computers with a CTP greater than 2,000 Mtops, unless a License Exception is available. XP controls vary according to destination and end-user and end-use. See § 742.12 of the EAR for additional information.

**Note:** For all destinations, except Cuba, Iran, Iraq, Libya, North Korea, Sudan, and Syria, no license is required (NLR) for computers with a CTP of 2,000 Mtops, and for assemblies described in 4A003.c that are not capable of exceeding a CTP of 2,000 Mtops in aggregation. Computers controlled in this entry for MT reasons are not eligible for NLR.

*License Requirement Notes:* See § 743.1 of the EAR for reporting requirements for exports under License Exceptions.

**License Exceptions**

LVS: $5000; N/A for MT and ''digital'' computers controlled by 4A003.b and having a CTP exceeding 10,000 MTOPS; or ''electronic assemblies'' controlled by 4A003.c and capable of enhancing performance by aggregation of ''computing elements'' so that the CTP of the aggregation exceeds 10,000 MTOPS.
GBS: Yes, for 4A003.d, .e, and .g and specially designed components therefor, exported separately or as part of a system.
CTP: Yes, for computers controlled by 4A003.a, .b and .c, to the exclusion of other technical parameters, with the exception of parameters specified as controlled for Missile Technology (MT) concerns and 4A003.e (equipment performing analog-to-digital or digital-to-analog conversions exceeding the limits of 3A001.a.5.a). See § 740.7 of the EAR.
CIV: Yes, for 4A003.d (having a 3–D vector rate less than 10 M vectors/sec), .e, and .g.

**List of Items Controlled**

*Unit:* Equipment in number; parts and accessories in $ value
*Related Controls:* See also 4A994
*Related Definitions:* N/A
*Items:*

**Note 1:** 4A003 includes the following:

a. Vector processors;
b. Array processors;
c. Digital signal processors;
d. Logic processors;
e. Equipment designed for ''image enhancement'';
f. Equipment designed for ''signal processing''.

**Note 2:** The control status of the ''digital computers'' and related equipment described in 4A003 is determined by the control status of other equipment or systems provided:

a. The ''digital computers'' or related equipment are essential for the operation of the other equipment or systems;
b. The ''digital computers'' or related equipment are not a ''principal element'' of the other equipment or systems; *and*

N.B. 1: The control status of ''signal processing'' or ''image enhancement'' equipment specially designed for other equipment with functions limited to those required for the other equipment is determined by the control status of the other equipment even if it exceeds the ''principal element'' criterion.

N.B. 2: For the control status of ''digital computers'' or related equipment for telecommunications equipment, see Category 5, Part 1 (Telecommunications).

c. The ''technology'' for the ''digital computers'' and related equipment is determined by 4E.

a. Designed or modified for ''fault tolerance'';

**Note:** For the purposes of 4A003.a., ''digital computers'' and related equipment are not considered to be designed or modified for ''fault tolerance'' if they utilize any of the following:

1. Error detection or correction algorithms in ''main storage'';
2. The interconnection of two ''digital computers'' so that, if the active central processing unit fails, an idling but mirroring central processing unit can continue the system's functioning;
3. The interconnection of two central processing units by data channels or by use of shared storage to permit one central processing unit to perform other work until the second central processing unit fails, at which time the first central processing unit takes over in order to continue the system's functioning; or
4. The synchronization of two central processing units by ''software'' so that one central processing unit recognizes when the other central processing unit fails and recovers tasks from the failing unit.

b. ''Digital computers'' having a ''composite theoretical performance'' (''CTP'') exceeding 2,000 million theoretical operations per second (Mtops);

c. ''Electronic assemblies'' specially designed or modified to be capable of enhancing performance by aggregation of ''computing elements'' (''CEs'') so that the ''CTP'' of the aggregation exceeds the limit in 4A003.b;

**Note 1:** 4A003.c applies only to ''electronic assemblies'' and programmable interconnections not exceeding the limit in 4A003.b when shipped as unintegrated ''electronic assemblies''. It does not apply to ''electronic assemblies'' inherently limited by nature of their design for use as related equipment controlled by 4A003.d, or 4A003.e.

**Note 2:** 4A003.c does not control ''electronic assemblies'' specially designed for a product or family of products whose maximum configuration does not exceed the limit of 4A003.b.

d. Graphics accelerators and graphics coprocessors exceeding a ''three dimensional Vector Rate'' of 3,000,000;

e. Equipment performing analog-to-digital conversions exceeding the limits in 3A001.a.5;

f. Reserved.

g. Equipment specially designed to provide external interconnection of

''digital computers'' or associated equipment that allows communications at data rates exceeding 80 Mbyte/s.

**Note:** 4A003.g does not control internal interconnection equipment (e.g., backplanes, buses) passive interconnection equipment, ''network access controllers'' or ''communication channel controllers''.

11. In Supplement No. 1 to part 774, the Commerce Control List, Category 4—Computers is amended by revising the table following the EAR99 entry to read as follows:

Information on How to Calculate ''Composite Theoretical Performance (''CTP'')

**Technical Note:** ''COMPOSITE THEORETICAL PERFORMANCE'' (''CTP'')

Abbreviations used in this Technical Note

| | |
|---|---|
| ''CE'' | ''computing element'' (typically an arithmetic logical unit) |
| FP | floating point |
| XP | fixed point |
| t | execution time |
| XOR | exclusive OR |
| CPU | central processing unit |
| TP | theoretical performance (of a single ''CE'') |
| ''CTP'' | ''composite theoretical performance'' (multiple ''CEs'') |
| R | effective calculating rate |
| WL | word length |
| L | word length adjustment |
| * | multiply |

Execution time t is expressed in microseconds, TP and ''CTP'' are expressed in millions of theoretical operations per second (Mtops) and WL is expressed in bits.

*Outline of ''CTP'' calculation method*

''CTP'' is a measure of computational performance given in Mtops. In calculating the ''CTP'' of an aggregation of ''CEs'' the following three steps are required:

1. Calculate the effective calculating rate R for each ''CE'';

2. Apply the word length adjustment (L) to the effective calculating rate (R), resulting in a Theoretical Performance (TP) for each ''CE'';

3. If there is more than one ''CE'', combine the TPs, resulting in a ''CTP'' for the aggregation.

Details for these steps are given in the following sections.

**Note 1:** For aggregations of multiple ''CEs'' that have both shared and unshared memory subsystems, the calculation of ''CTP'' is completed hierarchically, in two steps: first, aggregate the groups of ''CEs'' sharing memory; second, calculate the ''CTP'' of the groups using the calculation method for multiple ''CEs'' not sharing memory.

**Note 2:** ''CEs'' that are limited to input/output and peripheral functions (e.g., disk drive, communication and video display controllers) are not aggregated into the ''CTP'' calculation.

The following table shows the method of calculating the Effective Calculating Rate R for each ''CE'':

Step 1: The effective calculating rate R

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| For "CEs" Implementing:<br><br>**Note:** Every "CE" must be evaluated independently. | Effective calculating Rate, R |
|---|---|
| XP only<br><br>($R_{xp}$) | 1<br>---<br>$3 * (t_{xp\ add})$<br>if no add is implemented use:<br>1<br>---<br>$(t_{xp\ mult})$<br>If neither add nor multiply is implemented use the fastest available arithmetic operation as follows:<br>1<br>---<br>$3 * t_{xp}$<br>See Notes X & Z |
| FP only<br><br>($R_{fp}$) | $\max\left(\frac{1}{t_{fp\ add}}, \frac{1}{t_{fp\ mult}}\right)$<br>See Notes X & Y |
| Both FP and XP<br><br>(R) | Calculate both<br>$R_{xp}, R_{fp}$ |

| | |
|---|---|
| For simple logic processors not implementing any of the specified arithmetic operations. | 1<br>---<br>$3 * t_{log}$<br>Where $t_{log}$ is the execute time of the XOR, or for logic hardware not implementing the XOR, the fastest simple logic operation.<br>See Notes X & Z |
| For special logic processors not using any of the specified arithmetic or logic operations. | R = R' * WL/64<br>Where R' is the number of results per second, WL is the number of bits upon which the logic operation occurs, and 64 is a factor to normalize to a 64 bit operation. |

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**Note W:** For a pipelined "CE" capable of executing up to one arithmetic or logic operation every clock cycle after the pipeline is full, a pipelined rate can be established. The effective calculating rate (R) for such a "CE" is the faster of the pipelined rate or non-pipelined execution rate.

**Note X:** For a "CE" that performs multiple operations of a specific type in a single cycle (e.g., two additions per cycle or two identical logic operations per cycle), the execution time t is given by:

$$t = \frac{\text{cycle time}}{\text{the number of identical operations per machine cycle}}$$

"CEs" that perform different types of arithmetic or logic operations in a single machine cycle are to be treated as multiple separate "CEs" performing simultaneously (e.g., a "CE" performing an addition and a multiplication in one cycle is to be treated as two "CEs", the first performing an addition in one cycle and the second performing a multiplication in one cycle). If a single "CE" has both scalar function and vector function, use the shorter execution time value.

**Note Y:** For the "CE" that does not implement FP add or FP multiply, but that performs FP divide:

$$R_{fp} = \frac{1}{t_{fpdivide}}$$

If the "CE" implements FP reciprocal but not FP add, FP multiply or FP divide, then

$$R_{fp} = \frac{1}{t_{fpreciprocal}}$$

If none of the specified instructions is implemented, the effective FP rate is 0.

**Note Z:** In simple logic operations, a single instruction performs a single logic manipulation of no more than two operands of given lengths. In complex logic operations, a single instruction performs multiple logic manipulations to produce one or more results from two or more operands.

Rates should be calculated for all supported operand lengths considering both pipelined operations (if supported), and non-pipelined operations using the fastest executing instruction for each operand length based on:

1. Pipelined or register-to-register operations. Exclude extraordinarily short execution times generated for operations on a predetermined operand or operands (for example, multiplication by 0 or 1). If no register-to-register operations are implemented, continue with (2).

2. The faster of register-to-memory or memory-to-register operations; if these also do not exist, then continue with (3).

3. Memory-to-memory.

In each case above, use the shortest execution time certified by the manufacturer.

Step 2: *TP for each supported operand length WL*

Adjust the effective rate R (or R′) by the word length adjustment L as follows:
TP = R * L, where L = (1/3 + WL/96)

**Note:** The word length WL used in these calculations is the operand length in bits. (If an operation uses operands of different lengths, select the largest word length.) The combination of a mantissa ALU and an exponent ALU of a floating point processor or unit is considered to be one ''CE'' with a Word Length (WL) equal to the number of bits in the data representation (typically 32 or 64) for purposes of the ''CTP'' calculation.

This adjustment is not applied to specialized logic processors that do not use XOR instructions. In this case TP = R.

Select the maximum resulting value of TP for:

Each XP-only ''CE'' ($R_{xp}$);

Each FP-only ''CE'' ($R_{fp}$);

Each combined FP and XP ''CE'' (R);

Each simple logic processor not implementing any of the specified arithmetic operations; *and*

Each special logic processor not using any of the specified arithmetic or logic operations.

Step 3: *''CTP'' for aggregations of ''CEs'', including CPUs.*

For a CPU with a single ''CE'', ''CTP'' = TP (for ''CEs'' performing both fixed and floating point operations TP = max ($TP_{fp}$, $TP_{xp}$))

''CTP'' for aggregations of multiple ''CEs'' operating simultaneously is calculated as follows:

**Note** 1: For aggregations that do not allow all of the ''CEs'' to run simultaneously, the possible combination of ''CEs'' that provides the largest ''CTP'' should be used. The TP of each contributing ''CE'' is to be calculated at its maximum value theoretically possible before the ''CTP'' of the combination is derived.

N.B.: To determine the possible combinations of simultaneously operating ''CEs'', generate an instruction sequence that initiates operations in multiple ''CEs'', beginning with the slowest ''CE'' (the one needing the largest number of cycles to complete its operation) and ending with the fastest ''CE''. At each cycle of the sequence, the combination of ''CEs'' that are in operation during that cycle is a possible combination. The instruction sequence must take into account all hardware and/or architectural constraints on overlapping operations.

**Note** 2: A single integrated circuit chip or board assembly may contain multiple ''CEs''.

**Note 3:** Simultaneous operations are assumed to exist when the computer manufacturer claims concurrent, parallel or simultaneous operation or execution in a manual or brochure for the computer.

**Note 4:** ''CTP'' values are not to be aggregated for ''CE'' combinations (inter)connected by ''Local Area Networks'', Wide Area Networks, I/O shared connections/devices, I/O controllers and any communication interconnection implemented by ''software''.

**Note 5:** ''CTP'' values must be aggregated for multiple ''CEs'' specially designed to enhance performance by aggregation, operating simultaneously and sharing memory,-or multiple memory/''CE''-combinations operating simultaneously utilizing specially designed hardware.

This aggregation does not apply to ''electronic assemblies'' described by 4A003.c.

$$\text{''CTP''} = TP_1 + C_2 * TP_2 + \ldots + C_n * TP_n,$$

Where the TPs are ordered by value, with $TP_1$ being the highest, $TP_2$ being the second highest, ..., and $TP_n$ being the lowest. $C_i$ is a coefficient determined by the strength of the interconnection between ''CEs'', as follows:

For multiple ''CEs'' operating simultaneously and sharing memory:

$C_2 = C_3 = C_4 = \ldots = C_n = 0.75$

**Note 1:** When the ''CTP'' calculated by the above method does not exceed 194 Mtops, the following formula may be used to calculate $C_i$:

$$C_i = \frac{0.75}{\sqrt{m}} \qquad (i = 2, \ldots, n)$$

Where m=the number of ''CEs'' or groups of ''CEs'' sharing access.

provided:

1. The $TP_1$ of each ''CE'' or group of ''CEs'' does not exceed 30 Mtops;

2. The ''CEs'' or groups of ''CEs'' share access to main memory (excluding cache memory) over a single channel; *and*

3. Only one ''CE'' or group of ''CEs'' can have use of the channel at any given time.

N.B.: This does not apply to items controlled under Category 3.

**Note 2:** ''CEs'' share memory if they access a common segment of solid state memory. This memory may include cache memory, main memory or other internal memory. Peripheral memory devices such as disk drives, tape drives or RAM disks are not included.

For Multiple ''CEs'' or groups of ''CEs'' not sharing memory, interconnected by one or more data channels:

$C_i = 0.75 * k_i$ (i=2,..., 32) (see Note below)

$= 0.60 * k_i$ (i=33,..., 64)

$= 0.45 * k_i$ (i=65,..., 256)

$= 0.30 * k_i$ (i >256)

The value of $C_i$ is based on the number of ''CE''s, not the number of nodes.

Where $k_i = \min (S_i/K_r, 1)$, and
$K_r$=normalizing factor of 20 MByte/s.
$S_i$ = sum of the maximum data rates (in units of MByte/s) for all data channels connected to the $i^{th}$ ''CE'' or group of ''CEs'' sharing memory.

When calculating a $C_i$ for a group of ''CEs'', the number of the first ''CE'' in a group determines the proper limit for $C_i$. For example, in an aggregation of groups consisting of 3 ''CEs'' each, the 22nd group will contain $\text{''CE''}_{64}$, $\text{''CE''}_{65}$ and $\text{''CE''}_{66}$. The proper limit for $C_i$ for this group is 0.60.

Aggregation (of ''CEs'' or groups of ''CEs'') should be from the fastest-to-slowest; i.e.: $TP_1 \geq TP_2 \geq \ldots \geq TP_n$, and

in the case of $TP_i = TP_{i+1}$, from the largest to smallest; i.e.: $C_i \geq C_{i+1}$

**Note:** The $k_i$ factor is not to be applied to ''CEs'' 2 to 12 if the $TP_i$ of the ''CE'' or group of ''CEs'' is more than 50 Mtops; i.e., $C_i$ for ''CEs'' 2 to 12 is 0.75.

12. In Supplement No. 1 to part 774 (the Commerce Control List), Category 5—Telecommunications and ''Information Security'', Part I—Telecommunications is amended by revising the telecommunications notes that immediately follow the Category 5—I ''telecommunications'' heading, to read as follows:

**Category 5—Telecommunications and ''Information Security''**

*I. Telecommunications*

**Notes:** 1. The control status of components, ''lasers'', test and ''production'' equipmentand ''software'' therefor which are specially designed for telecommunications

equipment or systems is determined in Category 5, Part I.

2. ''Digital computers'', related equipment or ''software'', when essential for the operation and support of telecommunications equipment described in this Category, are regarded as specially designed components, provided they are the standard models customarily supplied by the manufacturer. This includes operation, administration, maintenance, engineering or billing computer systems.

13. In Supplement No. 1 to part 774 (the Commerce Control List), Category 5—Telecommunications and ''Information Security'', is amended as follows:

a. By revising ECCN 5A001;

b. By revising ECCN 5A991;

c. By revising ECCN 5B001;

d. By removing ECCN 5C001;

e. By adding a new ECCN 5C991; and

f. By revising the License Exceptions section and the List of Items Controlled for ECCNs 5D001 and 5E001, to read as follows:

**5A001 Telecommunications systems, equipment, and components.**

**License Requirements**

Reason for Control: NS, AT

| *Control(s)* | *Country Chart* |
|---|---|
| NS applies to 5A001.a ..... | NS Column 1 |
| NS applies to 5A001.b, .c, or .d. | NS Column 2 |
| AT applies to entire entry | AT Column 1 |

**License Requirement Notes:** See § 743.1 of the EAR for reporting requirements for exports under License Exceptions.

**License Exceptions**

LVS: N/A for 5A001.a and b.4
$5000 for 5A001b.2, b.3, b.5, and .d
$3000 for 5A001.c
GBS: Yes, except 5A001.a and b.4
CIV: Yes, except 5A001.a, b.3 and b.4

**List of Items Controlled**

*Unit:* Equipment in number; parts and accessories in $ value
*Related Controls:* See also 5A101 and 5A991
*Related Definitions: N/A*
Items:

a. Any type of telecommunications equipment having any of the following characteristics, functions or features:

a.1. Specially designed to withstand transitory electronic effects or electromagnetic pulse effects, both arising from a nuclear explosion;

a.2. Specially hardened to withstand gamma, neutron or ion radiation; *or*

a.3. Specially designed to operate outside the temperature range from 218 K (−55°C) to 397 K (124°C).

**Note:** 5A001.a.3 applies only to electronic equipment.

**Note:** 5A001.a.2 and 5A001.a.3 do not apply to equipment on board satellites.

b. Telecommunication transmission equipment and systems, and specially designed components and accessories therefor, having any of the following characteristics, functions or features:

b.1 Being underwater communications systems having any of the following characteristics:

b.1.a. An acoustic carrier frequency outside the range from 20 kHz to 60 kHz;

b.1.b. Using an electromagnetic carrier frequency below 30 kHz; *or*

b.1.c. Using electronic beam steering techniques;

b.2. Being radio equipment operating in the 1.5 MHz to 87.5 MHz band and having any of the following characteristics:

b.2.a. Incorporating adaptive techniques providing more than 15 dB suppression of an interfering signal; or

b.2.b. Having all of the following:

b.2.b.1. Automatically predicting and selecting frequencies and ''total digital transfer rates'' per channel to optimize the transmission; *and*

b.2.b.2. Incorporating a linear power amplifier configuration having a capability to support multiple signals simultaneously at an output power of 1 kW or more in the 1.5 MHz to 30 MHz frequency range or 250 W or more in the 30 MHz to 87.5 MHz frequency range, over an ''instantaneous bandwidth'' of one octave or more and with an output harmonic and distortion content of better than −80 dB;

b.3. Being radio equipment employing ''spread spectrum'' or ''frequency agility'' (frequency hopping) techniques having any of the following characteristics:

b.3.a. User programmable spreading codes; or b.3.b. A total transmitted bandwidth which is 100 or more times the bandwidth of any one information channel and in excess of 50 kHz;

**Note:** 5A001. b.3.b does not control cellular radio equipment operating in civil bands.

**Note:** 5A001.b.3 does not control equipment operating at an output power of 1.0 Watt or less.

b.4. Being digitally controlled radio receivers having all of the following:

b.4.a. More than 1,000 channels;

b.4.b. A ''frequency switching time'' of less than 1 ms;

b.4.c. Automatic searching or scanning of a part of the electromagnetic spectrum;

*and*

b.4.d. Identification of the received signals or the type of transmitter; *or*

**Note:** 5A001.b.4 does not control cellular radio equipment operating in civil bands.

b.5. Employing functions of digital ''signal processing'' to provide voice coding at rates of less than 2,400 bit/s.

c. Optical fiber communication cables, optical fibers and accessories, as follows:

c.1. Optical fibers of more than 500 m in length specified by the manufacturer as being capable of withstanding a proof test tensile stress of 2 x $10^9$ N/$m^2$ or more;

**Technical Note:** Proof Test: on-line or off-line production screen testing that dynamically applies a prescribed tensile stress over a 0.5 to 3 m length of fiber at a running rate of 2 to 5 m/s while passing between capstans approximately 150 mm in diameter. The ambient temperature is a nominal 293 K (20° C) and relative humidity 40%.

N.B.: Equivalent national standards may be used for executing the proof test.

c.2. Optical fiber cables and accessories designed for underwater use.

**Note:** 5A001.c.2 does not control standard civil telecommunication cables and accessories.

N.B. 1: For underwater umbilical cables, and connectors thereof, see 8A002.a.3.

N.B. 2: For fiber-optic hull penetrators or connectors, see 8A002.c.

d. ''Electronically steerable phased array antennae'' operating above 31 GHz.

**Note:** 5A001.d does not control ''electronically steerable phased array antennae'' for landing systems with instruments meeting ICAO standards covering microwave landing systems (MLS).

**5A991 Telecommunication Equipment, Not Controlled by 5A001.**

**License Requirements**

*Reason for Control:* AT

| *Control(s)* | *Country Chart* |
|---|---|
| AT applies to entire entry | AT Column 1 |

**License Exceptions**

LVS: N/A
GBS: N/A
CIV: N/A

**List of Items Controlled**

*Unit:* $ value
*Related Controls:* N/A
*Related Definitions:* N/A
*Items:*

a. Any type of telecommunications equipment, not controlled by 5A001.a, specially designed to operate outside the temperature range from 219 K (−54° C) to 397 K (124° C).

b. Telecommunication transmission equipment and systems, and specially

designed components and accessories therefor, having any of the following characteristics, functions or features:

**Note:** Telecommunication transmission equipment:

a. Categorized as follows, or combinations thereof:
1. Radio equipment (e.g., transmitters, receivers and transceivers);
2. Line terminating equipment;
3. Intermediate amplifier equipment;
4. Repeater equipment;
5. Regenerator equipment;
6. Translation encoders (transcoders);
7. Multiplex equipment (statistical mutiplex included);
8. Modulators/demodulators (modems);
9. Transmultiplex equipment (see CCITT Rec. G701);
10. ''Stored program controlled'' digital crossconnection equipment;
11. ''Gateways'' and bridges;
12. ''Media access units''; *and*

b. Designed for use in single or multi-channel communication via any of the following:
1. Wire (line);
2. Coaxial cable;
3. Optical fiber cable;
4. Electromagnetic radiation; *or*
5. Underwater acoustic wave propagation.

b.1. Employing digital techniques, including digital processing of analog signals, and designed to operate at a ''digital transfer rate'' at the highest multiplex level exceeding 45 Mbit/s or a ''total digital transfer rate'' exceeding 90 Mbit/s;

**Note:** 5A991.b.1 does not control equipment specially designed to be integrated and operated in any satellite system for civil use.

b.2. Modems using the ''bandwidth of one voice channel'' with a ''data signalling rate'' exceeding 9,600 bits per second;

b.3. Being ''stored program controlled'' digital cross connect equipment with ''digital transfer rate'' exceeding 8.5 Mbit/s per port.

b.4. Being equipment containing any of the following:

b.4.a. ''Network access controllers'' and their related common medium having a ''digital transfer rate'' exceeding 33 Mbit/s; *or*

b.4.b. ''Communication channel controllers'' with a digital output having a ''data signalling rate'' exceeding 64,000 bit/s per channel;

**Note:** If any uncontrolled equipment contains a ''network access controller'', it cannot have any type of telecommunications interface, *except* those described in, but not controlled by 5A991.b.4.

b.5. Employing a ''laser'' and having any of the following characteristics:

b.5.a. A transmission wavelength exceeding 1,000 nm; *or*

b.5.b. Employing analog techniques and having a bandwidth exceeding 45 MHz;

**Note:** 5A991.b.5.b does not control commercial TV systems.

b.5.c. Employing coherent optical transmission or coherent optical detection techniques (also called optical heterodyne or homodyne techniques);

b.5.d. Employing wavelength division multiplexing techniques; *or*

b.5.e. Performing ''optical amplification'';

b.6. Radio equipment operating at input or output frequencies exceeding:

b.6.1. 31 GHz for satellite-earth station applications; *or*

b.6.2. 26.5 GHz for other applications;

**Note:** 5A991.b.6 does not control equipment for civil use when conforming with an International Telecommunications Union (ITU) allocated band between 26.5 GHz and 31 GHz.

b.7. Being radio equipment employing any of the following:

b.7.a. Quadrature-amplitude-modulation (QAM) techniques above level 4 if the ''total digital transfer rate'' exceeds 8.5 Mbit/s;

b.7.b. QAM techniques above level 16 if the ''total digital transfer rate'' is equal to or less than 8.5 Mbit/s; *or*

b.7.c. Other digital modulation techniques and having a ''spectral efficiency'' exceeding 3 bit/sec/Hz;

**Notes:** 1. 5A001.b.7 does not control equipment specially designed to be integrated and operated in any satellite system for civil use.

2. 5A001.b.7 does not control radio relay equipment for operation in an ITU allocated band:

a. Having any of the following:

a.1. Not exceeding 960 MHz; *or*

a.2. With a ''total digital transfer rate'' not exceeding 8.5 Mbit/s;

*and*

b. Having a ''spectral efficiency'' not exceeding 4 bit/sec/Hz.

b.8. Providing functions of digital ''signal processing'' as follows:

b.8.a. Voice coding at rates less than 2,400 bit/s;

b.8.b. Employing circuitry that incorporates ''user-accessible programmability'' of digital ''signal processing'' circuits exceeding the limits of 4A003.b.

c. ''Stored program controlled'' switching equipment and related signalling systems, having any of the following characteristics, functions or features, and specially designed components and accessories therefor:

**Note:** Statistical multiplexers with digital input and digital output which provide switching are treated as ''stored program controlled'' switches.

c.1. ''Data (message) switching'' equipment or systems designed for ''packet-mode operation'' and assemblies and components therefor, n.e.s.

c.2. Containing ''Integrated Services Digital Network'' (ISDN) functions and having any of the following:

c.2.a. Switch-terminal (e.g., subscriber line) interfaces with a ''digital transfer rate'' at the highest multiplex level exceeding 192,000 bit/s, including the associated signalling channel (e.g., 2B+D); *or*

c.2.b. The capability that a signalling message received by a switch on a given channel that is related to a communication on another channel may be passed through to another switch.

**Note:** 5A991.c. does not preclude the evaluation and appropriate actions taken by the receiving switch or unrelated user message traffic on a D channel of ISDN.

c.3. Routing or switching of ''datagram'' packets;

c.4. Routing or switching of ''fast select'' packets;

**Note:** The restrictions in 5A991.c.3 and c.4 do not apply to networks restricted to using only ''network access controllers'' or to ''network access controllers'' themselves.

c.5. Multi-level priority and pre-emption for circuit switching;

**Note:** 5A991.c.5 does not control single-level call preemption.

c.6. Designed for automatic hand-off of cellular radio calls to other cellular switches or automatic connection to a centralized subscriber data base common to more than one switch;

c.7. Containing ''stored program controlled'' digital crossconnect equipment with ''digital transfer rate'' exceeding 8.5 Mbit/s per port.

c.8. ''Common channel signalling'' operating in either non-associated or quasi-associated mode of operation;

c.9. ''Dynamic adaptive routing'';

**Note:** 5A991.c.10 does not control packet switches or routers with ports or lines not exceeding the limits in 5A001.c.10.

c.10. Being packet switches, circuit switches and routers with ports or lines exceeding any of the following:

c.10.a. A ''data signalling rate'' of 64,000 bit/s per channel for a ''communications channel controller''; *or*

**Note:** 5A991.c.10.a does not control multiplex composite links composed only of communication channels not individually controlled by 5A991.b.1.

c.10.b. A ''digital transfer rate'' of 33 Mbit/s for a ''network access controller'' and related common media;

c.10.c. ''Optical switching'';

c.10.d. Employing ''Asynchronous Transfer Mode'' (''ATM'') techniques.

d. Optical fibers and optical fiber cables of more than 50 m in length designed for single mode operation;

e. Centralized network control having all of the following characteristics:

e.1. Receives data from the nodes; *and*

e.2. Process these data in order to provide control of traffic not requiring operator decisions, and thereby performing ''dynamic adaptive routing'';

**Note:** 5A991.e does not preclude control of traffic as a function of predictable statistical traffic conditions.

f. Phased array antennae, operating above 10.5 GHz, containing active elements and distributed components, and designed to permit electronic control of beam shaping and pointing, except for landing systems with instruments meeting International Civil Aviation Organization (ICAO) standards (microwave landing systems (MLS)).

g. Mobile communications equipment, n.e.s., and assemblies and components therefor; *or*

h. Radio relay communications equipment designed for use at frequencies equal to or exceeding 19.7 GHz and assemblies and components therefor, n.e.s.

B. Test, Inspection and Production Equipment

**5B001 Telecommunication test, inspection and production equipment, as follows (See List of Items Controlled).**

**License Requirements**

*Reason for Control:* NS, AT

| *Control(s)* | *Country Chart* |
|---|---|
| NS applies to entire entry | NS Column 2 |
| AT applies to entire entry | AT Column 1 |

*License Requirement Notes:* See § 743.1 of the EAR for reporting requirements for exports under License Exceptions.

**License Exceptions**

LVS: $5000
GBS: Yes
CIV: Yes

**List of Items Controlled**

*Unit:* Equipment in number; parts and accessories in $ value
*Related Controls:* See also 5B991.
*Related Definition:* N/A
*Items:*

a. Equipment and specially designed components or accessories therefor, specially designed for the ''development'', ''production'' or ''use'' of equipment, functions or features controlled by 5A001, 5D001 or 5E001.

**Note:** 5B001.a does not control optical fiber characterization equipment not using semiconductor ''lasers''.

b. Equipment and specially designed components or accessories therefor, specially designed for the ''development'' of any of the following telecommunication transmission or ''stored program controlled'' switching equipment:

b.1. Equipment employing digital techniques, including ''Asynchronous Transfer Mode'' (''ATM''), designed to operate at a ''total digital transfer rate'' exceeding 1.5 Gbit/s;

b.2. Equipment employing a ''laser'' and having any of the following:

b.2.a. A transmission wavelength exceeding 1750 nm;

b.2.b. Performing ''optical amplification'';

b.2.c. Employing coherent transmission or coherent optical detection techniques (also called optical heterodyne or homodyne techniques); *or*

b.2.d. Employing analogue techniques and having a bandwidth exceeding 2.5 GHz;

**Note:** 5B001.b.2.d does not include equipment specially designed for the ''development'' of commercial TV systems.

b.3. Equipment employing ''optical switching'';

b.4. Radio equipment having any of the following:

b.4.a. Quadrature-amplitude-modulation (QAM) techniques above level 128; *or*

b.4.b. Operating at input or output frequencies exceeding 31 GHz; *or*

**Note:** 5B001.b.4.b does not include equipment specially designed for the ''development'' of equipment designed or modified for operation in any ITU allocated band.

b.5. Equipment employing ''common channel signalling'' operating in either the non-associated mode of operation.

**5C991 Preforms of glass or of any other material optimized for the manufacture of optical fibers controlled by 5A991.**

**License Requirements**

*Reason for Control:* AT

| *Control(s)* | *Country Chart* |
|---|---|
| AT applies to entire entry | AT Column 1 |

**License Exceptions**

LVS: N/A
GBS: N/A
CIV: N/A

**List of Items Controlled**

*Unit:* $ value
*Related Controls:* N/A
*Related Definitions:* N/A
*Items:*

The list of items controlled is contained in the ECCN heading.

D. Software

**5D001 ''Software'', as described in the List of Items Controlled.**

* * * * *

**License Exceptions**

CIV: Yes, except for ''software'' controlled by 5D001.a and specially designed for the ''development'' or ''production'' of items controlled by 5A001.b.4 TSR: Yes, except for exports and reexports to destinations outside of Austria, Belgium, Canada, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Japan, Luxembourg, the Netherlands, Portugal, Spain, Sweden, or the United Kingdom of ''software'' controlled by 5D001.a and specially designed for items controlled by 5A001.b.4.

**List of Items Controlled**

*Unit:* $ value
*Related Controls:* See also 5D991
*Related Definitions:* N/A
*Items:*

a. ''Software'' specially designed or modified for the ''development'', ''production'' or ''use'' of equipment, functions or features controlled by 5A001 or 5B001.

b. ''Software'' specially designed or modified to support ''technology'' controlled by 5E001.

c. Specific ''software'' as follows:

c.1. ''Software'' specially designed or modified to provide characteristics, functions or features of equipment controlled by 5A001 or 5B001;

c.2. ''Software'' which provides the capability of recovering ''source code'' of telecommunications ''software'' controlled by 5D001;

c.3. ''Software'', other than in machine-executable form, specially designed for ''dynamic adaptive routing''.

d. ''Software'' specially designed or modified for the ''development'' of any of the following telecommunication transmission or ''stored program controlled'' switching equipment:

d.1. Equipment employing digital techniques, including ''Asynchronous Transfer Mode'' (''ATM''), designed to operate at a ''total digital transfer rate'' exceeding 1.5 Gbit/s;

d.2. Equipment employing a ''laser'' and having any of the following:

d.2.a. A transmission wavelength exceeding 1750 nm;

d.2.b. Employing analogue techniques and having a bandwidth exceeding 2.5 GHz;

**Note:** 5D001.d.2.b does not include ''software'' specially designed or modified for the ''development'' of commercial TV systems.

d.3. Equipment employing ''optical switching''; *or*

d.4. Radio equipment having any of the following:

d.4.a. Quadrature-amplitude-modulation (QAM) techniques above level 128; *or*

d.4.b. Operating at input or output frequencies exceeding 31 GHz; *or*

**Note:** 5D001.d.4.b does not include ''software'' specially designed or modified for the ''development'' of equipment designed or modified for operation in any ITU allocated band.

**5E001 ''Technology'', (see List of Items Controlled).**

* * * * *

**License Exceptions**

CIV: N/A

TSR: Yes, except for exports or reexports to destinations outside of Austria, Belgium, Canada, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Japan, Luxembourg, the Netherlands, Portugal, Spain, Sweden, or the United Kingdom of ''technology'' controlled by 5E001.a for the ''development'' or ''production'' of the following:

(1) Items controlled by 5A001.b.4; or

(2) ''Software'' controlled by 5D001.a that is specially designed for the ''development'' or ''production'' of items controlled by 5A001.b.4.

**List of Items Controlled**

*Unit:* $ value

*Related Controls:* See also 5E101 and 5E991

*Related Definitions:* N/A

*Items:*

a. ''Technology'' according to the General Technology Note for the ''development'', ''production'' or ''use'' (excluding operation) of equipment, functions or features or ''software'' controlled by 5A001, 5B001or 5D001.

b. Specific ''technologies'', as follows:

b.1. ''Required'' ''technology'' for the ''development'' or ''production'' of telecommunications equipment specially designed to be used on board satellites;

b.2. ''Technology'' for the ''development'' or ''use'' of ''laser'' communication techniques with the capability of automatically acquiring and tracking signals and maintaining communications through exoatmosphere or sub-surface (water) media;

b.3. ''Technology'' for the ''development'' of digital cellular radio systems;

b.4. ''Technology'' for the ''development'' of ''spread spectrum'' or ''frequency agility'' (frequency hopping) techniques.

c. ''Technology'' according the General Technology Note for the ''development'' of any of the following telecommunication transmission or ''stored program controlled'' switching equipment, functions or features:

c.1. Equipment employing digital techniques, including ''Asynchronous Transfer Mode'' (''ATM''), designed to operate at a ''total digital transfer rate'' exceeding 1.5 Gbit/s;

c.2. Equipment employing a ''laser'' and having any of the following:

c.2.a. A transmission wavelength exceeding 1750 nm;

c.2.b. Performing ''optical amplification'' using praseodymium-doped fluoride fiber amplifiers (PDFFA);

c.2.c. Employing coherent optical transmission or coherent optical detection techniques (also called optical heterodyne or homodyne techniques);

c.2.d. Employing wavelength division multiplexing techniques exceeding 8 optical carriers in a single optical window; *or*

c.2.e. Employing analogue techniques and having a bandwidth exceeding 2.5 GHz;

**Note:** 5E001.c.2.e does not include ''technology'' for the ''development'' or ''production'' of commercial TV systems.

c.3. Equipment employing ''optical switching''; *or*

c.4. Radio equipment having any of the following:

c.4.a. Quadrature-amplitude-modulation (QAM) techniques above level 128; *or*

c.4.b. Operating at input or output frequencies exceeding 31 GHz; *or*

**Note:** 5E001.c.4.b does not include ''technology'' for the ''development'' or ''production'' of equipment designed or modified for operation in any ITU allocated band.

c. 5. Equipment employing ''common channel signalling'' operating in either non-associated or quasi-associated mode of operation.

14. In Supplement No. 1 to part 774 (the Commerce Control List), Category 6—Sensors and Lasers, the following Export Control Classification Numbers (ECCNs) are amended:

a. By revising the List of Items Controlled section for ECCNs 6A003, 6A005 and 6C002; and

b. By revising the entry heading for ECCN 6C992, to read as follows:

**6A003 Cameras**

* * * * *

**List of Items Controlled**

*Unit:* Number

*Related Controls:* See also 6A203. See 8A002.d and .e for cameras specially designed or modified for underwater use.

*Related Definitions:* N/A.

*Items:*

a. Instrumentation cameras, as follows:

a.1. High-speed cinema recording cameras using any film format from 8 mm to 16 mm inclusive, in which the film is continuously advanced throughout the recording period, and that are capable of recording at framing rates exceeding 13,150 frames/s;

**Note:** 6A003.a.1 does not control cinema recording cameras designed for civil purposes.

a.2. Mechanical high speed cameras, in which the film does not move, capable of recording at rates exceeding 1,000,000 frames/s for the full framing height of 35 mm film, or at proportionately higher rates for lesser frame heights, or at proportionately lower rates for greater frame heights;

a.3. Mechanical or electronic streak cameras having writing speeds exceeding 10 mm/μs;

a.4. Electronic framing cameras having a speed exceeding 1,000,000 frames/s;

a.5. Electronic cameras, having all of the following:

a.5.a. An electronic shutter speed (gating capability) of less than 1 μs per full frame; and

a.5.b. A read out time allowing a framing rate of more than 125 full frames per second.

b. Imaging cameras, as follows:

**Note:** 6A003.b does not control television or video cameras specially designed for television broadcasting.

b.1. Video cameras incorporating solid state sensors, having any of the following:

b.1.a. More than 4 x $10^6$ ''active pixels'' per solid state array for monochrome (black and white) cameras;

b.1.b. More than 4 x $10^6$ ''active pixels'' per solid state array for color cameras incorporating three solid state arrays; *or*

b.1.c. More than 12 x $10^6$ ''active pixels'' for solid state array color cameras incorporating one solid state array;

b.2. Scanning cameras and scanning camera systems, having all of the following:

b.2.a. Linear detector arrays with more than 8,192 elements per array; *and*

b.2.b. Mechanical scanning in one direction;

b.3. Imaging cameras incorporating image intensifier tubes having the characteristics listed in 6A002.a.2.a;

b.4. Imaging cameras incorporating ''focal plane arrays'' having the characteristics listed in 6A002.a.3.

**Note:** 6A003.b.4 does not control imaging cameras incorporating linear ''focal plane arrays'' with twelve elements or fewer, not employing time-delay-and integration with the element, designed for any of the following:

a. Industrial or civilian intrusion alarm, traffic or industrial movement control or counting systems;

b. Industrial equipment used for inspection or monitoring of heat flows in buildings, equipment or industrial processes;

c. Industrial equipment used for inspection, sorting or analysis of the properties of materials;

d. Equipment specially designed for laboratory use; *or*

e. Medical equipment.

**6A005 ''Lasers'', components and optical equipment, as follows (see List of Items Controlled).**

* * * * *

**List of Items Controlled**

*Unit:* Equipment in number; parts and accessories in $ value

*Related Controls:* (1.) See also 6A205, 6A995, 0B001.g.5 and 0B001.b.6. (2.) For excimer ''lasers'' specially designed for lithography equipment, see 3B001. (3.) Shared aperture optical elements, capable of operating in ''super-high power laser'' applications are subject to the export licensing authority of the U.S. Department of State, Office of Defense Trade Controls. (See 22 CFR part 121.)

*Related Definitions:* (1.) Pulsed ''lasers'' include those that run in a continuous wave (CW) mode with pulses superimposed. (2.) Pulse-excited ''lasers'' include those that run in a continuously excited mode with pulse excitation superimposed. (3.) The control status of Raman ''lasers'' is determined by the parameters of the pumping source ''lasers''. The pumping source ''lasers'' can be any of the ''lasers'' described as follows:

*Items:*

a. Gas ''lasers'', as follows:

a.1. Excimer ''lasers'', having any of the following:

a.1.a. An output wavelength not exceeding 150 nm and having any of the following:

a.1.a.1. An output energy exceeding 50 mJ per pulse; *or*

a.1.a.2. An average or CW output power exceeding 1 W;

a.1.b. An output wavelength exceeding 150 nm but not exceeding 190 nm and having any of the following:

a.1.b.1. An output energy exceeding 1.5 J per pulse; *or*

a.1.b.2. An average or CW output power exceeding 120 W;

a.1.c. An output wavelength exceeding 190 nm but not exceeding 360 nm and having any of the following:

a.1.c.1. An output energy exceeding 10 J per pulse; *or*

a.1.c.2. An average or CW output power exceeding 500 W; *or*

a.1.d. An output wavelength exceeding 360 nm and having any of the following:

a.1.d.1. An output energy exceeding 1.5 J per pulse; *or*

a.1.d.2. An average or CW output power exceeding 30 W;

a.2. Metal vapor ''lasers'', as follows:

a.2.a. Copper (Cu) ''lasers'' having an average or CW output power exceeding 20 W;

a.2.b. Gold (Au) ''lasers'' having an average or CW output power exceeding 5 W;

a.2.c. Sodium (Na) ''lasers'' having an output power exceeding 5 W;

a.2.d. Barium (Ba) ''lasers'' having an average or CW output power exceeding 2 W;

a.3. Carbon monoxide (CO) ''lasers'' having any of the following:

a.3.a. An output energy exceeding 2 J per pulse and a pulsed ''peak power'' exceeding 5 Kw; *or*

a.3.b. An average or CW output power exceeding 5 Kw;

a.4. Carbon dioxide ($CO_2$) ''lasers'' having any of the following:

a.4.a. A CW output power exceeding 15 Kw;

a.4.b. A pulsed output having a ''pulse duration'' exceeding 10 μs and having any of the following:

a.4.b.1. An average output power exceeding 10 Kw; *or*

a.4.b.2. A pulsed ''peak power'' exceeding 100 Kw; *or*

a.4.c. A pulsed output having a ''pulse duration'' equal to or less than 10 μs; and having any of the following:

a.4.c.1. A pulse energy exceeding 5 J per pulse; *or*

a.4.c.2. An average output power exceeding 2.5 Kw;

a.5. ''Chemical lasers'', as follows:

a.5.a. Hydrogen Fluoride (HF) ''lasers'';

a.5.b. Deuterium Fluoride (DF) ''lasers'';

a.5.c. ''Transfer lasers'', as follows:

a.5.c.1. Oxygen Iodine ($O_2$–I) ''lasers'';

a.5.c.2. Deuterium Fluoride-Carbon dioxide (DF-$CO_2$) ''lasers'';

a.6. Krypton ion or argon ion ''lasers'' having any of the following:

a.6.a. An output energy exceeding 1.5 J per pulse and a pulsed ''peak power'' exceeding 50 W; *or*

a.6.b. An average or CW output power exceeding 50 W;

a.7. Other gas ''lasers'', having any of the following:

**Note:** 6A005.a.7 does not control nitrogen ''lasers''.

a.7.a. An output wavelength not exceeding 150 nm and having any of the following:

a.7.a.1. An output energy exceeding 50 mJ per pulse and a pulsed ''peak power'' exceeding 1 W; *or*

a.7.a.2. An average or CW output power exceeding 1 W;

a.7.b. An output wavelength exceeding 150 nm but not exceeding 800 nm and having any of the following:

a.7.b.1. An output energy exceeding 1.5 J per pulse and a pulsed ''peak power'' exceeding 30 W; *or*

a.7.b.2. An average or CW output power exceeding 30 W;

a.7.c. An output wavelength exceeding 800 nm but not exceeding 1,400 nm and having any of the following:

a.7.c.1. An output energy exceeding 0.25 J per pulse and a pulsed ''peak power'' exceeding 10 W; *or*

a.7.c.2. An average or CW output power exceeding 10 W; *or*

a.7.d. An output wavelength exceeding 1,400 nm and an average or CW output power exceeding 1 W.

b. Semiconductor ''lasers'', having a wavelength of less than 950 nm or more than 2000 nm, as follows:

b.1. Individual single-transverse mode semiconductor ''lasers'' having an average or CW output power exceeding 100 mW;

b.2. Individual, multiple-transverse mode semiconductor ''lasers'' and arrays of individual semiconductor ''lasers'', having any of the following:

b.2.a. An output energy exceeding 500 μJ per pulse and a pulsed ''peak power'' exceeding 10 W; *or*

b.2.b. An average or CW output power exceeding 10 W.

**Technical Note:** Semiconductor ''lasers'' are commonly called ''laser'' diodes.

**Note 1:** 6A005.b includes semiconductor ''lasers'' having optical output connectors (e.g. fiber optic pigtails).

**Note 2:** The control status of semiconductor ''lasers'' specially designed for other equipment is determined by the control status of the other equipment.

c. Solid state ''lasers'', as follows:

c.1. ''Tunable'' ''lasers'' having any of the following:

**Note:** 6A005.c.1 includes titanium—sapphire (Ti: $Al_2O_3$), thulium—YAG (Tm: YAG), thulium—YSGG (Tm: YSGG),

alexandrite (Cr: $BeAl_2O_4$) and color center ''lasers''.

c.1.a. An output wavelength less than 600 nm and having any of the following:

c.1.a.1. An output energy exceeding 50 mJ per pulse and a pulsed ''peak power'' exceeding 1 W; *or*

c.1.a.2. An average or CW output power exceeding 1 W;

c.1.b. An output wavelength of 600 nm or more but not exceeding 1,400 nm and having any of the following:

c.1.b.1. An output energy exceeding 1 J per pulse and a pulsed ''peak power'' exceeding 20 W; *or*

c.1.b.2. An average or CW output power exceeding 20 W; or

c.1.c. An output wavelength exceeding 1,400 nm and having any of the following:

c.1.c.1. An output energy exceeding 50 mJ per pulse and a pulsed ''peak power'' exceeding 1 W; *or*

c.1.c.2. An average or CW output power exceeding 1 W;

c.2. Non-''tunable'' ''lasers'', as follows:

**Note:** 6A005.c.2 includes atomic transition solid state ''lasers''.

c.2.a. Neodymium glass ''lasers'', as follows:

c.2.a.1. ''Q-switched lasers'' having any of the following:

c.2.a.1.a. An output energy exceeding 20 J but not exceeding 50 J per pulse and an average output power exceeding 10 W; *or*

c.2.a.1.b. An output energy exceeding 50 J per pulse;

c.2.a.2. Non-''Q-switched lasers'' having any of the following:

c.2.a.2.a. An output energy exceeding 50 J but not exceeding 100 J per pulse and an average output power exceeding 20 W; *or*

c.2.a.2.b. An output energy exceeding 100 J per pulse;

c.2.b. Neodymium-doped (other than glass) ''lasers'', having an output wavelength exceeding 1,000 nm but not exceeding 1,100 nm, as follows:

N.B.: For neodymium-doped (other than glass) ''lasers'' having an output wavelength not exceeding 1,000 nm or exceeding 1,100 nm, see 6A005.c.2.c.

c.2.b.1. Pulse-excited, mode-locked, ''Q-switched lasers'' having a ''pulse duration'' of less than 1 ns and having any of the following:

c.2.b.1.a. A ''peak power'' exceeding 5 GW;

c.2.b.1.b. An average output power exceeding 10 W; *or*

c.2.b.1.

c. A pulsed energy exceeding 0.1 J;

c.2.b.2. Pulse-excited, ''Q-switched lasers'' having a pulse duration equal to or more than 1 ns, and having any of the following:

c.2.b.2.a. A single-transverse mode output having:

c.2.b.2.a.1. A ''peak power'' exceeding 100 MW;

c.2.b.2.a.2. An average output power exceeding 20 W; *or*

c.2.b.2.a.3. A pulsed energy exceeding 2 J; *or*

c.2.b.2.b. A multiple-transverse mode output having:

c.2.b.2.b.1. A ''peak power'' exceeding 400 MW;

c.2.b.2.b.2. An average output power exceeding 2 kW; *or*

c.2.b.2.b.3. A pulsed energy exceeding 2 J;

c.2.b.3. Pulse-excited, non-''Q-switched lasers'', having:

c.2.b.3.a. A single-transverse mode output having:

c.2.b.3.a.1. A ''peak power'' exceeding 500 kW; *or*

c.2.b.3.a.2. An average output power exceeding 150 W; *or*

c.2.b.3.b. A multiple-transverse mode output having:

c.2.b.3.b.1. A ''peak power'' exceeding 1 MW; *or*

c.2.b.3.b.2. An average power exceeding 2 kW;

c.2.b.4. Continuously excited ''lasers'' having:

c.2.b.4.a. A single-transverse mode output having:

c.2.b.4.a.1. A ''peak power'' exceeding 500 kW; *or*

c.2.b.4.a.2. An average or CW output power exceeding 150 W; *or*

c.2.b.4.b. A multiple-transverse mode output having:

c.2.b.4.b.1. A ''peak power'' exceeding 1 MW; *or*

c.2.b.4.b.2. An average or CW output power exceeding 2 kW;

c.2.c. Other non-''tunable'' ''lasers'', having any of the following:

c.2.c.1. A wavelength less than 150 nm and having any of the following:

c.2.c.1.a. An output energy exceeding 50 mJ per pulse and a pulsed ''peak power'' exceeding 1 W; *or*

c.2.c.1.b. An average or CW output power exceeding 1 W;

c.2.c.2. A wavelength of 150 nm or more but not exceeding 800 nm and having any of the following:

c.2.c.2.a. An output energy exceeding 1.5 J per pulse and a pulsed ''peak power'' exceeding 30 W; *or*

c.2.c.2.b. An average or CW output power exceeding 30 W;

c.2.c.3. A wavelength exceeding 800 nm but not exceeding 1,400 nm, as follows:

c.2.c.3.a. ''Q-switched lasers'' having:

c.2.c.3.a.1. An output energy exceeding 0.5 J per pulse and a pulsed ''peak power'' exceeding 50 W; *or*

c.2.c.3.a.2. An average output power exceeding:

c.2.c.3.a.2.a. 10 W for single-mode ''lasers'';

c.2.c.3.a.2.b. 30 W for multimode ''lasers'';

c.2.c.3.b. Non-''Q-switched lasers'' having:

c.2.c.3.b.1. An output energy exceeding 2 J per pulse and a pulsed ''peak power'' exceeding 50 W; *or*

c.2.c.3.b.2. An average or CW output power exceeding 50 W; *or*

c.2.c.4. A wavelength exceeding 1,400 nm *and* having any of the following:

c.2.c.4.a. An output energy exceeding 100 mJ per pulse and a pulsed ''peak power'' exceeding 1 W; *or*

c.2.c.4.b. An average or CW output power exceeding 1 W;

d. Dye and other liquid ''lasers'', having any of the following:

d.1. A wavelength less than 150 nm and:

d.1.a. An output energy exceeding 50 mJ per pulse and a pulsed ''peak power'' exceeding 1 W; *or*

d.1.b. An average or CW output power exceeding 1 W;

d.2. A wavelength of 150 nm or more but not exceeding 800 nm and having any of the following:

d.2.a. An output energy exceeding 1.5 J per pulse and a pulsed ''peak power'' exceeding 20 W;

d.2.b. An average or CW output power exceeding 20 W; *or*

d.2.c. A pulsed single longitudinal mode oscillator having an average output power exceeding 1 W and a repetition rate exceeding 1 Khz if the ''pulse duration'' is less than 100 ns;

d.3. A wavelength exceeding 800 nm but not exceeding 1,400 nm and having any of the following:

d.3.a. An output energy exceeding 0.5 J per pulse and a pulsed ''peak power'' exceeding 10 W; *or*

d.3.b. An average or CW output power exceeding 10 W; *or*

d.4. A wavelength exceeding 1,400 nm and having any of the following:

d.4.a. An output energy exceeding 100 mJ per pulse and a pulsed ''peak power'' exceeding 1 W; *or*

d.4.b. An average or CW output power exceeding 1 W;

e. Components, as follows:

e.1. Mirrors cooled either by active cooling or by heat pipe cooling;

**Technical Note:** Active cooling is a cooling technique for optical components using flowing fluids within the subsurface (nominally less than 1 mm below the optical surface) of the optical component to remove heat from the optic.

e.2. Optical mirrors or transmissive or partially transmissive optical or electro-optical components specially designed for use with controlled ''lasers'';

f. Optical equipment, as follows:

(For shared aperture optical elements, capable of operating in ''Super-High Power Laser'' (''SHPL'') applications, see the U.S. Munitions List.)

f.1. Dynamic wavefront (phase) measuring equipment capable of mapping at least 50 positions on a beam wavefront having any of the following:

f.1.a. Frame rates equal to or more than 100 Hz and phase discrimination of at least 5% of the beam's wavelength; *or*

f.1.b. Frame rates equal to or more than 1,000 Hz and phase discrimination of at least 20% of the beam's wavelength;

f.2. ''Laser'' diagnostic equipment capable of measuring ''SHPL'' system angular beam steering errors of equal to or less than 10 μrad;

f.3. Optical equipment and components specially designed for a phased-array ''SHPL'' system for coherent beam combination to an accuracy of lambda/10 at the designed wavelength, or 0.1 μm, whichever is the smaller;

f.4. Projection telescopes specially designed for use with ''SHPL'' systems.

**6C002 Optical sensor materials, as follows (see List of Items Controlled).**

* * * * *

**List of Items Controlled**

*Unit:* Number

*Related Controls:* See also 6C992

*Related Definitions:* N/A

*Items:*

a. Elemental tellurium (Te) of purity levels of 99.9995% or more;

b. Single crystals of cadmium zinc telluride (CdZnTe), with zinc content less than 6% by weight, or cadmium telluride (CdTe), or mercury cadmium telluride (HgCdTe) of any purity level, including epitaxial wafers thereof.

**6C992 Optical sensing fibers not controlled by 6A002.d.3 which are modified structurally to have a ''beat length'' of less than 500 mm (high birefringence) or optical sensor materials not described in 6C002.b and having a zinc content of equal to or more than 6% by weight.**

* * * * *

15. In Supplement No. 1 to part 774 (the Commerce Control List), Category 7—Navigation and Avionics is amended by revising the notes that immediately follow the Category 7A (Systems, Equipment and Components) heading, to read as follows:

**Category 7—Navigation and Avionics**

A. SYSTEMS, EQUIPMENT AND COMPONENTS

*N.B. 1:* For automatic pilots for underwater vehicles, see Category 8. For radar, see Category 6.

*N.B. 2:* For inertial navigation equipment for ships or submersibles see item 9.e on the Wassenaar Munitions List.

16. In Supplement No. 1 to part 774 (the Commerce Control List), Category 9—Propulsion Systems, Space Vehicles and Related Equipment is amended by revising the parenthetical phrase that immediately follows the Category 9A (Systems, Equipment and Components) heading, to read as follows:

**Category 9—Propulsion Systems, Space Vehicles and Related Equipment**

A. SYSTEMS, EQUIPMENT AND COMPONENTS

*N.B.:* For propulsion systems designed or rated against neutron or transient ionizing, see the U.S. Munitions List, 22 CFR part 121.

Dated: July 13, 1999.

**R. Roger Majak,**

*Assistant Secretary for Export Administration.*

[FR Doc. 99–18313 Filed 7–22–99; 8:45 am]

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Friday
July 23, 1999

# Part V

# Environmental Protection Agency

**40 CFR Part 22**

**Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits; Final Rule**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 22**

**[FRL–6373–3]**

**RIN 2020–AA13**

## Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** This Rule revises the Consolidated Rules of Practice (''CROP''), including expansion of these procedural rules to include certain permit revocation, termination and suspension actions, and new rules for administrative proceedings not governed by section 554 of the Administrative Procedure Act. The CROP has not been substantially revised since 1980. This Rule will remove inconsistencies, fill in gaps in the CROP by codifying accepted procedures, and make the CROP more clear and easily understood. Most of these changes will not produce any procedural or substantive difference in the Agency's administrative enforcement actions. Other changes make the CROP more efficient and more effective, or to conform to new statutory requirements and new judicial decisions.

**DATES:** *Effective Date:* This rule shall become effective August 23, 1999.

*Applicability Date:* This rule shall be applicable to all proceedings commenced on or after August 23, 1999. Proceedings commenced before August 23, 1999 shall become subject to this rule on August 23, 1999, unless to do so would result in substantial injustice.

**FOR FURTHER INFORMATION CONTACT:** Scott Garrison (202–564–4047), Office Enforcement and Compliance Assurance, Office of Regulatory Enforcement (2248A), U.S. Environmental Protection Agency, Washington, D.C. 20460.

**SUPPLEMENTARY INFORMATION:**

The following outline is provided to assist the reader in locating topics of interest in the preamble.

I. Background

II. Response to Public Comments

A. Significant Comments Supporting Proposed Revisions
B. Significant Comments Critical of Proposed Revisions
1. Scope (40 CFR 22.1)
2. Powers and Duties of the Environmental Appeals Board, Regional Judicial Officer and Presiding Officer; disqualification, withdrawal and reassignment (40 CFR 22.4)
3. Filing, Service, and Form of Documents (40 CFR 22.5(a)–(c))
4. Confidentiality of Business Information (40 CFR 22.5(d))
5. Computation and Extension of Time (40 CFR 22.7)
6. Ex Parte Discussion of Proceeding (40 CFR 22.8)
7. Intervention and Non-Party Briefs (40 CFR 22.11)
8. Commencement of a Proceeding (40 CFR 22.13)
9. Complaint (40 CFR 22.14)
10. Answer to the Complaint (40 CFR 22.15)
11. Default (40 CFR 22.17)
12. Quick Resolution (40 CFR 22.18(a))
13. Settlement and Scope of Resolution or Settlement (40 CFR 22.18(b)&(c))
14. Alternative Dispute Resolution (40 CFR 22.18(d))
15. Prehearing Exchange; Prehearing Conference (40 CFR 22.19(a)&(b))
16. Other Discovery (40 CFR 22.19(e))
17. Supplementing Prior Exchanges, and Failure To Exchange Information (40 CFR 22.19(f)&(g))
18. Evidence (40 CFR 22.22)
19. Filing the Transcript (40 CFR 22.25)
20. Initial Decision (40 CFR 22.27)
21. Appeal From or Review of Initial Decision (40 CFR 22.30)
22. Final Order (40 CFR 22.31)
23. Motion To Reconsider a Final Order (40 CFR 22.32)
24. Supplemental Rules Governing the Administrative Assessment of Civil Penalties Under the Clean Air Act (40 CFR 22.34)
25. Scope of Subpart I (40 CFR 22.50)
26. Presiding Officer (40 CFR 22.51)
27. Information Exchange and Discovery (40 CFR 22.52)
28. Interlocutory Orders or Rulings (40 CFR 22.53)
29. Clean Air Act Field Citations
30. Other Comments Not Related to a Particular Section of the Proposed Rule

III. Miscellaneous Revisions

A. Section Numbering
B. Definitions (40 CFR 22.3)
C. Filing and Service of Rulings, Orders and Decisions (40 CFR 22.6)
D. Examination of Documents Filed (40 CFR 22.9)
E. Consolidation and Severance (40 CFR 22.12)
F. Motions (40 CFR 22.16)
G. Record of the Prehearing Conference (40 CFR 22.19(c))
H. Accelerated Decision; Decision to Dismiss (40 CFR 22.20)
I. Assignment of Presiding Officer; Scheduling a Hearing (40 CFR 22.21)
J. Offers of Proof (40 CFR 22.23(b))
K. Proposed Findings, Conclusions, and Order (40 CFR 22.26)
L. Motion to Reopen a Hearing (40 CFR 22.28)
M. Interlocutory Appeals (40 CFR 22.29)
N. Supplemental Rules Governing the Administrative Assessment of Civil Penalties Under the Federal Insecticide, Fungicide, and Rodenticide Act (40 CFR 22.35)
O. Supplemental Rules of Practice Governing the Administrative Assessment of Civil Penalties Under the Clean Water Act (40 CFR 22.38)
P. Supplemental Rules Governing the Administrative Assessment of Civil Penalties Under CERCLA Section 109 (40 CFR 22.39)
Q. Supplemental Rules Governing the Administrative Assessment of Civil Penalties for Violations of Compliance Orders Issued to Owners or Operators of Public Water Systems Under Part B of the Safe Drinking Water Act (40 CFR 22.42)
R. Supplemental Rules Governing the Administrative Assessment of Civil Penalties Against a Federal Agency Under the Safe Drinking Water Act. (40 CFR 22.43)
S. Supplemental Rules Governing the Termination of Permits Under Section 402(a) of the Clean Water Act or Under Section 3005(d) of the Resource Conservation and Recovery Act (40 CFR 22.44)
T. Supplemental Rules Governing Public Notice and Comment in Proceedings Under Section 309(g) of the Clean Water Act and Section 300h–2(c) of the Safe Drinking Water Act (40 CFR 22.45)
U. Appendices

IV. Administrative Requirements

A. The Regulatory Flexibility Act
B. Executive Order 12866
C. Paperwork Reduction Act
D. Unfunded Mandates Reform Act
E. Executive Order 12875
F. Executive Order 13045
G. Executive Order 13084
H. National Technology Transfer and Advancement Act
I. Submission to Congress and the Comptroller General

### I. Background

The Consolidated Rules of Practice (''CROP''), 40 CFR part 22, are procedural rules for the administrative assessment of civil penalties, issuance of compliance or corrective action orders, and the revocation, termination or suspension of permits, under most environmental statutes. The CROP were first promulgated on April 9, 1980 (45 FR 24360). On February 25, 1998, (63 FR 9464) EPA issued a notice of proposed rule making giving public notice and soliciting comments on proposed revisions to the CROP.

During the public comment period, EPA received substantive comments from Dow Chemical Company (''Dow''), the U.S. Air Force (''USAF''), the Utility Air Regulatory Group (''UARG''), the Utility Water Act Group (''UWAG''), the Corporate Environmental Enforcement Council (''CEEC''), and joint comments

from the Chemical Manufacturers Association and the American Petroleum Institute (''CMA/API''). The original public comment period closed on April 27, 1998. On May 6, 1998 (63 FR 25006), EPA published a second notice reopening the public comment period for an additional 60 days. During this reopened public comment period, EPA received one set of supplementary comments from CEEC.

All of the public comments submitted in response may be reviewed at the Enforcement and Compliance Docket and Information Center, room 4033 of the Ariel Rios Federal Building, 1200 Pennsylvania Avenue, N.W., Washington, DC. Persons interested in reviewing the comments must make advance arrangements to do so by calling 202–564–2614. A reasonable fee may be charged by EPA for copying docket materials. The public comments may also be viewed on the internet at http://www.epa.gov/oeca/forepart22.html.

Today's final rule includes most of the revisions identified in the proposed rule, with certain additional changes (both to the proposed revisions and to other provisions of the existing rule) responding to public comments. EPA's response to the public comments appears below.

## II. Response to Public Comments

### *A. Significant Comments Supporting Proposed Revisions*

Dow stated that ''[m]ost of the CROP provisions appear to reflect an appropriate balancing of interests'' and that it has a ''favorable impression of part 22 as a whole.'' CMA/API support EPA's efforts to simplify and clarify the CROP. CEEC states that it supports ''many of the types of changes EPA has proposed, as they will increase efficiency and reduce complexity in the administrative process.'' The following are specific comments supporting particular provisions of the proposed rule.

Commenters generally support the consolidation of the various rules into a single set of CROP procedures for APA and non-APA proceedings. CMA/API supports the Agency's decision to use the CROP instead of the proposed part 28 procedures for Class I proceedings under the Clean Water Act and the Safe Drinking Water Act (56 FR 29996 (July 1, 1991)). Dow and UARG support the use of CROP procedures in lieu of the procedures originally proposed for use under the Clean Air Act Field Citation Program.

Dow states that it supports the ''change'' in § 22.4(d)(1)[1] that would make appeals from a denial of a motion to disqualify a Presiding Officer go to the Environmental Appeals Board (''EAB'') ''rather than the Administrator.'' EPA notes that this revision of § 22.4(d)(1) is not intended to change the substance of the existing rule but merely to eliminate any implication that the Administrator must personally rule on appeals from the denial of disqualification requests made to Presiding Officers. *See In re Woodcrest Manufacturing, Inc.*, EPCRA Appeal No. 97–2, slip op. at 11–12 (EAB, July 23, 1998)(stating that the term ''Administrator'' is defined at 40 CFR 22.4(d)(1) to include the Administrator's delegate, and therefore ''the Administrator is not required to act personally on disqualification issues, but may instead delegate this authority to other individuals within the EPA'').

Dow supports the proposed change to § 22.5(c)(5), giving the Presiding Officer and the EAB, rather than the hearing clerks, authority to rule on the adequacy of documents filed. Dow strongly supports the inclusion of language in § 22.5(d) stating that the Agency's rules governing treatment of Confidential Business Information (40 CFR part 2) apply in CROP proceedings.

Dow supports proposed changes to §§ 22.5 and 22.6 allowing service of documents by reliable commercial delivery services other than the U.S. Mail, and supports the decision to expand the ''mail box rule'' of § 22.7(c) to provide that service is complete when the document is placed in the custody of a reliable commercial delivery service.

CMA/API support the provision in the proposed § 22.14(a)(6) requiring that the complaint give notice whether subpart I, non-APA procedures apply to the proceeding.

CMA/API and Dow support the proposed revision to § 22.15(a) expanding to 30 days the time allowed to file an answer.

CMA/API and Dow support the provisions in the proposed rule extending the time period for filing a response to a motion from 10 days to 15 days. Additionally, CMA/API supports not placing page limits on motion papers.

Dow supports the revisions to § 22.17(a) & (c) that give the Presiding Officers greater discretion in determining the appropriate relief in the default orders, because this ''flexibility will let the Presiding Officer ensure that any relief ordered is supported by the administrative record.'' CMA/API ''support the provision requiring the Presiding Officer, when issuing a default order, to determine that the relief sought in the complaint is consistent with the applicable statute.''

CEEC supports the Agency's explicit recognition of Alternative Dispute Resolution in the proposed § 22.18(d). Dow supports the provisions of the proposed § 22.18(d)(2) that permit the Presiding Officer to grant extensions of time for the parties to engage in alternative dispute resolution procedures.

CMA/API support the proposed § 22.19 allowing amendment of prehearing exchanges without restriction, and support the § 22.19(f) requirement that parties promptly supplement or correct information known to be incomplete, inaccurate or outdated, without requiring the parties to constantly check the accuracy of their information exchanges. CEEC supports the proposed revisions to §§ 22.19 and 22.22 that would allow use of information that has not been timely provided to the opposing party, upon a showing of ''good cause'' for the failure to timely provide that information. CEEC also supports the proposed limitation that ''other discovery'' pursuant to § 22.19(e) should be available only after the prehearing exchange required under § 22.19(a).

The CMA/API comments support the proposed change in § 22.27(b) ''requiring the Presiding Officer in all cases to explain how the civil penalty imposed corresponds to the statutory penalty criteria, rather than just the Agency's penalty policies.'' Dow notes its support for the provision in § 22.27(b) requiring that the Presiding Officer articulate how the amount of penalty conforms to the criteria set forth in the law under which the proceeding has been commenced. Dow supports the proposed revision of § 22.27(c) that would make an initial decision inoperative pending review by the EAB, because it ''will avoid premature recourse to the Federal courts'' and avoid harm to respondents whose appeals might be successful. Dow also supports the provision in the proposed § 22.28(b) under which a motion to reopen a hearing would expressly stay the deadlines for appeal or EAB review of the initial decision.

Both CMA/API and Dow support the new provision in § 22.30(a) allowing a party who has initially declined to

[1] To conform the CROP to the preferred style of the U.S. Government Printing Office, EPA has converted § 22.01 to § 22.1, § 22.02 to § 22.2, etc., in this final rule. For simplicity, this preamble will use the new numbering system throughout, even when referring to sections of the proposed rule or the 1980 CROP.

appeal an additional 20 days to raise additional issues in a cross appeal.

EPA received no significant public comment on many of the proposed revisions to the CROP. Proposed revisions to §§ 22.2, 22.6, 22.12, 22.21, 22.23, 22.24, 22.29, 22.33, and 22.35–22.45 elicited no specific comments at all. Today's final rule incorporates all of the changes identified in the February 25, 1998, Notice of Proposed Rule Making, except as noted below.

*B. Significant Comments Critical of Proposed Revisions*

1. Scope (40 CFR 22.1)

*a. Summary of Proposed Rule.* Section 22.1(a) identifies, statute by statute, the types of proceedings that are subject to the CROP. The proposed rule would bring within the scope of the CROP a number of proceedings that had previously used other procedures or that had no formal procedures: field citation proceedings under the Clean Air Act (42 U.S.C. 7413(d)(3)), proceedings to suspend or revoke a permit issued under section 402(a) of the Clean Water Act (33 U.S.C. 1342(a)) or to suspend or revoke a permit under sections 3005(d) and 3008(h) of the Solid Waste Disposal Act (42 U.S.C. 6925(d) and 6928(h)) (originally proposed in 60 FR 65280, December 11, 1996), proceedings for the assessment of administrative civil penalties under section 6001 of the Solid Waste Disposal Act (42 U.S.C. 6961), section 311(b)(6) of the Clean Water Act (33 U.S.C. 1321(b)(6)), and sections 1423(c) and 1447(b) of the Safe Drinking Water Act, 42 U.S.C. 300h–2(c) and 300j–6, including orders requiring both compliance and the assessment of a civil penalty under 1423(c), and proceedings for the assessment of civil penalties or the issuance of compliance orders under the Mercury-Containing and Rechargeable Battery Management Act (42 U.S.C. 14304). Other amendments would clarify the applicability of the CROP to proceedings already within its scope, and delete outdated references.

Section 22.1(b) explains the interrelation between the subpart H, the new subpart I, and the provisions of subparts A–G. Section 22.1(c) empowers the Administrator, the Regional Administrator, and the Presiding Officer to resolve procedural matters not covered in the CROP. The proposed revision to § 22.1(c) would make explicit the authority of the EAB to resolve such procedural matters.

*b. Significant Comments and EPA Response.* CEEC objects to expanding the scope of the CROP to include non-APA proceedings, arguing that EPA has failed to explain why the proposed CROP is more suitable than other procedures. Dow and CMA/API strongly support revised CROP procedures replacing the procedures proposed for the part 59 field citation program. CMA/API also supports the decision to include non-APA proceedings within the CROP, rather than as a distinct set of procedures under part 28.

The preamble to the proposed rule explained generally why EPA considers the proposed CROP suitable for non-APA enforcement cases, but it did not expressly contrast the suitability of alternative sets of procedures. In drafting the proposed CROP, EPA had the benefit of the public comments received in response to the 1991 proposed part 28 procedures and the 1994 proposed field citations procedures, and the benefit of practical case experience with both the proposed part 28 procedures and the existing CROP procedures. The proposed CROP revisions drew from the best provisions of each set of procedures, and is as a result more clear, more simple and more efficient than its predecessors.

CEEC questions EPA's decision to use the CROP procedures for non-APA cases, asserting that it is inappropriate for EPA ''to assume that one size fits all.'' CEEC does not identify any class of cases for which the proposed CROP might be unsuitable, nor does it identify other procedures that might be more suitable. EPA has taken into account the limits to a ''one size fits all'' approach through the inclusion of statute-specific supplemental rules (subpart H) and the special rules for non-APA proceedings (subpart I).

In apparent contradiction to its criticism of the ''one size fits all'' approach of the CROP, CEEC also faults EPA for failing to explain why the scope of the CROP fails to encompass corrective action orders pursuant to Solid Waste Disposal Act (''SWDA'') sections 3008(h) and 9003(h)(4), and pesticide cancellation proceedings pursuant to section 6 of the Federal Insecticide, Fungicide, and Rodenticide Act (''FIFRA''). Although the proposed rule would expand the scope of the CROP, EPA did not propose that it should replace all administrative adjudicatory procedures.

EPA determined in 1988 that less formal procedures are appropriate for corrective action orders because of the need for quick response to hazardous waste spills, because such cases present fewer factual issues than cases where a regulatee may be forced to pay a civil penalty for violating the law, and because the cost of the formal CROP procedures is twice as high as the cost of the informal procedures. 53 FR 12256, 12257 (April 13, 1988). EPA's procedures for corrective action orders, codified at 40 CFR part 24, were challenged upon issuance and upheld by the Court of Appeals for the District of Columbia Circuit. The D.C. Circuit agreed with EPA that ''to the modest extent that EPA's Part 24 regulations do implicate the private interest in avoiding the expense of unnecessary corrective actions, formal procedures [i.e., the CROP] do not promise a sufficient lowering of the risk of error to justify their significant expense to the Government.'' *Chemical Waste Management, Inc. and Waste Management of North America, Inc., v. U.S. Environmental Protection Agency,* 873 F.2d 1477, 1485 (D.C. Cir. 1989). EPA continues to believe that the informal procedures of part 24, rather than the CROP, are appropriate for SWDA sections 3008(h) and 9003(h)(4) corrective action orders.

Pesticide cancellation proceedings are subject to rules codified at 40 CFR part 164, as are other proceedings related to the registration status of a pesticide. Although some sections of part 164 are very similar, or identical, to provisions of the CROP, there are also fundamental differences, that reflect differences between FIFRA section 6 and the statutory authorities for various CROP proceedings. Although it would be possible to draft a single set of procedures that could apply to all corrective action orders and pesticide cancellation proceedings, as well as the proceedings within the scope of the CROP, it would call for extensive revisions and elaborate supplemental rules. At this time, it does not appear that combining either part 24 or part 164 with the CROP would produce significant efficiencies or improvements.

*c. Final Rule.* EPA has adopted § 22.1 as proposed, with minor changes. In the December 11, 1996, ''Round Two'' permit streamlining proposed rule, EPA proposed to remove the procedures existing in 40 CFR part 124, subpart E, for proceedings to revoke or suspend a permit issued under section 402(a) of the Clean Water Act (33 U.S.C. 1342(a)) or to revoke or suspend a permit under sections 3005(d) and 3008(h) of the Solid Waste Disposal Act (42 U.S.C. 6925(d) and 6928(h)). See 61 FR 65268 (December 11, 1996). EPA proposed that such proceedings would be conducted pursuant to the CROP procedures, and proposed CROP revisions to accomplish this. These changes were incorporated into the February 25, 1998, proposed CROP revisions. As EPA has not yet finalized the Round Two permit

streamlining rule and 40 CFR part 124, subpart E remains in effect, EPA has removed from § 22.1 (a)(4) and (a)(6) the proposed references to permit revocation, suspension and termination. EPA anticipates that these references will be restored when the Round Two permit streamlining rule is finalized.

EPA has deleted the word ''conducted'' from paragraphs (a)(1), (a)(3) and (a)(5). This word is unnecessary, and the deletions make these paragraphs more consistent with the rest of § 22.1(a). In § 22.1(a)(4)(i), EPA has replaced the word ''and'' in the first parenthetical list of citations to the U.S. Code, with the word ''or'' for consistency.

In the proposed § 22.1(b), the word ''establish'' appeared twice in the first sentence. EPA has deleted the redundant word. EPA has also revised the last sentence of 22.1(b) for clarity.

2. Powers and Duties of the Environmental Appeals Board, Regional Judicial Officer and Presiding Officer; Disqualification, Withdrawal and Reassignment. (40 CFR 22.4)

*a. Summary of Proposed Rule.* Proposed revisions to § 22.4(a) clarify the role of the Environmental Appeals Board, to which the Administrator has delegated the authority to rule on appeals. The proposed rule clarifies that the Environmental Appeals Board rules on appeals from decisions, rulings and orders of a Presiding Officer in proceedings under the CROP, acts as Presiding Officer until an answer is filed in cases initiated at EPA Headquarters, and approves settlement of such cases. The proposed rule provides that appeals and motions must be directed to the Environmental Appeals Board except those in matters referred by the Environmental Appeals Board to the Administrator, and motions for disqualification under paragraph (d).

Proposed revisions to § 22.4(b) describe the function of the Regional Judicial Officer, requiring each Regional Administrator to designate one or more Regional Judicial Officers to act as Presiding Officers in proceedings under subpart I, and to act as Presiding Officers in APA CROP proceedings until an answer is filed. The proposed rule provides that the Regional Administrator may delegate to a Regional Judicial Officer the authority to approve settlement of proceedings, ratify consent agreements and issue consent orders.

EPA proposed deleting from § 22.4(b) certain limitations on the Regional Judicial Officers. One proposed deletion is the current prohibition on employment of a Regional Judicial Officer by the Region's Enforcement Division or the Regional Division directly associated with the type of violation at issue in the proceeding. The other is the prohibition, derived from section 554(d) of the Administrative Procedure Act, against a Regional Judicial Officer having ''performed prosecutorial or investigative functions in connection . . . with any factually related hearing.'' The proposed rule would add new language precluding an individual from serving as Regional Judicial Officer in any case in which he or she has any ''interest in the outcome.'' The proposed rule retains the provisions that prohibit an individual from serving as Regional Judicial Officer in the same case in which he or she performed prosecutorial or investigative functions, and that require that Regional Judicial Officers be attorneys employed by a Federal agency.

EPA proposed editorial revisions to § 22.4(c), describing the role of the Presiding Officer, that do not introduce any substantive change.

The proposed § 22.4(d) establishes new procedures for seeking disqualification of the Administrator, a Regional Administrator, a member of the EAB, a Regional Judicial Officer (''RJO''), or an Administrative Law Judge (''ALJ''), from performing functions they are authorized to perform under the CROP. Under the existing rules, any party may seek the disqualification of a Regional Judicial Officer by motion to the Regional Administrator; or may seek the disqualification of any of the other individuals by motion to the Administrator. Under the proposed rules, any party must first file a motion with the particular individual requesting that he or she disqualify himself or herself from the proceeding. If the party has moved to disqualify a Regional Administrator, a Regional Judicial Officer, an ALJ, or a member of the EAB, and the motion is denied, the party may appeal the denial of the motion administratively. The proposed rule does not provide for administrative appeal from the Administrator's denial of a motion to disqualify herself.

The proposed § 22.4(d) provides that an interlocutory appeal may be taken when an ALJ denies a motion that he disqualify himself or herself from a proceeding. However, EPA asked for comments on whether to prohibit such interlocutory appeals.

b. Significant Comments and EPA Responses

*22.4(a).* Dow suggests clarifying the rule by adding the word ''initial'' before the word ''decisions'' in the description of the Environmental Appeals Board's role in ruling on decisions, rulings and orders of a Presiding Officer. EPA accepts the suggested change.

*22.4(b).* CEEC states that it opposes expansion of the role of RJOs through the CROP. The preamble to the proposed rule stated that EPA had no current plans to use the subpart I procedures for any cases other than those arising under Clean Water Act (''CWA'') sections 309(g)(2)(A) and 311(b)(6)(B)(i) (33 U.S.C. 1319(g)(2)(A) and 1321(b)(6)(B)(i)), and Safe Drinking Water Act (''SDWA'') sections 1414(g)(3)(B) and 1423(c) (42 U.S.C. 300g–3(g)(3)(B) and 300h–2(c)). *See* 63 FR at 9479. To codify that point, EPA has revised the proposed § 22.50 so that it applies only to these cases. With this revision, today's rule clearly does not represent any practical expansion of the RJOs' role. Since the 1980's, RJOs have presided over cases under CWA sections 309(g)(2)(A) and 311(b)(6)(B)(i), and SDWA sections 1414(g)(3)(B) and 1423(c), under the procedures proposed (but not finalized) as part 28 and under other Agency guidance (*e.g. Guidance on UIC Administrative Order Procedures*, November 28, 1986). Now they preside over the same kinds of cases using the CROP.

Of the six commenters on the proposed rule, five (UWAG, UARG, CEEC, CMA/API, and Dow) expressed concern that the proposed rule fails to protect constitutional due process rights and assure the independence and impartiality of Regional Judicial Officers. UARG and UWAG oppose use of any EPA attorneys as Presiding Officers, arguing that Agency loyalty will create bias or the appearance of bias. CEEC, CMA/API, Dow and (by implication) UARG and UWAG oppose the use of EPA enforcement attorneys as Presiding Officers. These commenters argue that allowing enforcement personnel to be Presiding Officers creates actual or apparent bias by commingling the investigative, prosecutorial and adjudicative functions. Particular concerns include EPA enforcement attorneys presiding over cases brought by their colleagues, and over cases with issues or defendants in common with cases the Presiding Officer has litigated. Dow, UARG and UWAG urge the Agency to use Administrative Law Judges for adjudication of all administrative enforcement proceedings, arguing that ALJs are more qualified and are insulated against institutional bias.

In response to these concerns, EPA has made several changes to § 22.4(b). First, EPA has added a requirement that a ''Regional Judicial Officer shall not prosecute enforcement cases and shall

not be supervised by any person who supervises the prosecution of enforcement cases, but may be supervised by the Regional Counsel.'' This change will assure that the persons presiding over subpart I proceedings will be able to freely exercise independent judgment, without fear of adverse action by EPA enforcement managers.

Commenters suggested various independence criteria: Dow suggested that the CROP should mandate either that the employment and advancement of each EPA attorney serving as RJO expressly be made independent of his or her rulings as Presiding Officer, or the attorney has no direct or indirect supervision (for a total of at least two levels of supervision) by persons or offices responsible for enforcement. UARG and UWAG believe that hearings should be run only by ALJs, but if the Agency refuses to implement that suggestion, they support the idea presented in the preamble to the proposed rule that the Presiding Officer not be directly supervised by any person who directly supervises the prosecution of the case. CMA/API suggested a requirement that the Regional Judicial Officer ''should not be employed by or supervised by any enforcement component, whether that component is in the Office of Regional Counsel or the Regional Office of Enforcement.''

EPA has considered the various independence criteria suggested by the commenters, and has concluded that prohibiting RJOs from prosecuting enforcement cases, and prohibiting RJOs from being supervised by persons who supervise the prosecution of enforcement cases, will sufficiently separate RJOs from enforcement. Although Regional Administrators and Regional Counsels necessarily have significant responsibility for their Regions' enforcement program, they have other responsibilities which give them a broader perspective. Accordingly, there is little risk that they would exert improper influence over the decisions of an RJO. In order to avoid any confusion, the rule explicitly allows supervision by the Regional Counsel. The Regional Administrators' authority to personally supervise the RJOs is implicit, but may not be delegated to a person who supervises the prosecution of enforcement cases (except the Regional Counsel).

EPA's experience with non-APA adjudications to date indicates that RJOs maintain their independence and impartiality, and their decisions reveal no bias toward the complainant. Only four decisions by EPA attorneys serving as Presiding Officer have been reversed on appeal out of over 180 decisions rendered over a period of approximately 10 years. Moreover, there has not been a single penalty or corrective action case where a respondent has appealed a denial of a motion to disqualify a Regional Judicial Officer, nor where a respondent has alleged a Regional Judicial Officer's actual bias among its grounds for appeal. These results demonstrate that the RJOs' present levels of competence and independence are reasonable. Today's rule assures that this independence will not be compromised.

The more restrictive requirements suggested in some of the comments would not be feasible to implement. Prohibiting supervision by Agency officials who have any enforcement responsibilities would prohibit virtually all upper management in the Regional Offices, including the Regional Administrators, from such supervision. The RJOs' record to date indicates that such restrictive standards are not necessary. Other suggested standards would invite time consuming litigation over side issues, such as whether a supervisor or office is responsible for ''enforcement'' or whether someone is ''indirectly'' supervising the RJO, when the proper questions are whether an RJO is in fact biased and whether such bias affected the outcome of a particular case.

Second, EPA has included in the final rule a provision precluding a Regional Judicial Officer from knowingly presiding over a case involving any party concerning which the Regional Judicial Officer performed any functions of prosecution or investigation within the 2 years preceding the initiation of the case. CMA/API recommended that Regional Judicial Officers should not currently be involved in any other proceedings involving the same defendants and should not have been involved in the investigation or prosecution of the defendant within the previous 5 years. EPA agrees that it could create at least an appearance of bias if an EPA attorney were to serve as prosecutor of one complaint and shortly thereafter function as adjudicator of another complaint against the same party. It is neither necessary nor practical for EPA to adopt CMA/API's recommendation that the CROP prohibit prosecutorial or investigative activity against the respondent for 5 years. EPA has included in the final rule a provision precluding a Regional Judicial Officer from knowingly presiding over a case involving any party concerning which the Regional Judicial Officer performed any functions of prosecution or investigation within the 2 years preceding the initiation of the case. EPA has made this requirement contingent upon the RJO's knowledge because name changes are sufficiently common in modern industry that a RJO might preside over a case without being aware that he or she had previous dealings with the same company. Upon becoming aware of such prior relationship, the RJO must promptly disqualify himself or herself from the proceeding. If, in a particular case, a party were to believe that participation in a similar case more than 2 years earlier would bias the RJO, that party could move for disqualification under § 22.4(d). Note also that, owing to the new prohibition against RJOs prosecuting enforcement cases, the potential for these conflicts will decrease over time.

In the response to the public comments, EPA has revised the proposed § 22.4(b) to increase the independence of RJOs (prohibiting RJOs from prosecuting enforcement cases, prohibiting their supervision by persons who supervises prosecution of enforcement cases, and prohibiting the RJO from knowingly presiding over a case involving any party concerning which he or she performed any functions of prosecution or investigation within the 2 years). Other changes sought by the commenters are impractical and unnecessary.

In proceedings subject to section 554 of the APA, Congress has determined that Presiding Officers may not be ''engaged in the performance of investigative or prosecuting functions for [EPA] in * * * a factually related case * * *'', and may not ''be responsible to or subject to the supervision or direction of [persons] engaged in the performance or investigative or prosecuting functions for [EPA].'' 5 U.S.C. 554(d). However, subpart I is designed for use in proceedings that are not subject to section 554 of the APA. Congress has expressly authorized EPA to assess civil penalties through procedures that do not meet the standards of section 554. Despite the broad range of options this allows, EPA has chosen as a matter of policy to make subpart I procedures adhere closely to the APA requirements. The subpart I procedures depart from the requirements of section 554 only in regard to the independence of the Presiding Officer. The commenters who object to subpart I for failing to provide this same level of independence are objecting, in effect, to the statutes that authorize non-APA proceedings. The Agency does not agree that such a broad limitation on its authority is appropriate.

Whether adjudication by EPA attorneys under subpart I provides adequate protection for respondents' due process rights must be evaluated according to the three part standard established in *Mathews* v. *Eldridge,* 424 U.S. 319 (1976):

''[O]ur prior decisions indicate that identification of the specific dictates of due process generally requires consideration of three distinct factors: First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.'' *Id.* at 334–35.

The private interests in a proceeding under subpart I of the CROP are the impact on respondent of a civil penalty and on respondent's reputation from a finding of liability, and perhaps in the expense and burden of the hearing itself. Although these interests are important, they are less important than the private interest at stake in *Mathews* v. *Eldridge,* where the governmental agency summarily discontinued an individual's social security disability benefits while the benefit termination hearing was pending. The private interests at stake in CROP proceedings do not rise to this level. Moreover, the interests at stake certainly are not so significant as individual interests in liberty or bodily integrity.

The risk of an erroneous deprivation of respondents' private interests through adjudications by EPA attorneys is low, and certainly lower than in *Mathews* v. *Eldridge,* where the disability benefits were terminated before any hearing was afforded. In a CROP subpart I proceeding, the respondent first has an opportunity for a hearing before an RJO (including the opportunity to present evidence and to cross examine the Agency's witnesses), and has opportunities for administrative review before the penalty is assessed (i.e., appeal of the initial decision to the EAB). The risk of an erroneous deprivation of a respondent's interests should correspond closely to the frequency with which decisions by EPA attorneys serving as Presiding Officer are reversed on appeal by either the EAB or a federal court, and as described above, this rate has been extremely low.

Balanced against the private interests at stake and the risk of their impairment is the government's interest. The government's primary interest in having EPA attorneys preside over certain enforcement cases is in making efficient use of Agency resources. The costs for an ALJ to travel from Washington, D.C., to the hearing location is greater than the cost for an EPA attorney to travel from the Regional office to the hearing location. In addition, ALJs are paid more than the EPA attorneys who serve as Presiding Officers. The other government interest is in having the flexibility to increase the number of Presiding Officers to meet the administrative case load. In the recent past, the number of ALJs was clearly inadequate to handle the number of cases. Although the number of ALJs is today more commensurate with the number of cases, future imbalances might be alleviated by temporarily expanding or contracting the number of EPA attorneys who may serve as Presiding Officer.

To summarize the results of this *Mathews* v. *Eldridge* three-step balancing test, there appears to be a relatively small risk of impairment of private interests that are of a moderate level of importance. This small risk of impairing moderately important interests must be balanced against the government's interests in making best use of its resources. Although it is not possible to weigh these factors with mathematical precision, it is clear that the use of EPA attorneys as Presiding Officers, subject to the provisions adopted in this rule and with the right to appeal to the EAB, is not a violation of respondents' rights to due process of law.

CMA/API recommend that, if EPA allows Agency personnel to serve as Regional Judicial Officers, they should be members in good standing with a bar. EPA notes that under the Federal personnel rules all attorney positions require bar membership, so this need not be addressed in § 22.4(b). CMA/API also argues that Regional Judicial Officers should have substantial litigation experience including adjudication. The position descriptions for Regional Judicial Officers require that they be senior attorneys with substantial litigation experience, and EPA believes that its internal procedures and controls are adequate to assure that Regional Judicial Officers have substantial litigation experience. EPA intends to continue its practice of sending each of its Regional Judicial Officers to the National Judicial College for training in presiding over administrative hearings. This level of experience and training is sufficient to prepare Agency attorneys to preside over the relatively straight-forward cases expected under subpart I.

Some commenters (CMA/API, UWAG, UARG) were concerned that the physical proximity, friendships or colleague relationships of the Regional Judicial Officers with Agency prosecuting attorneys would create an appearance of partiality, where they may share work and social activities, training and secretarial support, and where Regional Judicial Officers may overhear statements made by prosecutors. EPA and its RJOs make efforts to avoid such contacts where feasible, and the contacts that remain are unlikely to result in an actual bias. It does not appear that any solution short of complete physical isolation of Regional Judicial Officers from the enforcement offices could completely eliminate this concern. Such separation would also pose significant logistical difficulties for EPA's Regional offices. Accordingly, this comment is not adopted in the final rule. EPA Regional Offices will continue to take prudent measures to physically separate Regional Judicial Officers from personnel responsible for enforcement case development and prosecution to the extent feasible.

CMA/API suggested that a Regional Judicial Officer should not adjudicate any case involving the same counsel as another case in which he or she performed prosecutorial or investigative functions. EPA disagrees. Counsel serve merely as representatives of their clients, and bias cannot be presumed to attach merely to a representative.

CEEC and Dow suggested that the final sentence of the proposed § 22.4(b), which stated that RJOs may not have ''any interest in the outcome of any case'', is unclear and should incorporate explanatory language from the preamble to the proposed rule indicating that it includes ''a financial interest, personal interest, or career interest in the outcome of the action''. 63 FR at 9467. EPA notes that any interpretation of this clause would have to conform to the Standards of Ethical Conduct for Employees of the Executive Branch, 5 CFR part 2635, which are intended to supersede all agency ethics standards (except those approved by the Office of Governmental Ethics and promulgated as supplemental ethics regulations pursuant to 5 CFR 2635.105). In order to avoid creating a standard which might be interpreted differently than these government-wide ethics standards, EPA has removed this clause from the final rule.

A general principle of the government-wide ethics regulations, particularly 5 CFR 2635.101, is that all federal employees must perform their duties impartially. If an RJO held any interest or bias which would compromise his or her ability to preside

impartially in a particular proceeding, this would be grounds for disqualification under § 22.4(d).

Dow suggests that the CROP prohibit enforcement attorneys from serving as Presiding Officers unless the attorney has not issued potentially relevant interpretations of the statute or regulations allegedly violated. Dow suggests possible bias where the Regional Judicial Officer had previously issued interpretations of the regulations at issue in a case before him, that may create a reluctance to overrule his own prior interpretation. However, all adjudicators face the possibility of having to overrule their own prior interpretation of a rule, as contained in their own prior decisions. EPA is unaware of any court where adjudicators are barred from deciding cases where their earlier positions are precedent. In every case, the adjudicator's decision must be supported by the evidence and applicable law, and parties may appeal any adverse decision to the EAB. Accordingly, EPA has not made the suggested change in the final rule.

UARG and UWAG argue that anyone who has participated in a rule making proceeding that leads to the promulgation of a substantive rule would have an interest and bias in the interpretation of that rule, and should not serve as Presiding Officer in a case where that rule is at issue. Although Regional Judicial Officers have presided at public rule making hearings during the public comment period, their role is limited to conducting an orderly hearing—they are not responsible for weighing the evidence and do not participate substantively in the regulatory decision making. EPA believes that participation in substantive rule making is unlikely to result in bias in the interpretation of the rule. The Presiding Officer's decisions must include findings of fact and conclusions of law based upon the record in the case, and their interpretations of regulations are subject to appellate review. EPA declines to add the suggested prohibition with regard to rule making.

The proposed rule would delete from § 22.4(b) language precluding a Presiding Officer from hearing a case that is ''factually related'' to one in which he or she performed investigative or prosecutorial functions. The 1980 CROP was intended to provide procedures for hearings conforming to section 554 of the APA, and the ''factually related'' clause was derived from section 554(d), that provides that ''An employee or agent engaged in the performance of investigative or prosecuting functions for an agency in a case may not, in that or a factually related case, participate or advise in the decision [or] recommended decision * * *.'' As the revised CROP is intended for use in proceedings that are not subject to section 554, as well as APA proceedings, provisions of the 1980 CROP such as the ''factually related hearing'' clause are no longer appropriate for RJOs.

It is very probable that any EPA attorney sufficiently experienced to be selected as RJO would have prosecuted a substantial number of the type of routine cases which are expected to form the bulk of subpart I practice, and these cases may contain similar factual issues. Moreover, the geographical limits on each Region's enforcement efforts make it likely that highly experienced EPA attorneys will have prosecuted cases that have parties, locations, or other facts in common with cases they might hear as an RJO. The prohibition on hearing ''factually related'' cases is too broad for subpart I proceedings, where the cases will mainly involve well settled law and simple factual issues. The mere fact that two cases have some facts in common need not present any significant risk of bias or ''will to win,'' but it may result in unnecessary litigation over whether the cases are ''factually related.'' Although EPA acknowledges that experience with cases that are factually related in a substantial way could potentially be a cause for concern, there are many more cases where the factual relation is too trivial to result in bias.

Today's final rule will provide respondents in subpart I proceedings a fair and impartial decision maker. Any party may move to have a decision maker disqualified, or a decision overturned, on the basis of partiality where ''a disinterested observer may conclude that [the agency] has in some measure adjudged the facts as well as the law of a particular case in advance of hearing it.'' *Cinderella Career and Finishing School* v. *FTC,* 425 F.2d 583, 591 (D.C. Cir. 1970). In the event that an RJO who performed prosecutorial or investigative functions in a factually related case denies a motion for disqualification, respondent can appeal that decision, and, if the appellate body finds that the RJO was not impartial, then the RJO's decision will undoubtedly be reversed.

*22.4(c).* A comment as to paragraph (c) urges EPA to provide further sanctions, in addition to the existing sanction authorizing the Presiding Officer to draw adverse inferences against a party. For example, the rule should authorize, when a party willfully disregards discovery orders, sanctions up to the level of dismissal with prejudice or default, such as striking a count from a complaint or striking a specific defense. The commenter suggests adding to the rule that a Presiding Officer may impose any other appropriate sanction that could be imposed by a Federal court in a civil proceeding.

EPA believes that it is not necessary to add any additional language with regard to sanctions that may be imposed by a Presiding Officer. The broad language of § 22.4(c)(10) to ''[d]o all other acts and take all measures necessary'' authorizes the Presiding Officer to impose a broad array of sanctions appropriate for management of cases, to ensure the ''maintenance of order and for the efficient, fair and impartial adjudication of issues.'' Pursuant to that authority, Presiding Officers impose sanctions such as limiting the evidence a party may present. See, Paul Durham, d/b/a Windmill Hill Estates Water System, EPA Docket No. [SDWA]–C930036, 1997 SDWA LEXIS 1, nn. 5, 6 (ALJ, April 14, 1997). In addition, § 22.17(a) and 22.19(g) specifically provide for sanctions of default or dismissal with prejudice, and for exclusion of the information from evidence for failure to comply with information exchange required by § 22.19 or with an order of the Presiding Officer.

*22.4(d).* Commenters generally favor the proposed disqualification procedures, but have proposed several revisions to the proposed regulation:

CEEC recommends that EPA add a provision that ''requires the individual for whom disqualification is sought to specify reasons for his decision'' on the disqualification motion. EPA does not agree with the recommendation because it is unnecessary. When a decision maker rules on any motion under the CROP, the decision maker provides reasons for the ruling unless the reasons therefor are patently evident. The precise level of detail provided will depend upon the decision maker's informed discretion and the circumstances of the case. There is no reason to single out disqualification rulings for purposes of imposing an explicit requirement to articulate the basis for the ruling and no reason for limiting a decision maker's discretion in this regard.

Dow proposes that ''EPA should provide a procedure for appeal, in cases where the Administrator denies a motion to disqualify himself.'' EPA rejects the commenter's suggestion. Since all Agency officials are supervised by the Administrator, there is no

Agency official who could appropriately resolve such an appeal. Moreover, any need for such a requirement is remote, for the occasions when the Administrator acts or serves as the deciding official under the CROP are extremely rare. In practice, the EAB performs the role of final decision maker pursuant to its delegation from the Administrator under the regulations. For the most part, the Administrator's role is residual and limited to cases specifically referred to her by the EAB. The EAB has not made such a referral since its creation in 1992. A slightly different role is reserved for the Administrator under proposed § 22.31(f) (§ 22.31(e) of this final rule), which provides that, if the EAB were to issue a final order to a Federal agency, the agency may request a conference with the Administrator. This opportunity is not available to other recipients of EAB orders. If a conference occurs as provided in the provision, a decision by the Administrator may become the final decision. Nonetheless, EPA does not expect that many such requests will be made pursuant to this provision. If the Administrator were to deny a motion to disqualify herself from participating in a proceeding, the appropriate recourse would be to federal court, upon issuance of the final agency action at the end of the administrative proceeding.

Under both the existing rule and the proposed rule (except for subpart I cases), an interlocutory appeal under § 22.29 is available where a Presiding Officer denies a motion for disqualification. EPA requested comment on whether to prohibit interlocutory appeals to the EAB following the denial of a disqualification motion, consistent with federal court practice.

