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Part IV

Environmental Protection Agency

40 CFR Parts 9, 55 and 71

Federal Operating Permits Program; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 9, 55 and 71

[FRL–5526–7]

RIN 2060–AD68

Federal Operating Permits Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action promulgates regulations setting forth the procedures and terms under which the Administrator will administer programs for issuing operating permits to covered stationary sources, pursuant to title V of the Clean Air Act as amended in 1990 (Act). Although the primary responsibility for issuing operating permits to such sources rests with State, local, and Tribal air agencies, EPA will remedy gaps in air quality protection by administering a Federal operating permits program in areas lacking an EPA-approved or adequately administered operating permits program. Federally issued permits will clarify which requirements apply to sources and will enhance understanding of and compliance with air quality regulations.

EFFECTIVE DATE: July 31, 1996.

FOR FURTHER INFORMATION CONTACT: Candace Carraway (telephone 919–541–3189) or Kirt Cox (telephone 919–541–5399), U. S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Information Transfer and Program Integration Division, Mail Drop 12, Research Triangle Park, North Carolina 27711.

SUPPLEMENTARY INFORMATION:

Docket

Supporting information used in developing the promulgated rules is contained in Docket No. A–93–51. Supporting information used in developing 40 CFR part 70 is contained in Dockets No. A–90–33 and No. A–93–50. These dockets are available for public inspection and copying between 8:30 a.m. and 3:30 p.m. Monday through Friday at EPA's Air Docket, Room M–1500, Waterside Mall, 401 M Street SW, Washington, D.C. 20460. A reasonable fee may be charged for copying.

Background Information Document

A background information document (BID) for the promulgated rule may be obtained from the docket. Please refer to ''Federal Operating Permits Program - Response to Comments.'' The BID contains a summary of the public comments made on the proposed Federal Operating Permits Program rule and EPA responses to the comments.

Regulated Entities

Entities potentially regulated by this action are major sources, affected sources under title IV of the Act (acid rain sources), solid waste incineration units required to obtain a permit under section 129 of the Act, and those areas sources subject to a standard under section 111 or 112 of the Act which have not been exempted or deferred from title V permitting requirements. Regulated categories and entities include:

Category	Examples of regulated entities
Industry	Major sources under title I or section 112 of the Act; affected sources under title IV of the Act (acid rain sources); solid waste incineration units required to obtain a permit under section 129 of the Act; area sources subject to new source performance standards or national emission standards for hazardous air pollutants that are not exempted or deferred from permitting requirements under title V.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your facility is regulated by this action, you should carefully examine the applicability criteria in section 71.3(a) of the rule. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section or the EPA Regional Office that is administering the part 71 permit program for the State or area in which the relevant source or facility is located.

Outline. The information presented in this preamble is organized as follows:

I. Background
II. Summary of Promulgated Rule
III. Significant Changes to the Proposed Rule
IV. Administrative Requirements
A. Docket
B. Executive Order 12286
C. Regulatory Flexibility Act
D. Paperwork Reduction Act
E. Unfunded Mandates Reform Act

I. Background

A. Background of EPA's Development of the Proposed Part 71 Rule

Title V of the Act requires that if a permits program meeting the requirements of title V has not been approved for any State by November 15, 1995, EPA must promulgate, administer, and enforce a Federal title V program for that State (42 U.S.C. section 7661a(d)(3)). Thus, from the date of enactment of the 1990 Amendments to the Act, EPA was subject to a 5-year deadline to establish a Federal program for States that do not obtain EPA approval of their State programs within that time. The Act had also placed EPA under a 1-year deadline to promulgate regulations establishing the minimum elements of approvable State permit programs (42 U.S.C. section 7661a(b)). The EPA promulgated its regulations establishing these criteria, codified at 40 CFR part 70 (the part 70 rule), on July 21, 1992 (57 FR 32250). States were then to submit their title V programs for EPA review by November 15, 1993, and EPA was to approve or disapprove those submitted programs within 1 year of receiving them (42 U.S.C. section 7661a(d)(1)). Thus, under the temporal scheme of title V, EPA was to approve or disapprove timely submitted State title V programs by November 15, 1994, exactly 1 year before EPA's duty to establish a Federal program for unapproved States would ripen.

Almost immediately upon promulgation of part 70, numerous industry, State and local government