In response to EPA's request for comment, Dow and CEEC recommend that interlocutory appeals of motions for disqualification be allowed because ''there is a far greater likelihood of bias under CROP proceedings than in Federal courts,'' especially where the presiding officer is not an ALJ. Dow adds, therefore, that although it might be acceptable to prohibit an interlocutory appeal from the denial of a motion to disqualify an ALJ, because ''ALJs are insulated against actual bias,'' it is not appropriate to prohibit an interlocutory appeal from the denial of a motion for disqualification where the presiding officer is not an ALJ. CEEC argues that prohibiting interlocutory appeals would contribute to delay because the unavailability of an interlocutory appeals process would increase the number of proceedings that would have to be overturned on appeal.

EPA has considered these comments, but has decided to add a provision to the rules prohibiting interlocutory appeals from the denial of disqualification motions. EPA believes a prohibition against interlocutory appeals will not significantly affect the impartiality of the administrative adjudicative process and at the same time will prevent unnecessary delays. Based on the Agency's experience to date, motions to disqualify decision makers have been very infrequent. Therefore, the Agency expects that the circumstances will be extremely rare in which either the Agency or private litigants will have the burden of a retrial.

CEEC proposes that the regulatory bases for disqualifying a decision maker be expanded to include ''the appearance of impropriety.'' Courts have held that appearance of impropriety, without more, does not warrant disqualification under due process standards. *Del Vecchio* v. *Illinois Department of Corrections,* 31 F.3d 1363, 1371–72 (7th Cir. 1994). Courts have also declined to extend the judicial system's strict separation of functions standard to multi-function agencies. See e.g., *Simpson* v. *OTS,* 29 F.3d 1418, 1424 (9th Cir. 1994); EDF v. EPA, 510 F.2d at 1305. Likewise, the more stringent ''appearance'' standard in 28 U.S.C. 455(a), that requires a Federal judge to disqualify himself whenever his impartiality ''might reasonably be questioned'', does not apply to agency adjudicators. See, e.g., *Marine Shale Processors, Inc.* v. *EPA,* 81 F.3d 1371, 1386 (5th Cir. 1996). Although EPA intends that RJOs should avoid the appearance of impropriety, EPA does not believe that the CROP should create a disqualification standard based on appearance of impropriety.

The criteria for disqualification in a CROP proceeding are whether decision makers have ''a financial interest or [a] relationship with a party or with the subject matter which would make it inappropriate for them to act''. Whether a financial interest or a relationship is inappropriate is determined by reference to the Standards of Ethical Conduct for Employees of the Executive Branch, 5 CFR part 2635. Decision makers who fail to conform to these government-wide ethics standards are subject to disqualification.

*c. Final Rule.* EPA has reconsidered the proposed change to the title of § 22.4, and has decided to retain the original title ''Powers and duties of the Environmental Appeals Board * * *.''

EPA has adopted the language proposed under § 22.4(a), with the addition of the word ''initial'' before the word ''decisions'' in the first sentence, as recommended by a commenter. This paragraph appears as § 22.4(a)(1) in today's final rule. As noted above in the response to comments on § 22.4(c), a commenter recommended that Presiding Officers be given additional authority to impose sanctions. Although § 22.4(c) and other sections of the CROP provide adequate authority to impose procedural sanctions, EPA notes that § 22.4(c) applies only to the Presiding Officer, and not the EAB. In order that the CROP should expressly authorize the EAB to employ equivalent procedural sanctions, EPA has added a new paragraph to § 22.4(a). This new paragraph (a)(2) makes explicit the EAB's authority to impose procedural sanctions for failures to conform to CROP requirements and to orders of the EAB, an authority that the Agency has always considered implicit:

> (2) In exercising its duties and responsibilities under these Consolidated Rules of Practice, the Environmental Appeals Board may do all acts and take all measures as are necessary for the efficient, fair and impartial adjudication of issues arising in a proceeding, including imposing procedural sanctions against a party who without adequate justification fails or refuses to comply with these Consolidated Rules of Practice or with an order of the Environmental Appeals Board. Such sanctions may include drawing adverse inferences against a party, striking a party's pleadings or other submissions from the record, and denying any or all relief sought by the party in the proceeding.

EPA has also made a minor editorial revision to the last sentence of what is now § 22.4(a)(1), for reasons of grammar and clarity. EPA has changed the last clause from ''motions * * * where the Environmental Appeals Board has referred a matter to the Administrator'' to ''motions filed in matters that the Environmental Appeals Board has referred to the Administrator.''

As discussed in the response to comments above, EPA has made several changes to § 22.4(b) in response to public comments. EPA has added a new sentence to § 22.4(b): ''A Regional Judicial Officer shall not prosecute enforcement cases and shall not be supervised by any person who supervises the prosecution of enforcement cases, but may be supervised by the Regional Counsel.'' EPA has also included in the final rule a provision precluding a Regional Judicial Officer from knowingly presiding over a case involving any party concerning which the Regional Judicial Officer performed any functions of prosecution or investigation within the 2 years preceding the initiation of the case. EPA has deleted from the final

sentence of the proposed § 22.4(b) language prohibiting RJOs having ''any interest in the outcome'' of any proceeding. EPA has also revised § 22.50(a) to limit the applicability of subpart I to cases under CWA sections 309(g)(2)(A) and 311(b)(6)(B)(i) (33 U.S.C. 1319(g)(2)(A) and 1321(b)(6)(B)(i)), and SDWA sections 1414(g)(3)(B) and 1423(c) (42 U.S.C. 300g–3(g)(3)(B) and 300h–2(c)).

EPA has also made a minor, editorial change to § 22.4(b), unrelated to the public comments. The first sentence of the proposed § 22.4(b) stated that the ''Regional Administrator shall designate one or more Regional Judicial Officers to act as Presiding Officer....'' EPA has revised this sentence to say that the Regional Administrator shall ''delegate'' that authority.

EPA has adopted the proposed § 22.4(c) without change.

As discussed above, EPA has revised § 22.4(d) by adding a provision prohibiting interlocutory appeals from the denial of disqualification motions.

EPA has made three minor changes to correct errors in the proposed § 22.4(d). Contrary to the Agency's express intent that all motions for disqualification be made first to the official whose disqualification is sought (see 63 FR at 9467), the proposed § 22.4(d) erroneously includes a statement that motions for disqualification of a Regional Judicial Officer should be made to the Regional Administrator. The final rule requires that all motions for disqualification must first be made to the official whose disqualification is sought.

In the final rule, EPA has corrected another error in the proposed rule by substituting ''Administrative Law Judge'' for ''Presiding Officer'' in § 22.4(d). In § 22.3 of the 1980 CROP, ''Presiding Officer'' was defined as an Administrative Law Judge who has been designated by the Chief Administrative Law Judge to serve as Presiding Officer. However, under the proposed rules, the definition of ''Presiding Officer'' has been revised to mean either an Administrative Law Judge or a Regional Judicial Officer. The proposed § 22.4(d) failed to reflect this change. Because the proposed § 22.4(d) used the term ''Presiding Officer'' solely to refer to Administrative Law Judges, EPA has revised this paragraph to use the term ''Administrative Law Judge'' instead.

Finally, the phrase ''they deem themselves'' should be singular, rather than plural. EPA has substituted the phrase ''he deems himself''.

3. Filing, Service, and Form of Documents (40 CFR 22.5(a)–(c))

*a. Summary of Proposed Rule.* EPA proposed revisions of § 22.5(a) clarifying the requirements for filing documents with the hearing clerk or the clerk of the EAB. Proposed revisions of § 22.5(b) clarify the requirements for serving documents on other parties and on the Presiding Officer. The proposed paragraph (b)(1) would allow service of the complaint by any reliable commercial delivery service that provides written verification of delivery, and paragraph (b)(2) would allow service of all documents other than the complaint by any reliable commercial delivery service.

The proposed § 22.5(c) added provisions which would require more information on the first page of every pleading and to require tables of contents and tables of authorities for all legal briefs and memoranda greater than 20 pages in length (excluding attachments) to simplify review. The provision that allowed Hearing Clerks to determine the adequacy of documents was deleted, leaving that authority solely with Presiding Officers or the Environmental Appeals Board.

*b. Significant Comments and EPA Response.* Dow says that it is unclear whether the language in § 22.5(b)(1) allowing service of the complaint ''by certified mail, return receipt requested'' refers to one method of service or two alternative methods. EPA has amended this phrase to read ''by certified mail *with* return receipt requested''.

Dow suggests that § 22.5(b)(1) should allow respondent to waive the requirement that EPA send a copy of the CROP with the complaint. EPA acknowledges that this is superfluous in many cases, but nevertheless believes that this requirement is the most certain way of assuring that respondents are aware of their procedural rights.

USAF requests that the phrase ''officer or'' be deleted from § 22.5(b)(1)(ii)(B), questioning EPA's authority to file administrative cases against officers of the United States for actions within the scope of their employment. EPA agrees that the words ''officer or'' should be deleted from the proposed section for the reasons stated. EPA agrees that under normal circumstances, officers of the United States acting outside the scope of their employment would be treated in the same manner as other individuals. Where the real party in interest is a Federal agency, that agency should be named as respondent.

USAF also notes that the proposed § 22.5(b)(1)(ii)(B) provides less guidance as to the manner of service on Federal agencies than the language presently codified at § 22.5(b)(1)(iii). USAF urges the adoption of language clearly providing for service as provided by regulation, and absent regulation, service upon the chief attorney and on the senior executive officer responsible for the overall operations of the geographical unit of the agency being served. The language describing this latter official is adapted from 40 CFR § 270.11(a)(3)(ii), that designates who must sign waste permit applications. EPA agrees with the Air Force that the proposed rule does not succeed in clarifying who must be served. EPA has revised this paragraph to require service as provided by the respondent agency's regulations, or in the absence of controlling regulation, as otherwise provided by law. This will clearly allow Federal agencies to specify how they are to be served, and where they do not do so, it will allow EPA to serve the agency in any manner permitted by the Federal courts.

EPA recognizes the benefits of assuring that those directly in charge of a federal facility get prompt notice of a complaint, and so, has added to the final rule a direction that the complainant should send an additional copy of the complaint to the senior executive official having responsibility for the overall operations of the geographical unit where the alleged violations arose. This language, proposed by USAF, is derived from EPA's regulation designating who must sign applications for hazardous waste permits, 40 CFR 270.11(a)(3)(ii). EPA recognizes that the term ''geographical unit'' may be subject to varying interpretations, but has concluded that the imprecision is both necessary given the wide variety of federal facilities, and acceptable given that this copy of the complaint merely supplements the official service of the complaint. In recognition of this imprecision, this new provision uses the word ''should'' rather than ''shall.'' EPA will make a good faith effort to provide a copy of the complaint to the base commander, or equivalent, however, so long as complainant properly serves the federal agency according to its regulations or as otherwise provided by law, the requirements of § 22.5(b)(1)(iii) are satisfied.

USAF finds the phrase ''all pleadings and documents other than the complaint'', used in § 22.5(b)(2) and elsewhere, to be confusing. USAF recommends using ''answer'' and/or ''complaint'' in place of ''pleading'' and ''all filed documents'' or ''all filings'' in place of ''pleadings and documents''. EPA agrees with this recommendation.

Dow recommends that § 22.5(c)(2) should specify how respondent is to

determine the docket number. EPA agrees that the proposed rule leaves this unclear. EPA has stricken the parenthetical clause ''(after the filing of the complaint)'' in order to assure that the docket number shall appear on the complaint.

Dow and CEEC observe that under § 22.5(c)(4) a party who fails to furnish or update its name, address, and telephone number, and those of its attorney or representative, if any, completely waives its right to notice and service. The commenters argue that this sanction is too severe for harmless errors. EPA has amended this provision so that where a party fails to update information concerning its representative and/or service address, service to the outdated representative or address shall satisfy the requirements of § 22.5(b)(2) and § 22.6. In this manner, the consequences of any failure to update this information will be commensurate with the severity of the error.

In its comments on §§ 22.17(a) and 22.34(c), Dow notes that default is too harsh a sanction for minor errors in service or filing. The proposed § 22.5(c)(5) would allow the EAB or the Presiding Officer to exclude from the record any document that does not comply with § 22.5(c). This would apparently preclude exclusion for service errors as significant as those in § 22.5(c) (e.g., failure to serve the opposing party, failure to include a certificate of service per § 22.5(a)(3), failure to file the original document per § 22.5(a)(1)). Therefore, the final rule expands this sanction to include failures to conform to paragraphs (a), (b) and (d), as well as (c).

The Agency solicited comments on whether electronic filing and service should be allowed, and if so, under what conditions, but received no comments. After further consideration, EPA has decided that the CROP should permit the Presiding Officer and the EAB, in consultation with the parties and the affected hearing clerk, to authorize facsimile or electronic service and/or filing on a case-by-case basis. Accordingly, language is added to §§ 22.5(a)(1) and 22.5(b)(2) allowing the Presiding Officer or the EAB to authorize facsimile or electronic service and/or filing, subject to any appropriate conditions and limitations.

*c. Final Rule* In response to public comments, EPA has adopted a modified version of the proposed § 22.5(a), (b), and (c). EPA has revised this and other sections to use the more general term ''document'' in place of ''pleadings and documents'', and to use ''complaint'' or ''answer'' where reference to one or the other is specifically intended. EPA has edited § 22.5(b)(1) to read ''by certified mail with return receipt requested''. EPA deletes the phrase ''officer or'' from § 22.5(b)(1)(ii)(B), and revises the proposed § 22.5(b)(1)(ii)(B) as follows:

> ''Where respondent is an agency of the United States, complainant shall serve that agency as provided by that agency's regulations, or in the absence of controlling regulation, as otherwise permitted by law. Complainant should also provide a copy of the complaint to the senior executive official having responsibility for the overall operations of the geographical unit where the alleged violations arose.''

EPA has stricken from § 22.5(c)(2) the parenthetical clause ''(after the filing of the complaint)''. EPA has revised § 22.5(c)(4) as follows:

> ''(4) The first document filed by any person shall contain the name, address, and telephone number of an individual authorized to receive service relating to the proceeding. Parties shall promptly file any changes in this information with the Regional Hearing Clerk, and serve copies on the Presiding Officer and all parties to the proceeding. If a party fails to furnish such information or any changes thereto, service to the party's last known address shall satisfy the requirements of § 22.5(b)(2) and § 22.6.''

EPA has revised the proposed § 22.5(c)(5) to allow the EAB or the Presiding Officer to exclude from the record any document that does not comply with any requirement of § 22.5.

In addition to the changes suggested by the commenters, EPA has made several other minor changes to § 22.5. EPA has amended § 22.5(a)(1) to allow the Presiding Officer and the EAB the discretion to allow facsimile or electronic filing under such circumstances and limitations as they deem appropriate. EPA also has added to § 22.5(b)(2) language allowing the Presiding Officer or the EAB to authorize facsimile or electronic service, subject to such conditions and limitations as they deem appropriate. EPA has added a reference to the EAB to § 22.5(b): ''A copy of each document filed in the proceeding shall be served on the Presiding Officer or the Environmental Appeals Board, and on each party.''

EPA has determined that additional clarifications are appropriate for § 22.5(b)(2). EPA notes that the U.S. Postal Service considers overnight express and priority mail to be forms of first class mail. EPA has revised § 22.5(b)(2) to allow service ''by first class mail (including certified mail, return receipt requested, Overnight Express and Priority Mail), or by any reliable commercial delivery service. This change necessitates a corresponding change in § 22.7(c), because 5 day grace period for responding to motions sent by first class mail is unnecessary for documents served by overnight or same-day delivery.

Finally, EPA has revised the CROP to present numbers consistently, adopting the preferred style of the U.S. Government Printing Office. Numbers of 10 or more are expressed in figures and not spelled out. Accordingly, EPA has revised § 22.5(c) to require a table of contents and a table of authorities for all briefs and legal memoranda ''greater than 20 pages in length''.

4. Confidentiality of Business Information (40 CFR 22.5(d))

*a. Summary of Proposed Rule.* The proposed § 22.5(d) addresses treatment of information claimed as Confidential Business Information (''CBI'') in documents filed in CROP proceedings. The proposed paragraph (d)(1) would provide that any business confidentiality claim shall be made in the manner prescribed by 40 CFR part 2 at the time that the document is filed. It warns that a document filed without a claim of business confidentiality will be available to the public for inspection and copying pursuant to § 22.9.

Paragraph (d)(2) would require the submission of a redacted, non-confidential version in addition to the full document containing the information claimed confidential, and describes the process for preparing these documents. Paragraph (d)(3) describes the procedures for serving documents containing claimed-confidential information and makes clear that only a redacted version of any document may be served on a party, amici, or other representative thereof not authorized to receive the confidential information. Paragraph (d)(4) provides that only the redacted version of a document with claimed-confidential information will become part of the public record of the proceeding, and further provides that an EPA officer or employee may disclose information claimed confidential only as provided by 40 CFR part 2.

*b.* Significant Comments and EPA Response. Dow and CEEC express concern that under the proposed rule a failure to include a CBI claim at the time a document is submitted forecloses any future protection of the document. They argue that even where a company has inadvertently placed information in the public record, there is still value to in preventing further disclosure. They also point out that the Agency's CBI regulations at 40 CFR 2.203(c) provide that the Agency ''will make such efforts as are administratively practicable to

associate [a] late [confidentiality] claim with copies of . . . previously-submitted information in EPA files. . . .''

Section 2.203(c) expresses an Agency intent to give effect to late claims of business confidentiality, to the extent administratively practicable. While it is often administratively practicable to provide meaningful protection for a document that has been submitted in a non-confidential manner to an EPA office for EPA's own regulatory use, it is not administratively practicable to protect information that has become a matter of public record. There are significant costs associated with maintaining the confidentiality of documents EPA uses, and EPA must balance them against the potential benefits of protecting information that is already likely to be circulating among the public. The criteria for determining whether business information is entitled to confidential treatment, at § 2.208, include whether the business has taken reasonable measures to protect the confidentiality of the information. Placing a document in the public record falls short of those reasonable measures. Some of EPA's enforcement dockets receive daily visitors, while others are less frequently examined. Accordingly, once a person has filed a document with a hearing clerk, a subsequent effort by that person to assert a business confidentiality claim for information contained in that document will generally be ineffective. EPA will consider untimely confidentiality claims on a case-by-case basis, but claims asserted more than a few days after the original filing are unlikely to be granted.

CEEC also faults EPA for failing to draw sufficient attention in the notice of proposed rule making to the provisions addressing CBI. CEEC asserts that EPA missed an opportunity to work with the regulated community to achieve important regulatory reforms. EPA disagrees. It is the purpose of a notice of proposed rule making to elicit comment from the public to better inform the Agency's rule making process. EPA has made many changes in this final rule in response to the helpful comments submitted by CEEC and other commenters. Although EPA has not agreed with CEEC's one substantive comment on the CBI provisions, EPA appreciates the comment and carefully considered CEEC's point.

c. *Final Rule.* EPA adopts § 22.5(d) as proposed, except for replacing the phrase ''pleading or document'' with ''document'' as discussed in the response to public comments on § 22.5(a), (b) and (c), and replacing ''amici'' with ''non-party participant'' for consistency with changes to § 22.11(b).

5. Computation and Extension of Time (40 CFR 22.7)

*a. Summary of Proposed Rule.* Section 22.7(a) defines time periods for determining the date upon which a document is due. The proposed rule would revise the term ''legal holiday'' to ''Federal holiday'' for clarity.

Section 22.7(b) sets forth conditions under which the due date may be extended. The proposed revision to that paragraph would require that a motion for extension of time be filed sufficiently in advance of the due date so as to allow other parties an opportunity to respond and to allow time for the Presiding Officer or EAB to issue a ruling upon the motion.

Section 22.7(c) of the proposed rule would expand the ''mailbox rule'' to provide that service of documents other than the complaint is complete either upon mailing or when placed in custody of a reliable commercial delivery service, and to allow 5 additional days to respond not only to documents served by mail but also to documents served by reliable commercial delivery service.

*b. Significant Comments and EPA Response.* Dow requested an exception from including Saturdays, Sundays and holidays where the time period is 10 days or less. The commenter is concerned that there are not enough work days and mail delivery days to respond to a document.

In effect, this would extend the time period for a party's reply to a response, which is 10 days, under § 22.16(b). EPA believes that two different ways of calculating time periods would cause confusion and inconsistency. When a party needs more than 10 days to file a document, an adequate solution would be to request an extension of time.

Dow suggested a ''good cause'' exception to the time limit for filing a motion for extension of time. EPA believes that including such an exception in the rule is unnecessary and may encourage untimeliness, and thereby adversely affect the Agency's efforts to make administrative proceedings more efficient. A motion for leave to file a document beyond the time limit (''out of time''), stating reasons for not having filed within the time limit, may be submitted in accordance with § 22.16(a), along with the document sought to be filed. The time limit provided in the proposed revision does not require a motion for extension to be filed so far in advance of the due date so as to allow other parties the 15 days provided by § 22.16(b) to respond to the motion. A ''reasonable opportunity to respond'' and ''reasonable opportunity to issue an order'' will be construed based on the circumstances of the case.

*c. Final Rule.* Today's additional clarifications to § 22.5(b)(2), which define first class mail as including Overnight Express and Priority Mail, expressly allow for service by EPA's internal mail system, and provide the Presiding Officer and the EAB discretion to authorize facsimile or electronic filing, require a corresponding change to § 22.7(c). To assume 5 days for delivery by mail of a document, and thus to allow 5 additional days for a response, is appropriate where a document is served by first class mail and some forms of commercial delivery. However, it is not appropriate to make such assumption and allowance where there is a date of receipt, logged or stamped by the postal or commercial delivery service, showing that the document was sent by same day or overnight delivery. Accordingly, EPA is revising the third sentence of § 22.7(c) to exempt documents served by overnight or same-day delivery. According to the preferred style of the U.S. Government Printing Office, measurements of time are to be expressed in figures and not spelled out. EPA has revised § 22.7(c) to say that ''5 days shall be added''.

6. Ex Parte Discussion of Proceeding (40 CFR 22.8)

*a. Summary of Proposed Rule.* The existing § 22.8 prohibits the decision making officials in a proceeding from discussing the merits of the proceeding with any interested person outside the Agency, with any Agency staff member who performs a prosecutorial or investigative function in the proceeding or a factually related proceeding. This prohibition is also imposed on representatives and to persons likely to advise the decision making officials on the proceeding. The proposed rule would add a sentence that would exempt officials who have formally recused themselves from all adjudicatory functions, including the approval of consent agreements and issuance of final orders.

*b. Significant Comments and EPA Response.* Dow argues that the CROP should also restrict ex parte contacts before a complaint is issued, in order to avoid the potential for an adjudicator developing a bias in favor of the complainant. Dow suggests that the CROP should prohibit any communication regarding contemplated or reasonably foreseeable enforcement

proceedings between potential adjudicators and Agency enforcement personnel. Dow also suggests that where Agency enforcement attorneys may potentially serve as Presiding Officers, any communications regarding contemplated or reasonably foreseeable enforcement proceedings should be recorded, kept on file, and served on respondent as soon as that attorney is designated Presiding Officer.

EPA agrees that EPA attorneys who may serve as Presiding Officers should avoid communications regarding contemplated or reasonably foreseeable enforcement proceedings over which they might preside. However, a complete prohibition is neither feasible nor necessary.

In some instances, it is appropriate for Agency enforcement personnel to have prefiling discussions concerning specific enforcement cases with Agency attorneys who may be called upon act as Presiding Officers. When considering whether to assign a new case to a particular Agency enforcement attorney, it may be necessary to inquire of that attorney whether a prospective case may present a conflict with any cases in which the attorney is acting as Presiding Officer. So long as those discussions are carefully limited to transmitting the identity of the prospective respondent and a bare statement of the statutory or regulatory provisions allegedly violated, and to exploring whether there is any potential conflict of interest, but do not address the merits of the potential action, such discussions could not influence the decisions of the prospective adjudicator, and should not be considered prohibited ex parte communications.

Sound management of the Agency's enforcement program also periodically requires some discussion between complainants and adjudicators concerning anticipated work loads. For example, EPA periodically offers compliance audit programs (see, e.g., Registration and Agreement for TSCA Section 8(e) Compliance Audit Program, 56 FR 4128 (Feb. 1, 1991)) where large numbers potential cases are simultaneously settled on essentially identical terms, and it is appropriate in such cases for the complainant to discuss process issues with the persons who would be responsible for approving the consent agreements and issuing final orders. Discussions of how many consent agreements might be submitted for approval, when they might be submitted, whether or to what extent the consent agreements vary, are all permissible procedural matters that are not prohibited ex parte communications.

Compliance audit programs encourage violators to identify their violations and disclose them to EPA in exchange for a settlement and release of liability on favorable terms. Obtaining advance approval of the generic consent agreements could reassure those members of the regulated community who are wary of disclosing violations that the Agency will in fact conclude the cases according to the terms offered. Although this would result in substantive discussion of the terms of settlement between prospective complainants and adjudicators, this is permissible under the peculiar circumstances of a compliance audit program. It is permissible because compliance audit programs are entirely voluntary. Each compliance audit program is an offer by the Agency to the regulated community at large, and EPA typically engages in these efforts precisely because it does not know who is in violation and it wants to bring a large and ill-defined sector of the industry into compliance. No regulatee is obligated to identify itself as a violator or to participate in the program; each chooses to do so only if it considers the terms offered by the Agency to be in its best interest. Accordingly, where complainants wish to confer with Agency officials responsible for approving consent agreements and issuing final orders concerning potential compliance audit programs, they may do so without violating § 22.8.

Dow's suggested limitations also pose significant implementation problems. Parties may disagree about when an investigation becomes a ''contemplated or reasonably foreseeable enforcement proceeding'' and about what communications concern such a proceeding. For the foregoing reasons, EPA has not added any prohibition against communications concerning cases before the filing of the complaint. Similarly, EPA does not believe that it is necessary to require by rule that potential adjudicators retain a written record of all communications regarding potential cases. The prohibition in § 22.4(d)(1) against individuals serving as Presiding Officer in regard to ''any matter in which they have any relationship with a party or with the subject matter which would make it inappropriate for them to act'' provides adequate protection against any bias that might arise through communications prior to the filing of a complaint.

Dow also comments that where an adjudicator obtains advice from other EPA personnel, any such advice should be served on the respondent. The focus of Dow's concern is that EPA personnel such as technical experts, rule writers, and attorneys might be advising adjudicators on the merits of a proceeding. EPA shares Dow's opinion that such ex parte advice is generally unnecessary and inappropriate, and believes that it is in fact extremely uncommon. EPA agrees with the commenter that adjudicators should not be receiving such advice without all parties having the opportunity to review and respond to it. The CROP provides suitable procedures for adjudicators to solicit such advice (e.g., by calling for an expert to testify pursuant to § 22.19(e)(4)) and for EPA personnel to volunteer such advice (through amicus briefs subject to § 22.11(b)) without risk of ex parte communication.

There are, however, circumstances where it is appropriate for adjudicators to obtain from other EPA personnel advice that is not served on the parties. Administrative Law Judges periodically consult with each other, as do the Agency's RJOs. Adjudicators routinely receive advice from the attorneys and law clerks on the staff of the Environmental Appeals Board and the Office of Administrative Law Judges, and on occasion from hearing clerks and from Agency ethics officials. Accordingly, EPA declines to require that all advice to adjudicators from EPA personnel be served on the parties.

*c. Final Rule.* EPA is adopting § 22.8 as proposed, with minor changes. EPA notes that § 22.8 refers in three places to both Regional Judicial Officers and Presiding Officers. In order to avoid redundancy and potential confusion, EPA has stricken the words ''the Regional Judicial Officer.'' Other minor editorial changes in the first sentence are the substitution of the word ''proceeding'' for ''case'', so as to consistently use the word ''proceeding'' when referring to a particular administrative adjudication, and substitution of ''any decision'' for ''the decision'' to clarify ex parte communication is prohibited in regard to small matters as well as large ones. These editorial changes do not alter the substance of the CROP.

The preamble to the proposed rule indicated that the prohibitions on ex parte communications would apply to persons who approve consent agreements and issue final orders. 63 FR at 9468 (''For purposes of this provision [§ 22.8], the Agency would consider the approval of consent agreements and issuance of consent orders to be adjudicatory functions.''). In some instances, Regional Administrators have delegated the authority to review settlements and issue final orders to

persons associated with the Regions' enforcement programs. The Agency has reconsidered the position expressed in the preamble to the proposed rule, and has determined that the person who ultimately approves settlements on the Agency's behalf and issues these final orders need not be as independent as those who adjudicate contested issues. To make this change clear, EPA has amended the last sentence of § 22.8 to state that the ex parte restrictions shall not apply to a person who issues final orders only pursuant to § 22.18(b)(3).

7. Intervention and Non-party Briefs (40 CFR 22.11)

*a. Summary of Proposed Rule.* Section 22.11(a) describes the process for intervening in a CROP proceeding. The proposed rule provides more specific procedures and would make the standard for intervention equivalent to the standard used in the Federal courts. Paragraph (b) describes the procedures for motion for leave to file an amicus brief; the major change proposed was to provide a uniform 15 day period for responses to an amicus brief, rather than leaving this to the discretion of the Presiding Officer or the EAB.

*b. Significant Comments and EPA Response.* Dow suggests that § 22.11(b) should expressly allow 15 days for parties to respond to a motion for leave to file an amicus brief, as well as 15 days to respond to the brief itself. This change is not necessary, because ''motions'' are subject to § 22.16, which provides for responses within 15 days. Nevertheless, EPA accepts Dow's suggestion and has revised § 22.11(a) and (b) so that all CROP requirements apply to any motion for leave to file an amicus brief or motion to intervene in the same manner as if the movant were a party.

*c. Final Rule.* EPA is adopting the proposed § 22.11 with modifications. EPA has amended the language of § 22.11(a) and (b) so that all requirements of the CROP shall apply to any motion for leave to intervene or motion for leave to file an amicus brief as if the movant were a party.

EPA has also made two other changes to § 22.11(b) on its own initiative. First, it has replaced the terms ''amicus curiae'' and ''amicus brief'' with ''non-party brief.'' Second, EPA has replaced the requirement that motions for leave to file a non-party brief ''state the reasons why the proposed amicus brief is desirable'' with the requirement that it ''explain the relevance of the brief to the proceeding.'' Both changes are intended to improve the clarity and specificity of the CROP, and neither is intended to make a substantive change.

To conform to the preferred style of the U.S. Government Printing Office, EPA has revised § 22.7(c) to state the time allowed for responding to a non-party brief with the numeral ''15'.

8. Commencement of a Proceeding (40 CFR 22.13)

*a. Summary of Proposed Rule.* EPA proposed amending § 22.13 to define the commencement of an administrative enforcement proceeding, and to allow the simultaneous commencement and conclusion of a case through the filing of a consent agreement and a final order where pre-commencement negotiations result in settlement.

*b. Significant Comments and EPA Response.* CEEC recommends that the CROP should require discussions with a prospective respondent before the filing of a complaint. CEEC argues that pre-filing discussions would expedite the proceeding by allowing the parties to resolve the matter cooperatively, and by allowing early elimination of inappropriate allegations or penalties. CEEC proposes that the CROP should require that complainant determine whether a potential respondent had fair notice of the regulatory requirement(s) that it is alleged to have violated, and require EPA to disclose both the information in EPA's possession suggesting the violation and the information EPA will utilize to set the proposed penalty. CEEC argues that such a pre-filing process would maximize the opportunity to resolve compliance matters cooperatively and expeditiously.

EPA has often found it advantageous to engage in pre-filing discussions with prospective respondents under the existing CROP, and the proposed revisions will increase EPA's incentives to do so. Nothing in the proposed rule prevents EPA from engaging in the sort of pre-filing process CEEC proposes. However, EPA declines to go as far as CEEC proposes and create a mandatory pre-filing process. EPA's experience with pre-filing negotiations has been mixed: While in many cases pre-filing negotiations have produced expedited settlements, in other cases they have resulted in delay. Sometimes a respondent is not interested in settlement, but uses settlement discussions as a tactic in efforts to forestall enforcement. In contrast, active management of the case by a neutral presiding officer is generally effective in keeping both parties actively engaged in settlement efforts, and provides an alternative process when settlement efforts fail.

Although EPA does not at this time believe that a mandatory pre-filing process should be part of the CROP, EPA will consider ways to expand use of pre-filing negotiations. Although statutory public commenter provisions somewhat limit the Agency's authority to pursue pre-filing negotiations, the final rule does not add any further limits to EPA's discretion in this regard.

*c. Final Rule.* EPA is adopting § 22.13 of the CROP as proposed, with two minor changes. The first resolves conflicting language in the proposed rule concerning whether a case subject to public comment requirements of § 22.45 could be commenced through the filing of a consent agreement and final order pursuant to § 22.13(b). Although the proposed § 22.13(b) states that it is limited to cases not subject to § 22.45, the proposed § 22.45(b)(1) and (2) describe a process for public notice in cases commenced pursuant to § 22.13(b). EPA has revised the public comment procedures of § 22.45 to better accommodate cases commenced pursuant to § 22.13(b). Accordingly, EPA has deleted from § 22.13(b) the clause which would have made it inapplicable in cases subject to the public comment provisions of § 22.45. Second, as noted in the discussion of public comments on § 22.18(b) and (c), EPA has eliminated the term ''consent order,'' and is using the term ''final order'' instead.

9. Complaint (40 CFR 22.14)

*a. Summary of Proposed Rule.* The primary substantive change proposed in § 22.14 was the addition of explicit authority for complainants to use, at their discretion, a notice pleading approach comparable to that used in administrative enforcement proceedings under the proposed part 28 procedures and in the Federal courts. The proposed § 22.14(a)(4) would expressly permit EPA to file a complaint without specifying the precise penalty sought, as an alternative to pleading a specific penalty. Where complainant elects not to demand a specific penalty in the complaint, complainant is nonetheless obligated to provide a brief explanation of the severity of each violation alleged and a citation to the statutory penalty authority applicable for each violation alleged in the complaint. The text originally in paragraph (c) would be deleted to avoid the possibility of conflict with the notice pleading option proposed under § 22.14(a)(4)(ii).

The proposed § 22.14(a)(6) would require the complainant to specify in the complaint whether the non-APA procedures in subpart I shall apply to the proceeding. If a complaint does not contain an explicit statement that subpart I applies, the ensuing

proceeding shall be conducted in conformance with section 554 of the APA.

EPA also proposed editorial revisions, primarily to consolidate the provisions applicable to complaints for assessment of civil penalties with the essentially parallel provisions for revocation, termination or suspension of permits, and to explicitly provide for the issuance of compliance and corrective action orders.

b. Significant Comments and EPA Response

Four of the commenters, CMA/API, CEEC, UWAG and USAF, opposed the proposed notice pleading option.

Implicit in these comments is a concern that respondents will not be able to fairly gauge the amount of their potential penalty liability based on the information in the complaint. EPA agrees that complaints should provide more information than is required under the proposed rule. The proposed § 22.14(a)(4)(ii) arguably would allow issuance of complaints which do not clearly identify the number of violations charged, for example, where a statute authorizes EPA to assess a separate penalty for each day a violation continues. In order to ensure that respondents understand from the complaint how many violations are charged, EPA has revised § 22.14(a)(4)(ii) to require that the complaint specify ''the number of violations (where applicable, days of violation) for which a penalty is sought''.

CMA/API objected to the notice pleading option and recommended that it be rejected, noting that allowing complaints to issue without stating a sum certain would make it ''too easy'' for EPA to proceed with an administrative penalty action without gathering sufficient information to make an informed decision, and that the Agency might file meritless complaints that would nonetheless have a ''stigmatizing impact'' on respondents. EPA notes that the proposed § 22.14 would still require complainant to state the factual basis for alleging the violation, and to specify each provision of a statute, regulation, permit or order that respondent is alleged to have violated. The proposed change would only allow EPA, at its discretion, to postpone stating the extent of the relief sought. Owing to the retention of provisions that require complainant to specifically allege respondent's violation, the risk that EPA might file meritless complaints is not increased by the proposed change.

CMA/API objects that notice pleading will allow EPA to use the administrative complaint as a form of discovery to obtain information from the respondent, and argues that EPA's existing information gathering tools are adequate for that purpose. EPA does not view the administrative complaint as an investigation or discovery tool, but rather, the product of an investigation through which EPA has collected evidence reasonably supporting the conclusion that the respondent has violated the law. However, in some cases the litigation process is the only mechanism by which EPA can obtain the financial information necessary to determine what penalty is appropriate for those violations (see, e.g., FIFRA section 8(b), 7 U.S.C. 136f(b), and Toxic Substances Control Act (''TSCA'') section 11(b), 15 U.S.C. 2610(b), which expressly prohibit inspections seeking financial information).

The USAF argues that the proposed change potentially shifts to respondents the burden of demonstrating that something less than the maximum penalty is appropriate. EPA disagrees, as the proposed § 22.24(a) states that complainant bears both ''the burdens of presentation and persuasion * * * that the relief sought is appropriate'', while respondents only bear ''the burden of presenting * * * any response or evidence with respect to the appropriate relief.'' Notice pleading is common practice in the state and federal courts, and in those courts notice pleading does not put the burden of persuasion on the respondent, is not inherently unfair, and does not violate a defendant's due process rights.

USAF objects that notice pleading is unnecessary to achieve the Agency's stated goal of ''provid[ing] the Agency with added flexibility in issuing a complaint under circumstances where only the violator possesses information crucial to the proper determination of the penalty * * *.'' USAF suggests that a better approach would be to require a specific penalty proposal in the complaint, but allow the complainant to amend the proposed penalty based on information it timely obtains after the commencement of a suit.

EPA agrees that the approach USAF identified is appropriate in many cases. However, where EPA does not have adequate information to confidently recommend a specific penalty, EPA would be misleading the respondent were it to propose an arbitrary penalty which does not reflect significant facts of the case. An unreasonable penalty demand may also make EPA liable for respondent's attorneys' fees under the Equal Access to Justice Act (''EAJA''), 5 U.S.C. 504. The Small Business Regulatory Enforcement Fairness Act of 1996 (''SBREFA''), Pub.L. 104–121, expanded the EAJA to allow recovery of attorney's fees where an initial penalty demand is later shown to be unreasonable. Notice pleading is an appropriate and responsible choice in circumstances where liability is clear, but where EPA is not able to determine with confidence the reasonableness of a specific penalty amount before filing the case.

If EPA were not to provide the option of notice pleading, the SBREFA amendments would make it possible for polluters to escape high penalties if they can effectively hide from EPA their financial status or the economic benefits derived from their noncompliance with environmental regulation. Some statutes require EPA to consider a respondent's ability to pay the proposed penalty or its economic benefit of noncompliance in assessing a penalty (e.g., FIFRA section 14(a)(4), TSCA section 16(a)(2)(B), CWA section 309(g)(3), Clean Air Act (''CAA'') section 113(e)(1)), and EPA generally considers these factors relevant in penalty assessment under other statutes as well. However, authority for EPA to gather such information is not always clear, and under some statutes it has been expressly withheld (see, e.g., FIFRA section 8(b), 7 U.S.C. 136f(b), TSCA section 11(b), 15 U.S.C. 2610(b)). The SBREFA amendments to the EAJA make the Agency wary of seeking large penalties against individuals or privately held corporations (who do not generally make public disclosures of their financial condition) absent reliable financial information. Because EPA does not have the resources to inspect any but the largest facilities more than once every few years, inspections typically reveal violations that are several years old. The 5-year federal statute of limitations may limit the Agency's ability to sanction violators for older violations, so a respondent need only hide its financial status for a short time in order to forestall EPA from seeking penalties commensurate with a serious violation. Notice pleading increases the deterrent effect of EPA's enforcement program, and levels the regulatory playing field for publicly held and privately held corporations.

CEEC noted in its comments that the February 25, 1998, FR Notice of Proposed Rule Making did not analyze the proposed notice pleading option in light of the SBREFA amendments to the EAJA. The proposed rule, as well as today's final rule, is fully consistent with the EAJA as amended by SBREFA. The EAJA does not prohibit notice

pleading, and nothing in the SBREFA legislative history suggests any intent by Congress to limit its use in judicial or administrative enforcement. The EAJA does not require the agencies to include specific penalty demands in their complaints.

When a complainant makes an express demand, the remedies of the EAJA may be invoked. However, the EAJA explicitly excludes from the definition of ''demand'' any ''recitation of the maximum statutory penalty'' in the administrative or civil complaint. Consistent with this provision, EPA may postpone making a ''demand'' by exercising the notice pleading option of § 22.14(a)(4)(ii), and providing ''a brief explanation of the severity of each violation alleged and a citation to the statutory penalty authority applicable for each violation alleged in the complaint'' instead of a specific penalty demand.

Civil administrative penalty complaints should communicate the significance that the Agency places on the alleged violations. The CROP accomplishes this in both the traditional method embodied in § 22.14(a)(4)(i), and the notice pleading option in § 22.14(a)(4)(ii). Section 22.14(a)(4)(i) requires that the complaint state ''[t]he amount of the civil penalty which is proposed to be assessed, and a brief explanation of the proposed penalty,'' while § 22.14(a)(4)(ii) requires ''a brief explanation of the severity of each violation alleged and a citation to the statutory penalty authority applicable for each violation alleged in the complaint''. Moreover, EPA intends to maintain the practice developed in the notice pleading cases under the proposed part 28 administrative enforcement rules of concurrently supplementing complaints with early, informal settlement overtures to respondents. EPA has found this process expedites settlement while also providing respondents with more specific guidance on the penalty value the Agency places on its enforcement case.

EPA notes that notice pleading is not mandatory, but is instead an option. EPA expects that administrative complaints containing specific penalty proposals will continue to be a central part of the Agency's administrative enforcement program. However, one clear mandate of SBREFA is that the Agency should not make a penalty demand unless it has evidence to fully support that demand. Notice pleading balances the goals of SBREFA with those of the statutes EPA is charged with enforcing, as it allows the Agency to pursue enforcement in cases where adequate financial information is either unavailable or withheld by the respondent during the case development process.

Today's final rule is fully consistent with the spirit and intent of the Equal Access to Justice Act, in that the CROP produces complaints that are substantially justified by the facts, circumstances and relevant statutory and regulatory requirements alleged to be violated. The limitations on discovery in CROP proceedings practically force complainants to have in hand at the time an administrative complaint is filed virtually all the evidence necessary to prove the alleged violations and the appropriateness of the penalty. This is in marked contrast to the rules governing civil judicial enforcement, that allow complaints to be filed so long as the allegations and factual contentions ''are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery * * *.'' See Rule 11(b)(3) of the Federal Rules of Civil Procedure. The notice pleading option does not ease the Agency's pre-filing burdens associated with documenting that a regulatee has violated the law, but merely allows the filing of a complaint with somewhat less information about what penalty might be appropriate for those violations.

UWAG also questioned the efficacy of the notice pleading option, asserting that the Agency will be no better informed at the time of prehearing exchange or default than it is at the time the complaint is issued. EPA has shared this concern, and requested comments on whether complainant might postpone stating a specific proposed penalty for an additional 30 days, or longer, after prehearing exchange. 63 FR at 9472. Dow objected to postponement beyond prehearing exchange (although it did not state any objection to allowing complainant to state a specific proposed penalty for the first time in prehearing exchange). As discussed in the response to comments on § 22.19(a) below, it is appropriate to allow complainant to review respondent's prehearing exchange for 15 days before specifying a proposed penalty. EPA believes that this process properly balances the parties' competing interests.

Most regulatees will engage in settlement discussions with the Agency once a complaint has been filed. Such settlement discussions, often accompanied by voluntary exchanges of certain documents, almost always give EPA additional information about the merits of the Agency's allegations and the appropriateness of a penalty. In addition, § 22.15(b) requires respondent to state in its answer the ''circumstances or arguments which are alleged to constitute the grounds of any defense; the facts which respondent disputes; [and] the basis for opposing any proposed relief * * *.'' As a result of the information received through the answer and settlement discussions, complainant generally has a better understanding of whether respondent has financial limitations significant enough to warrant assessing a lower penalty. EPA recognizes that in some cases, a respondent may still resist providing necessary information. In such cases, the Agency's recourse would be to postpone proposing a specific penalty until 15 days after respondent has filed its prehearing exchange, in accordance with § 22.19(a)(4). If respondent's prehearing exchange fails to contain necessary information, complainant could then move for a discovery order, and subsequently amend the penalty demand as necessary.

Several commenters noted that notice pleading might impede quick resolution and settlement. CEEC notes that failure to provide a specific penalty amount early in the process can frustrate quick resolution of the proceedings. UWAG states that the failure to specify a sum-certain penalty in the complaint will undercut the Agency's goal of resolution of administrative complaints with a minimum of cost and delay, since a party will ''have no choice'' but to engage in settlement discussions in order to ascertain ''exactly what penalty'' the Agency is seeking. CMA/API notes that requiring a specific penalty demand amount encourages settlement because it makes clear to the respondent the extent of the penalty relief that EPA is seeking. CMA/API states that without a specific penalty amount stated in the complaint, a respondent can neither judge whether settlement is a realistic possibility nor gauge EPA's view of the significance of the matter. USAF states that the proposed change reduces the respondent's ability to negotiate and removes any incentive to negotiate.

The Agency acknowledges that notice pleading may impede use of the quick resolution process, and that it has the potential to delay settlement relative to cases where a sum certain penalty amount is stated in the complaint. However, notice pleading also provides an additional incentive to settle by preserving EPA's full penalty claim in the event settlement is not achieved. In those cases where the Agency perceives critical information gaps relevant to the amount of the penalty, these potential inefficiencies are an acceptable price to

pay in order to avoid making an unreasonable penalty demand.

EPA's introduction of the notice pleading option into CROP proceedings does not signal any intention to alter the Agency's longstanding policies and practices favoring expeditious settlements. Over the past 20 years, more than 98 per cent of all administrative cases have been settled without trials. Today's final rule evidences EPA's continuing commitment to non-adversarial resolution with new provisions such as commencement of pre-negotiated cases with a final order pursuant to § 22.13(b), the quick resolution of § 22.18(a), and procedures supporting alternative dispute resolution at § 22.18(d). Although notice pleading could possibly delay settlement, it is expected that the need to make efficient use of enforcement resources will restrain EPA's use of notice pleading if, in actual practice, it significantly reduces the frequency of settlements or the pace at which settlements are reached.

*c. Final Rule.* EPA has adopted § 22.14 as proposed, with several changes. As noted above, EPA has revised § 22.14(a)(4)(ii) to require that where complainant chooses not to specify a proposed penalty in the complaint, the complaint must state ''the number of violations (where applicable, days of violation) for which a penalty is sought''.

EPA also has made several minor changes at its own initiative. The proposed § 22.14(a)(6) required complainant to specify in the complaint whether subpart I ''applies to such hearing.'' EPA has revised this paragraph to clarify that where subpart I applies, it applies to the entire proceeding, and not just the evidentiary hearing phase.

EPA has added two new requirements as to content of the complaint. Section 22.14(a) now requires in paragraph (7) that the complaint include the address of the Regional Hearing Clerk, and in paragraph (8) requires instructions for paying penalties, if applicable. EPA has observed that the names and addresses of the lock box banks change often, and that it would be difficult to keep the proposed Appendix B up to date. EPA also notes that Appendix A is redundant with 40 CFR 1.7, and moreover, notes that these addresses are of less value to respondent than the specific address of the Regional Hearing Clerk. EPA has decided to expand § 22.14(a) to require that the relevant information appear in the complaint, and to delete both appendices.

In recognition of the fact that most complaints allege more than one violation, EPA has amended § 22.14(a)(3) to require that the complaint state the factual basis ''for each violation alleged.''

For the convenience of respondents receiving complaints which do not specify a proposed penalty, EPA has amended § 22.14(a)(4)(ii) to clarify that the complaint shall include ''a recitation of'', rather than a mere ''citation to'', the applicable statutory penalty authority.

EPA has revised § 22.14(a)(4)(iii) and (a)(5), as well as other sections of the CROP, to replace the unwieldy phrase ''revocation, termination or suspension of all or part of a permit'' with a new term ''Permit Action.'' EPA has moved the ''revocation, termination or suspension'' language into the definition of ''Permit Action'' at § 22.3(a), which makes the remainder of the CROP easier to read, and will facilitate any future efforts to bring other permit actions within the scope of the CROP.

EPA has changed the title of this section from ''Content and amendment of the complaint'' to the more general ''Complaint''. Finally, to conform to the preferred style of the U.S. Government Printing Office, EPA has revised § 22.14(c) to state the time allowed for responding to an amended complaint with the numeral ''20''.

10. Answer to the Complaint (40 CFR 22.15)

*a. Summary of Proposed Rule.* EPA proposed to amend § 22.15(a) to clarify requirements for filing and serving the answer to a complaint, and to extend the time allowed for the filing of an answer from 20 days to 30 days. EPA proposed to add to paragraph (b) a new requirement that the answer state the basis for opposing any proposed penalty, compliance or corrective action order, or permit revocation, termination or suspension. EPA proposed editorial changes to paragraph (c), and proposed no changes to paragraphs (d) or (e).

*b. Significant Comments and EPA Response.* USAF notes that where complainant has elected not to specify a penalty in the complaint, respondent cannot comply with the proposed requirement in § 22.15(b) that the answer state respondent's basis for opposing the proposed relief. In response, the final rule now requires that the answer shall state ''the basis for opposing any proposed relief * * *''

CEEC urges that EPA amend § 22.15(e) to allow respondent to amend its answer as a matter of right, arguing that respondent is unlikely to have all the necessary information at the time the answer is due. Allowing amendment of the answer as a matter of right would not encourage diligence in answering the complaint, and could disrupt the orderly progress of proceedings. Accordingly, EPA declines to adopt CEEC's suggestion.

The existing CROP allows amendments of the answer at the presiding officer's discretion, and motions to amend pleadings are generally granted. See, e.g., In re Port of Oakland and Great Lakes Dredge and Dock Co., 4 E.A.D. 170, 205 (EAB 1992) (''the Board adheres to the generally accepted legal principle that administrative pleadings are liberally construed and easily amended'') (citations omitted). Moreover, in paragraph (a) EPA already has expanded by 50% the time allowed for assembling information and preparing an answer. Although leave to amend pleadings is liberally granted, allowing amendments to the answer as a matter of right would make the CROP significantly less efficient. The purpose of the answer is to clarify what is contested and what is not contested at an early stage of the proceeding. Allowing amendment of the answer as a matter of right would not encourage due diligence in framing the issues, and could unfairly prejudice complainant if, for example, respondent were to substantially alter its defenses shortly before, or even after, the evidentiary hearing. Accordingly, CEEC's recommendation is rejected, except in circumstances where the complaint has been amended.

*c. Final Rule.* For the foregoing reasons, EPA has adopted § 22.15 of the CROP as proposed, with the exception of certain changes. As discussed above, the language of § 22.15(b) is amended to require that the answer state ''the basis for opposing any proposed relief * * *'', and the proposed § 22.15(e) is amended to allow amendment as of right whenever the complaint is amended.

Section 22.15(c) of both the proposed rule and the 1980 CROP states that ''[a] hearing ... shall be held if requested by respondent in its answer.'' As used in this context, the word ''hearing'' refers to an adjudicatory proceeding, and encompasses a determination on motion papers alone. See In re Green Thumb Nursery, Inc., 6 E.A.D. 782, 790 & n.14 (EAB 1997) (holding that there is no right to an oral evidentiary hearing). Elsewhere in both the proposed rule and the 1980 CROP, ''hearing'' refers specifically to the oral evidentiary hearing phase of a proceeding. In today's final rule, EPA has endeavored to use the term ''hearing'' to refer specifically to the oral evidentiary hearing. In order to avoid the implication that a request for a hearing

necessarily results in an oral evidentiary hearing, EPA has replaced the word ''shall'' with ''may.''

Consistent with the changes noted in § 22.14(a)(4)(iii) and (a)(5) above, EPA has revised § 22.15(a) by replacing the phrase ''permit revocation, termination or suspension'' with a new term ''Permit Action.'' To conform to the preferred style of the U.S. Government Printing Office, EPA has revised § 22.15(a) to state the time allowed for filing an answer with the numeral ''30''.

11. Default (40 CFR 22.17)

*a. Summary of Proposed Rule.* The proposed § 22.17 would reorganize the entire section to indicate the role of each of the parties and the Presiding Officer in a sequential manner.

Paragraph (a) would describe the actions of each party that may result in a finding of default and the consequences of such a finding for each of the parties. Provisions describing the end of the process (i.e., when penalty monies come due, when a permit revocation, termination or suspension becomes effective) would be moved to paragraph (d).

Paragraph (b) would describe content requirements for motions for default and would include a requirement that when the motion requests the assessment of a penalty or the imposition of other relief against a defaulting party, the movant must specify the penalty or other relief sought and must put into the record the legal and factual grounds for the relief requested. This amendment accommodates the change in § 22.14 that allows notice pleading in which the complainant elects not to demand a specific penalty in the complaint.

Paragraph (c) would describe the default order itself, would provide that a default order shall be an initial decision, and would clarify the standards for granting the default order, for granting the relief proposed, and for setting the order aside. In addition, proposed paragraph (c) would remove the apparent restriction on the Presiding Officers' discretion in existing § 22.17(a), in which a default order automatically assesses the penalty proposed in the complaint, or automatically revokes or terminates the permit according to the conditions proposed in the complaint. Although the proposed paragraph (c) would acknowledge that the Presiding Officer has some discretion regarding default orders, it would require that the proposed relief must be granted unless the record clearly demonstrates that the requested relief is inconsistent with the Act.

Paragraph (d) would specify when penalties assessed by default are due, and the effective dates for the default revocation, termination or suspension of permits, and for the default issuance of compliance or corrective action orders.

*b. Significant Comments and EPA Response.* Dow suggests revising § 22.17(a) to allow other less serious sanctions. Dow argues that minor or technical defaults, such as not including a proof of service in a responsive document when proper service is perfected or failing to appear at a conference due to weather conditions, do not deserve the severe sanctions delineated in the section. Dow's objection seems to be two-fold: that issuance of an order of default is mandated upon the violative conduct and that an issued order of default might be too severe under certain circumstances.

Dow's objection concerns language that has been in § 22.17(a) since 1980. The CROP has not mandated and does not now mandate automatic determination of default liability. The proposed rule retained the language in § 22.17(a) which states that a ''party may be found to be in default'', and in § 22.17(c) included the old § 22.17(d) language ''[f]or good cause shown, the Presiding Officer may set aside a default order'' [emphasis added]. Moreover, the proposed rule adds a new provision at § 22.17(c), which states that ''[w]hen the Presiding Officer finds that default has occurred, he shall issue a default order against the defaulting party unless the record shows good cause why a default order should not be issued''. Therefore, the new provisions at § 22.17 would allow Presiding Officers to exercise discretion in issuing a default order for ''minor or technical default.''

Furthermore, Presiding Officers do have authority to impose sanctions less than a complete finding of default when appropriate. Section 22.16(b) provides that any party who fails to respond to a motion within the designated period waives any objection to the granting of the motion. Section 22.19(g) provides that a when a party fails to respond to a discovery or prehearing exchange order as required, the Presiding Officer may draw adverse inferences and exclude information from evidence. As noted above in the response to comments on § 22.5(c), EPA has amended § 22.5(c)(5) so that the Presiding Officer may exclude from the record documents that are improperly served or untimely filed.

EPA has made no change to § 22.17(a) in response to Dow's comment because the CROP does not mandate default for minor errors and because other provisions of the CROP authorize less severe sanctions that are appropriate for types of nonperformance that fall short of default. Nevertheless, EPA has revised § 22.17(c) to emphasize the Presiding Officer's discretion, as discussed below.

The proposed § 22.17(b) would require complainant to specify the penalty sought and the legal and factual grounds therefor in any motion that ''requests the assessment of a penalty or the imposition of other relief against a defaulting party * * *'' This provision was added in order to complement the notice pleading option in § 22.14(a)(4)(ii), giving respondents notice of complainant's specific penalty demand assuring that record will support the penalty assessed. CEEC argues that delaying disclosure of the penalty demand until this stage ''delays resolution, fails to give respondents sufficient notice; frustrates small entities' or small business' rights under SBREFA; and thwarts EPA's goal to increase administrative efficiency.'' For the reasons stated above in the response to comments on § 22.14(a)(4), EPA disagrees. Because EPA has retained the notice pleading option in § 22.14(a)(4), EPA also retains in § 22.17(b) the requirement that complainant specify a penalty and state the legal and factual grounds therefor.

In its objection to the notice pleading option, CEEC states that the new provision requires disclosure of the penalty demand in ''any motion for default'' when such demand has not been disclosed in the complaint. This statement does not correspond exactly to the text of the § 22.17(b), which only requires that motions for default specify a penalty sought ''[w]here the motion requests the assessment of a penalty * * *'' Section 22.17(b), consistent with accepted practice under the existing CROP, allows parties to make motions that merely ask the Presiding Officer to determine whether a default has occurred, without arguing at that time what penalty should be assessed.

As noted in the response to comments on § 22.17(a), not all failures to conform to the CROP will warrant a default judgment. Until such time as a respondent is found to be liable for a default judgment, it is not necessary for the parties to commit their resources to arguing what relief is appropriate. Motions for default may be likened to motions for accelerated decision: It is appropriate in many instances to file a motion for partial accelerated decision, that merely attempts to resolve whether as a matter of law respondent is or is not liable for a violation, leaving the determination of the proper penalty for

a subsequent motion if liability is established. This approach spares the parties from burdensome litigation over an issue that may be moot.

CEEC's statement mirrors a statement in the preamble to the proposed rule (63 FR at 9469). EPA acknowledges that this statement, while generally accurate, is overly broad in that it incorrectly implies that every motion for default must specify a penalty. In order to avoid unnecessary burdens on the litigants, EPA intends that the CROP should continue to allow parties to make motions that merely ask the Presiding Officer to determine whether a default has occurred, without specifying a penalty in that particular motion. Pursuant to the second sentence of paragraph (b), complainant will still be obliged to specify a penalty if it moves for the assessment of a penalty against a defaulting party. However, this may be a second motion that follows a finding that default judgment against respondent is warranted.

In order to eliminate any confusion resulting from the overly broad statement in the preamble or ambiguity in the regulation itself, EPA has added an additional clarifying sentence to § 22.17(b): ''The motion may seek resolution of all or part of the proceeding.''

Dow supports the revision of § 22.17(c) that gives the Presiding Officers greater discretion in determining the appropriate relief in the default orders because this ''flexibility will let the Presiding Officer ensure that any relief ordered is supported by the administrative record.'' Dow's comment is essentially reiterated by CMA and API: both organizations ''support the provision requiring the Presiding Officer, when issuing a default order, to determine that the relief sought in the complaint is consistent with the applicable statute.''

Even though there were no adverse comments regarding this provision, the preceding discussion of paragraphs (a) and (b) suggests some useful revisions of paragraph (c). First, corresponding to § 22.17(b)'s statement that a default ''motion may seek resolution of any or all parts of the proceeding'', § 22.17(c) is revised to no longer require that a default order must be an initial decision, unless it resolves ''all issues and claims in the proceeding.'' This will allow Presiding Officers to find a party liable in default, without necessarily determining the appropriate relief in the same order.

Second, EPA has also relaxed the proposed requirement that ''the relief proposed in the complaint or the motion for default shall be ordered unless the record clearly demonstrates that the requested relief is inconsistent with the Act.'' Under this proposed language, if a proposed penalty were inconsistent with the record (e.g., owing to a mathematical error), though not to such a degree as to be clearly inconsistent with the statutory penalty authority, the Presiding Officer would apparently be required to assess the proposed penalty. In order to prevent injustice, EPA has amended this language to allow the Presiding Officer to impose other relief where ''the requested relief is clearly inconsistent with the record or the Act''.

*c. Final Rule.* EPA is adopting § 22.17 as proposed, but with several modifications. As discussed above, EPA has added one sentence to § 22.17(b). EPA has also noted that the rest of the proposed § 22.17(b) repeats parts of § 22.16(a). Section 22.16 applies to all motions, except as otherwise provided, so restatement is not necessary in § 22.17(b). Moreover, the failure to include all of § 22.16(a) in § 22.17(b) introduces potential confusion. Accordingly, EPA has deleted from the final rule those parts of the proposed § 22.17(b) that are redundant with the general requirements for motions at § 22.16.

The proposed § 22.17(a) provided that a default by respondent would constitute a waiver of respondent's ''right to a hearing'' on the factual allegations in the complaint. Throughout today's final rule, for clarity and consistency, EPA has endeavored to use the term ''hearing'' only to refer to oral evidentiary hearings. As there is no right to an oral evidentiary hearing (see, e.g., In re Green Thumb Nursery, Inc., 6 E.A.D. 782 (1997)), EPA has revised § 22.17(a) to state that default by respondent constitutes a waiver of respondent's ''right to contest'' the factual allegations in the complaint. EPA has replaced the undefined word ''action'' in § 22.17(a) with the word ''proceeding,'' which is defined in today's final rule as discussed below.

EPA has revised § 22.17(c) as follows: (1) EPA has added the clause ''as to all or part of the proceeding,'' to the first sentence, before ''unless the record shows''; (2) EPA has revised the second sentence to say ''If the order resolves all outstanding issues and claims in the proceeding, it shall constitute the initial decision under these Consolidated Rules of Practice.''; (3) EPA has expanded the next to last sentence in order to allow the Presiding Officer to impose relief other than that requested by complainant if it is clearly inconsistent with the record of the proceeding. In addition, EPA has split the second sentence of the proposed § 22.17(c) into two sentences. This editorial revision is not intended to effect a substantive change.

For consistency with changes elsewhere in the CROP, EPA has revised § 22.17(d) to refer to the effective date of a ''Permit Action'' rather than the effective date of a permit revocation or suspension. To conform to the preferred style of the U.S. Government Printing Office, EPA has also revised § 22.17(d) to state the time allowed for paying default penalties with the numeral ''30''.

12. Quick Resolution (40 CFR 22.18(a))

*a. Summary of Proposed Rule.* In cases where the complaint proposes a specific penalty amount (and seeks no other relief), the proposed § 22.18(a)(1) would provide that the respondent can resolve the case at any time by simply paying the proposed penalty in full. The only restriction on when the respondent can take advantage of the quick resolution provision is in cases involving the public comment provisions of § 22.45. In these cases, the respondent must wait until 10 days after the period for public comment has closed before submitting the penalty payment.

Where the complaint includes a specific proposed penalty, the proposed § 22.18(a)(2) would allow respondent to resolve an action without filing an answer by paying the penalty within 30 days of receipt of the complaint. By paying the proposed penalty within that 30 day time frame, the action is resolved before the answer is due and hence there is no need for respondent to file an answer.

If the respondent wishes to resolve the matter by paying the proposed penalty in full but needs additional time in which to do so, § 22.18(a)(2) would allow the respondent to file a written statement with the Regional Hearing Clerk within 30 days of receiving the complaint in which it agrees to pay the penalty within 60 days of receipt of the complaint.

*b. Significant Comments and EPA Response.* Dow noted that in actions subject to the public comment provisions, the 30 day public comment period may require respondent to file an answer even though it wants to resolve the action, because the last sentence of § 22.18(a)(1) provides that a respondent cannot utilize the quick resolution provision until 10 days after the close of the public comment period. This commenter suggested amending the last sentence of § 22.18(a)(1) to explicitly provide that the respondent does not have to file an answer if it wishes to settle the action by paying the full penalty. Instead, EPA believes that the

better approach is for respondent to file a statement agreeing to pay the full penalty, in accordance with § 22.18(a)(2), and delay payment until the eleventh day after the close of the public comment period. Section 22.18(b)(2) provides ample time for paying the proposed penalty after the close of the public comment period, so long as the public notice is issued contemporaneously with the complaint. If the public notice is delayed, a motion for extension of time may be necessary.

CEEC supports the proposed inclusion of the ''quick resolution'' process, but noted that the quick resolution option is not available to respondents if the complaint does not propose a specific penalty. The proposed language would have prevented respondents who receive complaints that did not contain specific penalty demands from exercising the quick resolution option even after EPA has made a specific penalty demand. This was unintended, and EPA has revised § 22.18(a)(1) so that once complainant has made a specific penalty demand, respondent may resolve the proceeding by paying the proposed penalty in full. The option of notice pleading in lieu of pleading a specific penalty amount is intended to provide EPA with flexibility in those situations where only the violator possesses information crucial to the proper determination of the penalty, such as the economic benefit the violator derived from its noncompliance, or its ability to pay the penalty. Under such circumstances, EPA needs to obtain and review the necessary information before proposing a penalty. Section 22.19 of the rule provides that EPA must at the prehearing exchange stage propose a specific penalty. Once EPA proposes a specific penalty, the respondent may, if it wishes, utilize the quick resolution provision and pay the proposed penalty in full at that time. As a result of this revision, notice pleading does not prevent the use of the quick resolution provision by the respondent, it only delays it. While the respondent, under such circumstances, would not be able to take advantage of the quick settlement until after the prehearing exchange, respondents always have the option of early resolution of the proceeding pursuant to § 22.18(b), by informally negotiating settlement with the Agency.

The same commenter noted that the quick resolution option was available to respondents only if they are willing to pay the full amount of the proposed penalty. This commenter also noted that the quick resolution provision should include safeguards to prevent or redress those situations where EPA may have pled an excessive penalty amount. These comments appear to envision a quick resolution that is entirely unlike that proposed in § 22.18(a), but which does not appear to differ significantly from the settlement process in § 22.18(b) and (c). As presently codified, the CROP does not explicitly provide for a ''no contest'' plea. EPA intended to remedy this by explicitly providing in the proposed § 22.18(a) a formal process for a respondent who—upon receipt of the complaint or at any later time—wishes to simply pay the proposed penalty and disengage from the proceeding. In contrast, the settlement provisions of § 22.18(b) and (c) provide opportunity to negotiate a settlement that could terminate the proceeding upon payment of a lesser penalty. If the respondent believes that EPA has pled an excessive amount, the respondent has the option of informally discussing the matter with EPA during settlement negotiations, or formally contesting the proposed penalty through the hearing process. Consequently, there is no need to amend the proposed § 22.18(a) to safeguard respondents' interests.

The USAF noted that, because of fiscal law requirements, it would be difficult for a federal agency to make a penalty payment within 60 days of complaint issuance, thereby effectively foreclosing federal agencies from taking advantage of the quick resolution provision. The USAF suggests that 18 months would be appropriate. EPA acknowledges that it may be difficult for a federal agency, or a state or local agency, to pay a penalty within 60 days of receipt of the complaint. However, EPA does not believe that the intended purpose of the quick resolution provision would be served by such an extension of the payment period. Where respondent is unable to pay the penalty within 60 days, EPA believes that the § 22.18(b) settlement process would be the appropriate process for terminating the proceeding.

The USAF also noted that this section obligates respondent to admit the jurisdictional allegations of the complaint and waive its right to appeal a final order, and argues that this deprives the federal respondent its right to elevate the matter to the President. The Agency maintains that if a federal agency wishes to contest a proposed penalty, it should exercise its right to hearing and raise the matter through the appeal processes provided. If, on the other hand, the federal agency wishes to conclude the action, it must be willing to agree to waive its rights to further appeals.

*c. Final Rule.* As noted above, EPA has amended the proposed § 22.18(a)(1) to allow quick resolution at any point in a proceeding once complainant has proposed a specific penalty, including penalties specified in complainant's prehearing exchange, and by moving from the first to the second sentence the language that limited quick resolution to cases where the complaint contained a specific proposed penalty.

As discussed in connection with the revisions to § 22.14, EPA has deleted Appendix B. Accordingly, EPA has revised the first sentence of § 22.18(a)(1) to require that payment be made as specified by complainant, and deleted reference to Appendix B. In order to address interbank funds transfers, EPA has expanded § 22.18(a)(1) to include other instruments of payment. With these changes, the first two sentences of § 22.18(a)(1) now read as follows:

> A respondent may resolve the action at any time by paying the specific penalty proposed in the complaint or in complainant's prehearing exchange in full as specified by complainant and by filing with the Regional Hearing Clerk a copy of the check or other instrument of payment. If the complaint contains a specific proposed penalty and respondent pays that proposed penalty in full within 30 days after receiving the complaint, then no answer need be filed.

The proposed § 22.18(a)(3) provided that quick resolution would constitute a waiver of respondent's ''rights to a hearing''. Throughout today's final rule, for clarity and consistency, EPA has endeavored to use the term ''hearing'' only to refer to oral evidentiary hearings. As there is no right to an oral evidentiary hearing (see, e.g., In re Green Thumb Nursery, Inc., 6 E.A.D. 782 (EAB 1997)), EPA has revised § 22.18(a)(3) to state that quick resolution constitutes a waiver of respondent's ''rights to contest the factual allegations in the complaint''.

EPA has also corrected a typographical error in the word ''section'' that appeared in the third sentence of the proposed § 22.18(a)(1). In the third sentence of § 22.18(a)(1), EPA has replaced the phrase ''to revoke, terminate or suspend a permit'' with the term ''Permit Action'', as discussed in connection with revisions to § 22.3(a) and § 22.14(a)(4)(iii).

EPA has replaced the undefined word ''action'' in § 22.18(a)(1) and (2) with the word ''proceeding,'' which is defined in today's final rule as discussed below. Finally, to conform to the preferred style of the U.S. Government Printing Office, EPA has revised § 22.18(a)(1) and (2) to state all time periods with numerals.

13. Settlement and Scope of Resolution or Settlement (40 CFR 22.18(b)&(c))

*a. Summary of Proposed Rule.* The proposed § 22.18(b) would clarify the existing settlement process. Paragraph (b)(2) would specify that consent agreements contain an express waiver of the respondent's right to a hearing and appeal of the final order, and establishes additional content requirements for consent agreements in cases where the complainant proposes to simultaneously commence and conclude a case pursuant to § 22.13(b) through filing of a consent agreement and final order negotiated before a complaint is issued.

Paragraph (b)(3) would be revised to expressly provide that an administrative action is settled only when the Regional Judicial Officer or Regional Administrator, or, in cases commenced at EPA Headquarters, the Environmental Appeals Board, approves a consent agreement and issues a final order.

Paragraph (c) would provide that the effect of settlements and full payment of proposed penalties is limited to those facts and violations specifically alleged in the complaint, and reserves the Agency's right to pursue injunctive relief or criminal sanctions.

*b. Significant Comments and EPA Response.* Dow urges that § 22.18(b)(2) should expressly provide for partial or contingent settlements. Dow's particular concern is that paragraph (b)(2) should not require respondent to waive its right to hearing or to appeal matters that are raised in the complaint but not included in the consent agreement or the final order. Dow's comments do not take issue with the waiver of rights to hearing or appeal in settlements of the entire proceeding.

Paragraphs (a), (b) and (c) of § 22.18 define the process by which the parties may resolve an entire proceeding, and so, consent agreements pursuant to § 22.18(b)(2) and final orders under § 22.18(b)(3) can be neither partial nor contingent. Nevertheless, EPA disagrees with Dow's conclusion that the proposed rule precludes partial or contingent settlements. Where the parties wish to settle some of the counts in a complaint, they may file stipulations as to a respondent's liability, and/or to the appropriate relief, for those counts. Where the parties seek a more final resolution, they may move pursuant to § 22.12(b) to sever the case ''with respect to any or all parties or issues.'' Upon severance, the parties may settle the uncontested portions and litigate the contested portions. Contingent settlements (e.g., where the parties agree that if a contested issue is resolved in a certain manner, then the parties agree to settle on predetermined terms) are possible under the proposed rule, however, the documents committing the parties to the contingency agreement would not themselves constitute ''consent agreements'' pursuant to § 22.18(b)(2). Such contingent settlements could be accomplished, for example, through formal stipulations as to the appropriateness of certain relief in the event that liability is established, or agreements to sign a specific ''consent agreement'' when the agreed conditions are met. As the problems Dow describes can easily be avoided, EPA believes that the language in the proposed rule is desirable in that it gives respondents unambiguous notice that consent agreements waive respondents' rights to a hearing and all rights of appeal, including appeal to the federal courts as well as appeal to the EAB under §§ 22.30 and 22.32.

CMA/API object to language proposed for § 22.18(c) that would limit the scope of relief available in settlements to those ''violations and facts'' alleged in the complaint. CMA/API feel this provision prevents the parties from taking advantage of the economies that result from resolving in a single settlement additional violations that may come to light during the proceeding. EPA agrees that it is, in many cases, desirable to resolve in a single proceeding additional violations that become apparent as a case progresses. However, such expansions of a proceeding should be accomplished through motions to amend the complaint, pursuant to § 22.14(c). Although even a joint or uncontested motion to amend the complaint is somewhat more burdensome that expanding the case through a consent agreement alone, this burden is outweighed by the interest of assuring a clear public record of the Agency's administrative enforcement proceedings.

This is particularly important where statutes require public notice of a proposal to assess penalties for specific violations. Such statutes envision that interested members of the public will have had notice of all violations cited in the complaint and all violations resolved by consent agreement, in order to properly avail themselves of their statutory rights as to those actions.

CEEC also objects to the proposed language limiting settlements to ''the facts and violations alleged in the complaint'', on the grounds that it is improper for the Agency to assess in a subsequent proceeding additional penalties for other violations arising out of the same circumstances identified in the initial proceeding. As noted above, EPA is well aware that resolving as many violations as possible within a single proceeding generally demands less resources than pursuing multiple cases involving similar facts or issues, and EPA generally can be counted on to take advantage of such cost-saving opportunities. There are, however, circumstances where this may be inadvisable or impossible. For example, where one violation is straightforward and undisputed, neither party would gain from delaying resolution of that case in order to address within the same proceeding another violation sharing certain facts with the first, but concerning a different statute, an unsettled area of the law, and presenting substantial evidentiary disputes. In other circumstances, where new facts establishing other violations come to light after the close of a case, it would be impossible to resolve these newly discovered violations through the closed case. EPA therefore disagrees with CEEC's contention that it is necessarily improper for EPA to seek penalties in a subsequent proceeding for violations related to the initial proceeding.

Section 22.14(a) requires that a complaint specify each statutory provision, regulation, permit or order that respondent is alleged to have violated, and a concise statement of the factual basis for alleging the violation. The complaint thereby describes the violations at issue in the case, in terms of the specific legal requirements and their specific factual circumstances; anything else is outside the scope of the proceeding. This description of the violations that comprise the case must also describe the scope of any settlement. Any violations that are outside the scope of the complaint must necessarily be outside the scope of any possible settlement.

The language of § 22.18(c) to which CEEC objects merely states that payment of a penalty ''shall only resolve respondent's liability * * * for the violations and facts alleged in the complaint.'' This provision defines the scope of settlement in its most obvious and straightforward sense.

*c. Final Rule.* EPA is adopting § 22.18(b) and (c) as proposed, with minor editorial changes. The proposed § 22.18(b)(2) provided that in a consent agreement, respondent must waive ''any right to a hearing''. For the reasons noted in the discussion of § 22.18(a)(3) above, EPA has revised this to require that respondent waive ''any right to contest the factual allegations in the complaint''. EPA has also replaced the term ''consent order'' with the term ''final order'' or ''proposed final order'' in paragraph (b) and elsewhere (§§ 22.3

(definition of final order), 22.13(b), and 22.45(b)(4)). A consent order is in fact a final order, and CROP's suggestion that there is a distinction only adds potential for confusion. EPA has replaced the phrase ''permit revocation, termination or suspension'' with ''Permit Action'', as discussed in connection with revisions to § 22.3(a) and § 22.14(a)(4)(iii). Finally, reflecting changes to § 22.14(a) noted above, EPA has added the requirement that in proceedings commenced pursuant to § 22.13(b), the consent agreement shall also contain the information required in § 22.14(a)(8).

14. Alternative Dispute Resolution (40 CFR 22.18(d))

*a. Summary of Proposed Rule.* The proposed § 22.18(d) would add a new provision that recognizes the use of alternative dispute resolution (''ADR'') within the scope of the Alternative Dispute Resolution Act, 5 U.S.C. 581 *et seq.* The proposed rule would provide that, while the parties engage in ADR, the enforcement proceeding is not automatically stayed, jurisdiction remains with the Presiding Officer, and all provisions of the CROP remain in effect. The parties may select any person to act as a neutral, or may file a motion with the Presiding Officer to request a neutral. If the Presiding Officer concurs with the motion, the Presiding Officer forwards the motion to the Chief Administrative Law Judge who designates a qualified neutral.

*b. Significant Comments and EPA Response.* Those who commented on the proposed § 22.18(d) support the Agency's use of ADR and inclusion in the CROP of a provision that recognizes ADR. CEEC believes that the proposed rule does not go far enough to encourage ADR, that it seems to employ ADR only after a complaint is filed, and that it limits the use of ADR by not staying the enforcement proceeding when the ADR process is commenced. CEEC urges the Agency to make available and encourage the use of a broad array of ADR options, by formalizing the availability of the complete range of ADR. Dow Chemical supports the allowance upon request of temporary stays and extensions for motions, discovery and hearings during ADR proceedings, to encourage voluntary settlement and to avoid imposing undue burdens on the parties and the Presiding Officer.

EPA believes that the absence of an automatic stay provision in the rule does not unreasonably limit the use of ADR. The Presiding Officer always has the discretion to grant a stay in connection with the parties' use of ADR, but such a decision should be made for each case individually depending on the circumstances, and a stay may be inappropriate in cases of excessive delay.

EPA agrees that a broad array of ADR options should be made available to parties, but believes that it is not necessary to list in the rule, and thereby possibly limit, the range of ADR options. Section 22.18(d)(1) provides for ''any process within the scope of the Alternative Dispute Resolution Act.'' The neutral serving in the particular case may discuss ADR options with the parties.

CEEC objected that the CROP does not require the Agency to attempt to resolve a case before filing the complaint. The CROP does not limit ADR to the time after a complaint is filed. The parties may agree to use ADR prior to the filing of a complaint.

*c. Final Rule.* EPA has adopted § 22.18(d) as proposed, with minor technical revisions to paragraph (d)(3) intended to address two concerns. First, in subpart I cases, it is appropriate for a neutral to be appointed by the Regional Administrator rather than by the Chief Administrative Law Judge. Second, it is more accurate to say the Presiding Officer ''grants'' a motion, rather than ''concurs with'' a motion.

15. Prehearing Exchange; Prehearing Conference (40 CFR 22.19(a)&(b))

*a. Summary of Proposed Rule.* EPA proposed to amend § 22.19(a) and (b) by reversing paragraphs (a) and (b) in order from the existing CROP, reflecting the fact that the information exchange is more common than, and usually precedes, a prehearing conference. The requirements for the prehearing exchange would now appear in paragraph (a). In addition to the information required to be exchanged under § 22.19(b) of the existing CROP, EPA proposed that the complainant would specify a proposed penalty if it has not done so in the complaint and state the basis for that penalty. The respondent would be required to provide all factual information it considers relevant to the assessment of a penalty, even if the complainant did not identify a specific penalty in the complaint. EPA also proposed under § 22.22 to tighten the standards for admitting into evidence information that was not timely exchanged.

In addition, EPA requested comments on whether it is necessary for the complainant to specify a proposed penalty in the prehearing exchange when it has not specified a specific penalty in the complaint (notice pleading). Comments were also requested on the merits of allowing the complainant to postpone for an additional 30 days, or indefinitely, the making of a specific penalty demand where EPA has not specified a specific penalty in the complaint. EPA also requested comments on the merits of requiring by rule that the parties simultaneously perform their prehearing information exchange 90 or 120 days after the filing of the answer, rather than requiring a prehearing exchange order from the Presiding Officer. 63 FR at 9472.

EPA proposed to revise paragraph (b) to no longer compel the Presiding Officer to require the parties to ''appear at a conference before him'', but instead would make the nature of the conference more flexible.

*b. Significant Comments and EPA Response.* CEEC opposes allowing EPA to postpone making a specific proposed penalty until the prehearing information exchange, insisting that the proposed penalty appear in the complaint. Dow does not object to postponing the specific penalty until prehearing exchange, but objects to any further postponement. Dow notes that if information obtained during or after the prehearing exchange warrants a change in the proposed penalty, the CROP already allows for amendment of the pleadings. Dow maintains that requiring a specific proposed penalty is not a hardship for the complainant, however, postponing it beyond prehearing exchange would impose a hardship on the respondent. Respondents need to know the proposed penalty amounts to make informed decisions about settling or contesting violations. Therefore, Dow argues that no further delays or extensions should be allowed, except with the consent of the respondent. UWAG suggested that the proposal would be ineffective because complainant would be no better informed at the time of prehearing exchange than it is at the time the complaint is issued.

As set forth in the discussion concerning § 22.14, EPA has retained § 22.14(a)(4)(ii), which allows EPA to elect not to specify a specific penalty in the complaint. When complainant has incomplete or unreliable information on subjects such as the economic benefit respondent received from its unlawful conduct and its ability to pay a penalty, it would be of little benefit to respondent for complainant to make an uninforme—and possibly unrealistic—penalty demand, which would need to be amended when better information becomes available. Complainant would risk specifying either a too-high figure that could result in EAJA claims, or a too-low figure that fails to achieve

deterrence, and then be forced to defend its guesswork in the penalty litigation. EPA has concluded that complainants should not have to specify a penalty demand until after prehearing exchange.

EPA continues to believe that there is merit to giving respondents a specific penalty demand at the earliest practical stage of a proceeding, and has therefore not adopted the approach used in the federal courts, where specific penalty demands generally are not made until the end of the proceeding. Today's final rule requires complainant to specify a proposed penalty no later than 15 days after respondent has filed its prehearing exchange. The final rule requires each party to include in its prehearing information exchange all factual information it considers relevant to the assessment of a penalty, as well as exhibits and documents it intends to use at the hearing, names of witnesses and summaries of their anticipated testimony. Owing to the general nature of these prehearing exchange requirements, further discovery may still be appropriate, and complainants may need to amend their proposed penalties, but the prehearing information exchange nonetheless will provide complainants with a substantial basis for formulating a specific penalty demand.

CEEC and Dow oppose automatic prehearing exchange, stating that during productive settlement discussions such attention could be better spent on settlement. Dow proposes one of the following options: (1) making the prehearing exchange totally dependent on an order from the Presiding Officer, or (2) making the prehearing exchange automatic, but expressly allowing the Presiding Officer to issue a temporary stay or to extend the deadline. CMA/API recommend a default time period of 90 days prehearing exchanges as a starting point, which the parties would be allowed to modify by mutual agreement.

Today's final rule does not require the automatic filing of prehearing exchanges. Although such a requirement may expedite resolution of many cases, EPA believes that it would be a distraction and an unnecessary burden in that greater number of cases that progress readily toward settlement. Furthermore, the Presiding Officer may require additional information from the parties as part of his or her prehearing scheduling order than is provided in § 22.19(a). Therefore, the prehearing exchanges will not be required until ordered by the Presiding Officer.

Regarding the proposed § 22.19(b), Dow notes that EPA failed to delete the phrase ''before him'', as discussed in the preamble to the proposed rules. EPA agrees that this editorial change would help clarify that § 22.19(b) no longer requires that the parties personally appear before the Presiding Officer, but allows the Presiding Officer to conduct telephonic prehearing conferences.

CEEC proposes that EPA should be required, as part of its prehearing exchange, to provide a respondent with all information relevant to whether the respondent had fair notice of the regulatory requirement(s). Many different offices in EPA conduct compliance assistance, provide speakers, and otherwise publicize regulatory requirements, and documenting all such efforts in every case would present an unreasonable and unnecessary burden on complainant, particularly because fair notice of the law is rarely an issue. Moreover, it is unlikely that EPA would have evidence showing that respondent does not know something. Accordingly, EPA rejects this proposal.

CEEC also proposes that EPA should also be required to disclose all information it uses, or chooses to ignore, in determining the penalty it seeks for each alleged violation. The proposed § 22.19(a) would require complainant to state the basis for the penalty in its prehearing exchange, as well as to provide narrative summaries of witnesses' expected testimony, and copies of all documents and exhibits that it intends to introduce into evidence at the hearing. These requirements would assure that complainant discloses all information it uses in determining the appropriate penalty. It would not, however, require disclosure of all information that EPA ''chooses to ignore.'' EPA believes that little or no reliable, relevant information is ever knowingly ignored in determining proposed penalties. Moreover, such exculpatory evidence and evidence of concerning a respondent's inability to pay the proposed penalty is almost always in respondent's hands, and not in complainant's. Accordingly, it would be exceedingly rare for the requirement proposed by CEEC to provide a respondent with new information. This potential benefit is greatly outweighed by the burden on the complainant to identify, document, and exchange all the information that it has not considered in determining the proposed penalty.

EPA agrees with CEEC's recommendation that § 22.19(a) should be amended to make the complainant's and respondent's burdens more equal. In the proposed § 22.19(a), complainant would be required to state the basis for the proposed penalty, while respondent would have to provide ''all factual information it considers relevant to the assessment of a penalty''. For cases where complainant has specified a proposed penalty before prehearing exchange, § 22.19(a)(3) of today's final rule now requires that ''complainant shall explain in its prehearing information exchange how the proposed penalty was calculated in accordance with any criteria set forth in the Act, and the respondent shall explain in its prehearing information exchange why the proposed penalty should be reduced or eliminated.'' For those cases where EPA has not specified a proposed penalty, § 22.19(a)(4) imposes on each party the identical burden of providing ''all factual information it considers relevant to the assessment of a penalty.''

*c. Final Rule.* For the foregoing reasons, EPA is adopting § 22.19(a) with the two substantive changes noted above. In response to CEEC's comment, EPA has amended the proposed § 22.19(a) to provide a more equitable burden concerning providing information concerning the proposed penalty. EPA has also revised § 22.19(a) to allow complainant to specify a proposed penalty 15 days after prehearing exchange, rather than in its prehearing exchange as proposed.

The parties information exchange burdens necessarily differ depending on whether complainant has specified a proposed penalty before the prehearing exchange, but the proposed rule did not fully address these differences. In order to make the prehearing information exchange process address these differences, EPA has significantly reorganized and revised § 22.19(a). Paragraph (a)(1) contains the provisions describing the nature and effect of the prehearing information exchange. The only significant differences between the provisions of paragraph (a)(1) and their counterparts in the proposed rule are that paragraph (a)(1) expressly requires that prehearing exchange be ''filed'' (§ 22.5(b) provides for service on the Presiding Officer and opposing parties), and clarifies that an order of the Presiding Officer initiates prehearing exchange.

Paragraph (a)(2) describes the contents of prehearing information exchange, other than those that depend upon whether complainant has specified a proposed penalty. These requirements are unchanged.

As discussed in the response to comments above, paragraph (a)(3) provides that where complainant has already specified a proposed penalty, complainant shall include in its prehearing information exchange an explanation of how the proposed

penalty was calculated in accordance with any criteria set forth in the Act, and the respondent shall include an explanation why the proposed penalty should be reduced or eliminated.

Paragraph (a)(4) applies where complainant has not specified a proposed penalty, and requires each party to include in its prehearing information exchange all factual information it considers relevant to the assessment of a penalty. It also requires that complainant file a document specifying a proposed penalty and explaining how the proposed penalty was calculated in accordance with any criteria set forth in the Act 15 days after respondent has filed its prehearing information exchange.

EPA has adopted § 22.19(b) as proposed, except that in response to comment, EPA has deleted the words ''before him''.

16. Other Discovery (40 CFR 22.19(e))

*a. Summary of Proposed Rule.* The proposed § 22.19(e) would provide a mechanism for discovery should any be necessary after the parties have completed their prehearing exchange. Under the CROP, other discovery has always been limited in comparison to the extensive and time-consuming discovery typical in the Federal courts, and designed to discourage dilatory tactics and unnecessary and time-consuming motion practice.

The proposed revisions to § 22.19(e)(1) would require additional detail in motions for discovery, and refine the substantive standards for issuance of a discovery order. The proposed rule would add a prohibition against discovery that would unreasonably burden the other party. The proposal would also elaborate the existing requirement that discovery seeks ''information [that] has significant probative value'', by the addition of the clause ''on a disputed issue of material fact relevant to liability or the relief sought.'' The proposed rule would clarify the existing prohibition on discovery where ''[t]he information to be obtained is not otherwise obtainable'', by substituting a requirement that discovery is permissible so long as it ''[s]eeks information that is most reasonably obtained from the non-moving party, and which the non-moving party has refused to provide voluntarily''.

Paragraph (e)(2) of the proposed rule would expressly prohibit discovery of a party's settlement positions and information regarding their development, specifically including penalty calculations that are based on Agency settlement policies. Paragraph (e)(3) would clarify that the Presiding Officer may order depositions upon oral questions only where additional conditions, over and above those in paragraph (e)(1), are satisfied. Paragraph (e)(4) would consolidate in the main body of the CROP the subpoena standards presently scattered through the supplemental rules. This consolidation does not signify any general subpoena authority: Subpoenas are available in CROP proceedings only where authorized by the Act giving rise to the cause of action.

Paragraph (e)(5) states that none of the § 22.19(e) limitations on discovery limit a party's right to request admissions or stipulations, a respondent's right to request Agency records under the Federal Freedom of Information Act (''FOIA''), 5 U.S.C. 552, or EPA's authority under the Act to conduct inspections, issue information request letters or administrative subpoenas, or otherwise obtain information.

*b. Significant Comments and EPA Response.* Several of the commenters object to proposed changes to § 22.19(e)(1) that would allow discovery only where it ''[w]ill neither unreasonably delay the proceeding nor unreasonably burden the non-moving party'', and where it ''[s]eeks information that has significant probative value on a disputed issue of material fact relevant to liability or the relief sought.'' UWAG and UARG are concerned that these criteria are vague and might prevent respondents from discovering documents relating to the basis for the Agency's determination that a violation has occurred and concerning how the Agency determined the proposed penalty. UWAG and UARG believe that respondents cannot meaningfully respond to a complaint without access to such documents. CEEC states that while efforts to lessen the burden of discovery are admirable, the proposed limitations on discovery are one-sided and disadvantage respondents. CMA/API believe that the proposed criteria of § 22.19(e)(1) are ''unfair and fundamentally tip the balance in favor of EPA.'' CMA/API say the ''unreasonably burdensome'' standard is vague, subjective, and too easily abused.

EPA believes that the changes to § 22.19(e)(1) will not significantly alter the amount of discovery permitted, although it is hoped that they will reduce the amount of litigation over whether discovery is to be allowed. EPA notes that the provisions to which the commenters object are less vague than the comparable provisions of the existing rule, which have been reasonably effective for 18 years. Although the standard ''neither unreasonably delay nor unreasonably burden'' does not achieve mathematical exactness, it is the sort of standard that judges are accustomed to apply. EPA is confident that the impartial presiding officers can implement these standards in a fair and efficient manner.

Although commenters express concern that the proposed discovery criteria may prevent respondents from discovering information important to their defense, no commenter has identified any specific information or category of information that could not be discovered under the proposed discovery standards. None of the commenters have articulated any reason why discovery should extend to information that does not have significant probative value on a disputed issue of material fact relevant to liability or the relief sought, or why a presiding officer should allow unreasonable delay or unreasonable burdens. EPA perceives no basis for the contention that these proposed discovery criteria unfairly limit discovery. The proposed changes to the standards for granting a discovery motion are incremental, and are unlikely to produce different results in the majority of cases. The proposed changes are beneficial in that they clarify the types of discovery that are appropriate and help prevent inappropriate discovery.

There is no inherent unfairness in rules that permit less extensive discovery than those of the Federal courts. Restrictions on discovery work as both an burden and an advantage, and as some of the commenters acknowledge, respondents share in the advantages as well as the burdens. For example, the extensive discovery allowed in the Federal courts allows EPA to expand a judicial case through discovery of all manner of violations. The CROP limits the Agency's discovery to ''information that has significant probative value on a disputed issue of material fact relevant to liability or the relief sought.'' As a result, EPA foregoes in its administrative proceedings the opportunities afforded by extensive discovery in exchange for the benefits of more expeditious case resolution.

EPA finds no merit to the contention that respondents cannot meaningfully respond to a complaint without broader discovery of documents relating to the basis for the Agency's determination that a violation has occurred and concerning how the Agency determined the proposed penalty. EPA is unlikely to have unique information relevant to the case. Respondents are generally in a better position than is EPA to obtain

first hand information about whether or not they have conducted their activities in violation of the law, and about the circumstances surrounding any violations. The evidence upon which EPA bases its enforcement action is generally acquired from the respondent through an inspection or information collection request that is well known to respondent, or through respondent's own reporting. The proposed § 22.14(a) requires EPA to articulate the regulatory and factual basis of its case in the complaint. The proposed § 22.19(a) requires EPA in prehearing exchange to identify all witnesses it intends to call at hearing, provide summaries of their expected testimony, provide copies of all exhibits and documents to be introduced as evidence, and specify the basis of the proposed penalty. In this context, it cannot reasonably be argued that the limitations on other discovery imposed through § 22.19(e) would prevent respondents' full and meaningful participation in the hearing.

Dow asserts that it is not appropriate for § 22.19(e)(2) to preclude discovery of penalty calculations based on ''settlement policies,'' because this would leave respondent without information necessary to respond to the proposed penalty. Dow observes that EPA does not have separate written policies for settlement and for pleading penalties, and Dow asserts that EPA uses its ''settlement'' policies for both purposes. Dow argues that § 22.19(e)(2) should allow discovery of any calculations used to derive a proposed penalty for pleading purposes or otherwise pursued in the proceeding.

EPA had intended that the proposed § 22.19(e)(2) should make clear that a party's settlement positions and information regarding their development are not discoverable. There is merit to Dow's contention that EPA should not be able to shield from discovery the basis for a proposed penalty simply by basing it on a document formally titled a ''settlement policy.'' The preamble to the proposed rule describes this paragraph in a manner that appears to avoid this problem, ''the proposed revision would prohibit discovery of a party's settlement positions and information regarding their development specifically including penalty calculations for purposes of settlement based on Agency settlement policies.'' 63 Fed. Reg. at 9473. Accordingly, EPA has replaced the parenthetical clause from the proposed paragraph (e)(2), ''(such as penalty calculations based upon Agency settlement policies)'', with more restrictive language taken the preamble, ''(such as penalty calculations for purposes of settlement based on Agency settlement policies)''.

CMA/API express their understanding and support of limitations on discovery and use of settlement positions, but indicate concern that § 22.19(e)(2) might signal an EPA intention to abandon its practice of sharing penalty and economic benefit calculations in settlement negotiations. This revision of CROP draws on two very different antecedents, as it merges the different approaches of the part 22 and the proposed part 28 procedures. In those programs that have historically relied on the 1980 version of the CROP, the Agency has specified a penalty demand in the complaint and has provided a copy of the applicable penalty policy and penalty calculation worksheets typically at initial settlement conferences, but never later than prehearing exchange. In contrast, in its CWA and SDWA class I administrative enforcement programs under the proposed part 28 rules, EPA did not generally argue the basis of a penalty or specify a penalty demand until post hearing briefs, in the manner of enforcement proceedings in the Federal courts. For those programs where the practice has been to specify a penalty in the complaint, EPA does not intend any dramatic change from current practice regarding disclosure of penalty and economic benefit calculations in settlement negotiations. For those programs that evolved in the Federal courts and under the proposed part 28 procedures, specifying a penalty and the basis for that penalty at prehearing exchange will be a major change, but it is certainly a change that will be to respondents' advantage.

Dow argues that the word ''reasonably'' should be inserted into § 22.29(e)(3)(i) so as to allow depositions on oral questions in circumstances where the information ''cannot reasonably be obtained by alternative methods of discovery.'' EPA agrees that the suggested change should result in more efficient proceedings, and has therefore adopted this recommendation.

The proposed § 22.19(e)(5) also elicited several comments. Some commenters seem to misinterpret the Agency's proposal as if it were offering FOIA and EPA's other information collection authorities as substitutes for discovery opportunities taken away in § 22.19(e)(1). As noted above, the changes to § 22.19(e)(1) will only produce an incremental restriction of discovery, and would preclude only inappropriate discovery. Accordingly, substitutes for discovery are neither needed nor appropriate, and suggestions that FOIA rights be expanded are rejected. EPA proposed § 22.19(e)(5) simply to make clear that FOIA requests, inspections, statutorily provided information collection requests, and administrative subpoenas issued by an authorized Agency official other than the Presiding Officer do not constitute discovery and are not restricted by the CROP. The proposed revision does not change the CROP, because these activities have never been subject to a Presiding Officer's control.[2]

EPA acknowledges that the statutory information collection tools available to the Agency are substantial, however, EPA does not believe that this undermines the fairness of the CROP proceedings. The central factual issue of a CROP proceeding is whether respondent's conduct has been consistent with the law, and respondent's ability to gather information about its own conduct is always greater than EPA's, statutory information collection authorities notwithstanding. In any event, it is uncommon for EPA to initiate inspections, information collection requests, or administrative subpoenas (other than those issued by the Presiding Officer) to gather information to support cases that have already commenced.

EPA notes that the clause ''EPA's authority under the Act'' may have contributed to some commenters' view of paragraph (e)(5) as endorsing the use of information collection authorities outside of those in § 22.19 to ''otherwise obtain information'' support ongoing cases. EPA's primary motivation in proposing § 22.19(e)(5) is that its authority to conduct investigations

[2] See, e.g., In Re: Dominick's Finer Foods, Inc., Docket No. CERCLA/EPCRA–007–95 (February 15, 1996) (holding that a pending action in which the parties are subject to the discovery rules of § 22.19(f) ''is by no means a basis for restricting EPA's information gathering rights'' under CERCLA § 104(e)). Cases holding that EPA may not be enjoined from exercising its investigative authority under the Solid Waste Disposal Act solely because of the pendency of a related administrative action: Del Val Ink and Color, Inc., RCRA II–91–0104 (January 12, 1993), at 6–7; Florida Dept. Of Transportation, RCRA 92–16–R (October 29, 1993), at 3–6; and Coors Brewing Co., RCRA–VIII–90–09 (January 4, 1991), at 11–15. Comparable federal court decisions: *Linde Thomson Langworthy Kohn & Van Dyke* v. *RTC*, 5 F.3d 1508 1518 (D.C. Cir. 1993) (Statute authorizing RTC investigations does not contemplate the termination of investigative authority upon commencement of civil proceedings.); *National-Standard Company* v. *Adamkus*, 881 F.2d 352, 363 (7th Cir. 1989)(''The mere pendency of a related civil action does not automatically preclude EPA's use of other authorized law enforcement techniques. * * *''); and In Re Stanley Plating Co., 637 F.Supp. 71, 72–73 (D.Conn. 1986) (Nothing in RCRA suggesting that civil action restricts EPA to investigative techniques in accordance with discovery rules).

unrelated to the particular proceeding, perhaps under other statutes or at other facilities, should not be restricted by an unrelated enforcement proceeding. EPA has replaced the phrase ''authority under the Act'' with the more general phrase ''under any applicable law'' in order to better convey EPA's intention that activities unrelated to an ongoing CROP proceeding are not to be subject to the § 22.19(e) limitations.

EPA cannot agree with commenters' suggestions that EPA's information collection authorities be restricted during the pendency of a case. EPA administers fourteen different regulatory statutes, several of which impose a wide variety of requirements on EPA and on regulatees. Many corporations have dozens, or even hundreds, of facilities that are regulated by EPA. EPA needs to continually conduct inspections and exercise other information collection authorities both to identify noncompliance with existing regulations and to determine the need for new or revised regulations, whether or not a company is presently subject to a CROP proceeding. In effect, the commenters ask EPA to blind itself to anything a respondent might do at any facility during the course of a CROP proceeding. EPA would be derelict in its regulatory and enforcement responsibilities if it were to forego its statutorily authorized information collection tools, even for a relatively short time.

Dow stated that although it agrees generally with the proposed § 22.19(e)(5), it believes that the CROP should allow for protective orders and/or sanctions to prevent a party from abusing or harassing another party. The Presiding Officer has the authority, under §§ 22.4(c)(6), 22.4(c)(10), 22.17, and 22.22, to impose certain sanctions against a party, such as exclusion of evidence, that are not provided in the statute under which a case is commenced. The Presiding Officer in a CROP proceeding does not have the broad powers of a Federal court judge, and can order only such relief (e.g. penalty, compliance order) as is authorized by the statute(s) under which the case is commenced. None of the statutes EPA administers authorize protective orders or contempt sanctions for misuse of the information collection authorities noted in § 22.19(e)(5).

The USAF urges that § 22.19(e)(5) state that where EPA seeks to obtain information from a respondent represented by an attorney in a proceeding under the CROP, it shall seek such information through the respondent's attorney. The USAF observes that § 22.10 requires representatives of parties to conform to the standards of conduct and ethics applicable in the Federal courts, and that one such rule would require that information collection efforts concerning the subject of the litigation are to be made through counsel for the party. EPA notes that these ethical rules are already applicable to attorneys and representatives for all parties through § 22.10, and need not be restated in § 22.19(e)(5).

More importantly, EPA's ability to enforce an information collection request will depend on whether the request has been made of the proper individual. Some statutory information collection authorities are only applicable to specified persons (e.g., Section 308(a) of the Clean Water Act, authorizes EPA to require the owner or operator of a point source to submit reports and provide information). Although an attorney may represent respondent in a particular proceeding, it is not clear that the scope of that representation will always make the attorney the surrogate of the proper recipient of an information collection request. In addition, EPA is a large and decentralized agency, and regulates many large and decentralized corporations. As a result, it is possible that the individuals responsible for a particular enforcement proceeding and those responsible for a particular information request may have no knowledge of each other's activities. For these reasons, it is not appropriate for EPA to commit itself by rule to send all information collection requests to respondent's attorney.

*c. Final Rule.* As stated above, EPA is adopting the § 22.19(e) as proposed with three modifications: Paragraph (e)(2) shall contain the language ''(such as penalty calculations for purposes of settlement based on Agency settlement policies)''. Paragraph (e)(3)(i) will allow depositions on oral questions in circumstances where the information ''cannot reasonably be obtained by alternative methods of discovery.'' Paragraph (e)(5) shall state that ''. . . Nothing in paragraph (e) of this section shall limit * * * EPA's authority, under any applicable law, to conduct inspections, issue information request letters or administrative subpoenas, or otherwise obtain information''.

EPA has also noted an unintended side effect of moving the subpoena provisions from the supplemental rules into the discovery section of the proposed rule. In many cases, subpoenas are not used as discovery tools, but merely to ensure the attendance of a witness at hearing. The witness may also be totally independent from the parties. In these circumstances, the standards set forth in § 22.19(e)(1) are inappropriate. Therefore, EPA has revised § 22.19(e)(4) so that it applies only to subpoenas issued for discovery purposes. Other subpoenas would be at the Presiding Officer's discretion, pursuant to § 22.4(c)(9). Corresponding language is also added to § 22.21 to provide for subpoenas not used as discovery tools.

17. Supplementing Prior Exchanges, and Failure To Exchange Information (40 CFR 22.19(f) & (g))

*a. Summary of Proposed Rule.* Section 22.19(f) would clarify that parties may freely supplement their information exchanges, and additionally impose on each party a duty to supplement or correct prior exchanges of information when the party learns that a prior exchange is deficient. Section 22.19(g) clarifies that a failure of a party to provide information within its control pursuant to an order of the Presiding Officer may lead to an inference that the information sought would be adverse to the non-exchanging party, to exclusion of the information from evidence, or to issuance of a default order.

*b. Significant Comments and EPA Response.* CMA/API support the proposed changes to § 22.19(f). Dow suggests that § 22.19(g) should state that ''the Presiding Officer may, in his discretion,'' impose the specified sanctions, in order to clarify that the ''abuse of discretion'' standard applies on appeal. EPA accepts this suggestion.

*c. Final Rule.* EPA is adopting the proposed § 22.19(f) and (g) with minor modifications. In the first sentence of paragraph (f), EPA has replaced the word ''responded'' with the more expressive phrase ''exchanged information in response.'' In response to Dow's comment noted above, EPA has added the phrase ''in his discretion'' to the language of § 22.19(g). EPA also corrected an erroneous citation in paragraph (g)(3): it should refer to § 22.17(c) rather than § 22.17(a). For consistency with the other paragraphs in § 22.19, EPA has added a heading to paragraph (g), ''Failure to exchange information''.

18. Evidence (40 CFR 22.22)

*a. Summary of Proposed Rule.* Section 22.22(a) proposes both structural and substantive changes. Structurally, EPA proposes splitting subsection (a) into two paragraphs, (a)(1) and (a)(2). Paragraph (a)(1) proposes to add an exclusionary provision for information not provided to the opposing party at least 15 days before the hearing date unless there was good cause and the

information was provided as soon as it had control of it or there was good cause for not providing the information. Paragraph (a)(2) proposes to clarify how and when confidential business information (''CBI'') may be used as evidence in accordance with, and specifically referencing EPA's general confidentiality requirements in 40 CFR Part 2. In conforming with Part 2 requirements, a proposed significant change would authorize the Presiding Officer and EAB to consider CBI information outside the presence of the public or a party as necessary to preserve the confidentiality of business information.

*b. Significant Comments and EPA Response.* Dow opposes the automatic exclusion of information that is not exchanged in a timely manner unless good cause is shown, as proposed in § 22.22(a)(1). Dow presents hypothetical situations where it believes a respondent would be unable to get exculpatory or mitigating information that comes to its attention admitted into evidence, if EPA ''deliberately chooses to withhold'' such information ''instead of exchanging it in a timely manner.'' In such situations, Dow reasons that there would be no ''good cause'' for EPA's failure to exchange the information. As a result, Dow advocates the proposed exclusionary provision be revised to state that the ''information will be excluded from evidence *only upon objection* by the innocent party (i.e., the party who did not fail to exchange the information in a timely manner).''

Dow's fears are unfounded. If party A withholds information until just before the hearing, and party B seeks to have that information admitted into evidence, then party A's failure to disclose would constitute ''good cause'' for the innocent party B's inability to produce the information 15 days prior to the hearing. If the party was required to disclose the information in prehearing exchange or other discovery, § 22.19(g) gives the Presiding Officer some authority to sanction the party who withheld the information. Section 22.19(f) prohibits knowing concealment of deficiencies in information that has previously been exchanged. It imposes an affirmative duty to promptly supplement or correct information provided previously in a prehearing exchange, a response to a request for information, or a response to a discovery order when a party learns that the information is ''incomplete, inaccurate or outdated, and the additional or corrective information has not otherwise been disclosed to the other party. * * *'' Id. An opposing party's failure to supplement as required under § 22.19(f) would provide ''good cause'' for admission of evidence. In addition, § 22.4(c)(10) empowers the Presiding Officer do all acts and measures needed for a fair adjudication of the proceedings.

The preamble to the proposed rule noted that the CROP is aimed at the practice of full and complete exchange of information in order to expedite hearings and avoid unnecessary and costly motion practice. *E.g.*, 63 FR at 9472, 9473. The Agency believes that the exclusionary provision facilitates this end and provides a mechanism to enforce the failure of a party to engage in such full disclosure. For parties that act in bad-faith, the CROP, as discussed above, provides adequate safeguards to address these situations and ensure a fair adjudication.

Regarding § 22.22(a)(2), CEEC supports the Agency's proposal to allow the Presiding Officer to review CBI evidence outside the presence of a party if it is necessary to preserve the confidentiality of the business information. In contrast, Dow believes that viewing CBI evidence outside the presence of a party can impede the non-attending party's ability to effectively participate in the hearing and the fairness of the hearing. Dow requests that the Agency include a provision for disclosure of CBI to all parties and to neutral experts, as needed, with safeguards to prevent against using the information outside the scope of the hearing.

The Agency acknowledges the legitimacy of Dow's concerns, however, today's rule and 40 CFR part 2 provide adequate mechanisms to accomplish most of Dow's suggestions. Notwithstanding today's revision of § 22.22(a)(2), EPA retains the authority to disclose CBI in a CROP proceeding where appropriate, pursuant to several statute-specific provisions of part 2 (*see, e.g.*, 40 CFR 2.301(g), 2.302(g), 2.304(g), 2.305(g), 2.306(i), 2.310(g)). Disclosure to a neutral expert could be accomplished through these authorities, or through the statute-specific provisions of part 2 that authorize disclosure to persons performing work under contract to EPA (*see, e.g.*, 40 CFR 2.301(h), 2.302(h), 2.304(h), 2.305(h), 2.306(j), 2.307(h), 2.310(h)). The Agency does not, however, have the authority to enforce secrecy agreements between respondent and an intervener, nor does it have the authority to impose sanctions (other than procedural sanctions such as default) for violations of protective orders that might be issued under the authority of § 22.4(a)(2) or (c). Therefore, it may be advisable for owners of CBI to make such agreements enforceable as contracts.

As expressed in the preamble to the proposed rule, the Agency believes that allowing the independent Presiding Officers the ''discretion to review confidential evidence outside the presence of a party * * * strike[s] an appropriate balance between the right of confrontation and the statutory mandates to protect confidential business information.'' 63 FR at 9474. Contrary to the Dow's suggestion, the Presiding Officer is competent to handle these infrequent situations, including the concern about CBI evidence being unduly relied upon to the detriment of the non-present party. The Presiding Officers handle cases daily involving the Agency's technical regulations and corresponding business information. As an impartial trier of fact, trained to assure that all cases are fairly adjudicated, the Presiding Officer can take into account the failure of a party to be present and to rebut any CBI evidence. Additionally, the Presiding Officer can pose questions to the absent party about any non-CBI issues that exist once the hearing resumes in full. Moreover, as this commenter acknowledges, the CROP provides that a party will have access to a redacted version of the CBI documents. Thus, a right to confrontation and to present its defense will not be unfairly impeded.

*c. Final Rule.* EPA is adopting § 22.22 as proposed, with four minor changes. In addition to excluding information required to be exchanged under § 22.19(a) or (f) that has not been provided to the opposing party at least 15 days before the hearing date, § 22.22(a)(1) should also exclude information that has not been timely provided pursuant to a § 22.19(e) discovery order. This is a technical change, in as much as § 22.19(g)(2) already permits the exclusion of information not provided pursuant to a discovery order, and that it is clearly the intent of the proposed rule to exclude information that has not been provided to opposing parties in a timely manner. EPA has therefore added to § 22.22(a)(1) a reference to § 22.19(e) discovery orders.

To conform to the preferred style of the U.S. Government Printing Office, EPA has revised § 22.22(a) to state the duration of this exclusion period with the numeral ''15''.

EPA has made an editorial change to § 22.22(b), which requires witnesses to testify ''orally, under oath or affirmation, except as otherwise provided in these Consolidated Rules of Practice or by the Presiding Officer.'' EPA has replaced the phrase ''in these Consolidated Rules of Practice'' with the more specific language ''in paragraphs

(c) and (d) of this section''. No provisions of the CROP other than § 22.22(b), (c) and (d) address whether witnesses must testify orally, under oath or affirmation.

EPA notes that although the existing § 22.22(c) places the burden of delivering copies of a witnesses' written testimony on the witness, this burden should fall on the party who would call that witness to testify. EPA has revised this paragraph to require that ''the *party who has called the* witness shall deliver a copy of the testimony to the Presiding Officer, the reporter, and opposing counsel.''

19. Filing the Transcript (40 CFR 22.25)

*a. Summary of Proposed Rule.* Section 22.25 provides that the hearing shall be transcribed, and that the reporter shall transmit copies to the Presiding Officer, and to the Regional Hearing Clerk who shall make copies available to the parties. EPA proposed a new provision specifically allowing motions to conform the transcript to the actual testimony, provided that such motions are filed within 20 days after notice of the availability of the transcript.

*b. Significant Comments and EPA Response.* Dow asserts that 20 days is insufficient time for attorneys and employee witnesses to review, correct, and move to amend a hearing transcript, even if the 20 days commenced upon receipt of the transcript. Dow recommends that § 22.25 be revised to allow motions to conform the transcript to the actual testimony either 30 days from the date the transcript is received, or 45 days from service of the notice of availability. EPA agrees with Dow's recommendation that additional time be allowed.

EPA originally proposed that the time allowed should be measured time from date the parties are notified that the transcript is available, as this appeared to be a single, well-defined reference point. In practice, this has not been the case, because complainants on occasion receive the transcript itself before receiving a formal notice of its availability. Moreover, the proposed standard would generally give complainant more time than respondent, because complainant typically receives the transcript as soon as it becomes available. The commenter's suggestion of 30 days from the date the transcript is received is good benchmark, as it allows each party the same amount of time to review the transcript, however, it is open-ended for so long as a respondent declines to request or pay for its copy of the transcript. In order to balance fairness to each party with the need for finality, EPA has adopt a standard building on both of the commenter's suggestions: ''Any party may file a motion to conform the transcript to the actual testimony within 30 days after receipt of the transcript, or 45 days after the parties are notified of the availability of the transcript, whichever is sooner.''

*c. Final Rule.* EPA is adopting the rule as proposed with the exception of modifying the language of § 22.25 to read ''Any party may file a motion to conform the transcript to the actual testimony within 30 days after receipt of the transcript, or 45 days after the parties are notified of the availability of the transcript, whichever is sooner.''

20. Initial Decision (40 CFR 22.27)

*a. Summary of Proposed Rule.* Section 22.27 is concerned with initial decision, and it consists (in both the existing and proposed versions) of three paragraphs. Paragraph (a) is concerned with the issuance of an initial decision, what it shall contain, and to whom copies shall be sent. Paragraph (b) outlines the factors a Presiding Officer must take into consideration in determining the amount of a civil penalty and the procedures for determining a civil penalty upon a default. Paragraph (c) sets forth when an initial decision becomes a final order and when it does not; this provision also states that the effect of an initial decision appealed to the EAB is stayed pending a decision on an appeal by the EAB.

Many of the changes in § 22.27(a) are intended to clarify the language. Other changes include requiring that an initial decision, where appropriate, include a compliance order, corrective action order or permit revocation, termination or suspension. This provision also designates to whom, in addition to the parties, copies of the initial decision are to be sent.

The revised § 22.27(b) would require that the Presiding Officer explain in the initial decision how the penalty recommended to be assessed therein corresponds to the evidence in the record and any penalty criteria set forth in the statute under which the action has been commenced. It also establishes that in case of default, the penalty recommended to be assessed shall not exceed the lesser of amount sought in either the complaint or motion for default.

In § 22.27(c), the ways in which a party can prevent an initial decision from becoming a final order are set forth. The proposed rule states that pending the issuance of decisions on appeals of them to the EAB, initial decisions are neither final nor operative. This amendment is to prevent a party from seeking judicial review prior to seeking review from EPA's administrative appellate body, the Environmental Appeals Board.

*b. Significant Comments and EPA Response.* Dow notes that the second sentence of § 22.27(a) arguably requires that every initial decision must include a civil penalty assessment. To remedy this, Dow recommends that the words ''if appropriate'' be moved so that they follows the phrase ''as well as reasons therefor, and''. EPA agrees, and adopts Dow's proposed revision.

Dow supports the inclusion in § 22.27(c) of the provision that states, ''An initial decision that is appealed to the Environmental Appeals Board shall not be final or operative pending the Environmental Appeals Board's issuance of a final order'' as properly balancing the needs of EPA and respondents. While Dow is pleased that this ''will avoid premature recourse to Federal courts'', Dow argues that EPA should not require appeal to the EAB for those issues that cannot be adjudicated administratively. As examples of matters that an agency cannot address, Dow cites challenges involving constitutional questions, challenges to an agency's interpretation of a statute and challenges to an agency's authority.

EPA does not agree with the recommendation that the CROP should not require an appeal to the EAB of ''issues that cannot be adjudicated administratively.'' It cannot be left to a party to determine the scope of the EAB's jurisdiction, and respondents should not bear the burden of attempting to predict whether a particular issue must be appealed to the EAB as a prerequisite to judicial review. Also, issues that may not be adjudicated administratively are often mixed with issues that may be adjudicated by the Board. It is appropriate, and in the interest of both the Agency and the parties, for the EAB to decide which issues may be adjudicated administratively. This will ensure that the EAB has the opportunity to exercise its full review authority and protect respondents from losing their right to appeal based on a failure to exhaust administrative remedies.

CEEC also objects to the proposed changes to § 22.27(c), arguing that it is inappropriate to require respondents to appeal any initial decisions to the EAB before appealing to the federal courts. CEEC's initial comments (April 27, 1998) gave no reasons why this is inappropriate. CEEC reiterated this objection in its supplemental comments (June 4, 1998), again without significant explanation. CEEC's supplemental comments elaborated on this point only

to the extent of echoing Dow's comment, stating that it is especially inappropriate ''where the issue to be addressed is a constitutional challenge, a challenge to an Agency interpretation, or a challenge to the Agency's authority.''

As EPA has already discussed issues specific to requiring appeal to the EAB as a prerequisite to judicial review ''where the issue to be addressed is a constitutional challenge, a challenge to an Agency interpretation, or a challenge to the Agency's authority'', this response will address the larger issue raised by CEEC, whether respondents should be required to appeal any decisions of a Presiding Officer to the EAB as a prerequisite to judicial review.

The EAB is responsible for assuring consistency in Agency adjudications by all of the ALJs and RJOs. The appeal process of the CROP gives the Agency an opportunity to correct erroneous decisions before they are appealed to the federal courts. The EAB assures that final decisions represent with the position of the Agency as a whole, rather than just the position of one Region, one enforcement office, or one Presiding Officer. EPA considers this a necessary and important function, and rejects CEEC's suggestion that this internal appeal and review process be abandoned. In addition to meeting EPA's institutional needs, this process also offers enormous advantages to respondents who are dissatisfied with an initial decision, in that appeals to the EAB are much quicker and much less expensive than appeals to a federal court.

CEEC's comment may be based on a misreading of the proposed rule as requiring respondent to make an interlocutory appeal to the EAB every time there is an adverse decision: ''In its Preliminary Comments, CEEC noted its concerns with the proposal requiring appeal to the EAB after every ''initial'' decision or order of the Presiding Officer before seeking judicial review.''

To the extent that this comment is intended to apply to any ruling or order other than an initial decision (as the latter term is defined in § 22.3), it is based on a misreading of the proposed rule. The proposed rule would only require that initial decisions (as specifically defined in § 22.3) be appealed to the EAB as a prerequisite to judicial review. EPA did not propose to require interlocutory appeal of rulings and orders other than initial decisions as a prerequisite to judicial review.

CEEC also objects to the process by which EPA has proposed the revisions relating to exhaustion of remedies. Terming the inclusion of the exhaustion requirement a ''major revision'' to the CROP, CEEC says that ''Given the magnitude of this proposed change, EPA should have brought this proposal to the attention of the regulated community in the summary of its proposed rule-change, and explained it thoroughly.''

First, the February 25, 1998, **Federal Register** notice of proposed rule making provided adequate notice of EPA's intention to address the exhaustion doctrine in its rules of administrative procedure. The one-sentence summary that begins the notice of proposed rule making accurately describes the subject of the notice, though it does not attempt to summarize all of the issues raised in the proposal. The body of the notice and the proposed regulations clearly identified and discussed this issue in detail. *See* 63 FR 9474–75, 9489. The proposed rule allowed 60 days for the public to comment on the entire proposal. In addition, in response to CEEC's concern, EPA published a second notice on May 6, 1998, reopening the public comment period for an additional 60 days.

CEEC's contention that the initial proposal did not give adequate notice of the magnitude of the proposed changes is not persuasive. The original notice of proposed rule making attracted the attention of a broad spectrum of the regulated community, and elicited comments from major trade associations representing the chemical manufacturing industry, the petrochemical industry and the utility industry, and individual comments from the U.S. Air Force and one major chemical company, in addition to the companies represented by CEEC. These comments were generally detailed and well considered. Only two of the comments addressed § 22.27(c), and only CEEC considered this an extraordinary revision. CEEC's contention that the initial proposal did not allow enough time to consider and comment on the proposed changes is also undermined by the fact that CEEC's supplemental comments were the only comments received during reopened comment period, as well as by the fact that those supplemental comments did not raise any significant issues that were not raised during the original public comment period.

Second, EPA disagrees with CEEC's characterization of the magnitude of the proposed changes. EPA considers appeals of an initial decision to the EAB as a prerequisite to judicial review under the CROP as previously codified, and that, during such appeal, the initial decision is inoperative. The regulated community also appears to share this understanding, as respondents consistently seek EAB review before appealing to the federal courts. The proposed explicit inclusion of the exhaustion doctrine simply clarifies the status quo, and thus does not represent something that would significantly alter or impact a respondent's rights or position under the CROP.

Although the proposed revision of § 22.27(c) was designed to make it explicit that an initial decision must be appealed to the EAB as a prerequisite for judicial review, Dow points out that § 22.27(c) does not actually say anything about the need for administrative appeal before judicial review. An explicit statement appears in § 22.31(e)(1) of the proposed rule, however, EPA acknowledges that it would be more helpful if the provision advising a respondent of the consequences of failing to appeal an initial decision to the EAB were included in the section discussing initial decisions, rather than the section concerned with final orders. Accordingly, language from § 22.31(e)(1) of the proposed rule now appears in a new § 22.27(d).

*c. Final Rule.* In response to comment, EPA has moved the words ''if appropriate'' from the end of the second sentence in § 22.27(a) to follow the phrase ''as well as reasons therefor, and'', in order to clarify that not all initial decisions will assess a penalty.

Language from § 22.27(c) and § 22.31(e)(1) relating to exhaustion of administrative remedies has been combined in a new § 22.27(d). The remainder of § 22.27(c) has also been subdivided into four paragraphs for easier reading.

EPA has made an additional substantive change to § 22.27(a) on its own initiative. The existing and proposed rules specify that the Regional Hearing Clerk shall forward the entire record of the proceeding to EPA Headquarters as soon as an initial decision is issued, regardless of whether the case is appealed to the EAB. For administrative efficiency, this requirement has been deleted. Regional Hearing Clerks will retain the record of the proceeding unless the EAB requests it. This change should have no effect on respondents' interests.

EPA has made minor editorial changes to § 22.27(a) as well: EPA has deleted the word ''reply'' from the first sentence to make it more general, and has replaced the phrase ''permit revocation and suspension'' with ''Permit Action'', as discussed in connection with revisions to § 22.3(a) and § 22.14(a)(4)(iii)..

In the fourth and fifth sentences of paragraph (b), the proposed rule uses the phrase ''penalty recommended to be

assessed in the complaint''. The convention elsewhere in the CROP is to describe the penalty proposed by complainant as the ''proposed penalty'', and the penalty determined by the Presiding Officer as the ''recommended penalty''. In order to eliminate the ''recommended to be assessed'' language and to provide for cases where complainant makes its specific penalty proposal in its prehearing exchange, EPA has replaced ''penalty recommended to be assessed in the complaint'' in the fourth sentence with the phrase ''penalty proposed by complainant''. In the fifth sentence, EPA has substituted the phrase ''proposed by complainant in the complaint, the prehearing information exchange or the motion for default''.

EPA has also changed the order of the sentences in paragraph (b). The sentence stating that ''[t]he Presiding Officer shall explain in detail in the initial decision how the penalty to be assessed corresponds to the any penalty criteria set forth in the Act'' has been moved up to follow the sentence stating that ''the Presiding Officer shall consider any penalty guidelines issued under the Act.'' This will make it clearer that the obligation to explain in detail how the penalty corresponds to the penalty criteria of the Act is not limited to circumstances where the Presiding Officer assesses a penalty different from that proposed in the complaint.

As discussed above in connection with public comments on § 22.17, EPA has revised the CROP to clarify that a motion for default or a default order may apply to all or part of a proceeding. EPA has made a corresponding change to § 22.27(c)(3), to clarify that it applies only to those default orders that constitute initial decisions.

To conform to the preferred style of the U.S. Government Printing Office, EPA has revised § 22.27(c) to state the time after which an initial decision becomes a final order with the numeral ''45''.

21. Appeal From or Review of Initial Decision (40 CFR 22.30)

*a. Summary of Proposed Rule.* The proposed revisions to § 22.30(a) would extend the time to file an appeal from 20 to 30 days, clarify the procedure for filing appeals, including, but not limited to, provisions addressing service and filing, and describing the contents of any appeal brief. The proposed rule also contained a new provision whereby a party who initially declined to appeal, but who receives a notice of appeal from another party, is granted an additional 20 days to raise other issues on appeal. This change would eliminate the need for protective filings by parties who otherwise would have elected not to file an appeal.

Proposed revisions to paragraph (b) would clarify the respective roles of the Regional Hearing Clerk and the Clerk of the Board. Paragraph (c) of the proposed rule added a provision expressly limiting the scope of appeals to issues raised during the course of the proceeding or by the initial decision. Minor editorial changes were made to the proposed paragraph (d), as well as to the other paragraphs.

EPA proposed a new paragraph (e) that would specify that the general requirements for motions at § 22.16 apply to motions made in appeals to the EAB. EPA proposed a new paragraph (f), consisting largely of the language formerly contained in § 22.31(a). Paragraph (f) describes the scope of review by the EAB and its authority to increase or decrease a penalty, or to modify any compliance order, corrective action order, or any permit revocation, termination and suspension. The proposed § 22.30(f) would allow the EAB to increase the amount of a penalty assessed in a default order, but would not allow the EAB to increase the default penalty to an amount greater than that proposed in the complaint or in a motion for default, whichever is less.

*b. Significant Comments and EPA Responses.* CMA/API support the provision extending the time for filing appeals from 20 to 30 days, while Dow objects that 30 days is not sufficient time to review the initial decision and file an appeal brief. CROP proceedings have worked effectively since 1980 with a 20 day appeal period, and with extensions in appropriate cases. Expanding the appeal period by fifty percent should substantially reduce the burdens felt by counsel, as well as allow improvement in the quality of the briefs filed. While today's final rule expands several time periods, EPA still intends that CROP proceedings should progress quickly from the filing of the complaint to the issuance of a final order. EPA believes that further expansion of the appeals period is not necessary at this time.

Dow also commented that the deadline for response briefs would be ambiguous under the proposed § 22.30(a)(2) in cases where two or more notices of appeal are filed in serial fashion. EPA concedes that in such cases there would not be a single date upon which all reply briefs are due, however, the proposed CROP is clear as to when the response briefs are due: A brief responding to an appeal is due within 20 days of service of the appeal brief to which it responds. Requiring all reply briefs to be filed on the same day would give the person filing the last appeal the most time to respond to the opposing party's appeal, while EPA's proposed approach gives each party the same amount of time to respond.

CEEC recommends that the CROP include procedures to ensure that members of the regulated community have access to all administrative complaints, decisions, orders, settlements, etc. EPA notes that all such documents appear in the public docket for each case. The formal opinions of the EAB are published in a series of bound volumes titled Environmental Administrative Decisions (E.A.D.), which may be purchased from the U.S. Superintendent of Documents. The full text of all formal EAB opinions may also be accessed electronically at the EAB's World Wide Web Site (http://www.epa.gov.eab). Decisions and ''substantive'' orders (i.e., having some discussion of legal argument) of the Agency's ALJs are on http://www.epa.gov/oalj going back to November 1996. A web site for RJO decisions is under construction. Hard copies of ALJ decisions (and substantive orders since 1997) may be obtained from the Headquarters Hearing Clerk, and RJO decisions may be obtained from the Regional Hearing Clerks. Several commercial sources also make available the EAB formal opinions, most ALJ decisions and orders, and some RJO decisions and orders.

The Agency's practice has been for the Regional Hearing Clerk to maintain a complete docket up through the initial decision, and for the Clerk of the Board to maintain the docket of subsequent proceedings. EPA acknowledges that this system has made it difficult for persons reviewing a case docket in an EPA Regional office to review the entire case record. In order that the Regional Hearing Clerk's docket should indicate that a case had been appealed, EPA proposed in § 22.30(a)(1) that each appellant shall serve copies of its notice of appeal and brief with the Regional Hearing Clerk. In response to CEEC's comment, EPA has revised § 22.30(a) and (b) to require that copies of all documents filed with, or by, the EAB shall also be served on the Regional Hearing Clerk.

Finally, Dow notes that despite EPA's stated intention of removing the words ''sua sponte'' from the CROP, EPA neglected to replace this expression in the title of § 22.30(b). EPA has finished this task by revising this title to read ''Review initiated by the Environmental Appeals Board.''

*c. Final Rule.* EPA has adopted § 22.30 as proposed, with several modifications. As discussed above, EPA has revised the title of § 22.30(b) to read ''Review initiated by the Environmental Appeals Board'', and has revised § 22.30(a) to require that copies of all documents filed with, or by, the EAB shall also be served on the Regional Hearing Clerk. EPA has made several other minor revisions on its own initiative:

As discussed above in connection with the revisions to § 22.11, EPA has replaced the term ''amicus curie'' in § 22.30(a)(1) and (a)(2) with the term ''non-party participant.''

In order that the Presiding Officer may be aware of the status of his or her decision, EPA has also revised paragraph (a)(1) to require that a copy of the notice of appeal be served on the Presiding Officer, and revised paragraph (b) to require that the EAB serve on the Presiding Officer a copy of its notice of intent to review a decision.

EPA has also replaced the expression ''Clerk of the Environmental Appeals Board'' with ''Clerk of the Board,'' using the term defined at § 22.3(a) for consistency.

Because response briefs are to be filed with the Clerk of the Board, the words ''and serve'' are unnecessary and potentially confusing as they appear in the proposed § 22.30(a)(2), and have therefore been deleted from today's final rule.

The proposed § 22.30(c) included a new provision: ''The parties' rights of appeal shall be limited to those issues raised during the course of the proceeding and by the initial decision.'' In order to reflect the well established principle that the question of subject matter jurisdiction cannot be waived and may be raised at any stage of a proceeding, EPA has revised this provision by adding the clause ''and to issues concerning subject matter jurisdiction.''

The proposed § 22.30(f) may incorrectly suggest that a final order is the only possible outcome from an EAB decision on appeal of an initial decision. However, it is not uncommon for the EAB to remand a case. EPA has revised paragraph (f) by adding the following sentence: ''The Environmental Appeals Board may remand the case to the Presiding Officer for further action.''

EPA has replaced the phrase ''any permit revocation, termination or suspension'' in § 22.30(f) with ''Permit Action'', as discussed in connection with revisions to § 22.3(a) and § 22.14(a)(4)(iii). To conform to the preferred style of the U.S. Government Printing Office, EPA has revised § 22.30 to state all time periods with numerals only.

22. Final Order (40 CFR 22.31)

*a. Summary of Proposed Rule.* Section 22.31 is concerned with final orders, and the proposed section consists of six sub-paragraphs. Paragraph (a) would specify the effect of the final order. It states that a final order constitutes final Agency action and specifies that a final order neither affects the right of the United States to seek criminal or civil relief for any violation of law nor waives a respondent's obligations to comply with applicable law. Paragraph (b) would establish the effective date of a final order. Paragraph (c) would set forth procedures for paying any civil penalties assessed in a final order. Paragraph (d) would establish that any corrective action or compliance order, or any permit revocation, termination or suspension becomes effective and enforceable as of the effective date of a final order unless otherwise specified in the final order. The proposed paragraph (e) is concerned with exhaustion of administrative remedies, and would specify that where a respondent fails to appeal an initial decision or enters into a consent agreement, the right of subsequent judicial review is waived. The proposed paragraph (f) discusses final orders issued to Federal agencies. This provision would specify that where the head of an affected agency seeks the intervention of the EPA Administrator, the decision by the Administrator will be the final order; this provision would also specify that a motion for reconsideration does not affect the 30-day time period for the effective date of final orders against Federal agencies.

*b. Significant Comments and EPA Responses.* The proposed inclusion in § 22.31(e) of a provision explicitly addressing exhaustion of administrative remedies as a prerequisite to judicial review is viewed by CEEC as a ''major'' revision of the CROP. CEEC argues that:

> ''Given the magnitude of this proposed change, EPA should have brought this proposal to the attention of the regulated community in the summary of its proposed rule-change, and explained it thoroughly.''

As discussed in EPA's response to comments on § 22.27(c), above, EPA disagrees with CEEC's characterization of the magnitude of this change, and maintains that the proposed rule gave adequate notice of the proposed change.

As discussed in EPA's response to comments on § 22.27(c), above, EPA agrees with Dow's comment that the requirement that an administrative appeal is a predicate for subsequent judicial review should appear in § 22.27. Therefore, the language that appeared in the proposed § 22.31(e)(1) has been deleted and moved to § 22.27(c). The proposed § 22.31(e)(2), which would specify that ''[a] respondent which elects to resolve a proceeding pursuant to § 22.18 waives its rights to judicial review'', is redundant with § 22.18(a)(3) and (b)(2) and can be deleted without substantive change. The proposed § 22.31(f) has been redesignated as § 22.31(e) in today's final rule.

The proposed § 22.31(f) describes the manner in which the head of another Federal agency may bring disputes over a final order directly to the EPA Administrator, and provides that the EAB's decision shall not be effective pending the Administrator's review. Essentially the same provision already appears in the supplemental rule governing Solid Waste Disposal Act cases, § 22.37(g). The proposed rule would move this provision from that supplemental rule into the main body of the CROP, in order that this process should be available in any CROP case brought against a Federal agency.

The USAF opposes moving this provision from the supplemental rule governing Solid Waste Disposal Act cases into the main text of the CROP. USAF argues that instead of a generally applicable provision, such procedures should be confined to the statute-specific supplemental rules. USAF argues that EPA should be required to amend the CROP each time Congressional action expands EPA's authority to enforce against another Federal agency, in order to provide a forum for resolving constitutional and jurisdictional issues.

The proposed change does not expand EPA's jurisdiction to assess civil penalties against a Federal facility, nor does it expand the scope of the CROP as it pertains to Federal facilities. EPA can assess penalties against Federal facilities for violations of the Safe Drinking Water Act (42 U.S.C. 300j–6), the Resource Conservation and Recovery Act (''RCRA'') (42 U.S.C. 6961), and the Clean Air Act (42 U.S.C. 7413(d), 7524(c) and 7545(d)(1)) through a CROP proceeding regardless of whether the proposed language is adopted. Should other authorities for assessing penalties against Federal facilities become available in the future, this will be true for those authorities as well. The only effect of the change proposed in § 22.31(f) is to provide a mutually understood process for staying a final order while the head of the respondent Federal Agency confers with the EPA Administrator.

The proposed § 22.31(f) is a procedural provision, not a jurisdictional provision. It does not, on its own, establish authority to assess administrative penalties. It merely provides the process to follow where Congress has provided such authority to EPA. Although EPA has not made the change USAF seeks, EPA has made a minor change to the proposed § 22.31(f)(1) (promulgated today as § 22.31(e)(1)) that should help reduce the chance that this might be misperceived as a jurisdictional provision, by moving the words ''pursuant to § 22.30'', to follow the word ''issued.''

*c. Final Rule.* EPA has made no substantive change in response to the comments on the proposed § 22.31. As described above, EPA has deleted the proposed § 22.31(e) because equivalent provisions now appear in §§ 22.18 and 22.27(c). Also as noted above, EPA has changed the proposed paragraph (f) to ''(e)'', and has moved the words ''pursuant to § 22.30'', to follow the word ''issued'' in § 22.31(e)(1).

On its own initiative, EPA has made several other editorial changes to § 22.31. First, the third sentence of the proposed § 22.31(a) is inartfully drafted and subject to misinterpretation. The relevance of the terms ''liability'' and ''violation'' is not clear in relation to proceedings for permit actions. For example, permit actions may often involve facts which could establish violations of the permit or of environmental regulations, however, permit action proceedings do not adjudicate respondents' liability for such violations. In order to avoid the implication that a final order in permit action proceeding might ''resolve Respondent's liability for a civil penalty'', or conversely, that a final order in a penalty proceeding might resolve ''the status of a permit or authority to operate'', this sentence must be revised. In addition, this sentence does not address proceedings commenced with a consent agreement and final order pursuant to § 22.13(b). Accordingly, EPA has revised the third sentence of the proposed § 22.31(a) to state that: ''The final order shall resolve only those causes of action alleged in the complaint, or for proceedings commenced pursuant to § 22.13(b), alleged in the consent agreement.''

Second, EPA has significantly simplified the second sentence of § 22.31(c), by removing the requirements concerning who shall be the payee on the check and where the check should be sent, and by amending § 22.14(a) to require that these be specified in the complaint. EPA notes that the proposed § 22.31(c) was deficient in that it did not provide a mechanism to accommodate changes in the lock box banks or bank addresses other than by amending the CROP, and that it did not provide for cases under Section 311(b)(6) of the Clean Water Act, where penalties must be paid to the ''Oil Spill Liability Trust Fund.'' Moreover, the focus on the ''check'' left it unclear whether interbank funds transfers were permitted. Requiring that the complaint address these issues allows EPA to replace the second and third sentences of § 22.31(c) with a much simpler statement:

> ''Payment shall be made by sending a cashier's check or certified check to the payee specified in the complaint, unless otherwise instructed by the complainant. The check shall note the case title and docket number. Respondent shall serve copies of the check or other instrument of payment on the Regional Hearing Clerk and on complainant.''

Third, EPA has replaced the phrase ''permit revocation, termination or suspension'' in § 22.31(d) with ''Permit Action'', as discussed in connection with revisions to § 22.3(a) and § 22.14(a)(4)(iii).

Fourth, EPA has clarified an imprecise sentence in the proposed § 22.31(f)(1) (now § 22.31(e)(1). The last sentence of the proposed § 22.31(f)(1) stated that ''In that event, a decision by the Administrator shall become the final order.'' EPA has replaced ''In that event'' with the more explicit statement, ''If a timely request is made''.

Finally, to conform to the preferred style of the U.S. Government Printing Office, EPA has revised § 22.31 to state all time periods with numerals only.

23. Motion to Reconsider a Final Order (40 CFR 22.32)

*a. Summary of Proposed Rule.* Section 22.32 of the 1980 CROP provides that parties may move for reconsideration of a final order within 10 days of service of the final order, and describes the procedure. The proposed rule made only trivial editorial changes.

*b. Significant Comments and EPA Response.* Dow objects that 10 days is insufficient time to perform the extensive reviews and legal research on specific issues raised by the final order. Dow concedes that 10 days is sufficient to file a motion for reconsideration, provided that additional time is allowed for the filing of briefs in support of the motion.

The purpose of § 22.32 is to provide a mechanism to bring to the EAB's attention a manifest error, such as a simple oversight, or a mistake of law or fact, or a change in the applicable law. *See In the Matter of Cypress Aviation, Inc.,* 4 E.A.D. 390, 392 (EAB 1992). The motion for reconsideration is not intended as a forum for rearguing positions already considered or raising new arguments that could have been made before. This narrow scope of § 22.32 is reflected in the fact that the CROP does not require a respondent to seek reconsideration in order to exhaust its administrative remedies as a prerequisite for judicial review. Accordingly, EPA has not expanded the time allotted to file a motion for reconsideration or to file briefs in support of a motion for reconsideration.

*c. Final Rule.* EPA is adopting § 22.32 as proposed, with two modifications. As noted in the discussion of public comments on § 22.18(b)&(c), EPA has eliminated the term ''consent order,'' and is using the term ''final order'' instead. In the interests of exhaustion of remedies and finality, motions for reconsideration are not appropriate where the final order results from settlement or quick resolution, nor where the parties have declined to appeal an initial decision and it has become final by operation of § 22.27(c). Accordingly, EPA has amended § 22.32 to clarify that it is limited to motions for reconsideration of a final order issued pursuant to § 22.30. In addition, to conform to the preferred style of the U.S. Government Printing Office, EPA has revised § 22.32 to state the time period allowed for motions for reconsideration with the numeral ''10''.

24. Supplemental Rules Governing the Administrative Assessment of Civil Penalties Under the Clean Air Act (40 CFR 22.34)

*a. Summary of Proposed Rule.* Section 22.34 presents supplemental rules applicable to Clean Air Act penalty cases. Paragraph (b) reiterates the requirement of 42 U.S.C. 7413(d)(2)(A) that before issuing an order assessing a civil penalty (i.e., a final order), EPA shall give written notice to the person against whom penalty is to be assessed the order is to be issued, and give that person the opportunity to request a hearing. It clarifies the relationship between this statutory requirement and the CROP by stating that the such notice shall be provided by issuance of a complaint. EPA proposed only minor editorial changes to § 22.34(b).

EPA proposed a new paragraph (c), which would apply to default orders for failure to answer a field citation. Section 59.5(d) of the proposed rule governing CAA field citations (59 FR 22776, May 3, 1994) would provide that when a respondent fails to file a timely answer to a field citation (and fails to offer to pay the penalty under the quick

resolution procedure at § 22.18(a)(2)), the Presiding Officer shall issue a default order assessing the penalty proposed in the complaint.

*b. Significant Comments and EPA Response.* Dow commented that respondents should be able to waive the written notice required pursuant to § 22.34(b), because this is a procedural protection provided merely for respondents' benefit. EPA agrees that the second sentence of § 22.34(b) appears to require issuance of a complaint in every case. In order to allow the parties to take full advantage of the efficiencies of § 22.13(b) where prefiling negotiations produce a settlement, EPA has amended this provision to specify that a complaint is sufficient to satisfy this notice requirement, but without requiring that a complaint necessarily must be served. The second sentence of § 22.34(b) now reads: ''Service of a complaint or a consent agreement and final order pursuant to § 22.13 satisfies this notice requirement.''

*c. Final Rule.* EPA is adopting § 22.34(a) as proposed, and has adopted the proposed § 22.34(b) with the exception of modifying the second sentence to read ''Service of a complaint or a consent agreement and final order pursuant to § 22.13 satisfies this notice requirement.'' EPA has deleted the proposed § 22.34(c), pending adoption of a final rule governing CAA field citations. Any changes necessary to accommodate field citations will be made when the proposed Field Citation rule is finalized.

25. Scope of Subpart I (40 CFR 22.50)

*a. Summary of Proposed Rule.* Section 22.50 defines the scope of subpart I and its relationship to other provisions of Part 22. The proposed paragraph (a) would restrict the scope of subpart I to adjudicatory proceedings that are initiated by a complaint stating that subpart I shall apply. The proposed paragraph (a) would clarify that subpart I does not apply to any proceeding where the statute requires a hearing subject to section 554 of the Administrative Procedure Act (APA).

Paragraph (b) lists the provisions of subparts A through G which do not apply to subpart I proceedings. Almost all provisions of subparts A through G apply to a subpart I proceeding. Paragraph (b) also addresses the potential for conflicting provisions in the preceding sections of the CROP, providing that where any provisions of subparts A though G conflict with any provision of subpart I, the latter supersedes the former.

The preamble to the proposed rule stated that EPA does not intend to alter its present practice of providing the full APA process in cases pursuant to section 109(a) of the Comprehensive Environmental Response, Compensation and Liability Act (''CERCLA'') (42 U.S.C. 9609(a)) or section 325(b)(1), (c), and (d) of the Emergency Planning and Community Right-To-Know Act (''EPCRA'') (42 U.S.C. 11045(b)(1), (c), and (d)), but invited comment as to the types of CERCLA and EPCRA penalty cases for which non-APA procedures would be appropriate, if the Agency decides in the future to assess EPCRA and CERCLA penalties through non-APA proceedings.

*b. Significant comments and EPA response.* Most commenters (Dow, CEEC, UWAG, UARG) oppose any proposed expansion of the role of RJOs under subpart I. The preamble to the proposed rule stated that EPA did not expect to use non-APA procedures except in the kinds of cases where they have historically been used for the foreseeable future. As discussed in the response to comments on § 22.4(b), EPA has revised § 22.50(a) to expressly limit the applicability of subpart I to cases under CWA sections 309(g)(2)(A) and 311(b)(6)(B)(i) (33 U.S.C. 1319(g)(2)(A) and 1321(b)(6)(B)(i)), and SDWA sections 1414(g)(3)(B) and 1423(c)(42 U.S.C. 300g–3(g)(3)(B) and 300h–2(c)). This change makes clear that the scope of the RJOs' activities will remain much the same as it has been in recent years.

All who commented on the proposed subpart I (CMA/API, Dow, CEEC, UWAG, UARG) expressed concern that it would not protect constitutional due process rights. In particular, CEEC considers such a proposal a ''major concern'' and submits that subpart I procedures do not meet the due process standard set forth in *Mathews* v. *Eldridge*, 424 U.S. 319 (1976). Dow, UWAG and UARG believe that there is too great a chance that RJOs would have a pro-Agency bias, and suggest that EPA should eliminate subpart I and apply APA procedures universally. Dow suggests in the alternative that either party should be allowed to opt out of subpart I and have APA procedures applied upon request.

EPA has addressed this due process question in the discussion of public comments on § 22.4(b). Also as noted above in the discussion of § 22.4(b), the Agency has implemented adequate measures to ensure the impartiality of the Regional Judicial Officers. If a litigant has reason to believe that a Regional Judicial Officer is biased, then a motion for disqualification pursuant to § 22.4(d) may be submitted.

As to Dow's suggestion of providing parties the option of having APA procedures apply upon request, Congress has provided for this option only in section 1414(g)(3)(B) of the Safe Drinking Water Act. If APA procedures were provided upon respondent's request in all proceedings brought under subpart I, the regulated community, rather than EPA, would be determining the course of the Agency's enforcement program, and imbalances of Agency resources might result. Nevertheless, the Agency acknowledges that, on occasion, a complainant may not recognize until after a case has been commenced that the subpart I procedures would not be adequate, for example, where intervention, amici, subpoena, or additional discovery appear crucial to the case, or where the issues are such that the proceeding would greatly benefit from the unquestioned independence of an ALJ. In those instances, a complainant may move to withdraw the complaint without prejudice in order that the proceeding be recommenced as an APA proceeding, or either party might move that subpart I should not be applied to the proceeding.

As to paragraph (b), Dow and CEEC suggest deleting the reference to § 22.11 and allowing intervention and amici curiae. This would be inconsistent with the purpose of subpart I, that is to have simpler and more efficient proceedings. To add to subpart I more of the provisions of subparts A through G would frustrate this purpose. If a party believes that intervention or amici curiae would be of crucial importance to a particular case, then as discussed above, it may file a motion requesting withdrawal or dismissal without prejudice to allow refiling under the APA procedures.

*c. Final Rule.* EPA has revised § 22.50(a) to limit the applicability of subpart I to cases under CWA sections 309(g)(2)(A) and 311(b)(6)(B)(i) (33 U.S.C. 1319(g)(2)(A) and 1321(b)(6)(B)(i)), and SDWA sections 1414(g)(3)(B) and 1423(c) (42 U.S.C. 300g–3(g)(3)(B) and 300h–2(c)). EPA adopts § 22.50(b) as proposed, with one correction. The February 25, 1998, FR notice included a typographical error in § 22.50(b). The section number that appeared as ''22011'' has been corrected to read ''22.1.''

26. Presiding Officer (40 CFR 22.51)

*a. Summary of Proposed Rule.* The proposed § 22.51 presents the key modification to the CROP facilitating use of the CROP in administrative adjudications not subject to section 554 of the APA, that the Presiding Officer

need not be an Administrative Law Judge (''ALJ''). Instead, the Presiding Officer in a ''non-APA'', subpart I proceeding would be a Regional Judicial Officer (''RJO''). Unlike an APA proceeding, where an RJO presides until an answer is filed and the RJO is replaced by an ALJ, in a subpart I proceeding the RJO serves as Presiding Officer until the initial decision has become final or has been appealed.

b. *Significant Comments and EPA Responses.* Several commenters objected to EPA attorneys, rather than ALJs, serving as Presiding Officers in subpart I proceedings. Their objections have been fully addressed in the discussion of public comments on the proposed § 22.4, and are not repeated here.

*c. Final Rule.* EPA has adopted § 22.51 as proposed, but with a minor addition. EPA has observed that while § 22.51 provides that the Presiding Officer ''shall rule on all motions until an initial decision has become final or has been appealed'', it does not explicitly state that the Presiding Officer will conduct the hearing. As is clear from the preamble to the proposed rule, and from the responses of the commenters, conduct of the hearing is the key element in the Presiding Officer's role in such cases, as it is for ALJ Presiding Officers in APA cases. In order to avoid any future confusion, the final rule includes an explicit statement that: ''The Presiding Officer shall conduct the hearing, and rule on all motions * * *''

27. Information Exchange and Discovery (40 CFR 22.52)

*a. Summary of Proposed Rule.* The proposed § 22.52 would define the parameters of an information exchange in non-APA proceedings. Parties would be subject to the prehearing exchange authorized in § 22.19(a), but most additional discovery would be prohibited under Subpart I. The proposed § 22.52 would require the respondent to provide in its prehearing exchange information concerning any economic benefit it may have enjoyed as a result of the alleged non-compliance or a failure to act.

Although proposed § 22.52 would prohibit most additional discovery that would otherwise be allowed under § 22.19(e), the complainant would be entitled to discovery of information concerning respondent's economic benefit of non-compliance and of financial records probative of respondent's ability to pay a penalty.

*b. Significant Comments and EPA Response.* CMA/API and CEEC believe that it is unfair to prohibit discovery by private parties but authorize discovery by EPA for penalty information. CMA/API and Dow oppose requiring respondents to provide information on economic benefit in the prehearing exchange because this requirement imposes a burden only upon the respondent. CMA/API argues that the prehearing exchange burdens for each party should be made equivalent, particularly given EPA's far greater information collection powers.

Dow asserts that § 22.52 is unnecessary because § 22.19(d) already provides ways to avoid excessive discovery. Dow argues that § 22.19(d) provides ample authority for the Presiding Officer to protect against excessive or abusive discovery practices. Dow expresses concern that the comparatively less formal procedures of subpart I might be used in very complex cases involving a multitude of separate alleged violations. In such cases, it is likely that additional discovery would be needed and appropriate. Dow urges that EPA abandon the subpart I modifications and apply the standard CROP procedures universally, as this would allow Presiding Officers to tailor the scope of discovery to the needs of each individual case.

While EPA acknowledges that the prehearing exchange requirements and discovery limits of the proposed § 22.52 are asymmetric, EPA disagrees with the contention that they are unfair. The comments suggest that the commenters perceive ''fairness'' to require that the parties be exact equals subject to the exact same rules. However, the parties are never equals in a CROP proceeding: The complainant alone carries the burden of persuasion, and carries most of the burden of presentation. Yet the statutes generally require penalty assessment to be based in large part on information held by the respondent, not the complainant. The proposed discovery regime redresses this imbalance in knowledge and burden by requiring a respondent to provide such information to the party required to put it forward to the neutral. There is nothing ''unfair'' about this arrangement. Indeed, it is a logistical necessity.

Being subject to such discovery does not invest in the respondent a reciprocal right to make discovery of the complainant on ''fairness'' grounds. EPA is not obligated to provide additional discovery in order to satisfy the requirements of the due process clause. *Matthews* v. *Eldridge,* 424 U.S. 319, 344–45 (1976); also see *Chemical Waste Management, Inc.* v. *U.S.E.P.A.,* 873 F.2d 1477 (D.C. Cir. 1989).

Non-APA proceedings are typically for enforcement cases that do not raise significant factual or legal issues. See, e.g., Sen. Rep. 99–50 (99th Cong., 1st. Sess.), reprinted in ''A Legislative History of the Water Quality Act of 1987, Congressional Research Service of the Library of Congress (November 1988) at 1448, which states:

> ''To serve its intended function, this administrative enforcement tool should be tailored to the less complex cases for which it is intended. Administrative enforcement should be as flexible and unencumbered by procedural complexities as possible, consistent with due process considerations while providing for effective input by citizens who may be affected by the violations. Administrative cases should be resolved promptly * * *. Because administrative penalty assessments will be used in smaller cases and often will be based on discharge monitoring reports routinely submitted by permittees, formal administrative procedures strictly in accordance with the formal adjudicatory procedures of the Administrative Procedures [sic] Act are not required. EPA therefore has the flexibility to streamline its decisionmaking process and procedural rules through promulgation of procedural regulations that provide appropriate due process protection.''

Requiring that subpart I provide discovery equal to § 22.19(e) would undermine the objective of subpart I: non-APA proceedings that are more efficient than APA proceedings. See, Superfund Reauthorization: Judicial and Legal Issues, Oversight Hearings before the Subcommittee on Administrative Law and Governmental Relations of the House Judiciary Committee, 99 Cong. 1st Sess. 64 (1985)(statement of F. Henry Habicht II, Assistant Attorney General, Land and Resources Division)(EPA objected to requiring APA procedures for imposition of administrative penalties under CERCLA, stating that such procedures were too lengthy and laborious). Section 22.52 accounts for most of the streamlining in these non-APA procedures relative to the APA procedures. If the same procedures apply to subpart I proceedings as apply to APA proceedings, the only differences remaining are the qualifications and independence of the adjudicator and the absence of the right to interlocutory appeal. Congress intended that the non-APA process provide faster, simpler, less costly and more efficient administrative proceedings, not just an additional corps of adjudicators.

The types of cases that are to be brought under the non-APA provisions are typically factually simple. Expanding discovery in subpart I would raise costs to the litigants and invite

delaying motions and fishing expeditions. The inquiry should be centered on the conduct of the respondent and any penalty assessment factors. Allowing additional discovery of EPA beyond the prehearing exchange would not serve those goals, but would raise the complexity and cost of proceedings that Congress intended to be as unencumbered as possible.

*c. Final Rule.* EPA adopts § 22.52 as proposed. EPA notes that this section does not affect the authority of the Presiding Order to require the attendance of witnesses by subpoena, if authorized by the Act, in accordance with § 22.4(c).

28. Interlocutory Orders or Rulings (40 CFR 22.53)

*a. Summary of Proposed Rule.* The proposed § 22.53 stated that, for proceedings subject to subpart I, ''[i]nterlocutory review as set forth in § 22.29 is prohibited.''

*b. Significant Comments and EPA Response.* Dow argues that the prohibition on interlocutory appeals in subpart I proceedings is unnecessary, because § 22.29 already imposes substantial limits on interlocutory appeals. Dow believes that interlocutory appeal is warranted in any case where the criteria of § 22.29(b) are met (i.e., ''(1) The order or ruling involves an important question of law or policy concerning which there is substantial grounds for difference of opinion; and (2) either an immediate appeal from the order or ruling will materially advance the ultimate termination of the proceeding, or review after the final order is issued will be inadequate or ineffective.'')

EPA intends to use subpart I primarily for cases where EPA has substantial prior enforcement experience, which do not appear to present significant new issues of law, and where the sanctions sought are relatively modest. In these circumstances, meritless appeals are likely to greatly exceed meritorious appeals. Because the likely advantages of interlocutory appeal are outweighed by the anticipated delays that would result from meritless appeals, the final rule retains the prohibition on interlocutory appeal in subpart I cases.

*c. Final Rule.* In today's final rule, EPA adopts the proposed prohibition on interlocutory appeals in subpart I cases. However, EPA has concluded that the proposed § 22.53 is redundant, because § 22.50(b) states that § 22.29, which provides for interlocutory appeals, does not apply to subpart I proceedings. Although the proposed § 22.53 highlighted this provision for purposes of soliciting public comment, EPA has concluded that this redundancy is inappropriate in the final rule. Accordingly, EPA has deleted the proposed § 22.53. The prohibition against interlocutory appeals in subpart I cases is accomplished through § 22.50(b)'s exclusion of § 22.29.

29. Clean Air Act Field Citations

*a. Summary of Proposed Rule.* EPA proposed that revisions to the CROP would supersede and replace the rules governing non-APA hearings on field citations under section 113(d)(3) of the Clean Air Act (''CAA''). The Field Citation rules were proposed (59 FR 22776, May 3, 1994) but not yet final at the time EPA proposed the CROP revisions, and EPA expected that the Field Citation rules would be published as a final rule before the CROP revisions. The preamble to the proposed CROP stated that EPA intended to use the procedures that would appear as subpart B of the Field Citation rules until the CROP revisions were made final.

*b. Significant Comments and EPA Response.* CMA/API, Dow and CEEC opposed the interim use of the procedures in subpart B of the Field Citation rules pending publication of the final CROP. These commenters urged EPA to postpone publication of the Field Citation rules until after publication of the final CROP procedures

EPA agrees that commencing a field citation program using one set of procedures for a short time before switching to the CROP procedures could result in unnecessary burdens and confusion. EPA has postponed issuing a final rule governing hearing procedures for CAA field citations.

*c. Final Rule.* Today's final rule does not contain the provisions in the proposed rule relating to the removal from the CFR of procedures for CAA field citations. A decision on appropriate hearing procedures for field citations, inclusion in subpart I of the CROP, will be made when the Field Citation rules are finalized.

30. Other Comments Not Related to a Particular Section of the Proposed Rule

*a. Significant Comments and EPA Response.* CEEC suggests that the CROP should provide respondents an opportunity to review enforcement related press releases and raise objections to the Presiding Officer. CEEC notes that unfair and misleading press releases reduce incentives to reach settlement. EPA makes every effort to assure that press releases are accurate, based on the information available to the Agency at the time. A complainant may, at its discretion, allow a respondent to review a press release before issuance, but EPA does not negotiate the terms of enforcement related press releases. To include in the CROP a provision providing respondents the right to review EPA's press releases and raise objections to the Presiding Officer would create the appearance that the government's ability to communicate with the public is subject to a private party's control. EPA therefore rejects this suggestion.

*b. Final Rule.* EPA has made no changes to the proposed rule in response to CEEC's suggestion that the CROP should provide respondents an opportunity to review enforcement related press releases and raise objections to the Presiding Officer.

## III. Miscellaneous Revisions

Through the process of analyzing the public comments, and pursuant to EPA's own internal review of the proposed rule, EPA has identified a number of typographical and drafting errors. In addition, EPA has identified parts of the proposed rule that could be stated more clearly, as mandated by Executive Order 12866 (September 30, 1993) and the President's memorandum of June 1, 1998, which require each agency to write all rules in plain language. In this final rule EPA adopts a number of changes on its own initiative, and not in response to any particular public comment. Where such revisions pertain to a section of the proposed rule that received significant public comment, the changes have already been discussed above. This section identifies the remaining revisions, which pertain to sections of the proposed rule that received no significant public comment. Public notice of proposed rule making is not required ''when the agency for good cause finds * * * that notice and public procedure thereon are impractical, unnecessary, or contrary to the public interest.'' 5 U.S.C. 553(b)(3)(B). EPA has determined that the following revisions do not significantly affect respondents' substantive or procedural rights. Accordingly, EPA has determined that providing an additional round of public notice before making these minor changes to this procedural rule would be unnecessary and contrary to the public interest.

*A. Section Numbering*

EPA has converted those section numbers that had contained a preceding zero (§§ 22.01, 22.02, etc.) to conform the CROP to the standard numbering of the Code of Federal Regulations set out in the regulations of the Administrative

Committee of the Federal Register at CFR 21.11 (§§ 22.1, 22.2, etc.) in this final rule. For simplicity, this preamble uses the new numbering system throughout, even when referring to sections of the proposed rule or the 1980 CROP.

*B. Definitions (40 CFR 22.3)*

EPA has deleted from the definition of ''Administrative Law Judge'' the superfluous Public Law citation.

EPA has revised the definition of ''Clerk of the Board'' to clarify that it means the Clerk of the Environmental Appeals Board.

In the definition of ''Complainant'', EPA has replaced the ambiguous word ''decision'' with ''adjudication''.

Under the proposed § 22.3, ''Hearing means a hearing on the record open to the public and conducted under these Consolidated Rules of Practice.'' It is not clear from this definition whether the hearing is the proceeding as a whole, or just the oral evidentiary hearing. ''Hearing'' is used throughout the CROP, most often in reference to the oral evidentiary hearing (e.g., prehearing exchange, motion to reopen a hearing), and sometimes in the more general sense (e.g., in the definition of ''party'' and ''Hearing Clerk''). Moreover, the definition of hearing does not acknowledge the fact that protection of confidential business information may require that all or part of a hearing be closed to the public. EPA has clarified the definition of ''hearing'' as follows:

*Hearing* means an evidentiary hearing on the record, open to the public (to the extent consistent with § 22.22(a)(2)), conducted as part of a proceeding under these Consolidated Rules of Practice.

Although the terms ''proceeding'' and ''action'' are used throughout the CROP, they have not previously been defined. In the final rule, EPA avoids the term ''action'' in reference to a particular proceeding, and has added to the CROP the following definition:

*Proceeding* means the entirety of a single administrative adjudication, from the filing of the complaint through the issuance of a final order, including any action on a motion to reconsider under § 22.32.

For consistency with these new definitions of ''hearing'' and ''proceeding'', EPA has substituted ''proceeding'' for ''hearing'' in the definition of ''party.''

EPA has simplified the definition of ''Initial Decision'' by deleting the superfluous phrase ''based on the record of the proceedings out of which it arises.''

EPA has converted the definition of ''permit'' into a definition of a new term ''Permit Action.'' By its nature, the CROP provides a set of common procedures applicable to various administrative proceedings under a large number of regulatory statutes, each of which have their own specific terminology. In order to avoid conflict between terms used differently in different regulatory programs, EPA has adopted the new term ''Permit Action'' as a generic term applicable solely within the CROP. This change allows EPA to replace the unwieldy ''permit revocation, termination or suspension'' language elsewhere in the CROP with ''Permit Action,'' improving the clarity of the CROP and facilitating any future efforts to bring other permit actions within the scope of the CROP.

EPA has deleted from this definition the references to permits issued under section 402(a) of the Clean Water Act (33 U.S.C. 1342(a)) and permits issued under sections 3005(d) and 3008(h) of the Solid Waste Disposal Act (42 U.S.C. 6925(d) and 6928(h)). EPA anticipates that these references will be restored when the Round Two permit streamlining rule (61 FR 65,268) is finalized, involving revocation of 40 CFR part 124, subpart E. In addition, EPA has added a parallel citation to the U.S. Code.

EPA has made two revisions to the definition of ''Regional Hearing Clerk.'' First, EPA has added a clause to the first sentence, specifying that the Regional Hearing Clerk ''shall be neutral in every proceeding.'' Second, EPA has revised the second sentence, which in the proposed rule states that ''Correspondence may be addressed to the Regional Hearing Clerk, U.S. Environmental Protection Agency (address of Regional Office—see Appendix A).'' EPA has created a new § 22.14(a)(7) which requires that the complaint contain the address of the Regional Hearing Clerk, which should provide more effective and more specific notice than the reference to Appendix A contained in the definition of Regional Hearing Clerk. EPA has therefore revised this sentence as follows: ''Correspondence with the Regional Hearing Clerk shall be addressed to the Regional Hearing Clerk at the address specified in the complaint.''

EPA has revised the definition of ''Respondent'' for clarity, replacing ''any person proceeded against in the complaint'' with ''any person against whom the complaint states a claim for relief.''

*C. Filing and Service of Rulings, Orders and Decisions (40 CFR 22.6)*

The proposed revisions to § 22.6 were intended to delete certain references as surplusage and to allow documents issued by adjudicators to be served by any reliable commercial delivery service. The proposed deletions, however, are inconsistent with the current practice that copies of all rulings, orders and decisions (except initial decisions) issued by an Administrative Law Judge are served on all parties by the Administrative Law Judge's legal staff assistant. Copies of all initial decisions are served on the parties by the Regional Hearing Clerk. Section 22.6 is amended to be consistent with this practice.

As noted in the response to comments on § 22.5(b)(2), the U.S. Postal Service considers overnight express and priority mail to be forms of first class mail. In addition, the proposed rule makes no mention of EPA's internal mail system. EPA's internal mail delivery system has proven to be generally effective, and it is in fact ultimately responsible for delivering first class mail (including certified mail) to individual EPA personnel. To address these points, EPA has revised § 22.6 to allow service ''by first class mail (including certified mail, return receipt requested, Overnight Express and Priority Mail), by EPA's internal mail, or by any reliable commercial delivery service.''

EPA has also replaced the expression ''Clerk of the Environmental Appeals Board'' with ''Clerk of the Board,'' using the term defined at § 22.3(a) for consistency.

*D. Examination of Documents Filed (40 CFR 22.9)*

EPA has replaced the term ''Environmental Appeals Board'' with ''Clerk of the Board,'' to specify the official document custodian.

*E. Consolidation and Severance (40 CFR 22.12)*

EPA has added ''or the Environmental Appeals Board'' to § 22.12(a) and (b), in order to clarify that the EAB has authority to consolidate or sever cases. This authority applies to cases pending before the EAB and to cases before a Presiding Officer through interlocutory appeal of a denial of a motion to consolidate or sever. In order to keep subpart I proceedings expeditious, EPA has also added a new requirement that subpart I proceedings may be consolidated only where all parties agree. This should eliminate the risk of litigation delays over whether one proceeding might be consolidated with another.

*F. Motions (40 CFR 22.16)*

EPA is adopting § 22.16 as proposed, except that a reference to § 22.51 has been added to § 22.16(c) in order to avoid any apparent conflict between § 22.16(c) and § 22.51, and the implication that an ALJ must rule on motions in proceedings under subpart I. EPA has also rearranged the sentences of § 22.16(a) to improve clarity. To conform to the preferred style of the U.S. Government Printing Office, EPA has revised § 22.16(b) to state the time allowed for responses and replies with the numerals ''15'' and ''10'', respectively.

*G. Record of the Prehearing Conference (40 CFR 22.19(c))*

The scope of the requirement that the Presiding Officer prepare and file ''for the record a written summary of the action taken'' at a prehearing conference is not clear. Just as a transcript of a prehearing conference may discourage frank and open discussion, the implication that the Presiding Officer may produce a formal summary of the conference may also reduce the effectiveness of such conferences. Moreover, the CROP is not clear whether the Presiding Officer's summary is supposed to constitute a finding of law or fact, nor is it clear whether the parties have the right to object and change the summary. EPA has revised the last two sentences in order to clarify that the Presiding Officer is only responsible for ensuring that the record of the proceeding includes any stipulations and agreements reached, and rulings and orders issued, during the conference.

*H. Accelerated Decision; Decision to Dismiss (40 CFR 22.20)*

Section 22.20(b)(2) provides for accelerated decisions and decisions to dismiss some but not all issues or claims in a proceeding. The last sentence requires that the Presiding Officer ''shall issue an interlocutory order specifying the facts which appear substantially uncontroverted, and the issues and claims upon which the hearing will proceed.'' This sentence is somewhat ambiguous, in that it might be construed as requiring an interlocutory order separate from, and in addition to, any partial accelerated decision or decision to dismiss certain counts. Such an interpretation would be unwarranted, would unnecessarily complicate the CROP, and would be contrary to the customary practice of the Agency's ALJs. Rule 56(d) of the Federal Rules of Civil Procedure, from which this language is derived, does not require a separate interlocutory order specifying the facts which appear substantially uncontroverted, and the issues and claims upon which the hearing will proceed. To clarify that a single decision or order can accomplish all the requirements of § 22.20(b)(2), EPA has amended the last sentence of that paragraph to state that: ''The partial accelerated decision or the order dismissing certain counts shall specify the facts which appear substantially uncontroverted, and the issues and claims upon which the hearing will proceed.''

*I. Assignment of Presiding Officer; Scheduling a Hearing (40 CFR 22.21)*

EPA has amended § 22.21(a) to clarify that the Regional Hearing Clerk forwards copies, not originals, of the complaint, answer, and other documents in the record to the Chief Administrative Law Judge upon receipt of the answer.

According to § 22.20(a), an accelerated decision is appropriate ''if no genuine issue of material fact exists and a party is entitled to judgment as a matter of law.'' Where this standard is not met, a hearing is appropriate. EPA has revised § 22.21(b) to use the same criterion as § 22.20(a): The first sentence of § 22.21(b) now states that, ''The Presiding Officer shall hold a hearing if the proceeding presents genuine issues of material fact.'' In addition to making § 22.20 and § 22.21 more clearly complementary, this change clarifies that the mere request for a hearing does not require that a hearing be held. Neither § 22.21(b) nor § 22.15(c) of the 1980 CROP required an oral evidentiary hearing merely upon respondent's request for a hearing. See, e.g., In re Green Thumb Nursery, Inc., 6 E.A.D. 782 (EAB 1997) (holding that there is no right to an oral evidentiary hearing).

EPA has also expanded the notice period before a hearing from 20 to 30 days. This will allow the parties, their attorneys, and witnesses additional time to make travel arrangements and to prepare for the hearing.

As noted in the discussion of § 22.19(e), EPA has added to § 22.21(b) an explicit statement of the Presiding Officer's authority (where provided by the Act) to require the attendance of witnesses or the production of documentary evidence by subpoena. This statement includes criteria for issuing subpoenas that appeared in the 1980 CROP (see, e.g., § 22.37(f)(1).

*J. Offers of Proof (40 CFR 22.23(b))*

The proposed § 22.23(b) provides for offers of proof regarding ''evidence * * * excluded from the record.'' Although the Presiding Officer may decline to admit certain documents, exhibits or testimony into evidence, and may refuse to consider them in his or her decision, it is incorrect to describe the status of such documents as ''excluded from the record.'' This information is indisputably part of ''the record'' of the proceeding for purposes of appellate review. Accordingly, EPA has revised this paragraph to state that ''Whenever the Presiding Officer denies a motion for admission into evidence, the party offering the information may make an offer of proof * * *.'' For purposes of clarity, EPA has revised this paragraph (b) using the word ''information'' in place of ''evidence'' where the subject is information which has not been admitted into evidence.

*K. Proposed Findings, Conclusions, and Order (40 CFR 22.26)*

Section 22.26 provides that the Presiding Officer must allow 20 days after receipt of notice of the availability of the transcript before requiring the parties to file proposed findings of fact, conclusions of law, and a proposed order. In the response to public comments on § 22.25 above, EPA announced that it would amend that section to allow motions to conform the transcript to the actual testimony to be filed ''within 30 days after receipt of the transcript, or 45 days after the parties are notified of the availability of the transcript, whichever is less.'' EPA has amended § 22.26 in order to assure that parties need not file proposed findings of fact, conclusions of law, and the proposed order before the last date for filing motions to conform the transcript to the actual testimony pursuant to § 22.26. For additional clarity, EPA has reorganized this section and has also substituted the word ''filed'' for the undefined term ''submitted.''

After the hearing, any party may file proposed findings of fact, conclusions of law, and a proposed order, together with briefs in support thereof. The Presiding Officer shall set a schedule for filing these documents and any reply briefs, but shall not require them before the last date for filing motions under § 22.25 to conform the transcript to the actual testimony. All submissions shall be in writing, shall be served upon all parties, and shall contain adequate references to the record and authorities relied on.

*L. Motion to Reopen a Hearing (40 CFR 22.28)*

The CROP does not specify when a motion is ''made'', so in the interest of clarity, EPA has substituted the word ''filed'' for ''made'' in the first sentence of § 22.28(a). To conform to the

preferred style of the U.S. Government Printing Office, EPA has revised § 22.28(a) and (b) to state the time periods associated with a motion to reopen a hearing with numerals only.

*M. Interlocutory Appeals (40 CFR 22.29)*

EPA has corrected a typographical error in the last sentence of the proposed § 22.29(a) ''forward the order or ruling to the Environmental Appeals Board * * *.'' EPA has corrected a typographical error in the proposed § 22.29(b) by replacing the semicolon that follows ''proceeding'' with a comma. EPA has also changed the title of paragraph (c) from ''Decision'' to ''Interlocutory review.'' The CROP does not specify when a motion is ''made'', so in the interest of clarity, EPA has substituted the word ''filed'' for ''made'' in the last sentence of § 22.29(c). To conform to the preferred style of the U.S. Government Printing Office, EPA has revised § 22.29 to state all time periods with numerals only.

*N. Supplemental Rules Governing the Administrative Assessment of Civil Penalties Under the Federal Insecticide, Fungicide, and Rodenticide Act (40 CFR 22.35)*

As discussed below, EPA has deleted Appendix A. In § 22.35(b), EPA has replaced the reference to Appendix A with a reference to 40 CFR 1.7, which contains the same EPA offices.

*O. Supplemental Rules of Practice Governing the Administrative Assessment of Civil Penalties Under the Clean Water Act (40 CFR 22.38)*

EPA has revised § 22.38(b) to provide notice to State agencies in proceedings commenced without a complaint, pursuant to § 22.13(b). For ease of administration, EPA has made the timing of such notice consistent with the public notice requirements of § 22.45(b)(1). Where § 22.38(c) refers to section 509(b)(1) of the CWA, EPA has added a parallel citation to 33 U.S.C. 1369(b)(1). As discussed above, EPA deleted from the proposed § 22.31(c) the requirement specifying to whom payment of penalties must be made, in favor of the more flexible requirement that complainant direct respondent as to how payment should be made. In view of this change to § 22.31(c), the proposed § 22.38(d) is unnecessary and has been deleted.

*P. Supplemental Rules Governing the Administrative Assessment of Civil Penalties Under CERCLA Section 109 (40 CFR 22.39)*

The proposed § 22.39(b) says petitions for judicial review must be filed ''within 30 days of the date the order making the assessment was issued.'' As the CROP does not specify when an order is ''issued,'' EPA has amended this provision to state that petitions for judicial review must be filed within 30 days after the order has been served on the parties. Where § 22.39(b) refers to CERCLA section 109, EPA has specified the relevant paragraphs and has added parallel citations to the U.S. Code.

EPA has deleted from § 22.39 a superfluous quotation mark that appeared in the proposed rule.

*Q. Supplemental Rules Governing The Administrative Assessment of Civil Penalties for Violations of Compliance Orders Issued to Owners or Operators of Public Water Systems Under Part B of the Safe Drinking Water Act (40 CFR 22.42)*

EPA has revised the title of this section to explicitly state that it applies to cases against owners or operators of public water systems.

Where § 22.42(a) refers to section 1414(g)(3)(B) of the SDWA, EPA has added a parallel citation to 42 U.S.C. § 300g–3(g)(3)(B).

EPA has also revised § 22.42(b) to provide more certain notice to respondents in subpart I proceedings of their right to choose that hearings be conducted in accordance with section 554 of the APA. Paragraph (b) now requires that the complaint must include notice of such right to choose, and notice that the right is waived if respondent does not indicate such choice in its answer. EPA has also revised the final sentence to require that the hearing clerk notify the parties of any changes if the pleadings have been recaptioned.

*R. Supplemental Rules Governing the Administrative Assessment of Civil Penalties Against a Federal Agency Under the Safe Drinking Water Act (40 CFR 22.43)*

Where § 22.43(a) refers to section 1447(b) of the SDWA, EPA has added a parallel citation to 42 U.S.C. § 300j–6(b). To conform to the preferred style of the U.S. Government Printing Office, EPA has revised § 22.43(b) and (c)(6) to state time periods with the numeral ''30''.

In paragraph (c)(6), EPA has added a missing comma after the word ''may'', and has clarified the reference to 40 CFR part 135. The proposed rule required that the public notice include reference to the requirements of 40 CFR 135. EPA has expanded this clause to state that the public notice shall instruct prospective appellants to provide copies of any appeal to the persons described in 40 CFR 135.11(a).

*S. Supplemental Rules Governing the Termination of Permits Under Section 402(a) of the Clean Water Act or Under Section 3005(d) of the Resource Conservation and Recovery Act (40 CFR 22.44)*

In the December 11, 1996, ''Round Two'' permit streamlining proposed rule, EPA proposed to remove the procedures existing in 40 CFR part 124, subpart E, for proceedings to revoke or suspend a permit issued under section 402(a) of the Clean Water Act (33 U.S.C. 1342(a)) or to revoke or suspend a permit under sections 3005(d) and 3008(h) of the Solid Waste Disposal Act (42 U.S.C. 6925(d) and 6928(h)). See 61 FR 65,268 (December 11, 1996). EPA proposed that such proceedings would be conducted pursuant to the CROP procedures, and proposed CROP revisions to accomplish this. These changes were incorporated into the February 25, 1998, proposed CROP revisions. As EPA has not yet finalized the Round Two permit streamlining rule and 40 CFR part 124, subpart E remains in effect, EPA has removed and reserved § 22.44. EPA anticipates that this section will be restored when the Round Two permit streamlining rule is finalized.

*T. Supplemental Rules Governing Public Notice and Comment in Proceedings Under Section 309(g) of the Clean Water Act and Section 300h–2(c) of the Safe Drinking Water Act (40 CFR 22.45)*

The proposed § 22.45 contains several minor errors. The paragraph number ''(1)'' was omitted from § 22.45(b), and the reference to ''paragraph (d)(1) of this section'' in § 22.45(c)(3) should instead refer to section (c)(1). EPA has corrected these typographical errors in today's final rule. EPA has revised the heading of this section to refer to ''section 1423(c)'' of the SDWA, rather than ''section 300h–2(c),'' which is the U.S. Code section number.

In addition to correcting the above-mentioned errors, EPA has expanded the scope of § 22.45 so that these public comment procedures shall apply to class II civil penalty cases under the oil pollution provisions of Section 311(b)(6)(B)(ii) of the Clean Water Act (33 U.S.C. 1321(b)(6)(B)(ii)). Section 311(b)(6)(C)(i) (33 U.S.C. 1321(b)(6)(C)(i)) requires that EPA provide public notice of and reasonable opportunity to comment on the proposed issuance of a class II civil penalty order.

EPA has also revised paragraphs (b)(1), (b)(2)(i), (c)(1) and (c)(3) to better accommodate cases commenced through the filing of a consent

agreement and final order pursuant to § 22.13(b).

EPA has revised paragraphs (b)(1) and (c)(1) to clarify when the public comment period begins and ends.

EPA has revised § 22.45(b)(2)(ii) and (v) to clarify that comments must be submitted to the Regional Hearing Clerk.

EPA has replaced the undefined word ''action'' in paragraphs (b)(2)(ii), (c)(1)(i), (c)(4)(v)(C), (c)(4)(vii) and (c)(4)(viii), with the word ''proceeding,'' which today's rule defines as discussed above.

In § 22.45(b)(2)(iv), EPA has added the word ''and'' after the semi-colon.

EPA has edited § 22.45(c)(1)(iii) and (iv) to refer to commenters in the singular, for consistency with the other provisions of § 22.45.

EPA has also revised § 22.45(c)(4)(ii) to more clearly and succinctly state that a commenter may petition to set aside a consent agreement and proposed final order only on the basis that material evidence was not considered.

EPA has edited the proposed § 22.45(c)(4)(vii) to correct deficiencies in grammar.

*U. Appendices*

The information in Appendix A of the proposed CROP (''Appendix'' in the 1980 CROP) is redundant with 40 CFR 1.7. For that reason, EPA has deleted Appendix A. This deletion should have no substantive effect. Section 22.5(c)(4) requires that the complaint include complainant's address, and the revised § 22.14(a)(7) requires that the complaint contain the address of the Regional Hearing Clerk, so respondents will have ample notice of the addresses relevant to their cases.

EPA has observed that the names and addresses of the lock box banks change often, and that it would be difficult to keep the proposed Appendix B up to date. EPA has decided to delete the proposed Appendix B, and instead to require under § 22.14(a)(8) that the complaint provide information on how to pay penalties.

## IV. Administrative Requirements

*A. The Regulatory Flexibility Act*

Under the Regulatory Flexibility Act, 5 U.S.C. 601–612, whenever an agency is required to publish a general notice of rule making for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the impact of the rule on small entities, *i.e.*, small business, small organizations, and small governmental jurisdictions. The analysis is not required, however, where the Administrator certifies that the rule will not have a significant economic impact on a substantial number of small entities.

This regulation will impose no significant costs on any small entities, because it creates no new regulatory requirements, but instead simplifies existing procedural rules. The overall economic impact on small entities is therefore believed to be nominal, if any at all. Accordingly, I hereby certify that this final regulation will not have a significant impact on a substantial number of small entities.

*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 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.

It has been determined that this rule is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review.

*C. Paperwork Reduction Act*

This rule contains no information collection activities and, therefore, no information collection request (''ICR'') will be submitted to the Office of Management and Budget for review in compliance with the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

*D. Unfunded Mandates Reform Act*

Title II of the Unfunded Mandates Reform Act of 1995 (''UMRA''), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. When a written statement is needed for an EPA rule, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, 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.

Today's rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector. The rule imposes no enforceable duties on any of these governmental entities or the private sector.

*E. Executive Order 12875*

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to

develop an effective process permitting elected officials and other representatives of State, local and tribal governments ''to provide meaningful and timely input to the development of regulatory proposals containing significant unfunded mandates.''

Today's rule does not create a mandate on State, local or tribal governments. This rule does not impose any enforceable duties on these entities. Instead, it merely revises the procedural rules governing EPA's administrative enforcement proceedings.

*F. Executive Order 13045*

Executive Order 13045: ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be ''economically significant'' as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This final rule is not subject to the E.O. 13045 because it is not ''economically significant'' as defined in E.O. 12866, and because it does not involve decisions based on environmental health or safety risks.

*G. Executive Order 13084*

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

*H. National Technology Transfer and Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law 104–113, section 12(d) (15 U.S.C. 272 note), directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA requires EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

*I. Submission to Congress and the Comptroller General*

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

**List of Subjects in 40 CFR Part 22**

Environment protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Hazardous waste, Penalties, Pesticides and pests, Poison prevention, Superfund, Waste treatment and disposal, Water pollution control, Water supply.

Dated: June 30, 1999.

**Carol M. Browner,**

*Administrator.*

Therefore, 40 CFR part 22 is revised to read as follows:

## PART 22—COSOLIDATED RULES OF PRACTICE GOVERNING THE ADMINISTRATIVE ASSESSMENT OF CIVIL PENALTIES, ISSUANCE OF COMPLIANCE OR CORRECTIVE ACTION ORDERS, AND THE REVOCATION, TERMINATION OR SUSPENSION OF PERMITS

### Subpart A—General

Sec.

22.1 Scope of this part.
22.2 Use of number and gender.
22.3 Definitions.
22.4 Powers and duties of the Environmental Appeals Board, Regional Judicial Officer and Presiding Officer; disqualification, withdrawal, and reassignment.
22.5 Filing, service, and form of all filed documents; business confidentiality claims.
22.6 Filing and service of rulings, orders and decisions.
22.7 Computation and extension of time.
22.8 Ex parte discussion of proceeding.
22.9 Examination of documents filed.

### Subpart B—Parties and Appearances

22.10 Appearances.
22.11 Intervention and non-party briefs.
22.12 Consolidation and severance.

### Subpart C—Prehearing Procedures

22.13 Commencement of a proceeding.
22.14 Complaint.
22.15 Answer to the complaint.
22.16 Motions.
22.17 Default.
22.18 Quick resolution; settlement; alternative dispute resolution.
22.19 Prehearing information exchange; prehearing conference; other discovery.
22.20 Accelerated decision; decision to dismiss.

### Subpart D—Hearing Procedures

22.21 Assignment of Presiding Officer; scheduling the hearing.
22.22 Evidence.
22.23 Objections and offers of proof.
22.24 Burden of presentation; burden of persuasion; preponderance of the evidence standard.
22.25 Filing the transcript.
22.26 Proposed findings, conclusions, and order.

### Subpart E—Initial Decision and Motion to Reopen a Hearing

22.27 Initial decision.
22.28 Motion to reopen a hearing.

### Subpart F—Appeals and Administrative Review

22.29 Appeal from or review of interlocutory orders or rulings.
22.30 Appeal from or review of initial decision.

**Subpart G—Final Order**

22.31 Final order.
22.32 Motion to reconsider a final order.

**Subpart H—Supplemental Rules**

22.33 [Reserved]
22.34 Supplemental rules governing the administrative assessment of civil penalties under the Clean Air Act.
22.35 Supplemental rules governing the administrative assessment of civil penalties under the Federal Insecticide, Fungicide, and Rodenticide Act.
22.36 [Reserved]
22.37 Supplemental rules governing administrative proceedings under the Solid Waste Disposal Act.
22.38 Supplemental rules of practice governing the administrative assessment of civil penalties under the Clean Water Act.
22.39 Supplemental rules governing the administrative assessment of civil penalties under section 109 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended.
22.40 [Reserved]
22.41 Supplemental rules governing the administrative assessment of civil penalties under Title II of the Toxic Substance Control Act, enacted as section 2 of the Asbestos Hazard Emergency Response Act (AHERA).
22.42 Supplemental rules governing the administrative assessment of civil penalties for violations of compliance orders issued to owners or operators of public water systems under part B of the Safe Drinking Water Act.
22.43 Supplemental rules governing the administrative assessment of civil penalties against a federal agency under the Safe Drinking Water Act.
22.44 [Reserved]
22.45 Supplemental rules governing public notice and comment in proceedings under sections 309(g) and 311(b)(6)(B)(ii) of the Clean Water Act and section 1423(c) of the Safe Drinking Water Act.
22.46–22.49 [Reserved]

**Subpart I—Administrative Proceedings Not Governed by Section 554 of the Administrative Procedure Act**

22.50 Scope of this subpart.
22.51 Presiding Officer.
22.52 Information exchange and discovery.

**Authority:** 7 U.S.C. 136*l;* 15 U.S.C. 2610(c), 2615(a) and 2647; 33 U.S.C. 1319(g), 1321(b)(6), 1342(a), 1415(a) and (f) and 1418; 42 U.S.C. 300g-3(g)(3)(B), 300h-2(c), 300j-6(a), 6912, 6925, 6928, 6945(c)(2), 6961, 6991b, 6991e, 7413(d), 7524(c), 7545(d), 7547(d), 7601, 7607(a), 9609, 11045, and 14304.

## Subpart A—General

### § 22.1 Scope of this part.

(a) These Consolidated Rules of Practice govern all administrative adjudicatory proceedings for:

(1) The assessment of any administrative civil penalty under section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act as amended (7 U.S.C. 136*l*(a));

(2) The assessment of any administrative civil penalty under sections 113(d), 205(c), 211(d) and 213(d) of the Clean Air Act, as amended (42 U.S.C. 7413(d), 7524(c), 7545(d) and 7547(d));

(3) The assessment of any administrative civil penalty or for the revocation or suspension of any permit under section 105(a) and (f) of the Marine Protection, Research, and Sanctuaries Act as amended (33 U.S.C. 1415(a) and (f));

(4)(i) The issuance of a compliance order pursuant to section 3008(a), section 4005(c)(2), section 6001(b), or section 9006(a) of the Solid Waste Disposal Act (''SWDA'') (42 U.S.C. 6925(d) & (e), 6928(a), 6945(c)(2), 6961(b), or 6991e(a)); or the assessment of any administrative civil penalty under sections 3008, 4005(c)(2), 6001(b), and 9006 of the SWDA (42 U.S.C. 6928, 6945(c)(2), 6961(b), and 6991e), except as provided in 40 CFR parts 24 and 124.

(ii) The issuance of corrective action orders under section 3008(h) of the SWDA only when such orders are contained within an administrative order which:

(A) Includes claims under section 3008(a) of the SWDA; or

(B) Includes a suspension or revocation of authorization to operate under section 3005(e) of the SWDA; or

(C) Seeks penalties under section 3008(h)(2) of the SWDA for non-compliance with a order issued pursuant to section 3008(h).

(iii) The issuance of corrective action orders under section 9003(h)(4) of the SWDA only when such orders are contained within administrative orders which include claims under section 9006 of the SWDA;

(5) The assessment of any administrative civil penalty under sections 16(a) and 207 of the Toxic Substances Control Act (15 U.S.C. 2615(a) and 2647);

(6) The assessment of any administrative civil penalty under sections 309(g) and 311(b)(6) of the Clean Water Act (33 U.S.C. 1319(g) and 1321(b)(6));

(7) The assessment of any administrative civil penalty under section 109 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. 9609);

(8) The assessment of any administrative civil penalty under section 325 of the Emergency Planning and Community Right-To-Know Act of 1986 (''EPCRA'') (42 U.S.C. 11045);

(9) The assessment of any administrative civil penalty under sections 1414(g)(3)(B), 1423(c), and 1447(b) of the Safe Drinking Water Act as amended (42 U.S.C. 300g–3(g)(3)(B), 300h–2(c), and 300j–6(b)), or the issuance of any order requiring both compliance and the assessment of an administrative civil penalty under section 1423(c);

(10) The assessment of any administrative civil penalty or the issuance of any order requiring compliance under Section 5 of the Mercury-Containing and Rechargeable Battery Management Act (42 U.S.C. 14304).

(b) The supplemental rules set forth in subparts H and I of this part establish special procedures for proceedings identified in paragraph (a) of this section where the Act allows or requires procedures different from the procedures in subparts A through G of this part. Where inconsistencies exist between subparts A through G of this part and subpart H or I of this part, subparts H or I of this part shall apply.

(c) Questions arising at any stage of the proceeding which are not addressed in these Consolidated Rules of Practice shall be resolved at the discretion of the Administrator, Environmental Appeals Board, Regional Administrator, or Presiding Officer, as provided for in these Consolidated Rules of Practice.

### § 22.2 Use of number and gender.

As used in these Consolidated Rules of Practice, words in the singular also include the plural and words in the masculine gender also include the feminine, and vice versa, as the case may require.

### § 22.3 Definitions.

(a) The following definitions apply to these Consolidated Rules of Practice:

*Act* means the particular statute authorizing the proceeding at issue.

*Administrative Law Judge* means an Administrative Law Judge appointed under 5 U.S.C. 3105.

*Administrator* means the Administrator of the U.S. Environmental Protection Agency or his delegate.

*Agency* means the United States Environmental Protection Agency.

*Business confidentiality claim* means a confidentiality claim as defined in 40 CFR 2.201(h).

*Clerk of the Board* means the Clerk of the Environmental Appeals Board, Mail Code 1103B, U.S. Environmental Protection Agency, 401 M St. S.W., Washington, DC 20460.

*Commenter* means any person (other than a party) or representative of such person who timely:

(1) Submits in writing to the Regional Hearing Clerk that he is providing or intends to provide comments on the proposed assessment of a penalty pursuant to sections 309(g)(4) and 311(b)(6)(C) of the Clean Water Act or section 1423(c) of the Safe Drinking Water Act, whichever applies, and intends to participate in the proceeding; and

(2) Provides the Regional Hearing Clerk with a return address.

*Complainant* means any person authorized to issue a complaint in accordance with §§ 22.13 and 22.14 on behalf of the Agency to persons alleged to be in violation of the Act. The complainant shall not be a member of the Environmental Appeals Board, the Regional Judicial Officer or any other person who will participate or advise in the adjudication.

*Consolidated Rules of Practice* means the regulations in this part.

*Environmental Appeals Board* means the Board within the Agency described in 40 CFR 1.25.

*Final order* means:

(1) An order issued by the Environmental Appeals Board or the Administrator after an appeal of an initial decision, accelerated decision, decision to dismiss, or default order, disposing of the matter in controversy between the parties;

(2) An initial decision which becomes a final order under § 22.27(c); or

(3) A final order issued in accordance with § 22.18.

*Hearing* means an evidentiary hearing on the record, open to the public (to the extent consistent with § 22.22(a)(2)), conducted as part of a proceeding under these Consolidated Rules of Practice.

*Hearing Clerk* means the Hearing Clerk, Mail Code 1900, U.S. Environmental Protection Agency, 401 M St. SW., Washington, DC 20460.

*Initial decision* means the decision issued by the Presiding Officer pursuant to §§ 22.17(c), 22.20(b) or 22.27 resolving all outstanding issues in the proceeding.

*Party* means any person that participates in a proceeding as complainant, respondent, or intervenor.

*Permit Action* means the revocation, suspension or termination of all or part of a permit issued under section 102 of the Marine Protection, Research and Sanctuaries Act (33 U.S.C. 1412).

*Person* includes any individual, partnership, association, corporation, and any trustee, assignee, receiver or legal successor thereof; any organized group of persons whether incorporated or not; and any officer, employee, agent, department, agency or instrumentality of the Federal Government, of any State or local unit of government, or of any foreign government.

*Presiding Officer* means an individual who presides in an administrative adjudication until an initial decision becomes final or is appealed. The Presiding Officer shall be an Administrative Law Judge, except where §§ 22.4(b), 22.16(c) or 22.51 allow a Regional Judicial Officer to serve as Presiding Officer.

*Proceeding* means the entirety of a single administrative adjudication, from the filing of the complaint through the issuance of a final order, including any action on a motion to reconsider under § 22.32.

*Regional Administrator* means, for a case initiated in an EPA Regional Office, the Regional Administrator for that Region or any officer or employee thereof to whom his authority is duly delegated.

*Regional Hearing Clerk* means an individual duly authorized to serve as hearing clerk for a given region, who shall be neutral in every proceeding. Correspondence with the Regional Hearing Clerk shall be addressed to the Regional Hearing Clerk at the address specified in the complaint. For a case initiated at EPA Headquarters, the term Regional Hearing Clerk means the Hearing Clerk.

*Regional Judicial Officer* means a person designated by the Regional Administrator under § 22.4(b).

*Respondent* means any person against whom the complaint states a claim for relief.

(b) Terms defined in the Act and not defined in these Consolidated Rules of Practice are used consistent with the meanings given in the Act.

**§ 22.4 Powers and duties of the Environmental Appeals Board, Regional Judicial Officer and Presiding Officer; disqualification, withdrawal, and reassignment.**

(a) *Environmental Appeals Board.* (1) The Environmental Appeals Board rules on appeals from the initial decisions, rulings and orders of a Presiding Officer in proceedings under these Consolidated Rules of Practice; acts as Presiding Officer until the respondent files an answer in proceedings under these Consolidated Rules of Practice commenced at EPA Headquarters; and approves settlement of proceedings under these Consolidated Rules of Practice commenced at EPA Headquarters. The Environmental Appeals Board may refer any case or motion to the Administrator when the Environmental Appeals Board, in its discretion, deems it appropriate to do so. When an appeal or motion is referred to the Administrator by the Environmental Appeals Board, all parties shall be so notified and references to the Environmental Appeals Board in these Consolidated Rules of Practice shall be interpreted as referring to the Administrator. If a case or motion is referred to the Administrator by the Environmental Appeals Board, the Administrator may consult with any EPA employee concerning the matter, provided such consultation does not violate § 22.8. Motions directed to the Administrator shall not be considered except for motions for disqualification pursuant to paragraph (d) of this section, or motions filed in matters that the Environmental Appeals Board has referred to the Administrator.

(2) In exercising its duties and responsibilities under these Consolidated Rules of Practice, the Environmental Appeals Board may do all acts and take all measures as are necessary for the efficient, fair and impartial adjudication of issues arising in a proceeding, including imposing procedural sanctions against a party who without adequate justification fails or refuses to comply with these Consolidated Rules of Practice or with an order of the Environmental Appeals Board. Such sanctions may include drawing adverse inferences against a party, striking a party's pleadings or other submissions from the record, and denying any or all relief sought by the party in the proceeding.

(b) *Regional Judicial Officer.* Each Regional Administrator shall delegate to one or more Regional Judicial Officers authority to act as Presiding Officer in proceedings under subpart I of this part, and to act as Presiding Officer until the respondent files an answer in proceedings under these Consolidated Rules of Practice to which subpart I of this part does not apply. The Regional Administrator may also delegate to one or more Regional Judicial Officers the authority to approve settlement of proceedings pursuant to § 22.18(b)(3). These delegations will not prevent a Regional Judicial Officer from referring any motion or case to the Regional Administrator. A Regional Judicial Officer shall be an attorney who is a permanent or temporary employee of the Agency or another Federal agency and who may perform other duties within the Agency. A Regional Judicial Officer shall not have performed prosecutorial or investigative functions in connection with any case in which he serves as a Regional Judicial Officer. A Regional Judicial Officer shall not knowingly preside over a case involving any party concerning whom the

Regional Judicial Officer performed any functions of prosecution or investigation within the 2 years preceding the commencement of the case. A Regional Judicial Officer shall not prosecute enforcement cases and shall not be supervised by any person who supervises the prosecution of enforcement cases, but may be supervised by the Regional Counsel.

(c) *Presiding Officer.* The Presiding Officer shall conduct a fair and impartial proceeding, assure that the facts are fully elicited, adjudicate all issues, and avoid delay. The Presiding Officer may:

(1) Conduct administrative hearings under these Consolidated Rules of Practice;

(2) Rule upon motions, requests, and offers of proof, and issue all necessary orders;

(3) Administer oaths and affirmations and take affidavits;

(4) Examine witnesses and receive documentary or other evidence;

(5) Order a party, or an officer or agent thereof, to produce testimony, documents, or other non-privileged evidence, and failing the production thereof without good cause being shown, draw adverse inferences against that party;

(6) Admit or exclude evidence;

(7) Hear and decide questions of facts, law, or discretion;

(8) Require parties to attend conferences for the settlement or simplification of the issues, or the expedition of the proceedings;

(9) Issue subpoenas authorized by the Act; and

(10) Do all other acts and take all measures necessary for the maintenance of order and for the efficient, fair and impartial adjudication of issues arising in proceedings governed by these Consolidated Rules of Practice.

(d) *Disqualification, withdrawal and reassignment.* (1) The Administrator, the Regional Administrator, the members of the Environmental Appeals Board, the Regional Judicial Officer, or the Administrative Law Judge may not perform functions provided for in these Consolidated Rules of Practice regarding any matter in which they have a financial interest or have any relationship with a party or with the subject matter which would make it inappropriate for them to act. Any party may at any time by motion to the Administrator, Regional Administrator, a member of the Environmental Appeals Board, the Regional Judicial Officer or the Administrative Law Judge request that he or she disqualify himself or herself from the proceeding. If such a motion to disqualify the Regional Administrator, Regional Judicial Officer or Administrative Law Judge is denied, a party may appeal that ruling to the Environmental Appeals Board. If a motion to disqualify a member of the Environmental Appeals Board is denied, a party may appeal that ruling to the Administrator. There shall be no interlocutory appeal of the ruling on a motion for disqualification. The Administrator, the Regional Administrator, a member of the Environmental Appeals Board, the Regional Judicial Officer, or the Administrative Law Judge may at any time withdraw from any proceeding in which he deems himself disqualified or unable to act for any reason.

(2) If the Administrator, the Regional Administrator, the Regional Judicial Officer, or the Administrative Law Judge is disqualified or withdraws from the proceeding, a qualified individual who has none of the infirmities listed in paragraph (d)(1) of this section shall be assigned as a replacement. The Administrator shall assign a replacement for a Regional Administrator who withdraws or is disqualified. Should the Administrator withdraw or be disqualified, the Regional Administrator from the Region where the case originated shall replace the Administrator. If that Regional Administrator would be disqualified, the Administrator shall assign a Regional Administrator from another Region to replace the Administrator. The Regional Administrator shall assign a new Regional Judicial Officer if the original Regional Judicial Officer withdraws or is disqualified. The Chief Administrative Law Judge shall assign a new Administrative Law Judge if the original Administrative Law Judge withdraws or is disqualified.

(3) The Chief Administrative Law Judge, at any stage in the proceeding, may reassign the case to an Administrative Law Judge other than the one originally assigned in the event of the unavailability of the Administrative Law Judge or where reassignment will result in efficiency in the scheduling of hearings and would not prejudice the parties.

**§ 22.5 Filing, service, and form of all filed documents; business confidentiality claims.**

(a) *Filing of documents.* (1) The original and one copy of each document intended to be part of the record shall be filed with the Regional Hearing Clerk when the proceeding is before the Presiding Officer, or filed with the Clerk of the Board when the proceeding is before the Environmental Appeals Board. A document is filed when it is received by the appropriate Clerk. The Presiding Officer or the Environmental Appeals Board may by order authorize facsimile or electronic filing, subject to any appropriate conditions and limitations.

(2) When the Presiding Officer corresponds directly with the parties, the original of the correspondence shall be filed with the Regional Hearing Clerk. Parties who correspond directly with the Presiding Officer shall file a copy of the correspondence with the Regional Hearing Clerk.

(3) A certificate of service shall accompany each document filed or served in the proceeding.

(b) *Service of documents.* A copy of each document filed in the proceeding shall be served on the Presiding Officer or the Environmental Appeals Board, and on each party.

(1) *Service of complaint.* (i) Complainant shall serve on respondent, or a representative authorized to receive service on respondent's behalf, a copy of the signed original of the complaint, together with a copy of these Consolidated Rules of Practice. Service shall be made personally, by certified mail with return receipt requested, or by any reliable commercial delivery service that provides written verification of delivery.

(ii)(A) Where respondent is a domestic or foreign corporation, a partnership, or an unincorporated association which is subject to suit under a common name, complainant shall serve an officer, partner, a managing or general agent, or any other person authorized by appointment or by Federal or State law to receive service of process.

(B) Where respondent is an agency of the United States complainant shall serve that agency as provided by that agency's regulations, or in the absence of controlling regulation, as otherwise permitted by law. Complainant should also provide a copy of the complaint to the senior executive official having responsibility for the overall operations of the geographical unit where the alleged violations arose. If the agency is a corporation, the complaint shall be served as prescribed in paragraph (b)(1)(ii)(A) of this section.

(C) Where respondent is a State or local unit of government, agency, department, corporation or other instrumentality, complainant shall serve the chief executive officer thereof, or as otherwise permitted by law. Where respondent is a State or local officer, complainant shall serve such officer.

(iii) Proof of service of the complaint shall be made by affidavit of the person making personal service, or by properly executed receipt. Such proof of service

shall be filed with the Regional Hearing Clerk immediately upon completion of service.

(2) *Service of filed documents other than the complaint, rulings, orders, and decisions.* All filed documents other than the complaint, rulings, orders, and decisions shall be served personally, by first class mail (including certified mail, return receipt requested, Overnight Express and Priority Mail), or by any reliable commercial delivery service. The Presiding Officer or the Environmental Appeals Board may by order authorize facsimile or electronic service, subject to any appropriate conditions and limitations.

(c) *Form of documents.* (1) Except as provided in this section, or by order of the Presiding Officer or of the Environmental Appeals Board there are no specific requirements as to the form of documents.

(2) The first page of every filed document shall contain a caption identifying the respondent and the docket number. All legal briefs and legal memoranda greater than 20 pages in length (excluding attachments) shall contain a table of contents and a table of authorities with page references.

(3) The original of any filed document (other than exhibits) shall be signed by the party filing or by its attorney or other representative. The signature constitutes a representation by the signer that he has read the document, that to the best of his knowledge, information and belief, the statements made therein are true, and that it is not interposed for delay.

(4) The first document filed by any person shall contain the name, address, and telephone number of an individual authorized to receive service relating to the proceeding. Parties shall promptly file any changes in this information with the Regional Hearing Clerk, and serve copies on the Presiding Officer and all parties to the proceeding. If a party fails to furnish such information and any changes thereto, service to the party's last known address shall satisfy the requirements of paragraph (b)(2) of this section and § 22.6.

(5) The Environmental Appeals Board or the Presiding Officer may exclude from the record any document which does not comply with this section. Written notice of such exclusion, stating the reasons therefor, shall be promptly given to the person submitting the document. Such person may amend and resubmit any excluded document upon motion granted by the Environmental Appeals Board or the Presiding Officer, as appropriate.

(d) *Confidentiality of business information.* (1) A person who wishes to assert a business confidentiality claim with regard to any information contained in any document to be filed in a proceeding under these Consolidated Rules of Practice shall assert such a claim in accordance with 40 CFR part 2 at the time that the document is filed. A document filed without a claim of business confidentiality shall be available to the public for inspection and copying.

(2) Two versions of any document which contains information claimed confidential shall be filed with the Regional Hearing Clerk:

(i) One version of the document shall contain the information claimed confidential. The cover page shall include the information required under paragraph (c)(2) of this section and the words ''Business Confidentiality Asserted''. The specific portion(s) alleged to be confidential shall be clearly identified within the document.

(ii) A second version of the document shall contain all information except the specific information claimed confidential, which shall be redacted and replaced with notes indicating the nature of the information redacted. The cover page shall state that information claimed confidential has been deleted and that a complete copy of the document containing the information claimed confidential has been filed with the Regional Hearing Clerk.

(3) Both versions of the document shall be served on the Presiding Officer and the complainant. Both versions of the document shall be served on any party, non-party participant, or representative thereof, authorized to receive the information claimed confidential by the person making the claim of confidentiality. Only the redacted version shall be served on persons not authorized to receive the confidential information.

(4) Only the second, redacted version shall be treated as public information. An EPA officer or employee may disclose information claimed confidential in accordance with paragraph (d)(1) of this section only as authorized under 40 CFR part 2.

### § 22.6 Filing and service of rulings, orders and decisions.

All rulings, orders, decisions, and other documents issued by the Regional Administrator or Presiding Officer shall be filed with the Regional Hearing Clerk. All such documents issued by the Environmental Appeals Board shall be filed with the Clerk of the Board. Copies of such rulings, orders, decisions or other documents shall be served personally, by first class mail (including by certified mail or return receipt requested, Overnight Express and Priority Mail), by EPA's internal mail, or any reliable commercial delivery service, upon all parties by the Clerk of the Environmental Appeals Board, the Office of Administrative Law Judges or the Regional Hearing Clerk, as appropriate.

### § 22.7 Computation and extension of time.

(a) *Computation.* In computing any period of time prescribed or allowed in these Consolidated Rules of Practice, except as otherwise provided, the day of the event from which the designated period begins to run shall not be included. Saturdays, Sundays, and Federal holidays shall be included. When a stated time expires on a Saturday, Sunday or Federal holiday, the stated time period shall be extended to include the next business day.

*(b) Extensions of time.* The Environmental Appeals Board or the Presiding Officer may grant an extension of time for filing any document: upon timely motion of a party to the proceeding, for good cause shown, and after consideration of prejudice to other parties; or upon its own initiative. Any motion for an extension of time shall be filed sufficiently in advance of the due date so as to allow other parties reasonable opportunity to respond and to allow the Presiding Officer or Environmental Appeals Board reasonable opportunity to issue an order.

(c) *Service by mail or commercial delivery service.* Service of the complaint is complete when the return receipt is signed. Service of all other documents is complete upon mailing or when placed in the custody of a reliable commercial delivery service. Where a document is served by first class mail or commercial delivery service, but not by overnight or same-day delivery, 5 days shall be added to the time allowed by these Consolidated Rules of Practice for the filing of a responsive document.

### § 22.8 Ex parte discussion of proceeding.

At no time after the issuance of the complaint shall the Administrator, the members of the Environmental Appeals Board, the Regional Administrator, the Presiding Officer or any other person who is likely to advise these officials on any decision in the proceeding, discuss ex parte the merits of the proceeding with any interested person outside the Agency, with any Agency staff member who performs a prosecutorial or investigative function in such proceeding or a factually related proceeding, or with any representative of such person. Any ex parte memorandum or other communication

addressed to the Administrator, the Regional Administrator, the Environmental Appeals Board, or the Presiding Officer during the pendency of the proceeding and relating to the merits thereof, by or on behalf of any party shall be regarded as argument made in the proceeding and shall be served upon all other parties. The other parties shall be given an opportunity to reply to such memorandum or communication. The requirements of this section shall not apply to any person who has formally recused himself from all adjudicatory functions in a proceeding, or who issues final orders only pursuant to § 22.18(b)(3).

**§ 22.9 Examination of documents filed.**

(a) Subject to the provisions of law restricting the public disclosure of confidential information, any person may, during Agency business hours inspect and copy any document filed in any proceeding. Such documents shall be made available by the Regional Hearing Clerk, the Hearing Clerk, or the Clerk of the Board, as appropriate.

(b) The cost of duplicating documents shall be borne by the person seeking copies of such documents. The Agency may waive this cost in its discretion.

## Subpart B—Parties and Appearances

**§ 22.10 Appearances.**

Any party may appear in person or by counsel or other representative. A partner may appear on behalf of a partnership and an officer may appear on behalf of a corporation. Persons who appear as counsel or other representative must conform to the standards of conduct and ethics required of practitioners before the courts of the United States.

**§ 22.11 Intervention and non-party briefs.**

(a) *Intervention.* Any person desiring to become a party to a proceeding may move for leave to intervene. A motion for leave to intervene that is filed after the exchange of information pursuant to § 22.19(a) shall not be granted unless the movant shows good cause for its failure to file before such exchange of information. All requirements of these Consolidated Rules of Practice shall apply to a motion for leave to intervene as if the movant were a party. The Presiding Officer shall grant leave to intervene in all or part of the proceeding if: the movant claims an interest relating to the cause of action; a final order may as a practical matter impair the movant's ability to protect that interest; and the movant's interest is not adequately represented by existing parties. The intervenor shall be bound by any agreements, arrangements and other matters previously made in the proceeding unless otherwise ordered by the Presiding Officer or the Environmental Appeals Board for good cause.

(b) *Non-party briefs.* Any person who is not a party to a proceeding may move for leave to file a non-party brief. The motion shall identify the interest of the applicant and shall explain the relevance of the brief to the proceeding. All requirements of these Consolidated Rules of Practice shall apply to the motion as if the movant were a party. If the motion is granted, the Presiding Officer or Environmental Appeals Board shall issue an order setting the time for filing such brief. Any party to the proceeding may file a response to a non-party brief within 15 days after service of the non-party brief.

**§ 22.12 Consolidation and severance.**

(a) *Consolidation.* The Presiding Officer or the Environmental Appeals Board may consolidate any or all matters at issue in two or more proceedings subject to these Consolidated Rules of Practice where: there exist common parties or common questions of fact or law; consolidation would expedite and simplify consideration of the issues; and consolidation would not adversely affect the rights of parties engaged in otherwise separate proceedings. Proceedings subject to subpart I of this part may be consolidated only upon the approval of all parties. Where a proceeding subject to the provisions of subpart I of this part is consolidated with a proceeding to which subpart I of this part does not apply, the procedures of subpart I of this part shall not apply to the consolidated proceeding.

(b) *Severance.* The Presiding Officer or the Environmental Appeals Board may, for good cause, order any proceedings severed with respect to any or all parties or issues.

## Subpart C—Prehearing Procedures

**§ 22.13 Commencement of a proceeding.**

(a) Any proceeding subject to these Consolidated Rules of Practice is commenced by filing with the Regional Hearing Clerk a complaint conforming to § 22.14.

(b) Notwithstanding paragraph (a) of this section, where the parties agree to settlement of one or more causes of action before the filing of a complaint, a proceeding may be simultaneously commenced and concluded by the issuance of a consent agreement and final order pursuant to § 22.18(b)(2) and (3).

**§ 22.14 Complaint.**

(a) *Content of complaint.* Each complaint shall include:

(1) A statement reciting the section(s) of the Act authorizing the issuance of the complaint;

(2) Specific reference to each provision of the Act, implementing regulations, permit or order which respondent is alleged to have violated;

(3) A concise statement of the factual basis for each violation alleged;

(4) A description of all relief sought, including one or more of the following:

(i) The amount of the civil penalty which is proposed to be assessed, and a brief explanation of the proposed penalty;

(ii) Where a specific penalty demand is not made, the number of violations (where applicable, days of violation) for which a penalty is sought, a brief explanation of the severity of each violation alleged and a recitation of the statutory penalty authority applicable for each violation alleged in the complaint;

(iii) A request for a Permit Action and a statement of its proposed terms and conditions; or

(iv) A request for a compliance or corrective action order and a statement of the terms and conditions thereof;

(5) Notice of respondent's right to request a hearing on any material fact alleged in the complaint, or on the appropriateness of any proposed penalty, compliance or corrective action order, or Permit Action;

(6) Notice if subpart I of this part applies to the proceeding;

(7) The address of the Regional Hearing Clerk; and

(8) Instructions for paying penalties, if applicable.

(b) *Rules of practice.* A copy of these Consolidated Rules of Practice shall accompany each complaint served.

(c) *Amendment of the complaint.* The complainant may amend the complaint once as a matter of right at any time before the answer is filed. Otherwise the complainant may amend the complaint only upon motion granted by the Presiding Officer. Respondent shall have 20 additional days from the date of service of the amended complaint to file its answer.

(d) *Withdrawal of the complaint.* The complainant may withdraw the complaint, or any part thereof, without prejudice one time before the answer has been filed. After one withdrawal before the filing of an answer, or after the filing of an answer, the complainant may withdraw the complaint, or any part thereof, without prejudice only upon motion granted by the Presiding Officer.

**§ 22.15 Answer to the complaint.**

(a) *General.* Where respondent: Contests any material fact upon which the complaint is based; contends that the proposed penalty, compliance or corrective action order, or Permit Action, as the case may be, is inappropriate; or contends that it is entitled to judgment as a matter of law, it shall file an original and one copy of a written answer to the complaint with the Regional Hearing Clerk and shall serve copies of the answer on all other parties. Any such answer to the complaint must be filed with the Regional Hearing Clerk within 30 days after service of the complaint.

(b) *Contents of the answer.* The answer shall clearly and directly admit, deny or explain each of the factual allegations contained in the complaint with regard to which respondent has any knowledge. Where respondent has no knowledge of a particular factual allegation and so states, the allegation is deemed denied. The answer shall also state: The circumstances or arguments which are alleged to constitute the grounds of any defense; the facts which respondent disputes; the basis for opposing any proposed relief; and whether a hearing is requested.

(c) *Request for a hearing.* A hearing upon the issues raised by the complaint and answer may be held if requested by respondent in its answer. If the respondent does not request a hearing, the Presiding Officer may hold a hearing if issues appropriate for adjudication are raised in the answer.

(d) *Failure to admit, deny, or explain.* Failure of respondent to admit, deny, or explain any material factual allegation contained in the complaint constitutes an admission of the allegation.

(e) *Amendment of the answer.* The respondent may amend the answer to the complaint upon motion granted by the Presiding Officer.

**§ 22.16 Motions.**

(a) *General.* Motions shall be served as provided by § 22.5(b)(2). Upon the filing of a motion, other parties may file responses to the motion and the movant may file a reply to the response. Any additional responsive documents shall be permitted only by order of the Presiding Officer or Environmental Appeals Board, as appropriate. All motions, except those made orally on the record during a hearing, shall:

(1) Be in writing;

(2) State the grounds therefor, with particularity;

(3) Set forth the relief sought; and

(4) Be accompanied by any affidavit, certificate, other evidence or legal memorandum relied upon.

(b) *Response to motions.* A party's response to any written motion must be filed within 15 days after service of such motion. The movant's reply to any written response must be filed within 10 days after service of such response and shall be limited to issues raised in the response. The Presiding Officer or the Environmental Appeals Board may set a shorter or longer time for response or reply, or make other orders concerning the disposition of motions. The response or reply shall be accompanied by any affidavit, certificate, other evidence, or legal memorandum relied upon. Any party who fails to respond within the designated period waives any objection to the granting of the motion.

(c) *Decision.* The Regional Judicial Officer (or in a proceeding commenced at EPA Headquarters, the Environmental Appeals Board) shall rule on all motions filed or made before an answer to the complaint is filed. Except as provided in §§ 22.29(c) and 22.51, an Administrative Law Judge shall rule on all motions filed or made after an answer is filed and before an initial decision has become final or has been appealed. The Environmental Appeals Board shall rule as provided in § 22.29(c) and on all motions filed or made after an appeal of the initial decision is filed, except as provided pursuant to § 22.28.

(d) *Oral argument.* The Presiding Officer or the Environmental Appeals Board may permit oral argument on motions in its discretion.

**§ 22.17 Default.**

(a) *Default.* A party may be found to be in default: after motion, upon failure to file a timely answer to the complaint; upon failure to comply with the information exchange requirements of § 22.19(a) or an order of the Presiding Officer; or upon failure to appear at a conference or hearing. Default by respondent constitutes, for purposes of the pending proceeding only, an admission of all facts alleged in the complaint and a waiver of respondent's right to contest such factual allegations. Default by complainant constitutes a waiver of complainant's right to proceed on the merits of the action, and shall result in the dismissal of the complaint with prejudice.

(b) *Motion for default.* A motion for default may seek resolution of all or part of the proceeding. Where the motion requests the assessment of a penalty or the imposition of other relief against a defaulting party, the movant must specify the penalty or other relief sought and state the legal and factual grounds for the relief requested.

(c) *Default order.* When the Presiding Officer finds that default has occurred, he shall issue a default order against the defaulting party as to any or all parts of the proceeding unless the record shows good cause why a default order should not be issued. If the order resolves all outstanding issues and claims in the proceeding, it shall constitute the initial decision under these Consolidated Rules of Practice. The relief proposed in the complaint or the motion for default shall be ordered unless the requested relief is clearly inconsistent with the record of the proceeding or the Act. For good cause shown, the Presiding Officer may set aside a default order.

(d) *Payment of penalty; effective date of compliance or corrective action orders, and Permit Actions.* Any penalty assessed in the default order shall become due and payable by respondent without further proceedings 30 days after the default order becomes final under § 22.27(c). Any default order requiring compliance or corrective action shall be effective and enforceable without further proceedings on the date the default order becomes final under § 22.27(c). Any Permit Action ordered in the default order shall become effective without further proceedings on the date that the default order becomes final under § 22.27(c).

**§ 22.18 Quick resolution; settlement; alternative dispute resolution.**

(a) *Quick resolution.* (1) A respondent may resolve the proceeding at any time by paying the specific penalty proposed in the complaint or in complainant's prehearing exchange in full as specified by complainant and by filing with the Regional Hearing Clerk a copy of the check or other instrument of payment. If the complaint contains a specific proposed penalty and respondent pays that proposed penalty in full within 30 days after receiving the complaint, then no answer need be filed. This paragraph (a) shall not apply to any complaint which seeks a compliance or corrective action order or Permit Action. In a proceeding subject to the public comment provisions of § 22.45, this quick resolution is not available until 10 days after the close of the comment period.

(2) Any respondent who wishes to resolve a proceeding by paying the proposed penalty instead of filing an answer, but who needs additional time to pay the penalty, may file a written statement with the Regional Hearing Clerk within 30 days after receiving the complaint stating that the respondent agrees to pay the proposed penalty in accordance with paragraph (a)(1) of this section. The written statement need not contain any response to, or admission of, the allegations in the complaint.

Within 60 days after receiving the complaint, the respondent shall pay the full amount of the proposed penalty. Failure to make such payment within 60 days of receipt of the complaint may subject the respondent to default pursuant to § 22.17.

(3) Upon receipt of payment in full, the Regional Judicial Officer or Regional Administrator, or, in a proceeding commenced at EPA Headquarters, the Environmental Appeals Board, shall issue a final order. Payment by respondent shall constitute a waiver of respondent's rights to contest the allegations and to appeal the final order.

(b) *Settlement.* (1) The Agency encourages settlement of a proceeding at any time if the settlement is consistent with the provisions and objectives of the Act and applicable regulations. The parties may engage in settlement discussions whether or not the respondent requests a hearing. Settlement discussions shall not affect the respondent's obligation to file a timely answer under § 22.15.

(2) *Consent agreement.* Any and all terms and conditions of a settlement shall be recorded in a written consent agreement signed by all parties or their representatives. The consent agreement shall state that, for the purpose of the proceeding, respondent: Admits the jurisdictional allegations of the complaint; admits the facts stipulated in the consent agreement or neither admits nor denies specific factual allegations contained in the complaint; consents to the assessment of any stated civil penalty, to the issuance of any specified compliance or corrective action order, to any conditions specified in the consent agreement, and to any stated Permit Action; and waives any right to contest the allegations and its right to appeal the proposed final order accompanying the consent agreement. Where complainant elects to commence a proceeding pursuant to § 22.13(b), the consent agreement shall also contain the elements described at § 22.14(a)(1)-(3) and (8). The parties shall forward the executed consent agreement and a proposed final order to the Regional Judicial Officer or Regional Administrator, or, in a proceeding commenced at EPA Headquarters, the Environmental Appeals Board.

(3) *Conclusion of proceeding.* No settlement or consent agreement shall dispose of any proceeding under these Consolidated Rules of Practice without a final order from the Regional Judicial Officer or Regional Administrator, or, in a proceeding commenced at EPA Headquarters, the Environmental Appeals Board, ratifying the parties' consent agreement.

(c) *Scope of resolution or settlement.* Full payment of the penalty proposed in a complaint pursuant to paragraph (a) of this section or settlement pursuant to paragraph (b) of this section shall not in any case affect the right of the Agency or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. Full payment of the penalty proposed in a complaint pursuant to paragraph (a) of this section or settlement pursuant to paragraph (b) of this section shall only resolve respondent's liability for Federal civil penalties for the violations and facts alleged in the complaint.

(d) *Alternative means of dispute resolution.* (1) The parties may engage in any process within the scope of the Alternative Dispute Resolution Act (''ADRA''), 5 U.S.C. 581 *et seq.,* which may facilitate voluntary settlement efforts. Such process shall be subject to the confidentiality provisions of the ADRA.

(2) Dispute resolution under this paragraph (d) does not divest the Presiding Officer of jurisdiction and does not automatically stay the proceeding. All provisions of these Consolidated Rules of Practice remain in effect notwithstanding any dispute resolution proceeding.

(3) The parties may choose any person to act as a neutral, or may move for the appointment of a neutral. If the Presiding Officer grants a motion for the appointment of a neutral, the Presiding Officer shall forward the motion to the Chief Administrative Law Judge, except in proceedings under subpart I of this part, in which the Presiding Officer shall forward the motion to the Regional Administrator. The Chief Administrative Law Judge or Regional Administrator, as appropriate, shall designate a qualified neutral.

### § 22.19 Prehearing information exchange; prehearing conference; other discovery.

(a) *Prehearing information exchange.* (1) In accordance with an order issued by the Presiding Officer, each party shall file a prehearing information exchange. Except as provided in § 22.22(a), a document or exhibit that has not been included in prehearing information exchange shall not be admitted into evidence, and any witness whose name and testimony summary has not been included in prehearing information exchange shall not be allowed to testify. Parties are not required to exchange information relating to settlement which would be excluded in the federal courts under Rule 408 of the Federal Rules of Evidence. Documents and exhibits shall be marked for identification as ordered by the Presiding Officer.

(2) Each party's prehearing information exchange shall contain:

(i) The names of any expert or other witnesses it intends to call at the hearing, together with a brief narrative summary of their expected testimony, or a statement that no witnesses will be called; and (ii) Copies of all documents and exhibits which it intends to introduce into evidence at the hearing.

(3) If the proceeding is for the assessment of a penalty and complainant has already specified a proposed penalty, complainant shall explain in its prehearing information exchange how the proposed penalty was calculated in accordance with any criteria set forth in the Act, and the respondent shall explain in its prehearing information exchange why the proposed penalty should be reduced or eliminated.

(4) If the proceeding is for the assessment of a penalty and complainant has not specified a proposed penalty, each party shall include in its prehearing information exchange all factual information it considers relevant to the assessment of a penalty. Within 15 days after respondent files its prehearing information exchange, complainant shall file a document specifying a proposed penalty and explaining how the proposed penalty was calculated in accordance with any criteria set forth in the Act.

(b) *Prehearing conference.* The Presiding Officer, at any time before the hearing begins, may direct the parties and their counsel or other representatives to participate in a conference to consider:

(1) Settlement of the case;

(2) Simplification of issues and stipulation of facts not in dispute;

(3) The necessity or desirability of amendments to pleadings;

(4) The exchange of exhibits, documents, prepared testimony, and admissions or stipulations of fact which will avoid unnecessary proof;

(5) The limitation of the number of expert or other witnesses;

(6) The time and place for the hearing; and

(7) Any other matters which may expedite the disposition of the proceeding.

(c) *Record of the prehearing conference.* No transcript of a prehearing conference relating to settlement shall be made. With respect to other prehearing conferences, no transcript of any prehearing conferences shall be made unless ordered by the Presiding Officer. The Presiding Officer

shall ensure that the record of the proceeding includes any stipulations, agreements, rulings or orders made during the conference.

(d) *Location of prehearing conference.* The prehearing conference shall be held in the county where the respondent resides or conducts the business which the hearing concerns, in the city in which the relevant Environmental Protection Agency Regional Office is located, or in Washington, DC, unless the Presiding Officer determines that there is good cause to hold it at another location or by telephone.

(e) *Other discovery.* (1) After the information exchange provided for in paragraph (a) of this section, a party may move for additional discovery. The motion shall specify the method of discovery sought, provide the proposed discovery instruments, and describe in detail the nature of the information and/or documents sought (and, where relevant, the proposed time and place where discovery would be conducted). The Presiding Officer may order such other discovery only if it:

(i) Will neither unreasonably delay the proceeding nor unreasonably burden the non-moving party;

(ii) Seeks information that is most reasonably obtained from the non-moving party, and which the non-moving party has refused to provide voluntarily; and

(iii) Seeks information that has significant probative value on a disputed issue of material fact relevant to liability or the relief sought.

(2) Settlement positions and information regarding their development (such as penalty calculations for purposes of settlement based upon Agency settlement policies) shall not be discoverable.

(3) The Presiding Officer may order depositions upon oral questions only in accordance with paragraph (e)(1) of this section and upon an additional finding that:

(i) The information sought cannot reasonably be obtained by alternative methods of discovery; or

(ii) There is a substantial reason to believe that relevant and probative evidence may otherwise not be preserved for presentation by a witness at the hearing.

(4) The Presiding Officer may require the attendance of witnesses or the production of documentary evidence by subpoena, if authorized under the Act. The Presiding Officer may issue a subpoena for discovery purposes only in accordance with paragraph (e)(1) of this section and upon an additional showing of the grounds and necessity therefor. Subpoenas shall be served in accordance with § 22.5(b)(1). Witnesses summoned before the Presiding Officer shall be paid the same fees and mileage that are paid witnesses in the courts of the United States. Any fees shall be paid by the party at whose request the witness appears. Where a witness appears pursuant to a request initiated by the Presiding Officer, fees shall be paid by the Agency.

(5) Nothing in this paragraph (e) shall limit a party's right to request admissions or stipulations, a respondent's right to request Agency records under the Federal Freedom of Information Act, 5 U.S.C. 552, or EPA's authority under any applicable law to conduct inspections, issue information request letters or administrative subpoenas, or otherwise obtain information.

(f) *Supplementing prior exchanges.* A party who has made an information exchange under paragraph (a) of this section, or who has exchanged information in response to a request for information or a discovery order pursuant to paragraph (e) of this section, shall promptly supplement or correct the exchange when the party learns that the information exchanged or response provided is incomplete, inaccurate or outdated, and the additional or corrective information has not otherwise been disclosed to the other party pursuant to this section.

(g) *Failure to exchange information.* Where a party fails to provide information within its control as required pursuant to this section, the Presiding Officer may, in his discretion:

(1) Infer that the information would be adverse to the party failing to provide it;

(2) Exclude the information from evidence; or

(3) Issue a default order under § 22.17(c).

### § 22.20 Accelerated decision; decision to dismiss.

(a) *General.* The Presiding Officer may at any time render an accelerated decision in favor of a party as to any or all parts of the proceeding, without further hearing or upon such limited additional evidence, such as affidavits, as he may require, if no genuine issue of material fact exists and a party is entitled to judgment as a matter of law. The Presiding Officer, upon motion of the respondent, may at any time dismiss a proceeding without further hearing or upon such limited additional evidence as he requires, on the basis of failure to establish a prima facie case or other grounds which show no right to relief on the part of the complainant.

(b) *Effect.* (1) If an accelerated decision or a decision to dismiss is issued as to all issues and claims in the proceeding, the decision constitutes an initial decision of the Presiding Officer, and shall be filed with the Regional Hearing Clerk.

(2) If an accelerated decision or a decision to dismiss is rendered on less than all issues or claims in the proceeding, the Presiding Officer shall determine what material facts exist without substantial controversy and what material facts remain controverted. The partial accelerated decision or the order dismissing certain counts shall specify the facts which appear substantially uncontroverted, and the issues and claims upon which the hearing will proceed.

## Subpart D—Hearing Procedures

### § 22.21 Assignment of Presiding Officer; scheduling the hearing.

(a) *Assignment of Presiding Officer.* When an answer is filed, the Regional Hearing Clerk shall forward a copy of the complaint, the answer, and any other documents filed in the proceeding to the Chief Administrative Law Judge who shall serve as Presiding Officer or assign another Administrative Law Judge as Presiding Officer. The Presiding Officer shall then obtain the case file from the Chief Administrative Law Judge and notify the parties of his assignment.

(b) *Notice of hearing.* The Presiding Officer shall hold a hearing if the proceeding presents genuine issues of material fact. The Presiding Officer shall serve upon the parties a notice of hearing setting forth a time and place for the hearing not later than 30 days prior to the date set for the hearing. The Presiding Officer may require the attendance of witnesses or the production of documentary evidence by subpoena, if authorized under the Act, upon a showing of the grounds and necessity therefor, and the materiality and relevancy of the evidence to be adduced.

(c) *Postponement of hearing.* No request for postponement of a hearing shall be granted except upon motion and for good cause shown.

(d) *Location of the hearing.* The location of the hearing shall be determined in accordance with the method for determining the location of a prehearing conference under § 22.19(d).

### § 22.22 Evidence.

(a) *General.* (1) The Presiding Officer shall admit all evidence which is not irrelevant, immaterial, unduly

repetitious, unreliable, or of little probative value, except that evidence relating to settlement which would be excluded in the federal courts under Rule 408 of the Federal Rules of Evidence (28 U.S.C.) is not admissible. If, however, a party fails to provide any document, exhibit, witness name or summary of expected testimony required to be exchanged under § 22.19 (a), (e) or (f) to all parties at least 15 days before the hearing date, the Presiding Officer shall not admit the document, exhibit or testimony into evidence, unless the non-exchanging party had good cause for failing to exchange the required information and provided the required information to all other parties as soon as it had control of the information, or had good cause for not doing so.

(2) In the presentation, admission, disposition, and use of oral and written evidence, EPA officers, employees and authorized representatives shall preserve the confidentiality of information claimed confidential, whether or not the claim is made by a party to the proceeding, unless disclosure is authorized pursuant to 40 CFR part 2. A business confidentiality claim shall not prevent information from being introduced into evidence, but shall instead require that the information be treated in accordance with 40 CFR part 2, subpart B. The Presiding Officer or the Environmental Appeals Board may consider such evidence in a proceeding closed to the public, and which may be before some, but not all, parties, as necessary. Such proceeding shall be closed only to the extent necessary to comply with 40 CFR part 2, subpart B, for information claimed confidential. Any affected person may move for an order protecting the information claimed confidential.

(b) *Examination of witnesses.* Witnesses shall be examined orally, under oath or affirmation, except as otherwise provided in paragraphs (c) and (d) of this section or by the Presiding Officer. Parties shall have the right to cross-examine a witness who appears at the hearing provided that such cross-examination is not unduly repetitious.

(c) *Written testimony.* The Presiding Officer may admit and insert into the record as evidence, in lieu of oral testimony, written testimony prepared by a witness. The admissibility of any part of the testimony shall be subject to the same rules as if the testimony were produced under oral examination. Before any such testimony is read or admitted into evidence, the party who has called the witness shall deliver a copy of the testimony to the Presiding Officer, the reporter, and opposing counsel. The witness presenting the testimony shall swear to or affirm the testimony and shall be subject to appropriate oral cross-examination.

(d) *Admission of affidavits where the witness is unavailable.* The Presiding Officer may admit into evidence affidavits of witnesses who are unavailable. The term ''unavailable'' shall have the meaning accorded to it by Rule 804(a) of the Federal Rules of Evidence.

(e) *Exhibits.* Where practicable, an original and one copy of each exhibit shall be filed with the Presiding Officer for the record and a copy shall be furnished to each party. A true copy of any exhibit may be substituted for the original.

(f) *Official notice.* Official notice may be taken of any matter which can be judicially noticed in the Federal courts and of other facts within the specialized knowledge and experience of the Agency. Opposing parties shall be given adequate opportunity to show that such facts are erroneously noticed.

### § 22.23 Objections and offers of proof.

(a) *Objection.* Any objection concerning the conduct of the hearing may be stated orally or in writing during the hearing. The party raising the objection must supply a short statement of its grounds. The ruling by the Presiding Officer on any objection and the reasons given for it shall be part of the record. An exception to each objection overruled shall be automatic and is not waived by further participation in the hearing.

(b) *Offers of proof.* Whenever the Presiding Officer denies a motion for admission into evidence, the party offering the information may make an offer of proof, which shall be included in the record. The offer of proof for excluded oral testimony shall consist of a brief statement describing the nature of the information excluded. The offer of proof for excluded documents or exhibits shall consist of the documents or exhibits excluded. Where the Environmental Appeals Board decides that the ruling of the Presiding Officer in excluding the information from evidence was both erroneous and prejudicial, the hearing may be reopened to permit the taking of such evidence.

### § 22.24 Burden of presentation; burden of persuasion; preponderance of the evidence standard.

(a) The complainant has the burdens of presentation and persuasion that the violation occurred as set forth in the complaint and that the relief sought is appropriate. Following complainant's establishment of a prima facie case, respondent shall have the burden of presenting any defense to the allegations set forth in the complaint and any response or evidence with respect to the appropriate relief. The respondent has the burdens of presentation and persuasion for any affirmative defenses.

(b) Each matter of controversy shall be decided by the Presiding Officer upon a preponderance of the evidence.

### § 22.25 Filing the transcript.

The hearing shall be transcribed verbatim. Promptly following the taking of the last evidence, the reporter shall transmit to the Regional Hearing Clerk the original and as many copies of the transcript of testimony as are called for in the reporter's contract with the Agency, and also shall transmit to the Presiding Officer a copy of the transcript. A certificate of service shall accompany each copy of the transcript. The Regional Hearing Clerk shall notify all parties of the availability of the transcript and shall furnish the parties with a copy of the transcript upon payment of the cost of reproduction, unless a party can show that the cost is unduly burdensome. Any person not a party to the proceeding may receive a copy of the transcript upon payment of the reproduction fee, except for those parts of the transcript ordered to be kept confidential by the Presiding Officer. Any party may file a motion to conform the transcript to the actual testimony within 30 days after receipt of the transcript, or 45 days after the parties are notified of the availability of the transcript, whichever is sooner.

### § 22.26 Proposed findings, conclusions, and order.

After the hearing, any party may file proposed findings of fact, conclusions of law, and a proposed order, together with briefs in support thereof. The Presiding Officer shall set a schedule for filing these documents and any reply briefs, but shall not require them before the last date for filing motions under § 22.25 to conform the transcript to the actual testimony. All submissions shall be in writing, shall be served upon all parties, and shall contain adequate references to the record and authorities relied on.

## Subpart E—Initial Decision and Motion To Reopen a Hearing

### § 22.27 Initial Decision.

(a) *Filing and contents.* After the period for filing briefs under § 22.26 has expired, the Presiding Officer shall issue an initial decision. The initial decision shall contain findings of fact,

conclusions regarding all material issues of law or discretion, as well as reasons therefor, and, if appropriate, a recommended civil penalty assessment, compliance order, corrective action order, or Permit Action. Upon receipt of an initial decision, the Regional Hearing Clerk shall forward copies of the initial decision to the Environmental Appeals Board and the Assistant Administrator for the Office of Enforcement and Compliance Assurance.

(b) *Amount of civil penalty.* If the Presiding Officer determines that a violation has occurred and the complaint seeks a civil penalty, the Presiding Officer shall determine the amount of the recommended civil penalty based on the evidence in the record and in accordance with any penalty criteria set forth in the Act. The Presiding Officer shall consider any civil penalty guidelines issued under the Act. The Presiding Officer shall explain in detail in the initial decision how the penalty to be assessed corresponds to any penalty criteria set forth in the Act. If the Presiding Officer decides to assess a penalty different in amount from the penalty proposed by complainant, the Presiding Officer shall set forth in the initial decision the specific reasons for the increase or decrease. If the respondent has defaulted, the Presiding Officer shall not assess a penalty greater than that proposed by complainant in the complaint, the prehearing information exchange or the motion for default, whichever is less.

(c) *Effect of initial decision.* The initial decision of the Presiding Officer shall become a final order 45 days after its service upon the parties and without further proceedings unless:

(1) A party moves to reopen the hearing;

(2) A party appeals the initial decision to the Environmental Appeals Board;

(3) A party moves to set aside a default order that constitutes an initial decision; or

(4) The Environmental Appeals Board elects to review the initial decision on its own initiative.

(d) *Exhaustion of administrative remedies.* Where a respondent fails to appeal an initial decision to the Environmental Appeals Board pursuant to § 22.30 and that initial decision becomes a final order pursuant to paragraph (c) of this section, respondent waives its rights to judicial review. An initial decision that is appealed to the Environmental Appeals Board shall not be final or operative pending the Environmental Appeals Board's issuance of a final order.

### § 22.28 Motion to reopen a hearing.

(a) *Filing and content.* A motion to reopen a hearing to take further evidence must be filed no later than 20 days after service of the initial decision and shall state the specific grounds upon which relief is sought. Where the movant seeks to introduce new evidence, the motion shall: state briefly the nature and purpose of the evidence to be adduced; show that such evidence is not cumulative; and show good cause why such evidence was not adduced at the hearing. The motion shall be made to the Presiding Officer and filed with the Regional Hearing Clerk.

(b) *Disposition of motion to reopen a hearing.* Within 15 days following the service of a motion to reopen a hearing, any other party to the proceeding may file with the Regional Hearing Clerk and serve on all other parties a response. A reopened hearing shall be governed by the applicable sections of these Consolidated Rules of Practice. The filing of a motion to reopen a hearing shall automatically stay the running of the time periods for an initial decision becoming final under § 22.27(c) and for appeal under § 22.30. These time periods shall begin again in full when the motion is denied or an amended initial decision is served.

## Subpart F—Appeals and Administrative Review

### § 22.29 Appeal from or review of interlocutory orders or rulings.

(a) *Request for interlocutory appeal.* Appeals from orders or rulings other than an initial decision shall be allowed only at the discretion of the Environmental Appeals Board. A party seeking interlocutory appeal of such orders or rulings to the Environmental Appeals Board shall file a motion within 10 days of service of the order or ruling, requesting that the Presiding Officer forward the order or ruling to the Environmental Appeals Board for review, and stating briefly the grounds for the appeal.

(b) *Availability of interlocutory appeal.* The Presiding Officer may recommend any order or ruling for review by the Environmental Appeals Board when:

(1) The order or ruling involves an important question of law or policy concerning which there is substantial grounds for difference of opinion; and

(2) Either an immediate appeal from the order or ruling will materially advance the ultimate termination of the proceeding, or review after the final order is issued will be inadequate or ineffective.

(c) *Interlocutory review.* If the Presiding Officer has recommended review and the Environmental Appeals Board determines that interlocutory review is inappropriate, or takes no action within 30 days of the Presiding Officer's recommendation, the appeal is dismissed. When the Presiding Officer declines to recommend review of an order or ruling, it may be reviewed by the Environmental Appeals Board only upon appeal from the initial decision, except when the Environmental Appeals Board determines, upon motion of a party and in exceptional circumstances, that to delay review would be contrary to the public interest. Such motion shall be filed within 10 days of service of an order of the Presiding Officer refusing to recommend such order or ruling for interlocutory review.

### § 22.30 Appeal from or review of initial decision.

(a) *Notice of appeal.* (1) Within 30 days after the initial decision is served, any party may appeal any adverse order or ruling of the Presiding Officer by filing an original and one copy of a notice of appeal and an accompanying appellate brief with the Environmental Appeals Board (Clerk of the Board (Mail Code 1103B), United States Environmental Protection Agency, 401 M Street, SW, Washington, DC, 20460. Hand deliveries may be made at Suite 500, 607 14th Street, NW.). One copy of any document filed with the Clerk of the Board shall also be served on the Regional Hearing Clerk. Appellant also shall serve a copy of the notice of appeal upon the Presiding Officer. Appellant shall simultaneously serve one copy of the notice and brief upon all other parties and non-party participants. The notice of appeal shall summarize the order or ruling, or part thereof, appealed from. The appellant's brief shall contain tables of contents and authorities (with page references), a statement of the issues presented for review, a statement of the nature of the case and the facts relevant to the issues presented for review (with appropriate references to the record), argument on the issues presented, a short conclusion stating the precise relief sought, alternative findings of fact, and alternative conclusions regarding issues of law or discretion. If a timely notice of appeal is filed by a party, any other party may file a notice of appeal on any issue within 20 days after the date on which the first notice of appeal was served.

(2) Within 20 days of service of notices of appeal and briefs under paragraph (a)(1) of this section, any other party or non-party participant may

file with the Environmental Appeals Board an original and one copy of a response brief responding to argument raised by the appellant, together with reference to the relevant portions of the record, initial decision, or opposing brief. Appellee shall simultaneously serve one copy of the response brief upon each party , non-party participant, and the Regional Hearing Clerk. Response briefs shall be limited to the scope of the appeal brief. Further briefs may be filed only with the permission of the Environmental Appeals Board.

(b) *Review initiated by the Environmental Appeals Board.* Whenever the Environmental Appeals Board determines to review an initial decision on its own initiative, it shall file notice of its intent to review that decision with the Clerk of the Board, and serve it upon the Regional Hearing Clerk, the Presiding Officer and the parties within 45 days after the initial decision was served upon the parties. The notice shall include a statement of issues to be briefed by the parties and a time schedule for the filing and service of briefs.

(c) *Scope of appeal or review.* The parties' rights of appeal shall be limited to those issues raised during the course of the proceeding and by the initial decision, and to issues concerning subject matter jurisdiction. If the Environmental Appeals Board determines that issues raised, but not appealed by the parties, should be argued, it shall give the parties reasonable written notice of such determination to permit preparation of adequate argument. The Environmental Appeals Board may remand the case to the Presiding Officer for further proceedings.

(d) *Argument before the Environmental Appeals Board.* The Environmental Appeals Board may, at its discretion, order oral argument on any or all issues in a proceeding.

(e) *Motions on appeal.* All motions made during the course of an appeal shall conform to § 22.16 unless otherwise provided.

(f) *Decision.* The Environmental Appeals Board shall adopt, modify, or set aside the findings of fact and conclusions of law or discretion contained in the decision or order being reviewed, and shall set forth in the final order the reasons for its actions. The Environmental Appeals Board may assess a penalty that is higher or lower than the amount recommended to be assessed in the decision or order being reviewed or from the amount sought in the complaint, except that if the order being reviewed is a default order, the Environmental Appeals Board may not increase the amount of the penalty above that proposed in the complaint or in the motion for default, whichever is less. The Environmental Appeals Board may adopt, modify or set aside any recommended compliance or corrective action order or Permit Action. The Environmental Appeals Board may remand the case to the Presiding Officer for further action.

## Subpart G—Final Order

### § 22.31 Final order.

(a) *Effect of final order.* A final order constitutes the final Agency action in a proceeding. The final order shall not in any case affect the right of the Agency or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. The final order shall resolve only those causes of action alleged in the complaint, or for proceedings commenced pursuant to § 22.13(b), alleged in the consent agreement. The final order does not waive, extinguish or otherwise affect respondent's obligation to comply with all applicable provisions of the Act and regulations promulgated thereunder.

(b) *Effective date.* A final order is effective upon filing. Where an initial decision becomes a final order pursuant to § 22.27(c), the final order is effective 45 days after the initial decision is served on the parties.

(c) *Payment of a civil penalty.* The respondent shall pay the full amount of any civil penalty assessed in the final order within 30 days after the effective date of the final order unless otherwise ordered. Payment shall be made by sending a cashier's check or certified check to the payee specified in the complaint, unless otherwise instructed by the complainant. The check shall note the case title and docket number. Respondent shall serve copies of the check or other instrument of payment on the Regional Hearing Clerk and on complainant. Collection of interest on overdue payments shall be in accordance with the Debt Collection Act, 31 U.S.C. 3717.

(d) *Other relief.* Any final order requiring compliance or corrective action, or a Permit Action, shall become effective and enforceable without further proceedings on the effective date of the final order unless otherwise ordered.

(e) *Final orders to Federal agencies on appeal.* (1) A final order of the Environmental Appeals Board issued pursuant to § 22.30 to a department, agency, or instrumentality of the United States shall become effective 30 days after its service upon the parties unless the head of the affected department, agency, or instrumentality requests a conference with the Administrator in writing and serves a copy of the request on the parties of record within 30 days of service of the final order. If a timely request is made, a decision by the Administrator shall become the final order.

(2) A motion for reconsideration pursuant to § 22.32 shall not toll the 30-day period described in paragraph (e)(1) of this section unless specifically so ordered by the Environmental Appeals Board.

### § 22.32 Motion to reconsider a final order.

Motions to reconsider a final order issued pursuant to § 22.30 shall be filed within 10 days after service of the final order. Motions 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 Environmental Appeals Board. Motions for reconsideration directed to the Administrator, rather than to the Environmental Appeals Board, will not be considered, except in cases that the Environmental Appeals Board has referred to the Administrator pursuant to § 22.4(a) 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 so ordered by the Environmental Appeals Board.

## Subpart H—Supplemental Rules

### § 22.33 [Reserved]

### § 22.34 Supplemental rules governing the administrative assessment of civil penalties under the Clean Air Act.

(a) *Scope.* This section shall apply, in conjunction with §§ 22.1 through 22.32, in administrative proceedings to assess a civil penalty conducted under sections 113(d), 205(c), 211(d), and 213(d) of the Clean Air Act, as amended (42 U.S.C. 7413(d), 7524(c), 7545(d), and 7547(d)). Where inconsistencies exist between this section and §§ 22.1 through 22.32, this section shall apply.

(b) *Issuance of notice.* Prior to the issuance of a final order assessing a civil penalty, the person to whom the order is to be issued shall be given written notice of the proposed issuance of the order. Service of a complaint or a consent agreement and final order pursuant to § 22.13 satisfies this notice requirement.

**§ 22.35 Supplemental rules governing the administrative assessment of civil penalties under the Federal Insecticide, Fungicide, and Rodenticide Act.**

(a) *Scope.* This section shall apply, in conjunction with §§ 22.1 through 22.32, in administrative proceedings to assess a civil penalty conducted under section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act as amended (7 U.S.C. 136l(a)). Where inconsistencies exist between this section and §§ 22.1 through 22.32, this section shall apply.

(b) *Venue.* The prehearing conference and the hearing shall be held in the county, parish, or incorporated city of the residence of the person charged, unless otherwise agreed in writing by all parties. For a person whose residence is outside the United States and outside any territory or possession of the United States, the prehearing conference and the hearing shall be held at the EPA office listed at 40 CFR 1.7 that is closest to either the person's primary place of business within the United States, or the primary place of business of the person's U.S. agent, unless otherwise agreed by all parties.

**§ 22.36 [Reserved].**

**§ 22.37 Supplemental rules governing administrative proceedings under the Solid Waste Disposal Act.**

(a) *Scope.* This section shall apply, in conjunction with §§ 22.1 through 22.32, in administrative proceedings under sections 3005(d) and (e), 3008, 9003 and 9006 of the Solid Waste Disposal Act (42 U.S.C. 6925(d) and (e), 6928, 6991b and 6991e) (''SWDA''). Where inconsistencies exist between this section and §§ 22.1 through 22.32, this section shall apply.

(b) *Corrective action and compliance orders.* A complaint may contain a compliance order issued under section 3008(a) or section 9006(a), or a corrective action order issued under section 3008(h) or section 9003(h)(4) of the SWDA. Any such order shall automatically become a final order unless, no later than 30 days after the order is served, the respondent requests a hearing pursuant to § 22.15.

**§ 22.38 Supplemental rules of practice governing the administrative assessment of civil penalties under the Clean Water Act.**

(a) *Scope.* This section shall apply, in conjunction with §§ 22.1 through 22.32 and § 22.45, in administrative proceedings for the assessment of any civil penalty under section 309(g) or section 311(b)(6) of the Clean Water Act (''CWA'')(33 U.S.C. 1319(g) and 1321(b)(6)). Where inconsistencies exist between this section and §§ 22.1 through 22.32, this section shall apply.

(b) *Consultation with States.* For proceedings pursuant to section 309(g), the complainant shall provide the State agency with the most direct authority over the matters at issue in the case an opportunity to consult with the complainant. Complainant shall notify the State agency within 30 days following proof of service of the complaint on the respondent or, in the case of a proceeding proposed to be commenced pursuant to § 22.13(b), no less than 40 days before the issuance of an order assessing a civil penalty.

(c) *Administrative procedure and judicial review.* Action of the Administrator for which review could have been obtained under section 509(b)(1) of the CWA, 33 U.S.C. 1369(b)(1), shall not be subject to review in an administrative proceeding for the assessment of a civil penalty under section 309(g) or section 311(b)(6).

**§ 22.39 Supplemental rules governing the administrative assessment of civil penalties under section 109 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended.**

(a) *Scope.* This section shall apply, in conjunction with §§ 22.10 through 22.32, in administrative proceedings for the assessment of any civil penalty under section 109 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. 9609). Where inconsistencies exist between this section and §§ 22.1 through 22.32, this section shall apply.

(b) *Judicial review.* Any person who requested a hearing with respect to a Class II civil penalty under section 109(b) of CERCLA, 42 U.S.C. 9609(b), and who is the recipient of a final order assessing a civil penalty may file a petition for judicial review of such order with the United States Court of Appeals for the District of Columbia or for any other circuit in which such person resides or transacts business. Any person who requested a hearing with respect to a Class I civil penalty under section 109(a)(4) of CERCLA, 42 U.S.C. 9609(a)(4), and who is the recipient of a final order assessing the civil penalty may file a petition for judicial review of such order with the appropriate district court of the United States. All petitions must be filed within 30 days of the date the order making the assessment was served on the parties.

(c) *Payment of civil penalty assessed.* Payment of civil penalties assessed in the final order shall be made by forwarding a cashier's check, payable to the ''EPA, Hazardous Substances Superfund,'' in the amount assessed, and noting the case title and docket number, to the appropriate regional Superfund Lockbox Depository.

**§ 22.40 [Reserved].**

**§ 22.41 Supplemental rules governing the administrative assessment of civil penalties under Title II of the Toxic Substance Control Act, enacted as section 2 of the Asbestos Hazard Emergency Response Act (AHERA).**

(a) *Scope.* This section shall apply, in conjunction with §§ 22.1 through 22.32, in administrative proceedings to assess a civil penalty conducted under section 207 of the Toxic Substances Control Act (''TSCA'') (15 U.S.C. 2647). Where inconsistencies exist between this section and §§ 22.1 through 22.32, this section shall apply.

(b) *Collection of civil penalty.* Any civil penalty collected under TSCA section 207 shall be used by the local educational agency for purposes of complying with Title II of TSCA. Any portion of a civil penalty remaining unspent after a local educational agency achieves compliance shall be deposited into the Asbestos Trust Fund established under section 5 of AHERA.

**§ 22.42 Supplemental rules governing the administrative assessment of civil penalties for violations of compliance orders issued to owners or operators of public water systems under part B of the Safe Drinking Water Act.**

(a) *Scope.* This section shall apply, in conjunction with §§ 22.1 through 22.32, in administrative proceedings to assess a civil penalty under section 1414(g)(3)(B) of the Safe Drinking Water Act, 42 U.S.C. 300g-3(g)(3)(B). Where inconsistencies exist between this section and §§ 22.1 through 22.32, this section shall apply.

(b) *Choice of forum.* A complaint which specifies that subpart I of this part applies shall also state that respondent has a right to elect a hearing on the record in accordance with 5 U.S.C. 554, and that respondent waives this right unless it requests in its answer a hearing on the record in accordance with 5 U.S.C. 554. Upon such request, the Regional Hearing Clerk shall recaption the documents in the record as necessary, and notify the parties of the changes.

**§ 22.43 Supplemental rules governing the administrative assessment of civil penalties against a federal agency under the Safe Drinking Water Act.**

(a) *Scope.* This section shall apply, in conjunction with §§ 22.1 through 22.32, in administrative proceedings to assess a civil penalty against a federal agency under section 1447(b) of the Safe Drinking Water Act, 42 U.S.C. 300j-6(b).

Where inconsistencies exist between this section and §§ 22.1 through 22.32, this section shall apply.

(b) *Effective date of final penalty order.* Any penalty order issued pursuant to this section and section 1447(b) of the Safe Drinking Water Act shall become effective 30 days after it has been served on the parties.

(c) *Public notice of final penalty order.* Upon the issuance of a final penalty order under this section, the Administrator shall provide public notice of the order by publication, and by providing notice to any person who requests such notice. The notice shall include:

(1) The docket number of the order;

(2) The address and phone number of the Regional Hearing Clerk from whom a copy of the order may be obtained;

(3) The location of the facility where violations were found;

(4) A description of the violations;

(5) The penalty that was assessed; and

(6) A notice that any interested person may, within 30 days of the date the order becomes final, obtain judicial review of the penalty order pursuant to section 1447(b) of the Safe Drinking Water Act, and instruction that persons seeking judicial review shall provide copies of any appeal to the persons described in 40 CFR 135.11(a).

**§ 22.44 [Reserved]**

**§ 22.45 Supplemental rules governing public notice and comment in proceedings under sections 309(g) and 311(b)(6)(B)(ii) of the Clean Water Act and section 1423(c) of the Safe Drinking Water Act.**

(a) *Scope.* This section shall apply, in conjunction with §§ 22.1 through 22.32, in administrative proceedings for the assessment of any civil penalty under sections 309(g) and 311(b)(6)(B)(ii) of the Clean Water Act (33 U.S.C. 1319(g) and 1321(b)(6)(B)(ii)), and under section 1423(c) of the Safe Drinking Water Act (42 U.S.C. 300h-2(c)). Where inconsistencies exist between this section and §§ 22.1 through 22.32, this section shall apply.

(b) *Public notice.*—(1) *General.* Complainant shall notify the public before assessing a civil penalty. Such notice shall be provided within 30 days following proof of service of the complaint on the respondent or, in the case of a proceeding proposed to be commenced pursuant to § 22.13(b), no less than 40 days before the issuance of an order assessing a civil penalty. The notice period begins upon first publication of notice.

(2) *Type and content of public notice.* The complainant shall provide public notice of the complaint (or the proposed consent agreement if § 22.13(b) is applicable) by a method reasonably calculated to provide notice, and shall also provide notice directly to any person who requests such notice. The notice shall include:

(i) The docket number of the proceeding;

(ii) The name and address of the complainant and respondent, and the person from whom information on the proceeding may be obtained, and the address of the Regional Hearing Clerk to whom appropriate comments shall be directed;

(iii) The location of the site or facility from which the violations are alleged, and any applicable permit number;

(iv) A description of the violation alleged and the relief sought; and

(v) A notice that persons shall submit comments to the Regional Hearing Clerk, and the deadline for such submissions.

(c) *Comment by a person who is not a party.* The following provisions apply in regard to comment by a person not a party to a proceeding:

(1) *Participation in proceeding.* (i) Any person wishing to participate in the proceedings must notify the Regional Hearing Clerk in writing within the public notice period under paragraph (b)(1) of this section. The person must provide his name, complete mailing address, and state that he wishes to participate in the proceeding.

(ii) The Presiding Officer shall provide notice of any hearing on the merits to any person who has met the requirements of paragraph (c)(1)(i) of this section at least 20 days prior to the scheduled hearing.

(iii) A commenter may present written comments for the record at any time prior to the close of the record.

(iv) A commenter wishing to present evidence at a hearing on the merits shall notify, in writing, the Presiding Officer and the parties of its intent at least 10 days prior to the scheduled hearing. This notice must include a copy of any document to be introduced, a description of the evidence to be presented, and the identity of any witness (and qualifications if an expert), and the subject matter of the testimony.

(v) In any hearing on the merits, a commenter may present evidence, including direct testimony subject to cross examination by the parties.

(vi) The Presiding Officer shall have the discretion to establish the extent of commenter participation in any other scheduled activity.

(2) *Limitations.* A commenter may not cross-examine any witness in any hearing and shall not be subject to or participate in any discovery or prehearing exchange.

(3) *Quick resolution and settlement.* No proceeding subject to the public notice and comment provisions of paragraphs (b) and (c) of this section may be resolved or settled under § 22.18, or commenced under § 22.13(b), until 10 days after the close of the comment period provided in paragraph (c)(1) of this section.

(4) *Petition to set aside a consent agreement and proposed final order.* (i) Complainant shall provide to each commenter, by certified mail, return receipt requested, but not to the Regional Hearing Clerk or Presiding Officer, a copy of any consent agreement between the parties and the proposed final order.

(ii) Within 30 days of receipt of the consent agreement and proposed final order a commenter may petition the Regional Administrator (or, for cases commenced at EPA Headquarters, the Environmental Appeals Board), to set aside the consent agreement and proposed final order on the basis that material evidence was not considered. Copies of the petition shall be served on the parties, but shall not be sent to the Regional Hearing Clerk or the Presiding Officer.

(iii) Within 15 days of receipt of a petition, the complainant may, with notice to the Regional Administrator or Environmental Appeals Board and to the commenter, withdraw the consent agreement and proposed final order to consider the matters raised in the petition. If the complainant does not give notice of withdrawal within 15 days of receipt of the petition, the Regional Administrator or Environmental Appeals Board shall assign a Petition Officer to consider and rule on the petition. The Petition Officer shall be another Presiding Officer, not otherwise involved in the case. Notice of this assignment shall be sent to the parties, and to the Presiding Officer.

(iv) Within 30 days of assignment of the Petition Officer, the complainant shall present to the Petition Officer a copy of the complaint and a written response to the petition. A copy of the response shall be provided to the parties and to the commenter, but not to the Regional Hearing Clerk or Presiding Officer.

(v) The Petition Officer shall review the petition, and complainant's response, and shall file with the Regional Hearing Clerk, with copies to the parties, the commenter, and the Presiding Officer, written findings as to:

(A) The extent to which the petition states an issue relevant and material to the issuance of the proposed final order;

(B) Whether complainant adequately considered and responded to the petition; and

(C) Whether a resolution of the proceeding by the parties is appropriate without a hearing.

(vi) Upon a finding by the Petition Officer that a hearing is appropriate, the Presiding Officer shall order that the consent agreement and proposed final order be set aside and shall establish a schedule for a hearing.

(vii) Upon a finding by the Petition Officer that a resolution of the proceeding without a hearing is appropriate, the Petition Officer shall issue an order denying the petition and stating reasons for the denial. The Petition Officer shall:

(A) File the order with the Regional Hearing Clerk;

(B) Serve copies of the order on the parties and the commenter; and

(C) Provide public notice of the order.

(viii) Upon a finding by the Petition Officer that a resolution of the proceeding without a hearing is appropriate, the Regional Administrator may issue the proposed final order, which shall become final 30 days after both the order denying the petition and a properly signed consent agreement are filed with the Regional Hearing Clerk, unless further petition for review is filed by a notice of appeal in the appropriate United States District Court, with coincident notice by certified mail to the Administrator and the Attorney General. Written notice of appeal also shall be filed with the Regional Hearing Clerk, and sent to the Presiding Officer and the parties.

(ix) If judicial review of the final order is denied, the final order shall become effective 30 days after such denial has been filed with the Regional Hearing Clerk.

**§§ 22.46–22.49 [Reserved].**

## Subpart I—Administrative Proceedings Not Governed by Section 554 of the Administrative Procedure Act

### § 22.50 Scope of this subpart.

(a) *Scope.* This subpart applies to all adjudicatory proceedings for:

(1) The assessment of a penalty under sections 309(g)(2)(A) and 311(b)(6)(B)(i) of the Clean Water Act (33 U.S.C. 1319(g)(2)(A) and 1321(b)(6)(B)(i)).

(2) The assessment of a penalty under sections 1414(g)(3)(B) and 1423(c) of the Safe Drinking Water Act (42 U.S.C. 300g–3(g)(3)(B) and 300h–2(c)), except where a respondent in a proceeding under section 1414(g)(3)(B) requests in its answer a hearing on the record in accordance with section 554 of the Administrative Procedure Act, 5 U.S.C. 554.

(b) *Relationship to other provisions.* Sections 22.1 through 22.45 apply to proceedings under this subpart, except for the following provisions which do not apply: §§ 22.11, 22.16(c), 22.21(a), and 22.29. Where inconsistencies exist between this subpart and subparts A through G of this part, this subpart shall apply. Where inconsistencies exist between this subpart and subpart H of this part, subpart H shall apply.

### § 22.51 Presiding Officer.

The Presiding Officer shall be a Regional Judicial Officer. The Presiding Officer shall conduct the hearing, and rule on all motions until an initial decision has become final or has been appealed.

### § 22.52 Information exchange and discovery.

Respondent's information exchange pursuant to § 22.19(a) shall include information on any economic benefit resulting from any activity or failure to act which is alleged in the administrative complaint to be a violation of applicable law, including its gross revenues, delayed or avoided costs. Discovery under § 22.19(e) shall not be authorized, except for discovery of information concerning respondent's economic benefit from alleged violations and information concerning respondent's ability to pay a penalty.

[FR Doc. 99–17337 Filed 7–22–99; 8:45 am]

BILLING CODE 6560–50–P

Friday
July 23, 1999

# Part VI

# Environmental Protection Agency

**40 CFR Parts 148, 261 et al.**

**Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Dye and Pigment Industries; Land Disposal Restrictions for Newly Identified Wastes; CERCLA Hazardous Substance Designation and Reportable Quantities; Proposed Rule**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Parts 148, 261, 268, 271, and 302**

**[SWH–FRL–6373–4]**

**RIN 2050–AD80**

## Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Dye and Pigment Industries; Land Disposal Restrictions for Newly Identified Wastes; CERCLA Hazardous Substance Designation and Reportable Quantities

**AGENCY:** Environmental protection agency (EPA).

**ACTION:** Notice of Proposed Rulemaking.

**SUMMARY:** The EPA is proposing to list two of three wastes from the dyes and pigment industries as hazardous wastes under the Resource, Conservation, and Recovery Act (RCRA), which direct EPA to determine whether certain wastes from the dye and pigment industries present a hazard to human health or the environment. The effect of listing these wastes will be to subject them to stringent management and treatment standards and to emergency notification requirements if there are releases of these hazardous wastes to the environment. EPA is proposing concentration-based listings for the two wastes, such that waste generators have the option of determining that their specific waste is nonhazardous. To have their waste classified as nonhazardous, generators must determine the levels of constituents in their wastes, and certify to EPA that their wastes are below the regulatory levels of concern.

**DATES:** EPA will accept public comments on this proposed rule until September 21, 1999; comments postmarked after this date will be marked ''late'' and may not be considered. Any person may request a public hearing on this proposal by filing a request with Mr. David Bussard, whose address appears below, by August 6, 1999.

**ADDRESSES:** If you wish to comment on this proposed rule, you must send an original and two copies of the comments referencing docket number F–1999–DPIP–FFFFF to: RCRA Docket Information Center, Office of Solid Waste (5305G), U.S. Environmental Protection Agency Headquarters (EPA, HQ), 401 M Street, SW, Washington, DC 20460. Hand deliveries of comments should be made to the Arlington, VA, address listed below. You may also submit comments electronically by sending electronic mail through the Internet to: rcradocket@epamail.epa.gov. See the beginning of Supplementary Information for instructions on electronic submission.

You should not submit electronically any confidential business information (CBI). You must submit an original and two copies of CBI under separate cover to: RCRA CBI Document Control Officer, Office of Solid Waste (5305W), U.S. EPA, 401 M Street, SW, Washington, DC 20460. See the beginning of Supplementary Information for information of viewing public comments and supporting materials.

Address requests for a hearing to Mr. David Bussard at: Office of Solid Waste, Hazardous Waste Identification Division (5304W), U.S. Environmental Protection Agency 401 M Street, SW, Washington, DC 20460, (703)308–8880.

**FOR FURTHER INFORMATION CONTACT:** For general information, contact the RCRA Hotline at (800) 424–9346 or TDD (800) 553–7672 (hearing impaired). In the Washington, DC, metropolitan area, call (703) 412–9810 or TDD (703) 412–3323. For information on specific aspects of the rule, contact Narendra Chaudhari or Robert Kayser, Office of Solid Waste (5304W), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460. [E-mail addresses and telephone numbers:

chaudhari.narendra@epamail.epa.gov, (703) 308-0454;

kayser.robert@epamail.epa.gov, (703) 308–7304)].

**SUPPLEMENTARY INFORMATION:** You should identify comments in electronic format with the docket number F–1999-DPIP-FFFFF. You must submit all electronic comments as an ASCII (text) file, avoiding the use of special characters and any form of encryption. If you do not submit comments electronically, EPA is asking prospective commenters to voluntarily submit one additional copy of their comments on labeled personal computer diskettes in ASCII (text) format or a word processing format that can be converted to ASCII (text). It is essential to specify on the disk label the word processing software and version/edition as well as the commenter's name. This will allow EPA to convert the comments into one of the word processing formats utilized by the Agency. Please use mailing envelopes designed to physically protect the submitted diskettes. EPA emphasizes that submission of comments on diskettes is not mandatory, nor will it result in any advantage or disadvantage to any commenter. Supporting documents in the docket for this Notice are also available in electronic format on the Internet. Follow these instructions to access these documents.

WWW: http://www.epa.gov/epaoswer/hazwaste/id

FTP: ftp.epa/gov

Login: anonymous

Password: your Internet address

Files are located in /pub/gopher/OSWRCRA.

EPA will keep the official record for this action in paper form. Accordingly, we will transfer all comments received electronically into paper form and place them in the official record, which will also include all comments submitted directly in writing. The official record is the paper record maintained at the address in **ADDRESSES** at the beginning of this document.

EPA responses to comments, whether the comments are written or electronic, will be in a notice in the **Federal Register** or in a response to comments document placed in the official record for this rulemaking. We will not immediately reply to commenters electronically other than to seek clarification of electronic comments that may be garbled in transmission or during conversion to paper form, as discussed above.

You may view public comments and supporting materials in the RCRA Information Center (RIC), located at Crystal Gateway I, First Floor, 1235 Jefferson Davis Highway, Arlington, VA. The RIC is open from 9 a.m. to 4 p.m., Monday through Friday, excluding federal holidays. To review docket materials, we recommend that you make an appointment by calling (703) 603–9230. You may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies cost $0.15/page. For information on accessing paper and/or electronic copies of the document, see the **SUPPLEMENTARY INFORMATION** section.

### How Can I Influence EPA's Thinking on This Proposed Rule?

In developing this proposal, we tried to address the concerns of all our stakeholders. Your comments will help us improve this rule. We invite you to provide different views on options we propose, new approaches we haven't considered, new data, how this proposed rule may effect you, or other relevant information. We welcome your views on all aspects of this proposed rule, but request comments on specific issues throughout this notice. We grouped these specific requests near the end of the sections in which we discuss the relevant issues. Your comments will be most effective if you follow the suggestions below:

- Explain your views and reasoning as clearly as possible.
- Provide solid technical and cost data to support your views.
- If you estimate potential costs, explain how you arrived at the estimate.
- Tell us which parts you support, as well as those with which you disagree.
- Provide specific examples to illustrate your concerns.
- Offer specific alternatives.
- Refer your comments to specific sections of the proposal, such as the units or page numbers of the preamble, or the regulatory sections.
- Be sure to include the name, date, and docket number with your comments.

**Contents of This Proposed Rule**

The following outline lists the contents of the preamble to this proposed rule:


I. Overview
A. Who Would Potentially be Affected by This Proposed Rule?
B. Why Does This Proposed Rule Read Differently From Other Listing Rules?
C. What Are the Statutory Authorities for This Proposed Rule?
II. Background
A. How Does EPA Define a Hazardous Wastes?
B. What Industries Are Covered in This Proposed Rule?
C. Confidential Business Information (CBI) Issues Regarding This Rule
D. What Wastes Are Covered in Today's Proposed Rule?
E. What Information Did EPA Collect and Use?
III. Approach Used in This Proposed Listing
A. Summary of Today's Action
B. What Is a Concentration-Based Listing?
C. Why Is a Concentration-Based Approach Being Used for This Listing?
D. What Risk Assessment Approach Did EPA Use?
E. How Did EPA Estimate Exposure Concentrations?
F. What Exposure Assumptions and Toxicity Levels Did EPA Use?
G. What Uncertainties Are Associated With the Risk Assessment?
H. What Risk Level Do the Concentration Levels Represent?
I. What Are the Proposed Listing Levels?
IV. Proposed Listing Determinations and Regulations
A. What Are the Proposed Regulations for the Two Wastes?
B. What Are We Proposing for Anthraquinone Sludges?
C. What Is the Status of Landfill Leachate From Previously Disposed Wastes?
V. Generator Requirements for Implementation of Concentration-Based Listings
A. Do I Have to Determine Whether or Not My Waste Is Hazardous?
B. How Do I Manage My Waste During the Period Between the Effective Date of the Final Rule and Initial Hazardous Waste Determination for My Waste?
C. What Are the Steps I Must Follow to Determine Whether or Not My Waste Is Hazardous?
D. What Are the Requirements for a Waste Determined to be Nonhazardous, and How Do I Claim My Waste to Be Nonhazardous?
E. What Records Am I Required to Keep On-site to Support a Nonhazardous Claim for My Waste?
F. What Happens if I Do Not Meet the Notification and Recordkeeping Requirements for a Waste That I Have Determined to be Nonhazardous?
G. What Are the Follow-up Waste Analysis Requirements for My Nonhazardous Waste?
H. What Happens If My Waste Constituent Concentrations Are No Longer Below the Listing Concentrations?
I. Can I Treat My Waste to Below Listing Concentrations and Then Claim My Waste to Be Nonhazardous?
J. Alternative Implementation Approach
VI. Proposed Treatment Standards Under RCRA's Land Disposal Restrictions
A. What are EPA's Land Disposal Restrictions (LDRs)?
B. How Does EPA Develop LDR Treatment Standards?
C. What Treatment Standards Are Proposed?
D. Other LDR-Related Provisions
E. Is There Treatment and Management Capacity Available for These Proposed Newly Identified Wastes
VII. State Authority and Compliance
A. How Are States Authorized Under RCRA?
B. What Is the Effect of Today's Proposal on State Authorizations?
C. Who Must Notify EPA That They Have a Hazardous Waste?
D. What Do Generators and Transporters Have to Do?
E. Which Facilities Are Subject to Permitting?
VIII. CERCLA Designation and Reportable Quantities
A. What Is the Relationship Between RCRA and CERCLA?
B. Is EPA Proposing to Add Dye and Pigment Production Wastes to CERCLA?
C. Is EPA Proposing to Adjust the Statutory One Pound RQ for K167 and K168 Wastes?
D. When Do I Need to Report a Release of K167 and K168 Wastes Under CERCLA?
E. How Do I Report a Release?
F. What Is the Statutory Authority for This Program?
IX. Analytical and Regulatory Requirements
A. Is This a Significant Regulatory Action? (Executive Order 12866)
B. Why Is This Proposed Rule Necessary?
C. What Regulatory Options Were Considered?
D. What Are the Potential Cost Impacts of Today's Proposed Rule?
E. What Are the Potential Economic Impacts to Industry From the Proposed Rule?
F. What Are the Potential Benefits From the Proposed Rule?
G. What Consideration Was Given to Small Entities?
H. What Consideration Was Given to Children's Health?
I. What Consideration Was Given to Environmental Justice?
J. What Consideration Was Given to Unfunded Mandates?
K. What Consideration Was Given to Tribal Governments Analysis?
L. Was the National Technology Transfer and Advancement Act Considered?
M. How is the Paperwork Reduction Act Considered in Today's Proposal?


## I. Overview

### *A. Who Would Potentially Be Affected by This Proposed Rule?*

The action, if finalized, could potentially affect those who handle the waste streams proposed for listing on EPA's RCRA list of hazardous wastes. This action may also affect entities that may need to respond to releases of these wastes as CERCLA hazardous substances. Those affected may include:

| Category | Affected entities |
|---|---|
| Industry | Generators of the following listed wastes, or entities that treat, store, transport, or dispose of these wastes or materials derived from them.<br>K167 Spent filter aids, diatomaceous earth, or adsorbents used in the production of azo, anthraquinone, or triarylmethane dyes, pigments, or FD&C colorants.<br>K168 Wastewater treatment sludges from the production of triarylmethane dyes and pigments (excluding triarylmethane pigments using aniline as a feedstock). |
| State, Local, Tribal Govt | State and Local Emergency Planning entities. |
| Federal Govt | National Response Center, and any Federal Agency that handle the listed waste or chemical. |

We do not intend this table to be exhaustive, but rather our aim is to provide a guide for readers regarding entities likely to be regulated by this action. This table lists those entities that EPA now is aware potentially could be

affected by this action. However, this action may affect other entities not listed in the table. To determine whether your facility is regulated by this action, you should examine 40 CFR parts 260 and 261 carefully in concert with the amended rules found at the end of this **Federal Register** document. Furthermore, we are proposing this rule as a concentration-based listing, such that waste generators have the option of determining that their specific waste is nonhazardous (see Sections IV and V of today's rule). If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding section entitled **FOR FURTHER INFORMATION CONTACT**.

*B. Why Does This Proposed Rule Read Differently From Other Listing Rules?*

Today's proposed listing determination preamble and regulations are written in ''readable regulations'' format. The authors tried to use active rather than passive voice, plain language, a question-and-answer format, the pronouns ''we'' for EPA and ''you'' for the owner/generator, and other techniques to make the information in today's proposed rule easier to read and understand. This new format is part of the Agency's efforts at regulatory reinvention, and it makes today's proposed rule read differently from other listing rules. The Agency believes that this new format will increase readers' abilities to understand the regulations, which should then increase compliance, make enforcement easier, and foster better relationships between EPA and the regulated community.

All of the requirements found in today's proposed regulations would constitute binding, enforceable legal requirements. The plain language format used in today's proposed regulations may appear different from other rules, but it would establish binding, enforceable legal requirements just as those in the existing regulations.

*C. What Are the Statutory Authorities for This Proposed rule?*

EPA is proposing these regulations under the authority of Sections 2002(a), 3001 (a), (b) and (e)(2), 3004 (g) and (m), and 3007(a) of the Solid Waste Disposal Act (commonly referred to as RCRA), as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA). These statutes are codified in Volume 42 of the United States Code (U.S.C.), sections 6901 to 6992(k).

Section 102(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), 42 U.S.C. 9602(a), is the authority for the CERCLA aspects of this proposed rule.

## II. Background

*A. How Does EPA Define a Hazardous Waste?*

EPA's regulations establish two ways of identifying wastes as hazardous under RCRA. Wastes may be hazardous either if they exhibit certain properties (''characteristics''), or if the wastes are included on a specific list of wastes EPA has determined are hazardous (''listing'' a waste as hazardous). EPA's regulations in the Code of Federal Regulations (40 CFR) §§ 261.20 through 261.24 define characteristic wastes. These regulations classify wastes that exhibit certain properties as having the characteristic of ignitability, corrosivity, reactivity, or toxicity. As a generator, you must identify wastes as characteristic wastes by sampling a waste, or by using appropriate company records concerning the nature of the waste, to determine whether a waste has the relevant properties (see § 262.11(c)). There is no regulatory requirement to conduct sampling, but persons improperly managing materials that are found to be characteristic hazardous wastes are subject to enforcement actions under RCRA.

EPA may ''list'' wastes as hazardous if we conclude that the waste is capable of posing a substantial present or potential hazard to human health or the environment when improperly managed. We have established criteria for listing a hazardous waste at 40 CFR 261.11(a)(3) for wastes that contain hazardous constituents identified in Appendix VIII of 40 CFR part 261. In deciding whether a wastes poses a substantial hazard, we consider the factors given in § 261.11(a)(3). We place constituents in Appendix VIII if scientific studies have shown a chemical has toxic effects on life forms (see 261.11(a)(3)). When listing a waste, we also add the hazardous constituents that serve as the basis for listing to Appendix VII to part 261.

The regulations at 40 CFR 261.31 through 261.33 contain the various hazardous wastes the Agency has listed to date. Section 261.31 lists wastes generated from non-specific sources, known as ''F-wastes,'' and contains wastes that are usually generated by various industries or types of facilities, such as ''wastewater treatment sludges from electroplating operations'' (see code F006). Section 261.32 lists hazardous wastes generated from specific industry sources, known as ''K-wastes,'' such as ''Spent potliners from primary aluminum production'' (see code K088). Section 261.33 contains lists of commercial chemical products and other materials that become hazardous wastes, known as ''P-wastes'' or ''U-wastes,'' when they are discarded or intended to be discarded.

The proposed regulations in today's notice would list wastes from a specific industry and thus these wastes would be added to § 261.32 with K-waste codes. We are proposing to add constituents that serve as the basis for the proposed listings to Appendix VII, Part 261. For the chemicals not already listed on the list of Hazardous Constituents in Appendix VIII, we are also proposing to add these chemicals to that list.

Wastes listed as hazardous are subject to federal requirements under RCRA. These regulations affect persons who generate, transport, treat, store or dispose of such waste. Facilities that must meet the hazardous waste management requirements, including the need to obtain permits to operate, commonly are referred to as Subtitle C facilities. Subtitle C is Congress' original statutory designation for that part of RCRA that directs EPA to issue those regulations for hazardous wastes as may be necessary to protect human health or the environment. EPA standards and procedural regulations implementing Subtitle C are found generally at 40 CFR Parts 260 through 272.

Solid wastes that are not hazardous wastes may be disposed of at facilities that are overseen by state and local governments. These are the so-called Subtitle D facilities, which generally impose less stringent requirements on management of wastes. Subtitle D is Congress' original statutory designation for that part of RCRA that deals with disposal of solid waste. EPA regulations affecting Subtitle D facilities are found generally at 40 CFR Parts 240 thru 247, and 255 thru 258. Regulations for Subtitle D landfills that accept municipal waste (''municipal solid waste landfills'') are given in Part 258.

Residuals from the treatment, storage, or disposal of most listed hazardous wastes are also classified as hazardous wastes based on the ''derived-from'' rule (40 CFR 261.3(c)(2)(i)). For example, ash or other residuals from treatment of the listed wastes generally carry the original waste code and are subject to the hazardous waste regulations. Also, the ''mixture'' rule (40 CFR 261.3(a)(2)(iv)) provides that, with certain limited exceptions, any mixture of a listed hazardous waste and a solid waste is itself a RCRA hazardous waste. However, when these wastes are recycled as described in 40 CFR 261.2(e)(1)(iii) or 261.4(a)(8), they are

not solid wastes and are not subject to hazardous waste regulations. For example, if a waste is collected and returned in a closed-loop fashion to the same process, the waste is not regulated.

All RCRA hazardous wastes are also hazardous substances under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as described in section 101(14)(C) of the CERCLA statute. This applies to wastes listed in 261.31 through 261.33, as well as any wastes that exhibit a RCRA characteristic. Table 302.4 at 40 CFR 302.4 lists CERCLA hazardous substances along with their reportable quantities (RQs). Anyone spilling or releasing a substance at or above the RQ must report this to the National Response Center, as required in CERCLA Section 103. In addition, Section 304 of the Emergency Planning and Community Right-to-Know Act (EPCRA) requires facilities to report the release of a CERCLA hazardous substance at or above its RQ to State and local authorities. Today's rule proposes to establish RQs for the newly listed wastes. EPA is not taking action at this time to adjust the one-pound statutory RQs for the newly listed hazardous substances.

*B. What Industries Are Covered in This Proposed Rule?*

1. The Dye and Pigment Industries

Today's proposal applies to the manufacturers of organic dyes and pigments, and does not affect producers of only inorganic dyes or pigments. We have already issued final rules governing the manufacturing of inorganic pigments. Section 261.32 contains wastes codes K002 through K008 that list wastewater treatment sludges and other residues from the production of inorganic pigments.

The organic dye and pigment industries are comprised of three related industries, dye manufacturers, pigment manufacturers, and Food, Drug, and Cosmetic (FD&C) colorant manufacturers. Dyes are colored or fluorescent organic substances which impart color to a substrate. When a dye is applied, it penetrates the substrate in a soluble form, after which it may or may not become insoluble. Dyes are used to color fabrics, leather, paper, ink, lacquers, varnishes, plastics, cosmetics, and some food items. Dye manufacture in the U.S. includes more than 2,000 individual dyes, the majority of which are produced in quantities of less than 50,000 pounds. The U.S. International Trade Commission's (USITC) production data for 1994 showed total production of approximately 156,000 tons for all organic dyes.

Organic pigments possess unique characteristics that distinguish them from dyes and other colorants. The primary difference between pigments and dyes is that, during the application process, pigments are usually insoluble in the substrate. Pigments also retain a crystalline or particulate structure and impart color by selective absorption or by scattering of light. This is different from dyes, which impart color by selective absorption. Pigments are used in a variety of applications; the primary use is in printing inks. There are fewer pigments produced than dyes, though pigment batches are generally larger in size. The USITC publication, Industry and Trade Summary: Synthetic Organic Pigments, USITC (No. 3021, February 1997), indicates that the total U.S. production was an estimated 71,500 tons of organic pigments in 1995.

FD&C colorants are dyes and pigments that have been approved by the Food and Drug Administration (FDA) for use in food items, drugs, and/or cosmetics. Typically, FD&C colorants are azo or triarylmethane dyes and are similar or identical to larger-volume dye products not used in food, drugs, and cosmetics. Manufacture of FD&C colorants is typically the same as that for the corresponding dye or pigment, except that the colorant undergoes additional purification. Each FD&C colorant batch is tested and certified by the FDA.

2. Previous Regulations of Wastes From This Industry

The 1984 Hazardous and Solid Waste Amendments (HSWA) to RCRA require EPA to make listing determinations for wastes from the production of dyes and pigments (see RCRA section 3001(e)(2)). On June 1991 EPA entered into a proposed consent decree in a lawsuit filed by the Environmental Defense Fund (*EDF* v. *Browner*, Civ. No. 89–0598 (D.D.C.), hereafter referred to as the consent decree). The consent decree sets out a series of deadlines for promulgating RCRA listing decisions, and has been amended as necessary. Paragraph 1h. of the consent decree obligates EPA to determine whether or not to list as hazardous certain wastes from the production of dyes and pigments.

In the consent decree EPA agreed to examine wastes from the manufacture of three classes of dyes and pigments for regulation: azo/benzidine, anthraquinone, and triarylmethane. The agreement specifies that the listing determination is to address wastes from the azo, monoazo, diazo, triazo, polyazo, azoic, and benzidine categories of the azo/benzidine dye and pigment class; the anthraquinone and perylene categories of the anthraquinone dye and pigment class; and the triarylmethane, triphenylmethane, and pyrazolone categories of the triarylmethane dye and pigment class. The settlement agreement also specifies that the listing determination is to address the following specific types of wastes where they are found: spent catalysts, reactor still overheads, vacuum system condensate, process waters, spent adsorbent, equipment cleaning sludge, product mother liquor, product standardization filter cake, dust collector filter fines, recovery still bottoms, treated wastewater effluent, and wastewater treatment sludge.

Due to the market demand for a wide variety of dye and pigment products, the dye and pigment industries typically operate successive batch processes producing varying dye and pigment products. These batch operations generate a wide variety of solid wastes on a periodic basis. These wastes generally can be divided into two general types: commingled wastes and process-specific wastes. Commingled wastes are wastes combined from multiple processes prior to management (*e.g.*, wastewaters). Commingled wastes include secondary wastes generated from the treatment of other commingled wastes (*e.g.*, wastewater treatment sludges). Process-specific wastes are wastes that are unique to a specific process and may be managed independently of one another (*e.g.*, spent filter aids).

On December 22, 1994, EPA published a notice that proposed listing decisions for 11 of the wastes covered in the consent decree. EPA deferred any listing decisions on three other wastes. (See 59 FR 66072). As a result, EPA and EDF amended the consent decree (paragraph 1h(v)) to establish deadlines for promulgating listing decisions for two of the deferred wastes. In today's notice, EPA is proposing listing determinations for all three of the deferred wastes.

*C. Confidential Business Information (CBI) Issues Regarding This Rule*

For the purpose of developing the supporting data for listing rulemakings for the dye and pigment industry, a questionnaire was sent out to industry pursuant to RCRA Section 3007. Some of the information collected from industry and used in the 1994 proposed rule, as well as today's proposed rule, was claimed as confidential. As a result of a consent order and a subsequent preliminary injunction in connection

with a case brought by some of the dye and pigment industry to prevent the disclosure of information claimed as CBI, *Magruder et al.* v. *U.S. EPA*, Civ. No. 94–5768 (D.N.J.), the EPA is enjoined from disclosing information claimed as confidential until all CBI determinations have been made on the data intended to be published in connection with these proposed rules.

Therefore, as with the 1994 proposed rule, we have removed information from this preamble and rule (and supporting background documents), if the information may disclose information claimed as CBI. We note the missing information in the text to this rule, where appropriate. However, we have included data that are not claimed as CBI, whenever such data are available. We have also included data that we obtained from public or non-CBI sources. Wherever we are unable to include pertinent data in a table, the following statement appears in a footnote: ''Relevant data are not included at the present time due to business confidentiality concerns.''

At this time EPA expects that this rule will also need some form of notice of data availability (NODA) or reproposal prior to promulgation as a final rule because of CBI problems. However, EPA is proceeding as noted above to allow publication of as much of the proposed rule as can be shared at this time. Thus, commenters can see as much as possible of EPA's current thinking and can comment on the basic approach, the implementation issues, and other portions of the rule that can reasonably be commented upon, even with the current redactions. We intend to supplement the public record prior to issuing a final listing determination.

### *D. What Wastes Are Covered in Today's Proposed Rule?*

Today's proposal applies only to the dye and pigment manufacturing industries. The end-user markets for dyes and pigments, which include textiles, paper, leather, ink, paints, coatings, plastics, fibers, and other low volume markets, are not within the scope of our listing determination. Consistent with both HSWA Amendments of 1984 and the consent decree, EPA is only making proposed determinations on wastes from the production and manufacturing of dyes and pigments.

In the 1994 proposed rule, the Agency deferred action on three waste streams based on insufficient characterization data, or lack of health-based levels for specific constituents of concern. The ''deferred'' dye and pigment waste streams are the subject of today's proposed rule. The three deferred wastes are:

- Spent filter aids, diatomaceous earth, or adsorbents used in the production of azo, anthraquinone, or triarylmethane dyes, pigments, or FD&C colorants.
- Wastewater treatment sludge from the production of triarylmethane dyes and pigments (excluding triarylmethane pigments using aniline as a feedstock).
- Wastewater treatment sludge from the production of anthraquinone dyes and pigments.

This proposed rule will refer to these wastes as ''filter aids,'' ''TAM sludges,'' and ''anthraquinone sludges'' respectively. Brief descriptions of the three wastes are given below.

#### Filter Aids

Manufacturers add filter aids (*e.g.*, diatomaceous earth) to some reaction processes to remove particulate impurities. The spent filter aids then are collected in a filter press and the press cake, sometimes called a clarification sludge, is disposed as waste. In some cases, facilities also use filter aids following completed reactions to clarify and purify certain products. The Agency grouped spent filter aids, diatomaceous earth, and adsorbents used in the production of all relevant classes of dyes and pigments, because these wastes typically contain unreacted raw materials, by-products, and impurities. The constituent composition of these filter aids varies depending on the dye or pigment produced and the raw materials used. The Agency deferred a determination as to whether to list Filter Aids in 1994 due to insufficient waste characterization data for this widely variable waste (see 59 FR 66103).

#### TAM Sludges

As described in the 1994 proposed rule, EPA evaluated wastes from the production of TAM pigments that use aniline as starting material (''feedstock'') separately from other TAM wastewaters and wastewater treatment sludges. This was because the process that uses aniline as a feedstock is somewhat different (see 59 FR 66081 and 66096). We proposed listing decisions for wastes from TAM pigments derived from aniline in the 1994 notice, but deferred a decision for wastewater treatment sludge from the production of TAM dyes and pigments that do not use aniline. Today's proposed rule addresses the wastewater treatment sludges from production of TAM dyes and pigments, excluding TAM pigments using aniline as a feedstock.

The typical wastewater treatment sludge is generated via the treatment of the following process waste streams: equipment washdown, plant run-off, spent scrubber liquid and mother liquor. Wastewater treatment steps usually include: neutralization to adjust pH, clarification, and biological treatment. Pretreatment sludges may be generated from precipitation/filtration in neutralization tanks, and from treatment with adsorbents, such as activated carbon. Biological treatment can also lead to generation of a wastewater treatment sludge. Sludge streams are further processed, typically through filtration and dewatering, prior to disposal. Information related to the management of TAM sludges is not included due to business confidentiality concerns.

In support of the 1994 proposed rule, we attempted to sample TAM sludges (from production of TAM pigments that do not use aniline as a feedstock). However, TAM dyes or pigments were not being produced at the time EPA collected its samples, and we could not attribute any constituents detected to TAM production. Thus, EPA deferred any listing decision for sludges from the production of TAM dyes and pigments (excluding TAM pigments using aniline as a feedstock) due to insufficient waste characterization data (see 59 FR 66095).

#### Anthraquinone Sludges

The typical anthraquinone sludge is generated via the treatment of process wastewater similar to that described for TAM sludges. From the data collected for the 1994 proposed rule, the only constituents detected in the waste that we could attribute to anthraquinone production did not have health-based benchmarks. EPA was unable to identify any appropriate surrogate compound of known toxicity to estimate the toxicity of these constituents. Because of the lack of health-based benchmarks or reliable surrogates, we deferred any listing determination in the 1994 proposal. As part of the deferral, we requested toxicity data or any suitable surrogates for the two waste constituents (see 59 FR 66101).

### *E. What Information Did EPA Collect and Use?*

#### 1. The RCRA Section 3007 Survey

In support of the 1994 proposed rule, EPA distributed a detailed RCRA section 3007 survey to dye and pigment manufacturing facilities in 1992. The purpose of the questionnaire was to collect information on the 12 specific residuals identified in the 1991 consent decree. Most questions in this survey requested information on waste generation and management activities in

1991. From data provided by questionnaire respondents, EPA identified facilities that manufacture azo, anthraquinone, or triarylmethane dyes or pigments (the number of facilities is not included due to business confidentiality concerns). In the questionnaire, EPA collected information regarding the products manufactured at each facility, raw materials and additives used, and 1991 production volumes. The questionnaire also collected information on the management of the wastes generated by each facility, including waste quantity and how the wastes were managed and disposed.

EPA contacted companies generating the three deferred wastes at issue in today's proposed rule to update the information in the 1992 § 3007 survey. The updated information EPA collected includes the quantities of wastes generated (for the year 1997), and the waste management practices used by the facilities for each of the wastes. The Agency used this updated information in its risk assessment, as described in Section III.D. The following discussion summarizes the information collected for each waste.

Filter Aids

In response to the 1992 questionnaire, a number of dye and pigment manufacturers reported generating filter aid wastes. We are not including information on the number of facilities generating this waste, nor the waste quantities reported for 1991, due to business confidentiality concerns. We also cannot include information collected by EPA in 1998 on the number of generators and the quantities for 1997 for the same reason. Facilities that generated spent filter aids may generate this waste from the production of a wide variety of different dyes and pigments. For example, one facility reported generating a total of 90 Mtons of filter aid wastes in 1997, comprised of 18 filter aids arising from the production of dyes and/or pigments.

TAM Sludges

In response to the 1992 questionnaire, a number of dye and pigment manufacturers reported generating TAM wastewater treatment sludges. We are not including information on the number of facilities generating this waste, nor the waste quantities reported for 1991, due to business confidentiality concerns. We also cannot include information collected by EPA in 1998 on the number of generators and the quantities for 1997 for the same reason. As noted previously, EPA was unable to collect samples of this waste.

Anthraquinone Sludges

In response to the 1992 questionnaire, a number of dye and pigment manufacturers reported generating anthraquinone wastewater treatment sludges. We are not including information on the number of facilities generating this waste, nor the waste quantities reported for 1991, due to business confidentiality concerns. We also cannot include information collected by EPA in 1998 on the number of generators and the quantities for 1997 for the same reason.

As noted above, the only chemicals detected in sludge that could be attributed to anthraquinone production in 1994 did not have health-based benchmarks. EPA did not receive any information in comments on the 1994 proposal that would assist us in calculating health benchmarks. Furthermore, EPA has not subsequently found any suitable surrogates to estimate the toxicity of the compounds in question.

2. Sampling and Analysis Data

For the 1994 proposed rule, the Agency performed sampling to characterize the wastes generated at dye and pigment manufacturing facilities. EPA collected a total of 34 waste samples from facilities to characterize the residuals under evaluation. The analytical results for all the wastes are summarized in the Background Document for Identification and Listing of the Deferred Dye and Pigment Wastes, Appendix A (hereafter called the Listing Background Document) for today's proposal, which is available in the docket. (Note however, that we cannot release much of the analytical data due to business confidentiality concerns). The dye and pigment manufacturers also provided a limited amount of additional waste sampling and analysis data in 1994. These additional data include aggregated analytical results from 19 industry analyses of samples that EPA and the facilities split during sampling visits. An industry trade group (Color Pigment Manufacturers' Association, or CPMA) aggregated this analytical information and submitted this information to EPA in April 1994. CPMA also included this information in the group's public comments on the 1994 proposed rule (see Docket No. F–94–DPLP–FFFFF, item DPLP–0025). We used the available sampling data from these sources to identify potential constituents of concern for use in today's proposed rule.

For the 1994 proposed rule, EPA collected limited sampling data for spent filter aids. Our sampling results were inconclusive for TAM sludges because these products were not manufactured during our sampling visit. While we did succeed in obtaining samples of anthraquinone sludge, we do not have health benchmarks for the two constituents that could be attributed to production of anthraquinone products.

## III. Approach Used in This Proposed Listing

### *A. Summary of Today's Action*

In listings promulgated by EPA, we typically describe the scope of the listing in terms of the waste material and the industry or process generating the waste. However, in today's rule we are proposing to use a new approach in these listings, a ''concentration-based listing.'' In a concentration-based listing, a waste would be hazardous unless a determination is made that it does not contain any of the constituents of concern at or above specified levels of concern. This approach draws from the concept of the characteristic approach to defining a hazardous waste, in that whether a waste is hazardous depends on the levels of key constituents in the wastes. We describe this concept in detail later in this notice.

We are proposing concentration-based listings for two of the deferred wastes:

- Spent filter aids, diatomaceous earth, or adsorbents used in the production of azo, anthraquinone, or triarylmethane dyes, pigments, or FD&C colorants.
- Wastewater treatment sludge from the production of triarylmethane dyes and pigments (excluding triarylmethane pigments using aniline as a feedstock).

For both wastes, the listings would apply if the wastes contain any of the constituents identified in the regulation at a concentration equal to or greater than the hazardous level set for that constituent (see tables IV–1 and IV–2 for levels). We are also proposing a set of conditions and requirements that must be met if a facility wishes to claim its waste does not exceed these levels and is, therefore, not covered by the listing.

We are proposing not to list as hazardous the third waste considered:

- Wastewater treatment sludge from the production of anthraquinone dyes and pigments.

In the following sections we describe the concept of a concentration-based listing and the risk assessment methodology we used to develop concentration limits for each wastes. We describe our proposed decisions in more detail in Section IV.

*B. What Is a Concentration-Based Listing?*

A concentration-based listing specifies constituent-specific levels in a waste that causes the waste to become a listed hazardous waste. In this proposed rule, we identify constituents of concern likely to be present in two categories of dye and pigment wastes. Using risk assessment tools developed to support our hazardous waste identification program, we assessed the potential risks associated with the constituents of concern. From this analysis, we developed ''listing concentrations'' for each of the constituents of concern in the two waste categories.

If you generate any of the wastes included in the two categories of dye and pigment wastes referenced above, you must either determine whether or not your waste is hazardous or assume that it is hazardous as-generated. We are proposing that you determine representative concentrations for the constituents of concern in your waste through sampling and analyses, unless you can use process knowledge to demonstrate that certain constituents are not present in your waste. Based on this information, you must make a determination as to whether or not your waste is a listed hazardous waste. Your waste would be a listed hazardous waste if it contains any of the constituents of concern at a concentration equal to or greater than the hazardous concentration identified for that constituent. If all of the constituents of concern in your waste were below their respective listing concentrations, you would need to notify EPA that your wastes are nonhazardous. The detailed descriptions of the steps you would be required to follow to implement the concentration-based listing are described later in this proposed rule.

*C. Why Is a Concentration-Based Approach Being Used for This Listing?*

There are several reasons for using a concentration-based approach for listing the deferred dyes and pigments wastes. First, these wastes are generated by an industry that uses batch processes to manufacture a variety of products, in response to market demand for a wide variety of dye and pigment products. Batch operations may result in highly variable wastes at the same facility or different facilities. A concentration-based approach allows the variable wastes generated at these facilities to be evaluated individually for hazard, so only the truly hazardous wastes are listed. This tailored approach is more cost-effective for the industry than a standard listing, and avoids the unnecessary regulation of nonhazardous waste.

Alternatively, EPA could have attempted to collect more information on these specific wastes to support a straightforward listing, i.e., without any concentration limits. However, such a data collection effort would have been difficult due to the wide variety of individual dye or pigment products produced and the potential variability in the waste characteristics. For example, one facility generated 18 filter aid wastes in 1997 arising from the production of different dyes and/or pigments. Gathering sufficient samples to evaluate all potential filter aid wastes would require a large commitment of scarce Agency resources that would have been beyond the reasonable scope of this rulemaking, especially given the time constraints of the existing Consent Decree. Given the relatively low quantities of the individual filter aids produced, EPA does not feel such an effort was justified.

Second, many manufacturers in the dye and pigment industries want to keep facility-specific product and waste information confidential. These manufacturers are concerned that release of such information could cause competitive harm. A concentration-based listing allows us to rely less on CBI, since we do not use this information directly to set the listing concentrations. This means we don't use specific information, such as product formulations or concentrations of constituents in the wastes, to set hazardous concentration levels for constituents of concern. As noted earlier, however, in this particular listing EPA still must resolve the CBI claims on some specific data prior to release.

Finally, a concentration-based listing approach may provide an incentive for hazardous waste generating facilities to modify their manufacturing processes or treat their wastes. For example, if a facility has a listed hazardous waste based on constituent-specific concentration levels established by EPA, it also knows the required concentrations levels of constituents in its waste below which its waste would become nonhazardous. Therefore, the facility may decide to modify its manufacturing process in order to generate a nonhazardous waste. Thus, this approach encourages waste minimization.

Section 1003 of the HSWA indicates that one of RCRA's goals is to promote protection of human health and the environment and to conserve valuable material and energy resources by ''minimizing the generation of hazardous waste and the land disposal of hazardous waste by encouraging process substitution, materials recovery, properly conducted recycling, and reuse and treatment.'' Section 1003 further provides that it is a national policy of the United States that, whenever feasible, the generation of hazardous waste is to be reduced or eliminated as expeditiously as possible.

The Pollution Prevention Act of 1990 (42 U.S.C. 13101 *et seq.*, Pub. L. 101–508, November 5, 1990) provides a hierarchy of pollution prevention approaches. Pollution should be prevented or reduced; pollution that cannot be prevented should be recycled or reused in an environmentally safe manner; pollution that cannot be prevented/reduced or recycled should be treated; and disposal or release into the environment should be chosen only as a last resort. A concentration-based listing may prevent pollution by discouraging generation of wastes with high levels of toxic constituents. If EPA provides a concentration-based target in the listing, generators would have the regulatory and economic incentive to meet the reduced levels.

*D. What Risk Assessment Approach Did EPA Use?*

Under a concentration-based listing approach, EPA must calculate concentration levels, or ''listing levels,'' in the waste that would present a hazard. To accomplish this, the Agency: (1) Selected constituents of potential concern in the waste, (2) chose a plausible waste management scenario, (3) calculated exposure concentrations by modeling the release and transport of the constituents from the waste management unit to the point of exposure, and (4) calculated waste concentrations that would yield the target risk level at the point of exposure.

The following sections present an overview of the analysis EPA used to calculate risk-based listing levels for filter aids and TAM sludges generated during the manufacture of organic dye and pigment products. You will find more details of how we selected the constituents of concern in the Listing Background Document. Details of the risk assessment are provided in the document in the docket entitled Development of Risk-Based Listing Concentrations for Hazardous Constituents Contained in Spent Filter Aids and Triarylmethane (TAM) Wastewater Treatment Sludges (hereafter called the Risk Assessment Background Document).

1. Choosing the Constituents of Concern

Our initial universe of constituents of potential concern included any constituent detected in any wastestream from the production of all classes of dyes and pigments we examined (i.e., all wastes sampled associated with the production of azo, TAM, and anthraquinone dyes or pigments, including FD& C colorants). We typically obtain samples from the specific wastes of concern for a standard listing evaluation. However, obtaining representative samples of filter aids and TAM sludges was difficult, as noted in the 1994 proposal (see 59 FR 66095 and 66103), due to widely varying wastes and batch processes. We believe that the broad universe of constituents detected in all wastes examined provides an appropriate starting point for selecting constituents of concern for filter aids, because these wastes may be generated from the production of many kinds of dyes and pigments. Because TAM sludge is a much more narrowly defined waste, we relied on available information regarding constituents used in TAM production to determine what constituents we expect in the waste.

Our primary source of potential constituents was the set of analytical data EPA collected to support the 1994 proposed rule described in Section I.E.2 of today's notice. We also examined the limited analytical data from industry to confirm the presence of constituents. These data sets included sampling results for all wastes under consideration in the 1994 proposal, because the available analytical data for the three specific wastes at issue are limited. For filter aids, EPA obtained some samples in support of the 1994 proposed rule. However, filter aids may potentially contain a variety of constituents, depending on what products and processes are in use by different facilities. Therefore, the limited waste analysis data for filter aids alone were not adequate to establish constituents of concern. We have no waste analysis data that would allow us to identify specific constituents of concern for TAM or anthraquinone sludges. As noted in Section II.D, our sampling results were inconclusive for TAM sludges because TAM dyes or pigments were not being produced at the time EPA collected its samples. While we did succeed in obtaining samples of anthraquinone sludge, we do not have health benchmarks for the two constituents that could be attributed to production of anthraquinone products. Thus, we did not pursue a listing for this waste.

We used the analytical data from all wastes to develop an initial list of potential chemicals of concern. We then reduced and augmented this list based on several factors. First, we can only develop a concentration level if a health benchmark exists for the chemical. Therefore, we removed constituents without health benchmarks from further evaluation. The sources we used for health benchmark data are summarized below; the Risk Assessment Background Document contains further information (see Appendix E).

Due to the lack of health-based benchmarks, we excluded certain constituents from consideration in today's proposed rule that we previously evaluated for azo dye and pigment wastes in the 1994 proposed rule. These constituents are acetoacetanilide (AAA), acetoacet-o-toluidine (AAOT), and acetoacet-o-anisidine (AAOA). For the 1994 proposal, we derived health based numbers based on a Structural Activity Relationship (SAR) analysis. The Agency has since reevaluated and revised the SAR analysis based on comments received in response to the 1994 proposal. The revised analysis, which has been independently peer reviewed, concludes that the current available data are insufficient to make a quantitative estimation of the carcinogenic potential of these compounds, or to establish provisional non-cancer benchmarks. The revised toxicological analysis for these compounds and the peer review documents are provided in Appendix A to the Risk Assessment Background Document.

We then screened the remaining potential constituents to remove chemicals that we believed were of little use in defining the hazardous characteristic of the two wastes at issue. In this screen we considered the prevalence with which a constituent is used in the manufacturing of the different classes of dyes and pigments at issue in the consent decree, the likelihood that a chemical could be attributed to such production, and the frequency with which a chemical was detected in wastes samples. In considering if the constituents detected are likely to be derived from dye or pigment production, we used publicly available information from the Colour Index International (3rd edition, 1996). For example, we retained any chemicals that were detected that are commonly used as raw materials in the production of the dyes and pigments at issue (e.g., aniline is widely used in the production of azo products; see Colour Index, vol. 4, pages 4009 and 4699). We also kept some chemicals detected that have no apparent use as raw materials, because they may be impurities or degradation products from chemicals used in the manufacturing process (e.g., naphthalene may be an impurity in a commonly used raw material, beta-naphthol). We removed some constituents, such as acetone and methylene chloride, that were detected frequently in samples, because they are common laboratory contaminants and/or common solvents that have no reported use in the production of these dyes and pigments. While such constituents may be present in wastes, we did not consider them further because we could not reasonably attribute them to dye and pigment production processes sampled. We dropped other constituents that had little or no reported use in the Colour Index; the dropped constituents were also rarely found in waste samples.

We are proposing to include the selected core chemicals in Table III–1 as constituents of concern for defining the two listed wastes. This table summarizes the frequency with which we detected the chemicals in waste samples, and prevalence of use of the chemicals in the production of the three dye and pigment classes (azo, TAM, and anthraquinone) as found in the Colour Index. For filter aids we included constituents on the final list of constituents of concern if we detected the chemicals with at least a low frequency (i.e, in more than one sample), and we found some evidence that industry used the chemicals in the production of the dyes and pigments at issue. We also selected several chemicals that we believe may be degradation products of other raw materials (e.g., p-phenylenediamine), or possible impurities in other starting materials (e.g., naphthalene). Finally, we included several compounds that may arise from TAM production, as described below, even though we do not have analytical data showing these chemicals are present in wastes from this industry. (More details of our rationale for choosing chemicals of concern are given in the Listing Background Document, Section 4).

We chose to add two chemicals for consideration as constituents of concern that were reported to be used in the production of TAM products, even though we did not find them in any waste samples. In the case of benzaldehyde, we did not analyze any of the wastes for this compound. However, this chemical is reported to be used in the production of TAM products (see Colour Index, vol.4, page 4727). We analyzed for the other chemical (the

identity is not given due to business confidentiality concerns), but we did not find it in any samples. However, the 3007 Survey indicated significant use of this chemical in the production of TAM dyes. EPA did not succeed in obtaining waste samples during the production of TAM dye and pigments (excluding TAM pigments using aniline as a feedstock). Therefore, based on the known uses in TAM manufacturing, we considered these two chemicals as potential constituents of concern.

In the case of TAM sludges, we considered proposing the same list of core constituents used for filter aids. We considered this option primarily because we have no analytical data that reflects wastes arising from TAM production. (We do have data for wastes from the production of TAM pigments using aniline as a feedstock; this subset of TAM wastes were dealt with in the 1994 proposed rule and is not at issue in today's notice. We decided to propose a list based on the constituents that are known to be used in the manufacturing of TAM dyes or pigments. Using public sources of information (i.e., Colour Index), we were able to identify reactants reported in use for TAM products. Except as noted previously, the constituents identified in this way are consistent with the constituents reported in the 3007 Survey. This analysis led to the list of constituents of concern for TAM sludges.

The publicly available information we used was consistent with the information provided by industry in responses to the 3007 Survey, except in a few cases. In some instances (the identities are not given due to business confidentiality concerns), the Colour Index showed low to moderate use of the chemicals that was not confirmed in the 3007 Survey. Conversely, in the case of another chemical (the identity is not given due to business confidentiality concerns), the 3007 Survey indicated significant use in the production of TAM dyes, while the Colour Index did not. In cases where we had these discrepancies, we relied on the source that showed use and assumed that these chemicals may be used in production.

In choosing core constituents of concern for a concentration-based listing for filter aids and TAM sludges, we considered adding other constituents shown in Table III–2. We considered these chemicals because they were detected with a moderate frequency, they had some use in manufacturing the dye and pigment products of concern, or they are in a class of compounds that have been historically linked to dye production (benzidines). However, we believe that these constituents are unlikely to be present in these two specific wastes at levels of concern. Some of the chemicals in Table III–2 could not be linked to the production of the dye and pigment classes at issue. We did not include chemicals in the final list of core constituents of concern unless we could find some evidence that the presence of a chemical was related to the production of the classes of the dyes and pigments of interest (for filter aids, the production of azo, TAM, or anthraquinone products; for TAM sludges, the production of TAM products, excluding TAM pigments using aniline as a feedstock). This is because many waste samples were wastewaters or sludges collected from combined wastewater treatment systems, and such systems typically receive waste streams from various other production processes at facilities. We did not include other chemicals because they were never or rarely detected in EPA's analysis.

TABLE III–1.—CORE CONSTITUENTS OF CONCERN IN FILTER AIDS AND TAM SLUDGES

| Constituent | Core constituents of concern for filter aids (FA) and/or TAM sludges (T) | Frequency of detection[1] | Use in production of dye and pigment classes[2] | Comments |
|---|---|---|---|---|
| Aniline | FA | High; S | High use (Azo); some use in TAM pigment (aniline based) | |
| Benzaldehyde | FA, T | Not analyzed | Moderate use in TAM products** | Not analyzed, but common reactant in TAM production. |
| Chloroaniline, p- | FA | Moderate, S | Rare use (Azo) | Aromatic amine; possible contaminant. |
| Cresol, p- | FA | Moderate, S | Low use (Azo) found in Colour Index;** | Industry split samples did not distinguish meta and para isomers. |
| Dimethoxybenzidine, 3,3′- | FA | Low, S | Moderate use (Azo) | |
| Dimethylaniline, N,N- | FA, T | Rare | Moderate to high use found for TAM dye production; rare use otherwise. | Rarely detected, but TAM waste not sampled and common reactant in TAM production. |
| Diphenylamine | FA, T | Moderate | Low use (Azo); rare use in TAMs | Indistinguishable from N-Nitrosodiphenylamine by EPA method (GC/MS). |
| Diphenylhydrazine, 1,2- | FA | Moderate | None reported | Possible oxidation product of aniline; indistinguishable from azobenzene by EPA method (GC/MS). |
| Formaldehyde | FA, T | Moderate, S | Moderate use for TAM; low use for others | |
| Naphthalene | FA | Moderate/High | None reported | Possible impurity in common Azo raw material (beta-naphthol). |
| Phenol | FA | Moderate/High, S | Moderate use (Azo) | |
| Phenylenediamine, p-(4-aminoaniline). | FA | Low/Moderate | Moderate use (Azo) | Possible hydrolysis product of other azo raw materials (aminoacetoacetanilide); indistinguishable from o-isomer in EPA analysis. |

TABLE III–1.—CORE CONSTITUENTS OF CONCERN IN FILTER AIDS AND TAM SLUDGES—Continued

| Constituent | Core constituents of concern for filter aids (FA) and/or TAM sludges (T) | Frequency of detection[1] | Use in production of dye and pigment classes[2] | Comments |
|---|---|---|---|---|
| Toluidine, o-(2-aminotoluene). | FA, T | Moderate, S | Moderate use (Azo); low use (TAM) | Hydrolysis product of raw materials (AAOT); EPA could not separate o- and p-isomers during analysis. |
| Toluidine, p-(4-aminotoluene). | FA, T | Moderate, S | Low to moderate uses (TAM and anthraquinone). | EPA could not separate o-and p-isomers during analysis. |
| (**) | | | | |
| (**) | | | | |

[1] As found in EPA analysis of samples of all dye and pigment wastes from production of azo, TAM, and anthraquinone dyes/pigments and FD&C colorants; ''ND'' means not detected; ''S'' denotes reported in industry split samples.
[2] From the Colour Index International, 3rd edition, 1996.
**Relevant data are not included at the present time for a number of constituents due to business confidentiality concerns.

TABLE III–2.—OTHER CONSTITUENTS OF POSSIBLE CONCERN

| Constituent | Frequency of detection[1] | Use in production of dye and pigment classes[2] | Comments |
|---|---|---|---|
| Benzene | Moderate, S | None reported | Found in waste, but no use; common contaminant from many industrial processes. |
| Benzidine | Low | No reported use domestically. | Used historically (Azo), but no current domestic use reported; only found in wastes from processes that do not use filter aids. |
| Chlorobenzene | Moderate, S | None reported | No known use; other uses as solvent. |
| Chloroform | Moderate, S | None reported | No use; contaminant from treated water supplies; other uses as solvent. |
| Dichlorobenzene, 1,2- | Moderate | None reported | No use in azo/TAM/anthraquinone production; solvent uses in other dye production (Oxazine dyes).[2] |
| Phenylenediamine, o-(2-aminoaniline). | (See comments) | Low use (anthraquinone) | EPA found analytical methods unreliable (very poor recoveries); may be indistinguishable from p-isomer. |
| Toluidine, 5-nitro-o-(2-methyl-5-nitroaniline). | ND, S | Moderate use (Azo) | Not detected in any EPA samples of azo wastes and reported in only 1 industry sample. |
| (**) | | | |

[1] As found in EPA analysis of samples of all dye and pigment wastes from production of azo, TAM, and anthraquinone dyes/pigments and FD&C colorants; ''ND'' means not detected; ''S'' denotes reported in industry split samples.
[2] From the Colour Index International, 3rd edition, 1996.
** Relevant data are not included at the present time for a number of constituents due to business confidentiality concerns.

We believe that using analytical data from all dye and pigment wastes sampled is clearly appropriate for filter aids. This is because filter aids are used to treat and purify a wide variety of wastes derived from all of the classes of dye and pigment products (azo, triarylmethane, and anthraquinone). The shorter list for TAM sludges also is appropriate, due to the more limited set of potential waste constituents for this single dye and pigment class. We calculated concentration limits for all constituents in Tables III–1 and III–2 for both spent filter aids and TAM sludges, as we describe later in this notice.

We are seeking comment on whether the constituents of concern we selected are appropriate for the concentration-based listings for the two wastes under consideration. We are interested in any information on the potential for these, or any other constituents in Table III–2, to be in these wastes at levels of concern. We believe that it is reasonable to select constituents that we can link to the dye and pigment processes under evaluation. To require testing for an extensive list of constituents without adequate reason would lead to unnecessary analysis by industry in evaluating if their wastes meet the listing levels. After considering information provided in comments on today's proposed rule, we may choose to add potential constituents from Table III–2, or delete proposed constituents for the two wastes.

Analytical Issues

We found problems in our chemical analysis of dye and pigment waste samples for some of the constituents in Table III–1. In a few cases, our analyses could not distinguish between two compounds when we used the usual EPA methods for semivolatile organic chemicals, GC/MS method 8270 in Test Methods for Evaluating Solid Wastes, Physical/Chemical Methods; SW–846, hereafter called SW–846). We found problems for four pairs of compounds: diphenylamine/N-nitrosodiphenylamine; 1,2-diphenylhydrazine/azobenzene; o-toluidine/p-toluidine; and o-phenylenediamine/p-phenylenediamine. We propose to deal with these problems as outlined below.

N-Nitrosodiphenylamine breaks down to diphenylamine in the method we used; therefore these two chemicals could not be distinguished. This means

that detection by this method could be due to either compound being in the waste. We found no reported use of the N-nitroso-derivative, but we did find diphenylamine has some use in the production of azo and TAM products. Therefore, for this pair we selected diphenylamine as the likely constituent of concern. This means that, if we finalize diphenylamine as a constituent in the concentration based listings, generators would analyze for this constituent and assume any concentration measured is diphenylamine.

Similarly, we could not distinguish the compounds 1,2-diphenylhydrazine and azobenzene in the analytical method used, because these chemicals interconvert readily under analytical conditions. Thus, our data showed that one or both of these compounds were present in waste samples, but we could not tell which one. In this case, we did not find any reported use of either chemical in dye or pigment production processes. However we believe that the presence of either may be explained by oxidation of aniline from processes that use aniline as a reactant. Thus, in this case we are proposing to include the constituent with the lower concentration level (1,2-diphenylhydrazine) to be protective. This means that generators would analyze their waste for the total level of 1,2-diphenylhydrazine/azobenzene, and assume that the amount detected is due only to the more toxic 1,2-diphenylhydrazine. This is also reasonable because these compounds may readily interconvert in wastes or the environment, thus it is prudent to set the listing level for the more toxic component.

In our analysis we also could not separate two isomers of toluidine (o-toluidine and p-toluidine) and phenylenediamine (o-phenylenediamine and p-phenylenediamine). While it may be possible to distinguish these isomers using other analytical methods, we have no data at this time to indicate this. For the toluidine isomers, we are proposing to include both isomers as constituents of concern. If generators cannot separate these isomers, they could determine a total quantity for both. In the absence of information on which isomer is expected in the waste, generators would assume that the measured concentration is due to the more toxic o-toluidine. Generators could use their knowledge of their production processes, however, to definitively rule out the presence of one of the isomers, and in this way identify which isomer is present. For example, if generators know that only one isomer is used in any of the relevant processes, they could document this and claim this as part of their determination. Note that the risk-based concentration levels we propose to set for these two chemicals are similar (i.e, they differ by less than a factor of two for both wastes), thus the practical distinction between these isomers is relatively unimportant, unless generators measure them at levels approaching the listing levels.

For the o- and p-phenylenediamine isomers, we reviewed the analytical data and now believe that o-phenylenediamine cannot be reliably measured. We found that we could not reliably recover the chemical from samples with known concentrations (spiked samples). In addition, the reported usage of o-phenylenediamine in the production of dyes and pigments is relatively limited compared to the use of p-phenylenediamine (see Colour Index, vol. 4, page 4822). Furthermore, p-phenylenediamine may also form from the degradation of a widely used azo precursor, p-aminoacetoacetanilide. Therefore, because of these analytical problems, and also because its use in dye or pigment production is limited, we are proposing not to include o-phenylenediamine in the list of constituents of concern for either waste. Thus, if we finalize phenylenediamine as a constituent of concern for filter aids, generators would be required only to determine if p-phenylenediamine is present in their wastes below the listing levels.

We seek comment on these analytical issues associated with the potential constituents of concern. We are especially interested in any information on methods that may reliably resolve the analytical problems noted above. We also seek comment on the problematic chemicals we identified, and whether EPA should adopt another approach. One approach might be to simply avoid using any of these compounds on the list of constituents of concern due to the analytical problems. However, due to their potential importance, we believe at this time that the above approach is a reasonable attempt to use these chemicals in setting listing levels. Another approach would be to use the approach described for the 1,2-diphenylhydrazine/azobenzene pair, i.e., if the generators cannot resolve the constituents in the chemical analysis, they would always assume that the more toxic constituent was in fact present. We believe this may be overly conservative in some cases, but solicit comment on this and other possible approaches.

2. Choosing the Risk Assessment Scenarios To Evaluate

For both filter aids and TAM sludges, we evaluated the scenario of disposal in unlined municipal landfills and assessed the impact of the release of leachate from these landfills to the groundwater. In past listings we have found that landfill disposal of wastewater treatment sludges and similar solids is quite common (e.g., see EPA's recent listing for petroleum refining wastes, 63 FR 42110; August 6, 1998). The updated information we collected for both wastes showed that some generators sent these wastes to municipal landfills. In both cases, EPA chose to evaluate this scenario. However due to constraints on release of information claimed as CBI, we cannot discuss in detail the prevalence of this disposal practice or the extent of other practices.

We used the updated 1997 waste volumes (i.e., waste quantities) reported by facilities in our modeling of potential releases from municipal landfills. In the case of filter aids, we combined the filter aids generated by each facility and arrayed these combined waste volumes into a distribution that would represent quantities of filter aids that go to municipal landfills. We then used this distribution of waste volumes as a key input parameter into our modeling.

For TAM sludges (excluding sludges associated with TAM pigments using aniline as a feedstock), the updated data showed few generators of this waste. One facility sent 57 metric tons of sludge derived solely from the production of TAM dyes or pigments to a municipal landfill. This specific sludge was generated from wastewater that arose from the production of TAM products, and did not include wastewaters from other production processes. We cannot discuss the volumes or management practices of the other facilities at this time due to CBI constraints. We used the one volume associated with the dedicated sludge in all modeling for TAM sludge disposal in municipal landfills.

Under Federal regulations, generators are free to send either waste to any Subtitle D municipal landfill. We assumed that any municipal landfill described in EPA's nation-wide distribution of municipal landfills was possible, with some geographic limitations reflecting the locations of the dye and pigment manufacturers (described further below). Therefore, we used the distribution of data available for each of the parameters needed to model potential risk associated with disposal of dye and pigment waste

streams in municipal landfills. The primary source of data from which we selected key modeling inputs (e.g., surface area, active life, distance to well) is EPA's 1988 National Survey of Solid Waste Municipal Landfill Facilities. These parameters are described in more detail in the Risk Assessment Background Document (Section 4).

EPA has promulgated regulations governing the design and operation of municipal landfills (see 40 CFR Part 258), and our modeling assumptions reflected some of these requirements when appropriate (e.g., daily cover). We chose to model a landfill without the full liner system described in the regulations, because it is reasonable to assume that many landfills now and in the future may not have synthetic liners. For example, the design criteria in 258.40 apply only to new units or lateral expansions of existing units. Existing landfills (i.e., those in existence prior to the effective date as defined in § 258.1(e)) do not have to meet the design requirements in § 258.40 (e.g., liner systems). Furthermore, the regulations allow exemptions from the standards depending on the location and size of the landfill (Section 258.1(f)), and States may approve alternative designs for new units or lateral expansions based on performance standards (§ 258.40(a)(1)). Finally, EPA is in the process of authorizing States to implement the municipal landfill regulations, and States are still working to issue permits and bring all landfills up to the regulatory requirements. Given the existing exemptions in the regulations, and the uncertainty in how many landfills have liner systems, we believe it is prudent to base our modeling on landfills without a liner.

Another reason the modeling of unlined landfills appears prudent is because industrial wastes also can go to unlined landfills that do not take municipal waste (i.e., industrial nonhazardous waste landfills), and thus would not be subject to those standards. We are unaware of any legal requirement that these wastes could not go to such non-municipal waste landfills. Given the similarities in the disposal practices (municipal and industrial nonhazardous waste landfills), we believe that an unlined landfill scenario is reasonable.

EPA used the approximate geographic locations of the facilities that generated spent filter aids and TAM sludges to estimate location parameters needed to conduct the risk assessment. We used geographic location to identify the soil, climate, and hydrogeologic parameters used in the fate and transport modeling. Location related parameters required for the risk assessment and specific inputs and data distributions used to model risk from these units are described in detail in the Risk Assessment Background Document (Section 4).

As noted above, there is uncertainty in how many landfills that might receive these waste have liner systems in place. EPA acknowledges that a liner system would serve to contain waste leachate, and would lessen the risk while such a liner system was intact. We seek comment as to whether an alternative regulatory approach should be taken for wastes sent to landfills with liners or certain environmental controls.

3. The Receptors and Exposure Pathways Evaluated

The primary receptors we considered in this analysis are adults and children exposed via ingestion (i.e., drinking water) and noningestion (e.g. showering) exposure pathways to water from groundwater wells contaminated by the leachate from the municipal landfill receiving filter aid or TAM sludge wastes. We considered only receptors with residential drinking water wells for the groundwater pathway. We assumed all community wells and other municipal water supplies are treated and, therefore, would not be contaminated with constituents from the wastes of concern.

We also evaluated receptors from nongroundwater pathways in our sensitivity analysis. We assumed the receptors for these pathways were farmers and their children who live in close proximity to the municipal landfill. We chose these receptors because their exposure results in the highest potential risk for nongroundwater pathways, which was appropriate for the initial sensitivity or screening analysis. Nongroundwater exposure pathways for filter aids and TAM sludges disposed in municipal landfills result from the emission of vapors from these landfilled wastes. We evaluated exposure from both direct and indirect nongroundwater pathways. The direct pathway consists of dispersal of vapors from the landfill through the air pathway directly to the receptor via the inhalation. Indirect pathways include deposition to soil, transfer to fruits, vegetables, grain, and forage (air-to-plant transfer and soil-to-plant transfer), and uptake by grazing animals. The plant and animal products are then consumed by the farm family.

*E. How Did EPA Estimate Exposure Concentrations?*

1. Risk Assessment Methods

To calculate listing levels for constituents of concern, we needed to determine what concentrations at the point of exposure would be associated with levels in the wastes. We conducted the risk assessment in three stages: (1) the sensitivity analysis, (2) the deterministic analysis, and (3) the probabilistic analysis for the groundwater pathways. For the nongroundwater pathways, the Agency used results from the sensitivity analysis to screen out nongroundwater risks, because they were not significant relative to potential groundwater risks associated with disposal of wastes in landfills.

*a. Sensitivity Analysis.* The purpose of our sensitivity analysis was to identify the most sensitive or risk-driving parameters in the risk assessment model and to determine high-end and central tendency values for subsequent use in the deterministic analysis. A high-end parameter corresponds to its 90th or 10th percentile value depending on whether a high or low value of that parameter results in a higher predicted risk. We conducted the sensitivity analysis by varying each parameter or set of linked parameters to high ends one at a time, while holding all other variables in the analysis at central tendency. We then compared the risk results using a single high-end parameter to the results obtained when all values are set at central tendency. Using this method, we identified the two most sensitive high end parameters that resulted in the highest risks. We then set these parameters to their high-end values in the subsequent deterministic analysis. For the groundwater pathway, we used the sensitivity analysis to identify high-end parameters for use in the deterministic assessment of risk from groundwater.

For the nongroundwater pathway, we were able to use the results from the sensitivity analysis as a screening level analysis of nongroundwater risks. Originally, we intended to use the nongroundwater sensitivity analysis to identify the most sensitive parameters for use in a deterministic analysis of nongroundwater risks from the dye and pigment waste streams. However, we were able to use the results of the nongroundwater sensitivity analysis to screen out or eliminate nongroundwater risks as a primary concern for dye and pigment industry wastes. We screened out nongroundwater risks by comparing the results of the nongroundwater sensitivity analysis to the results of the

groundwater sensitivity analysis, which we performed using the same inputs for common parameters. In all cases, the groundwater risk analysis produced higher risk estimates for all constituents. Since the purpose of this analysis was to set risk-based concentration limits, we focused our analysis on the pathway of most concern (i.e., highest risk) to determine protective concentrations. Because the groundwater pathway presented the highest risk, we only evaluated the groundwater pathway further using deterministic and Monte Carlo analyses. In other words, risk-based concentrations set based on groundwater pathway risks will also be protective of nongroundwater pathway risks. Based on this finding, no further modeling of nongroundwater risks was conducted. The Risk Assessment Background Document describes the sensitivity analysis for both groundwater and nongroundwater pathways and presents the results in Appendices A and H.

*b. Deterministic Analysis.* The ''deterministic'' method uses single values for input parameters in the models to produce a point estimate of risk or hazard. For this analysis, we used a double high-end risk assessment. In this method, we set the two parameters identified to be most sensitive at their high-end values and all other parameters are set at central tendency. A central tendency risk estimate is the point estimate in which all variables are set at central tendency values. We presume the high-end risk estimate to be a plausible estimate of individual risk for those persons at the upper end of the risk distribution. By using these descriptors we intend to convey estimates of exposure in the upper end of the distribution (i.e., above the 90th percentile), while avoiding estimates that are beyond the true distribution. (See the EPA guidance memo entitled, Guidance on Risk Characterization for Risk Managers, 1992; hereafter known as the Habicht memo, 1992). We applied the deterministic methodology to assess groundwater pathway risks from disposal of spent filter aid and TAM sludges in municipal landfills. The parameters that we found to be the two key high-end parameters varied somewhat by chemical and waste. However, these parameters were some combination of waste quantity, well location, and duration of exposure.

*c. Probabilistic Analysis (Monte Carlo Method).* In the probabilistic analysis, we vary sensitive parameters for which distributions of data are available. Parameters varied for this analysis include waste volumes, landfill size, parameters related to the location of the landfill such as climate and hydrogeologic data, location of the receptor, and exposure factors (e.g., drinking water ingestion rates). The probabilistic analysis is conducted using a Monte Carlo methodology. Monte Carlo analysis provides a means of quantifying some variability and uncertainty in risk assessments by using distributions that describe the full range of values that the various input parameters may have. Some of the parameters in the probabilistic analysis are set as constant values because (1) there are insufficient data to develop a distribution, (2) simplifying assumptions are made, (3) site specific constants are available, or (4) the analysis has not been shown to be sensitive to the values of the parameter, that is, even if the parameter is varied, the risk results do not vary significantly.

Monte Carlo simulation is a statistical technique that calculates an individual risk value or hazard quotient for each category of parameters that affect or determine risk. For each calculation, the Monte Carlo simulation uses parameter values that are randomly selected from the distribution of values available for each parameter. The range of values selected for the input parameters reflects the distribution of values corresponding to each input parameter. The repetitive calculations take many randomly selected combinations of input parameters to generate a range of risk results. Based on the distribution of the output, we can determine a risk or hazard level representing the high end (e.g., 90th or 95th percentile) or central tendency (i.e., 50th percentile). Although the simulation is internally complex, commercial software performs the calculations as a single operation, presenting a distribution of risk results. From these results, we can determine the percentile distribution of exposure point concentrations and risks for the selected risk assessment scenario. We assessed potential groundwater pathway risks from disposal of filter aid and TAM wastes in municipal landfills using the probabilistic risk assessment method.

Monte Carlo simulation can be used to simulate the effects of natural variability and informational uncertainty that often accompany many actual environmental conditions. Further, information on the range and likelihood of possible values for these parameters is produced using this technique. When compared with alternative approaches for assessing parameter uncertainty or variability, the Monte Carlo technique has the advantages of very general applicability, no inherent restrictions on input distributions or input-output relationships, and relatively straightforward computations. Also, Monte Carlo application results can be used to satisfactorily calculate uncertainty, and to quantify the degree of conservatism used. With deterministic analyses, an alternative to Monte Carlo, it is often not possible to quantify the level of protection represented by the results. However, some potential limitations may exist when applying Monte Carlo techniques in modeling efforts. Variability (inherent variation in a measure over time and space) and uncertainty (lack of knowledge) are often difficult to distinguish within applications. Also, one must account for correlations among the various data parameters to avoid distorting results. As explained in Section III.H, we relied on the Monte Carlo approach to set listing levels for today's proposal.

2. Fate and Transport Modeling

The risk analysis employs several key fate and transport models. The models include a landfill partitioning model based upon the equations presented in a series of articles by Jury *et al.* We used this model to estimate the concentration of leachate from the landfill and the emission rate for volatile constituents from the landfill. We applied EPA's Industrial Source Complex Short Term, version 3 (ISCST3) to estimate the dispersion and deposition of vapors emitted from the municipal landfill. For estimating the concentration of constituents of concern at the residential drinking water well, we used the groundwater model EPACMTP or *EPA's C*omposite *M*odel for Leachate Migration with *T*ransformation *P*roducts. Further details and references for these models are presented in the Risk Assessment Background Document (Section 5.2.2).

*a. Landfill Partitioning Model.* We used the Jury equations to estimate fate and transport of constituents in the nongroundwater pathways from the landfill to the receptor and to estimate leachate from the landfill. Using a model based on the Jury equations, we projected the contaminant loss from a landfill due to volatilization, run-off, degradation, and leaching. The Jury equations partition the waste in the landfill to waste, air, and pore water and calculate potential losses from leaching, volatilization, and degradation. The landfill partitioning model evaluates contaminant losses over both the active waste disposal period and after the landfill is closed. We used the landfill partitioning model to conduct the

sensitivity, deterministic, and Monte Carlo analyses.

*b. Air Model.* We used the ISCST3 air dispersion and deposition model to estimate the vapor air concentrations and deposition rates needed to develop relative risk estimates associated with vapor air emissions from the municipal landfill. We estimated air pathway risks using emissions estimates from the landfill partitioning model as inputs to the ISCST3 air model, and using ISCST3 to estimate the air concentration and deposition of vapor for each constituent at receptor locations. This modeling step was only needed for the sensitivity analysis to estimate risks from non-groundwater pathways.

*c. Groundwater Model.* We used the EPACMTP groundwater model to estimate the concentration of constituents of concern at the residential drinking water well. We conducted the groundwater modeling using six surrogate compounds to represent the movement of all constituents of concern through the groundwater pathway. Identification of surrogate compounds provides a means of minimizing the modeling runs required to model the large number of constituents evaluated for this assessment. For this assessment, organic constituents are grouped into six categories based on like chemical and physical properties. Sorption potential and hydrolysis rate are the key parameters used to group constituents; however, for the constituents of concern in today's proposed rule, hydrolysis was not important. Therefore, the only constituent-specific parameter of importance for transport of the organic compounds of interest was the sorption potential (i.e., the organic carbon partition coefficient, $K_{oc}$; this is a measure of the tendency for a chemical to adsorb to organic material in soils). For computational efficiency, we only modeled the surrogate constituent in each category, and then applied the modeling results for the surrogate to each constituent in the category. We found that the dilution and attenuation of the constituents we evaluated did not vary significantly (*i.e.*, less that a factor of 2), even with larger differences in $K_{oc}$. Thus, the use of surrogates did not introduce any appreciable uncertainty into the final results. See Appendix C of the Risk Assessment Background Document for details of the designation of constituent categories and identification of surrogate compounds.

We used the EPACMPT model to conduct the sensitivity analysis, deterministic analysis, and Monte Carlo analysis for the groundwater pathway. The groundwater pathway modeling yields the groundwater exposure concentrations resulting from the release of waste constituents from the landfill. Precipitation that percolates through the waste unit generates leachate, which can infiltrate from the bottom of the landfill into the subsurface. The waste constituents dissolved in the leachate (as predicted by the partitioning model) are then transported via aqueous phase migration through the vadose zone to the underlying saturated zone and then down gradient to a ground water receptor well. We project the concentration at the intake point of a hypothetical groundwater drinking water well or receptor well, located at a specified distance from the down gradient edge of the waste management unit.

We located the residential wells down gradient from the landfill and within the top ten meters of a plume of groundwater contaminated by the leachate from the municipal landfill. As noted previously, we used distances of receptor wells from waste management units from EPA's National Survey of Municipal Landfills. The distance from the landfill to the receptor well, and the location of the well in relation to the plume of contaminated groundwater, are important parameters in the groundwater model. This is because the projected concentrations of constituents at the well, and the corresponding risks, increase as the well location is moved closer to the source within the plume.

For the Monte Carlo analysis, we placed the receptor well downgradient from the waste management unit at a radial distance of up to 1,610 m; the distance for each simulation was taken from the distribution of distances gathered by EPA in its survey noted above. We assumed the lateral location of the well to be randomly distributed within the estimated lateral extent of the plume. For the deterministic analysis, the downgradient receptor well location was fixed within the lateral extent of the plume (most often at the high end value of 102 meters from the landfill).

The objective of this ground-water modeling was to compute the amount of dilution and attenuation a contaminant may undergo as it migrates from a landfill to a ground-water well. The amount of dilution and attenuation is expressed as a dilution/attenuation factor (DAF), which represents the ratio of the initial leachate concentration leaving the landfill to the ground-water receptor well concentration. The high-end DAFs for the different constituents did not vary much for the two wastes, i.e., the DAFs were in the range of 3 to 5.

The groundwater model accounts for the following processes affecting contaminant fate and transport: advection, hydrodynamic dispersion, linear or nonlinear equilibrium sorption, chained first-order decay reactions, and dilution from recharge in the saturated zone. EPACMTP was run in both deterministic mode and Monte Carlo mode. In the deterministic mode, we set the two most sensitive variables to their high end values, while keeping all other parameters set at central tendency. In the probabilistic Monte Carlo mode, the model randomly selected parameter values from their respective statistical distributions. The Monte Carlo procedure allows assessment of the uncertainty associated with ground-water well concentrations that result from uncertainty and variability in climatic and hydrogeologic characteristics of waste management units across the range of locations associated with the Dyes and Pigments industry.

### *F. What Exposure Assumptions and Toxicity Levels Did EPA Use?*

We used values from EPA's Exposure Factors Handbook (EPA, 1997) to set the exposure assumptions for this analysis. We applied the recommended values for the central tendency and high end intake rates in the deterministic analysis, and we used a distribution of values developed from the data presented in the Exposure Factors Handbook in the Monte Carlo analysis. Section 6.0 of the Risk Assessment Background Document discusses these values in detail.

The health benchmark data used in the analysis are based upon the values presented in the Integrated Risk Information System (IRIS) online database of verified health benchmarks or in the Health Effects Assessment Summary Tables (HEAST) document. Appendix E of the Risk Assessment Background Document contains toxicological profiles used in our analysis. The studies used as the basis for these benchmarks have been reviewed and summaries of these studies, along with references to the complete studies, are presented in Appendix E of the Risk Assessment Background Document.

### *G. What Uncertainties Are Associated With The Risk Assessment?*

Uncertainty is inherent in the risk assessment process. It occurs because the risk assessment process is complex, and variability is inherent in the environment. We may classify the sources of uncertainty as parameter uncertainty and variability, exposure

scenario uncertainty, and model uncertainty. Parameter uncertainty occurs when parameters appearing in equations cannot be measured precisely and/or accurately. Variability refers to the normal variations in physical and biological processes that we cannot reduce with additional data. We have addressed variability in this risk assessment by using a probabilistic analysis. Exposure scenario uncertainty occurs because of the inability to measure exposure of receptors to constituents of concern. Model uncertainty is associated with all models used in risk assessment and occurs because computer models require simplifications of reality, and thus exclude some variables and interactions that influence fate and transport but cannot be included in models due to complexity or lack of data. We discuss each of these issues in detail in Section 8 of the Risk Assessment Background Document.

One important area of uncertainty that we believe should be noted is the uncertainty involving estimates of risks to children from carcinogenic compounds. We used the same overall approach for estimating cancer risks in both adults and children from the dye and pigment waste streams evaluated. We modified the exposure factors for children to account for differences between adult and child receptors (e.g., body weight, exposure duration). However, we recognize that significant uncertainties and unknowns exist regarding the estimation of lifetime cancer risks in children. Methodologies for estimating environmental threats to children's health are relatively new. They are currently being debated within the scientific community, and will continue to evolve. The analysis of cancer risks in children undertaken for this assessment has not been externally peer reviewed.

### *H. What Risk Level Do the Concentration Levels Represent?*

In calculating concentration limits for the two wastes, we assumed the residential drinking water well concentration is equal to EPA established protective or health-based level for each constituent for the most sensitive receptor (adult or child). Protective concentrations are those at which adverse health effects from any single constituent present in contaminated drinking water and/or water used for bathing or showering do not exceed a one in 100,000 ($1 \times 10^{-5}$) individual lifetime cancer risk or a non-cancer hazard quotient of 1 (where the hazard quotient is the ratio of the concentration in the water to the concentration at which no non-cancer effects are expected). The use of these risk levels is consistent with the initial cancer-risk and HQ ''levels of concern'' that we described in the discussion on EPA's hazardous waste listing policy in the 1994 proposed rule for dye pigment wastes (see 59 FR 66075). As noted previously, we based the concentrations on the groundwater pathway, which is the pathway of most concern for all constituents of concern for this industry when disposed in municipal landfills. Section 5 of the Risk Assessment Background Document provides the methodology we used to derive risk limiting waste concentrations in greater detail.

### *I. What Are the Proposed Listing Levels?*

Table III–3 presents the risk-based concentration levels for all potential constituents of concern calculated for both spent Filter Aids and TAM sludges based on our risk assessment. These levels represent protective concentrations for constituents that may be present in the wastes, and are based on the receptor that yielded the lowest allowable waste concentration (i.e, adult or child). Using the partitioning model described above, we calculated protective levels for constituents in both the waste itself and for leachate that is released from the landfill. We are proposing to set the concentration levels in the listing at the levels calculated for the constituents in the two wastes. If you generate either waste under consideration, your waste concentrations would have to be below these levels, or else your waste will be a listed hazardous waste. Therefore, under this proposal, you would be assessing constituent concentrations in the waste itself.

#### 1. Selection of Listing Levels in Wastes Versus Leachate

We considered using the landfill leachate levels in Table III–2 instead of the waste levels to define the listed waste. We could do this if we require generators to evaluate their wastes using a test designed to predict leaching from landfills. The Toxicity Characteristic Leaching Procedure (TCLP) is one possible method available. The Toxicity Characteristic (TC) regulation uses the TCLP to decide whether wastes are hazardous under this characteristic (see 40 CFR 261.24). However, we decided not to use the TCLP approach for several reasons. First, we did not perform TCLP analysis for these constituents in any of the dye and pigment wastes examined. Thus, we are uncertain how the method might perform for the wastes at issue. The partitioning model also factors in the placement of the wastes into the landfill and provides a leaching rate that reflects how the volumes of wastes are assumed to be disposed over time. The TCLP approach is appropriate for defining levels of concern under the TC for all wastes on a nationwide basis, where we have no specific information on waste quantities disposed. In today's proposed rule we have information on the specific quantities of the two selected wastes in the dyes and pigments industries. Finally, we believe that the analysis of the waste itself is more straightforward to implement, and would not require measuring levels in a derived leachate that are much lower than those in the waste. Therefore, we chose to propose the concentration based levels for the waste itself.

However, the TCLP does represent an actual measurement of leach potential as opposed to a value generated by a model. Thus, the Agency may still consider a final regulation based on the TCLP, depending on comments received and additional information provided.

#### 2. Selection of Probabilistic Versus Deterministic Modeling Results

The constituent concentrations in Table III–3 reflect the results of the probabilistic modeling assessment. We chose to use the probabilistic results, rather than rely on the deterministic results. While the Agency has used the results of deterministic analyses for past listing decisions, EPA has more recently used Monte Carlo analyses for additional verification (see Petroleum Listing final rule, 63 FR 42110; August 6, 1998). As we have developed and refined the Monte Carlo approach, we believe it provides some distinct advantages. As noted earlier, when compared with alternative approaches for assessing parameter uncertainty or variability, the probabilistic technique has the advantages of general applicability and no inherent restrictions on input distributions or input-output relationships.

An additional factor the Agency considered was the highly variable nature of the data available. The constituents of concern, their concentrations, and waste volumes can be highly variable across the different industry processes, a factor which made the Agency reluctant to rely on selected point estimates for its assessment. Also of particular concern was the difficulty we found in choosing what set of parameters would truly represent a ''high-end'' analysis for multiple pathways, constituents, and locations. The issues associated with choosing high-end parameters are discussed in the Risk Assessment Background

Document, which presents the deterministic as well as the probabilistic results.

The probabilistic simulations used in this proposed rulemaking assessed the full distributions of critical input data (e.g., distance to well, waste volumes, landfill area) to randomly generate receptor well concentrations of key constituents for certain landfill situations, and then combined the results from many runs to produce a probability distribution of risks. We were then able to choose points along the probability distribution of risk for comparison to the high-end analysis. For example, a risk that corresponds to the 90th percentile for a specific waste constituent in a landfill means that the risk would be below this level in 90 percent of the runs.

The concentration levels in Table III–3 represent the probabilistic modeling results at the 90th percentile. As discussed previously, we are attempting to calculate estimates of exposure in the upper end of the distribution (i.e., above the 90th percentile), while avoiding estimates that are beyond the true distribution. (See Habicht memo, 1992.) The Agency's policies do not indicate that there is any particular point on a Monte Carlo distribution that should be the point at which the Agency regulates or does not regulate. This conceptual range is not meant to precisely define the limits of this descriptor, but should be used by the assessor as a target range for characterizing ''high-end risk.'' Therefore, a high-end estimate that falls within the range (above the 90th percentile but still realistically on the distribution) is a reasonable basis for a decision.

We believe that the 90th percentile levels calculated for the waste concentrations in today's proposed rule are protective. For filter aids, the high-end deterministic results gave concentrations that were somewhat higher than the 90th percentile levels from the probabilistic analysis (by a factor of 2–4 fold). Therefore, we believe that using the 90th percentile values (as opposed to higher percentile values) provides results that are more consistent with previous listing determinations based on high-end deterministic assessments. For TAM sludges, the 90th percentile probabilistic levels are also close to the deterministic results, although for this waste the probabilistic levels for most constituents are slightly above the deterministic values (approximately two-fold). Thus, the 90th percentile results appear to agree reasonably well overall with the deterministic results. Furthermore, the probabilistic DAFs predicted for transport of landfill leachate from the landfill to the receptor well were already quite low at the 90th percentile (i.e., 2–5), also suggesting that the 90th percentile is adequately protective.

We are soliciting comments on both the use of the probabilistic modeling results, rather than the deterministic analyses, and also our use of the 90th percentile risk level, rather than any other level. For example, the 95th percentile probabilistic results yields concentrations that are about two-fold lower. Details of the deterministic modeling results, and levels calculated using other percentiles from the probabilistic analysis, are given in the Risk Assessment Background Document (Appendix F). We also seek comment on the setting of the regulatory levels for the waste itself, rather than the option of using the TCLP values.

TABLE III–3.—CALCULATED RISK-BASED CONCENTRATION LEVELS FOR POSSIBLE CONSTITUENTS OF CONCERN FOR DYE AND PIGMENT WASTES[1]

| Constituents | Concentration levels for filter aids** | | Concentration levels for TAM sludges | |
|---|---|---|---|---|
| | Waste (mg/kg) | Leachate (mg/ml) | Waste (mg/kg) | Leachate (mg/ml) |
| Aniline | ..... | ..... | 17 | 0.03 |
| Benzaldehyde | ..... | ..... | 5000 | 5.6 |
| Benzene | ..... | ..... | 370 | 0.11 |
| Benzidine | ..... | ..... | 0.027 | 0.000023 |
| Chloroaniline, p- | ..... | ..... | 250 | 0.25 |
| Chlorobenzene | ..... | ..... | 36 | 0.0036 |
| Chloroform | ..... | ..... | 100 | 0.042 |
| Cresol, p- | ..... | ..... | 330 | 0.33 |
| Dichlorobenzene, 1,2– | ..... | ..... | 1100 | 0.043 |
| Dimethoxybenzidine, 3,3'- | ..... | ..... | 520 | 0.38 |
| Dimethylaniline, N,N- | ..... | ..... | 300 | 0.11 |
| Diphenylamine | ..... | ..... | 27,000 | 1.1 |
| N-Nitrosodiphenylamine | ..... | ..... | 7,400 | 0.62 |
| Diphenylhydrazine, 1,2- | ..... | ..... | 31 | 0.0042 |
| Azobenzene | ..... | ..... | 720 | 0.013 |
| Formaldehyde | ..... | ..... | 7000 | 11 |
| Naphthalene | ..... | ..... | 17 | 0.0028 |
| Phenol | ..... | ..... | 28,000 | 34 |
| Phenylenediamine, o-(2-aminoaniline) | ..... | ..... | 61 | 0.11 |
| Phenylenediamine, p-(4-aminoaniline) | ..... | ..... | 5,000 | 10 |
| Toluidine, o-(2-aminotoluene) | ..... | ..... | 13 | 0.022 |
| Toluidine, p-(4-aminotoluene) | ..... | ..... | 23 | 0.029 |
| Toluidine, 5-nitro-o-(2-Methyl-5-nitroaniline) (**) | ..... | ..... | 220 | 0.15 |

[1] Levels represent the 90th percentile risk derived from the probabilistic analysis.
** Relevant data are not included at the present time for a number of constituents due to business confidentiality concerns.

## IV. Proposed Listing Determinations and Regulations

### *A. What Are the Proposed Regulations for the Two Wastes?*

We are proposing that, if you generate either of the two categories of dye and pigment wastes at issue, you must either determine whether or not your waste is a listed hazardous waste within a specified time, or assume that it is hazardous as generated. Your waste would become a listed hazardous waste if it contains any of the constituents of concern at a concentration equal to or greater than the hazardous concentration identified for that constituent. You must make a determination that all of the constituents of concern in your waste are below the hazardous concentrations to claim that your wastes remain nonhazardous. We are proposing the following specific regulatory language for the two wastes:

K167 Spent filter aids, diatomaceous earth, or adsorbents used in the production of azo, anthraquinone, or triarylmethane dyes, pigments, or FD&C colorants, unless these wastes do not contain any of the constituents identified in § 261.32(b)(3)(iii) at a concentration equal to or greater than the hazardous level set for that constituent as demonstrated by the procedures specified in § 261.32(b).

K168 Wastewater treatment sludges from the production of triarylmethane dyes and pigments (excluding triarylmethane pigments using aniline as a feedstock), unless these wastes do not contain any of the constituents identified in § 261.32(b)(3)(iii) at a concentration equal to or greater than the hazardous level set for that constituent as demonstrated by the procedures specified in § 261.32(b).

The constituents and levels in these listing descriptions would be those given in Tables IV–1 for Filter Aids and Table IV–2 for TAM sludges. Section V describes the steps you must follow to implement the concentration-based listing.

We solicit comment on the proposed list of constituents and their levels. Specifically, based on the rather high levels set for some constituents (e.g., diphenylamine, formaldehyde for TAM sludges), EPA is considering removing these. These levels may be unlikely in these wastes, and may not merit analysis. We seek any information that may assist us in deciding on whether we should retain all of these constituents. We also solicit comment as to whether any other constituents (e.g., any others in Table III–3) should be added to the regulatory lists in Tables IV–1 or IV–2.

TABLE IV–1.—CONCENTRATION LEVELS FOR SPENT FILTER AIDS

| Constituents | Concentration levels (mg/kg)** |
|---|---|
| Aniline | |
| Benzaldehyde | |
| Chloroaniline, p- | |
| Cresol, p- | |
| Dimethylaniline, N,N- | |
| Dimethoxybenzidine, 3,3′- | |
| Diphenylamine | |
| Diphenylhydrazine, 1,2- | |
| Formaldehyde | |
| Naphthalene | |
| Phenol | |
| Phenylenediamine, p- | |
| Toluidine, o- | |
| Toluidine, p- | |
| (**) | |
| (**) | |

** Relevant data are not included at the present time due to business confidentiality concerns.

TABLE IV–2.—CONCENTRATION LEVELS FOR TAM SLUDGES

| Constituent | Concentration levels (mg/kg) |
|---|---|
| Benzaldehyde | 5000 |
| Dimethylamine, N,N- | 300 |
| Diphenylamine | 27,000 |
| Formaldehyde | 7000 |
| Toluidine, o- | 13 |
| Toluidine, p- | 23 |
| (**) | (**) |

**Relevant data are not included at the present time due to business confidentiality concerns.

As required under § 261.30(b), we are adding those constituents that are the bases for listings to Appendix VII of Part 261, ''Basis for Listing Hazardous Waste.'' Thus, we are proposing to add the constituents in Table IV–1 for K167 (filter aids), and the constituents in Table IV–2 for K168 (TAM sludges) to Appendix VII. In addition, several constituents in Tables IV–1 and IV–2 are not currently listed on Appendix VIII to Part 261, ''Hazardous Constituents.'' EPA places constituents on Appendix VIII if they have been shown in scientific studies to have toxic, carcinogenic, mutagenic, or teratogenic effects on humans or other life forms (see 261.11(a)(3)). The Risk Assessment Background Document contains the detailed toxicological data for all constituents we evaluated, including the specific chemicals that we are proposing to add to Appendix VIII in today's rule: benzaldehyde, N,N-dimethylaniline, p-cresol, and p-phenylenediamine, and another chemical, the identity of which is not given due to business confidentiality concerns. While cresol and phenylenediamine are currently listed on Appendix VIII, the precise isomers are not specified. Therefore, we are proposing to add these specific isomers. If, in response to comment, we decide to add any additional constituents to the chemicals of concern in either concentration-based listing, then we would also add those constituents to Appendix VII, and to Appendix VIII, if necessary.

In proposing to promulgate a concentration-based listing for filter aids and TAM sludges under 40 CFR 261.11(a)(3), we considered the factors given under 40 CFR 261.11(a)(3) and believe that these wastes pose a substantial present or potential hazard to human health or the environment at the proposed listing levels. We considered nearly all of these factors as part of the risk assessment described in today's rule. Specifically, we considered the constituents' toxicity/concentration, mobility, persistence, and bioaccumulation potential in setting the concentration-based levels (corresponding to factors (I) through (vi) given in § 261.11(a)(3)). As described in the risk assessment section, we considered municipal landfills as the ''plausible'' management practice (factor (vii)), and evaluated the waste quantities generated by facilities (factor viii). Concerning factor (ix), we examined damage cases for the dye and pigment industries for the 1994 proposed rule (see Risk Assessment Support for Dye and Pigment Listing Determination, November 29 1994; document number S0333, EPA Docket No. F–94–DPLP–FFFFF). However none of those cases provide any information on the possible damages associated with the two wastes at issue in today's proposal. Finally, we considered other regulatory programs (factor (x)), when appropriate. No other regulatory program EPA identified adequately addressed the risks posed by the wastes. However, as noted in Section IV.C, we considered the protection afforded by the Clean Water Act, and the regulations being considered for leachate from landfills. As a result of this consideration, we are proposing to temporarily defer any regulation of landfill leachate that may be derived from the wastes proposed for listing, provided certain conditions are met.

### *B. What Are We Proposing for Anthraquinone Sludges?*

We are proposing not to list wastewater treatment sludges from the production of anthraquinone dyes and pigments. As described earlier in this notice, the only constituents that were

found in wastes that could be attributed to anthraquinone production ( the identities are not given due to business confidentiality concerns) do not have health-based benchmarks. We did not receive any data in comments on the 1994 proposed rule that would allow us to estimate such benchmarks.

Discussion of the details of waste generation and management for this waste cannot be released at this time due to business confidentiality concerns.

Therefore, we are proposing not to list anthraquinone sludges because we cannot identify any health threat from these wastes. Further discussion on the generation of this waste cannot be released at this time due to CBI constraints. We do not find any demonstrated risk from the constituents that we can attribute to anthraquinone production. We seek comment on this decision not to list this waste.

*C. What Is the Status of Landfill Leachate From Previously Disposed Wastes?*

Leachate derived from the treatment, storage, or disposal of listed hazardous wastes is classified as a hazardous waste by virtue of the ''derived-from'' rule in 40 CFR 261.3(c)(2). The Agency has been clear in the past that hazardous waste listings apply to wastes disposed of prior to the effective date of a listing, even if the landfill ceases disposal of the waste when the waste becomes hazardous (see 53 FR 31147; August 17, 1988). We also have a well-established interpretation that listings likewise apply to leachate derived from the disposal of listed hazardous wastes, including leachate derived from wastes disposed before a listing effective date which meet the listing description. We are not reopening any of these issues by the present notice.

Of course, as set out in detail in the August 1988 notice, this does not mean that landfills holding wastes which are subsequently listed as hazardous become subject to Subtitle C regulation. However, previously disposed wastes now meeting a listing description, including residues such as leachate which are derived from such wastes, which are ''actively managed'' do become subject to Subtitle C regulation (*id.*). In many, indeed most circumstances, active management of leachate would be exempt from Subtitle C regulation because the usual management practice is discharge either to POTWs via the sewer system, where leachate mixes with domestic sewage and is excluded from RCRA jurisdiction (see RCRA Section 1004(27) and 40 CFR 261.4(a)(1)), or to navigable waters, also excluded from RCRA jurisdiction (see RCRA Section 1004(27) and 40 CFR 261.4(a)(2)). In addition, management of leachate in wastewater treatment tanks prior to discharge under the CWA is also exempt from RCRA regulation (40 CFR 264.1(g)(6)).

However, we believe, because the proposed listings for the two categories of dye and pigment wastes (K167–K168) are concentration-based listings, it would be difficult to know whether the previously disposed wastes that meet the narrative description of K167–K168 are in fact K167–K168 hazardous wastes that exceed the listing levels. We don't anticipate that records documenting the concentrations of proposed constituents of concern for these wastes exist for previously disposed wastes. Therefore, absent a finding that the wastes, when disposed, would have met the listing being proposed today, the previously disposed wastes (including landfill leachate and gas condensate derived from these wastes that are actively managed) could not be classified as K167–K168.

However, if actively managed landfill leachate and gas condensate derived from the two categories of dye and pigment wastes proposed to be listed in today's rule could be classified as K167–K168, we are concerned about the potential disruption in current leachate management that could occur and the possibility for redundant regulation. Recently, this issue was raised to the Agency in the context of the petroleum refinery waste listings (see 63 FR 42173; August 6, 1998). A commenter expressed concern that, because some of their nonhazardous waste landfills received petroleum wastes which are now listed, the leachate that is collected and managed from these landfills would be classified as hazardous. The commenter argued that this could lead to increased treatment and disposal costs without necessarily any environmental benefit. After examining and seeking comment on this issue, we published a final rule that temporarily defers regulation of landfill leachate and gas condensate derived from certain listed petroleum refining wastes (K169–K172) that were disposed before, but not after, the new listings became effective, provided certain conditions are met (see 64 FR 6806; February 11, 1999).

At the time this issue was brought to the Agency's attention in the context of the petroleum refinery waste listings, EPA's Office of Water had recently proposed national effluent limitations guidelines and pretreatment standards for wastewater discharges—most notably, leachate—from certain types of landfills (see 63 FR 6426; February 6, 1998). In support of this proposal, EPA conducted a study of the volume and chemical composition of wastewaters generated by both Subtitle C (hazardous waste) and Subtitle D (nonhazardous waste) landfills, including treatment technologies and management practices currently in use. EPA proposed effluent limitations (for nine pollutants in the Nonhazardous Subcategory) for direct dischargers (see 63 FR 6463). Most pertinent to finalizing the temporary deferral for the petroleum refining wastes, EPA did not propose pretreatment standards for Subtitle D landfill wastewaters sent to POTWs because the Agency's information indicated that such standards were not required.

The conditions included in the temporary deferral published on February 11, 1999 are that the leachate is subject to regulation under the Clean Water Act, and the leachate is not stored in surface impoundments after February 13, 2001. See 40 CFR 261.4(b)(15). We believed that it was appropriate to temporarily defer the application of the new waste codes to such leachate in order to avoid disruption of ongoing leachate management activities while the Agency decides how to integrate the RCRA and CWA regulations consistent with RCRA section 1006(b)(1). As discussed above, we do not anticipate that this situation is likely to occur because the nature of the concentration-based listing makes it difficult to determine whether the wastes previously disposed met the concentrations at the time of disposal. However, to the extent previously disposed of dye and pigment wastes could be determined to meet the listing description and levels, we believe that the same rationale fully discussed in the February 11, 1999 rulemaking applies in this situation as well. As such, we would be concerned about forcing pretreatment of leachate even though pretreatment is neither required by the CWA nor needed. Therefore, we are proposing to temporarily defer landfill leachate and gas condensate derived from the two categories of dye and pigment wastes, with the same conditions as described in 40 CFR 261.4(b)(15) for petroleum wastes. We believe the issue of whether disruptions can be minimized through integration of CWA and RCRA rules will be more amenable to resolution once the CWA rulemaking is completed.

We request any available information on whether or not the two categories of dye and pigment wastes previously disposed in nonhazardous landfills contained constituents of concern identified for these wastes at

concentrations equal to or greater than the proposed listing levels. Even if we don't receive any information that previously disposed dye and pigment wastes will result in generation of hazardous landfill leachate and gas condensate, we nonetheless intend to finalize the temporary deferral for landfill leachate and gas condensate from these wastes. This is because someone may discover this problem later (after the effective date of the listing), so, by having a temporary deferral in place, it would be possible to avoid disruption of ongoing leachate management activities while we further examine this issue and await the CWA final rule.

## V. Generator Requirements for Implementation of Concentration-Based Listings

We are proposing that the concentration-based listings be self-implementing. This requires that you (the waste generator) meet the necessary conditions to determine whether or not your waste is hazardous based on the procedures we describe below. We have identified the constituents of concern for the two categories of dye and pigment wastes in Tables IV–1 and IV–2. We have also identified the listing level for each of these constituents in the same tables. We are proposing that you use this information, in conjunction with waste analysis results, to determine if your waste is a listed hazardous waste.

Unless you make a determination that your waste is nonhazardous using the specified procedures, you are subject to the existing requirements under RCRA for persons who generate hazardous waste. Thus, if you are not already a hazardous waste generator, you must notify the EPA, according to section 3010 of RCRA, that you generate a hazardous waste. You are also subject to all applicable requirements for hazardous waste generators in 40 CFR 262.

If you determine that your waste is nonhazardous, we are proposing to require, under the authority of sections 2002 and 3007 of RCRA, that you keep certain records of your waste and submit a notification and certification to the EPA claiming you have a nonhazardous waste. Following a nonhazardous claim, you would have a continuing obligation to ensure that your waste meets all of the proposed conditions and requirements for the waste to be deemed nonhazardous.

### *A. Do I Have to Determine Whether or Not My Waste Is Hazardous?*

If you want to assume that your waste is hazardous as-generated or you don't want to analyze it to make a hazardous waste determination, you may do that. In such a case, we are proposing your waste would be considered hazardous as-generated and subject to all applicable RCRA Subtitle C hazardous waste requirements, effective as of the effective date of the final rule or initial generation of the waste. However, if you want your waste to be nonhazardous as-generated, you must perform the waste analysis steps in V.C and determine your waste to be nonhazardous. If your waste is determined to be nonhazardous and claimed to be nonhazardous within 60 days (see V.D) following the effective date of the final rule or initial generation of the waste, we are proposing that none of the waste generated following the effective date of the rule or initial generation is hazardous as-generated.

If you elect not to make this determination by the 60th day, or alternatively determine that your waste is hazardous, you may use the same waste analysis procedures (see V.C) to make a nonhazardous determination for your waste at anytime after the 60th day. If this determination shows your waste as-generated is nonhazardous, it can be claimed to be nonhazardous (see V.D). We are proposing that the nonhazardous claim for waste as-generated, if submitted more than 60 days after the effective date of the rule or initial generation, would only become effective on the date when you receive a written receipt or confirmation that your notification and certification has been delivered to the EPA. After you have received this receipt or confirmation, any waste generated on or after the generation date of the waste that was analyzed for the nonhazardous determination may be claimed a nonhazardous waste that is not subject to Subtitle C, including LDR requirements. Any waste generated prior to that generation date remains hazardous.

We request comment on whether the 60 day time limit for making a hazardous or nonhazardous waste listing determination and nonhazardous waste claim should be longer (*e.g.,* 90 days) to allow adequate time for sampling and analyses.

### *B. How Do I Manage My Waste During the Period Between the Effective Date of the Final Rule and Initial Hazardous Waste Determination for My Waste?*

You cannot dispose of your waste as nonhazardous until you complete an initial determination to show that your waste is nonhazardous. Because the potential hazard from your waste is due to its placement on land, we are proposing that, as a condition of the waste being nonhazardous, you must store your waste in containers, or in another manner that does not involve land placement.

Because the interim storage period for the waste prior to a hazardous waste determination is relatively short (60 days), we request comment on whether it is necessary to impose such a condition. Given that the generator would be subject to enforcement for improper storage if the waste turns out to be hazardous, generators may have adequate incentives to store the waste in compliance with Subtitle C requirements during the interim period.

Alternatively, we could condition the waste being nonhazardous on the generator's storing the waste in accordance with the requirements described in 40 CFR 262.34. This would be an appropriate precaution in case the waste turns out to be hazardous. We also request comment on this approach.

### *C. What Are the Steps I Must Follow To Determine Whether or Not My Waste Is Hazardous?*

We are proposing the following waste analysis steps for making a determination that your waste is nonhazardous as-generated:

1. You must collect a minimum of four representative samples of your waste and analyze each for the constituents of concern identified in Tables IV–1 or IV–2. These samples must be adequate to determine the maximum levels of constituents that may be in your waste. Instead of analyzing for a constituent, you may also apply process knowledge (knowledge of the constituents in your waste based on the materials, degradation products, and manufacturing processes used) to document that a constituent could not be present in the waste. You should note, however, that process knowledge cannot be used to determine a level of constituent in your waste.

2. Compare the sampling and analyses results or process knowledge information (documentation that a constituent could not be present in the waste) for the constituents of concern in your waste to the hazardous

concentration levels set for these constituents.

3. If none of your waste samples contain any of the constituents of concern at concentrations equal to or greater than the hazardous concentration levels set for these constituents, you can determine that your waste is nonhazardous. However, if any of your waste samples contains any of the constituents of concern at a concentration equal to or greater than the hazardous concentration level set for that constituent, your waste is a listed hazardous waste and subject to all applicable RCRA Subtitle C hazardous waste requirements.

We would consider requiring less than four representative samples of the waste for the initial hazardous waste determination if this could be supported. We request comment on whether generators can reliably determine the maximum concentration of constituents in the waste with less than four samples. We also request comment on whether the generators should be allowed to use process knowledge information, in lieu of testing, to support claims that constituents of concern could not be present in their wastes. Alternatively, we could require testing for all constituents of concern in the initial testing.

We are proposing that the maximum concentration of any constituent detected in any sample must be below the established listing level in order for you to determine that the waste is nonhazardous. We are proposing this approach because we believe it is the most protective, and because it does not rely on any statistical manipulation of waste analysis data to determine constituent concentrations in the waste. However, we request comment on whether the generator should be allowed to average constituent levels in multiple waste samples. Under that approach, the generator would calculate concentrations using an upper confidence limit on the mean (e.g., 95th percent) and compare this limit to the listing levels established for the constituents.

*D. What Are the Requirements for a Waste Determined To Be Nonhazardous, and How Do I Claim My Waste To Be Nonhazardous?*

We are proposing that after you have determined your waste is nonhazardous, but prior to disposing the waste as nonhazardous, you must claim your waste to be nonhazardous as follows:

1. You must submit a one-time notification to the EPA. The notification must include the facility name, address, and telephone number of an authorized representative, description of the waste and potential waste code, and an estimate of the average annual volume of waste claimed to be nonhazardous. The notification must also include a certification that none of your waste samples contain any of the constituents of concern identified for your waste at concentrations equal to or greater than the hazardous concentration levels set for these constituents, and these levels were determined without dilution of the waste. By dilution, we mean addition of other waste or media to your waste after generation, which do not meet the narrative listing description for your waste, in order to reduce the concentration of the constituents of concern in your waste to below listing levels.

2. The notification and certification must be sent by certified mail return receipt, or by written confirmation of delivery from a commercial delivery service.

3. The certification must be signed by a responsible corporate official and must state as follows: ''I certify under penalty of law that none of the waste samples contain any of the constituents of concern identified for this waste at concentrations equal to or greater than the hazardous concentration levels set for these constituents, and that these levels were determined without dilution of the waste. Based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete. I am aware that there are significant penalties for submitting a false certification, including the possibility of fine and imprisonment.''

We are proposing to require the notification and certification under the authority of Sections 2002 and 3007 of RCRA. The notification and certification will provide confirmation that certain wastes that meet the narrative description for the two categories of dye and pigment wastes are not RCRA hazardous wastes. We are not proposing to require submission of waste analysis data to the EPA for review or approval. Instead, we propose to require, also under the authority of sections 2002 and 3007 of RCRA, that certain records be kept on-site (see below). We request comment on whether generators should be required to submit waste analyses data along with the notification.

*E. What Records am I Required To Keep On-Site To Support a Nonhazardous Claim for My Waste?*

We are proposing that you must, at a minimum, keep the following information on-site:

1. A copy of the notification and certification sent to the EPA and documentation that it was received.

2. The sampling and analysis plan used for collecting and analyzing representative samples of your waste.

3. The initial sampling and analyses data and process knowledge information (if used) that support a nonhazardous claim for your waste.

4. All follow-up sampling and analyses data and process knowledge information (if used) for the most recent three years.

*F. What Happens if I Do Not Meet the Notification and Recordkeeping Requirements for a Waste That I Have Determined To Be Nonhazardous?*

We are requiring notification and recordkeeping under the authority of sections 2002 and 3007 of RCRA. These provisions are requirements, not conditions of the waste being nonhazardous. Failure to comply with these requirements may result in an enforcement action under Section 3008 of RCRA. This section of the statute permits the imposition of civil penalties in an amount up to $27,500 for each day of noncompliance.

*G. What Are the Follow-Up Waste Analysis Requirements for My Nonhazardous Waste?*

You must analyze a minimum of one representative sample of the nonhazardous waste every calendar year it is generated. You must also analyze a minimum of one representative sample of the nonhazardous waste anytime, after the initial waste analysis, there is a process change that may increase the concentrations of hazardous constituents of concern in the waste. If process change has not occurred, you may use the results of the initial waste analysis to create a more tailored list of the constituents of concern in your waste and test just for those constituents. If your waste is in fact hazardous (*i.e.*, if it contains any constituent of concern at or above the regulatory level), you are liable for compliance with Subtitle C requirements.

We request comment on whether a minimum of four representative samples should be required for follow-up waste analysis and whether follow-up waste analysis required every calendar year should be terminated after three consecutive years of verification that the waste remains nonhazardous. This would be based on the waste generator performing the required follow-up analysis on the waste and finding that none of the waste samples contain any of the constituents of concern at

concentrations at or above the hazardous concentration levels set for these constituents for three consecutive years.

*H. What Happens if My Waste Constituent Concentration Are No Longer Below the Listing Concentrations?*

If follow-up waste analysis (or any analysis of your waste after the initial waste analysis) finds your waste contains one or more constituents of concern at concentrations at or above their hazardous concentrations, your waste is a listed hazardous waste and subject to all applicable RCRA Subtitle C hazardous waste requirements. To claim the waste nonhazardous again, you must repeat the initial waste analysis and show that none of the waste samples contain any of the constituents of concern at or above their hazardous concentrations. You must also submit a new notification and certification for your waste.

*I. Can I Treat My Waste to Below Listing Concentrations and Then Claim My Waste To Be Nonhazardous?*

If your waste is hazardous as-generated, you can treat the waste to make it nonhazardous. However, if your waste is hazardous as-generated, it is subject to all applicable RCRA Subtitle C hazardous waste requirements and would be required to be treated in any case to meet the proposed LDR treatment standards before any placement in a land-based unit. Under the proposed LDR treatment standards (see Section VI), the wastes must be treated using specified technologies (''technology standards''). We believe that compliance with LDR treatment standards is likely to result in nonhazardous concentrations of constituents in the waste. However, based on the mixture and derived-from rules, the treated waste would still carry the hazardous waste code. Therefore, you may choose to use the initial waste determination procedures for waste as-generated (see V.C above) to determine if your treated waste is nonhazardous. If your treated waste is determined to be nonhazardous and you want to claim it as nonhazardous, you must follow the same procedures as those required to claim ''as-generated'' waste nonhazardous (see V.D above). We are proposing that the non-hazardous claims for treated waste would only become effective on the date when you receive a written receipt or confirmation that your notification and certification has been delivered to the EPA. Thus, prior to the effective date, your waste still remains a listed hazardous waste and must meet all applicable RCRA Subtitle C hazardous waste requirements.

*J. Alternative Implementation Approach*

As an alternative to the implementation approach proposed in today's rule, we may adopt a more streamlined approach for waste generators to use in self-implementing the concentration-based listings for these wastes. Under a streamlined approach, we would not require the waste generator to perform sampling and analysis procedures as conditions to determine that its waste (which meets the narrative description of K167 or K168) is nonhazardous. We would also not have notification and recordkeeping requirements for a waste determined to be nonhazardous. However, the levels for the constituents of concern in the waste would have to be below the listing levels, if the waste generated after the effective date of the rule is to be handled as nonhazardous waste. Therefore, after the effective date of the rule, if the waste is in fact hazardous (*i.e.,* if it contains any constituent of concern at or above the regulatory level), the waste would be subject to Subtitle C requirements. We may also adopt an approach somewhere in the middle that includes some minimal waste characterization requirements.

The streamlined implementation approach discussed above for the concentration-based listings would be similar to the existing program for determining whether a waste exhibits a hazardous characteristic. At this time, EPA believes the approach presented earlier in today's proposal (see V. A–I) is the more appropriate approach for this listing since, in contrast to the situation with characteristic wastes, we have performed analyses specific to this industry and have determined that the constituents of concern are likely to be present in the industry's waste. However, we will give careful consideration to any arguments presented or relevant waste analysis data submitted in response to today's proposal (e.g., data showing that only a small portion of the wastestreams in the industry exceed the listing levels) in order to decide whether a more streamlined approach is warranted. We request comment on possibly allowing the waste generators to use a more streamlined approach for self-implementing the concentration-based listings proposed in today's rule.

## VI. Proposed Treatment Standards Under RCRA's Land Disposal Restrictions

*A. What Are EPA's Land Disposal Restrictions (LDRs)?*

The statute requires EPA to establish treatment standards for all hazardous wastes that are land disposed. These are the so called ''land disposal restrictions'' or LDRs. For any hazardous waste identified or listed after November 8, 1984, EPA must promulgate these LDR treatment standards within six months of the date of identification or final listing (RCRA Section 3004(g)(4), 42 U.S.C. 6924(g)(4)). The statute also requires EPA to set as these treatment standards ''* * * levels or methods of treatment, if any, which substantially diminish the toxicity of the waste or substantially reduce the likelihood of migration of hazardous constituents from the waste so that short-term and long-term threats to human health and the environment are minimized.'' (RCRA Section 3004(m)(1), 42 U.S.C. 6924(m)(1)).

Wastes that meet treatment standards established by EPA may be land disposed. Wastes that do not meet these standards are prohibited from land disposal (except in units meeting a stringent no-migration test). Each waste proposed for listing as hazardous in this rule will be subject to all the land disposal restrictions on the same day their respective listing becomes effective.

*B. How Does EPA Develop LDR Treatment Standards?*

To establish LDR treatment standards, EPA first identifies the best demonstrated available technology (BDAT) for the hazardous constituents present in the hazardous waste, and then determines what constituent concentrations can be achieved by the technology or technologies identified as BDAT.

EPA typically has established treatment standards based on performance data from the treatment of the waste at issue, if such data are available, and also from the treatment of wastes with similar chemical and physical characteristics or similar concentrations of hazardous constituents. Treatment standards typically cover both wastewater and nonwastewater waste forms on a constituent-specific basis. The constituents selected for regulation under the LDR program are not necessarily limited to those present in a proposed listing , but also may include those constituents or parameters that will ensure that treatment technologies

are operated properly. For listed waste EPA identifies these as ''regulated constituents'' and they appear individually in the Table at 40 CFR 268.40, along with their respective treatment standards.

EPA may either designate a method of treatment as the treatment standard or develop a numerical treatment standard, which could be satisfied by use of any treatment technology (that doesn't entail impermissible dilution). On the other hand, if the treatment standard is a designated method, that is the only permissible means of treating the waste.

After developing the LDR treatment standards, we must also determine if treatment capacity is available to treat the expected volumes of wastes. If so, the LDR treatment standards become effective essentially at the same time a listing does. If not, EPA may grant up to a two-year national capacity variance (NCV) during which time the LDR treatment standards are not effective.

For a more detailed overview of the Agency's approach for developing treatment standards for hazardous wastes, see the final rule on solvents and dioxins (51 FR 40572, November 7, 1986) and section III.A.1 of the preamble to the final rule that set land disposal restrictions for the ''Third Third'' wastes (55 FR 22535, June 1, 1990). EPA also has explained its BDAT procedures in ''Best Demonstrated Available Technology (BDAT) Background Document for Quality Assurance/Quality Control Procedures and Methodology (EPA/OSW, October 23, 1991)''. This document is available in the docket supporting this proposed rulemaking.

### *C. What Treatment Standards Are Proposed?*

The Agency has previously promulgated technology-specific standards—*i.e.,* in the words of the statute, ''methods of treatment''—for the following K167 core constituents of concern: 3,3′-dimethoxybenzidine (U091), 1,2-diphenylhydrazine (U099), formaldehyde (U121), o-toluidine (U328), p-toluidine (U353), and other chemical(s), the identities of which are not included due to business confidentiality concerns. We also promulgated technology-specific standards for K168 core constituents of concern: formaldehyde, o-toluidine, and p-toluidine. Analytical complications formed the basis of the Agency's decision to promulgate technology-based BDAT treatment standards (see 55 FR 22611, June 1, 1990).

These pre-existing technology-specific standards provide the starting point for our analysis. We also assessed the potential of developing numerical standards for these and the other constituents of concern in K167 and K168. We found that numerical treatment standards based on performance of BDAT (combustion) would nonetheless potentially result in situations where threats to human health and the environment are not minimized, as required by section 3004(m). This seeming anomaly is explained by the fact that numerical treatment standards based on performance of combustion consist of an analytical detection limit times a variability factor. In this instance, this numerical value would be significantly above the risk-based model levels of concern which justify the listing, largely due to high analytical detection limits for some constituents. Thus, the numerical treatment standards calculated in the accepted manner would arguably not meet the ''minimize threat'' language governing LDR treatment standards in RCRA section 3004(m).[1] As a result, we are not inclined to pursue the use of numerical treatment standards for K167 and K168.

In looking further at technology-specific standards, we find that there is significant structural similarity among all the constituents of concern, including those for which we have not previously set technology-specific standards. The constituents of concern either have been demonstrated to be treated effectively by the BDAT technology to below detection, or are of structural similarity that it can be inferred that they would not be more difficult to treat via combustion or other destructive procedures. Hence, we expect that all constituents of concern for these two wastes are amenable to similar methods of treatment. Therefore, we find the previously promulgated technology-specific standards to be the BDAT for the K167 and K168.

We propose that the technology of combustion (CMBST) be specified for nonwastewater waste forms. For wastewater waste forms, we propose to specify that one of two alternatives be used: either a treatment train consisting wet air oxidation (WETOX) or chemical oxidation (CHOXD) followed by carbon adsorption (CARBN), or treatment by combustion (CMBST). We are confident that these technologies in units subject to either Subtitle C rules, or eventually, MACT standards for hazardous waste combustors, both of which require combustion units to meet specific standards to assure proper combustion at all times, will substantially diminish the toxicity of the K167 and K168 wastes so that short-term and long-term threats to human health and the environment are minimized. We repeat that, because we are proposing to express the treatment standards as specified technologies, wastes must be treated by the required technologies before disposal.[2]

### *D. Other LDR-Related Provisions*

The provisions in 40 CFR 268.45 would also be applicable for the treatment and disposal of hazardous debris cross-contaminated with K167 or K168. Debris contaminated with K167 and/or K168 would be required to be treated prior to land disposal, using specific technologies from one or more of the following families of debris treatment technologies: extraction, destruction, or immobilization. Hazardous debris contaminated with a listed waste that is treated by an immobilization technology specified in 40 CFR 268.45 Table 1 is a hazardous waste and must be managed in a hazardous waste facility. Residuals generated from the treatment of debris contaminated with K167 or K168 would remain subject to the treatment standards proposed today. Residuals that no longer exceed the hazardous listing levels may be disposed in nonhazardous waste units. See 57 FR 37277, August 18, 1992, for additional information on the applicability, scope, and content of the hazardous debris provisions.

Lastly, because land disposal also includes placement in injection wells (40 CFR 268.2(c)) application of the land disposal restrictions to K167 and K168 requires the modification of injection well requirements found in 40 CFR 148. We propose that K167 and K168 be prohibited from underground injection. Therefore, K167 and K168 wastes may not be underground injected unless they have been treated in compliance with the LDR treatment standards or a no migration petition for these wells has been approved.

[1] This is not to say that the listing levels necessarily represent ''minimize threat'' levels for these constituents. EPA is pursuing these questions in the HWIR rulemaking. Our point here is that the levels justifying the listing certainly are not lower than whatever levels EPA may eventually determine minimize threat levels to be, and that a numerical standard developed using our standard methodology would be higher still (essentially due to high detection limits).

[2] There are two exceptions. Where the treatment technology is not appropriate to the waste, regulations provide a petition process whereby the generator or treatment facility may petition the Administrator for a variance (see 40 CFR 268.44). In addition, persons may petition the Administrator for an alternate treatment method by showing that the alternate method can achieve a measure of performance equal to the method specified by rule (see 40 CFR 268.42(b)).

*E. Is There Treatment and Management Capacity Available for These Proposed Newly Identified Wastes?*

1. What Is a Capacity Determination?

When EPA develops new hazardous waste LDR regulations, the law (RCRA) requires us to determine whether adequate alternative treatment capacity exists nationally to manage the waste and meet the new treatment standards. The LDRs are effective when promulgated unless EPA grants a national capacity variance from the otherwise-applicable date and establishes a different date (not to exceed two years beyond the statutory deadline) based on ''* * * the earliest date on which adequate alternative treatment, recovery, or disposal capacity which protects human health and the environment will be available'' (RCRA section 3004(h)(2), 42 U.S.C. 6924(h)(2)).

Our capacity analysis methodology focuses on the amount of waste currently disposed on the land, which will require alternative or additional treatment as a result of the LDRs. The quantities of wastes that are not disposed on the land, such as discharges regulated under NPDES, discharges to a POTW, or treatment in a RCRA exempt tank, are not included in the quantities requiring additional treatment as a result of the LDRs. Also, land disposed wastes that do not require alternative or additional treatment are excluded from the required capacity estimates (*i.e.*, those that are currently treated to meet standards). Land disposed wastes requiring alternative or additional treatment or recovery capacity that is available on-site or within the same company also are excluded from the required commercial capacity estimates. The resulting estimates of required commercial capacity are then compared to estimates of available commercial capacity. If adequate commercial capacity exists, the waste is restricted from further land disposal. If adequate capacity does not exist, EPA has the authority to grant a national capacity variance.

In making the estimates described above, the volume of waste requiring treatment depends on the current waste management practices employed by the waste generators before this proposed regulation is finalized and becomes effective. Data on waste management practices for these wastes were collected during the development of this proposed rule. However, we realize that as the regulatory process proceeds, generators of these wastes may decide to minimize or recycle their wastes or otherwise alter their management practices. Thus, EPA will monitor changes and update data on current management practices as these changes will affect the volume of wastes ultimately requiring commercial treatment or recovery capacity.

The commercial hazardous waste treatment industry can change rapidly. For example, national commercial treatment capacity changes as new facilities come on-line or old facilities go off-line and as new units and new technologies are added at existing facilities. The available capacity at commercial facilities also changes as facilities change their commercial status (*e.g.*, changing from a fully commercial to a limited commercial or ''captive''—company owned—facility). Thus, EPA also continues to update and monitor changes in available commercial treatment capacity.

We request data on the annual generation volumes and characteristics of wastes affected by this proposed rule, including K167 and K168 in wastewater and nonwastewater forms, soil or debris contaminated with these wastes, residuals generated from the treatment or recycling of these wastes, and the current and planned management practices for the wastes, waste mixtures, and treatment residuals. We also request data on the current treatment or recovery capacity capable of treating these wastes, facility and unit permit status related to treatment of the proposed wastes and any plans that facilities may have to expand or reduce existing capacity, or construct new capacity. Of particular interest to us are waste characteristics, such as pH, total organic carbon content, constituent concentrations, and physical forms that may limit the availability of treatment technologies.

2. What Are the Capacity Analysis Results?

This preamble only provides a brief summary of the capacity analysis performed to support this proposed regulation. For additional and more detailed information, please refer to the ''Background Document for Capacity Analysis for Land Disposal Restrictions: Newly Identified Dye and Pigment Process Wastes (Proposed Rule), June 1999.''

For this capacity analysis, we examined data on waste characteristics and management practices gathered for the purpose of the dyes and pigments hazardous waste listing determination. The source for these data is primarily the 1992 RCRA Section 3007 survey and the follow-up survey specific to these wastes conducted in 1997 (see the docket for more information on these survey instruments—Background Document for proposed hazardous waste listing of Dyes and Pigments Wastes). The available data sources indicate that there are no quantities of either the K167 or K168 wastewater that will require alternative commercial treatment, and therefore this volume is assumed to be zero. There is adequate wastewater treatment capacity available should the need for treatment of the wastewater form of these wastes arise. EPA estimates of the quantity of nonwastewater forms of K167 and K168 that may require alternative commercial treatment and be managed off-site at a commercial hazardous waste treatment facility are not included due to business confidentiality concerns. Also, the ultimate volume of waste estimated to require alternative or additional commercial treatment may change if the final listing determination changes; should this occur, we will revise the capacity analysis accordingly. The actual quantity of waste requiring commercial treatment may be smaller due to facility closures after 1992 (the year of RCRA Section 3007 survey) and changes in product formulations. We recognize the batch process nature of this industry and the speed at which facilities may change product formulations.

As described in the BDAT section above, EPA is proposing that the treatment standards be mandated treatment methods. The proposed treatment standard for nonwastewaters is combustion. We estimate that the commercially available sludge and solid combustion capacity is at least 300,000 tons per year and therefore sufficient to treat the lesser volume of these wastes which would newly require treatment. Therefore, we are proposing to not grant a national capacity variance from LDR treatment standards for these wastes.

For soil and debris contaminated with these wastes, we believe that the vast majority of contaminated soil and debris will be managed on-site and therefore would not require substantial commercial treatment capacity. Therefore, we are proposing to not grant a national capacity variance for hazardous soil and debris contaminated with the newly listed wastes covered under this proposal. Based on the questionnaire responses, there are no data showing mixed radioactive wastes or underground injected wastes associated with the proposed listings. We are also proposing to not grant a national capacity variance for mixed radioactive wastes (i.e., radioactive wastes mixed with K167 or K168) or wastes being underground injected.

We solicit any updated or additional information pertinent to this determination. We also request comments on current and future management practices and the volumes managed for these wastes.

## VII. State Authority and Compliance

### *A. How Are States Authorized Under RCRA?*

Under section 3006 of RCRA, EPA may authorize qualified States to administer and enforce the RCRA hazardous waste program within the State. (See 40 CFR Part 271 for the standards and requirements for authorization.) Following authorization, EPA retains enforcement authority under Sections 3007, 3008, 3013, and 7003 of RCRA, although authorized States have primary enforcement responsibility.

Before the Hazardous and Solid Waste Amendments of 1984 (HSWA) amended RCRA, a State with final authorization administered its hazardous waste program entirely in lieu of the Federal program in that State. The Federal requirements no longer applied in the authorized State, and EPA could not issue permits for any facilities located in the State with permitting authorization. When new, more stringent Federal requirements were promulgated or enacted, the State was obligated 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.

By contrast, under Section 3006(g) of RCRA, 42 U.S.C. 6926(g), new requirements and prohibitions imposed by the HSWA (including the hazardous waste listings finalized in this notice) take effect in authorized States at the same time that they take effect in non-authorized States. While States must still adopt HSWA-related provisions as State law to retain final authorization, EPA is directed to implement those requirements and prohibitions in authorized States, including the issuance of permits, until the State is granted authorization to do so.

Authorized States are required to modify their programs only when EPA promulgates Federal standards that are more stringent or broader in scope than existing Federal standards. Section 3009 of RCRA allows States to impose standards more stringent than those in the Federal program. See also 40 CFR 271.1(I). For those Federal program changes, both HSWA and non-HSWA, that are less stringent or reduce the scope of the Federal program, States are not required to modify their programs. Less stringent regulations, both HSWA and non-HSWA, do not go into effect in authorized States until those States adopt them and are authorized to implement them.

### *B. What Is the Effect of Today's Proposal on State Authorizations?*

We are proposing today's rule pursuant to HSWA authority. The listing of the new K-wastes is promulgated pursuant to RCRA Section 3001(e)(2), a HSWA provision. Therefore, we are adding this rule to Table 1 in 40 CFR 271.1(j), which identifies the Federal program requirements that are promulgated pursuant to HSWA and take effect in all States, regardless of their authorization status. The land disposal restrictions for these wastes are promulgated pursuant to RCRA Section 3004(g) and (m), also HSWA provisions. Table 2 in 40 CFR 271.1(j) is modified to indicate that these requirements are self-implementing. States may apply for either interim or final authorization for the HSWA provisions in 40 CFR 271.1(j), as discussed below. Until the States receive authorization for these more stringent HSWA provisions, EPA will implement them.

A State submitting a program modification for the portions of this rule promulgated pursuant to HSWA authority may apply to receive either interim authorization under RCRA section 3006(g) or final authorization under 3006(b), if the State requirements are, respectively, substantially equivalent or equivalent to EPA's requirements. States can only receive final authorization for program modifications implementing non-HSWA requirements. The procedures and schedule for final authorization of State program modifications are described in 40 CFR 271.21. It should be noted that all HSWA interim authorizations are currently scheduled to expire on January 1, 2003 (see 57 FR 60129, February 18, 1992).

Section 271.21(e)(2) of EPA's State authorization regulations (40 CFR Part 271) requires that States with final authorization modify their programs to reflect Federal program changes and submit the modifications to EPA for approval. The deadline by which the States must modify their programs to adopt this regulation is determined by the date of promulgation of a final rule in accordance with section 271.21(e)(2). Table 1 at 40 CFR 271.1 is amended accordingly. Once EPA approves the modification, the State requirements become RCRA Subtitle C requirements.

States with authorized RCRA programs already may have regulations similar to those in this proposed rule. These State regulations have not been assessed against the Federal regulations being finalized to determine whether they meet the tests for authorization. Thus, a State would not be authorized to implement these regulations as RCRA requirements until State program modifications are submitted to EPA and approved, pursuant to 40 CFR 271.21. Of course, States with existing regulations that are more stringent than or broader in scope than current Federal regulations may continue to administer and enforce their regulations as a matter of State law. In implementing the HSWA requirements, EPA will work with the States under agreements to avoid duplication of effort.

### *C. Who Must Notify EPA That They Have a Hazardous Waste?*

Under RCRA Section 3010, the Administrator may require all persons who handle hazardous wastes to notify EPA of their hazardous waste management activities within 90 days after the wastes are identified or listed as hazardous. This requirement may be applied even to those generators, transporters, and treatment, storage, and disposal facilities (TSDFs) that have previously notified EPA with respect to the management of other hazardous wastes. The Agency has decided to waive this notification requirement for persons who handle wastes that are covered by today's listings and have already (1) notified EPA that they manage other hazardous wastes, and (2) received an EPA identification number. However, any person who generates, transports, treats, stores, or disposes of these wastes and has not previously received an EPA identification number must obtain an identification number pursuant to 40 CFR 262.12 to generate, transport, treat, store, or dispose of these hazardous wastes 90 days after the effective date.

### *D. What Do Generators and Transporters Have To Do?*

Persons that generate newly identified hazardous wastes may be required to obtain an EPA identification number if they do not already have one (as discussed above). In order to be able to generate or transport these wastes after the effective date of this rule, generators of the wastes listed today will be subject to the generator requirements set forth in 40 CFR 262. These requirements include standards for hazardous waste determination (40 CFR 262.11), compliance with the manifest (40 CFR 262.20 to 262.23), pretransport procedures (40 CFR 262.30 to 262.34), generator accumulation (40 CFR

262.34), record keeping and reporting (40 CFR 262.40 to 262.44), and import/export procedures (40 CFR 262.50 to 262.60). The generator accumulation provisions of 40 CFR 262.34 allow generators to accumulate hazardous wastes without obtaining interim status or a permit only in units that are container storage units or tank systems; the regulations also place a limit on the maximum amount of time that wastes can be accumulated in these units. If these wastes are managed in units that are not tank systems or containers, these units are subject to the permitting requirements of 40 CFR 264 and 265, and the generator is required to obtain interim status and seek a permit (or modify interim status or a permit, as appropriate). Also, the regulations require that persons who transport newly identified hazardous wastes to obtain an EPA identification number as described above; such transporters will be subject to the transporter requirements set forth in 40 CFR Part 263.

*E. Which Facilities Are Subject to Permitting?*

1. Facilities Newly Subject to RCRA Permit Requirements

Facilities that treat, store, or dispose of wastes that are subject to RCRA regulation for the first time by this proposed rule (that is, facilities that have not previously received a permit pursuant to Section 3005 of RCRA and are not currently operating pursuant to interim status), might be eligible for interim status (see Section 3005(e)(1)(A)(ii) of RCRA). In order to obtain interim status based on treatment, storage, or disposal of such newly identified wastes, eligible facilities are required to comply with 40 CFR 270.70(a) and 270.10(e) by providing notice under Section 3010 and submitting a Part A permit application no later than 6 months after date of publication of the final rule. Such facilities are subject to regulation under 40 CFR Part 265 until a permit is issued.

In addition, under Section 3005(e)(3) and 40 CFR 270.73(d), not later than 6 months after date of publication of the final rule, land disposal facilities newly qualifying for interim status under section 3005(e)(1)(A)(ii) also must submit a Part B permit application and certify that the facility is in compliance with all applicable groundwater monitoring and financial responsibility requirements. If the facility fails to submit these certifications and a permit application, interim status will terminate on that date.

2. Existing Interim Status Facilities

Pursuant to 40 CFR 270.72(a)(1), all existing hazardous waste management facilities (as defined in 40 CFR 270.2) that treat, store, or dispose of the newly identified hazardous wastes and are currently operating pursuant to interim status under section 3005(e) of RCRA, must file an amended Part A permit application with EPA no later than the effective date of today's rule, (i.e., 6 months after date of publication of a final rule). By doing this, the facility may continue managing the newly listed wastes. If the facility fails to file an amended Part A application by that date, the facility will not receive interim status for management of the newly listed hazardous wastes and may not manage those wastes until the facility receives either a permit or a change in interim status allowing such activity (40 CFR 270.10(g)).

3. Permitted Facilities

Facilities that already have RCRA permits must request permit modifications if they want to continue managing newly listed wastes (see 40 CFR 270.42(g)). This provision States that a permittee may continue managing the newly listed wastes by following certain requirements, including submitting a Class 1 permit modification request by the date on which the waste or unit becomes subject to the new regulatory requirements (i.e., the effective date of a final rule), complying with the applicable standards of 40 CFR Parts 265 and 266 and submitting a Class 2 or 3 permit modification request within 180 days of the effective date.

Generally, a Class 2 modification is appropriate if the newly listed wastes will be managed in existing permitted units or in newly regulated tank or container units and will not require additional or different management practices than those authorized in the permit. A Class 2 modification requires the facility owner to provide public notice of the modification request, a 60-day public comment period, and an informal meeting between the owner and the public within the 60-day period. The Class 2 process includes a ''default provision,'' which provides that if the Agency does not reach a decision within 120 days, the modification is automatically authorized for 180 days. If the Agency does not reach a decision by the end of that period, the modification is permanently authorized (see 40 CFR 270.42(b)).

A Class 3 modification is generally appropriate if management of the newly listed wastes requires additional or different management practices than those authorized in the permit or if newly regulated land-based units are involved. The initial public notification and public meeting requirements are the same as for Class 2 modifications. However, after the end of the 60-day public comment period, the Agency will grant or deny the permit modification request according to the more extensive procedures of 40 CFR Part 124. There is no default provision for Class 3 modifications (see 40 CFR 270.42(c)).

Under 40 CFR 270.42(g)(1)(v), for newly regulated land disposal units, permitted facilities must certify that the facility is in compliance with all applicable 40 CFR Part 265 groundwater monitoring and financial responsibility requirements no later than 6 months after the date of publication of a final rule. If the facility fails to submit these certifications, authority to manage the newly listed wastes under 40 CFR 270.42(g) will terminate on that date.

4. Units

Units in which newly identified hazardous wastes are generated or managed will be subject to all applicable requirements of 40 CFR 264 for permitted facilities or 40 CFR 265 for interim status facilities, unless the unit is excluded from such permitting by other provisions, such as the wastewater treatment tank exclusions (40 CFR 264.1(g)(6) and 265.1(c)(10)) and the product storage tank exclusion (40 CFR 261.4(c)). Examples of units to which these exclusions could never apply include landfills, waste piles, incinerators, and any other miscellaneous units in which these wastes may be generated or managed.

5. Closure

All units in which newly identified hazardous wastes are treated, stored, or disposed after the effective date of this regulation that are not excluded from the requirements of 40 CFR 264 and 265 are subject to both the general closure and post-closure requirements of Subpart G of 40 CFR 264 and 265 and the unit-specific closure requirements set forth in the applicable unit technical standards Subpart of 40 CFR 264 or 265 (e.g., Subpart N for landfill units). In addition, EPA promulgated a final rule that allows, under limited circumstances, regulated landfills or surface impoundments to cease managing hazardous waste, but to delay Subtitle C closure to allow the unit to continue to manage nonhazardous waste for a period of time prior to closure of the unit (see 54 FR 33376, August 14, 1989). Units for which closure is delayed continue to be subject to all

applicable 40 CFR 264 and 265 requirements. Dates and procedures for submittal of necessary demonstrations, permit applications, and revised applications are detailed in 40 CFR 264.113(c) through (e) and 265.113(c) through (e).

## VIII. CERCLA Designation and Reportable Quantities

### *A. What Is the Relationship Between RCRA and CERCLA?*

CERCLA defines hazardous substances to include RCRA hazardous wastes. When EPA adds a hazardous waste under RCRA, the Agency also adds the waste to its list of CERCLA hazardous substances. CERCLA also establishes a reportable quantity or RQ for each CERCLA hazardous substance as one pound and authorizes EPA to adjust the RQ based on an evaluation of its physical, chemical, and toxic properties. If you are the person in charge of a vessel or facility that releases a CERCLA hazardous substance in an amount that equals or exceeds its RQ, then you must report that release to the National Response Center and State and local authorities. EPA provides a list of the CERCLA hazardous substances along with their RQs in Table 302.4 at 40 CFR 302.

### *B. Is EPA Proposing To Add Dye and Pigment Production Wastes to CERCLA?*

Yes. Today, EPA is proposing to add the dye and pigment production wastes (K167 and K168) to the list of CERCLA hazardous substances. Specifically, EPA is proposing to add the K167 and K168 waste streams as EPA defines them at 40 CFR Part 261 to Table 302.4 at 40 CFR Part 302.

### *C. Is EPA Proposing To Adjust the Statutory One Pound RQ for K167 and K168 Wastes?*

No. Today, EPA is proposing to retain the statutory RQ of one pound for both K167 and K168 wastes. Some of the information on which the Agency is basing its decision to list the waste has been claimed to be confidential business information (CBI) collected for the purposes of RCRA. The Agency would have to rely on some of this information to establish RQs for these wastes under CERCLA. EPA adjusts an RQ of a waste stream based on an evaluation of all of the listed constituents of that waste. Both K167 and K168 wastes may contain hazardous constituents that have been claimed to be CBI. At this point, the Agency has been enjoined from releasing any information claimed as CBI and collected pursuant to this rulemaking. Until the Agency solves pending questions regarding the use of information collected pursuant to RCRA and claimed as CBI for this listing and for the CERCLA RQ determination, EPA is deferring making adjustments to the statutory RQs of these wastes.

### *D. When Do I Need To Report a Release of K167 and K168 Wastes Under CERCLA?*

If EPA promulgates today's proposed rule, you will need to report a release of either K167 or K168 waste if you are the person in charge of a vessel or facility that releases either waste and the amount that is released equals or exceeds one pound.

### *E. How Do I Report a Release?*

To report a release of any CERCLA hazardous substance (including K167 and K168, if EPA promulgates this rule) that equals or exceeds its RQ, you must immediately notify the National Response Center (NRC) as soon as you have knowledge of that release. The toll-free telephone number of the NRC is 1–800–424–8802; in the Washington, DC, metropolitan area, the number is (202) 267–2675.

You also are required to report the release to State and local authorities (see 40 CFR 355). The Emergency Planning and Community Right-to-Know Act (EPCRA) requires that owners and operators of certain facilities report releases of CERCLA hazardous substances and EPCRA extremely hazardous substances to State and local authorities. After the release of an RQ or more of any CERCLA hazardous substance, you must immediately report the release to the community emergency coordinator of the local emergency planning committee for any area likely to be affected by the release, and to the State emergency response commission of any State likely to be affected by the release.

### *F. What Is the Statutory Authority for This Program?*

Section 101(14) of CERCLA defines the term hazardous substance by referring to substances listed under several other environmental statutes, as well as those substances that EPA designates as hazardous under CERCLA section 102(a). In particular, CERCLA section 101(14)(C) defines the term hazardous substance to include ''any hazardous waste having the characteristics identified under or listed pursuant to section 3001 of the Solid Waste Disposal Act.'' CERCLA section 102(a) gives EPA authority to determine RQs for CERCLA hazardous substances. CERCLA section 102(b) establishes a one pound RQ for all hazardous substances unless and until EPA adjusts the RQ under section 102(a). CERCLA section 103(a) requires any person in charge of a vessel or facility that releases a CERCLA hazardous substance in an amount equal to or greater than its RQ to report the release immediately to the federal government. EPCRA section 304 requires owners or operators of certain facilities to report releases of CERCLA hazardous substances and EPCRA extremely hazardous substances to State and local authorities.

We invite comments today's proposal to designate the K167 and K168 wastes under CERCLA and how it may affect you.

## IX. Analytical and Regulatory Requirements

### *A. Is This a Significant Regulatory Action? (Executive Order 12866)*

Under Executive Order 12866, EPA must determine whether a regulatory action is significant and, therefore, subject to OMB review and the other provisions of the Executive Order. A significant regulatory action is defined by Executive Order 12866 as one 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 rights and obligations or 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.

Under the terms of Executive Order 12866, we have determined that this rule is a ''significant regulatory action'' because of point four (4) above: the rule raises novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order. Today's proposed concentration-based listing action deviates from the Agency's standard or historic listing approach. Historically, the Agency's listing program has captured entire quantities of targeted wastestreams posing unacceptable risks to human health and the environment. Today's approach identifies targeted wastestreams but proposes listing only those quantities containing one or more constituents of

concern at concentration levels that reflect unacceptable risks. This action, therefore, was submitted to OMB for review. Changes made in response to OMB suggestions or recommendations are documented in the public record.

Although this rule is not ''economically significant,'' the Agency has prepared an economic support document for today's rule entitled: Economic Assessment for the Proposed Listing of Wastewater Treatment Sludge from the Production of Triarylmethane (TAM) Dyes and Pigments, and Spent Filter Aids from Azo, Anthraquinone, or Triarylmethane Dyes, Pigments, and Colorants. This Economic Assessment addresses, among other factors, compliance costs to the regulated community, industry economic impacts, qualitative benefits, small entity impacts, children's health, and environmental justice. A summary of findings from this Economic Assessment is presented below. The complete Economic Assessment document is available in the RCRA docket for today's rule.

Today's proposed action is projected to result in incremental annual compliance costs to the organic dyes and pigments industries, however at this time we cannot include the range of aggregate costs due to business confidentiality concerns. Estimated impacts on potentially affected land disposal facilities are highly variable, depending upon the regulatory option. Due to business confidentiality concerns, we are currently not able to include annual aggregate nationwide compliance costs to land disposal facilities.

### *B. Why is This Proposed Rule Necessary?*

While waste produced by dye and pigment facilities already is regulated to a certain extent, certain waste streams generated by these facilities still pose both human health and ecological risks. Current disposal practices for both spent filter aids and TAM wastewater treatment sludge have the potential to pollute soil and water. To date, the market and other private sector institutions have failed to address pollution issues associated with these two wastestreams for several reasons.

First, because individuals not responsible for the pollution bear the costs in human health and ecological damages, insufficient incentives exist for dye and pigment facilities to incur the additional costs for implementing pollution control measures. In this case, the private industry costs of production do not fully reflect the human health and environmental costs of management of these two wastestreams. This situation, referred to as ''environmental externality,'' represents a type of market failure. A non-regulatory approach, such as educational outreach programs, would be largely ineffective because the people who are made aware of the potential health risks (*e.g.*, those people living near landfills where these two wastestreams are disposed) have limited ability to reduce exposure without incurring significant costs.

Second, the parties harmed by the pollution of soil and water are not likely to obtain compensation from dye and pigment facilities through legal or other means. This is due to the high transaction costs involved, and the difficulty citizens may have in establishing a causal relationship between the damage incurred and activity at the dye or pigment facility. Establishing a direct link between a specific dye or pigment facility and human health and/or other damages incurred would be especially difficult since under current practices many facilities dispose of wastes in landfills where it is co-mingled with many other wastes.

We believe that federal government intervention is necessary to correct for these market distortions and to fairly and consistently internalize costs associated with these negative externalities. We feel that federal regulation is the optimal means of correcting these market failures. EPA, therefore, is proposing a concentration based hazardous waste listing for spent filter aids and TAM wastewater treatment sludge.

### *C. What Regulatory Options Were Considered?*

We considered three regulatory options for management of the two waste streams examined in this assessment. These were: no listing-status quo, the standard listing approach (covering the entire quantity of all affected wastestreams), and a concentration-based listing approach. The no-list option would result in affected facilities not incurring any incremental management and administrative costs under RCRA Subtitle C. This option, however, may result in affected facilities facing future human health and environmental liabilities for groundwater damages. The standard listing (includes all affected wastes) option would require that all affected facilities comply with RCRA Subtitle C regulations. These facilities would incur incremental management and administrative costs required under RCRA Subtitle C. The concentration-based listing approach requires that affected facilities determine whether or not their waste contains constituent concentrations that exceed regulatory limits. If concentrations exceed regulatory limits, the waste is regulated under RCRA Subtitle C and the facility will incur incremental management, administrative, and analytical costs. Because of the wide variation in the types of constituents and concentrations present in these two waste streams, the Agency is proposing a concentration-based listing approach in today's action.

### *D. What are the Potential Cost Impacts of Today's Proposed Rule?*

#### 1. Introduction and Scope of Analysis

The value of any regulatory policy is traditionally measured by the net change in social welfare that it generates. The Economic Assessment conducted in support of today's proposed action examines both costs and benefits in an effort to anticipate the overall change in social welfare. The primary focus of the analysis is on compliance costs and economic impacts potentially borne by the dyes and pigments industries. Benefits are examined on a qualitative basis. Other regulatory issues covered in the Economic Assessment include small entity impacts, environmental justice, children's health, and unfunded mandates. The Economic Assessment also examines potential impacts on land disposal facilities which have received wastes considered in this rulemaking.

#### 2. Key Data Sources

The primary source of information used to establish baseline conditions in the dyes and pigments industries was from RCRA 3007 questionnaires. The RCRA 3007 data used in this analysis represent the total number of facilities believed to be generating TAM and spent filter aid waste. Other key data sources include: the 1992 Census of Manufacturers, the U.S. International Trade Commission, and various news sources which report on industry trends. Because our data were limited, the estimated findings from this analysis should be viewed as national, and not specific to any discernible facility.

#### 3. Industry Profile and Market Overview

Today's proposed action is expected to affect three different industries; the organic dyes industry, the organic pigments industry, and the municipal and industrial solid waste landfill industry. The organic dyes and pigments industries produce dyes and pigments for a wide variety of intermediate and end users including the automotive, textile, printing, and

plastics industries. The municipal and industrial solid waste landfill industry receives and manages waste from industries generating nonhazardous or exempt materials. A hazardous determination for wastes previously accepted as nonhazardous may require modified management procedures for the leachate generated from municipal and industrial facilities that have previously accepted these wastes.

*Organic Dyes and Pigments Industries—General*

Both the organic dyes industry and the organic pigments industry are classified under the North American Industry Classification System (NAICS) as 325132, Synthetic Organic Dye and Pigment Manufacturing. The Ecological and Toxicological Association of the Dyestuffs Manufacturing Industry (ETAD) defines dyes as ''intensely colored or fluorescent organic substances which impart color to a substrate by selective absorption of light.'' The Color Pigment Manufacturers' Association (CPMA) defines pigments as ''colored, black, white, or fluorescent particulate organic or inorganic solids, which usually are insoluble in, and essentially physically and chemically unaffected by, the vehicle or substrate in which they are incorporated.''

More than 2,000 individual dyes are manufactured, generally in multiple small batch quantities. This large number of dyes is attributable to the many different types of materials to which dyes are applied and the different conditions of service for which dyes are required. There are fewer pigments produced than dyes, however, pigment batches are generally larger in size. Organic dyes are classified in several ways including their chemical structure or class, general dye chemistry, and application process. Chemical structure classifications include azos, triarylmethanes (TAM), diphenylmethanes, anthraquinones, stilbenes, methines, polymethines, xanthenes, phthalocyanines, and sulfurs. Organic pigments are derived in whole or in part from benzenoid chemicals and colors and are described as toners or lakes. These pigments essentially are the same in final form, but differ in their preparation method. This proposed waste listing is concerned with TAM wastewater treatment sludges and spent filter aid waste streams resulting from the production of azo, anthraquinone, or triarylmethane dyes, pigments, and colorants.

In 1992, the most recent year for which consistent data are available, there were reportedly 38 establishments listed under Standard Industrial Classification (SIC) 28652, Synthetic Organic Dyes, and 42 establishments listed under SIC Code 28653, Synthetic Organic Pigments, Lakes, and Toners (Bureau of the Census, 1992 Census of Manufacturers). Total employment was estimated at 5,200 individuals for the synthetic organic dyes industry and 4,500 individuals for the synthetic organic pigments industry. Aggregate annual wages for both the dyes and pigments industries totaled approximately $375 million in 1992.

There are significant barriers to entry in both the dyes and pigments industries in terms of capital investment and environmental liability. Both dyes and pigments are produced by organic synthesis, which translates into capital- and time-intensive requirements, making a certain level of economy to scale a necessity. During the 1980s, many smaller dyes businesses either closed or were acquired by larger companies. The smaller dye producers that remain operating today typically supply niche markets not serviced by the large producers because of profitability, environmental concerns, or small volumes. During the 1980s, the colored pigments industry was dramatically restructured due to globalization of pigment markets, competitive factors, and the increasing cost of plant improvements to meet governmental standards, particularly in the United States. A number of smaller producers, unable to compete with larger international firms, closed their plants or were acquired by larger firms, primarily from Western Europe or Japan.

Consolidation has continued in the dyes and pigments industries throughout the 1990s, and is expected to continue through the year 2000 as the industries face increasing pressure from the growth of low-cost producers in Asia and other developing countries. The synthetic organic pigments industry currently consists of a few large multinational companies and a number of smaller pigment companies that specialize in a few product lines. Sales of organic pigments make up a relatively small portion of these multinational's overall chemical sales. The majority of the U.S. dye business is currently controlled by European-owned companies operating in the United States.

The U.S. International Trade Commission's (USITC) production data for the five-year period from 1990 through 1994 indicated that dye production was highest in 1993 at approximately 160,000 tons. Production declined in 1994 to approximately 156,000 tons. More recent production information is not available. The Chemical Market Reporter, December 22, 1997, indicates that the demand for organic dyes is likely to increase between 2.0 and 2.5 percent annually through the end of the decade. The average unit value of all dyes has varied from approximately $6,000 to $6,800 per ton during the 1990 through 1993 period; data for 1994 are not available. The total production value of dyes in the mid 1990's was approximately $1.0 billion. The Industry and Trade Summary: Synthetic Organic Pigments, USITC Publication 3021, February 1997, indicates that total U.S. production of organic pigments grew from 56,400 tons in 1991 to an estimated 71,500 tons in 1995. The average unit value of all organic pigments has varied from about $14,800 to $16,100 per ton over the 1991 through 1995 period. The total production value of organic pigments is estimated at $1.2 billion for 1997.

The majority of organic dye imports to the U.S. in the mid 1990's came from Western Europe. Most of these imports represented intra company sales between European dye manufacturers and their U.S. subsidiaries. Asia accounted for the vast majority of remaining imports. Industry experts predict that this distribution will remain unchanged through the year 2,000. The pigments industry is a global industry with imports having a significant impact on the U.S. market. The major synthetic organic pigments suppliers to the United States have been Germany, Japan, Switzerland, and the United Kingdom. In 1995, these four countries accounted for 73 percent of the value of organic pigments imports. In recent years, imports of lower technical requirement pigments have increased, with the Republic of Korea and Japan being the major suppliers. In recent years, China and India have emerged as important suppliers to the U.S. synthetic organic pigment market. Analysts expect this trend to continue and indicate that increased Chinese imports place downward pressure on prices.

The largest export markets for the U.S. dye industry in 1992, in terms of quantity, were Canada, Mexico, United Kingdom, the Netherlands, and Japan. U.S. exports to Western Europe were mostly intra company sales between European dye manufacturers and their U.S. subsidiaries. The primary export markets for U.S. synthetic organic pigments are Canada, Belgium, the United Kingdom, and Japan. During 1991–95, total U.S. organic pigments exports increased 50 percent from $200

million in 1991, to $299 million in 1994, with a slight decline in 1995. A large portion of U.S. exports to Europe were believed to be sales by large European-owned multinational companies with production facilities in the U.S. The strength of the U.S. dollar will have a significant impact on the ultimate strength of U.S. exports.

*The Municipal and Industrial Solid Waste Landfill Industry*

A disposal practice for nonhazardous organic dye and pigment industry wastes is off-site disposal in industrial and/or municipal solid waste landfills. The leachate derived from these wastes has traditionally been collected and recirculated, treated, or disposed. Because of the proposed listing, collected leachate from landfills (i.e., cells) that have accepted these wastes may be hazardous under the Derived-from Rule. Also, when the leachate from these two wastes mixes with leachate from other wastes, the entire leachate quantity from the affected landfill (or cell) may be considered hazardous under the Mixture Rule. By changing the regulatory status of the proposed wastes, the collected leachate from the disposal of these wastes will be covered under Subtitle C of RCRA. Municipal Solid Waste (MSW) and industrial landfills that have previously accepted and generated leachate from these wastes may face increased leachate management costs.

The EPA Report, Characterization of Municipal Solid Waste in the United States: 1997 Update, EPA530–R–98–007, May 1998, estimates there were approximately 2,400 MSW landfills in the contiguous U.S. for 1996. Based on the best available data, we have determined the number of MSW and industrial landfills that received the two organic dye and pigment industry wastes proposed for listing. This information, however, is not included due to business confidentiality concerns.

It is highly probable that these landfills are located within 50 miles of the organic dyes and pigments facilities. Leachate quantities generated by each of these landfills are dependent upon the geographic location, area, leachate collection system design, and operation of the landfill. Recent information from the Solid Waste Digest indicates that landfills receiving anywhere from 250 to 1,500 tons of waste per day are representative of landfills receiving dye and pigment wastes. Based on an average national tipping fee, the approximate annual sales for a landfill that, on average, accepts 750 tons of waste per day, would be about $7.7 million. Aggregate nationwide municipal landfill revenues are estimated in the range of $6.2 to $37.1 billion per year.

4. Baseline Waste Management Procedures and Costs

This section briefly summarizes the baseline management procedures and costs the dyes and pigments industries are subject to in contending with the proposed wastes. Baseline leachate management procedures and costs experienced by landfills accepting the proposed dye and pigment wastes are also discussed.

*Organic Dyes and Pigments—Proposed Wastestream Listings*

The two wastes generated during the production of dyes and pigments that we are proposing for listing as hazardous under RCRA are identified as K167 and K168. These are described below:

K167—Spent filter aids, diatomaceous earth, or absorbents used in the production of azo, anthraquinone, or triarylmethane dyes or pigments.

K168—Wastewater treatment sludge from the production of TAM dyes and pigments (excluding triarylmethane pigments using aniline as a feedstock).

The annual generation of these proposed hazardous wastes are estimated and analyzed as combined quantities. Further discussion on management practices is not included due to business confidentiality concerns. This analysis applies baseline scenarios using both MSW lined and industrial D unlined landfill facilities.

Costs for baseline waste management practices were derived from published sources and industry submitted data. The cost for waste disposal in a lined MSW landfill with leachate collection is estimated at $75 per ton. Disposal in an unlined landfill is estimated at $63 per ton. Waste disposal costs for Facilities currently managing under Subtitle C are estimated at $650 per ton for incineration and $213 per ton for disposal in a Subtitle C landfill. Waste discharge to a POTW is estimated to cost $1.50 per 1,000 gallons. The Subtitle C transportation cost is estimated at $53 per ton, within a 200-mile limit.

*Dye and Pigment Leachate Management—Affected Landfills*

Our analysis indicates that a number of landfills are likely to be affected by the proposed dye and pigment listing. The number of affected landfills, however, is not included here due to business confidentiality concerns. Data on leachate management practices for these landfills are extrapolated from a petroleum sample leachate management distribution. Applying the distribution of management practices identified in the petroleum sample to the population of landfills affected by the two wastes indicates results that cannot be included due to business confidentiality concerns.

The average leachate and condensate quantities generated per representative landfill over the 5-year expected generation scenario are as follows: 5.0 million gallons per year discharge via a NPDES-permit, 4.2 million gallons per year to a POTW, 2.0 million gallons per year trucked to an off-site POTW, 1.6 million gallons per year for which a portion is trucked and the remainder (0.6 million gallons per year) is recirculated.

Baseline leachate and condensate management cost data were provided by representative landfill facilities. These data were used to develop average unit cost estimates on a per year per landfill basis for each leachate management practice. Average leachate management costs are estimated as follows: truck to an off-site POTW ($0.07/gallon), truck a portion to an off-site POTW and recirculate the remaining fraction ($0.05/gallon), discharge to an NPDES outfall ($0.04/gallon), discharge via pipe to POTW ($0.03/gallon), and recirculate ($0.01/gallon).

5. Compliance Waste Management Procedures and Costs

We considered three regulatory options in analyzing compliant waste management procedures and costs for generators of the proposed waste listings: no listing-status quo, concentration-based listing, and standard listing. The no-list option results in no incremental compliance costs. The concentration-based listing requires sampling and analysis costs not normally required under a standard listing, but may result in reduced waste quantities managed as hazardous waste. The assessment conducted for today's action examines the economic impacts to the affected facilities under the proposed concentration-based listing and assumes 100 percent of all affected wastestreams must be managed as hazardous waste. This assumption results in a high-end, or worst case scenario for examining industry economic impacts.

We also considered three regulatory options in the evaluation of compliant procedures and costs for leachate generated from landfills that have accepted the proposed dye and pigment wastestreams. These options are: no list, a Clean Water Act temporary deferral

option with a two-year impoundment deferral, and, a standard listing leachate management option that treats the leachate as hazardous waste subject to Subtitle C regulation. The no-list option would result in no incremental management and cost impacts to affected landfills. The Clean Water Act temporary deferral option would exempt the landfill leachate from being RCRA Subtitle C regulation if it is managed under the Clean Water Act. After two years, impoundments would no longer be allowed to manage exempt leachate. The standard listing option would require that landfills treat the leachate as hazardous waste and subject to Subtitle C regulation under the Derived-from and Mixture Rules. Existing exemptions would apply. We examined compliance management procedures and incremental cost to landfills under the Clean Water Act temporary deferral and standard listing options.

*Organic Dyes and Pigments Industries—Proposed Wastestream Listings*

Future post listing compliance waste management practices assume the promulgation of land disposal restrictions (LDRs). The compliance management practice assumed is RCRA Subtitle C hazardous waste incineration, with disposal of the resulting ash in a Subtitle C landfill. Stabilization of the incinerator ash is not assumed given the lack of significant hazardous metal constituents in the wastes. Our assumptions for other management practices reported are not included due to business confidentiality concerns. Cost estimates for compliance management activities have been derived using unit costs from published sources and additional data obtained from Agency and contractor knowledge. Subtitle C incineration and ash disposal in a Subtitle C landfill is estimated at $650/ton and $213/ton, respectively. Shipping costs to Subtitle C facilities is based on a flat fee of $53/ton for a 200-mile radius.

Facilities generating the proposed waste listings are subject to Part 262 of RCRA. There are four primary requirements specified in the Part 262 standards: plants must obtain an EPA identification number, an approved manifest system must be established, pre transport requirements must be satisfied (labeling, marking, placarding), and, specified record keeping and reporting requirements are triggered. All of the facilities affected by this proposed listing are assumed to have already been affected by the previous proposed listing. Therefore, minimal incremental administrative costs are assumed to be incurred as a result of today's proposed listing. This analysis assumes that RCRA Parts 264 and 270 do not apply.

Sampling and analysis costs in this assessment are based on the assumption that wastes produced at each facility will be sampled each year. Aggregate sampling and analysis costs are based on an average and worst case number of chemicals. Sampling and analysis costs include taking the sample, packaging, transportation, analysis of the sample, and reporting the results. Costs were estimated assuming analysis for total concentrations. The annualized sampling costs for constituents are estimated to be $153/sample, and the sampling costs for the worst-case number of constituents are estimated to be $246/sample.

Corrective action compliance costs associated with non-permitted facilities include the cost to conduct a RCRA Facility Investigation (RFI), a Corrective Measures Study (CMS), and remediate solid waste management units (SWMUs) and areas of concern (AOCs). Because of the previous listing, we assumed all facilities affected by this proposed rule will already have triggered quanitification of the above corrective action compliance costs. No incremental costs for corrective action compliance are assumed to be incurred as a result of this proposed listing.

*Dye and Pigment Leachate Management—Affected Landfills*

Under the Standard Listing regulatory option, the leachate collected from landfill cells that received these two waste streams will be managed according to the requirements specified under Subtitle C of RCRA. Under the Clean Water Act temporary deferral regulatory option, the Agency will exempt the leachate from being regulated as hazardous under Subtitle C if it is managed in tank systems under the Clean Water Act (including POTWs) or through recirculation. Under a no list regulatory option, leachate quantities generated at MSW landfills will continue to be regulated under Subtitle D of RCRA and leachate quantities generated at industrial waste landfills will be subject to state and local regulations.

Cost estimates for leachate compliance management and transportation activities were derived using unit costs from published sources, annualized costs (updated) developed in the previously proposed organic dye and pigment hazardous waste listings, and the recent final listing of four petroleum refining waste streams. Cost estimates have been developed on an annualized per landfill basis for capital and O&M requirements, based on a 5-year, 10-year, and 20-year period of amortization. These periods are designed to reflect the period under RCRA regulation and the remaining life of the landfill. The cost estimate ranges also cover the expected five-year leachate generation and ten-year conservative leachate generation case. Because there are fewer commercial treatment/POTW facilities permitted to receive manifested hazardous wastewaters (i.e., leachate), total transport distances are assumed to increase with the promulgation of the rule.

We have developed compliance cost estimates for the following leachate management practices: truck to a POTW, truck to a POTW plus reticulate, reticulate only, hardpipe to a POTW, and discharge via NPDES. RCRA administrative costs are also estimated. Annualized compliance costs on a per landfill basis, presented in million dollars, are estimated as follows: truck to a POTW ($1.71–$7.00), truck to a POTW plus reticulate ($1.38–$5.64), reticulate only ($0.01–$0.02) , hardpipe to a POTW (same as baseline), and discharge via NPDES ($0.10–$0.27). These costs encompass the full range of amortization over the five, ten, and twenty year period. RCRA administrative costs associated with compliance are estimated to be no more than $4,000 per landfill per year.

6. Incremental Aggregate Compliance Costs

This section summarizes the projected incremental compliance costs associated with today's proposed action. Incremental costs are estimated for the generators of the proposed dye and pigment wastes, and the Subtitle D landfill facilities that accepted these wastes.

Organic Dyes and Pigments—Proposed Wastestream Listings

Total baseline management and compliance management costs were calculated on a per unit basis for each activity. Incremental costs are the difference between baseline and compliance costs, including administrative, and sampling and analysis costs. The total incremental cost is the summation of this difference between baseline and compliance costs across all affected waste quantities/facilities. Our analysis indicates that total incremental costs associated with the proposed listing may fall within a broad range. We are not able to present these findings due to business confidentiality concerns. Presentation of the average incremental cost per ton is

also subject to business confidentiality restrictions. The high-end estimate assumes 100 percent baseline waste management in an unlined landfill, and analytical costs for the high-end estimate of constituents potentially impacted.

Dye and Pigment Leachate Management—Affected Landfills

The total incremental landfill costs are estimated by multiplying the number of affected landfills in each leachate management category by incremental landfill costs, calculated on a unit-by-unit basis. The estimated impacts on the affected land disposal facilities are highly variable, depending on the regulatory option. Under the standard listing option, costs were found to fall within a broad range. Business confidentiality restrictions prevent us from releasing this information. The range reflects a five, ten, or twenty year amortization schedule, and the five or ten year leachate generation period. Presentation of cost impacts under the Clean Waste Act temporary deferral option is also restricted due to business confidentiality concerns.

*E. What Are the Potential Economic Impacts to Industry From the Proposed Rule?*

We examined the economic impacts to both dye and pigment manufacturers and solid waste landfill facilities. The impacts to the dye and pigment industry were examined by comparing incremental costs to annual estimated sales for the affected product lines. Incremental compliance costs to landfills were examined as a percent of revenues from tipping fees.

Economic Impacts—Organic Dyes and Pigments Industry

Waste generation rates for filter aids and TAM sludge are variable, depending upon the product being manufactured. A model facilities approach was used based on four representative waste generation rate categories. Information regarding waste generation rates, production rates, and product sales was derived from responses to RCRA 3007 questionnaires and from U.S. International Trade Commission Reports. Like waste generation rates, product prices are also highly variable. Product prices used in this analysis ranged from $6,500 to $18,000 per ton. Data provided in U.S. International Trade Commission public reports served as a basis for approximating average industry prices.

Gross sales, based on the above range of waste generation rates and prices, were estimated. These findings, however may not be divulged due to business confidentiality concerns. A midpoint of annual gross sales was also estimated for the waste generation categories examined. It should be noted that individual facilities are likely to produce a variety of products, not all of which will be affected by this proposed rulemaking. The gross sales estimates developed for this analysis only reflect sales of affected product lines and do not reflect aggregate sales for any single facility.

Incremental compliance cost impacts were estimated but may not be released to the public due to business confidentiality concerns. The actual economic impact will likely be dependent on the price elasticity of demand for individual dye and pigment products. For example, if an affected product has many close substitutes, it is possible that the producer of the impacted product may not be able to modify prices in response to increased production costs. Conversely, dye and pigment products with unique applications may have a more inelastic demand. Prices of these products may be increased enough to largely offset any changes associated with the rulemaking. It is important to consider that this rulemaking affects less than a certain percent of the overall combined production of the dyes and pigments industries. While the estimated impacts may be experienced on selected product lines, overall impacts on the industries are expected to be less due to multiple product lines.

Economic Impacts—Solid Waste Landfills Managing Dye and Pigment Leachate

We examined average incremental compliance costs as a percent of sales (tipping fee revenues) for three different sized landfills to estimate potential economic impacts of the proposed listing on landfill management costs. The model landfill facilities were assumed to accept 250, 750, and 1,500 tons of waste per day. These sizes were selected as representative of the industry and landfills accepting dye and pigment wastes.

Annual landfill sales were derived for each of the models using an average national tipping fee of $35.81/ton. It was assumed that the landfills operated approximately 286 days a year (five and one-half days/week). Therefore, approximate annual sales for a landfill that on average accepts 750 tons of waste per day would be $7.68 million. Impact estimates are based on average leachate generation rates.

Incremental costs were examined for both the Standard Regulatory Option and the Clean Water Act temporary deferral. For each option, incremental costs were considered for six management practices. In estimating the potential economic impacts of the Standard Regulatory Option, expected incremental compliance costs based on a five-year amortization schedule were used. The five-year amortization is believed to correspond more closely to the actual leachate generation. Incremental compliance costs for the analysis of the Clean Water Act temporary deferral option are based on a 20-year capital amortization schedule.

Under the standard listing option, we have estimated costs that facilities would face if they have to truck the leachate to a POTW. These impacts cannot be presented to the public due to business confidentiality concerns. Actual incremental compliance costs for the smallest landfill size were estimated but may not be divulged. Impacts in relation to all other technologies in the standard listing scenario were estimated but may not be divulged due to business confidentiality concerns. Under the Clean Water Act temporary deferral option, costs were also estimated. Business confidentiality concerns prevent us from releasing this information also.

*F. What Are the Potential Benefits From the Proposed Rule?*

We conducted a qualitative benefits analysis of today's proposed listing of filter aids and TAM wastewater treatment sludges. This analysis addresses human health benefits projected as a result of the proposed listing. The analysis also examines benefits associated with waste minimization efforts potentially stimulated by this action. Potential ecological benefits are not examined. The analysis incorporates findings from, and is consistent with, the risk analysis conducted in support of this action. Incremental individual and/or population benefits are not available for incorporation into this benefits analysis.

In determining whether waste generated from the production of dyes and pigments meets the criteria for listing a waste as hazardous as set out at 40 CFR 261.11, we initially evaluated the potential toxicity and intrinsic hazard of the constituents likely to be present in the waste streams. The fate and mobility of these chemicals, the likely exposure routes, the current waste management practices, and plausible management practices were examined. Based on this assessment we identified a core list of constituents associated

with filter aids TAM sludges. We are seeking comment on the inclusion of other constituents of potential concern (see Section IV).

Human Health Benefits

One objective of a human health risk assessment is to estimate the number of chronic health impacts that could be avoided as a result of the implementation of the proposed rule. This would include the exposures by drinking contaminated water from residential wells located near the source of contamination, consuming food products contaminated by blowing dust or vapors, and otherwise being exposed directly to contaminated soil and water.

The benefit associated with today's action is the enhanced security associated with more stringent management requirements for the proposed ''high concentration'' filter aid and TAM wastestreams. When these wastestreams are managed under the more stringent Subtitle C requirements, the risks to human health and the environment associated with their disposal is minimized.

Waste Minimization Benefits

Regulatory compliance costs for the dyes and pigments industries may be lowered through use of waste minimization practices. A previously issued guidance document on pollution prevention, recycling, and reuse practices for the dye manufacturing industry offers a number of general and specific alternatives. Engineering site visits, particularly at newer facilities, indicated that a number of these practices are economically and technically feasible. These visits also pointed out areas of improvement needed at all facilities, most notably reduction of wastewater volume.

Specific waste minimization procedures and corresponding cost reductions tend to be highly dependent on the manufacturing processes at each facility. The following waste minimization opportunities for specific plant operations and waste streams may decrease compliance costs through reduction in waste volume at dye and pigment facilities: filtering devices with reusable membranes, centrifugation, dry collection of dust and fines whenever practicable, automated handling and measurement of raw materials and products, and consideration of process integration for recycling to other parts of the same facility.

As noted earlier in today's notice, a concentration-based listing also provides an added incentive for generators to reduce the level of hazardous constituents of concern. If constituent levels are reduced to below the concentration levels specified in the listing regulation, then their waste will not be regulated as hazardous.

*G. What Consideration Was Given to Small Entities?*

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996) whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities.

We conducted a screening analysis to answer a series of questions regarding the potential impacts of the proposed dyes and pigments waste listing on small entities. This analysis was conducted per the requirements of the Regulatory Flexibility Act (RFA) as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA), and Agency guidance. Our screening analysis came to a definitive conclusion. However, we are not able to divulge this conclusion due to business confidentiality concerns.

The Small Business Administration (SBA) size standard for small businesses in the dyes and pigments industry, which is part of cyclic crudes and intermediates (NAICS 325132) is 750 employees (13 CFR 121.201). This, and all size standards apply to the owners or parent corporation, of the business, and not individual plant operations which are most directly affected by this proposed regulation. Of the dye and pigment companies potentially affected by the regulation, we have determined the maximum number of small businesses under the SBA size standard. This determination, however, is not available for public release due to business confidentiality concerns. It is possible that some of the landfills affected by this rulemaking may be small according to the SBA size standards for landfills (less than $5 million in sales).

Data are not available on the financial status of the small entities in question, as they are privately held companies. However, we have made a preliminary estimate of the impact on these companies, assuming that 100 percent of all wastes are managed as Subtitle C. We may not release this finding due to business confidentiality concerns.

It is important to recognize that these estimates are based only on product sales which are directly associated with the waste generated. For instance, an individual company may produce 100 different dyes, but spent filter aids may only be generated in the production of 20 of them. In this case, the impact estimate only represents the sales value of the 20 dyes associated with the generation of the spent filter aids, and not on overall company sales. Overall company impacts would be lower. For the landfills potentially affected by the rule, impacts have been estimated but are not available for release due to business confidentiality concerns.

As a result of the screening analysis, the Agency has come to a conclusion concerning small business impacts but is not able to release this information due to business confidentiality concerns. This rule does not require a full regulatory flexibility analysis. The Economic Assessment document presents the complete regulatory flexibility screening analysis conducted in support of today's action.

*H. What Consideration Was Given to Children's Health?*

Children's Health (Executive Order 13045)

''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be ''economically significant'' as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This proposed rule is not subject to the Executive Order because it is not economically significant as defined in E.O. 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children.

The topic of environmental threats to children's health is growing in regulatory importance as scientists, policy makers, and village leaders continue to recognize the extent to which children are particularly vulnerable to environmental hazards.

Recent EPA actions have been in the forefront of addressing environmental threats to the health and safety of children. Today's proposed rule further reflects our commitment to mitigating environmental threats to children.

A few significant physiological characteristics are largely responsible for children's increased susceptibility to environmental hazards. First, children eat proportionately more food, drink proportionately more fluids, and breathe more air per pound of body weight than do adults. As a result, children potentially experience greater levels of exposure to environmental threats than do adults. Second, because children's bodies are still in the process of development, their immune systems, neurological systems, and other immature organs can be more easily and considerably affected by environmental hazards. The connection between these physical characteristics and children's susceptibility to environmental threats are reflected in the higher baseline risk levels for children.

Today's proposed rule will reduce risks posed by the hazardous constituents found in the listed waste streams by requiring more appropriate and safer management practices. EPA considered risks to children in its risk assessment and set allowable concentrations for constituents in the waste at levels that are believed to be protective to children, as well as adults. The more appropriate and safer management practices proposed in this rule are projected to reduce risks to children potentially exposed to the constituents of concern.

The public is invited to submit or identify peer-reviewed studies and data, of which the agency may not be aware, that assess results of early life exposure to the proposed hazardous constituents from filter aids and TAM waste generated in the production of organic dyes and pigments.

### *I. What Consideration Was Given to Environmental Justice?*

#### Environmental Justice (Executive Order 12898)

Executive Order 12898, ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Population'' (February 11, 1994), is designed to address the environmental and human health conditions of minority and low-income populations. EPA is committed to addressing environmental justice concerns and is assuming a leadership role in environmental justice initiatives to enhance environmental quality for all residents of the United States. The Agency's goals are to ensure that no segment of the population, regardless of race, color, national origin, or income bears disproportionately high and adverse human health and environmental impacts as a result of EPA's policies, programs, and activities, and that all people live in clean and sustainable communities. In response to Executive Order 12898 and to concerns voiced by many groups outside the Agency, EPA's Office of Solid Waste and Emergency Response (OSWER) formed an Environmental Justice Task Force to analyze the array of environmental justice issues specific to waste programs and to develop an overall strategy to identify and address these issues (OSWER Directive No. 9200.3–17).

To comply with the Executive Order, we have assessed whether today's proposed rule may have disproportionate effects on minority populations or low-income populations. We do not have determinative facility location correlated with minority population and impacts data to indicate that the environmental problems addressed by the proposed listing for dye and pigment wastes could disproportionately effect minority or low income communities. The affected facilities, however, are distributed throughout the country and many are located within highly urbanized areas. Because the proposed rule reduces environmental risks associated with the management of the proposed waste streams, the Agency believes that this rule will not result in adverse human health and environmental impacts. Today's proposed rule, therefore, is not expected to result in any disproportionately negative impacts on minority or low income communities relative to affluent or non minority communities.

### *J. What Consideration Was Given to Unfunded Mandates?*

#### Executive Order 12875

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.''

Today's rule implements mandates specifically and explicitly set forth by the Congress without the exercise of any policy discretion by EPA. This action is proposed under the authority of Sections 3001(e)(2) and 3001 (b)(1) of the Hazardous and Solid Waste Amendments (HSWA) of 1984, which direct EPA to make a hazardous waste listing determination for certain wastes from the dye and pigment industries. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

#### Unfunded Mandates Reform Act (UMRA)

The Unfunded Mandates Reform Act (UMRA) of 1995 supersedes Executive Order 12875 and reiterates previously established directives, while imposing additional requirements. Title II of the UMRA, Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions by State, local, and tribal governments and the private sector. Under section 202 of UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed rules and final rules for which the Agency published a notice of proposed rulemaking if those rules contain ''Federal mandates'' that may result in the expenditure by State, local, and tribal governments , in the aggregate, or to the private sector, of $100 million or more in any single year. If a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives. Under section 205, EPA must adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule, unless the Administrator publishes with the final rule an explanation why that alternative was not adopted. The provisions of section 205 do not apply when they are inconsistent with applicable law.

We have determined that this proposed rule will not result in the expenditure of $100 million or more by State, local, and tribal governments, in

the aggregate, or by the private sector in any single year.

*K. What Consideration Was Given to Tribal Governments Analysis?*

Executive Order 13084

Under Executive Order 13084, ''Consultation with Tribal Governments,'' the EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, or that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If EPA complies by consulting, the EPA must provide the Office of Management and Budget, in a separately identified section of the preamble to the rule, or proposed rule, a description of the extent of our prior consultation with representatives of affected tribal governments, a summary of their concerns, and a statement supporting the need to issue the regulation. Also, Executive Order 13084 requires the EPA to develop an effective process permitting elected and other representatives of Indian tribal governments to, ''provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

For many of the same reasons described above under unfunded mandates, the requirements of Executive Order 13084 do not apply to this proposed rulemaking. While Executive Order 13084 does not provide a specific gauge for determining whether a proposed regulation ''significantly or uniquely affects'' an Indian tribal government, this proposal does not impose substantial direct compliance costs on tribal governments and/or their communities. Tribal communities are not known to own or operate any dye or pigment manufacturing facilities, nor are these communities disproportionately located adjacent to or near such facilities. Finally, tribal governments will not be required to assume any administrative or permitting responsibilities associated with this proposed rule.

*L. Was the National Technology Transfer and Advancement Act Considered?*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This proposed rulemaking does not involved technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

*M. How Is the Paperwork Reduction Act Considered in Today's Proposal?*

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the *Paperwork Reduction Act,* 44 U.S.C. 3501 *et seq.* An Information Collection Request (ICR) document has been prepared by EPA (ICR No. 1918.01) and a copy may be obtained from Sandy Farmer by mail at Office of Policy (OP) Regulatory Information Division; U.S. Environmental Protection Agency (2137); 401 M Street, SW; Washington, DC 20460, by email at *farmer.sandy@epamail.epa.gov*, or by calling (202) 260–2740. A copy may also be downloaded off the Internet at http://www.epa.gov/icr.

This proposed rule contains concentration-based listings that generators would be self-implementing. Under the concentration-based listings, a generator of wastes that fall within the K167 or K168 listing descriptions must comply with waste analysis requirements if it wants to determine that its waste is nonhazardous. These requirements are necessary to ensure that the levels of selected constituents in the wastes are below the regulatory levels of concern.

The Agency estimated the worst-case burden associated with complying with the requirements in this proposed rule. In 1992, the most recent year for which consistent data are available, there were reportedly 80 dye and pigment facilities (Industrial Organic Chemicals, Manufacturers-Industry Series, Census Bureau, Department of Commerce, 1992). Because of business confidentiality concerns in using the actual number of facilities that reported generating wastes that fall within the K167 or K168 listing descriptions, EPA assumed that all 80 facilities generate these wastes. In addition, EPA assumed that all 80 facilities would analyze their wastes and find the wastes to be hazardous. Under such assumptions, all of these 80 facilities, as well as subsequent handlers, would need to manage and dispose of the wastes under RCRA Subtitle C regulations.

The estimated worst-case burden results from the following requirements for industry respondents: reading the regulations; performing waste analysis, and incremental burden associated with complying with existing RCRA regulations. To the extent that this rule imposes burden as incremental to the existing RCRA regulations promulgated in previous rulemakings, those requirements have been assigned OMB control numbers 2050–0024 (ICR No. 976.08, Hazardous Waste Report—Biennial Report); 2050–0039 (ICR No. 801.12, Requirements for Generators, Transporters, and Waste Management Facilities under the Hazardous Waste Manifest System); 2050–0120 (ICR No. 1571.05, General Hazardous Waste Facility Standards); 2050–0085 (ICR No. 1442.14, Land Disposal Restrictions); and 2050–0009 (ICR No. 1573.05, Part B Permit Application, Permit Modifications and Special Permits).

EPA estimates that the total annual respondent burden for all activities will be 7,334 hours. The estimated total cost for all activities will be $508,605. If generators determine their wastes to be nonhazardous after performing waste analysis, the proposed rule contains some new notification and recordkeeping requirements. However, the information collection burden associated with these requirements would not be expected to be greater than if the generators determine their wastes to be hazardous.

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 use 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.

Comments are requested 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. Send comments on the ICR to the Director, OP Regulatory Information Division; U.S. Environmental Protection Agency (2137); 401 M Street, SW; Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW; Washington, DC 20503, marked ''Attention: Desk Officer for EPA.'' Include the ICR number in any correspondence. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after July 23, 1999, a comment to OMB is best assured of having its full effect if OMB receives it by August 23, 1999. The final rule will respond to any OMB and public comments on the information collection requirements contained in this proposal.

**List of Subjects**

*40 CFR Part 148*

Administrative practice and procedure, Hazardous wastes, Reporting and recordkeeping requirements, Water supply.

*40 CFR Part 261*

Environmental protection, Hazardous waste, Recycling, Reporting and recordkeeping requirements.

*40 CFR Part 268*

Environmental protection, Hazardous waste, Reporting and recordkeeping requirements.

*40 CFR Part 271*

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indians-lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

*40 CFR Part 302*

Environmental protection, Air pollution control, Chemicals, Emergency Planning and Community Right-to-Know Act, Hazardous substances, Hazardous waste, Intergovernmental relations, Natural resources, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: June 30, 1999.

**Carol M. Browner,**

*Administrator.*

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

## PART 148—HAZARDOUS WASTE INJECTION RESTRICTIONS

1. The authority citation for part 148 continues to read as follows:

**Authority:** Secs. 3004, Resource Conservation and Recovery Act, 42 U.S.C. 6901 *et seq.*

2. Section 148.18 is amended by adding paragraphs (j) and (k) to read as follows:

**§ 148.18 Waste specific prohibitions—newly listed and identified wastes.**

* * * * *

(j) Effective [date six months after date of final rule], the wastes specified in § 261.32 of this chapter as EPA Hazardous Waste Numbers K167 and K168 are prohibited from underground injection.

(k) The requirements of paragraphs (a) through (j) of this section do not apply:

(1) If the wastes meet or are treated to meet the applicable standards specified in Subpart D of part 268 of this chapter; or

(2) If an exemption from a prohibition has been granted in response to a petition under Subpart C of this part; or

(3) During the period of extension of the applicable effective date, if an extension has been granted under § 148.4.

## PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

3. The authority citation for Part 261 continues to read as follows:

**Authority:** 42 U.S.C. 6905, 6912(a), 6921, 6922, 6924(y), and 6938.

4. Section 261.4 is amended by revising paragraph (b)(15) to read as follows.

**§ 261.4 Exclusions.**

* * * * *

(b) * * *

(15) Leachate or gas condensate collected from landfills where certain solid wastes have been disposed, provided that:

(i) The solid wastes disposed would meet one or more of the listing descriptions for Hazardous Waste Codes K167, K168, K169, K170, K171, and K172 if these wastes had been generated after the effective date of the listing;

(ii) The solid wastes described in paragraph (b)(15)(i) of this section were disposed prior to the effective date of the listing;

(iii) The leachate or gas condensate do not exhibit any characteristic of hazardous waste nor are derived from any other listed hazardous waste;

(iv) Discharge of the leachate or gas condensate, including leachate or gas condensate transferred from the landfill to a POTW by truck, rail, or dedicated pipe, is subject to regulation under sections 307(b) or 402 of the Clean Water Act;

(v) After February 13, 2001, leachate or gas condensate derived from K169–K172 will no longer be exempt if it is stored or managed in a surface impoundment prior to discharge. After [date 24 months after publication date of the final rule], leachate or gas condensate derived from K167–K168 will no longer be exempt if it is stored or managed in a surface impoundment prior to discharge. There is one exception: if the surface impoundment is used to temporarily store leachate or gas condensate in response to an emergency situation (e.g., shutdown of wastewater treatment system), provided the impoundment has a double liner, and provided the leachate or gas condensate is removed from the impoundment and continues to be managed in compliance with the conditions of this paragraph (b)(15) after the emergency ends.

* * * * *

5. Section 261.32 is amended by designating the introductory text and the table as paragraph (a) and by amending the newly designated table by adding a new subgroup ''Organic dyes and pigments'' and it's entries at the end of the table and by adding paragraphs (b) and (c) to read as follows.

**§ 261.32 Hazardous wastes from specific sources.**

(a) * * *

| Industry and EPA hazardous waste No. | Hazardous waste | Hazardous code |
|---|---|---|
| | * * * * * * * | |
| Organic dyes and pigments: | | |
| K167 | Spent filter aids, diatomaceous earth, or adsorbents used in the production of azo, anthraquinone, or triarylmethane dyes, pigments, or FD&C colorants, unless these wastes do not contain any of the constituents identified in paragraph (b)(3)(iii) of this section at a concentration equal to or greater than the hazardous level set for that constituent as demonstrated by the procedures specified in paragraph (b) of this section. | (T) |
| K168 | Wastewater treatment sludges from the production of triarylmethane dyes and pigments (excluding triarylmethane pigments using aniline as a feedstock), unless these wastes do not contain any of the constituents identified in paragraph (b)(3)(iii) of this section at a concentration equal to or greater than the hazardous level set for that constituent as demonstrated by the procedures specified in paragraph (b) of this section. | (T) |

(b) *Procedures for determining potential K167 and K168 wastes to be nonhazardous.* A generator of wastes that fall within the K167 or K168 listing descriptions must use the following waste analysis and handling procedures if it wants to determine that its waste is nonhazardous. If the procedures are completed and the waste is determined to be nonhazardous within 60 days of [the effective date of the final rule], or within 60 days after the waste is first generated, then all of the waste generated after the effective date or the first generation date is nonhazardous (assuming the levels of the relevant constituents identified in paragraph (b)(3)(iii) of this section are in fact below the listing levels). If the determination is made more than 60 days after [the effective date of the final rule] or 60 days after the waste is first generated, the determination will not become effective until the date the generator receives a written receipt or confirmation (e.g., Registered Mail or delivery service receipt) that its notification and certification has been delivered to the EPA. After the generator has received this receipt or confirmation, any waste generated on or after the generation date of the waste that was analyzed for the hazardousness determination is nonhazardous (assuming the levels of the relevant constituents identified in paragraph (b)(3)(iii) of this section are in fact below the listing levels). Any waste generated prior to that generation date remains hazardous.

(1) *Initial waste analysis.* The waste generator must collect a minimum of 4 representative samples of the waste as-generated and analyze it for the constituents identified in the applicable list under paragraph (b)(3)(iii) of this section. Instead of analyzing for a constituent, the generator may also apply knowledge of the constituents in the wastes based on the materials and processes used to document that a constituent is not present in the waste.

(2) *Waste holding and handling.* The waste generator must store the waste until a hazardous waste listing determination is completed as specified in the condition in paragraph (b)(3) of this section. The waste must be stored in containers, or in another manner that does not involve land placement.

(3) *Hazardous or nonhazardous waste listing determination for waste as-generated.* The waste generator, following an initial waste analysis, must make a hazardous or nonhazardous determination for the waste as-generated based on the data obtained from the initial waste analysis.

(i) *Hazardous determination.* If any of the waste sampled contains any of the constituents in the applicable list under paragraph (b)(3)(iii) of this section at a concentration equal to or greater than the hazardous level set for that constituent, the waste is a listed hazardous waste and subject to all applicable RCRA Subtitle C hazardous waste requirements.

(ii) *Nonhazardous determination.* If none of the waste sampled contains any of the constituents in the applicable list under paragraph (b)(3)(iii) of this section at concentrations equal to or greater than the hazardous levels set for these constituents, the waste is determined to be nonhazardous and subject only to notification and recordkeeping requirements described in paragraph (c) of this section.

(iii) *Hazardous (listing) levels.* All concentrations in the waste sample(s) for constituents identified in this paragraph (b)(3)(iii) that are equal to or greater than the following levels:

CONSTITUENT LEVELS FOR K167 (MG/KG)

[Levels are not included due to business confidentiality concerns]

| | |
|---|---|
| Aniline | |
| Benzaldehyde | |
| p-Chloroaniline | |
| p-Cresol | |
| N,N–Dimethylaniline | |
| 3,3′–Dimethoxybenzidine | |
| Diphenylamine | |
| 1,2–Diphenylhydrazine | |
| Formaldehyde | |
| Naphthalene | |
| Phenol | |
| p-Phenylenediamine | |
| o-Toluidine | |
| p-Toluidine | |

[Other constituent(s) not included due to business confidentiality concerns]

CONSTITUENT LEVELS FOR K168 (MG/KG)

| | |
|---|---|
| Benzaldehyde | 5000 |
| Dimethylamine, N,N- | 300 |
| Diphenylamine | 27000 |
| Formaldehyde | 7000 |
| Toluidine, o- | 13 |
| Toluidine, p- | 23 |

[Constituent not included due to business confidentiality concerns]

(4) *Hazardous or nonhazardous waste listing determination for wastes after treatment.* If a waste that has been determined to be a K167 or K168 listed hazardous waste is treated to below hazardous levels, the waste generator or treater may make a determination that the residue of the treatment process is nonhazardous by applying the process set forth for wastes as-generated in paragraphs (b)(1) through (b)(3) of this section to the treated waste. The effective date of when the residue becomes nonhazardous will be the date when the waste generator or treater receives a return receipt or confirmation that the notification and certification submitted has been delivered to EPA. However, the residue remains subject to the LDR treatment standards for K167 or K168 as appropriate.

(5) *Follow-up analysis.* The waste generator must collect and analyze a minimum of one representative sample of the nonhazardous waste every calendar year it is generated. The waste generator must also analyze a minimum of one representative sample of the nonhazardous waste anytime, after the initial waste analysis, there is a process change that may increase the concentration of hazardous constituents in the waste. If process change has not occurred, the waste generator may use the results of the initial waste analysis to create a more tailored list of constituents for follow-up analysis. If follow-up analysis (or any analysis of your waste after the initial waste analysis) shows that any of the waste sampled contains any of the constituents in the applicable list under paragraph (b)(3)(iii) of this section at a concentration equal to or greater than the hazardous level set for that constituent, the waste is a listed hazardous waste and subject to all applicable RCRA Subtitle C requirements. In order to determine the waste nonhazardous again, the waste generator or treater must apply all of the procedures in paragraphs (b)(1) through (b)(3) or paragraph (b)(4) of this section to the waste.

(c) *Notification and recordkeeping requirements for wastes determined to be nonhazardous.* These requirements apply only for wastes that have been determined to be nonhazardous based on the procedures described in paragraph (b) of this section. The waste generator must meet the following notification and recordkeeping requirements prior to disposing any wastes as nonhazardous.

(1) *Submit notification.* The waste generator claiming that its waste is nonhazardous must submit a one-time notification to EPA (by mail or delivery service which provides return receipt) within 60 days following [the effective date of the final rule] or initial generation of the waste. The notification must include the waste generator's name and address, a representative's name and telephone number, description of the waste and potential waste code, and an estimate of the average annual volume of waste claimed to be nonhazardous. The notification must also include a certification signed by an authorized representative and must state as follows:

I certify under penalty of law that none of the waste sampled contains any of the constituents of concern identified for this waste at concentrations equal to or greater than the hazardous concentration levels set for these constituents, and that these levels were determined without dilution of the waste. Based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete. I am aware that there are significant penalties for submitting a false certification, including the possibility of fine and imprisonment.

(2) *Maintain records on-site.* At a minimum, the waste generator is required to keep the following information on site:

(i) A copy of the notification and certification sent to EPA and return receipt.

(ii) The sampling and analysis plan used for collecting and analyzing representative sample(s) of the waste.

(iii) The initial sampling and analyses data and process knowledge information (if used) that support a nonhazardous claim for the waste.

(iv) All follow-up sampling and analyses data and process knowledge information (if used) for the most recent three years.

6–7. Appendix VII to Part 261 is amended by adding the following waste streams entries in alphanumeric order (by the first column) to read as follows:

**Appendix VII to Part 261—Basis for Listing Hazardous Waste**

| EPA hazardous waste No. | Hazardous constituents for which listed |
|---|---|
| * | * * * * * * * |
| K167 | Aniline, benzaldehyde, p-chloroaniline, p-cresol, N,N-dimethylaniline, 3,3-dimethoxybenzidine, diphenylamine, 1,2-diphenylhydrazine, formaldehyde, naphthalene, phenol, p-phenylenediamine, o-toluidine, o-toluidine, and other constituents not included due to business confidentiality concerns. |
| K168 | Benzaldehyde, N,N-dimethylaniline, diphenylamine, formaldehyde, o-toluidine, p-toluidine, and other constituents not included due to business confidentiality concerns. |
| * | * * * * * * * |

* * * * *

8. Appendix VIII to Part 261 is amended by adding the following waste streams entries in alphanumeric order to read as follows.

**Appendix VIII to Part 261—Hazardous Constituents**

| Common name | Chemical abstracts name | Chemical abstracts No. | Hazardous waste No. |
|---|---|---|---|
| * * * | * * * | | * |
| Benzaldehyde | Same | 100–52–7 | |
| * * * | * * * | | * |
| p-Cresol | Phenol, 3-methyl- | 106–44–5 | U052 |
| * * * | * * * | | * |
| N,N–Dimethylaniline | Benzenamine, N,N-dimethyl- | 121–69–7 | |
| * * * | * * * | | * |
| p-Phenylenediamine | Benzenediamine, 1,4- | 106–50–3 | |
| | Identity of other constituent(s) not included due to business confidentiality concerns. | | |

| Common name | Chemical abstracts name | Chemical abstracts No. | Hazardous waste No. |
|---|---|---|---|
| * * * | * * * | * | * |

## PART 268—LAND DISPOSAL RESTRICTIONS

9. The authority citation for part 268 continues to read as follows:

**Authority:** 42 U.S.C. 6905, 6912(a), 6921, and 6924.

10. Section 268.32 is added to subpart C to read as follows:

### § 268.32 Waste specific prohibitions—dye and pigment wastes.

(a) Effective [date 6 MONTHS from date of publication of final rule], the following wastes are prohibited from land disposal: the wastes specified in part 261 of this chapter as EPA Hazardous Waste Numbers K167 and K168, soil and debris contaminated with these wastes, radioactive wastes mixed with these hazardous wastes, and soil and debris contaminated with these radioactive mixed wastes.

(b) The requirements of paragraph (a) of this section do not apply if:

(1) The wastes meet the applicable treatment standards specified in subpart D of this part;

(2) Persons have been granted an exemption from a prohibition pursuant to a petition under § 268.6, with respect to those wastes and units covered by the petition;

(3) The wastes meet the applicable alternate treatment standards established pursuant to a petition granted under § 268.44; or

(4) Persons have been granted an extension to the effective date of a prohibition pursuant to § 268.5, with respect to these wastes covered by the extension.

11. Section 268.40 is amended by adding K167 and K168 in alphanumeric order to the Table of Treatment Standards to read as follows: (The footnotes are republished without change.)

### § 268.40 Applicability of treatment standards.

* * * * *

TREATMENT STANDARDS FOR HAZARDOUS WASTES

[Note: NA means not applicable]

| Waste code | Waste description and treatment/regulatory subcategory [1] | Regulated hazardous constituent | | Wastewaters | Nonwastewaters |
|---|---|---|---|---|---|
| | | Common name | CAS [2] No. | Concentration in mg/l [3], or technology code [4] | Concentration in mg/kg [5] unless noted as "mg/l TCLP", or technology code |
| * | * * * | * | | * * | * |
| K167 ..... | Spent filter aids, diatomaceous earth, or adsorbents used in the production of azo, anthraquinone, or triarylmethane dyes, pigments of FD&C colorants. | NA ..... | NA ..... | (WETOX or CHOXD) fb CARBN: or CMBST. | CMBST. |
| K168 ..... | Wastewater treatment sludges from the production of triarylmethane dyes and pigments (excluding triarylmethane pigments using aniline as a feedstock). | NA ..... | NA ..... | (WETOX or CHOXD) fb CARBN: or CMBST. | CMBST. |
| * | * * * | * | | * * | * |

Footnotes to Treatment Standard Table 268.40

[1] The waste descriptions provided in this table do not replace waste descriptions in 40 CFR part 261. Descriptions of Treatment/Regulatory Subcategories are provided, as needed, to distinguish between applicability of different standards.

[2] CAS means Chemical Abstract Services. When the waste code and/or regulated constituents are described as a combination of a chemical with its salts and/or esters, the CAS number is given for the parent compound only.

[3] Concentration standards for wastewaters are expressed in mg/l and are based on analysis of composite samples.

[4] All treatment standards expressed as a Technology Code or combination of Technology Codes are explained in detail in 40 CFR 268.42 Table 1—Technology Codes and Descriptions of Technology-Based Standards.

[5] Except for Metals (EP or TCLP) and Cyanides (Total and Amenable) the nonwastewater treatment standards expressed as a concentration were established, in part, based upon incineration in units operated in accordance with the technical requirements of 40 CFR part 264, Subpart O or part 265 Subpart O, or based upon combustion in fuel substitution units operating in accordance with applicable technical requirements. A facility may comply with these treatment standards according to provisions in 40 CFR 268.40(d). All concentration standards for nonwastewaters are based on analysis of grab samples.

* * * * *

## PART 271—REQUIREMENTS FOR AUTHORIZATION OF STATE HAZARDOUS WASTE PROGRAMS

12. The authority citation for part 271 continues to read as follows:

**Authority:** 42 U.S.C. 6905, 6912(a), and 6926.

### Subpart A—Requirements for Final Authorization

13. Section 271.1(j) is amended by adding the following entry to Table 1 in

chronological order by date of publication in the **Federal Register**, and by adding the following entry to Table 2 in chronological order by effective date, to read as follows.

**§ 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 |
|---|---|---|---|
| * | * | * | * |
| [Date of publication in the Federal Register of final rule]. | Dye and Pigment Production Waste Listing. | [Federal Register page numbers for final rule]. | [Effective date of final rule]. |
| * | * | * | * |

* * * * *

TABLE 2.—SELF-IMPLEMENTING PROVISIONS OF THE HAZARDOUS AND SOLID WASTE AMENDMENTS OF 1984

| Effective date | Self-implementing provision | RCRA citation | Federal Register reference |
|---|---|---|---|
| * | * | * | * |
| [Effective date of final rule] | Prohibition on land disposal of K167 and K168 wastes, and prohibition on land disposal of radioactive waste mixed with K167 and K168 wastes, including soil and debris. | 3004(g)(4)(C) and 3004(m) | [Date of publication of final rule], [FR page numbers]. |
| * | * | * | * |

## PART 302—DESIGNATION, REPORTABLE QUANTITIES, AND NOTIFICATION

14. The authority citation for part 302 continues to read as follows:

**Authority:** 42 U.S.C. 9602, 9603, and 9604; 33 U.S.C. 1321 and 1361.

15. In § 302.4, table 302.4 is amended by adding the following new entries in alphanumerical order at the end of the table to read as follows:

**§ 302.4 Designation of hazardous substances.**

* * * * *

TABLE 302.4.—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES

[Note: All comments/notes are located at the end of this table]

| Hazardous substance | CASRN | Regulatory synonyms | Statutory | | | Final RQRQ | |
|---|---|---|---|---|---|---|---|
| | | | RQ | Code† | RCRA waste No. | Category | Pounds (Kg) |
| * | * | * | * | * | * | * | * |
| K167 Spent filter aids, diatomaceous earth, or adsorbents used in the production of azo, anthraquinone, or triarylmethane dyes, pigments or FD&C colorants. | ..... | ..... | 1* | 4 | K167 | ..... | ## |
| K168 Wastewater treatment sludges from the production of triarylmethane dyes and pigments (excluding triarylmethane pigments using aniline as a feedstock). | ..... | ..... | 1* | 4 | K168 | ..... | ## |

† Indicates the statutory sources as defined by 1, 2, 3, and 4 below.

* * * * * * *

4—Indicates that the statutory source for designation of this hazardous substance under CERCLA is RCRA Section 3001.

1*—Indicates that the 1-pound RQ is a CERCLA statutory RQ.

* * * * * * *

##—The Agency may adjust the statutory RQ for this hazardous substance in a future rulemaking; until then the statutory RQ applies.

* * * * * * *

[FR Doc. 99–17495 Filed 7–22–99; 8:45 am]

BILLING CODE 6560–50–P

Friday
July 23, 1999

# Part VII

# Department of Housing and Urban Development

**24 CFR Part 972**

**Required Conversion of Developments From Public Housing Stock; Proposed Rule**

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

**24 CFR Part 972**

**[Docket No. FR–4475–P–01]**

**RIN 2577–AC01**

## Required Conversion of Developments From Public Housing Stock

**AGENCY:** Office of Public and Indian Housing, HUD.

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule implements a recent revision to the statute that authorizes the public housing and Section 8 housing assistance programs. The revision requires Public Housing Agencies (PHAs) to identify distressed public housing developments that must be converted to tenant-based assistance. If it would be more expensive to modernize and operate a distressed development for its remaining useful life than to provide tenant-based assistance to all residents, or the PHA cannot assure the long-term viability of a distressed development, then it must develop and carry out a five-year plan to remove the development from its public housing inventory, and convert it to tenant-based assistance.

**DATES:** *Comments Due Date:* September 21, 1999.

**ADDRESSES:** Submit comments regarding this proposed rule to the Regulations Division, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–0500. Please refer to the above docket number and title. Facsimile (FAX) comments are not acceptable. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

**FOR FURTHER INFORMATION CONTACT:** Rod Solomon, Deputy Assistant Secretary for Policy, Program and Legislative Initiatives, Department of Housing and Urban Development, Office of Public and Indian Housing, 451 Seventh Street, SW, Washington, DC 20410, telephone (202) 708–0713. (This is not a toll-free telephone number.) Persons with hearing or speech disabilities may access this number via TTY by calling the free Federal Information Relay Service at 1–800–877–8339.

**SUPPLEMENTARY INFORMATION:**

### I. Statutory Basis

Section 202 of the Departments of Veterans Affairs and Housing and Urban Development and Independent Agencies Appropriations Act, 1996 (42 U.S.C. 1437l note) provided for a program of required conversion of distressed public housing. HUD implemented that statute by issuing the regulations now found at 24 CFR part 971. Section 33 of the United States Housing Act of 1937 (hereafter Section 33), added by the Quality Housing and Work Responsibility Act of 1998 (hereafter the Public Housing Reform Act), adds provisions for required conversion of distressed public housing to tenant-based assistance. In addition to creating new section 33, section 537 of the Public Housing Reform Act repealed section 202. However, developments that were identified by PHAs or by HUD—before the enactment of the Public Housing Reform Act—for conversion, or for assessment of whether such conversion is required, continue to be subject to the requirements of section 202 and the part 971 regulations implementing that section.

To implement the provisions for required conversions established by the new section 33 of the 1937 Act, this rule would place implementing provisions in a new 24 CFR 972, subpart A.

### II. Relationship of Voluntary Conversions to Required Conversions

The same statute that revised this program of required conversions created the provisions for voluntary conversions. Section 533 of the Public Housing Reform Act revised section 22 of the United States Housing Act of 1937, entitled ''Authority to Convert Public Housing to Vouchers.'' A separate rulemaking is underway to implement those provisions through a new 24 CFR 972, subpart B.

### III. Description of Specific Sections

#### *A. Identification of Developments Subject to Required Conversion*

Under this proposed rule, PHAs are required to identify developments that must be converted to tenant-based assistance. Under the Public Housing Reform Act, developments are subject to required conversion if they are (1) on the same or contiguous sites; (2) are distressed, in accordance with guidelines established by HUD that take into account the criteria established in the Final Report of the National Commission on Severely Distressed Public Housing (hereafter, ''the Commission'') published in August 1992 by the Government Printing Office; and (3) are either identified as distressed housing for which the PHA cannot assure long term viability, or are more expensive than tenant-based assistance.

In this proposed rule, HUD has repeated portions of the regulations from 24 CFR 971. In identifying units as distressed for which the PHA cannot assure long term viability, the standard used to make this determination remains the same. In addition, the cost test (the methodology for comparing the cost of public housing with the cost of tenant-based assistance) is basically the same test as that used in the current regulation (part 971). The cost test methodology is found in the Appendix to this part, Part 972. HUD is considering the use of a web-based cost comparison calculator on HUD's internet homepage that would reduce the calculation burden on PHAs. HUD is also considering a refinement of the existing cost calculation in the appendix to part 972 to include a more precise net present value calculation.

In this rule, HUD has established certain criteria that a development has to meet in order to be identified as ''distressed.'' In shaping these criteria, HUD took into account the guidelines established by the Commission (see Appendix B of its final report, referenced above). Under this proposed rule, a distressed development is defined as a development predominantly occupied by families that has 250 units or more and has a vacancy rate of at least 10 percent for each of the last three years, where the vacancy rate has not significantly decreased over these years.

Under the superseded provision for required conversion (section 202), only developments with over 300 units were affected. Under the new section 33, there is no such size limit on what developments are subject to required conversion. To reflect this change, this proposed rule decreases the number of units that a development must have in order to be subject to required conversion to 250 dwelling units. HUD invites public comment on the inclusion at a later date of developments smaller than 250 units and developments not predominantly occupied by families. Some of these developments may be suitable for required conversion, even though the incidence is less than with respect to large family developments. HUD did not include such developments in this proposed rule, so that the large family developments would continue to receive HUD's administrative resource priority. We believe that the smaller and not predominantly family developments are more likely to be found viable after conversion assessments and that they do not raise financial issues of the same

magnitude as the larger family developments. We also believe that serious problems with respect to the smaller and not predominantly family developments are more likely to be addressed locally, without enforcement action by HUD.

You are invited to comment on whether the required conversion program should be expanded later to include the developments not included in this proposed rule. If so, to what extent? Are there ways of accomplishing any necessary actions with respect to these developments in a manner that assures reasonable commitment of HUD administrative resources relative to the likely benefits?

In determining what factors to use when defining a development as distressed, HUD reviewed all of the factors identified by the Commission as having an impact on whether a development is severely distressed. The criteria that HUD uses in defining distress in this section are identified by the Commission as factors contributing to the distress of public housing—high vacancy rate, high modernization needs, predominantly family developments. Although there are other factors that the Commission identified as contributing to the likelihood of distress, many of these factors are not feasible as criteria for purposes of this section, because data is not readily available to HUD in all cases. This is the case for information such as the crime rate in the development as compared to the city crime rate and relative school dropout rates.

One factor that the Commission used to identify distressed developments was very low median income as compared to the average median income in the City. The Commission's definition gave this factor the most weight, and found that housing was at the greatest risk of being distressed where the average median income in the development was less than 20 percent of the average local median income. HUD specifically invites comments on whether a comparison of the average median income at the development with the average median income in the area (MSA), or another measure of tenant income, should be included in the identification of developments as distressed.

*B. Contents of the Conversion Plan*

Once a development is identified as subject to required conversion, the PHA must develop a conversion plan. This conversion plan outlines the PHA's plan to remove the units from the inventory, and to provide tenant-based or project-based assistance for the residents that will be displaced as a result of conversion to comparable housing. In developing a conversion plan, the PHA should consider any existing consent orders.

The conversion plan is a five year plan, which may be extended by not more than an additional 5 years if HUD determines the 5-year deadline is impracticable. HUD will allow longer than five years (up to 10 years) for units to be taken out of the public housing inventory in recognition of new statutory language that indicates that the cost comparison should be based on the remaining useful life of the public housing. HUD believes that the cost test, comparing the costs of continued operation of public housing with providing tenant-based assistance, generally should continue to be based on the twenty year time frame in the existing regulation (or thirty years for rehabilitation equivalent to new construction). This conclusion is based on the statute's requirement of long-term viability if required conversion is to be avoided. However, in order to ensure that public housing that has a remaining useful life of less than twenty or thirty years, as applicable, is put to the best use, HUD will allow a PHA up to ten years to take the units out of the public housing inventory in exceptional circumstances where this would be the most beneficial means of providing subsidized housing over that time period.

A description and analysis regarding developments subject to required conversion must be submitted to HUD as part of the PHA Annual Plan. However, HUD approval of the conversion plan is separate from HUD approval of the PHA Annual Plan. A separate approval is required because the standards for approval under the PHA Plan differ from the standards for approval of a conversion plan.

*C. Actions After Submission of a Conversion Plan*

A PHA may not demolish or dispose of units or property until completion of the required environmental review under 24 CFR part 58 (if a responsible entity has assumed environmental responsibility for the project) or 24 CFR part 50 (if HUD is performing the environmental review). Further, HUD will not approve a conversion plan until completion of the required environmental review. However, before completion of the environmental review, HUD may approve the targeted units for deprogramming and may authorize the PHA to undertake other activities proposed in the conversion plan that do not require environmental review (such as certain activities related to the relocation of residents), as long as the buildings in question are adequately secured and maintained.

Once a conversion plan is approved, the PHA may relocate residents using tenant-based assistance. A PHA must apply for Section 8 tenant-based assistance, and HUD will give a PHA with an approved conversion plan priority for receiving tenant-based assistance. As the development is removed from the public housing inventory, public housing operating subsidy and modernization funding will phase out under the usual process. HUD may require that funding for the initial year of tenant-based assistance be provided from the public housing Capital Fund, Operating Fund, or both.

**IV. Findings and Certifications**

*A. Public Reporting Burden*

The information collection requirements contained in §§ 972.107, 972.109, and 972.110 have been submitted to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). In accordance with the Paperwork Reduction Act, HUD may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid OMB control number.

If you have comments regarding the information collections contained in the rule, submit them by September 21, 1999. Please refer to the title of this rule and send the comments to:

Joseph F. Lackey, Jr., HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503;
and to
Millie Hamman, Reports Liaison Officer, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410.

Although the information collections are largely specified by section 33 of the United States Housing Act of 1937, we are nonetheless interested in receiving comments on the most efficient way to collect information necessary to reviewing the necessary elements of this conversion program. We invite comments that do the following: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of HUD's functions, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the

information to be collected; and (4) Minimize the burden of the information collection on the PHAs, including use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

The burden of the information collections in subpart A of part 972 is estimated as follows:

| Section number | Number of respondents | Number of Responses per respondent | Number of hours per response | Burden hours |
|---|---|---|---|---|
| 972.107 Conversion Plan | 330 | *1.5 | *8 | 3,960 |
| 972.110 Consultation | 330 | *1.5 | 20 | 9,900 |

*The number of responses and times estimated are averages.

The total burden hours for new information collections contained in this rule is 13,860 hours.

*B. Impact on Small Entities*

Under the Regulatory Flexibility Act (5 U.S.C. 605(b)), HUD is required to determine whether this rule will have a significant economic impact on a substantial number of small entities. If the rule would have such impact, the Department is obligated to perform an initial regulatory flexibility analysis to consider alternative ways of achieving the objective of the rule. The entities that are subject to this rule are public housing agencies that administer public housing. PHAs protected by the Act are those that are organizationally part of a city or county political jurisdiction with less than 50,000 in population.

This rule requires PHAs to determine whether any of their developments must be converted to tenant-based assistance. If a development is distressed and not viable in the long term or is more expensive for the PHA to operate as public housing as compared to providing tenant-based assistance, a PHA may be required to develop a conversion plan for removal of the development. Ultimately, the goal of the rule is to promote more efficient delivery of affordable housing to residents of current public housing developments. This efficiency should benefit small PHAs and large PHAs alike. HUD concludes that this rule will not have a significant economic impact on a substantial number of small entities.

HUD anticipates that no more than 10 percent of all PHAs will be subject to the requirements of required conversion. A large portion of the PHAs that will be subject to required conversion will be large, troubled PHAs. This is a result of the statutory direction to identify units subject to the requirements based on the criteria established by the National Commission on Severely Distressed Public Housing, which focused on large troubled agencies.

The conversion plan will involve a one-time cost, and this cost can vary from development to development, depending on the scope of the assessment, location of the property, and other factors. A mitigating factor concerning the cost for PHAs whose properties are potentially subject to the requirements of required conversion is that they may request assistance from HUD in conducting the required analyses in order to offset the costs. HUD has provided such assistance in the past and intends to continue to do so, if resources are available. Therefore, the cost burden on small entities is not likely to be great.

Despite HUD's determination that the rule does not have a substantial impact on a significant number of small entities, we specifically invite comments regarding alternatives to provisions of this rule that would meet the statutory objectives, while mitigating the impact on small entities.

*C. Environmental Impact*

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection between the hours of 7:30 a.m. and 5:30 p.m. weekdays in the Regulations Division at the above address.

*D. Federalism Impact*

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that this rule does not have substantial direct effects on the States or on the relationship, or the distribution of power and responsibilities, between the Federal government and the States. The rule merely states the conditions under which a PHA is required to convert a public housing development to tenant-based assistance.

*E. Unfunded Mandates Reform Act*

This rule does not impose a Federal mandate that will result in the expenditure by State and local governments, in the aggregate, or by the private sector, of $100 million or more in any one year.

*F. Regulatory Review*

The Office of Management and Budget (OMB) reviewed this rule under Executive Order 12866, Regulatory Planning and Review. OMB determined that this rule is a ''significant regulatory action'' as defined in section 3(f) of the Order (although not an economically significant regulatory action under the Order). Any changes made to this rule as a result of that review are clearly identified in the docket file, which is available for public inspection in the Regulations Division of the Office of General Counsel, Room 10276, 451 Seventh Street, SW, Washington, DC 20410–0500.

*G. Catalog*

The Catalog of Federal Domestic Assistance number for the program affected by this rule is 14.850.

**List of Subjects in 24 CFR 972**

Grant programs—housing and community development, low and moderate income housing, public housing.

Accordingly, HUD proposes to add part 972, subpart A, to title 24 of the Code of Federal Regulations as follows:

## PART 972—CONVERSION OF PUBLIC HOUSING TO TENANT-BASED ASSISTANCE

### Subpart A—Required Conversion of Public Housing Developments

Sec.

972.101 What is the definition of ''conversion''?
972.102 What is the purpose of this subpart?
972.103 To what developments is this subpart applicable?
972.104 What are the standards for identifying which public housing developments must be converted?

972.105 How does a PHA determine if a property is viable in the long term?
972.107 What does a conversion plan contain?
972.109 When does a PHA submit a conversion plan to HUD?
972.110 What is the public and resident consultation process for developing a conversion plan?
972.112 What is the effect of conversion on operating subsidy?
972.113 How does the conversion plan relate to a demolition/disposition plan?
972.114 How are HOPE VI developments treated?
972.116 How does a PHA obtain funding to assist residents of the units being converted?
972.118 What actions can HUD take with respect to required conversion?
972.120 What environmental reviews are required?
972.122 When may a PHA proceed with converting a public housing development?

**Subpart B—[Reserved]**

**Authority:** 42 U.S.C. 1437t, 1437z–5, and 3535(d).

## Subpart A—Required Conversion of Public Housing Developments

### § 972.101 What is the definition of ''conversion''?

For purposes of this subpart, the term ''conversion'' means the removal of public housing units from the inventory of a PHA, and the provision of tenant-based or project-based assistance for the residents of the public housing that is being removed. The term ''conversion,'' as used in this subpart, does not necessarily mean the physical removal of the public housing development.

### § 972. 102 What is the purpose of this subpart?

The purpose of this subpart is to implement section 33 of the United States Housing Act of 1937 (42 U.S.C. 1437z–5), which requires PHAs to review their public housing inventory and identify developments, or parts of developments, which must be removed from its stock of public housing operated under an Annual Contributions Contract with HUD. This subpart provides the procedures a PHA must follow to develop and carry out a conversion plan to remove the units from the public housing inventory, including how to provide for the transition for residents of these developments to other affordable housing.

### § 972.103 To what developments is this subpart applicable?

(a) This subpart is applicable to developments not considered for conversion or for assessment for conversion before October 21, 1998, for conversion or for assessment of whether such conversion is required. The developments to which this subpart is applicable are subject to the requirements of section 33 of the United States Housing Act of 1937 (42 U.S.C. 1437z–5).

(b) The provisions of this subpart cease to apply when the units in a development that are subject to the requirements of this subpart have been demolished.

(c) This subpart is not applicable to any development identified before October 21, 1998 by HUD or a PHA for conversion or for assessment of whether such conversion is required (in accordance with section 202 of the Omnibus Consolidated Rescissions and Appropriations Act of 1996 (Pub. L. 104–134, approved April 26, 1996, 110 Stat. 1321–279—1321–281)). See part 971 of this title for regulations applicable to such a development.

### § 972.104 What are the standards for identifying which public housing developments must be converted?

The development, or portions thereof, must be converted if it is a predominantly family development of 250 or more dwelling units and it meets the following criteria:

(a) *The development is on the same or contiguous sites.* This refers to the actual number and location of units, irrespective of HUD development project numbers.

(b) *The development has a vacancy rate of at least 10 percent for dwelling units not in funded, on-schedule modernization, for each of the last three years, and the vacancy rate has not significantly decreased in those three years.* For the determination of vacancy rates, you must use the data you relied upon for your last Public Housing Assessment System (PHAS) or Public Housing Management Assessment Program (PHMAP) certification, as reported on the Form HUD–51234 (report on Occupancy). Units in the following categories must not be included in this calculation:

(1) Vacant units in an approved demolition or disposition program;

(2) Vacant units in which resident property has been abandoned, but only if State law requires the property to be left in the unit for some period of time, and only for the period of time stated in the law;

(3) Vacant units that have sustained casualty damage, but only until the insurance claim is adjusted; and

(4) Units that are occupied by your employees and units that are used for resident services; and

(c) *The development either is distressed housing for which you cannot assure the long-term viability as public housing, or more expensive for you to operate as public housing than providing tenant-based assistance.*

(1) The development is distressed housing that you cannot assure the long-term viability as public housing through reasonable revitalization, density reduction, or achievement of a broader range of household income. (See § 972.105)

(i) Properties meeting the standards set forth in paragraphs (a)(1) and (2) of this section will be assumed to be ''distressed.''

(ii) A development satisfies the long-term viability test only if it is probable that, after reasonable investment, for at least twenty years (or at least 30 years for rehabilitation equivalent to new construction) the development can sustain structural/system soundness and full occupancy; will not be excessively densely configured relative to standards for similar (typically family) housing in the community; will not constitute an excessive concentration of very low-income families; and has no other site impairments that clearly should disqualify the site from continuation as public housing.

(2) The development is more expensive for you to operate as public housing than to provide tenant-based assistance if it has an estimated cost, during the remaining useful life of the project, of continued operation and modernization of the development as public housing in excess of the cost of providing tenant-based assistance under section 8 of the United States Housing Act of 1937 for all families in occupancy, based on appropriate indicators of cost (such as the percentage of total development cost required for modernization).

(i) For purposes of this determination, the costs used for public housing must be those necessary to produce a revitalized development as described in the paragraph (c)(1) of this section.

(ii) These costs, including estimated operating costs, modernization costs and accrual needs must be used to develop a per unit monthly cost of continuing the development as public housing.

(iii) That per unit monthly cost of public housing must be compared to the per unit monthly Section 8 cost.

(iv) Both the method to be used and an example are included in the Appendix to this part.

**§ 972.105 How does a PHA determine if a property is viable in the long term?**

In order for a property to meet the standard of long-term viability, as discussed in § 972.104, the following criteria must be met:

(a) The investment to be made in the development is reasonable. (1) Proposed revitalization costs for viability must be reasonable. Such costs must not exceed, and ordinarily would be substantially less than, 90 percent of HUD's total development cost limit for the units proposed to be revitalized (100 percent of the total development cost limit for any ''infill'' new construction subject to this regulation). The revitalization cost estimate used in your most recent comprehensive plan for modernization is to be used for this purpose, unless you demonstrate or HUD determines that another cost estimate is clearly more realistic to ensure viability and to sustain the operating costs that are described in paragraph (a)(2) of this section.

(2) The overall projected cost of the revitalized development must not exceed the Section 8 cost under the method contained in the Appendix to this part, even if the cost of revitalization is a lower percentage of the TDC than the limits stated in paragraph (a)(1) of this section.

(3) The source of funding for such a revitalization program must be identified and available. In addition to other resources already available to you, you may assume that future formula funds provided through the Capital Fund over five years are available for this purpose.

(b) *Appropriate density is achieved.* The resulting public housing development must have a density which is comparable that which prevails in or is appropriate for the community for similar types of housing (typically family). The PHA must consider the full range of density options and objectives, including the need to reduce density at the site and the need to confine urban sprawl.

(c) *A greater income mix can be achieved.* (1) Measures generally will be required to broaden the range of resident incomes over time to include a significant mix of households with at least one full-time worker (for example, at least 20 percent with an income at least 30 percent of median area income). Measures to achieve a broader range of household incomes must be realistic in view of the site's location. Evidence of such realism typically would include some mix of incomes of other households located in the same census tract or neighborhood, or unique advantages of the public housing site.

(2) For purposes of judging appropriateness of density reduction and broader range of income measures, overall size of the public housing site and its number of dwelling units will be considered. The concerns these measures would address generally are greater as the site's size and number of dwelling units increase.

**§ 972.107 What does a conversion plan contain?**

(a) With respect to any development that is identified under § 972.103, you must develop a 5-year plan for removal of the affected public housing units from the inventory. The plan must consider relocation alternatives for households in occupancy, including other public housing and Section 8 tenant-based assistance, and must provide for relocation from the units as soon as possible. For planning purposes, you must assume that HUD will be able to provide in a timely fashion any necessary Section 8 rental assistance. The plan must include:

(1) A listing of the public housing units to be removed from the inventory;

(2) The number of households to be relocated, by bedroom size;

(3) Identification and obligation status of any previously approved modernization, reconstruction, or other capital funds for the distressed development and your recommendations concerning transfer of these funds to Section 8 or alternative public housing uses;

(4) The relocation resources that will be necessary, including a request for any necessary Section 8 and a description of actual or potential public or other assisted housing vacancies that can be used as relocation housing;

(5) A schedule for relocation and removal of units from the public housing inventory;

(6) Provision for notifying families residing in the development, 90 days prior to displacement that:

(i) The development must be removed from the public housing inventory;

(ii) Such families will receive comparable housing in the form of tenant-based or project-based assistance;

(iii) Any necessary counseling with respect to the relocation will be provided;

(iv) Such families will be relocated to other decent, safe, sanitary and affordable housing that is, to the maximum extent possible, housing of their choice; and

(v) If the development is used as housing after conversion, you must ensure each resident the right to remain in the housing, using tenant-based assistance towards rent;

(7) A record indicating compliance with the statute's requirements for consultation with applicable public housing tenants of the affected development and the unit of local government where the public housing is located, as set forth in § 972.110; and

(8) A description of the plans for demolition or disposition of the public housing units.

(b) Generally, the conversion plan may not be more than a five year plan. However, HUD may allow you up to ten years to remove the units from the inventory, in exceptional circumstances where HUD determines that this is clearly the most cost effective and beneficial means of providing housing assistance over that same period. For example, HUD may allow a longer period of time to remove the units from the public housing inventory, where more than one development is being converted, and a larger number of families require relocation than can easily be absorbed into the rental market at one time, provided the housing has a remaining useful life of longer than five years and the longer time frame will assist in relocation.

**§ 972.109 When does a PHA submit a conversion plan to HUD?**

The requirements of this section are on-going requirements. If you must submit a plan for conversion, you must submit it as part of your Annual Plan.

**§ 972.110 What is the public and resident consultation process for developing a conversion plan?**

(a) You must consult with appropriate public officials and with the appropriate public housing residents in developing your conversion plan.

(b) You may satisfy the requirement for consultation with public officials by obtaining a certification from the appropriate government official that your conversion plan is consistent with the applicable Consolidated Plan. This may be the same certification as is required for your PHA Annual Plan that includes the conversion plan, if the certifying official is the same for both and the certification specifically addresses the conversion plan.

(c) To satisfy the requirement for consultation with the appropriate public housing residents, in addition to the public participation requirements for the PHA Annual Plan, you must:

(1) Hold a meeting with the residents of the affected sites at which you must:

(i) Explain the requirements of this section, especially as they apply to the residents of the affected developments; and

(ii) Provide draft copies of the conversion plan to the residents;

(2) Provide a reasonable comment period for residents; and

(3) Summarize the resident comments for HUD, in the conversion plan, and consider these comments in developing the final conversion plan.

**§ 972.112 What is the effect of conversion on operating subsidy?**

For purposes of determining operating subsidy eligibility, HUD will consider the conversion plan you submit to be the equivalent of a formal request to remove dwelling units from your inventory and ACC. HUD will notify you in writing whether it has approved the conversion plan. Units that are vacant or vacated on or after the written notification date will be treated as approved for deprogramming under § 990.108(b)(1) of this title and also will be provided the phase-down of subsidy pursuant to § 990.114 of this title.

**§ 972.113 How does the conversion plan relate to a demolition/disposition plan?**

Section 18 of the United States Housing Act of 1937 does not apply to demolition of developments removed from your inventory under this section. However, with respect to any such demolition, you must comply with the requirements for environmental review found at part 58 of this title. Section 18 does apply to any disposition of developments removed from your inventory under this section. Therefore, you must submit a disposition application under section 18. HUD's review of any such disposition application will take into account that the development has been required to be converted.

**§ 972.114 How are HOPE VI developments treated?**

Developments with HOPE VI implementation grants that have approved HOPE VI revitalization plans on September 30, 1999 will not be subject to the requirements of this section. Future HUD actions to approve or deny proposed HOPE VI implementation grant revitalization plans must be consistent with the requirements of this section. Developments with HOPE VI planning or implementation grants, but without approved HOPE VI revitalization plans, are fully subject to required conversion standards under this part.

**§ 972.116 How does a PHA obtain funding to assist residents of the units being converted?**

(a) You may apply for tenant-based assistance in accordance with Section 8 program requirements, and HUD will give you a priority for receiving tenant-based assistance to replace the public housing units. It is HUD's policy to provide funds for one-for-one replacement housing with either public housing or tenant-based assistance, if funds are available.

(b) HUD may require that funding for the initial year of tenant-based assistance be provided from the public housing Capital Fund, Operating Fund, or both.

**§ 972.118 What actions can HUD take with respect to required conversion?**

(a) HUD will take appropriate actions to ensure that certain distressed developments are properly identified and converted.

(b) HUD may take any or all of the following actions:

(1) Direct you to cease additional spending in connection with a development that meets, or is likely to meet the statutory criteria, except to the extent that failure to expend such amounts would endanger health or safety;

(2) Identify developments that fall within the statutory criteria where you have failed to do so properly;

(3) Take appropriate actions to ensure the conversion of developments where you have failed to adequately develop or implement a conversion plan;

(4) Require you to revise the conversion plan, or prohibit conversion, where HUD has determined that you have erroneously identified a development as being subject to the requirements of this section; or

(5) Authorize or direct the transfer of capital or operating funds committed to or on behalf of the development (including comprehensive improvement assistance, comprehensive grant or Capital Fund amounts attributable to the development's share of funds under the formula, and major reconstruction of obsolete projects funds) to tenant-based assistance or appropriate site revitalization for the agency.

**§ 982.120 What environmental reviews are required?**

You may not demolish or dispose of units or property until completion of the required environmental review under part 58 of this title (if a responsible entity has assumed environmental responsibility for the project) or part 50 of this title (if HUD is performing the environmental review). Further, HUD will not approve a conversion plan until completion of the required environmental review. However, before completion of the environmental review, HUD may approve the targeted units for deprogramming and may authorize you to undertake other activities proposed in your conversion plan that do not require environmental review (such as certain activities related to the relocation of residents), as long as the buildings in question are adequately secured and maintained.

**§ 972.122 When may a PHA proceed with converting a public housing development?**

You may proceed to convert a development covered by a conversion plan only after receiving written approval from HUD. This approval will be separate from the approval that you receive for your PHA Annual Plan.

Dated: July 16, 1999.

**Harold Lucas,**

*Assistant Secretary for Public and Indian Housing.*

[FR Doc. 99–18773 Filed 7–22–99; 3:35 pm]

BILLING CODE 4210–33–P

Friday
July 23, 1999

# Part VIII

# Department of Housing and Urban Development

**24 CFR Part 972**

**Voluntary Conversion of Developments From Public Housing Stock; Proposed Rule**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

## 24 CFR Part 972

**[Docket No. FR–4476–P–01]**

**RIN 2577–AC02**

## Voluntary Conversion of Developments From Public Housing Stock

**AGENCY:** Office of the Assistant Secretary for Public and Indian Housing, HUD.

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule implements a recent revision to the statute authorizing the public housing and Section 8 housing assistance programs to allow a Public Housing Agency (PHA) to convert any public housing project it owns to tenant-based assistance where the conversion would satisfy statutory objectives. If, after conducting a conversion assessment, the PHA determines that the following conditions are met, it may convert the project: Conversion will not be more expensive than continued operation of the project conversion will benefit residents and the community; and conversion will not adversely affect the availability of affordable housing in the community. The statute requires every PHA to conduct and submit to HUD a conversion assessment for its projects no later than October 1, 2001. However, HUD has the authority to exclude developments or categories of developments from the assessment requirement, or to streamline the conversion assessment requirements, and this rule does include streamlining for specified categories of developments.

**DATES:** *Comments Due Date:* September 21, 1999.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposed rule to the Regulations Division, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–0500. Communications should refer to the above docket number and title. Facsimile (FAX) comments are not acceptable. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

**FOR FURTHER INFORMATION CONTACT:** Rod Solomon, Deputy Assistant Secretary for Policy, Program and Legislative Initiatives, Department of Housing and Urban Development, Office of Public and Indian Housing, 451 Seventh Street, SW, Room 4116, Washington, DC 20410; telephone (202) 708–0713 (this is not a toll-free telephone number). Persons with hearing or speech disabilities may access this number via TTY by calling the free Federal Information Relay Service at 1–800–877–8339.

**SUPPLEMENTARY INFORMATION:**

### I. Statutory Basis

Section 22 of the United States Housing Act of 1937 (42 U.S.C. 1437 *et seq.*) (the ''1937 Act''), as amended by section 533 of the Quality Housing and Work Responsibility Act of 1998 (title V of the FY 1999 HUD Appropriations Act; Public Law 105–276, approved October 21, 1998; 112 Stat. 2518–2680) (the ''Public Housing Reform Act''), authorizes Public Housing Agencies (PHAs) to convert a development to tenant-based assistance by removing the development or a portion of a development from its public housing inventory and providing for relocation of the residents or provision of tenant-based assistance to them. This action is permitted only when that change would be economical, be beneficial to residents of the development and the surrounding area, and not have an adverse impact on the availability of affordable housing.

The statute requires a PHA to perform a conversion assessment as the first step toward the change. If that produces support for converting the units, the PHA may develop, and submit, a conversion plan to HUD. A PHA may convert the public housing only if the conversion plan has been approved by HUD. The statute also requires certain assessment actions be taken before October, 1, 2001.

### II. Relationship of Voluntary Conversions to Required Conversions

This proposed rule would implement the voluntary conversion requirements set forth in section 22 of the 1937 Act through the creation of a new 24 CFR part 972, subpart B. Subpart A of new 24 CFR part 972 would implement section 537 of the Public Housing Reform Act, which added a new section 33 to the 1937 Act. New Section 33 sets forth provisions for the required conversion of distressed public housing to tenant-based assistance. HUD is implementing section 33 of the 1937 Act through a separate proposed rulemaking.

Section 202 of the Departments of Veterans Affairs and Housing and Urban Development and Independent Agencies Appropriations Act, 1996 (42 U.S.C. 1437l note) provided for a program of required conversion of distressed public housing. HUD implemented that statute by issuing the regulations now found at 24 CFR part 971. In addition to creating new section 33, section 537 of the Public Housing Reform Act repealed section 202. However, those developments that have already been identified by PHAs or by HUD for conversion, or for assessment of whether such conversion is required, continue to be subject to the requirements of section 202 and the part 971 regulations implementing that section.

### III. Description of Specific Sections

*A. Conversion Assessment Requirements*

The Public Housing Reform Act requires that a PHA conduct a conversion assessment for each development that it operates as public housing. HUD is given the authority to exempt certain classes of developments from this requirement, or streamline the requirements of the conversion assessment. In this rule, HUD has streamlined the requirements of the conversion assessment, but requires that every PHA review and determine the best course of action with respect to each development that it operates as public housing.

Any PHA that has passed the Public Housing Assessment System (PHAS) physical conditions indicator must either conduct a conversion assessment for each public housing development, or certify that it has reviewed the operations of the development, and has determined that a full conversion assessment is unnecessary. Any PHA that has failed the PHAS physical conditions indicator must conduct a conversion assessment for each public housing development; however, a streamlined assessment may be conducted. The streamlined conversion assessment for these PHAs must include the cost analysis, comparing the cost of providing tenant-based assistance with the cost of continuing to operate the development as public housing, for each public housing development. This will ensure that the PHA, with respect to each development, at least makes and considers the threshold determination whether it is more economical to convert the public housing. Any PHA that intends to convert a development to tenant-based assistance must conduct the full conversion assessment, including all of the elements listed in § 972.209.

PHAs will be receiving their first PHAS scores at various times during the period for which conversion assessments are required. The last of

these scores would be received with ample time remaining in this period for PHAs to conduct the required streamlined assessments, in the event they fail the physical conditions indicator. PHAs that do not want to wait for PHAS scores, however, may fulfill the assessment requirement by conducting the streamlined assessments (cost test only) for each development.

HUD believes that Congressional intent was to ensure that every PHA review the operations of developments operated as public housing, and determine if conversion would be appropriate. The Senate Committee Report (S. Rep. No. 105–21, at 27 (1997)) states that this section ''provides a framework for assessing the relative costs of tenant-based assistance and public housing so that PHAs can make informed judgements about their policies.'' At the same time, Congress did not intend for the requirements of a conversion assessment to place an undue burden on PHAs, and therefore gave HUD broad authority to waive or provide for streamlined assessments (S. Rep. No 105–21, at 27 (1997)).

The certifications and streamlined assessments that HUD is proposing will fulfill both of these intentions. PHAs whose developments are most at risk, where HUD has found that the PHA's stock does not meet basic standards, must conduct a streamlined assessment, including the cost analysis. All others at least must consider the relative costs of public housing and vouchers with respect to each development. This will ensure that PHAs consider the most appropriate future action for all developments, and that PHAs with substandard physical conditions assess the relative costs of tenant-based assistance and public housing before determining the best course of action for each of these properties. HUD is considering the use of a web-based cost comparison calculator on HUD's internet homepage that would reduce the calculation burden on PHAs. HUD is also considering a refinement of the existing cost calculation in the appendix to part 972 to include a more precise net present value calculation.

A conversion assessment, or certification with respect to any development for which a conversion assessment is not necessary, must be submitted to HUD no later than October 1, 2001. PHAs should include the conversion assessments, or certifications as part of the next PHA Annual Plan to be submitted to HUD, after their completion. If the next PHA Annual Plan submission will not be submitted to HUD by October 1, 2001, a PHA must have the conversion assessment on file by October 1, 2001, and include it in the next PHA Annual Plan submission. A PHA may otherwise elect to undertake a conversion assessment at any time for any or all of its developments, and submit it to HUD as part of its next PHA Annual Plan.

Although HUD believes that it has streamlined the conversion assessment in such a way that PHAs will not be burdened by the requirements, HUD specifically invites any comments regarding how the requirements for conversion assessments can more efficiently fulfill the purposes of this section.

A full conversion assessment is required for any PHA that seeks approval to convert a property to tenant-based assistance. A full conversion assessment includes the cost analysis, an analysis of the market value of the public housing, an analysis of the rental market conditions, an analysis of the likely impact of conversion on the neighborhood, and, if applicable, a description of any actions that will be taken to convert the public housing.

The cost analysis, which is required as part of the full conversion assessment, and is necessary to implement a conversion plan, uses the methodology currently used for purposes of required conversion requirements (*See* Appendix to 24 CFR part 971). The appendix to new part 972 would retain this comparison on a monthly cost basis; the results would not change if one calculated a net present value for the remaining useful life of the public housing, because the monthly costs for both public housing and tenant-based assistance would be multiplied by the number of months in question. In response to statutory language that the cost of public housing must be based on ''the remaining useful life of the project,'' HUD has made one specific change to the methodology used for the cost analysis. This change is in the amount of time on which a PHA may amortize its modernization spending. In the current cost test, a PHA must use a time frame of twenty years in keeping with the expected life of the capital improvements (30 years if the work is equivalent to new construction). A PHA that is voluntarily conducting a conversion assessment and seeking approval for conversion may be permitted by HUD to use a time frame of less than 20 or 30 years, so long as the time frame is chosen in five year intervals (i.e. 5 years, 10 years, or 15 years), and the PHA provides HUD with a justification to why a shorter time frame is a reasonable estimate of the property's remaining useful life.

The cost analysis compares the cost of operating a revitalized public housing development with the cost of providing tenant based assistance to the residents of the public housing development. HUD realizes, however, that those PHAs wishing to voluntarily convert a development may not have a proposed revitalization plan. Further, HUD is concerned that those PHAs wanting to voluntarily convert a public housing development may not have sufficient incentive to fully consider whether that development could be revitalized, and in particular may not fully consider whether vacancies and operating costs could be reduced through the reasonable investment of funds in the development. Therefore, HUD is seeking comments on whether to give a PHA the option to:

1. Prepare a revitalization plan for the public housing development (for purposes of the cost analysis, the operating costs of the development would be based on the revitalization plan); or

2. For purposes of the cost analysis, assume that a revitalized development would result in a 10% reduction in current operating costs (this option would only be available to those PHAs that calculate current operating costs based on no greater than a 10% vacancy rate).

The statute states that the cost analysis should be conducted on both a net present value basis, and in terms of new budget authority. The appendix thus adds a calculation for new budget authority. The difference between that calculation and the calculation for net present value is that any capital investment in the public housing is not amortized over the remaining useful life in a manner that reflects the cost of expending the capital funds immediately. In order for a PHA to convert a public housing development, the cost of tenant-based assistance has to be less than the cost of public housing, both on a net present value basis, and based on new budget authority.

The analysis of market value requires that a PHA purchase independent appraisals. Although Congress states that it did not intend for PHAs to need expensive, new appraisals (S. Rep. No. 105–21, at 27 (1997)), under the proposed rule this part of the conversion assessment is not mandatory for any PHA except those that are planning to convert a public housing development to tenant-based assistance. HUD believes that appraisals are the most effective means to undertaking the required estimates of market value.

An analysis of the rental market conditions, and an analysis of the impact of conversion on the neighborhood must be included in the conversion assessment as well. PHAs should rely, to the greatest extent possible, on existing data sources. In addition, PHAs that are conducting a conversion assessment for more than one property may be able to use the same information and analyses in the assessments submitted to HUD.

HUD specifically invites comments on whether additional guidance should be given regarding how PHAs should conduct the analysis of rental market conditions and the analysis of the impact on the neighborhood and how these analyses relate to the PHA's obligation to affirmatively further fair housing.

*B. Conversion Plan*

In order for a PHA to convert a public housing development to tenant-based assistance, a PHA must submit, and HUD must approve a conversion plan. A conversion plan must be consistent with any settlement agreement that the PHA has entered into. A conversion plan must be submitted to HUD as part of the PHA Annual Plan submission. Although the conversion plan will be part of a PHA Annual Plan submission, the conversion plan will be subject to a separate approval from HUD. A separate approval is required because the standards for approval of the conversion plan differ from the standards for approval of the PHA Annual plan submission. A PHA may not proceed with conversion until it receives a separate written approval of its conversion plan from HUD.

A PHA may not demolish or dispose of units or property until completion of the required environmental review under 24 CFR part 58 (if a Responsible Entity has assumed environmental responsibility for the project) or 24 CFR part 50 (if HUD is performing the environmental review). Further, HUD will not approve a conversion plan until completion of the required environmental review. However, before completion of the environmental review, HUD may approve the targeted units for deprogramming and may authorize the PHA to undertake other activities proposed in the conversion plan that do not require environmental review (such as certain activities related to the relocation of residents), as long as the buildings in question are adequately secured and maintained.

If a conversion plan is approved by HUD, the PHA may remove the public housing from the inventory and relocate the residents using tenant-based or project-based assistance. If the PHA proposes in its conversion plan to demolish or dispose of the development, the conversion plan will serve as the demolition or disposition application, and a separate application will not be required by HUD. Alternatively, the PHA may retain ownership of the converted buildings as rental units or for other purposes.

Once a conversion plan is approved, tenants may be relocated using tenant-based assistance. A PHA must apply for Section 8 tenant-based assistance and the PHA will be given a priority for receiving tenant-based assistance. Although the statute also gives HUD the authority to consent to a transfer of the funds used for public housing to tenant-based assistance, HUD believes that the most direct way to fund the Section 8 tenant-based assistance is through annual appropriations. As the development is removed from the public housing inventory, public housing operating subsidy and modernization funding will phase out under the usual process. HUD may require that funding for the initial year of tenant based assistance be provided from the new public housing Capital Fund, Operating Fund, or both.

## IV. Issues Highlighted for Public Comment

Although HUD welcomes public comment on all aspects of this proposed rule, in particular it seeks comments on the following issues. Public comment is invited on this proposed rule in its entirety, including those issues discussed elsewhere in the preamble. All comments will be considered in the development of the final rule.

*A. Use of Voluntary Conversion Process To Promote Housing Deconcentration*

HUD requests comments on the possible use of the voluntary conversion process to promote deconcentration of assisted housing, through partial conversion to vouchers of public housing developments, and subject to compliance with the standards of this regulation. For example, a PHA might decide to retain one third of a large public housing development as public housing, and leverage private financing to renovate the development. Two thirds of the public housing units would be replaced with vouchers to be used elsewhere. If successful, such an approach might result in public housing in a mixed-income setting, vouchers used in a manner that deconcentrates poverty and renovation of private market units in an area that needs revitalizing. Would such a result be desirable, financially feasible, or workable, in many situations? If such a result would be desirable, what would HUD need to do to promote it in appropriate situations?

*B. Total Development Cost (TDC) Calculation*

Section 520 of the Public Housing Reform Act made several changes to the requirements governing the Total Development Cost (TDC) limit for public housing development. Due to these changes, it may no longer be appropriate to use full TDC for accrual. It may be more appropriate to use a housing construction cost component of TDC. This reflects the idea that accrual should primarily be based on the hard costs of revitalization. Unlike TDC, housing construction cost does not include the soft costs associated with redevelopment, and therefore HUD believes that using housing construction cost may yield a better estimate of accrual. HUD may make this change at the final rule stage and specifically requests comment on this issue.

*C. Impact of Conversion on Minorities and Persons With Disabilities*

HUD requests comments on the best means to ensure that fair housing considerations are appropriately addressed during the voluntary conversion process. In particular, HUD requests comments on whether a description should be required, as part of a full conversion assessment, of the proposed conversion's impact on racial and ethnic minorities and persons with disabilities. This will assist the PHA to carry out its responsibilities under the nondiscrimination requirements of the Fair Housing Act (42 U.S.C. 3601 *et seq.*) to affirmatively further fair housing.

## V. Findings and Certifications

*Public Reporting Burden*

The information collection requirements contained in §§ 972.209 and 972.217 have been submitted to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). In accordance with the Paperwork Reduction Act, HUD may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid OMB control number.

The burden of the information collections in this proposed rule is estimated as follows:

REPORTING AND RECORDKEEPING BURDEN

| Section reference | Number of parties | Number of responses per respondent* | Estimated average time for requirement (in hours)* | Estimated annual burden (in hours) |
|---|---|---|---|---|
| 972.209 | 330 | 1 | 8 | 2,640 |
| 972.217 | 165 | 1.5 | 28 | 6,930 |
| Total Reporting and Recordkeeping Burden (Hours) | | | | 9,570 |

*The number of responses and times estimated are averages.

Although the information collections are largely specified by section 22 of the United States Housing Act of 1937, HUD is nonetheless interested in receiving comments on the most efficient way to collect information necessary to reviewing the necessary elements of this conversion program. In accordance with 5 CFR 1320.8(d)(1), HUD is soliciting comments from members of the public and affected agencies concerning this collection of information to:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Interested persons are invited to submit comments regarding the information collection requirements in this proposal. Comments must be received within sixty (60) days from the date of this proposal. Comments must refer to the proposal by name and docket number (FR–4476) and must be sent to:

Joseph F. Lackey, Jr., HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503;
and
Mildred Hamman, Reports Liaison Officer, Office of the Assistant Secretary for Public and Indian Housing, Department of Housing and Urban Development, 451—7th Street, SW, Room 4244, Washington, DC 20410

*Impact on Small Entities*

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)) (the RFA), has reviewed and approved this proposed rule, and in so doing certifies that this rule will not have a significant economic impact on a substantial number of small entities. The reasons for HUD's determination are as follows:

(1) *A Substantial Number of Small Entities Will Not be Affected.* The entities that would be subject to this rule are public housing agencies that administer public housing. Under the definition of ''Small governmental jurisdiction'' in section 601(5) of the RFA, the provisions of the RFA are applicable only to those few public housing agencies that are part of a political jurisdiction with a population of under 50,000 persons. The number of entities potentially affected by this rule is therefore not substantial.

(2) *No Significant Economic Impact.* This rule requires PHAs to perform conversion assessments for certain developments using readily available data to determine whether those developments should be converted to tenant-based assistance. HUD has provided for streamlined assessments, including certifications for any PHA that has passed the Public Housing Assessment System (PHAS) physical conditions indicator and a conversion assessment limited to the cost analysis for other PHAs.

This is a one-time requirement as contemplated by the Public Housing Reform Act. Smaller PHAs will have fewer developments to consider, and the burden on them should consequently be proportionally smaller. Ultimately, the goal of the rule is to promote more efficient delivery of affordable housing to residents of current public housing developments. This efficiency should benefit small PHAs and large PHAs alike.

Accordingly, the economic impact of this rule will not be significant, and it will not affect a substantial number of small entities. Notwithstanding HUD's determination that this rule will not have a significant economic effect on a substantial number of small entities, HUD specifically invites comments regarding any less burdensome alternatives to this rule that will meet HUD's objectives as described in this preamble.

*Environmental Impact*

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4223). The Finding of No Significant Impact is available for public inspection between the hours of 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC.

*Federalism Impact*

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that this rule will not have federalism implications concerning the division of local, State, and Federal responsibilities. The rule merely states the preconditions for a PHA to voluntarily convert a public housing development to tenant-based assistance. No programmatic or policy change will result from this rule that will affect the relationship between the Federal government and State and local governments.

*Unfunded Mandates Reform Act*

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This proposed rule does not impose any Federal mandates on any State, local, or tribal governments or the private sector within the meaning of Unfunded Mandates Reform Act of 1995.

*Regulatory Planning and Review*

The Office of Management and Budget (OMB) reviewed this rule under Executive Order 12866, Regulatory

Planning and Review. OMB determined that this rule is a ''significant regulatory action'' as defined in section 3(f) of the Order (although not an economically significant regulatory action under the Order). Any changes made to this rule as a result of that review are identified in the docket file, which is available for public inspection in the office of the Department's Rules Docket Clerk, Room 10276, 451 Seventh Street, SW, Washington, DC 20410–0500.

*Catalog of Federal Domestic Assistance Number*

The Catalog of Federal Domestic Assistance number for the program affected by this rule is 14.850.

**List of Subjects in 24 CFR Part 972**

Grant programs—housing and community development, Low and moderate income housing, Public housing.

For the reasons discussed in the preamble, HUD proposes to amend title 24 of the Code of Federal Regulations as follows:

1. Add part 972, subpart B and an appendix to part 972 to read as follows:

## PART 972—CONVERSION OF PUBLIC HOUSING TO TENANT-BASED ASSISTANCE

**Subpart A—[Reserved]**

**Subpart B—Voluntary Conversion of Public Housing Developments**

Sec.


972.201 What is the definition of ''conversion''?
972.203 What is the purpose of this subpart?
972.205 What is the procedure for a PHA to follow if it wants to convert a public housing project to tenant-based assistance?
972.207 For what developments must a PHA perform a conversion assessment?
972.209 What does a conversion assessment contain?
972.211 When does a PHA submit a conversion assessment to HUD?
972.213 What conditions must be addressed in the conversion assessment that will allow HUD to approve conversion?
972.215 What is the public and resident consultation process for developing a conversion plan?
972.217 What are the components of a conversion plan?
972.219 When does a PHA submit a conversion plan to HUD?
972.221 What is the HUD process for approving the conversion plan?
972.223 What action does HUD take with respect to a PHA's conversion plan?
972.225 When may a PHA proceed to convert a development?

**Appendix to Part 972—Methodology of Comparing Cost of Public Housing With the Cost of Tenant-Based Assistance**


**Authority:** 42 U.S.C. 1437t, 14372–5, 3535(d).

### Subpart A—[Reserved]

### Subpart B—Voluntary Conversion of Public Housing Developments

#### § 972.201 What is the definition of ''conversion''?

For purposes of this subpart, the term ''conversion'' means the removal of public housing units from the inventory of a Public Housing Agency (PHA), and the provision of tenant-based, or project-based assistance for the residents of the public housing that is being removed. The term ''conversion,'' as used in this subpart, does not necessarily mean the physical removal of the public housing development.

#### § 972.203 What is the purpose of this subpart?

This subpart implements section 22 of the United States Housing Act of 1937 (42 U.S.C. 1437t). The purposes of this subpart are to:

(a) Require PHAs to perform an assessment which considers developments for which conversion of public housing may be appropriate; and

(b) Provide a basis for a PHA to take action for conversion on a voluntary basis.

#### § 972.205 What is the procedure for a PHA to follow if it wants to convert a public housing project to tenant-based assistance?

(a) A PHA must perform a full conversion assessment, in accordance with §§ 972.209–972.211, and submit it to HUD as part of the next PHA Annual Plan submission.

(b) A PHA must prepare a conversion plan, in accordance with § 972.217, and submit it to HUD, as part of the next PHA Annual Plan, within one year after submitting the conversion assessment.

(c) A PHA may proceed to convert the project if HUD approves the conversion plan.

#### § 972.207 For what developments must a PHA perform a conversion assessment?

(a) *General rule.* (1) *Required initial conversion assessment.* A PHA must conduct a full conversion assessment in accordance with § 972.209 for each development once during the period of October 1, 1999 through September 30, 2001, unless:

(i) The development is subject to required conversion, under subpart A of this part or part 971 of this title;

(ii) The development is the subject of a plan for demolition that has not been disapproved by HUD; or

(iii) A HOPE VI revitalization grant has been awarded for the development.

(2) *Optional future conversion assessments.* A PHA may otherwise elect to undertake a conversion assessment at any time for any or all of its developments, and submit it to HUD as part of its next PHA Annual Plan.

(b) *Streamlined Assessment.* With respect to the required initial conversion assessment, the following streamlining will apply:

(1) *PHAs that have passed the Public Housing Assessment System (PHAS) physical conditions indicator.* (i) Any PHA that passes the physical condition component of PHAS (part 902, subpart B, of this chapter) may designate developments for which it will not conduct a conversion assessment.

(ii) In order not to assess a particular development, the PHA must certify that it:

(A) Has reviewed the development's operation as public housing;

(B) Considered converting the public housing to tenant-based assistance; and

(C) Concluded that an assessment is unnecessary because conversion would not satisfy the three conditions necessary for voluntary removal set forth in § 972.213(a).

(iii) A PHA must maintain documentation of the reasoning with respect to each development for which it certifies that an assessment is unnecessary.

(2) *PHAs that fail the PHAS physical condition indicator.* (i) Any PHA that does not receive a passing score on the PHAS physical conditions indicator must conduct an assessment for each development except those listed in paragraphs (a)(1)–(3) of this section.

(ii) However, any PHA that is required to perform a conversion assessment for a development, may submit to HUD a streamlined conversion assessment that includes the cost analysis, comparing the cost of providing tenant-based assistance with the cost of continuing to operate the development as public housing, described at § 972.209(a).

(c) *Full assessment required for conversion.* A PHA must submit a full conversion assessment (not a streamlined assessment under paragraph (b) of this section) for any public housing project it wishes to convert to tenant-based assistance.

#### § 972.209 What does a conversion assessment contain?

The conversion assessment contains five elements, as described below:

(a) *Cost analysis.* A PHA must conduct a cost analysis comparing the

cost of providing Section 8 tenant-based assistance with the cost of continuing to operate the development as public housing for the remainder of its useful life. See the Appendix to this part for the required methodology for this cost analysis.

(b) *Analysis of the market value.* (1) A PHA must have an independent appraisal conducted to compare the market value of the development before and after rehabilitation. In both cases, the market value must be based on the use of the development as public housing.

(2) In addition, the appraisal must compare:

(i) The market value of the development before rehabilitation, based on the use of the development as public housing, with the market value of the development after conversion; with

(ii) The market value of the development after rehabilitation, based on the use of the development as public housing, with the market value of the development after conversion.

(3) A copy of the appraisal findings and the analysis of market value of the development in the conversion assessment must be provided in the conversion assessment.

(c) *Analysis of rental market conditions.* (1) A PHA must conduct an analysis of the likely success of using tenant-based assistance for the residents of the public housing development. This analysis must include an assessment of the availability of decent and safe dwelling units rented at or below the payment standard established for Section 8 tenant-based assistance.

(2) In conducting this assessment, a PHA must take into account:

(i) Its overall use of rental certificates or vouchers under lease and the success rates of using Section 8 tenant-based assistance in the community for the appropriate bedroom sizes; and

(ii) Any particular characteristics of the specific residents of the public housing which may affect their ability to be housed.

(d) *Impact analysis.* A PHA must describe the likely impact of conversion of the public housing development on the neighborhood in which the public housing is located. This should include:

(1) The impact on the availability of affordable housing in the neighborhood; and

(2) The impact on the concentration of poverty in the neighborhood.

(e) *Conversion implementation.* If a PHA intends to convert the development (or a portion of it) to tenant-based assistance, the conversion assessment must include a description of any actions the PHA plans to take in converting the development. This must include a general description of the planned future uses of the development, and the means, and timetable for accomplishing such uses.

### § 972.211 When does a PHA submit a conversion assessment to HUD?

(a) *Required initial conversion assessment.* (1) A PHA must submit a conversion assessment, or certification that a conversion assessment is unnecessary, for any development for which it is required under § 972.207(a) no later than October 1, 2001. The conversion assessment, or the certification that a conversion assessment is unnecessary, must be submitted to HUD as part of the next PHA Annual Plan after its completion. If the next PHA Annual Plan submission will not be submitted to HUD by October 1, 2001, a PHA must have the conversion assessment on file by October 1, 2001, and include it in the next PHA Annual Plan submission.

(b) *Optional future conversion assessments.* A PHA may otherwise elect to undertake a conversion assessment for any or all of its developments, and submit it to HUD as part of its next PHA Annual Plan.

(c) *Required updated conversion assessment.* Where a PHA proposes to convert a development to tenant-based assistance, it must submit an updated conversion assessment if the conversion assessment otherwise would be more than one year older than the conversion plan to be submitted to HUD. To update a conversion assessment, a PHA must ensure that the analysis of rental market conditions is based on the most recently available data, and must include any data that have changed since the initial conversion assessment. A PHA may submit the initial cost analysis and comparison of the market value of the public housing before and after rehabilitation and/or conversion if there is no reason to believe that such information has changed significantly.

### § 972.213 What conditions must be addressed in the conversion assessment that will allow HUD to approve conversion?

(a) *Conditions.* In order to convert a public housing development, the PHA must conduct a conversion assessment that demonstrates that the conversion of the development:

(1) Will not be more expensive than continuing to operate the development (or portion of it) as public housing;

(2) Will principally benefit the residents of the public housing development to be converted and the community; and

(3) Will not adversely affect the availability of affordable housing in the community.

(b) *Evidence.* (1) The relative expense of continuing operation as public housing or conversion to tenant-based assistance may be demonstrated by the cost analysis and market value analysis.

(2) The benefit to residents and the community may be demonstrated in the rental market analysis, the analysis of the impact on the neighborhood, the market value analysis, and the proposed future use of the development.

(3) The impact on affordable housing may be demonstrated in the rental market analysis and the analysis of the impact of conversion on the neighborhood.

### § 972.215 What is the public and resident consultation process for developing a conversion plan?

(a) A conversion plan must be developed in consultation with appropriate public officials and with significant participation by residents of the development.

(b) The requirement for consultation with public officials may be satisfied by obtaining a certification from the appropriate State or local officials that the conversion plan is consistent with that government's Consolidated Plan. This may be the same certification as is required for the PHA Annual Plan that includes the conversion plan, so long as the certification specifically addresses the conversion plan.

(c) To satisfy the requirement for significant participation by residents of the development, in addition to the public participation requirements for the PHA Annual plan, a PHA must:

(1) Hold a meeting with the residents of the affected sites at which the PHA:

(i) Explain the requirements of section 22 of the United States Housing Act and these regulations, especially as they apply to residents of affected developments; and

(ii) Provides draft copies of the conversion plan to them.

(2) Provide a reasonable comment period for residents; and

(3) Summarize the resident comments for HUD and consider these comments in developing the final conversion plan.

### § 972.217 What are the components of a conversion plan?

A conversion plan must:

(a) Describe the conversion and future use or disposition of the public housing development. If the future use of the development is demolition or disposition, the PHA is not required to submit a demolition or disposition application, so long as the PHA submits,

and HUD approves a conversion plan, which includes a description of the future uses of the development.

(b) Include a timetable, showing when any actions will be taken in converting the development, relocating the tenants, and when the future use will take place.

(c) Include an impact analysis of the conversion on the affected community. This may include the description that is required as part of the conversion assessment.

(d) Include a summary of the resident comments received when developing the conversion plan.

(e) Include the statement used to notify each family residing in the affected public housing 90 days before conversion that the development will no longer be used as public housing and to explain the benefits that will be offered, which must include at least the following information:

(1) The PHA will offer the family comparable tenant-based or project-based assistance that meets the Housing Quality Standards (HQS) for decent, safe and sanitary housing, and that is located in an area that is generally not less desirable than the displaced person's original development;

(2) The PHA will provide the family with actual and reasonable relocation expenses that they incur as a result of the conversion;

(3) The PHA will provide any counseling the family needs as a result of being displaced by the conversion; and

(4) If the development is used as housing after conversion, the PHA will ensure each resident may choose to remain in the housing, using tenant-based assistance towards rent.

(f) Confirm that any proceeds received from the conversion are subject to the limitations under section 18(a)(5) of the United States Housing Act of 1937 (42 U.S.C. 1437p(a)(5)) applicable to proceeds resulting from demolition or disposition.

(g) Summarize why the conversion assessment for the public housing project supports the three condition necessary for conversion described in § 972.213(a).

**§ 972.219 When does a PHA submit a conversion plan to HUD?**

A PHA that wishes to convert a public housing project to tenant-based assistance must submit a conversion plan to HUD. A PHA must prepare a conversion plan, in accordance with § 972.217, and submit it to HUD, as part of the next PHA Annual Plan within one year after submitting the conversion assessment.

**§ 972.221 What is the HUD process for approving the conversion plan?**

Although a PHA will submit its conversion plan to HUD as part of the PHA Annual Plan, the conversion plan will be treated separately for purposes of HUD approval. A PHA needs a separate written approval from HUD in order to proceed with conversion. HUD will make reasonable efforts to respond to a conversion plan within 90 days.

**§ 972.223 What action does HUD take with respect to a PHA's conversion plan?**

(a) When a PHA submits a conversion plan to HUD, HUD will review it to determine whether:

(1) The conversion plan is complete and includes all of the information required under § 972.217; and

(2) The conversion plan is consistent with the conversion assessment the PHA submitted.

(b) HUD will disapprove a conversion plan only if HUD determines that:

(1) The conversion plan is plainly inconsistent with the conversion assessment;

(2) There is reliable information and data available to the Secretary that contradicts the conversion assessment; or

(3) The conversion plan is incomplete or otherwise fails to meet the requirements under § 972.217.

**§ 972.225 When may a PHA proceed to convert a development?**

(a) A PHA may proceed to convert a development covered by a conversion plan only after receiving written approval of the conversion plan from HUD. This approval will be separate from the approval that the PHA receives for its PHA Annual Plan. A PHA may apply for tenant-based assistance in accordance with Section 8 program requirements, and will be given priority for receiving tenant-based assistance to replace the public housing units.

(b) A PHA may not demolish or dispose of units or property until completion of the required environmental review under part 58 of this title (if a Responsible Entity has assumed environmental responsibility for the project) or part 50 of this title (if HUD is performing the environmental review). Further, HUD will not approve a conversion plan until completion of the required environmental review. However, before completion of the environmental review, HUD may approve the targeted units for deprogramming and may authorize the PHA to undertake other activities proposed in the conversion plan that do not require environmental review (such as certain activities related to the relocation of residents), as long as the buildings in question are adequately secured and maintained.

(c) For purposes of determining operating subsidy eligibility, the submitted plan will be considered the equivalent of a formal request to remove dwelling units from the PHA's inventory and ACC and approval (or acceptance). Units that are vacant or are vacated on or after the written notification date will be treated as approved for deprogramming under § 990.108(b)(1) of this title, and will also be provided the phase down of subsidy pursuant to § 990.114 of this title.

(d) HUD may require that funding for the initial year of tenant based assistance be provided from the new public housing Capital Fund, Operating Fund, or both.

## Appendix to Part 972—Methodology of Comparing Cost of Public Housing With the Cost of Tenant-Based Assistance

**I. Public Housing-Net Present Value**

The costs used for public housing shall be those necessary to produce a revitalized development as described in the next paragraph. These costs, including estimated operating costs, modernization costs and costs to address accrual needs must be used to develop a per unit monthly cost of continuing the development as public housing. That per unit monthly cost of public housing must be compared to the per unit monthly Section 8 cost.

The estimated cost of the continued operation and modernization as public housing shall be calculated as the sum of total operating, modernization, and accrual costs, expressed on a monthly per occupied unit basis. The costs shall be expressed in current dollar terms for the period for which the most recent Section 8 costs are available.

*A. Operating Costs*

1. The proposed revitalization plan must indicate how unusually high current operating expenses (e.g, security, supportive services, maintenance, utilities) will be reduced as a result of post-revitalization changes in occupancy, density and building configuration, income mix and management. The plan must make a realistic projection of overall operating costs per occupied unit in the revitalized development, by relating those operating costs to the expected occupancy rate, tenant composition, physical configuration and management structure of the revitalized development. The projected costs should also address the comparable costs of buildings or developments whose siting, configuration, and tenant mix is similar to that of the revitalized public housing development.

2. The development's operating cost (including all overhead costs pro-rated to the development—including a Payment in Lieu of Taxes (PILOT) or some other comparable payment, and including utilities and utility allowances) shall be expressed as total operating costs per month, divided by the

number of units occupied by households. For example, if a development will have 1,000 units occupied by households and will have $300,000 monthly in non-utility costs (including pro-rated overhead costs and appropriate P.I.L.O.T.) and $100,000 monthly in utility costs paid by the authority and $50,000 monthly in utility allowances that are deducted from tenant rental payments to the authority because tenants paid some utility bills directly to the utility company, then the development's monthly operating cost per occupied unit is $450—the sum of $300 per unit in non-utility costs, $100 per unit in direct utility costs, and $50 per unit in utility allowance costs.

3. In justifying the operating cost estimates as realistic, the plan should link the cost estimates to its assumptions about the level and rate of occupancy, the per-unit funding of modernization, any physical reconfiguration that will result from modernization, any planned changes in the surrounding neighborhood and security costs. The plan should also show whether developments or buildings in viable condition in similar neighborhoods have achieved the income mix and occupancy rate projected for the revitalized development. The plan should also show how the operating costs of the similar developments or buildings compare to the operating costs projected for the development.

4. In addition to presenting evidence that the operating costs of the revitalized development are plausible, when the per-unit operating cost of the renovated development is more than ten percent lower than the current per-unit operating cost of development, then the plan should detail how the revitalized development will achieve its reduction in costs. To determine the extent to which projected operating costs are lower than current operating costs, the current per-unit operating costs of the development will be estimated as follows:

a. If the development has reliable operating costs and if the overall vacancy rate is less than twenty percent, then these costs will be divided by the sum of all occupied units and vacant units fully funded under PFS plus fifty percent of all units not fully funded under PFS. For instance, if the total monthly operating costs of the current development are $6.6 million and it has 1,000 occupied units and 200 vacant units not fully funded under PFS (or a 17 percent overall vacancy rate), then the $6.6 million is divided by 1100—1000 plus 50 percent of 200—to give a per unit figure of $600 per unit month. By this example, the current costs of $600 per occupied unit are at least ten percent higher than the projected costs per occupied unit of $450 for the revitalized development, and the reduction in costs would have to be detailed.

b. If the development currently lacks reliable cost data or has a vacancy rate of twenty percent or higher, then its current per unit costs will be estimated as follows. First, the per unit cost of the entire authority will be computed, with total costs divided by the sum of all occupied units and vacant units fully funded under PFS plus fifty percent of all vacant units not fully funded under PFS. Second, this amount will be multiplied by the ratio of the bedroom adjustment factor of the development to the bedroom adjustment factor of the Housing Authority. The bedroom adjustment factor, which is based on national rent averages for units grouped by the number of bedrooms and which has been used by HUD to adjust for costs of units when the number of bedrooms vary, assigns to each unit the following factors:.70 for 0-bedroom units, .85 for 1-bedroom units, 1.0 for 2-bedroom units, 1.25 for 3-bedroom units, 1.40 for 4-bedroom units, 1.61 for 5-bedroom units, and 1.82 for 6 or more bedroom units. The bedroom adjustment factor is the unit-weighted average of the distribution. For instance, if the development with one thousand occupied units had in occupancy 500 two-bedroom units and 500 three-bedroom units, then its bedroom adjustment factor would be 1.125—500 times 1.0 plus 500 times 1.25, the sum divided by 1,000. Where necessary, HUD field offices will arrange for assistance in the calculation of the bedroom adjustment factors of the Housing Authority and its affected developments.

c. As an example of estimating development operating costs from PHA operating costs, suppose that the Housing Authority had a total monthly operating cost per unit of $500 and a bedroom adjustment factor of .90, and suppose that the development had a bedroom adjustment factor of 1.125. Then, the development's estimated current monthly operating cost per occupied unit would be $625—or $500 times 1.25 (the ratio of 1.125 to .90).

*B. Modernization*

The cost of modernization is the initial revitalization cost to meet viability standards, that cost amortized over twenty years (which is equivalent to fifteen years at a three percent annual real capital cost for the initial outlay). Expressed in monthly terms, the modernization cost is divided by 180 (or 15 years times 12 months). Thus, if the initial modernization outlay to meet viability standards is $60 million for 1,000 units, then the per-unit outlay is $60,000 and the amortized modernization cost is $333 per unit per month (or $60,000 divided by 180). However, when revitalization would be equivalent to new construction and the PHA thus is permitted to amortize the proposed cost over thirty years (which is equivalent to twenty-two and one-half years at a three percent annual real capital cost to the initial outlay), the modernization cost will be divided by 270, the product of 22.5 and 12, to give a cost per unit month of $ 222.

*C. Accrual*

The monthly per occupied unit cost of accrual (i.e., replacement needs) will be estimated by using the latest published HUD unit total development cost limits for the area and applying them to the development's structure type and bedroom distribution after modernization, then subtracting from that figure half the per-unit cost of modernization, then multiplying that figure by .02 (representing a fifty year replacement cycle), and dividing this product by 12 to get a monthly cost. For example, if the development will remain a walkup structure containing five hundred two-bedroom occupied and five hundred three-bedroom occupied units, if HUD's Total Development Cost limit for the area is $70,000 for two-bedroom walkup structures and $92,000 for three-bedroom walkup structures, and if the per unit cost of modernization is $60,000, then the estimated monthly cost of accrual per occupied unit is $85. This is the result of multiplying the value of $51,000—the cost guideline value of $81,000 minus half the modernization value of $60,000—by .02 and then dividing by 12.

*D. Overall Cost*

The overall current cost for continuing the development as public housing is the sum of its monthly post-revitalization operating cost estimates, its monthly modernization cost per occupied unit, and its estimated monthly accrual cost per occupied unit. For example, if the operating cost per occupied unit month is $450 and the amortized modernization cost is $333 and the accrual cost is $85, the overall monthly cost per occupied unit is $868.

*E. Adjustment for Shorter Remaining Useful Life (Used Only for Voluntary Conversion—See Subpart B of This Part)*

Where a PHA demonstrates that it is reasonable to use a remaining useful life of five, ten or fifteen years rather than twenty or thirty years, the PHA shall divide total modernization costs by 45 to determine the monthly per unit cost if a five year remaining useful life is used, 90 if a ten year remaining useful life is used, and 135 if a fifteen remaining useful life is used.

**II. Public Housing-New Budget Authority (Used Only for Voluntary Conversion—See Subpart B of This Part)**

This cost analysis shall be conducted in the same manner as the net present value analysis, with one exception. The total capital cost shall be divided by the total number of months in the remaining useful life used in the analysis (*e.g.* for a 20 year remaining useful life, divide the total capital cost by 240) rather than the lower denominator which reflects amortization of capital costs, taking into account the immediate expenditure of capital funds, in the net present value model.

**III. Tenant-Based Assistance**

The estimated cost of providing tenant-based assistance under Section 8 for all households in occupancy shall be calculated as the unit-weighted averaging of the monthly Fair Market Rents for units of the applicable bedroom size; plus the most recent administrative fee applicable to newly funded Section 8 rental assistance during the year used for calculating public housing operating costs (*e.g.*, the administrative fee for units funded in fiscal years 1995 and 1996 is the monthly administrative fee amount in column C of the January 24, 1995 **Federal Register** at 60 FR 4764); plus the amortized cost of demolishing the occupied public housing units, where the cost per unit is not to exceed ten percent of the TDC prior to amortization. For example, if the development has five hundred occupied two-bedroom units and five hundred occupied three-bedroom units and if the Fair Market

Rent in the area is $600 for two bedroom units and is $800 for three bedroom units and if the administrative fee comes to $46 per unit, and if the cost of demolishing 1000 occupied units is $5 million, then the per unit monthly cost of tenant based assistance is $774 ($700 for the unit-weighted average of Fair Market Rents, or 500 times $600 plus 500 times $800 with the sum divided by 1,000; plus $46 for the administrative fee; plus $28 for the amortized cost of demolition and tenant relocation (including any necessary counseling), or $5000 per unit divided by 180 in this example). In voluntary conversion, this Section 8 cost would then be compared to the cost of revitalized public housing development, both in terms of net present value and new budget authority—in the example of this section, both the revitalized public housing cost (net present value) of $868 monthly per occupied unit, and the revitalized public housing cost (new budget authority) of $785 monthly per occupied unit would exceed the Section 8 cost of $774 monthly per occupied unit. Therefore, the PHA would have the option of preparing a conversion plan for the development under subpart B of this part.

In required conversion, the Section 8 cost would be compared with the cost of the revitalized public housing development on a net present value basis. In the example in this section, the revitalized public housing cost on a net present value basis of $868 per month would exceed the Section 8 cost of $774 monthly per occupied unit. Therefore the PHA would be required to convert the development under the requirements of subpart A of this part.

**IV. Detailing the Section-8 Cost Comparison: A Summary Table**

The section 8 cost comparison methods are summarized, using the example provided in this section IV.

*A. Key Data, Development*

The revitalized development has 1000 occupied units. All of the units are in walkup buildings. The 1000 occupied units will consist of 500 two-bedroom units and 500 three-bedroom units. The total current operating costs attributable to the development are $300,000 per month in non-utility costs, $100,000 in utility costs paid by the PHA, and $50,000 in utility allowance expenses for utilities paid directly by the tenants to the utility company. Also, the modernization cost for revitalization is $60,000,000, or $60,000 per occupied unit. This will provide standards for viability but not standards for new construction. The cost of demolition and relocation of the 1000 occupied units is $5 million, or $5000 per unit, based on recent experience.

*B. Key Data, Area*

The unit total development cost limit is $70,000 for two-bedroom walkups and $92,000 for three-bedroom walkups. The two-bedroom Fair Market Rent is $600 and the three-bedroom Fair Market Rent is $800. The applicable monthly administrative fee amount, in the most recent **Federal Register** Notice, is $46.

*C. Preliminary Computation of the Per-Unit Average Total Development Cost of the Development*

This results from applying the location's unit total development cost by structure type and number of bedrooms to the occupied units of the development. In this example, five hundred units are valued at $70,000 and five hundred units are valued at $92,000 and the unit-weighted average is $81,000.

*D. Current Per Unit Monthly Occupied Costs of Public Housing (Net Present Value)*

| | |
|---|---|
| 1. Operating Cost | $450 (total monthly costs divided by occupied units: in this example, the sum of $300,000 and $100,000 and $50,000—divided by 1,000 units). |
| 2. Amortized Modernization Cost | $333 ($60,000 per unit divided by 180 for standards less than those of new construction). |
| 3. Estimated Accrual Cost | $85 (the per-unit average total development cost minus half of the modernization cost per unit, times .02 divided by 12 months: in this example, $51,000 times .02 and then divided by 12). |
| 4. Total Per Unit Public Housing Costs | $868. |

*E. Per Unit Monthly Occupied Costs of Public Housing (New Budget Authority)*

| | |
|---|---|
| 1. Operating Cost | $450 (total monthly costs divided by occupied units: in this example, the sum of $300,000 and $100,000 and $50,000—divided by 1,000 units). |
| 2. Modernization Cost | $250 ($60,000 per unit divided by 240 for standards less than those of new construction). |
| 3. Estimated Accrual Cost | $85 (the per-unit average total development cost minus half of the modernization cost per unit, times .02 divided by 12 months: in this example, $51,000 times .02 and then divided by 12). |
| 4. Total Per Unit Public Housing Costs | $785. |

*F. Current per Unit Monthly Occupied Costs of Section 8*

| | |
|---|---|
| 1. Unit-weighted Fair Market Rents | $700 (the unit-weighted average of the Fair Market Rents of occupied bedrooms: in this example, 500 times $600 plus 500 times $800, divided by 1000). |
| 2. Administrative Fee | $46. |
| 3. Amortized Demolition and Relocation Cost | $28 ($5000 per unit divided by 180). |
| 4. Total Per Unit Section 8 Costs | $774. |

*G. Result*

In this example, because revitalized public housing costs, both on a net present value basis, and based on new budget authority, exceeds current Section 8 costs, a conversion plan would be permissible under voluntary conversion, Subpart B of this Section. Under required conversion, because revitalized public housing costs on a net present value basis exceed Section 8 costs, the PHA would be required to convert the public housing development under subpart A of this Section.

Dated: June 23, 1999.

**Harold Lucas,**

*Assistant Secretary for Public and Indian Housing.*

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## Part IX

# Department of Housing and Urban Development

**Notice of Funding Availability for the HUD Healthy Homes Initiative; Notice**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–4516–N–01]**

## Notice of Funding Availability for the HUD Healthy Homes Initiative

**AGENCY:** Office of the Director of Lead Hazard Control, Office of the Secretary, HUD.

**ACTION:** Notice of Funding Availability (NOFA).

**SUMMARY:** *Purpose of the Program.* The purpose of the Healthy Homes Initiative is to demonstrate cost effective, preventive measures to correct multiple safety and health hazards in the home environment which produce serious diseases and injuries in children.

*Available Funds.* Approximately $3.5 million.

*Eligible Applicants.* Research institutions, not-for-profit institutions, and for-profit firms located in the U.S., State and local governments, and Federally-recognized Indian Tribes. For-profit firms are not allowed to include a fee in the cost proposal (i.e., no profit can be made from the project). Federal agencies and federal employees are not eligible to apply for this program.

*Application Deadline.* September 23, 1999.

*Match.* None.

If you are interested in applying for funding under this initiative, please review the following additional information.

**ADDITIONAL INFORMATION:**

### I. Application Due Date, Application Kits, Further Information, and Technical Assistance

*Application Due Date.* Submit an original and four copies of your completed application on or before 12:00 midnight Eastern Time on September 23, 1999.

*Address for Submitting Applications. For Mailed Applications.* The address for mailed applications is: Department of Housing and Urban Development, Office of Lead Hazard Control, 451 Seventh Street, SW, Room P3206, Washington, D.C. 20410.

*For Overnight/Express Mail or Hand Carried Applications.* The address for applications that are hand carried or sent via overnight delivery is: HUD Office of Lead Hazard Control, Suite 3206, 490 L'Enfant Plaza SW, Washington, D.C. 20024.

*For Application Kits.* You may obtain an application kit from the HUD Office of Lead Hazard Control at the address shown above. When requesting an application kit, please refer to ''Healthy Homes Initiative NOFA.'' Please be sure to provide your name, address (including zip code), and telephone number (including area code). Alternatively, you may obtain an application kit by downloading it from the internet at *http://www.hud.gov.*

*For Further Information Contact.* Ms. Ellen Taylor, Planning and Standards Division, Office of Lead Hazard Control, at the address above; telephone (202) 755–1785, extension 116, or Ms. Karen Williams, Grants Officer, extension 118 (these are not toll-free numbers). Hearing- and speech-impaired persons may access the above telephone numbers via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

### II. Amount Allocated

Approximately $3.5 million will be available to fund demonstration projects in FY 1999. Grants will be awarded on a competitive basis following evaluation of all proposals according to the Rating Factors described in section V(B). HUD anticipates that approximately 3 to 5 grants will be awarded, ranging from approximately $250,000 to approximately $2,500,000.

### III. Program Description, Eligible Applicants, and Eligible Activities

*(A) Program Description*

(1) *Background.* In the FY 1999 Budget, HUD proposed a Healthy Homes Initiative (sometimes referred to as the ''Initiative'' or ''HHI'') that would protect children from housing conditions responsible for multiple diseases and injuries. The Initiative departs from the more traditional approach of attempting to correct one hazard at a time (e.g., asbestos, radon).

The Healthy Homes Initiative builds upon HUD's existing housing-related health and safety issues, including lead hazard control, building structural safety, electrical safety, and fire protection to address multiple childhood diseases and injuries related to housing in a more coordinated fashion. A coordinated effort is feasible because a limited number of building deficiencies contribute to many hazards. Substantial savings are possible using this approach, because separate visits to a home by an inspector, public health nurse, or outreach worker if independently done can add significant cost to efforts to eliminate hazards.

In addition to deficiencies in basic housing facilities that may impact health, changes in the U.S. housing stock and more sophisticated epidemiological methods and biomedical research have led to the identification of new and often more subtle health hazards in the residential environment. While such hazards will tend to be found disproportionately in housing that is substandard (e.g. structural problems, lack of adequate heat, etc.), such housing-related environmental hazards may also exist in housing that is otherwise of good quality. Appendix A briefly describes the housing-associated health and injury hazards HUD considers key targets for intervention. Appendix B lists the references that serve as the basis for the information provided in this NOFA.

*(B) Healthy Homes Activities*

HUD has identified four categories for grouping Healthy Homes activities. These are: (1) Excess moisture reduction, (2) dust control, (3) ventilation and control of toxins, and (4) education. These four activities are described in this section.

(1) *Excess moisture reduction:* Moisture problems are evident in many homes, more so in older urban areas and communities with humid climates. While high moisture levels alone are not sufficient to necessarily result in health hazards, it is a common precursor. Moisture problems can lead to paint deterioration (lead poisoning), mold formation (pulmonary hemosiderosis in infants), higher concentrations of dust mites, cockroach infestation, asthma and allergen sensitization, and structural hazards associated with rot and rust (injuries). In a 1995 study of pulmonary hemosiderosis in Cleveland, Ohio, toxic molds were identified in 65% of homes within the target areas, compared to a national prevalence rate of 3%. The disease in infants associated with this exposure (infant pulmonary hemorrhage) had a 30% mortality rate. Nationally, this mold-related disease appears to have a low prevalence, but, for those children who contract this disease, a very high mortality rate. There is also evidence that certain molds can be important triggers of asthma in children, a disease which has seen a 160% increase in the past fifteen years in children under five. In addition, the presence of moisture problems is a risk factor for respiratory illnesses and symptoms, especially in children.

Structural problems can allow moisture intrusion, as well as create safety and fire hazards and provide access for rodent and insect pests. Structural defects can result from improper construction, poor maintenance, or natural hazards. Holes in floors are present in more than one million U.S. homes. Open cracks or holes in walls (four million homes) and broken plaster or peeling paint (three

million homes) are even more prevalent. Moisture problems require a variety of corrective interventions, ranging from simple patching to correction of basic drainage.

(2) *Dust Control.* Dust sources, sinks and traps can serve as a vehicle for a variety of hazardous agents, such as lead, allergens, and pesticide residues. Settled and airborne dust can become problems where surface conditions hinder cleaning, such as rough or porous surfaces. Dust is the principal pathway through which children are exposed to lead-based paint and mold and is also an exposure route for allergens, dust mites, and some pesticides. In young children, transmission occurs principally through normal hand-to-mouth contact. Some dust traps are relatively easily addressed, for example, the removal of carpets and sealing of floor surfaces. Dust remediation often consists of removal by using special vacuum systems, and the creation of smooth and cleanable surfaces, as well as controlling dust sources, such as sinks (e.g., draperies), sources such as paint and exterior bare soil, and unsafe work practices (uncontrolled renovation). New household vacuums with dust sensors are now available on the retail market and warrant study regarding their effectiveness in house dust control. Another key research need involves the sink and filtering action of carpets, that is, the way in which they attract, trap and release dust and other pollutants. Low-cost dust control methods are available and may cost as little as $250 per unit.

(3) *Ventilation and control of toxins.* Ventilation can be either a problem or an intervention. Proper ventilation supplies adequate oxygen and removes carbon dioxide and other pollutants, such as allergens. Virtually no home ventilation system actively supplies clean fresh air; instead, infiltration through building ''leakage'' is the norm, although tighter building envelopes and better insulation typically reduce fresh air incursion. In some climates, increasing ventilation can result in increased moisture problems. Poorly-designed systems can contribute to dispersal of mold, soil gases (such as radon) and other contaminants into the living space. Carbon monoxide exposures can occur through combustion spillage caused by airflow reversal in chimneys or use of unvented heaters or appliances. Carbon monoxide alarms and airflow analysis that could detect dangerous air movements are rare in U.S. housing. Improperly-maintained or inadequately vented heating and cooking appliances may introduce hazardous gases and particulate matter into the living environment and are also related to fire hazards. Building materials, cleaning products, and appliances can emit gases with irritant, allergic, or other toxic properties. Ozone generators, for example, are known to increase indoor ozone with no positive impact on air quality.

(4) *Education.* Education is an important part of most of the interventions that will be implemented. Occupants can be encouraged to use checklists, such as that provided in HUD's ''Danger in the Home'' brochure, to identify and correct hazards, and create a safer and healthier home environment. Occupant behavior can be modified using prompting tools that can be especially effective in preventing injuries or illnesses at low cost ($100–$200 per unit). For example, provision of a hot water thermometer (as a ''prompting device'') is known to result in reductions in scald injuries, because hot water heater temperatures are lowered and residents know to keep them lowered. Education and outreach efforts also need to be targeted to multiple audiences, such as residential construction contractors, health care deliverers and housing specialists.

*(C) Baseline Assessment and Initiation of Projects*

Through the Healthy Homes Initiative, HUD will initiate the baseline assessment of available risk reduction techniques and research on the control of key hazards described in Appendix A, and initiate projects to promote implementation of techniques demonstrated to be successful. Grantees will perform research and demonstrate and assess interventions addressing multiple housing-related problems affecting the health of children and develop and disseminate interventions appropriate to residential environments.

The main tasks to be addressed by these projects include the following:

(1) Identification of homes where intervention would be appropriate.

(2) Identification and evaluation of effective methods of hazard abatement and risk reduction.

(3) Development of appropriately-scaled and efficient intervention strategies.

(4) Selection of efficient strategies for evaluating intervention effectiveness.

(5) Development of local capacity to operate sustainable programs to prevent and control toxic housing-based hazards, especially in low and very-low income residences.

HUD has decided to initiate the HHI projects primarily by issuing competitively awarded grants this fiscal year. On February 26, 1999, HUD issued a Notice of Funds Availability targeted at mold and moisture control in inner city housing. That NOFA was published in the **Federal Register** as part of HUD's FY 1999 SuperNOFA (see 64 FR 9719–9724). The broader projects funded though this NOFA, published today, will allow HUD to assess whether and how well mold and moisture control can be integrated into other hazard control efforts. (This Notice, and the application kit, also appears on HUD's Web site, at www.hud.gov/lea.) HUD will evaluate proposals based on the elements described below. Awards are expected to be made by September, 1999.

*(D) Project Elements*

Project elements include:

(1) Pilot-testing and implementing housing assessment, maintenance, renovation and construction techniques to identify and correct housing-related illness and injury risk factors.

(2) Developing and delivering public education to prevent both emerging and well-recognized housing-related childhood diseases and injuries, and promote the use of identified solutions.

(3) Conducting research that evaluates the effectiveness of housing interventions and public education campaigns, and provides the knowledge base for recommending future use of the most cost-effective strategies.

*(E) Goals and Objectives*

The primary goal of this program is to protect children by supporting one or more demonstration projects employing cost-effective, replicable interventions to correct safety and health hazards in the home environment capable of producing serious diseases and injuries in children.

Objectives include the following:

(1) Developing a cost-effective protocol for identifying homes that are candidates for interventions, identifying hazards in these homes, and screening out homes where structural or other condition factors (e.g., cost accessibility) make interventions infeasible or impractical.

(2) Developing a flexible set of intervention strategies that take into account the range of conditions likely to be encountered in older housing, and the need to maximize the number of housing units that receive an intervention.

(3) Developing an efficient strategy for evaluating the effectiveness of interventions in preventing disease and injury in children.

(4) Building local capacity to develop a sustainable program that will continue

to prevent and, where they occur, minimize and control housing—based hazards in low- and very-low income residences when HUD funding is exhausted.

(5) Affirmatively furthering fair housing and environmental justice.

(6) Mobilizing public and private resources, involving cooperation among all levels of government, the private sector, and community-based organizations to develop the most promising, cost-effective methods for identifying and controlling housing-based hazards.

(7) Integrating safe work practices into housing maintenance, repair, and improvements.

(8) To the greatest extent feasible, promoting job training, employment, and other economic opportunities for low-income and minority residents and businesses which are owned by and/or employ low-income and minority residents as defined in 24 CFR 135.5.

*(F) Eligible Activities*

You will be afforded considerable latitude in designing and implementing the interventions to prevent or correct safety and health hazards in the home environment capable of producing serious diseases and injuries in children. However, in developing a strategy, you should use all reasonably available sources of information on controlling housing-based hazards in buildings and protecting workers and occupants during and after the intervention process. HUD is interested in promoting housing intervention approaches that result in the reduction of health threats for the maximum number of residents, and in particular low-income children, and that demonstrate replicable techniques which are cost-effective and efficient.

The following direct activities and support activities are eligible under this grant program.

(1) Direct Project Elements (activities conducted by you and any sub-recipients):

(a) Performing evaluations of eligible housing to determine the presence of housing-based hazards (e.g., mold growth, unvented appliances, exposed steam pipes or radiators, damaged lead-based paint) through the use of generally accepted testing procedures.

(b) Conducting medical examinations of young children for conditions caused or exacerbated by exposure to hazards where this is considered essential to your project, and there are no alternative sources to cover these costs.

(c) Conducting housing interventions to remediate existing housing-based hazards and address conditions that could result in their recurrence. Any lead hazard evaluation and control work shall be conducted by certified performers in accordance with the HUD *Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing (''Guidelines'')* and other applicable regulations.

(d) Carrying out temporary relocation of families and individuals during the period in which intervention is conducted and until the time the affected unit receives clearance for reoccupancy. Residents so relocated should be guaranteed the choice of returning to the unit after the intervention.

(e) Performing medical testing recommended by a physician or applicable occupational or public health agency for individuals in hazardous conditions and environmental sampling to protect the health of the intervention workers, supervisors, and contractors.

(f) Undertaking housing rehabilitation activities that are specifically required to carry out effective control of housing-based hazards, and without which the intervention could not be completed and maintained. Grant funds under this program may also be used to control immediate lead-based paint hazards.

(g) Conducting clearance testing and analysis for lead, mold, carbon monoxide and/or other toxins as appropriate, with respect to generally accepted standards or criteria, or where not available, other appropriate levels justified in conjunction with the project.

(h) Carrying out architectural, engineering and work specification development and other construction management services necessary to, and in direct support of, activities to control housing-based hazards and remediate existing hazards.

(i) Providing training on safe maintenance practices to homeowners, renters, painters, remodelers, and housing maintenance staff working in low- or very-low income housing.

(j) Providing cleaning supplies for hazard intervention and hazard control to community/neighborhood-based organizations for use by homeowners and tenants in low income housing, or to such homeowners, and tenants directly.

(k) Conducting general or targeted community awareness or education programs on environmental health and safety hazards. This activity would include training on safe maintenance and renovation practices, among other topics, and further fair housing and environmental justice goals. It would also include making materials available, upon request, in alternative formats for persons with disabilities (e.g., Braille, audio, large type), and in languages other than English that are common in the community, whenever possible.

(l) Securing liability insurance for hazard intervention and hazard evaluation and control activities to be performed.

(m) Supporting data collection, analysis, and evaluation of project activities. This activity is separate from administrative costs.

(n) Conducting applied research activities directed at demonstration of cost-effective evaluation and intervention methods for preventing housing-based hazards.

(o) Presenting research findings at a scientific conference in each project year following the first year of activity.

(p) Maintaining a registry (updated at least monthly) of housing units in which housing-based hazards were not found during evaluation, and those in which such problems and hazards have been controlled. Units on the registry should be affirmatively marketed to families with young children and such families should be given preference for occupancy when they are vacant.

(q) Preparing quarterly progress reports, interim and final research reports, and an overall final grant report detailing activities, findings, conclusions and recommendations, at the conclusion of grant activities.

(2) Support Elements.

(a) Your administrative costs.

(b) Program planning and management costs of sub-grantees and other sub-recipients.

*(G) Ineligible Activities*

You cannot use program funds for the following:

(1) Purchase of real property.

(2) Purchase or lease of equipment having a per unit cost in excess of $5,000, unless prior written approval is obtained from HUD.

(3) Medical treatment costs.

**IV. Program Requirements**

Applicants are subject to the following requirements:

*(A) Threshold Requirements—Compliance with Fair Housing and Civil Rights Laws*

With the exception of Federally recognized Indian tribes, all applicants and their subrecipients must comply with all Fair Housing and civil rights laws, statutes, regulations and executive orders as enumerated in 24 CFR 5.105(a). If you are a Federally recognized Indian tribe, you must comply with the Age Discrimination Act of 1975, section 504 of the Rehabilitation Act of 1973, and the Indian Civil Rights Act.

If you, the applicant—

(1) Have been charged with a systemic violation of the Fair Housing Act by the Secretary alleging ongoing discrimination;

(2) Are a defendant in a Fair Housing Act lawsuit filed by the Department of Justice alleging an ongoing pattern or practice of discrimination; or

(3) Have received a letter of noncompliance findings under Title VI of the Civil Rights Act, section 504 of the Rehabilitation Act of 1973, or Section 109 of title I of the Housing and Community Development Act of 1974—

HUD will not rank and rate your application under this NOFA if the charge, lawsuit, or letter of findings has not been resolved to the satisfaction of the Department before the application deadline stated in the individual program NOFA. HUD's decision regarding whether a charge, lawsuit, or a letter of findings has been satisfactorily resolved will be based upon whether appropriate actions have been taken to address allegations of ongoing discrimination in the policies or practices involved in the charge, lawsuit, or letter of findings.

*(B) Additional Nondiscrimination Requirements*

You, the applicant, and your subrecipients, must comply with the Americans with Disabilities Act and Title IX of the Education Amendments Act of 1972.

(C) Other Requirements

(1) *Budgeting.* Administrative Costs. There is a 10% maximum for administrative costs. The application kit contains specific information on allowable administrative costs.

(2) *Period of Performance.* The period of performance cannot exceed 36 months.

(3) *Coastal Barrier Resources Act.* Pursuant to the Coastal Barrier Resources Act (16 U.S.C. 3501), funds may not be used for properties located in the Coastal Barrier Resources System.

(4) *Flood Disaster Protection Act.* Under the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001–4128), funds may not be used for construction, reconstruction, repair or improvement of a building or mobile home which is located in an area identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards unless:

(i) The community in which the area is situated is participating in the National Flood Insurance Program in accordance with the applicable regulations (44 CFR parts 59–79), or less than a year has passed since FEMA notification regarding these hazards; and

(ii) Where the community is participating in the National Flood Insurance Program, flood insurance on the property is obtained in accordance with section 102(a) of the Flood Disaster Protection Act (42 U.S.C. 4012a(a)). You are responsible for assuring that flood insurance is obtained and maintained for the appropriate amount and term.

(5) *National Historic Preservation Act.* The National Historic Preservation Act of 1966 (16 U.S.C. 470) (NHPA) and the regulations at 36 CFR part 800 apply to the mold intervention and related hazard control activities that are undertaken pursuant to this program. HUD and the Advisory Council for Historic Preservation have developed an optional Model Agreement for use by grantees and State Historic Preservation Officers in carrying out any lead hazard control activities under this program.

(6) *Waste Disposal.* Waste disposal will be handled according to the requirements of the Occupational Health and Safety Administration (OSHA) (e.g., 29 CFR part 1910 and/or 1926, as applicable), the Environmental Protection Agency (EPA) (e.g., 40 CFR parts 61, 260–282, 300–374, and/or 700–799, as applicable), the Department of Transportation (e.g., 49 CFR parts 171–177), and/or appropriate State or local regulatory agency(ies). Disposal of wastes from intervention activities that contain lead-based paint but are not classified as hazardous will be handled in accordance with the HUD *Guidelines.*

(7) *Worker Protection Procedures.* You must comply with the requirements of OSHA (e.g., 29 CFR part 1910 and/or 1926, as applicable), or the State or local occupational safety and health regulations, whichever are most stringent.

(8) *Written Policies and Procedures.* You must have written policies and procedures for all phases of intervention, including evaluation, development of specifications, financing, occupant relocation, independent project inspection, and clearance testing (e.g., for mold, lead, carbon monoxide or other hazards, as applicable). You and all your subcontractors, sub-recipients, and their contractors must comply with these policies and procedures.

(9) *Continued Availability of Safe Housing to Low-Income Families.* Units in which housing-based hazards have been controlled under this program shall be occupied by and/or continue to be available to low-income residents.

(10) *Affirmatively Furthering Fair Housing.* If you are a successful applicant, you will have a duty to affirmatively further fair housing. You, the applicant, should include in your application or work plan the specific steps that you will take to:

(i) Address the elimination of impediments to fair housing that were identified in the jurisdiction's Analysis of Impediments (AI) to Fair Housing Choice;

(ii) Remedy discrimination in housing; or

(iii) Promote fair housing rights and fair housing choice.

(11) *Economic Opportunities for Low and Very Low-Income Persons (Section 3).* Recipients of assistance must comply with section 3 of the Housing and Urban development Act of 1968, 12 U.S.C. 1701u (Economic Opportunities for Low and Very Low-Income Persons in Connection with Assisted Projects) and the HUD regulations at 24 CFR part 135, including the reporting requirements of subpart E. Section 3 requires recipients to ensure that, to the greatest extent feasible, training, employment and other economic opportunities will be directed to (1) low and very low income persons, particularly those who are recipients of government assistance for housing, and (2) business concerns which provide economic opportunities to low and very low income persons.

(12) *Data collection and provision.* You must collect, maintain and provide to HUD the data necessary to document the various approaches used to evaluate and control housing-based hazards, including evaluation and control methods, building conditions, medical and familial information (with confidentiality of individually-identifiable information ensured) in order to determine the effectiveness and relative cost of these methods.

(13) *Certifications and Assurances.* Certification forms are included in the application kit. These forms include:

(i) An assurance in accordance with 24 CFR 50.3(h) that the applicant will carry out its responsibilities regarding HUD's environmental review.

(ii) A certification of compliance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, and the implementing regulations at 49 CFR part 24; and HUD Handbook 1378 (Tenant Assistance, Relocation and Real Property Acquisition).

(iii) An assurance that the applicant's financial management system meets the standards for fund control and accountability described in 24 CFR 85.20 and 84.21.

(iv) An assurance that any pre-intervention and clearance evaluation for lead, and lead hazard abatement will be conducted by certified performers.

(v) An assurance that project funds obtained through this NOFA will not replace existing resources dedicated to any ongoing project.

(vi) Assurance that human research subjects will be protected from research risks in conformance with the Common Rule (Federal Policy for the Protection of Human Subjects, codified by HUD at 24 CFR part 60).

(vii) Certification that the applicant will comply with the requirements of the Fair Housing Act, title VI of the Civil Rights Act of 1964, section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975, and will affirmatively further fair housing. Federally recognized Indian tribes must certify that they will comply with the requirements of the Age Discrimination Act of 1975, section 504 of the Rehabilitation Act of 1973, and the Indian Civil Rights Act.

(14) *Davis-Bacon Act.* The Davis-Bacon Act does not apply to this program. However, if program funds are used in conjunction with other Federal programs in which Davis-Bacon prevailing wage rates apply, then Davis-Bacon provisions would apply to the extent required under the other Federal programs.

**V. Application Selection Process**

*(A) Rating and Ranking*

HUD intends to fund the highest ranked application(s) within the limits of funding. Once available funds have been allocated to meet the requested or negotiated amounts of the top eligible applicant(s), HUD reserves the right, in successive order, to offer any residual amount as partial funding to the next eligible applicant provided HUD, in its sole judgment, is satisfied that the residual amount is sufficient to support a viable, though reduced effort. In the event that HUD commits an error that, when corrected, would result in the selection of an otherwise eligible applicant, HUD may select that applicant when sufficient funds become available.

(1) *Negotiation.* After HUD has rated and ranked all applications and has made selections, HUD may require that all winners participate in negotiations to determine the specific terms of the grant agreement and budget. In cases where HUD cannot successfully conclude negotiations with a selected applicant or a selected applicant fails to provide HUD with requested information, an award will not be made to that applicant. In this instance, HUD may offer an award to the next highest ranking applicant, and proceed with negotiations with the next highest ranking applicant.

(2) *Adjustments to Funding.* HUD reserves the right to fund less than the full amount requested in your application to ensure the fair distribution of the funds and to ensure that the purposes of a specific program are met. HUD may choose not to fund any portion of your application that is not eligible for funding under statutory or regulatory requirements, or which do not meet the requirements of this NOFA or which may duplicate other funded programs or activities.

(B) *Factors for Award Used to Evaluate and Rate Applications*

This section provides the factors for rating and ranking your application and the maximum points for each factor. The application kit provides additional instructions for responding to these factors. The maximum number of points to be awarded is 102.

(1) *Bonus Points.* This NOFA provides for the award of up to two bonus points for eligible activities/projects that the applicant proposes to be located in high performing federally designated Empowerment Zones (EZs) or Enterprise Communities (ECs). To be eligible to receive the two bonus points, you must certify that the proposed activities/projects: (a) Will be located in a Federally designated Empowerment Zone or Enterprise Community and will serve residents of the EZ/EC; and (b) are consistent with the strategic plan of the EZ/EC. If you provide this certification and HUD determines that the area is a high performing EZ/EC, you will be awarded the two points. A listing of the high performing federally designated EZs/ECs are available from the SuperNOFA Information Center, or through the HUD web site on the Internet at http://www.HUD.gov, as well as in the **Federal Register**.

(2) *Court-Ordered Consideration.* For any application submitted by the City of Dallas, Texas, for funds under this NOFA for which the City of Dallas is eligible to apply, HUD will consider the extent to which the strategies or plans in the city's application or applications will be used to eradicate the vestiges of racial segregation in the Dallas Housing Authority's low income housing programs. The City of Dallas should address the effect, if any, that vestiges of racial segregation in Dallas Housing Authority's low income housing programs have on potential participants in the programs covered by this NOFA, and identify proposed actions for remedying those vestiges. HUD may add up to 2 points to the score based on this consideration. This special consideration results from an order of the U.S. District Court for the Northern District of Texas, Dallas, Division. (This Section V(B)(2) is limited to applications submitted by the City of Dallas.)

(3) *Five Rating Factors.* The five rating factors by which your application will be evaluated are as follows:

Rating Factor 1: Capacity of the Applicant and Relevant Organizational Experience (20 Points)

This factor addresses your organizational capacity necessary to successfully implement your proposed activities in a timely manner. The rating of you or your staff includes any community-based organizations, sub-contractors, consultants, sub-recipients, and members of consortia that are firmly committed to your project. In rating this factor HUD will consider:

(1) Your recent, relevant and successful demonstrated experience in undertaking eligible program activities. You must describe the knowledge and experience of the proposed overall project director and day-to-day program manager in planning and managing large and complex interdisciplinary programs, especially those involving housing rehabilitation, public health, or environmental programs. In your narrative response for this factor, you should include information on your program staff, their experience, commitment to the program, and position titles. Resumes of up to three (3) pages each and position descriptions for up to three personnel in addition to the project director and program manager, and a clearly delineated organizational chart for your project must be included as an appendix. Copies of job announcements (including salary range) should be included for any key positions that are currently vacant. Indicate the percentage of time that key personnel will devote to your project and any salary costs to be paid by funds from this program. Include descriptions of the experience and qualifications of subcontractors and consultants.

(2) Your previous experience in reducing or eliminating housing-based hazards (if any).

(3) Whether you have sufficient personnel or will be able to quickly retain qualified experts or professionals to begin your proposed program immediately and to perform your proposed activities in a timely and effective fashion. Describe how principal components of your agency will participate in or support your project. You should thoroughly describe capacity, as demonstrated by experience in initiating and implementing related

environmental, health, or housing projects.

Rating Factor 2: Need/Extent of the Problem (15 Points)

This factor addresses the extent to which there is a need for your proposed program activities to address documented problems in your target area(s).

(1) Document a critical level of need for your proposed activities in the area where activities will be carried out. You should pay specific attention to documenting need as it applies to your target area(s), rather than the larger geographic area.

(2) Your documentation of need should summarize available data linking housing-based hazards to disease or injuries to children in your target area(s). Examples of supporting data that might be used to demonstrate need, include:

(a) Economic and demographic data relevant to your target area(s), including poverty and unemployment rates;

(b) Rates of childhood illnesses or injuries(e.g., asthma, burns) that could be caused or exacerbated by exposure to conditions in the home environment, among children residing in your target area(s), and/or rates of environmentally-related disease or adverse health effects (e.g., hypertension, elevated blood lead levels) in your target area(s);

(c) Unavailability of other Federal, State or local funding or private sector resources that could be, or is used, to address the problem.

(3) For the areas targeted for your project activities, provide data available in your jurisdiction's currently approved Consolidated Plan (including the AI), or derived from 1990 Census Data, or derived from other sources (all data should be documented) that address:

(a) The age and condition of housing;

(b) The number and percentage of very-low and low income families with incomes less than 80% of the median income, as determined by HUD, for the area, with adjustments for smaller and larger families (See application kit for additional information.);

(c) The number and proportion of children under six years old.

(d) Describe how proposed activities would help HUD achieve its goals for this program area.

(e) There must be a direct relationship between the proposed activities, community needs, and the purpose of the program.

Rating Factor 3: Soundness of Approach (45 Points)

This factor addresses the quality and cost-effectiveness of your proposed work plan. You should present information on the proposed approach for controlling housing-based hazards. The response to this factor should include the following elements:

(1) *Intervention Strategy* (30 points). Describe the strategy you will use in planning and executing the housing-based hazard interventions. You should provide information on:

(a) *Strategy for Implementing the Demonstration Project* (10 points). Describe your overall strategy for your proposed demonstration project. The description must include a discussion of:

(i) Your overall strategy for identifying, selecting, prioritizing, and enrolling units of eligible housing in which you will undertake housing-based hazards interventions, and then targeting such units to the low-income families with young children for the long run. Describe the extent to which your proposed activities will occur in an Empowerment Zone or Enterprise Community (EZ/EC), if applicable.

(ii) The estimated total number of owner occupied and/or rental units in which you will conduct interventions.

(iii) The degree to which your work plan focuses on housing units with young children, and how you propose to make treated units available to these households for the long run. Describe your planned approach to control housing-based hazards before children are affected; and/or to control these hazards in units where children have already been treated for illnesses or injuries associated with housing-based hazards (e.g., burns, lead poisoning, asthma). Describe the process for your referral of children for medical case management if this is not ongoing.

(iv) The financing strategy, including eligibility requirements, terms, conditions, and amounts available, to be employed in conducting housing-based hazards activities. You must discuss the way funds will be administered (e.g., use of grants, deferred loans, forgivable loans, other resources, private sector financing, etc.) as well as the agency which will administer the process. Describe how your proposed project will further and support the policy priorities of the Department, including providing opportunities for self-sufficiency, particularly for persons enrolled in welfare-to-work programs; or providing educational and job training opportunities.

(b) *Outreach and Community Involvement* (5 points). You must describe:

(i) Proposed methods of community education. These should include community awareness, education, training, and outreach programs in support of your work plan and objectives. This should include general and/or targeted efforts undertaken to assist your efforts in reducing exposure to housing-based hazards. To the extent possible, programs should be culturally sensitive, targeted, and linguistically appropriate.

(ii) Proposed involvement of neighborhood or community-based organizations in the proposed activities. These activities may include outreach, community education, marketing, inspection, and housing evaluations and interventions.

(c) *Technical Approach for Conducting Housing-Based Hazards Interventions* (15 points)

(i) Describe your process for evaluating units of eligible housing in which you will undertake housing-based hazards interventions.

(ii) Describe any specialized testing or visual inspection that you will conduct during unit inspection with reference to source(s) of the protocol(s). Describe technical qualifications and requirements for laboratories. To be eligible for points under this factor, any laboratories you use must successfully participate in the Clinical Laboratory Program, National Lead Laboratory Accreditation Program, and/or National Voluntary Laboratory Accreditation Program, or other applicable quality assurance program, which you demonstrate to be substantially equivalent.

(iii) Describe the housing-based hazards interventions you will undertake. Provide an estimate of the per unit costs (and a basis for those estimates) for the type of interventions that are planned. Provide a schedule for initiating and conducting interventions in the selected units. Discuss efforts to incorporate cost-effective control methods to address multiple environmental health and safety hazards (e.g., deteriorating lead-based paint, damaged asbestos-containing materials, lack of smoke detectors). Work must be conducted in accordance with the HUD *Guidelines* in units where lead hazards are identified.

(iv) Describe your process for the development of work specifications for selected interventions. Describe your management processes to be used to ensure the cost-effectiveness of the housing interventions. Discuss your contracting process to obtain contractors to conduct interventions in selected units.

(v) Describe your plan for the temporary relocation of occupants of units selected for intervention, and how you will determine the need for

relocation. Address the use of safe houses and other housing arrangements, storage of household goods, stipends, incentives, etc.

(vi) Describe your plan for ensuring right of return and/or first referral for occupants of units selected for intervention who have had to move for intervention to occur.

(2) *Economic Opportunity* (5 points) Describe methods that will result in economic opportunities for residents and businesses in the community where activities will be carried out. Include information on how you will provide employment, business development, and contract opportunities. Describe how you or your partners will satisfy the requirements of Section 3 of the Housing and Community Development Act of 1992 to give preference to hiring low-and very low-income persons or contracting with businesses owned by or employing low-and very-low income persons.

(3) *Program Evaluation and Research* (10 points).

(a) Identify and discuss the specific methods you will use to measure progress, and evaluate the effectiveness of interventions. Describe how the information will be obtained, documented, and reported.

(b) Provide a detailed description of your proposed applied research activities. Your research designs should be feasible and display thorough knowledge of relevant scientific literature. They should include an appropriate plan for managing, analyzing and archiving data. Also, quality assurance mechanisms must be well integrated into your research design to ensure the validity and quality of collected data.

(4) *Budget* (Not Scored). Your proposed budget will be evaluated for the extent to which it is reasonable, clearly justified, and consistent with the intended use of program funds. HUD is not required to approve or fund all proposed activities. You must thoroughly document and justify all budget categories and costs (Part B of Standard Form 424A) and all major tasks. Describe in detail your budgeted costs for each required program element (major task) included in your overall plan. The four required program elements are: administration; education and outreach; control of housing-based hazard (including sampling); and program evaluation and applied research.

Rating Factor 4: Leveraging Resources (10 Points)

This factor addresses your ability to secure other community resources (such as financing, supplies or services) which can be combined with HUD's resources to achieve project purposes.

(1) In evaluating this factor, HUD will consider the extent to which you have partnered with other entities to secure additional resources to increase the effectiveness of your proposed project. Describe how other organizations will participate in or support your project. Resources may include funding or in-kind contributions (such as services or equipment) allocated to your proposed program. Resources may be provided by governmental entities, public or private organizations, or other entities willing to be your partner in this effort.

(2) Each source of contributions must be supported by a letter of commitment from the contributing entity, whether a public or private source, which must describe the contributed resources that will be used in your program. Staff in-kind contributions should be given a market-based monetary value. If you fail to provide letters of commitment with specific details including the amount of the actual contributions, you will not get rating points for this factor. Each letter of commitment, memorandum of understanding, or agreement to participate shall include the organization's name and the proposed level of commitment and responsibilities as they relate to the proposed program. The commitment must be signed by an official legally able to make commitments on behalf of the organization.

Rating Factor 5: Comprehensiveness and Coordination (10 Points)

This factor addresses the extent to which your program reflects a coordinated, community-based process of identifying needs and building a system to address the needs by using available HUD and other community resources. In evaluating this factor, HUD will consider:

(1) The degree of coordination of your proposed project with those of other groups or organizations to best support and coordinate all activities, and the specific steps you will take to share information on solutions and outcomes with others. Any written agreements or memoranda of understanding in place must be described.

(2) The extent to which you have developed linkages, or the specific steps you will take to develop linkages, to coordinate your activities so solutions are holistic and comprehensive. Linkages include those with other HUD, Federal, State or locally funded activities through meetings, information networks, planning processes, or other means.

(3) The degree of coordination with housing rehabilitation, housing and health inspection, and other related housing programs.

(a) Describe your plan for integrating and coordinating housing-based hazards interventions with other housing-related activities (e.g., rehabilitation, weatherization, removal of code violations, and other similar work).

(b) Describe your plans to consolidate housing-based hazards interventions with applicable housing codes and health regulations.

(c) Describe your plans to generate and use public subsidies or other resources (such as revolving loan funds) to finance future interventions to prevent and control housing-based hazards, particularly in low- and very-low-income housing.

(d) Detail the extent to which you will ensure that the needs of minorities and persons with disabilities will be addressed adequately during your intervention activities; and that housing in which environmental hazards have been addressed will remain available and affordable in the long run for low income, minority, large families, and for persons with disabilities.

(4) If applicable, the application should demonstrate a knowledge of the target community's Consolidated Plan and/or Analysis of Impediments to Fair Housing Choice and detail the Consolidated Plan issue areas in which your organization participates. Describe the degree to which you have become actively involved (or if not currently active, the specific steps you will take to become active) in your community's Consolidated Planning process established to identify and address a need/problem that is related in whole or part, directly, or indirectly the activities you propose.

## VI. Application Submission Requirements

*(A) Applicant Information*

You should submit your application in accordance with the format and instructions contained in this program section of this NOFA. The following is a checklist of required application contents:

(1) Transmittal letter that summarizes your proposed program, provides the dollar amount requested, and identifies you and your partners in the application.

(2) The name, mailing address, telephone number, and principal contact person. If you are a consortium of associates, sub-recipients, partners, major subcontractors, joint venture participants, or others contributing

resources to the project, similar information shall also be provided for each of these entities and you must specify the lead entity.

(3) Completed Forms HUD–2880, Applicant/Recipient Disclosure/Update Report; Certification Regarding Lobbying; and SF–LLL, Disclosure of Lobbying Activities, where applicable.

(4) Standard Forms SF–424, 424A, 424B, and other certifications and assurances listed in this program section. (see application kit).

(5) A narrative statement addressing the rating factors for award. The narrative statement must be numbered in accordance with each factor for award (Factor 1 through 5). The response to the rating factors must not exceed a total of 30 pages.

(6) Any attachments, appendices, references, or other relevant information may accompany the project description, but must not exceed twenty (20) pages for your entire application.

(7) A detailed budget with supporting cost justification for all budget categories of your funding request.

(8) The resumes and position descriptions of your project director and program manager and up to three additional key personnel.

## VII. Corrections to Deficient Applications

After the application due date, HUD may not, consistent with its regulations in 24 CFR part 4, subpart B, consider any unsolicited information you, the applicant, may want to provide. HUD may contact you, however, to clarify an item in your application or to correct technical deficiencies. You should note, however, that HUD may not seek clarification of items or responses that improve the substantive quality of your response to any selection factors. In order not to unreasonably exclude applications from being rated and ranked, HUD may, however, contact applicants to ensure proper completion of the application and will do so on a uniform basis for all applicants. Examples of curable (correctable) technical deficiencies include your failure to submit the proper certifications or your failure to submit an application that contains an original signature by an authorized official. In each case, HUD will notify you in writing by describing the clarification or technical deficiency. HUD will notify applicants by facsimile or by return receipt requested. You must submit clarifications or corrections of technical deficiencies in accordance with the information provided by HUD within 14 calendar days of the date of receipt of the HUD notification. If your deficiency is not corrected within this time period, HUD will reject your application as incomplete, and it will not be considered for funding.

## VIII. Findings and Certifications

*Paperwork Reduction Act Statement*

The information collection requirements contained in this NOFA were submitted to the Office of Management and Budget for review and approval under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The approval number when assigned will be announced by separate notice published in the **Federal Register**. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

*Executive Order 12612, Federalism The General Counsel, as the Designated Official under section 6(a) of*

Executive Order 12612, Federalism, has determined that the provisions of this NOFA do not have ''federalism implications'' within the meaning of the Order.

*Accountability in the Provision of HUD Assistance*

Section 102 of the Department of Housing and Urban Development Reform Act of 1989 (HUD Reform Act) and the final rule codified at 24 CFR part 4, subpart A, published on April 1, 1996 (61 FR 1448), contain a number of provisions that are designed to ensure greater accountability and integrity in the provision of certain types of assistance administered by HUD. On January 14, 1992, HUD published, at 57 FR 1942, a notice that also provides information on the implementation of section 102. The documentation, public access, and disclosure requirements of section 102 are applicable to assistance awarded under this NOFA as follows:

*Documentation and public access requirements.* HUD will ensure that documentation and other information regarding each application submitted pursuant to this NOFA are sufficient to indicate that basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a five-year period beginning not less than 30 days after the award of the assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. In addition, HUD will include the recipients of assistance pursuant to this NOFA in its **Federal Register** notice of all recipients of HUD assistance awarded on a competitive basis.

*Disclosures.* HUD will make available to the public for five years all applicant disclosure reports (HUD Form 2880) submitted in connection with this NOFA. Update reports (also Form 2880) will be made available along with the applicant disclosure reports, but in no case for a period of less than three years. All reports—both applicant disclosures and updates—will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15.

*Section 103 HUD Reform Act*

HUD will comply with section 103 of the Department of Housing and Urban Development Reform Act of 1989 and HUD's implementing regulations in subpart B of 24 CFR part 4 with regard to the funding competition announced today. These requirements continue to apply until the announcement of the selection of successful applicants. HUD employees involved in the review of applications and in the making of funding decisions are limited by section 103 from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted under section 103 and subpart B of 24 CFR part 4.

Applicants or employees who have ethics related questions should contact the HUD Office of Ethics (202) 708–3815. (This is not a toll-free number.) For HUD employees who have specific program questions, such as whether particular subject matter can be discussed with persons outside HUD, the employee should contact the appropriate Field Office Counsel.

*Prohibition Against Lobbying Activities*

Applicants for funding under this NOFA are subject to the provisions of section 319 of the Department of Interior and Related Agencies Appropriation Act for Fiscal Year 1991 (31 U.S.C. 1352) (the Byrd Amendment) and to the provisions of the Lobbying Disclosure Act of 1995 (Pub. L. 104–65; approved December 19, 1995).

The Byrd Amendment, which is implemented in regulations at 24 CFR part 87, prohibits applicants for Federal contracts and grants from using appropriated funds to attempt to influence Federal executive or legislative officers or employees in

connection with obtaining such assistance, or with its extension, continuation, renewal, amendment, or modification. The Byrd Amendment applies to the funds that are the subject of this NOFA. Therefore, applicants must file a certification stating that they have not made and will not make any prohibited payments and, if any payments or agreement to make payments of nonappropriated funds for these purposes have been made, a form SF–LLL disclosing such payments must be submitted. The certification and the SF–LLL are included as Attachment D of this NOFA.

The Lobbying Disclosure Act of 1995 (Pub. L. 104–65; approved December 19, 1995), which repealed section 112 of the HUD Reform Act, requires all persons and entities who lobby covered executive or legislative branch officials to register with the Secretary of the Senate and the Clerk of the House of Representatives and file reports concerning their lobbying activities.

## IX. Environmental Requirements

Activities assisted under this program are subject to HUD environmental review to the extent required under 24 CFR part 50. An award under the Healthy Homes Initiative does not constitute approval of specific sites where activities may be carried out. Following award execution, HUD will perform environmental reviews for activities to be carried out on properties proposed by your organization. You may not rehabilitate, convert, repair or construct a property, or commit or expend program funds or non-HUD funds for these program activities for any eligible property, until you receive written notification from the appropriate HUD official that HUD has completed its environmental review and the property has been approved. The results of environmental reviews may require that proposed activities be modified or proposed sites rejected.

## X. Authority

The authority for this program is the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1999, Pub. L. 105–276 (approved October 21, 1998), 112 Stat. 2461, 2482.

Dated: July 16, 1999.

**David Jacobs,**

*Director of the Office of Lead Hazard Control.*

### Appendix A

The following briefly describes the housing-associated health and injury hazards HUD considers key targets for intervention:

*Allergens and asthma:* Experts estimate that 14 million Americans have asthma, with an associated annual cost of $14 billion. Asthma is now recognized as the leading cause of school and work absence, emergency room visits and hospitalization. For sensitized children, exposure to antigens from dust mites, certain pets, and cockroaches has been associated with more severe asthma. There is a preponderance of evidence showing a dose-response relationship between exposure and prevalence of asthma and allergies; some evidence also indicates that exposure to antigens early in life may predispose or hasten the onset of allergies and asthma Dust mites have been identified as the largest trigger for asthma and allergies. Cockroach allergens appear to be excessive in 30–50% of inner-city housing and affect 5–15% of the population, whereas dust mite appears to be the dominant allergen in other environments. Interventions known to have beneficial effects include installation of impervious mattress and pillow covers, which can reduce allergen exposure by 90%. Other dust mite control measures include dehumidification, laundering bedding, and removal of carpets and other dust sinks. Cleaning carpets with tannic acid solution has also been demonstrated to greatly reduce dust mites. Asthma prevention program costs have been estimated at about $500 per unit, which includes about $150 for educational interventions.

Asbestos: Asbestos is a mineral fiber that has been used commonly in a variety of building construction materials and household products for insulation and as a fire-retardant. The Environmental Protection Agency (EPA) and the Consumer Product Safety Commission (CPSC) have banned most asbestos products. Manufacturers have also voluntarily limited uses of asbestos. Today, asbestos is most commonly found in older homes: in pipe and furnace insulation materials, asbestos shingles, millboard, textured paints and other coating materials, and floor tiles. Elevated concentrations of airborne asbestos can occur when asbestos-containing materials (ACM) are disturbed by cutting, sanding or other remodeling activities. Improper attempts to remove these materials can release asbestos fibers into the air in homes, increasing asbestos levels and endangering people living in those homes. The most dangerous asbestos fibers are too small to be visible. After they are inhaled, they can remain and accumulate in the lungs. Asbestos can cause lung cancer, mesothelioma (a cancer of the chest and abdominal linings), and asbestosis (irreversible lung scarring that can be fatal). Most people with asbestos-related diseases were exposed to elevated concentrations on the job; some developed disease from exposure to clothing and equipment brought home from job sites. As with radon, dose-response extrapolations suggest that lower level exposures, as may occur when asbestos-containing building materials deteriorate or are disturbed, may also cause cancer.

Intact asbestos-containing materials are not a hazard; they should be monitored for damage or deterioration and isolated if possible. Repair of damaged or deteriorating ACM usually involves either sealing (encapsulation) or covering (enclosure) it. Repair is usually cheaper than removal, but it may make later removal of asbestos more difficult and costly. Repairs should be done only by a professional trained and certified to handle asbestos safely and can cost from a few hundred to a few thousand dollars; removal can be more expensive.

*Combustion products of heating and cooking appliances:* Burning of oil, natural gas, kerosene, and wood for heating or cooking purposes can release a variety of combustion products of health concern. Depending upon the fuel, these may include carbon monoxide (a chemical asphyxiant), oxides of nitrogen (respiratory irritants), polycyclic aromatic hydrocarbons (e.g., the carcinogen benzo[a]pyrene), and airborne particulate matter (respiratory irritants). Carbon monoxide, an odorless gas, can be fatal. Nitrogen dioxide can damage the respiratory tract, and sulfur dioxide can irritate the eyes, nose and respiratory tract. Smoke and other particulates irritate the eyes, nose and throat, and can cause lung cancer.

Improper venting and poor maintenance of heating systems and cooking appliances can dramatically increase exposure to combustion products. Experts recommend having combustion heating systems inspected by a trained professional every year to identify blocked openings to flues and chimneys; cracked or disconnected flue pipe; dirty filters; rust or cracks in the heat exchanger; soot or creosote build-up; and exhaust or gas odors. Installing a carbon monoxide detector is also recommended; however, such a detector will not detect other combustion by-products.

*Insect and Rodent pests:* The observed association between exposure to cockroach antigen and asthma severity has already been noted above. In addition, cockroaches may act as vehicles to contaminate and environmental surfaces with certain pathogenic organisms. Rodents can transmit a number of communicable diseases to humans, either through bites, arthropod vectors, or exposure to aerosolized excreta. In addition, humans can become sensitized to proteins in rodent, urine, dander and saliva. Such sensitization may contribute to asthma severity among children. Insect and rodent infestation is frequently associated with substandard housing that makes it difficult to eliminate. Treatment of rodent and insect infestations often includes the use of toxic pesticides which may present hazards to occupants (see below). Integrated pest management (IPM) for rodents and cockroaches, which reduces the use of pesticides, is estimated to cost approximately $150 per unit. IPM control measures include sealing holes and cracks, removing food sources and use of traps.

*Lead:* Exposure to lead, especially from deteriorating lead-based paint, remains one of the most important and best-studied of the household environmental hazards to children. Although blood lead levels have fallen nationally, a large reservoir of lead remains in housing. The most recent national survey, conducted from 1991–94, showed that nearly one million U.S. preschoolers still have elevated blood lead levels. Overall, the prevalence rate among all children under six

years of age is 4.4%. Among low-income children living in older housing where lead-based paint is most prevalent, the rate climbs to 16%; and for African-American children living in such housing, it reaches 21%.

HUD estimates that 64 million dwellings have some lead-based paint, and that 20 million have lead-based paint hazards. Of those, about 3.6 million have young children and of those, about 500,000 units have inadequate cash flow to respond to lead-based paint hazards. Costs can range anywhere from $500 to $15,000 per unit. Corrective measures include paint stabilization, enclosure and removal of certain building components coated with lead paint, and cleanup and ''clearance testing'', which ensures the unit is safe for young children.

*Mold and moisture:* An analysis of several pulmonary disease studies estimates that 25% of airways disease, and 60% of interstitial lung disease may be associated with moisture in the home or work environment. Moisture is a precursor to the growth of mold and other biological agents, which is also associated with respiratory symptoms. An investigation of a cluster of pulmonary hemosiderosis (PH) cases in infants showed PH was associated with a history of recent water damage to homes and with levels of the mold Stachybotrys atra (SA) in air and in cultured surface samples. Associations between exposure to SA and ''sick building'' symptoms in adults have also been observed. Other related toxigenic fungi have been found in association with SA-associated illness and could play a role. For sensitive individuals, exposure to a wide variety of common molds may also aggravate asthma. Addressing mold problems in housing requires coordination among the medical, public health, microbiological, housing, and building science communities.

The cost of mold/moisture-related intervention work (e.g., integrated pest management, clean & tune furnace, remove debris ,vent clothes dryer, cover dirt floor with impermeable vapor barrier) is a few hundred dollars, unless major modification of the ventilation system is needed. In Cleveland, mold interventions, including repairs to ventilation systems and basement flooring, in the most heavily-contaminated homes range from $500—$5,000, with some costs also being dedicated to lead hazard control simultaneously through its lead+asthma program.

*Pesticide residues:* According to the EPA, 75 percent of U.S. households used at least one pesticide product indoors during the past year. Products used most often are insecticides and disinfectants. Another study suggests 80 percent of most people's exposure to pesticides occurs indoors and that measurable levels of up to a dozen pesticides have been found in the air inside homes. The amount of pesticides found in homes appears to be greater than can be explained by recent pesticide use in those households; other possible sources include contaminated soil or dust that migrates in from outside, stored pesticide containers, and household surfaces that collect and then release the pesticides. Pesticides used in and around the home include products to control insects (insecticides), termites (termiticides), rodents (rodenticides), molds and fungi(fungicides), and microbes (disinfectants). In 1990, the American Association of Poison Control Centers reported that some 79,000 children were involved in common household pesticide poisonings or exposures. In households with children under five years old, almost one-half stored at least one pesticide product within reach of children. Exposure to chlorpyriphos (CP), a commonly used organophosphate insecticide, in the prenatal and early postnatal period may impair neurodevelopment. While CP is a biodegradable pesticide, substantial persistence of CP in house dust has been demonstrated. Exposure to high levels of cyclodiene pesticides, commonly associated with misapplication, has produced various symptoms, including headaches, dizziness, muscle twitching, weakness, tingling sensations, and nausea. In addition, EPA is concerned that cyclodienes might cause long-term damage to the liver and the central nervous system, as well as an increased risk of cancer.

There are available data on hazard evaluation methods and remediation effectiveness regarding pesticide residues in the home environment.

*Radon progeny:* The National Academy of Sciences estimates that approximately 15,000 cases of lung cancer per year are related to radon exposure. Epidemiologic studies of miners exposed to high levels of radon in inhaled air have defined the dose response relation for radon-induced lung cancer at high exposure levels. Extrapolation of these data has been used to estimate the excess risk of lung cancer attributable to exposure to radon gas at the lower levels found in homes. These estimates indicate that radon gas is an important cause of lung cancer deaths in the U.S. Excessive exposures are typically related to home ventilation, structural integrity and location.

Radon measurement and remediation methods are well-developed, and the Environmental Protection Agency (EPA) recommends that every home be measured for radon. EPA estimates that materials and labor costs for radon reduction in an existing home are $800–$2500. Including radon resistant techniques in new home construction costs $350–$500, and can save up to $65 annually in energy costs, according to the EPA.

*Take home hazards from work/hobbies and work at home:* When the clothing, hair, skin, or shoes of workers become contaminated with hazardous materials in the workplace, such contaminants may inadvertently be carried to the home environment and/or an automobile. Such ''take-home'' exposures have been demonstrated, for example, in homes of lead-exposed workers. In addition, certain hobbies or workplaces located in the home may provide an especially great risk of household contamination.

Control methods include storing and laundering work clothes separately, and showering and changing before leaving work, or immediately after arriving home. Once a home becomes contaminated, cleaning floors and contact surfaces and replacing furnishings may be necessary to reduce exposures.

*Unintentional injuries/fire:* Unintentional injury is now the leading cause of death and disability among children younger than 15 years of age. In 1997, nearly 7 million persons in the United States were disabled for at least 1 full day by unintentional injuries received at home. During the same year, 28,400 deaths were attributable to unintentional home injuries, of which 1800 occurred among children 0–4 years of age. Among young children, three types of events accounted for more than ¾ of deaths: fires/burns, drownings, and mechanical suffocation. Falls and poisoning are the next most common.

Home visitation protocols have been shown to be effective in reducing exposure to such hazards. The ''add-on'' cost of injury prevention measures, when combined with other housing interventions are estimated at about $100 per unit. This includes the cost of some injury prevention devices, such as smoke alarms, electrical socket covers, etc.

**Appendix B**

*References*

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Friday
July 23, 1999

# Part X

# Department of Housing and Urban Development

**24 CFR Part 5, et al.**

**One-Strike Screening and Eviction for Drug Abuse and Other Criminal Activity; Proposed Rule**

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

**24 CFR Parts 5, 200, 247, 880, 882, 884, 891, 960, 966, and 982**

**[Docket No. FR–4495–P–01]**

**RIN 2501–AC63**

## One-Strike Screening and Eviction for Drug Abuse and Other Criminal Activity

**AGENCY:** Office of the Secretary, HUD.

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule would amend the regulations for the public housing and Section 8 assisted housing programs, and for other HUD assisted housing programs, such as the Section 221 (d)(3) below market interest rate (BMIR) program, Section 202 program for the elderly, and Section 811 program for persons with disabilities, and Section 236 interest reduction program. All of these programs were affected by recent statutory amendments. These amendments give Public Housing Agencies (PHAs) and assisted housing owners the tools for adopting and implementing fair, effective, and comprehensive policies for denying admission to applicants who engage in illegal drug use or other criminal activity and for evicting or terminating assistance of persons who engage in such activity.

**DATES:** *Comments Due Date:* Comments on the proposed rule and the proposed information collection requirements are due on or before September 21, 1999.

**ADDRESSES:** Submit written comments regarding this proposed rule to the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410. Comments should refer to the above docket number and title. A copy of each comment submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address. Facsimile (FAX) comments will not be accepted.

**FOR FURTHER INFORMATION CONTACT:** For Section 8 certificate, voucher, and moderate rehabilitation programs—Gerald J. Benoit, Director, Real Estate Performance and Housing Division, Office of Public and Indian Housing, Department of Housing and Urban Development, Room 4210, 451 Seventh Street, SW, Washington, DC 20410; telephone (202) 708–0477. For public housing '' Patricia Arnaudo, Senior Program Manager, Office of Public and Assisted Housing Delivery, Department of Housing and Urban Development, 451 Seventh Street, SW, Room 4224, Washington DC, 20410; telephone (202) 708–0744 or the Public and Indian Housing Resource Center at 1–800–955–2232.

For the Section 8 project-based programs '' Willie Spearmon, Director, Office of Multifamily Business Products, Office of Housing, Department of Housing and Urban Development, Room 6134, 451 Seventh Street, SW, Washington, DC 20410; telephone (202) 708–3000.

Only the Public and Indian Housing Resource Center number is toll-free. Persons with hearing or speech impairments may access these numbers via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

**SUPPLEMENTARY INFORMATION:**

### I. Background

President Clinton, in his 1996 State of the Union address, proposed the ''one strike and you're out'' policy. The President challenged local housing authorities and tenant associations to stop criminal gang members and drug dealers who were destroying the lives of decent tenants. In response to the President's ''One Strike'' mandate, HUD expeditiously issued guidelines and procedures and conducted extensive training for PHAs around the country. Public housing agencies, localities, police departments and judges have all responded to the President's call. Public housing communities are better, safer places because of their efforts.

It is critical that assisted housing owners have the same opportunities to fight criminal activity, so that residents in their communities can also live in peace. This proposed rule provides for that broadened authority and responsibility. The rule is intended to give PHAs and assisted housing owners the tools for adopting and implementing fair, effective, and comprehensive policies for both crime prevention and enforcement. Crime prevention will be advanced by the authority to screen out those who engage in illegal drug use or other criminal activity, and enforcement will be advanced by the authority to evict and terminate assistance for persons who participate in criminal activity.

In 1996, the Housing Opportunity Program Extension Act (Pub. L. 104–120, 110 Stat. 834–846, approved March 28, 1996) (''the Extension Act'') amended the United Stated Housing Act of 1937 (42 U.S.C. 1437a, *et seq.*) (''the 1937 Act''). The Extension Act added significant crime and security protections for public housing and section 8 residents. It made an individual who has been evicted from public housing or any Section 8 program for drug-related criminal activity ineligible for admission to public housing and the section 8 programs for a three-year period, beginning from the date of eviction. The evicted family becomes eligible for re-admission, however, if the individual who engaged in the activity has successfully completed a rehabilitation program approved by the PHA or if the PHA determines that the circumstances leading to the eviction no longer exist.

The Extension Act also required PHAs to establish standards that prohibit occupancy in any public housing unit or participation in a section 8 tenant-based program by any person the PHA determines to be using a controlled substance, or whose pattern of illegal use of a controlled substance or pattern of alcohol abuse would interfere with the health, safety or right to peaceful enjoyment of the premises by other residents of the development. In this connection, the Extension Act authorized the PHA administering the program to determine whether an applicant has been rehabilitated from drug or alcohol abuse. In addition, the Extension Act provided PHAs the opportunity to access criminal records for public housing applicants and residents.

HUD issued a variety of guidance on implementing the Extension Act (PIH Notice 96–16, issued April 12, 1996 and PIH Notice 96–27, issued May 15, 1996). HUD published proposed rules for the section 8 tenant-based and moderate rehabilitation programs on March 31, 1997 (62 FR 15346) and for the public housing program on May 9, 1997 (62 FR 25728).

Sections 575–579 of the Quality Housing and Work Responsibility Act of 1998 (Public Law 105–276, approved Oct. 21, 1998, 112 Stat. 2634–2643) (''the Public Housing Reform Act'' or ''the 1998 Act'') revised provisions of the 1937 Act (sections 6 and 16) and created other statutory authority to expand crime and security provisions to most federally assisted housing. Instead of issuing a final rule on the admission and eviction provisions of the Extension Act, HUD is publishing this new proposed rule on the provisions as they exist after the revision to the drug abuse and criminal activity requirements made by the Public Housing Reform Act.

The 1998 Act revised the prohibition on admitting families for three years because of eviction from public housing or Section 8 units for drug-related criminal activity to cover admissions to

(and evictions from) Section 202, Section 811, Section 221(d)(3) BMIR, Section 236, and Section 514/515 rural housing projects. In addition, the 1998 Act (section 578(a)) added the obligation for project owners—including PHAs that administer public housing—to deny admission to sex offenders who are subject to a lifetime registration requirement under a State sex offenders' registration program. The FY 1999 appropriations act (Section 428 of Public Law 105–276, 112 Stat. 2511) added a new paragraph (f) to section 16 of the 1937 Act to bar persons convicted of manufacturing or producing methamphetamine from public housing and Section 8 assisted housing where the PHA determines who is admitted.

An additional crime and safety provision was added to the 1937 Act by the Personal Responsibility and Work Opportunity Act of 1996 (Public Law 104–193, approved August 22, 1996; 110 Stat. 2105, 2348). Section 903 of that Act amended the 1937 Act (42 U.S.C. 1437f(d)(1) and 1437d(*l*)) to add as a grounds for termination of tenancy in the public housing and Section 8 assistance programs fleeing to avoid prosecution, or custody or confinement after conviction, for a felony (or a high misdemeanor in New Jersey). Violating a condition of probation or parole imposed under Federal or State law is also grounds for termination of tenancy under that provision. That provision also created the obligation (in a new section 27 of the 1937 Act) for PHAs to provide Federal, State or local law enforcement officials with information concerning assistance recipients whom the officials are pursuing for violating parole or fleeing to avoid prosecution.

## II. Applicability

This proposed rule would implement the statutory provisions described above. However, not all of the statutory provisions apply to all of the programs covered by this rule. The chart below describes which provisions apply to which programs. Until this rule is issued for effect, the provisions of this rule are not effective. However, the following provisions of the recent statutory amendments are already in effect: (1) the drug treatment facility check provision of section 575(e) of the 1998 Act, which applies to public housing only, and (2) the methamphetamine production provision of section 428 of the Fiscal Year 1999 appropriation act. Both of these provisions were described as immediately applicable in the Initial Guidance Notice on the 1998 Act, published in the **Federal Register** on February 18, 1999 (64 FR 8192). The safety and security provisions of the Extension Act remain in effect, as described in PIH Notice 96–27.

BILLING CODE 4210–32–P

| Statutory Provision [Section of 98 Act unless otherwise specified] | Applies to public housing? | Applies to Section 8 tenant-based assistance? | Applies to Section 8 project-based assistance? | Applies to other federally assisted housing: 221(d)(3) BMIR, 236, 202 & 811 projects? |
|---|---|---|---|---|
| Definition of Person with Disabilities<br><br>[506 of 98 Act, amending 3 of 37 Act] | Yes | Yes | Yes | No |
| Access to Drug Abuse Treatment Facility Records<br><br>[575(e) of 98 Act, adding 6(t) of 37 Act] | Yes | No | No | No |
| Criminal Activity Grievances & Evictions<br><br>[575(a)&(b) of 98 Act, amending 6(k) & (l) of 37 Act] | Yes | No | No | No |
| Access to Criminal Records<br><br>[575(c) & (d) of 98 Act, adding 6(t) of 37 Act] | Yes | Yes - PHAs<br>No - owners | Yes, except owners obtain info through PHAs | No |
| Denial of Admission for Previous Eviction for Drug-Related Crime<br><br>[576(a) of 98 Act, 42 USC 13661] | Yes | Yes | Yes | Yes |
| Denial of Admission for Drug Use & Alcohol Abuse<br><br>[576(b) of 98 Act, 42 USC 13661] | Yes | Yes | Yes | Yes |
| Denial of Admission for Drug-Related, Violent or Other Crime<br><br>[576(c) of 98 Act, 42 USC 13661] | Yes | Yes | Yes | Yes |

| | | | | |
|---|---|---|---|---|
| Evictions & Termination of Assistance for Drug Use & Alcohol Abuse<br><br>[577 of 98 Act, 42 USC 13662] | Yes | Yes | Yes | Yes |
| Denial of Admission & Evictions of Sex Offenders<br><br>[578 of 98 Act, 42 USC 13663] | Yes | Yes | Yes | Yes |
| Definitions<br><br>[579 of 98 Act, 42 USC 13664] | Yes | Yes | Yes | Yes |
| Denial of Admission, Evictions, & Termination of Assistance for Methamphetamine Manufacture<br><br>[428 of 99 Appropriations Act, amending 16 of 37 Act] | Yes | Yes | Yes, if a PHA makes admission decisions | No |
| Evictions of Fleeing Felons<br><br>[903 of 96 Personal Respons. & Work Opportunity Reconciliation Act, amending 6(l) & 8(d) of 37 Act] | Yes | Yes | Yes | No |

BILLING CODE 4210–32–C

## III. Subjects This Rule Covers

### *A. Ineligibility of Persons Involved in Drug or Alcohol Abuse*

The rule requires PHAs and owners of federally assisted housing to develop standards that prohibit admission of any household with a member who (1) the PHA or owner has determined is engaged in illegal drug use; or (2) the PHA or owner has reasonable cause to believe is engaged in illegal drug use or alcohol abuse (or pattern of abuse) that may interfere with the health, safety or right to peaceful enjoyment of other residents of the development. With respect to households already participating in a federally assisted housing program, the rule requires PHAs and owners to develop occupancy standards or lease provisions that allow the PHAs and owners to terminate tenancy or assistance of households with a member engaged in such conduct. The 1998 amendments of the 1996 Extension Act provisions on ineligibility of illegal drug users and alcohol abusers confirm that a PHA or owner may deny admission or terminate assistance for the whole household that includes a person involved in the proscribed activity. With respect to a PHA or owner's discretion to consider rehabilitation for a household member with the offending substance abuse problem, the rule would permit a PHA or owner to hold the whole household responsible for that member's successful rehabilitation as a condition for continued occupancy and avoidance of eviction.

### *B. Ineligibility of Persons Convicted of Producing Methamphetamine*

Individuals convicted of manufacturing or producing methamphetamine are ineligible for public housing, Section 8 tenant-based assistance, and Section 8 project-based assistance administered by a PHA, in accordance with section 428 of the HUD appropriations act for FY 1999 (amending section 16 of the 1937 Act). The restriction applies to persons convicted of producing methamphetamine in a building or complex assisted under the public housing or Section 8 programs. PHAs are required by the statute and this rule (e.g., §§ 966.4(f)(5)(i)(B), 982.310(c), 982.553(b)(1)(ii)) to establish standards that make these persons ineligible for admission and require their immediate termination of tenancy.

### *C. Termination of Tenancy of Fleeing Felons*

Owners of public housing and Section 8 assisted housing are authorized to terminate the tenancy of individuals who are fleeing to avoid prosecution or to avoid custody or confinement after conviction of a crime or attempt to commit a crime, as described above (e.g., §§ 966.4(f)(5)(ii)(B) and 982.553(b)(2)(ii)). The crimes covered are those that are felonies under the laws of the place from which the individual flees (or, in the case of the State of New Jersey, a high misdemeanor). In addition, the rule permits owners to terminate the tenancy of individuals who violate a condition of probation or parole imposed under Federal or State law. In order to implement this provision, the proposed rule requires PHAs and Section 8 housing owners to amend their leases to provide for termination under these circumstances.

### *D. Criminal Records from Law Enforcement Agencies*

PHA Access to Records

PHAs may access criminal conviction records from the National Crime Information Center, police departments, and other law enforcement agencies for purposes of applicant screening, lease enforcement, and eviction. PHAs may access such records for adult applicants and tenants of public housing and adult applicants and participants in the PHA's Section 8 tenant-based programs. In addition, they may access records in order to screen applicants or evaluate tenants for owners of project-based Section 8 housing programs. In order to access an applicant's or tenant's criminal conviction record, the PHA must provide the law enforcement agency with a consent form signed by the applicant or tenant.

Owners' Access to Records

Owners of project-based section 8 developments, including owners of project-based certificate program and moderate rehabilitation program developments, may request a PHA to obtain criminal records and perform determinations for the owner regarding screening applicants, lease enforcement, or eviction for developments located in the PHA's jurisdiction. The owner must provide the PHA with a consent form signed by the applicant or tenant. When the owner makes such a request, the PHA must obtain the applicant or tenant's criminal record from the appropriate law enforcement agency. The PHA must not give the criminal record, or disclose its content, to the owner. Instead, the PHA must use the record to screen the applicant or evaluate the tenant based on the owner's standards for admission and occupancy. The PHA may charge the owner a fee for both obtaining the record and performing the screening and evaluation services.

### *E. Records of Sex Offenders Subject to a Lifetime Registration Requirement*

This proposed rule would implement the requirement that PHAs and owners of federally assisted housing prohibit admission of any household that includes a person subject to a lifetime registration requirement under a State sex offender registration program.

This provision requires that, in addition to any criminal records check a PHA may conduct, the PHA also must make further inquiries, as necessary, with State and local agencies to determine whether an applicant is subject to a lifetime registration requirement under a State sex offender registration program. (State and local agencies responsible for collecting criminal history record information or information on persons required to register as sex offenders are required to comply with PHA requests for such information.) The PHA must make this determination for owners of other federally assisted housing if the housing is located in the PHA's jurisdiction and the owner requests that the PHA assist in this way. As with other criminal records obtained by the PHA on behalf of an owner pursuant to section 6(q) of the 1937 Act, the PHA must not release the information to the owner but must screen the applicant or evaluate the tenant using the owner's criteria. The PHA may charge a fee for this service.

### *F. Records From Drug Abuse Treatment Facilities—Applicable to Public Housing Only*

The Public Housing Reform Act authorizes PHAs to obtain limited information concerning public housing applicants from drug abuse treatment facilities. A PHA may make an inquiry to a drug abuse treatment facility only if it either makes the same inquiry with respect to all applicants or makes inquiry concerning applicants with a prior criminal record or prior tenancy showing the applicant engaged in destruction of property, violent activity against another person or interfered with another tenant's peaceful enjoyment of the premises. To obtain information from a drug treatment facility, the PHA must provide the facility with a written consent form signed by the individual applicant. The PHA may only inquire whether the drug abuse treatment facility reasonably believes that the individual is currently using illegal drugs.

*G. Records Management*

PHAs must establish a records management system that ensures that criminal records and records from drug abuse treatment facilities are maintained confidentially, are not misused or improperly disseminated, and are destroyed within the statutorily prescribed time frames. The statute requires the imposition of a fine in the event that any PHA agent obtains criminal records under false pretenses or discloses any such information to anyone not legally entitled to such information. The rule provides that records must not be kept in the applicant or tenant file and that once the record is no longer needed it is destroyed.

Information obtained from public records or obtained from law enforcement agencies independent of this authority is not subject to the restrictions on disclosure imposed by this rule.

*H. Definition of Person With Disabilities*

The 1998 Act amended the 1937 Act (at 42 U.S.C. 1437a(b)(3)(E)) by adding a new sentence to the definition of a person with a disability which states, ''Notwithstanding any other provision of law, no individual shall be considered a person with disabilities, for purposes of eligibility for low-income housing * * * solely on the basis of any drug or alcohol dependence.'' This new statutory language is already included in the Department's current definition of person with disabilities (§ 5.403(a)), since the rule refers to the statute. The statutory definition in the 1937 Act includes reference to the definition of disability in section 223(d) of the Social Security Act. The Social Security Administration (SSA) implements that provision through regulations found at 20 CFR 404.1535, which exclude individuals whose alcohol or drug addiction is a contributing factor material to the determination of disability. The SSA rule states that a person is considered disabled if the disabling physical and mental limitations would persist upon discontinuation of drugs or alcohol abuse. (20 CFR 404.1535(b)(2)).

As required by the 1998 Act, the Department consulted with the Departments of Justice, Health and Human Services and the Social Security Administration, and reviewed pertinent regulations related to the definition of disability. The Department is satisfied that the statutory definition of ''person with disabilities'' included in the existing rule incorporates the Social Security Administration's (SSA) definition of disability located at section 223(d) of the Social Security Act, and that the SSA's rule that excludes individuals whose alcohol or drug addiction is a contributing material factor to their disability is appropriate to apply to disability determinations under HUD programs.

*I. Compliance With Civil Rights Requirements*

In developing their policies for screening and eviction under this rule, PHAs and owners are, of course, bound to comply with nondiscrimination and equal opportunity requirements, as provided in 24 CFR 5.105.

**V. Findings and Certifications**

*Paperwork Reduction Act*

(a) The proposed information collection requirements contained at §§ 5.853, 5.854, 5.855, 5.902, 5.903, 882.517, 960.204, and 982.553 of this rule have been submitted to the Office of Management and Budget (OMB) for review, under section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

(b) In accordance with 5 CFR 1320.5(a)(1)(iv), HUD estimates that the total reporting and recordkeeping burden that will result from the proposed collection of information as follows:

REPORTING BURDEN

| Section reference | Number of respondents | Est. average response/freq. of response | Est. annual time (hours) | Burden (hours) |
|---|---|---|---|---|
| 5.853, 5.854, 5.855, 882.517, 982.553: Standards for Admission of Drug Criminals; Other Criminals; Alcohol Abusers | 4,500 | 1 | 30 | 135,000 |
| 5.902(c): Consent form from Family for Release of Criminal Records | 3,000 | 1 | .15 | 450 |
| 5.902(d) and (f): PHA and Owner Request for Criminal Conviction Records | 1,500 | 1 | 4 | 6,000 |
| 5.902(f)(7): PHA Notification to Family and Owner concerning Criminal Conviction Records | 1,500 | 1 | 1 | 1,500 |
| 5.903(d)(2): PHA request to State or local agency for Sex Offender Information | 300 | 1 | 2 | 600 |
| 5.903(e)(6)(i): PHA Notification to Family and Owner concerning Sex Offender Information | 300 | 1 | 1 | 300 |
| 960.204(c): PHA Requirement that Family provide information whether any proposed household member has ever been diagnosed or treated for illegal drug use, abuse; sign consent form | 1,500 | 1 | 1 | 1,500 |
| 960.204(d), (e)(i)(ii): PHA request for Information from Drug Use Treatment Facility | 500 | 1 | 1 | 500 |
| 5.902(g), 5.903(f), 960.204(f): Establishment of a Systems of Records Management and Confidentiality | 4,500 | 1 | 16 | 72,000 |
| Total Reporting Burden | ..... | ..... | ..... | 82,850 |

(c) In accordance with 5 CFR 1320.8(d)(1), the Department is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

As described above, interested persons are invited to submit comments regarding the information collection requirements in this proposal. Under the provisions of 5 CFR part 1320, OMB is required to make a decision concerning this collection of information between 30 and 60 days after today's publication date. Therefore, a comment on the information collection requirements is best assured of having its full effect if OMB receives the comment within 30 days of today's publication. This time frame does not affect the deadline for comments to the agency on the proposed rule, however. Comments must refer to the rule by name and docket number (FR–4495–P–01) and must be sent to:

Joseph F. Lackey, Jr., HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503

and

Millie Hamman, Reports Management Officer, Office of Public and Indian Housing, Department of Housing and Urban Development, Room 4238, 451 Seventh Street, SW, Washington, DC 20410

*Environmental Impact*

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4223). The Finding is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Regulations Division, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC.

*Unfunded Mandates Reform Act*

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This proposed rule does not impose a Federal mandate that will result in the expenditure by State, local, or tribal governments in the aggregate, or by the private sector, of $100 million or more in any one year within the meaning of Unfunded Mandates Reform Act of 1995.

*Executive Order 12866*

The Office of Management and Budget (OMB) reviewed this proposed rule under Executive Order 12866, *Regulatory Planning and Review*. OMB determined that this proposed rule is a ''significant regulatory action,'' as defined in section 3(f) of the Order (although not economically significant, as provided in section 3(f)(1) of the Order). Any changes made to the proposed rule subsequent to its submission to OMB are identified in the docket file, which is available for public inspection in the office of the Department's Rules Docket Clerk, Room 10276, 451 Seventh Street, SW, Washington, DC 20410–0500.

*Impact on Small Entities*

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)) (the RFA), has reviewed and approved this proposed rule and in so doing certifies that this rule will not have a significant economic impact on a substantial number of small entities. The reasons for HUD's determination are as follows:

(1) *A Substantial Number of Small Entities Will Not be Affected.* The proposed rule is exclusively concerned with public housing agencies and with owners of federally assisted housing. Specifically, the proposed rule will establish requirements governing applicant screening and termination of assistance and occupancy based on criminal activity. Under the definition of ''Small governmental jurisdiction'' in section 601(5) of the RFA, the provisions of the RFA are applicable only to those few PHAs that are part of a political jurisdiction with a population of under 50,000 persons. Owners or managers of assisted housing would qualify as small entities only if they had less than $1.5 million in gross receipts annually. The number of entities potentially affected by this rule is therefore not substantial.

(2) *No Significant Economic Impact.* The proposed rule will not change the amount of funding available under the federally assisted housing assistance programs. In the programs administered by the Office of Housing, management agents perform the functions affected by the rule for owners, including nonprofit owners. These agents are approved because they provide management acceptable to HUD and are capable of carrying out requirement management activities, including changes in procedures. They receive fees based on the work they perform, and guidelines provide for allowing fee increases for changed work procedures. Accordingly, the economic impact of this rule will not be significant, and it will not affect a substantial number of small entities.

Notwithstanding HUD's determination that this rule will not have a significant economic effect on a substantial number of small entities, HUD specifically invites comments regarding any less burdensome alternatives to this rule that will meet HUD's objectives as described in this preamble.

*Executive Order 12612, Federalism*

The General Counsel, as the Designated Official for HUD under section 6(a) of Executive Order 12612, *Federalism*, has determined that this rule will not have federalism implications concerning the division of local, State, and Federal responsibilities. No programmatic or policy change under this rule will affect the relationship between the Federal government and State and local governments.

*Catalog of Domestic Assistance Numbers*

The Catalog of Domestic Assistance numbers for the programs affected by this proposed rule are 14.120, 14.195, 14.850, 14.855 and 14.857.

**List of Subjects**

*24 CFR Part 5*

Administrative practices and procedures, Aged, Claims, Drug abuse, Drug traffic control, Grant programs—housing and community development, Grant programs—Indians, Individuals with disabilities, Loan programs—housing and community development, Low and moderate income housing, Mortgage insurance, Pets, Public housing, Rent subsidies, Reporting and Recordkeeping requirements.

*24 CFR Part 200*

Administrative practice and procedure, Aged, Civil rights, Grant programs—housing and community development, Loan programs—housing and community development, Reporting and recordkeeping requirements.

*24 CFR Part 247*

Grant programs—housing and community development, Loan programs—housing and community development, Low and moderate income housing, Rent subsidies.

*24 CFR Part 880*

Grant programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements.

*24 CFR Part 882*

Grant programs—housing and community development, Homeless, Lead poisoning, Manufactured homes, Rent subsidies, Reporting and recordkeeping requirements.

*24 CFR Part 884*

Grant programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements, rural areas.

*24 CFR Part 891*

Aged, Capital advance programs, Civil rights, Grant programs—housing and community development, Individuals with disabilities, Loan programs—housing and community development, Low- and moderate-income housing, Mental health programs, Rent subsidies, Reporting and recordkeeping requirements.

*24 CFR Part 960*

Aged, Grant program—housing and community development, Individuals with disabilities, Public housing.

*24 CFR Part 966*

Grant programs—housing and community development, Public housing.

*24 CFR Part 982*

Grant programs—housing and community development, Housing, Rent subsidies, Reporting and recordkeeping requirements.

Accordingly, HUD proposes to amend 24 CFR parts 5, 200, 247, 880, 882, 884, 891, 960, 966 and 982, as follows:

## PART 5—GENERAL HUD PROGRAM REQUIREMENTS; WAIVERS

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

**Authority:** 42 U.S.C. 3535(d), unless otherwise noted.

2. Amend § 5.100 by adding the following definitions, in alphabetical order:

### § 5.100 Definitions.

* * * * *

*Drug* means a controlled substance as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802).

*Drug-related criminal activity* means the illegal manufacture, sale, distribution, or use of a drug, or the possession of a drug with intent to manufacture, sell, distribute or use the drug.

* * * * *

*Federally assisted housing* (for purposes of subparts I and J of this part) means housing assisted under any of the following programs:

(1) Public housing;

(2) Housing receiving project-based or tenant-based assistance under Section 8 (42 U.S.C. 1437f);

(3) Housing that is assisted under section 202 of the Housing Act of 1959, as amended by section 801 of the National Affordable Housing Act (12 U.S.C. 1701q);

(4) Housing that is assisted under section 202 of the Housing Act of 1959, as such section existed before the enactment of the National Affordable Housing Act;

(5) Housing that is assisted under section 811 of the National Affordable Housing Act (42 U.S.C. 8013);

(6) Housing financed by a loan or mortgage insured under section 221(d)(3) of the National Housing Act (12 U.S.C. 1715*l*(d)(3)) that bears interest at a rate determined under the proviso of section 221(d)(5) of such Act (12 U.S.C. 1715*l*(d)(5));

(7) Housing insured, assisted, or held by HUD or by a State or local agency under section 236 of the National Housing Act (12 U.S.C. 1715z–l); or

(8) Housing assisted by the Rural Development Administration under section 514 or section 515 of the Housing Act of 1949 (42 U.S.C. 1483, 1484).

* * * * *

*Public housing* means housing assisted under the 1937 Act (42 U.S.C. 1437, *et seq.*), other than housing assisted under Section 8 (42 U.S.C. 1437f).

* * * * *

*Violent criminal activity* means any criminal activity that has as one of its elements the use, attempted use, or threatened use of physical force substantial enough to cause, or be reasonably likely to cause, nontrivial bodily injury or property damage.

3. Amend part 5 by adding new subparts I and J, to read as follows:

### Subpart I—Preventing Crime in Federally Assisted Housing—When a Project Owner May Deny Admission or Terminate Tenancy for Criminal Activity or Alcohol Abuse by Household Members

Sec.

5.851 Applicability to subsidized projects.
5.852 Terms.
5.853 Prohibiting admission of drug criminals.
5.854 Prohibiting admission of other criminals.
5.855 Prohibiting admission of alcohol abusers.
5.856 Evicting drug criminals.
5.857 Evicting other criminals.
5.858 Evidence of criminal activity.
5.859 Evicting alcohol abusers.
5.860 Drug use and alcohol abuse: owner discretion.

### Subpart J—Access to Criminal Records and Information

Sec.

5.901 Definitions.
5.902 Availability of criminal records.
5.903 Sex offender information.

## Subpart I—Preventing Crime in Federally Assisted Housing—When a Project Owner May Deny Admission or Terminate Tenancy for Criminal Activity or Alcohol Abuse by Household Members

### § 5.851 Applicability to subsidized projects.

(a) Except as provided in paragraph (b) or (c) of this section, subpart I of this part is applicable to project-based assistance for federally assisted housing.

(b) Subpart I of this part does not apply to public housing or housing assisted with tenant-based assistance under Section 8. For public housing, see part 960 (admission) and part 966 (termination of tenancy) of this title. For Section 8 tenant-based assistance, see part 982 of this title.

(c) Subpart I of this part does not apply to housing assisted by the Rural Development Administration under section 514 or section 515 of the Housing Act of 1949.

### § 5.852 Terms.

(a) *Terms found elsewhere.* The following terms are defined in subpart A of this part: *1937 Act, drug, drug-related criminal activity, federally assisted housing, HUD, public housing, public housing agency (PHA), Section 8, violent criminal activity.*

(b) *Additional terms* (for purposes of subpart I of this part).

*Covered person.* A resident, any member of the resident's household, a guest or another person under the resident's control.

*Household.* The family and any live-in aide approved by the responsible entity.

*Owner.* The owner of federally assisted housing.

*Premises.* The building or complex in which the assisted dwelling unit is located, including common areas and grounds.

*Responsible Entity.* For the public housing program, and for the Section 8 tenant-based assistance program (part 982 of this title), the Section 8 project-based certificate or project-based

voucher program (part 983 of this title) and the Section 8 moderate rehabilitation program (part 882 of this title), *responsible entity* means the PHA administering the program under an ACC with HUD. For all other federally assisted housing, the responsible entity means the owner of the housing.

**§ 5.853 Prohibiting admission of drug criminals.**

(a) The owner must establish standards that prohibit admission of a household to federally assisted housing (subject to the provisions of § 5.860 of this subpart) if:

(1) The owner determines that any household member is currently engaging in or has engaged in drug-related criminal activity; or

(2) The owner determines that it has reasonable cause to believe that illegal use or a pattern of illegal use of a drug by a household member may threaten the health or safety of, or the right to peaceful enjoyment of the premises by, other residents).

(b) The owner may require the household to submit sufficient evidence, as determined by the owner, that the members of the household have not engaged in drug-related criminal activity during a reasonable period, as determined by the owner, before admission to the federally assisted housing.

(c) The owner standards must prohibit admission to the federally assisted housing if any household member has been evicted from federally assisted housing for drug-related criminal activity. This prohibition applies during a reasonable period, as determined by the owner, which is at least three years from the date of the judicial determination authorizing the eviction. However, the owner may admit the household if the owner determines:

(1) That the evicted household member who engaged in drug-related criminal activity has successfully completed a supervised drug rehabilitation program, or

(2) That the circumstances leading to the eviction no longer exist (for example, the criminal household member has died or is imprisoned).

**§ 5.854 Prohibiting admission of other criminals.**

(a) The owner may prohibit admission of a household to federally assisted housing under standards established by the owner if the owner determines that any household member is currently engaging in or has engaged in:

(1) Violent criminal activity,

(2) Other criminal activity which may threaten the health or safety of, or the right to peaceful enjoyment of the premises by, other residents, or

(3) Other criminal activity which may threaten the health or safety of the owner, property management staff, or persons performing a contract administration function or responsibility on behalf of an owner or PHA (including an employee, contractor, subcontractor or agent).

(b) The owner may require the family to submit sufficient evidence, as determined by the owner, that the members of the household have not engaged in such criminal activity during a reasonable period, as determined by the owner, before admission to the federally assisted housing.

(c) The owner must establish standards that prohibit admission to federally assisted housing if any member of the household is subject to a lifetime registration requirement under a State sex offender registration program. In screening of applicants, the owner must check public documents or request the PHA to perform criminal history background check necessary to determine whether any household member is subject to a lifetime sex offender registration requirement. (See § 5.903.)

**§ 5.855 Prohibiting admission of alcohol abusers.**

The owner must establish standards that prohibit admission to federally assisted housing if the owner determines it has reasonable cause to believe that abuse or pattern of abuse of alcohol by a household member may threaten the health or safety of, or the right to peaceful enjoyment of the premises by, other residents.

**§ 5.856 Evicting drug criminals.**

The lease must provide that the owner may terminate the tenancy during the term of the lease if any covered person is currently engaged in or has engaged in any drug-related criminal activity on or near the premises.

**§ 5.857 Evicting other criminals.**

(a) *Threat to other residents.* The lease must provide that any of the following types of criminal activity by a covered person are grounds for termination of tenancy during the term of the lease:

(1) Any criminal activity that threatens the health or safety of, or the right to peaceful enjoyment of the premises by, other residents (including property management staff residing on the premises); or

(2) Any criminal activity that threatens the health or safety of, or the right to peaceful enjoyment of their residences by, persons residing in the immediate vicinity of the premises.

(b) *Fugitive felon or parole violator.* The lease must provide that the owner may terminate the tenancy during the term of the lease if a member of the household is:

(1) Fleeing to avoid prosecution, or custody or confinement after conviction, for a crime, or attempt to commit a crime, that is a felony under the laws of the place from which the individual flees, or that, in the case of the State of New Jersey, is a high misdemeanor; or

(2) Violating a condition of probation or parole imposed under Federal or State law.

**§ 5.858 Evidence of criminal activity.**

The owner may deny admission or terminate tenancy for criminal activity by a family member if the owner determines that the household member has engaged in the criminal activity, regardless of whether the household member has been arrested or convicted for such activity.

**§ 5.859 Evicting alcohol abusers.**

The lease must provide that the owner may terminate the tenancy if the owner determines that a household member has engaged in abuse or pattern of abuse of alcohol that threatens the health or safety of, or the right to peaceful enjoyment of the premises by, other residents.

**§ 5.860 Drug use and alcohol abuse: owner discretion.**

(a) *Consideration of rehabilitation.* In determining whether to deny admission or terminate tenancy for illegal drug use or a pattern of illegal drug use by a household member who is no longer engaging in such use, or for abuse or a pattern of abuse of alcohol by a household member who is no longer engaging in such abuse, the owner may consider whether such household member is participating in or has successfully completed a supervised drug or alcohol rehabilitation program, or has otherwise been rehabilitated successfully.

(b) *Conditions for admission or continued assistance.* (1) In determining whether to deny admission or terminate tenancy for illegal drug use by a household member, or for alcohol abuse by a household member, the owner may impose, as a condition of admission to or continued assistance in the program for other household members, a requirement that any household member who engaged in or is culpable for the drug use or alcohol abuse may not reside with the household or on the premises.

(2) The owner may require a household member who has engaged in

the illegal use of a drug (as defined in § 5.100 of this part), or in alcohol abuse that threatened the health or safety of, or the right to peaceful enjoyment of the premises by, other residents, to submit evidence of current participation in, or successful completion of, a supervised drug or alcohol rehabilitation program as a condition to being allowed to reside with the household or on the premises.

## Subpart J—Access to Criminal Records and Information

### § 5.901 Definitions.

(a) *Terms found elsewhere*. The following terms are defined in subpart A of this part: *1937 Act, annual contributions contract (ACC), drug, household, HUD, public housing, public housing agency (PHA), Section 8.*

(b) *Additional terms* (for purposes of subpart J of this part).

*Responsible entity*. For the public housing program, the Section 8 tenant-based assistance program (part 982 of this title), the Section 8 project-based certificate or project-based voucher program (part 983 of this title), and the Section 8 moderate rehabilitation program (part 882 of this title), *responsible entity* means the PHA administering the program under an ACC with HUD. For all other Section 8 programs, responsible entity means the Section 8 owner.

### § 5.902 Availability of criminal records.

(a) *Purpose and applicability*. (1) This section authorizes PHAs that administer the Section 8 and public housing programs to obtain criminal conviction records from a law enforcement agency. The criminal conviction records are used to screen applicants for admission to these programs and for lease enforcement or eviction. PHAs may not provide these records concerning a household member receiving Section 8 tenant-based assistance to owners.

(2) This section implements section 6(q) of the 1937 Act (42 U.S.C. 1437d(q)). The provisions of this section only apply to criminal records obtained by a PHA from a law enforcement agency under this section. The provisions of this section do not apply to criminal records obtained by a PHA or others from law enforcement agencies other than under this section, e.g., criminal records that are publicly available or records offered by law enforcement agencies.

(b) *Additional definitions* (for purposes of this section).

*Adult*. A person who is 18 years of age or older, or who has been convicted of a crime as an adult under any Federal, State, or tribal law.

*Law enforcement agency*. The National Crime Information Center, police departments and other law enforcement agencies that hold criminal conviction records.

(c) *Consent for release of criminal conviction records*. (1) The responsible entity may require the family to submit a consent form signed by each adult household member.

(2) By execution of the consent form, an adult household member consents that:

(i) Any law enforcement agency may release criminal conviction records concerning the household member to a PHA in accordance with this section;

(ii) The PHA may receive the criminal conviction records from a law enforcement agency, and may use the records in accordance with this section.

(d) *PHA request for criminal conviction records*. (1) A PHA that administers a Section 8 or public housing program under an ACC with HUD may request criminal conviction records from any law enforcement agency concerning an adult member of a household:

(i) Applying for admission to a public housing program or to a Section 8 tenant-based or project-based program.

(ii) Residing in public housing or receiving Section 8 project-based assistance.

(2) The PHA request to the law enforcement agency must include a copy of the consent form signed by the household member.

(3) When the law enforcement agency receives the PHA request (including a copy of the signed consent form), the law enforcement agency must promptly release to the PHA a certified copy of any criminal conviction records concerning the household member in the possession or control of the law enforcement agency. NCIC records must be provided in accordance with NCIC procedures.

(4) The law enforcement agency may charge a reasonable fee for releasing criminal conviction records to the PHA.

(e) *Permitted use and disclosure of criminal conviction records received by PHA*. (1) *Use of records*. Criminal conviction records received by a PHA from a law enforcement agency in accordance with this section may only be used for the following purposes:

(i) *Applicant screening*: (A) PHA screening of applicants for admission to public housing (part 960 of this title);

(B) PHA screening of applicants for admission to the Section 8 tenant-based assistance program (part 982 of this title);

(C) PHA screening of applicants for admission to the Section 8 moderate rehabilitation program (part 882 of this title); or the Section 8 project-based certificate or project-based voucher program (part 983 of this title); or

(D) PHA screening concerning criminal conviction of applicants for admission to Section 8 project-based assistance, at the request of the owner. (For requirements governing use of criminal conviction records obtained by a PHA at the request of a Section 8 owner under this section, see paragraph (f) of this section.)

(ii) *Lease enforcement and eviction*: (A) PHA enforcement of public housing leases; and PHA eviction of public housing residents;

(B) Enforcement of leases by a Section 8 project owner; and eviction of residents by a Section 8 project owner. (However, criminal conviction records received by a PHA from a law enforcement agency under this section may not be used for lease enforcement or eviction of residents receiving Section 8 tenant-based assistance.)

(2) *PHA disclosure of records*. A PHA may only disclose the criminal conviction records which it receives from a law enforcement agency as follows:

(i) Criminal conviction records may be disclosed to officers or employees of the PHA, or to authorized representatives of the PHA who have a job-related need to have access to the information. For example, if the PHA is seeking to evict a public housing tenant on the basis of criminal activity as shown in criminal conviction records provided by a law enforcement agency, the records may be disclosed to PHA employees performing functions related to the eviction, or to a PHA hearing officer conducting an administrative grievance hearing concerning the proposed eviction.

(ii) Criminal conviction records may be disclosed to the extent necessary in connection with a judicial eviction proceeding. For example, criminal conviction records may be included in pleadings or other papers filed in an eviction action, may be disclosed to parties to the action or the court, and may be filed in court or used in evidence. Upon disclosure as necessary in connection with judicial eviction proceedings, such criminal conviction records may become public information, and the PHA is not responsible for controlling access to or knowledge of such records after such disclosure.

(f) *Owner's request for criminal records*. (1) An owner of a unit with Section 8 project-based assistance that is located in a PHA's jurisdiction may request that the PHA obtain criminal conviction records of a household

member from a law enforcement agency. The PHA must review the records on the owner's behalf in accordance with paragraph (f)(6) of this section.

(2) The owner's request must include a copy of the consent form, signed by the household member.

(3) The owner's request must also specify whether the owner is requesting the PHA to obtain the criminal conviction records concerning the household member for applicant screening, for lease enforcement, or for eviction.

(4) The owner's request must also include the following information concerning the criteria used by the owner in applicant screening, lease enforcement or eviction:

(i) If the owner intends to use the PHA determination regarding any such criminal conviction records for applicant screening, the owner's request must include the owner standards for prohibiting admission of drug criminals in accordance with § 5.853, and for prohibiting admission of other criminals in accordance with § 5.854.

(ii) If the owner intends to use the PHA determination regarding any such criminal conviction records for eviction, the owner's request must include the owner standards for evicting drug criminals in accordance with § 5.856, and for evicting other criminals in accordance with § 5.857.

(iii) If the owner intends to use the PHA determination regarding any such criminal conviction records for lease enforcement other than eviction, the owner's request must include any owner standards for lease enforcement because of criminal activity by members of a household.

(5) If the owner submits a request for criminal conviction records concerning an adult household member to the PHA, the PHA must request the criminal conviction records from the appropriate law enforcement agency or agencies as determined by the PHA.

(6) If the PHA receives criminal conviction records requested by a Section 8 project owner, the PHA must determine whether criminal action by a household member, as shown by such criminal conviction records, may be a basis for applicant screening, lease enforcement or eviction. The PHA determination must be based on the criteria used by the owner as specified in the owner's request (see paragraph (f)(4) of this section). For example, if the owner wants to know if the household member has engaged in criminal activity that may be a basis for denying admission, the PHA must determine whether criminal activity as shown by any criminal conviction record received from a law enforcement agency may be a basis for prohibiting admission in accordance with HUD regulations and the owner criteria.

(7) The PHA must notify the family and the owner whether it has received criminal conviction records concerning the household member, and of its determination whether such criminal conviction records may be a basis for applicant screening, lease enforcement or eviction. However, except as provided in paragraph (f)(8) of this section, the PHA must not disclose the household member's criminal conviction record or the content of that record to the owner.

(8) The PHA may only disclose criminal conviction records to the owner for use in connection with judicial eviction proceedings by the owner. The PHA may only release the records:

(i) If the owner has requested the criminal conviction records concerning a household member for use in connection with eviction; and

(ii) If the PHA has determined that criminal activity by the household member as shown by such records received from a law enforcement agency may be a basis for eviction from a Section 8 unit; and

(iii) If the owner provides the PHA a written certification that the owner must use the criminal conviction records only to the extent necessary in connection with judicial eviction proceeding in which the owner seeks to evict the Section 8 tenant based on criminal activity by the household member as shown in the criminal conviction records.

(9) If an owner requests a PHA to obtain criminal conviction records in accordance with this section, the PHA may charge the owner reasonable fees for making the request on behalf of the owner and for taking other actions for the owner. The PHA may require the owner to reimburse costs incurred by the PHA, including reimbursement of any fees charged to the PHA by the law enforcement agency.

(g) *Records management.* The PHA must establish and implement a system of records management that ensures that any criminal record received by the PHA from a law enforcement agency is:

(1) Maintained confidentially;

(2) Not misused or improperly disseminated; and

(3) Destroyed, once the purpose for which the record was requested has been accomplished.

**§ 5.903 Sex offender information.**

(a) *Purpose.* The purpose of this section is to prevent admission of dangerous sex offenders to federally assisted housing. For this purpose, PHAs are authorized to obtain sex offender registration information from State and local agencies.

(b) *Applicability.* The provisions of this section apply to criminal history background checks by a PHA of State sex offender registration information in accordance with 42 U.S.C. 13663. The provisions of this section do not apply to sex offender information obtained by a PHA or others from law enforcement agencies other than under this section, such as publicly available information listing persons subject to a lifetime registration requirement under a State sex offender registration program.

(c) *Terms found elsewhere.* The following terms are defined in subpart A of this part: *federally assisted housing, household, HUD, public housing, public housing agency (PHA), owner, Section 8.*

(d) *How PHA obtains sex offender registration information.* (1) A PHA that administers a Section 8 or public housing program under an ACC with HUD must carry out criminal history background checks necessary to determine whether a member of a household applying for admission to any federally assisted housing program is subject to a lifetime sex offender registration requirement under a State sex offender registration program.

(2) If the PHA requests such information from any State or local agency responsible for the collection or maintenance of such information, the State or local agency must promptly provide the PHA such information in its possession or control.

(3) The State or local agency may charge a reasonable fee for providing the information.

(e) *Owner's request for sex offender registration information.*

(1) An owner of federally assisted housing that is located in the jurisdiction of a PHA that administers a Section 8 or public housing program under an ACC with HUD may request that the PHA obtain information necessary to determine whether a household member is subject to a lifetime registration requirement under a State sex offender registration requirement.

(2) The owner's request must specify whether the owner is asking the PHA to obtain the sex offender registration information concerning the household member for applicant screening, for lease enforcement, or for eviction.

(3) The owner's request must also include the following information concerning the criteria used by the

owner in applicant screening, lease enforcement or eviction:

(i) If the owner intends to use the PHA determination regarding any such sex offender registration information for applicant screening, the owner's request must include the owner standards in accordance with § 5.854(c) for prohibiting admission of persons subject to a lifetime sex offender registration requirement.

(ii) If the owner intends to use the PHA determination regarding any such sex offender registration information for eviction, the owner's request must include the owner standards for evicting persons subject to a lifetime registration requirement in accordance with § 5.857.

(iii) If the owner intends to use the PHA determination regarding any such sex offender registration information for lease enforcement other than eviction, the owner's request must include any owner standards for lease enforcement because of criminal activity by members of a household.

(4) If an owner submits a request for sex offender registration information from the PHA, the PHA must obtain such information in accordance with paragraph (d) of this section.

(5) If the PHA obtains sex offender registration information from a State or local agency upon request from an owner, the PHA must determine whether such information may be a basis for applicant screening, lease enforcement or eviction. The PHA determination must be based on the criteria used by the owner as specified in the owner's request.

(6)(i) The PHA must notify the family and the owner of its determination whether sex offender registration information received by the PHA under this section concerning a household member may be a basis for applicant screening, lease enforcement or eviction in accordance with HUD requirements and the criteria used by the owner.

(ii) The PHA must not disclose to the owner any sex offender registration information obtained by the PHA under this section. However, the restriction on PHA disclosure of sex offender registration information does not apply to information that is public information, or is obtained by a PHA other than under this section (for example, information posted on a State sex offender registration website).

(7) If an owner asks a PHA to obtain sex offender registration information concerning a household member in accordance with this section, the PHA may charge the owner reasonable fees for making the request on behalf of the owner and for taking other actions for the owner. The PHA may require the owner to reimburse costs incurred by the PHA, including reimbursement of any fees charged to the PHA by a State or local agency for releasing the information.

(f) *Records management.* (1) The PHA must establish and implement a system of records management that ensures that any sex offender registration information record received by the PHA from a State or local agency under this section is:

(i) Maintained confidentially;

(ii) Not misused or improperly disseminated; and

(iii) Destroyed, once the purpose for which the record was requested has been accomplished.

(2) The records management requirements do not apply to information that is public information, or is obtained by a PHA other than under this section.

(g) *Opportunity to dispute.* If a PHA obtains sex offender registration information from a State or local agency under paragraph (d) of this section showing that a household member is subject to a lifetime sex offender registration requirement, the PHA must provide the family a copy of such information, and an opportunity to dispute the accuracy and relevance of the information. This opportunity must be provided before a denial of admission, eviction or lease enforcement action on the basis of such information.

## PART 200—INTRODUCTION TO FHA PROGRAMS

4. The authority citation for part 200 continues to read as follows:

**Authority:** 12 U.S.C. 1701–1715z–18; 42 U.S.C. 3535(d).

5. Add a new § 200.37 under the heading ''Miscellaneous Cross Cutting Regulations'' to read as follows:

### § 200.37 Preventing crime in federally assisted housing.

Programs administered under section 236 and under sections 221(d)(3) and 221(d)(5) of the National Housing Act are subject to the requirements of part 5, subparts I and J, of this title.

## PART 247—EVICTIONS FROM SUBSIDIZED AND HUD-OWNED PROJECTS

6. The authority citation for part 247 continues to read as follows:

**Authority:** 12 U.S.C. 1701q, 1701s, 1715b, 1715l, and 1715z–1; 42 U.S.C. 1437a, 1437c, 1437f, and 3535(d).

7. In § 247.2, revise the last sentence in the definition of ''subsidized project'' to read as follows:

### § 247.2 Definitions.

* * * * *

*Subsized project* * * * For purposes of this part, *subsidized project* also includes those units in a housing project that receive the benefit of:

(1) Rental subsidy in the form of rent supplement payments under section 101 of the Housing and Urban Development Act of 1965 (12 U.S.C. 1701s); or

(2) Housing assistance payments for project-based assistance under Section 8 of the 1937 Act (42 U.S.C. 1437f). However, this part is not applicable to Section 8 project-based assistance under parts 880, 881, 883 and 884 of this title (except as specifically provided in those parts).

8. In § 247.3, revise paragraph (a)(3) to read as follows:

### § 247.3 Entitlement of tenants to occupancy.

(a) * * *

(3) Criminal activity or alcohol abuse by a covered person in accordance with part 5, subparts I and J, of this title.

* * * * *

## PART 880—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM FOR NEW CONSTRUCTION

9. The authority citation for part 880 continues to read as follows:

**Authority:** 42 U.S.C. 1437a, 1437c, 1437f, 3535(d), 12701, and 13611–13619.

### § 880.607 [Amended]

10. In § 880.607, revise paragraph (b)(1)(iii) to read as follows:

* * * * *

(b) * * *

(1) * * *

(iii) Criminal activity or alcohol abuse by a covered person in accordance with part 5, subparts I and J, of this title.

* * * * *

## PART 882—SECTION 8 MODERATE REHABILITATION PROGRAMS

11. The authority citation for part 882 continues to read as follows:

**Authority:** 42 U.S.C. 1437f and 3535(d).

12. In § 882.102, amend paragraph (b) by removing the definitions of the terms ''Drug-related criminal activity'', ''Drug-trafficking'', and ''Violent criminal activity'', and by adding definitions of the following additional terms, in alphabetical order:

### § 882.102 Definitions.

* * * * *

*Covered person.* A resident, any member of the resident's household, a guest or another person under the resident's control.

* * * * *

*Household.* The family and any PHA-approved live-in aide.

**§ 882.514 [Amended]**

13. In § 882.514, remove paragraph (a)(2) and redesignate paragraph (a)(3) as paragraph (a)(2).

14. In part 882, add a new § 882.518 to read as follows:

**§ 882.518 When a PHA may deny admission or terminate assistance for criminals and alcohol abusers.**

(a) *Requirement to deny admission.* (1) *Prohibiting admission of drug criminals.* (i) The PHA must establish standards that prohibit admission of a household to the Section 8 moderate rehabilitation program if the PHA determines that any household member is currently engaging in or has engaged in drug-related criminal activity or the PHA determines that it has reasonable cause to believe that illegal use or a pattern of illegal use of a drug, as defined in § 5.100 of this part, by a household member may threaten the health or safety of, or the right to peaceful enjoyment of the premises by, other residents).

(ii) The PHA may require the household to submit sufficient evidence, as determined by the PHA, that the members of the household have not engaged in drug-related criminal activity during a reasonable period, as determined by the PHA, before admission to the program.

(iii) The PHA standards must prohibit admission to the program if any household member has been evicted from federally assisted housing for drug-related criminal activity. This prohibition applies during a reasonable period, as determined by the PHA, which is at least three years from the date of the judicial determination authorizing the eviction. The PHA may admit the household if the PHA determines:

(A) That the evicted household member who engaged in drug-related criminal activity has successfully completed a supervised drug rehabilitation program approved by the PHA, or

(B) That the circumstances leading to eviction no longer exist (for example, the criminal household member has died or is imprisoned).

(iv) The PHA must establish standards that permanently prohibit admission to the program if any household member has ever been convicted of drug-related criminal activity for manufacture or production of methamphetamine on the premises of federally assisted housing.

(2) *Prohibiting admission of other criminals.* (i) The PHA may prohibit admission of a household to the program under standards established by the PHA if the PHA determines that any household member is currently engaged in or has engaged in:

(A) Violent criminal activity,

(B) Other criminal activity which may threaten the health or safety of, or the right to peaceful enjoyment of the premises by, other residents,

(C) Other criminal activity which may threaten the health or safety of the owner, property management staff, or persons performing a contract administration function or responsibility on behalf of the PHA (including a PHA employee or a PHA contractor, subcontractor or agent).

(ii) The PHA may require the household to submit sufficient evidence, as determined by the PHA, that the members of the household have not engaged in such criminal activity during a reasonable period, as determined by the PHA, before admission to the program.

(iii) The PHA must establish standards that prohibit admission to the program if any member of the household is subject to a lifetime registration requirement under a State sex offender registration program. In screening of applicants, the PHA must perform criminal history background checks necessary to determine whether any household member is subject to a lifetime sex offender registration requirement.

(3) *Prohibiting admission of alcohol abusers.* The PHA must establish standards that prohibit admission to the program if the PHA determines that it has reasonable cause to believe that abuse or pattern of abuse of alcohol by a household member may adversely affect the health or safety of, or the right to peaceful enjoyment of the premises by, other residents.

(b) *Terminating assistance.* (1) *Terminating assistance for drug criminals.* (i) The PHA must establish standards that allow the PHA to terminate assistance for a family under the program if the PHA determines that any household member has engaged in drug-related criminal activity.

(ii) *Methamphetamine conviction—termination of assistance.* The PHA must immediately terminate assistance for a family under the program if the PHA determines that any member of the household has ever been convicted of drug-related criminal activity for manufacture or production of methamphetamine on the premises of federally assisted housing.

(2) *Terminating assistance for other criminals.* (i) The PHA must establish standards that allow the PHA to terminate assistance for a family if the PHA determines that any household member has engaged in violent criminal activity.

(ii) *Fugitive felon or parole violator.* The PHA may terminate assistance for a family if the PHA determines that a member of the household is:

(A) Fleeing to avoid prosecution, or custody or confinement after conviction, for a crime, or attempt to commit a crime, that is a felony under the laws of the place from which the individual flees, or that, in the case of the State of New Jersey, is a high misdemeanor; or

(B) Violating a condition of probation or parole imposed under Federal or State law.

(3) *Evidence of criminal activity.* The PHA may deny admission or terminate assistance for criminal activity by a household member, as authorized in this section, if the PHA determines that the household member has engaged in the criminal activity, regardless of whether the household member has been arrested or convicted for such activity.

(4) *Terminating assistance for alcohol abusers.* The PHA must establish standards that allow termination of assistance for a family if the PHA determines that a household member has engaged in abuse or pattern of abuse of alcohol that threatens the health or safety of, or the right to peaceful enjoyment of the premises by, other residents.

(5) *Drug use or alcohol use: PHA discretion.* (i) *Consideration of rehabilitation.* In determining whether to deny admission or terminate assistance for illegal drug use by a household member who is no longer engaging in such use, or for alcohol abuse by a household member who is no longer engaging in such abuse, the PHA may consider whether the household member is participating in or has successfully completed a supervised drug or alcohol rehabilitation program, or has otherwise been rehabilitated successfully.

(ii) *Conditions for admission or continued assistance.* (A) In determining whether to deny admission or terminate assistance for illegal use of a drug (as defined in § 5.100 of this title) by a household member, or for alcohol abuse by a household member, the PHA may impose, as a condition of admission to, or continued assistance in the program for other family members, a requirement that the family member who engaged in or is culpable for such use or abuse may not reside with the household or on the premises.

(B) The PHA may require a household member who has engaged in the illegal

use of a drug (as defined in § 5.100 of this title), or in alcohol abuse that threatened the health or safety of, or the right to peaceful enjoyment of the premises by, other residents, to submit evidence of current participation in, or successful completion of, a supervised drug or alcohol rehabilitation program as a condition of continued assistance.

## PART 884—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM, NEW CONSTRUCTION SET-ASIDE FOR SECTION 515 RURAL RENTAL HOUSING PROJECTS

15. The authority citation for part 884 continues to read as follows:

**Authority:** 42 U.S.C. 1437a, 1437c, 1437f, 3535(d), and 13611–13619.

16. In § 884.216, revise paragraph (b) to read as follows:

### § 884.216 Termination of tenancy.

* * * * *

(b) Termination of tenancy for criminal activity or alcohol abuse by a covered person is subject to part 5, subpart G of this title.

* * * * *

## PART 891—SUPPORTIVE HOUSING FOR THE ELDERLY AND PERSONS WITH DISABILITIES

17. The authority citation for part 891 continues to read as follows:

**Authority:** 12 U.S.C. 1701q; 42 U.S.C. 1437f, 3535(d), and 8013.

18. Revise § 891.430 to read as follows:

### § 891.430 Denial of admission, termination of tenancy, and modification of lease.

(a) The provisions of part 5, subpart I, of this title apply to Section 202 and Section 811 capital advance projects.

(b) The provisions of part 247 of this title apply to all decisions by an owner to terminate the tenancy or modify the lease of a household residing in a unit (or residential space in a group home).

19. Revise § 891.630 to read as follows:

### § 891.630 Denial of admission, termination of tenancy, and modification of lease.

(a) The provisions of part 5, subpart I, of this title apply to Section 202 direct loan projects.

(b) The provisions of part 247 of this title apply to all decisions by a Borrower to terminate the tenancy or modify the lease of a family residing in a unit.

20. Revise § 891.770 to read as follows:

### § 891.770 Denial of admission, termination of tenancy, and modification of lease.

(a) The provisions of part 5, subpart I, of this title apply to Section 202 direct loan projects with Section 162 assistance for disabled families.

(b) The provisions of part 247 of this title apply to all decisions by a Borrower to terminate the tenancy or modify the lease of a family residing in a unit (or residential space in a group home).

## PART 960—ADMISSION TO, AND OCCUPANCY OF, PUBLIC HOUSING

21. The authority citation for part 960 continues to read as follows:

**Authority:** 42 U.S.C. 1437a, 1437c, 1437d, 1437n and 3535(d).

22. In part 960, add a new subpart A to read as follows:

### Subpart A—Applicability and Definitions

Sec.
960.1 Applicability.
960.2 Definitions.

## Subpart A—Applicability and Definitions

### § 960.1 Applicability.

This part is applicable to public housing.

### § 960.2 Definitions.

(a) *Terms found elsewhere.* The following terms are defined in part 5, subpart A of this title: *1937 Act, drug, drug-related criminal activity, federally assisted housing, HUD, public housing, public housing agency (PHA), Section 8, violent criminal activity.*

(b) *Additional terms* (for purposes of this part).

*Covered person.* A resident, any member of the resident's household, a guest or another person under the resident's control.

*Household.* The family and any PHA-approved live-in aide.

*Premises.* The building or complex in which the public housing dwelling unit is located, including common areas and grounds.

23. In subpart B of part 960, remove § 960.202, redesignate § 960.204 as § 960.202, and add new §§ 960.203 and 960.204 to read as follows:

### § 960.203 When a PHA may deny admission for criminal activity or drug abuse by household members.

(a) *Prohibiting admission of drug criminals.* (1) The PHA must establish standards that prohibit admission of a household to the PHA's public housing program if:

(i) The PHA determines that any household member is currently engaging in or has engaged in drug-related criminal activity; or

(ii) The PHA determines that it has reasonable cause to believe that illegal drug use or a pattern of illegal drug use by a household member may adversely affect the health or safety of, or the right to peaceful enjoyment of the premises by, other residents.

(2) The PHA may require the household to submit sufficient evidence, as determined by the PHA, that the members of the household have not engaged in drug-related criminal activity during a reasonable period, as determined by the PHA, before admission to the PHA's public housing program.

(3) The PHA standards must prohibit admission to the PHA's public housing program if any household member has been evicted from federally assisted housing for drug-related criminal activity. This prohibition applies during a reasonable period, as determined by the PHA, which is at least three years from the date of the judicial determination authorizing the eviction. However, the PHA may admit the household if the PHA determines:

(i) That the evicted household member who engaged in drug-related criminal activity has successfully completed a supervised drug rehabilitation program approved by the PHA; or

(ii) That the circumstances leading to the eviction no longer exist (for example, the criminal household member has died or is imprisoned).

(4) The PHA must establish standards that permanently prohibit admission to the PHA's public housing program if any household member has ever been convicted of drug-related criminal activity for manufacture or production of methamphetamine on the premises of federally assisted housing.

(b) *Prohibiting admission of other criminals.* (1) The PHA may prohibit admission of a household to the PHA's public housing program, under standards established by the PHA, if the PHA determines that any household member is currently engaging in or has engaged in:

(i) Violent criminal activity; or

(ii) Other criminal activity which may threaten the health or safety of, or the right to peaceful enjoyment of the premises by, other residents; or

(iii) Other criminal activity which may threaten the health or safety of PHA management staff, or persons performing management functions on behalf of the PHA (including a PHA employee or a PHA contractor, subcontractor or agent).

(2) The PHA may require the family to submit sufficient evidence, as determined by the PHA, that the

members of the household have not engaged in such criminal activity during a reasonable period, as determined by the PHA, before admission to the PHA's public housing program.

(3) The PHA must establish standards that prohibit admission to the PHA's public housing program if any member of the household is subject to a lifetime registration requirement under a State sex offender registration program. In screening of applicants, the PHA must perform criminal history background checks necessary to determine whether any household member is subject to a lifetime sex offender registration requirement.

(c) *Prohibiting admission of alcohol abusers.* The PHA must establish standards that prohibit admission to the PHA's public housing program if the PHA determines that it has reasonable cause to believe that abuse or pattern of abuse of alcohol by a household member may threaten the health or safety of, or right to peaceful enjoyment of the premises by, other public housing residents.

(d) *Evidence of criminal activity.* The PHA may deny admission for criminal activity by a household member as authorized in this section if the PHA determines that the household member has engaged in the criminal activity, regardless of whether the household member has been arrested or convicted for such activity.

(e) *Criminal records.* Before a PHA denies admission to the PHA's public housing program on the basis of a criminal record, the PHA must provide the household with a copy of the criminal record and an opportunity to dispute the accuracy and relevance of that record.

(f) *Drug use and alcohol abuse: PHA discretion.* (1) *Consideration of rehabilitation.* In determining whether to deny admission to the PHA's public housing program for illegal drug use or a pattern of illegal drug use by a household member who is no longer engaging in such use, or for abuse or pattern of abuse of alcohol by a household member who is no longer engaging in such abuse, the PHA may consider whether such household member is participating in or has successfully completed a supervised drug or alcohol rehabilitation program, or has otherwise been rehabilitated successfully.

(2) *Conditions for admission.* In determining whether to deny admission to the PHA's public housing program for illegal drug use by a household member, or for alcohol abuse by a household member, the PHA may impose, as a condition of admission to, and continued assistance in, the PHA's public housing program for other family members, a requirement that the household member who engaged in or is culpable for the drug use or alcohol abuse may not reside in the unit.

(3) *Submission of evidence.* The PHA may require a household member who has engaged in the illegal use of a drug (as defined in § 5.100 of this title), or in alcohol abuse that affected the health or safety of, or the right to peaceful enjoyment of the premises by, other residents, to submit evidence of current participation in, or successful completion of, a supervised drug or alcohol rehabilitation program as a condition to being allowed to reside in the unit.

**§ 960.204 Drug use by applicants: obtaining information from drug treatment facility.**

(a) *Purpose.* This section implements section 6(u) of the 1937 Act (42 U.S.C. 1437d(u)) on requesting and obtaining information from drug abuse treatment facilities concerning applicants. The provisions of this section do not apply to information requested or obtained from drug abuse treatment facilities other than under section 6(u).

(b) *Additional definitions* (for purposes of this section).

(1) *Currently engaging in illegal drug use.* Illegal drug use occurred recently enough to justify a reasonable belief that continuing illegal drug use by a household member is a real and ongoing problem.

(2) *Drug abuse treatment facility.* An entity:

(i) That holds itself out as providing, and provides, diagnosis, treatment, or referral for treatment with respect to the illegal drug use; and

(ii) That is either an identified unit within a general care facility; or an entity other than a general medical care facility.

(c) *Authorization by household member for PHA to receive information from a drug abuse treatment facility.* (1) The PHA may require the family to submit for any household member who is at least 18 years of age, and for each family head or spouse regardless of age a consent form signed by such household member that:

(i) Requests any drug abuse treatment facility to inform the PHA whether the drug abuse treatment facility has reasonable cause to believe that the household member is currently engaging in illegal drug use;

(ii) Authorizes the PHA to receive such information from the drug treatment facility, and to utilize such information in determining whether to prohibit admission of the household member to the PHA's public housing program in accordance with § 960.203.

(2) The consent form submitted for a proposed household member must expire automatically after the PHA has made a final decision to either approve or deny the admission of such person.

(d) *PHA request for information from drug use treatment facility.* (1) The PHA may request that a drug abuse treatment facility disclose whether the drug abuse treatment facility has reasonable cause to believe that the proposed household member is currently engaging in the illegal use of a drug (as defined in § 5.100 of this title).

(2) The PHA's request to the drug abuse treatment facility must include a copy of the consent form signed by the proposed household member.

(3) Subject to section 543 of the Public Health Service Act (42 U.S.C. 290dd–2), the drug abuse treatment facility is required to provide the information requested by the PHA in accordance with paragraph (d)(1) of this section.

(4) A drug abuse treatment facility is not liable for damages based on any information required to be disclosed under this section if such disclosure is consistent with section 543 of the Public Health Service Act (42 U.S.C. 290dd–2).

(5) The PHA is not obligated to request information from a drug treatment facility under this section, and is not liable for damages for failing to request or receive such information.

(6) A drug abuse treatment facility may charge the PHA a reasonable fee for information provided under this section.

(e) *Prohibition of discriminatory treatment of applicants.* (1) A PHA may request information from a drug abuse treatment facility under paragraph (d) of this section only if the PHA has adopted and has consistently implemented either of the following policies:

(i) *Policy A—Request for all families.* Under Policy A, the PHA must submit a request for information to a drug abuse treatment facility in accordance with paragraph (d) of this section before admitting any family to the PHA's public housing program. For each such family, the request must be submitted for each proposed household member described in paragraph (c)(3) of this section.

(ii) *Policy B—Request for certain household members.* Under Policy B, the PHA must submit a request to a drug abuse treatment facility only with respect to each proposed household member:

(A) Whose criminal record indicates prior arrest or conviction for any

criminal activity that may be a basis for denial of admission under § 960.203; or

(B) Whose prior tenancy records indicate that the proposed household member:

(*1*) Engaged in the destruction of property;

(*2*) Engaged in violent activity against another person; or

(*3*) Interfered with the right of peaceful enjoyment of the premises of other residents.

(2) The policy adopted by the PHA must be included in the PHA administrative plan and the PHA plan.

(f) *Records management and confidentiality.* (1) Each PHA that receives information from a drug abuse treatment facility under this section must establish and implement a system of records management that ensures that any information which the PHA receives from the drug abuse treatment facility about a person:

(i) Is maintained confidentially in accordance with section 543 of the Public Health Service Act (12 U.S.C. 290dd–2);

(ii) Is not misused or improperly disseminated; and

(iii) Is destroyed, as applicable:

(A) Not later than 5 business days after the PHA admits the person as a household member under the PHA's public housing program; or

(B) If the PHA denies the admission of such person as a household member, in a timely manner after the date on which the statute of limitations for the commencement of a civil action based upon that denial of admissions has expired.

## PART 966—PUBLIC HOUSING LEASE AND GRIEVANCE PROCEDURE

23a. Revise the heading for part 966 to read as set forth above.

24. The authority citation for part 966 is revised to read as follows:

**Authority:** 42 U.S.C. 1437d and 3535(d).

25. Revise § 966.1 to read as follows:

### § 966.1 Purpose and applicability.

(a) This part is applicable to public housing.

(b) Subpart A of this part prescribes the provisions that must be incorporated in leases for public housing dwelling units.

(c) Subpart B of this part prescribes public housing grievance hearing requirements.

26. Add a new § 966.2 to read as follows:

### § 966.2 Definitions.

(a) *Terms found elsewhere.* The following terms are defined in part 5, subpart A of this title: *1937 Act, drug, drug-related criminal activity, HUD, public housing, public housing agency, Section 8, violent criminal activity.*

(b) *Additional terms* (for purposes of this part).

*Covered person.* A resident, any member of the resident's household, a guest or another person under the resident's control.

*Federally assisted housing* means housing assisted under any of the following programs:

(1) Public housing;

(2) Housing receiving project-based or tenant-based assistance under Section 8 (42 U.S.C. 1437f);

(3) Housing that is assisted under section 202 of the Housing Act of 1959 as amended by section 801 of National Affordable Housing Act) (12 U.S.C. 1701q);

(4) Housing that is assisted under section 202 of the Housing Act of 1959, as such section existed before the enactment of the National Affordable Housing Act;

(5) Housing that is assisted under section 811 of the National Affordable Housing Act (42 U.S.C. 8013);

(6) Housing financed by a loan or mortgage insured under section 221(d)(3) of the National Housing Act (12 U.S.C. 1715*l*(d)(3)) that bears interest at a rate determined under the proviso of section 221(d)(5) of such Act (12 U.S.C. 1715*l*(d)(5));

(7) Housing insured, assisted, or held by HUD or by a State or State agency under section 236 of the National Housing Act (12 U.S.C. 1715z–1); or

(8) Housing assisted by the Rural Development Administration under section 514 or section 515 of the Housing Act of 1949 (42 U.S.C. 1483, 1484).

*Household.* The family and any PHA-approved live-in aide.

*Premises.* The building or complex in which the public housing dwelling unit is located, including common areas and grounds.

27. In § 966.4, redesignate paragraph (l)(5) as paragraph (l)(6), revise paragraphs (f)(12), (l)(2) and (l)(3)(i), and add new paragraph (l)(5) to read as follows:

### § 966.4 Lease requirements.

* * * * *

(f) * * *

(12)(i) To assure that no covered person engages in:

(A) Any criminal activity that threatens the health, safety or right to peaceful enjoyment of the premises by other residents; or

(B) Any drug-related criminal activity on or off the premises.

(ii) To assure that no member of the household engages in an abuse or pattern of abuse of alcohol that affects the health, safety, or right to peaceful enjoyment of the premises by other residents.

* * * * *

(l) * * *

(2) *Grounds for termination of tenancy.* The PHA may terminate the tenancy for any of the following grounds:

(i) Serious or repeated violation of the lease. Serious violation includes, but is not limited to:

(A) Failure to pay rent or other payments due under the lease; or

(B) Violation of household obligations as described in paragraph (f) of this section;

(ii) Criminal activity or alcohol abuse as provided in paragraph (l)(5) of this section; or

(iii) Other good cause. Other good cause includes, but is not limited to:

(A) Criminal or other activity by a member of the household that threatens the health or safety of other public housing residents or of persons residing in the immediate vicinity of the premises; or

(B) Criminal or other activity by a member of the household that threatens the health or safety of PHA management staff.

(3) *Lease termination notice.* (i) The PHA must give written notice of lease termination of:

(A) 14 days in the case of failure to pay rent;

(B) A reasonable period of time considering the seriousness of the situation (but not to exceed 30 days):

(*1*) If the health or safety of other residents, PHA employees, or persons residing in the immediate vicinity of the premises is threatened; or

(*2*) If any member of the household has engaged in any drug-related criminal activity or violent criminal activity; or

(*3*) If any member of the household has been convicted of a felony;

(C) 30 days in any other case, except that if a State or local law allows a shorter notice period, such shorter period shall apply.

* * * * *

(5) *When the PHA may terminate tenancy for criminal activity or alcohol abuse by household members.*—(i) *Evicting drug criminals. (A) Drug crime on or off the premises.* The lease must provide that the PHA may terminate the tenancy if any covered person has engaged in any drug-related criminal activity on or off the premises, including cases where:

(*1*) A covered person has engaged in drug-trafficking; or

(*2*) A covered person has engaged in illegal drug use (including cases where the PHA determines that illegal drug use or a pattern of illegal drug use by a household member may threaten the health or safety of, or the right to peaceful enjoyment of the premises by, other residents).

(B) *Methamphetamine conviction.* The PHA must immediately terminate the tenancy if the PHA determines that any member of the household has ever been convicted of drug-related criminal activity for manufacture or production of methamphetamine on the premises of federally assisted housing.

(ii) *Evicting other criminals.* (A) *Threat to other residents.* The lease must provide that any criminal activity by a covered person that threatens the health or safety of, or the right to peaceful enjoyment of the premises by, other residents (including PHA management staff residing on the premises) is grounds for termination of tenancy.

(B) *Fugitive felon or parole violator.* The PHA may terminate the tenancy if a member of the household is:

(*1*) Fleeing to avoid prosecution, or custody or confinement after conviction, for a crime, or attempt to commit a crime, that is a felony under the laws of the place from which the individual flees, or that, in the case of the State of New Jersey, is a high misdemeanor; or

(*2*) Violating a condition of probation or parole imposed under Federal or State law.

(iii) *Evidence of criminal activity.* The PHA may terminate tenancy for criminal activity by a household member if the PHA determines that the household member has engaged in the criminal activity, regardless of whether the household member has been arrested or convicted for such activity.

(iv) *Use of criminal record.* If the PHA seeks to terminate the tenancy for criminal activity as shown by a criminal record, the PHA must provide the tenant with a copy of the criminal record before a PHA grievance hearing or court trial concerning the termination of tenancy or eviction, and the tenant must be given an opportunity to dispute the accuracy and relevance of that record in the grievance hearing or court trial.

(v) *Evicting alcohol abusers.* The PHA must establish standards that allow termination of tenancy if the PHA determines that a household member has engaged in abuse or pattern of abuse of alcohol that threatens the health or safety of, or the right to peaceful enjoyment of the premises by, other residents.

(vi) *Drug use and alcohol abuse: PHA discretion.* (A) *Consideration of rehabilitation.* In determining whether to terminate tenancy for illegal drug use or a pattern of illegal drug use by a household member who is no longer engaging in such use, or for abuse or pattern of abuse of alcohol by a household member who is no longer engaging in such abuse, the PHA may consider whether such household member is participating in or has successfully completed a supervised drug or alcohol rehabilitation program.

(B) *Conditions for continued assistance.* (*1*) In determining whether to terminate tenancy for illegal drug use by a household member, or for alcohol abuse by a household member, the PHA may impose, as a condition of continued assistance for other household members, a requirement that any household member who engaged in or is culpable for the drug use or alcohol abuse may not reside in the unit.

(*2*) The PHA may require a household member who has engaged in the illegal use of a drug (as defined in § 5.100 of this title), or in alcohol abuse that threatened the health or safety of, or the right to peaceful enjoyment of the premises by, other residents, to submit evidence of current participation in, or successful completion of, a supervised drug or alcohol rehabilitation program as a condition to being allowed to reside in the unit.

* * * * *

28. In § 966.51, revise paragraphs (a)(2)(i)(A) and (a)(2)(i)(B) and add paragraph (a)(2)(i)(C) to read as follows:

**§ 966.51 Applicability.**

(a) * * *

(2)(i) * * *

(A) Any criminal activity that threatens the health, safety or right to peaceful enjoyment of the premises of other residents or employees of the PHA;

(B) Any violent or drug-related criminal activity on or near such premises; or

(C) Any criminal activity that resulted in felony conviction of a household member.

* * * * *

## PART 982—SECTION 8 TENANT-BASED ASSISTANCE: HOUSING CHOICE VOUCHER PROGRAM

29. The authority citation for part 982 continues to read as follows:

**Authority:** 42 U.S.C. 1437f and 3535(d).

30. Amend § 982.4 as follows:

a. Remove the definitions of *drug-related criminal activity, drug-trafficking,* and *violent criminal activity* from paragraph (b);

b. Add definitions of ''covered person'' and ''household'' to paragraph (b), in alphabetical order; and

c. Revise paragraph (a)(2) to read as follows:

**§ 982.4 Definitions.**

(a) * * *

(2) *Terms found elsewhere.* The following terms are defined in part 5, subpart A of this title: *1937 Act, drug, drug-related criminal activity, federally assisted housing, MSA, HUD, public housing, Section 8,* and *violent criminal activity.*

* * * * *

(b) * * *

*Covered person.* A resident, any member of the resident's household, a guest or another person under the resident's control.

* * * * *

*Household.* The family and any PHA-approved live-in aide.

* * * * *

31. In § 982.54, add a new paragraph (d)(4)(iii) to read as follows:

**§ 982.54 Administrative plan.**

* * * * *

(d) * * *

(4) * * *

(iii) Standards for denying admission or terminating assistance based on criminal activity or alcohol abuse in accordance with § 982.553;

* * * * *

32. In § 982.310, revise paragraph (c) to read as follows:

**§ 982.310 Owner termination of tenancy.**

* * * * *

(c) *Criminal activity.*—(1) *Evicting drug criminals.*—(i) *Drug crime on or near the premises.* During the term of the lease, the owner may terminate tenancy if any covered person has engaged in any drug-related criminal activity on or near the premises, including cases where:

(A) A covered person has engaged in drug-trafficking; or

(B) A covered person has engaged in illegal use of a drug, as defined in § 5.100 of this title, (including cases where the owner determines that illegal use or pattern of illegal use of a drug by a household member may threaten the health or safety of, or the right to peaceful enjoyment of the premises by, other residents).

(2) *Evicting other criminals.*—(i) *Threat to other residents.* During the term of the lease, the owner may terminate tenancy for any of the following types of criminal activity by a covered person:

(A) Any criminal activity that threatens the health or safety of, or the right to peaceful enjoyment of the premises by, other residents (including property management staff residing on the premises);

(B) Any criminal activity that threatens the health, safety of, or the right to peaceful enjoyment of their residences by, persons residing in the immediate vicinity of the premises; or

(C) Any violent criminal activity on or near the premises.

(ii) *Fugitive felon or parole violator.* During the term of the lease, the owner may terminate the tenancy if a member of the household is:

(A) Fleeing to avoid prosecution, or custody or confinement after conviction, for a crime, or attempt to commit a crime, that is a felony under the laws of the place from which the individual flees, or that, in the case of the State of New Jersey, is a high misdemeanor; or

(B) Violating a condition of probation or parole imposed under Federal or State law.

(3) *Evidence of criminal activity.* The owner may terminate tenancy for criminal activity by a family member if the owner determines that the household member has engaged in the criminal activity, regardless of whether the household member has been arrested or convicted for such activity.

* * * * *

33. Amend § 982.551 by redesignating paragraph (m) as paragraph (n); adding a new paragraph (m); and revising paragraph (l) to read as follows:

**§ 982.551 Obligations of participant.**

* * * * *

(l) *Crime by household members.* The members of the household may not engage in drug-related criminal activity or violent criminal activity or other criminal activity that threatens the health, safety or right to peaceful enjoyment of other residents and persons residing in the immediate vicinity of the premises (see § 982.553).

(m) *Alcohol abuse by household members.* The members of the household must not abuse alcohol in a way that threatens the health, safety or right to peaceful enjoyment of other residents and persons residing in the immediate vicinity of the premises.

* * * * *

34. Amend § 982.552 as amended at 64 FR 26650 effective August 12, 1999, by revising paragraphs (b)(1), (b)(2), and (c)(3), and by adding paragraph (c)(1)(xi), to read as follows:

**§ 982.552 PHA denial or termination of assistance for family.**

* * * * *

(b) *Requirement to deny admission or terminate assistance.* (1) The PHA may deny admission to the program for a reasonable time period determined by the PHA if any household member has been evicted from federally assisted housing for serious violation of the lease (other than eviction for drug-related criminal activity. For provisions on eviction for drug-related criminal activity, see § 982.553).

(2) The PHA may terminate program assistance for a household evicted from housing assisted under the program for serious violation of the lease (other than an eviction for drug-related criminal activity).

* * * * *

(c) *Authority to deny admission or terminate assistance.*

(1) * * *

(xi) For denial or termination of assistance for crime or alcohol abuse by household members, see § 982.553.

* * * * *

(3) *Exclusion of family members.* In determining whether to deny admission or terminate assistance in accordance with paragraphs (c)(1) or (c)(2) of this section, the PHA may impose, as a condition of continued assistance for other family members, a requirement that family members who participated in or were culpable for the action or failure will not reside in the unit. The PHA may permit the other members of a participant family to continue receiving assistance.

* * * * *

35. Revise § 982.553 to read as follows:

**§ 982.553 Denial of admission or termination of assistance for criminals and alcohol abusers.**

(a) *Requirement to deny admission.*—(1) *Prohibiting admission of drug criminals.* (i) The PHA must establish standards that prohibit admission of a household to the program if:

(A) the PHA determines that any household member is currently engaging in or has engaged in drug-related criminal activity; or

(B) the PHA determines that it has reasonable cause to believe that illegal drug use or a pattern of illegal drug use by a household member may adversely affect the health, safety, or right to peaceful enjoyment of the premises by other residents.

(ii) The PHA may require the household to submit sufficient evidence, as determined by the PHA, that the members of the household have not engaged in drug-related criminal activity during a reasonable period, as determined by the PHA, before admission to the program.

(iii) The PHA must prohibit admission to the program if any household member has been evicted from federally assisted housing for drug-related criminal activity. This prohibition applies during a reasonable period, as determined by the PHA, which is at least three years from the date of the judicial determination authorizing the eviction. The PHA may admit a household if the PHA determines:

(A) That the evicted household member who engaged in drug-related criminal activity has successfully completed a supervised drug rehabilitation program approved by the PHA; or

(B) That the circumstances leading to eviction no longer exist (for example, the criminal household member has died or is imprisoned).

(iv) The PHA must establish standards that permanently prohibit admission to the program if any household member has ever been convicted of drug-related criminal activity for manufacture or production of methamphetamine on the premises of federally assisted housing.

(2) *Prohibiting admission of other criminals.* (i) The PHA may prohibit admission of a household to the program if the PHA determines that any household member is currently engaged in or has engaged in:

(A) Violent criminal activity;

(B) Other criminal activity which may threaten the health or safety of, or the right to peaceful enjoyment of the premises by, other residents;

(C) Other criminal activity which may threaten the health or safety of the owner, property management staff, or persons performing a contract administration function or responsibility on behalf of the PHA (including a PHA employee or a PHA contractor, subcontractor or agent).

(ii) The PHA may require the household to submit sufficient evidence, as determined by the PHA, that the members of the household have not engaged in such criminal activity during a reasonable period, as determined by the PHA, before admission to the program.

(iii) The PHA must establish standards that prohibit admission to the program if any member of the household is subject to a lifetime registration requirement under a State sex offender registration program. In screening of applicants, the PHA must perform criminal history background checks necessary to determine whether any household member is subject to a lifetime sex offender registration requirement.

(3) *Prohibiting admission of alcohol abusers.* The PHA must establish standards that prohibit admission to the program if the PHA determines that it has reasonable cause to believe that abuse or pattern of abuse of alcohol by a household member may adversely affect the health or safety of, or the right to peaceful enjoyment of the premises by, other residents.

(b) *Terminating assistance.*—(1) *Terminating assistance for drug criminals.*—(i) *Standards.* The PHA must establish standards that allow the PHA to terminate assistance for a family under the program if the PHA determines that any household member has engaged in drug-related criminal activity.

(ii) *Methamphetamine conviction—termination of assistance.* The PHA must immediately terminate assistance for a family under the program if the PHA determines that any member of the household has ever been convicted of drug-related criminal activity for manufacture or production of methamphetamine on the premises of federally assisted housing.

(2) *Terminating assistance for other criminals.*—(i) *Standards.* The PHA must establish standards that allow the PHA to terminate assistance for a family if the PHA determines that any household member has engaged in violent criminal activity.

(ii) *Fugitive felon or parole violator.* The lease must provide that the PHA may terminate assistance for a family if the PHA determines that a member of the household is:

(A) Fleeing to avoid prosecution, or custody or confinement after conviction, for a crime, or attempt to commit a crime, that is a felony under the laws of the place from which the individual flees, or that, in the case of the State of New Jersey, is a high misdemeanor; or

(B) Violating a condition of probation or parole imposed under Federal or State law.

(3) *Terminating assistance for alcohol abusers.* The PHA must establish standards that allow termination of assistance for a family if the PHA determines that household member has engaged in abuse or pattern of abuse of alcohol that threatens the health or safety of, or the right to peaceful enjoyment of the premises by, other residents.

(c) *Evidence of criminal activity.* The PHA may deny admission or terminate assistance for criminal activity by a household member as authorized in this section if the PHA determines that the household member has engaged in the criminal activity, regardless of whether the household member has been arrested or convicted for such activity.

(d) *Use of criminal record.* If a PHA proposes to deny admission for criminal activity as shown by a criminal record, the PHA must provide the family with a copy of the criminal record before a PHA informal review of such decision in accordance with § 982.554. If a PHA proposes to terminate assistance for criminal activity as shown by a criminal record, the PHA must provide the family with a copy of the criminal record before a PHA hearing in accordance with § 982.554. The family must be given an opportunity to dispute the accuracy and relevance of that record. For denial of admission, the PHA must provide such opportunity in the informal review process in accordance with § 982.554. For termination of assistance, the PHA must provide such opportunity in accordance with § 982.555.

(e) *Drug use or alcohol use: PHA discretion.* (1) *Consideration of rehabilitation.* In determining whether to deny admission or terminate assistance for illegal drug use by a household member who is no longer engaging in such use, or for alcohol abuse by a household member who is no longer engaging in such abuse, the PHA may consider whether the household member is participating in or has successfully completed a supervised drug or alcohol rehabilitation program, or has otherwise been rehabilitated successfully.

(2) *Conditions for admission or continued assistance.* (i) In determining whether to deny admission or terminate assistance for illegal use of a drug by a household member, or for alcohol abuse by a household member, the PHA may impose, as a condition of admission to, or continued assistance in the program for other family members, a requirement that the family member who engaged in or is culpable for such use or abuse may not reside in the unit.

(ii) The PHA may require a household member who has engaged in the illegal use of a drug (as defined in § 5.100 of this title), or in alcohol abuse that threatened the health or safety of, or the right to peaceful enjoyment of the premises by, other residents, to submit evidence of current participation in, or successful completion of, a supervised drug or alcohol rehabilitation program as a condition of continued assistance.

Dated: July 16, 1999.

**Andrew Cuomo,**

*Secretary.*

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Vol. 64, No. 141

Friday, July 23, 1999

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## FEDERAL REGISTER PAGES AND DATES, JULY

35559–35920 ..... 1
35921–36236 ..... 2
36237–36558 ..... 6
36559–36762 ..... 7
36763–37032 ..... 8
37033–37392 ..... 9
37393–37662 ..... 12
37663–37832 ..... 13
37833–38102 ..... 14
38103–38286 ..... 15
38287–38534 ..... 16
38535–38814 ..... 19
38815–38998 ..... 20
38999–39392 ..... 21
39393–39896 ..... 22
39897–40280 ..... 23

## CFR PARTS AFFECTED DURING JULY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

**3 CFR**

**Proclamations:**
6575 ..... 36229
6982 ..... 36549
7206 ..... 36229
7207 ..... 36549
7208 ..... 37389
7208 ..... 37393
7209 ..... 39895

**Executive Orders:**
July 12, 1911 (Revoked in part by PLO 7400) ..... 38212
12722 (See Notice of July 20, 1999 ..... 39897
12724 (See Notice of July 20, 1999 ..... 39897
13010 ..... 38535
13129 ..... 36757, 37033
13130 ..... 38535

**Administrative Orders:**
Notice of July 20, 1999) ..... 39897

Memorandums:
July 7, 1999 ..... 37393
July 9, 1999 ..... 38101

Presidential Determinations:
No. 99–30 of June 23, 1999 ..... 35921
No. 99–31 of June 30, 1999 ..... 37033, 38075
No. 99–32 of July 1, 1999 ..... 37035, 38075

**5 CFR**

531 ..... 36763
550 ..... 36763
591 ..... 36763
890 ..... 36237

**Proposed Rules:**
1204 ..... 35952
1205 ..... 35957

**7 CFR**

47 ..... 38103
271 ..... 38287
272 ..... 38287
273 ..... 38287
274 ..... 38287
275 ..... 38287
276 ..... 38287
277 ..... 38287
278 ..... 38287
279 ..... 38287
280 ..... 38287
281 ..... 38287
282 ..... 38287
283 ..... 38287
284 ..... 38287
285 ..... 38287
300 ..... 37663
301 ..... 37663, 38815
319 ..... 38108
400 ..... 38537
762 ..... 38297
925 ..... 37833
944 ..... 37833
1477 ..... 35559
1980 ..... 38297

**Proposed Rules:**
29 ..... 39432
54 ..... 38315
56 ..... 37886
70 ..... 37886
210 ..... 38839
220 ..... 38839
225 ..... 38839
226 ..... 38839
250 ..... 36978
251 ..... 36978
253 ..... 39432
254 ..... 39432
271 ..... 37454
273 ..... 37454
276 ..... 37454
319 ..... 36608
906 ..... 38597
924 ..... 37888
948 ..... 37890
1000 ..... 37892, 39092
1001 ..... 37892, 39092
1002 ..... 37892, 39092
1004 ..... 37892, 39092
1005 ..... 37892, 39092
1006 ..... 37892, 39092
1007 ..... 37892, 39092
1012 ..... 37892, 39092
1013 ..... 37892, 39092
1030 ..... 37892, 39092
1032 ..... 37892, 39092
1033 ..... 37892, 39092
1036 ..... 37892, 39092
1040 ..... 37892, 39092
1044 ..... 37892, 39092
1046 ..... 37892, 39092
1049 ..... 37892, 39092
1050 ..... 37892, 39092
1064 ..... 37892, 39092
1065 ..... 37892, 39092
1068 ..... 37892, 39092
1076 ..... 37892, 39092
1079 ..... 37892, 39092
1106 ..... 37892, 39092
1124 ..... 37892, 39092
1126 ..... 37892, 39092
1131 ..... 37892, 38144, 39092
1134 ..... 37892, 39092
1135 ..... 37892, 39092
1137 ..... 37892, 39092
1138 ..... 37892, 39092
1139 ..... 37892, 39092
1218 ..... 39790, 39803
1430 ..... 39442
1710 ..... 36609

**8 CFR**

214.....36423
235.....36559
**Proposed Rules:**
241.....37461, 39560

**9 CFR**

1.....38546
2.....38546
3.....38546
52.....37395
78.....36775
94.....38548
331.....37666
381.....37666
**Proposed Rules:**
3.....38145
94.....37897, 38599
96.....37897
130.....37903

**10 CFR**

9.....39393
50.....38551
170.....38816
171.....38816
708.....37396
**Proposed Rules:**
40.....36615
50.....36291, 39447
72.....36291
430.....37706
474.....37905
810.....35959

**11 CFR**

110.....37397
**Proposed Rules:**
110.....39095

**12 CFR**

615.....38110
**Proposed Rules:**
229.....37708

**13 CFR**

**Proposed Rules:**
123.....36617

**14 CFR**

23.....39899
25.....38999
39 .....35559, 36561, 36563, 36777, 37667, 37669, 37838, 37841, 38299, 38301, 38557, 38817, 38821, 39001, 39003, 39005, 39396, 39398
71 .....36565, 36566, 36567, 36568, 37671, 38302, 38303, 38304, 38305, 38306, 38560, 38822, 38823, 38824, 39007, 39008, 39009, 39011, 39012, 39013, 39014, 39015, 39403
73.....39016
97 .....35562, 35564, 38561, 38562
257.....38111
258.....38111
1206.....39404
**Proposed Rules:**
21.....35902
25.....39095
27.....35902
29.....35902
39 .....36307, 36618, 36623, 36624, 36626, 36628, 37046, 37465, 37471, 37911, 37913, 37915, 37917, 37918, 37920, 38150, 38152, 38154, 38156, 38157, 38316, 38319, 38322, 38325, 38329, 38332, 38335, 38338, 38341, 38345, 38348, 38351, 38355, 38358, 38362, 38365, 38368, 38371, 38374, 38378, 38379, 38382, 38383, 38603, 38605, 38606, 38844, 38846, 38848, 38850, 39097, 39100, 39102, 39104, 39448, 39450, 39944, 39946
71 .....36630, 36631, 37713, 37714, 37715, 37716, 37717, 38385, 38386, 38607, 38609, 39949, 39950
91.....35902, 37018
93 .....35963, 37296, 37304, 38851
139.....37026

**15 CFR**

774.....36779
902.....36780, 39017
**Proposed Rules:**
710.....39194
711.....39194
712.....39194
713.....39194
714.....39194
715.....39194
716.....39194
717.....39194
718.....39194
719.....39194
720.....39194
721.....39194
740.....40106
743.....40106
774.....40106
801.....37049
922.....38853

**16 CFR**

**Proposed Rules:**
23.....37051
Ch. II.....38387
432.....38610
453.....35965
1213.....37051
1500.....37051
1513.....37051

**17 CFR**

1.....36568
3.....39912
9.....39913, 39915
240.....37586, 39918
249.....37586
**Proposed Rules:**
1.....38159

**18 CFR**

2.....37037
153.....37037
157.....37037
275.....37037
284.....37037
290.....37037
385.....37037
430.....35566
**Proposed Rules:**
330.....37718
385.....37718

**20 CFR**

220.....36239

**21 CFR**

74.....39414
173.....38563
520.....37672, 39918
524.....37400
556.....35923
558.....35923, 37672
1020.....35924
1308 .....35928, 37673, 39560
1312.....35928
**Proposed Rules:**
16.....36492, 36517
101 .....36492, 36517, 36824
115.....36492, 36517
291.....39810
333.....39452
510.....35966
514.....35966
558.....35966

**22 CFR**

**Proposed Rules:**
103.....39244

**23 CFR**

655.....38307
661.....38565
1225.....35568

**24 CFR**

291.....36210
570.....38812
**Proposed Rules:**
5.....40262
200.....36216, 40262
247.....40262
290.....38284
880.....40262
882.....40262
884.....40262
891.....40262
Ch. IX.....38853
960.....40262
966.....40262
972.....40323, 40340
982.....40262

**25 CFR**

**Proposed Rules:**
516.....38164

**26 CFR**

1 .....35573, 36092, 36116, 36175, 37037, 37675, 37677, 38825
20.....37675
25.....37675
31.....37675
40.....37675
301 .....36092, 36569, 37677, 39020
602 .....36092, 36116, 36175, 37678
**Proposed Rules:**
1.....35579, 37727
301.....37727, 39106

**28 CFR**

0.....37038
90.....39744
553.....36750
600.....37038
**Proposed Rules:**
5.....37065

**29 CFR**

1614.....37644
4044.....38114, 38534
**Proposed Rules:**
1908.....35972
1926.....38078
2510.....38390

**30 CFR**

210.....38116
216.....38116
227.....36782
920.....36784
934.....38826
**Proposed Rules:**
57.....36632, 36826
72.....36826
75.....36632, 36826
904.....37067
914.....38165
917.....38391
920.....38392
938.....36828

**31 CFR**

100.....39919
306.....38124
Ch. V.....35575

**32 CFR**

199.....38575
989.....38127
**Proposed Rules:**
775.....37069
776.....37473

**33 CFR**

100 .....37583, 39027, 39415
110.....38828
117 .....36239, 36569, 36570, 37678, 38829, 38830
165 .....36571, 36572, 36573, 37679, 39027, 39032, 39033
173.....36240
**Proposed Rules:**
110.....38166
117.....36318, 39454
165 .....36633, 39108, 39454

**34 CFR**

**Proposed Rules:**
600.....38272
668.....38272, 38504
694.....39109

**36 CFR**

242.....35776, 35821
251.....37843
**Proposed Rules:**
327.....38854
1010.....39951
1191.....37326
1275.....37922

**37 CFR**

201.....36574
202.....36574
203.....36574
204.....36574
211.....36574
212.....36576

251.....36574
253.....36574
259.....36574
260.....36574

**Proposed Rules:**

212.....36829
255.....38861

**38 CFR**

21.....38576

**39 CFR**

111.....38831
3002.....37401

**40 CFR**

9.....36580, 37624
22.....40138
51.....35714
52 .....35577, 35930, 35941, 36243, 36248, 36586, 36786, 36790, 37402, 37406, 37681, 37847, 38577, 38580, 38832, 38836, 39034, 39037, 39920, 39923
60.....37196, 38241
62 .....36600, 37851, 38582
63.....37683, 38950
75.....37582
80.....37687
81.....37406, 39416
82.....39040
90.....36423
180 .....36252, 36794, 37855, 37861, 37863, 37870, 38307, 39041, 39049, 39053, 39060, 39068, 39072, 39078
185 .....39068, 39072, 39078
186.....39072, 39078
228.....39927
260.....36466
261.....36466
262.....37624
264.....36466, 37624
265.....36466, 37624
268.....36466
270.....36466, 37624
273.....36466
300.....39878
430.....36580
745.....39418

**Proposed Rules:**

35.....40064, 40084
52 .....36635, 36830, 36831, 37491, 37492, 37734, 37923, 38616, 38617, 38862, 38863, 39110, 39963
62 .....36426, 36639, 37923, 38617
63.....37734, 38993
81.....37492
131.....37072
148.....40192
180.....36640
261.....40192
268.....40192
271.....40192
300.....39886
302.....40192
403.....39564
442.....38863
745.....40064

**41 CFR**

101-35.....38588
102-2.....39083
Ch. 301.....38587
301–52.....38528
301–54.....38528
301–70.....38528
301–71.....38528
301–76.....38528

**42 CFR**

431.....39934
482.....36070
498.....39934
1001.....39420
1002.....39420
1003.....39420

**Proposed Rules:**

8.....39810
405.....38395
409.....36320
410.....36320, 39608
411.....36320, 39608
412.....36320
413.....36320
414.....39608
415.....39608
416.....36321
419.....36320
488.....36321
489.....36320
498.....36320
1003.....36320

**43 CFR**

**Proposed Rules:**

2530.....38172

**44 CFR**

7.....38308
64.....38309, 38311

**45 CFR**

2522.....37411
2525.....37411
2526.....37411
2527.....37411
2528.....37411
2529.....37411

**Proposed Rules:**

5b.....37081

**46 CFR**

**Proposed Rules:**

10.....39455
15.....39455
90.....39455
98.....39455
125.....39455
126.....39455
127.....39455
128.....39455
129.....39455
130.....39455
131.....39455
132.....39455
133.....39455
134.....39455
170.....39455
174.....39455
175.....39455
388.....36831

**47 CFR**

1.....35832, 39938
18.....37417
20.....38313
63.....39938
73 .....35941, 36254, 36255, 36256, 36257, 36258, 37875, 37876, 38588, 38589, 38590, 38591, 38592, 39940, 39941
76.....35948, 36605
90.....36258, 39942

**Proposed Rules:**

1.....38617
15.....38877
20.....38396
22.....38617
27.....36642
73 .....36322, 36323, 36324, 36642, 37924, 37925, 37926, 37927, 38621, 38622, 39963, 39964, 39965
101.....38617

**48 CFR**

1.....36222
12.....36222
14.....36222
15.....36222
19.....36222
26.....36222
33.....36222
52.....36222
53.....36222
Ch. 1.....36222
201.....39429
237.....39430
252.....39431
Ch. 5.....37200
829.....38592
1615.....36271
1632.....36271
1652.....36271
1801.....36605
1804.....36605
1809.....36605
1815.....36605
1827.....36605
1832.....36605
1833.....36606
1845.....36605
1852.....36605
2832.....37044
6103.....38143

**Proposed Rules:**

9.....37360
31.....37360
47.....37640
52.....37640
208.....38878
212.....38878
213.....38878
214.....38878
215.....38878
232.....38878
245.....39456
252.....38878, 39456
1807.....38880
1811.....38880
1812.....38880
1815.....38880
1816.....38880
1823.....38880
1842.....38880
1846.....38880
1852.....38880

**49 CFR**

1.....36801
177.....36802
180.....36802
395.....37689
567.....38593
574.....36807
578.....37876
591.....37878

**Proposed Rules:**

192.....35580
195.....38173
571.....36657
1420.....39111

**50 CFR**

17 .....36274, 37638, 39560
100.....35776, 35821
216.....37690
600.....36817, 39017
622.....36780, 37690
635 .....36818, 37700, 37883
660 .....36817, 36819, 36820
679 .....37884, 39087, 39089, 39090

**Proposed Rules:**

17 .....36454, 36836, 37492
20.....39460
622 .....35981, 36325, 37082
640.....37082
648.....35984
660.....39479, 39965

## REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

## RULES GOING INTO EFFECT JULY 23, 1999

**AGRICULTURE DEPARTMENT**

**Food Safety and Inspection Service**

Meat and poultry inspection:
- Soy protein concentrate, modified food starch, and carrageenan; use as binders; published 5-24-99

**AGRICULTURE DEPARTMENT**

National Appeals Division procedure rules:
- Adverse decisions appeals procedures and jurisdiction and records authentication; published 6-23-99

**COMMERCE DEPARTMENT**

**Export Administration Bureau**

Export licensing:
- Commerce control list—
  - Wassenaar Arrangement List of Dual-Use Items; implementation; commerce control list revisions and reporting requirements; published 7-23-99

**COMMODITY FUTURES TRADING COMMISSION**

Commodity Exchange Act:
- Alternative methods of compliance with requirements for disclosure of exchange disciplinary information and access denial actions; published 7-23-99
- Deficiencies, inaccuracies, and changes resulting from exchange disciplinary and access denial actions; reporting requirements; published 7-23-99
- National Futures Association; performance of certain functions with respect to exchange disciplinary and access denial actions; published 7-23-99

**ENVIRONMENTAL PROTECTION AGENCY**

Water pollution control:
- Ocean dumping; site designations—
  - San Francisco Deep Ocean Disposal Site, CA; published 7-23-99

**FEDERAL COMMUNICATIONS COMMISSION**

Radio stations; table of assignments:
- Various States; published 7-23-99

Televison broadcasting:
- Closed captioning and video description of video programming; inadvertent trademark reference removed; published 6-23-99

**HEALTH AND HUMAN SERVICES DEPARTMENT**

**Food and Drug Administration**

Animal drugs, feeds, and related products:
- Marbofloxacin tablets; published 7-23-99

**HEALTH AND HUMAN SERVICES DEPARTMENT**

**Health Care Financing Administration**

Medicare and Medicaid:
- Nurse aide training programs loss; appeal; published 7-23-99

**HOUSING AND URBAN DEVELOPMENT DEPARTMENT**

Public and Indian housing:
- Public housing modernization—
  - Comprehensive Improvement Assistance Program; published 6-23-99

**TRANSPORTATION DEPARTMENT**

**Coast Guard**

Ports and waterways safety:
- Vessels and marine facilities; Year 2000 (Y2K) reporting requirements; published 6-23-99

**TRANSPORTATION DEPARTMENT**

**Federal Aviation Administration**

Airworthiness directives:
- AlliedSignal Inc.; published 6-11-99
- MT-Propeller Entwicklung GMBH; published 7-8-99
- New Piper Aircraft, Inc.; published 6-14-99
- Raytheon; published 6-11-99

## COMMENTS DUE NEXT WEEK

**AGRICULTURE DEPARTMENT**

**Animal and Plant Health Inspection Service**

Animal welfare:
- Confiscation of animals; comments due by 7-27-99; published 5-28-99

Plant-related quarantine, domestic:
- Asian longhorned beetle; comments due by 7-26-99; published 5-27-99

Veterinary services; import or entry services at ports, user fees; comments due by 7-27-99; published 5-28-99

**AGRICULTURE DEPARTMENT**

**Food and Nutrition Service**

Food stamp program:
- Personal Responsibility and Work Opportunity Reconciliation Act of 1996; implementation—
  - Coupons replacement by electronic benefit transfer systems; comments due by 7-26-99; published 5-27-99

**AGRICULTURE DEPARTMENT**

**Farm Service Agency**

Warehouses:
- Cotton warehouses; ≥without unnecessary delay≥ defined; comments due by 7-27-99; published 5-28-99

**AGRICULTURE DEPARTMENT**

**Food Safety and Inspection Service**

Meat and poultry inspection:
- Listeria monocytogenes contamination of ready-to-eat products; compliance with HACCP system regulations and comment request; comments due by 7-26-99; published 5-26-99

**COMMERCE DEPARTMENT**

**National Oceanic and Atmospheric Administration**

Fishery conservation and management:
- Northeastern United States fisheries—
  - Atlantic mackerel, squid, and butterfish; comments due by 7-26-99; published 6-25-99
- West Coast States and Western Pacific Fisheries—
  - Coral Reef Ecosystem and Bottomfish and Seamount Groundfish Fishery ManagementPlans; environmental impact statement, notice of intent; comments due by 7-29-99; published 7-22-99

Ocean and coastal resource management:
- Channel Islands National Marine Sanctuary, CA; review of management plan/regulations, intent to prepare environmental impact statement, and scoping meetings; comments due by 7-27-99; published 6-11-99

**DEFENSE DEPARTMENT**

Acquisition regulations:
- Overseas use of purchase card; comments due by 7-26-99; published 5-25-99

Federal Acquisition Regulation (FAR):
- Relocation costs; comments due by 7-26-99; published 5-25-99

Freedom of Information Act; implementation:
- Defense Information Systems Agency and Office of Manager, National Communications System; comments due by 7-26-99; published 5-27-99

**EDUCATION DEPARTMENT**

Postsecondary education:
- William D. Ford Federal Direct Loan Program; comments due by 7-30-99; published 6-16-99

**ENVIRONMENTAL PROTECTION AGENCY**

Air pollutants, hazardous; national emission standards:
- Generic maximum achievable control technology; process wastewater provisions; comments due by 7-29-99; published 6-29-99
- Polymers and resins (Groups I and IV); comments due by 7-30-99; published 6-30-99

Air programs:
- Accidental release prevention—
  - Flammable hydrocarbon fuel exemption; comments due by 7-28-99; published 6-25-99

Air programs; State authority delegations:
- Arizona; comments due by 7-28-99; published 6-28-99

Air quality implementation plans; approval and promulgation; various States:
- California; comments due by 7-28-99; published 6-28-99
- Georgia; comments due by 7-30-99; published 6-30-99

Michigan; comments due by 7-30-99; published 6-30-99

Hazardous waste program authorizations:

Idaho; comments due by 7-26-99; published 6-25-99

Hazardous waste:

Land disposal restrictions—

Mercury-bearing wastes; treatment standards; comments due by 7-27-99; published 5-28-99

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:

Fenhexamid; comments due by 7-27-99; published 5-28-99

Spinosad; comments due by 7-26-99; published 5-26-99

Tebuconazole; comments due by 7-26-99; published 5-26-99

Terbacil; comments due by 7-27-99; published 5-28-99

Superfund program:

National oil and hazardous substances contingency plan—

National priorities list update; comments due by 7-26-99; published 6-24-99

National priorities list update; comments due by 7-26-99; published 6-25-99

**FEDERAL COMMUNICATIONS COMMISSION**

Common carrier services:

Numbering resource optimization; comments due by 7-30-99; published 6-17-99

Radio stations; table of assignments:

Arizona; comments due by 7-26-99; published 6-10-99

Colorado; comments due by 7-26-99; published 6-10-99

Idaho; comments due by 7-26-99; published 6-10-99

Louisiana; comments due by 7-26-99; published 6-10-99

Texas; comments due by 7-26-99; published 6-11-99

**FEDERAL ELECTION COMMISSION**

Rulemaking petitions:

Wohlford, Mary Clare, et al.; comments due by 7-26-99; published 7-21-99

**GENERAL SERVICES ADMINISTRATION**

Federal Acquisition Regulation (FAR):

Relocation costs; comments due by 7-26-99; published 5-25-99

**HEALTH AND HUMAN SERVICES DEPARTMENT**

**Food and Drug Administration**

Biological products:

Albumin (human), plasma protein fraction (human), and immune globulin (human); comments due by 7-28-99; published 5-14-99

**HEALTH AND HUMAN SERVICES DEPARTMENT**

**Health Care Financing Administration**

Medicare:

Ambulatory surgical centers; ratesetting methodology, payment rates and policies, and covered surgical procedures list; comments due by 7-30-99; published 7-6-99

Hospital outpatient services; prospective payment system; comments due by 7-30-99; published 7-6-99

**HEALTH AND HUMAN SERVICES DEPARTMENT**

**Public Health Service**

Indian Child Protection and Family Violence Prevention Act; implementation:

Individuals employed in positions involving regular contact with or control over Indian children; minimum standards of character and employment suitability; comments due by 7-26-99; published 5-27-99

**INTERIOR DEPARTMENT**

**Fish and Wildlife Service**

Endangered and threatened species:

Freshwater mussels; comments due by 7-26-99; published 5-27-99

Ventura marsh milk-vetch; comments due by 7-26-99; published 5-25-99

Migratory bird hunting:

Seasons, limits, and shooting hours; establishment, etc.; comments due by 7-27-99; published 5-3-99

**INTERIOR DEPARTMENT**

**Surface Mining Reclamation and Enforcement Office**

Permanent program and abandoned mine land reclamation plan submissions:

Pennsylvania; comments due by 7-30-99; published 7-8-99

**JUSTICE DEPARTMENT**

**Immigration and Naturalization Service**

Immigration:

Aliens—

Inadmissibility and deportability on public charge grounds; public charge definition; comments due by 7-26-99; published 5-26-99

**JUSTICE DEPARTMENT**

Protection of Children from Sexual Predators Act of 1998; implementation:

Designation of agencies to receive and investigate reports of child pornography; comments due by 7-26-99; published 5-26-99

**LABOR DEPARTMENT**

**Mine Safety and Health Administration**

Coal mine and metal and nonmetal mine safety and health:

Underground mines—

Diesel particulate matter exposure of miners; correction; comments due by 7-26-99; published 7-8-99

Coal mine safety and health:

Underground mines—

Diesel particulate matter exposure of miners; comments due by 7-26-99; published 4-27-99

**NATIONAL CREDIT UNION ADMINISTRATION**

Credi unions:

Insurance requirements—

Share insurance fund capitalization; comments due by 7-26-99; published 5-26-99

**SMALL BUSINESS ADMINISTRATION**

Business loans:

Liquidation of collateral and sale of commercial loans; comments due by 7-29-99; published 6-29-99

**TRANSPORTATION DEPARTMENT**

**Coast Guard**

Drawbridge operations:

New Jersey; comments due by 7-26-99; published 5-25-99

Oregon; comments due by 7-26-99; published 5-25-99

**TRANSPORTATION DEPARTMENT**

Economic regulations:

Airline code-sharing arrangements, long-term wet leases, and change-of-gauge services; disclosure; comments due by 7-30-99; published 7-15-99

**TRANSPORTATION DEPARTMENT**

**Federal Aviation Administration**

Airworthiness directives:

Airbus; comments due by 7-28-99; published 6-28-99

Bell; comments due by 7-26-99; published 5-26-99

Boeing; comments due by 7-26-99; published 6-11-99

British Aerospace; comments due by 7-28-99; published 6-28-99

Dassault; comments due by 7-28-99; published 6-28-99

Dornier; comments due by 7-28-99; published 6-28-99

Eurocopter France; comments due by 7-26-99; published 5-26-99

Pilatus Aircraft Ltd.; comments due by 7-28-99; published 6-23-99

Raytheon; comments due by 7-30-99; published 6-14-99

Short Brothers; comments due by 7-28-99; published 6-28-99

Airworthiness standards:

Special conditions—

General Electric Aircraft Engines models CT7-6D, CT7-6E and CT7-8 turboshaft engines; comments due by 7-27-99; published 5-28-99

Class D and Class E airspace; comments due by 7-29-99; published 6-11-99

Class E airspace; comments due by 7-26-99; published 6-21-99

Class E airspace; correction; comments due by 7-29-99; published 6-30-99

**TRANSPORTATION DEPARTMENT**

**Research and Special Programs Administration**

Hazardous materials:

Hazardous materials transportation—

Loading, unloading, and storage; regulatory applicability; comments due by 7-26-99; published 4-27-99

**TRANSPORTATION DEPARTMENT**

**Surface Transportation Board**

Rail procedures:

Rail rate reasonableness, exemption and revocation proceedings; expedited procedures; comments due by 7-26-99; published 6-25-99

**TREASURY DEPARTMENT**

**Customs Service**

Customs brokers:

Licensing and conduct; comments due by 7-28-99; published 6-29-99

**TREASURY DEPARTMENT**

**Internal Revenue Service**

Income taxes and estate and gift taxes:

Annuities valuation, interests for life or terms of years, and remainder or reversionary interests; actuarial tables use; cross reference; comments due by 7-29-99; published 4-30-99

## LIST OF PUBLIC LAWS

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**H.R. 775/P.L. 106–37**
Y2K Act (July 20, 1999; 113 Stat. 185)

**Last List June 29, 1999**

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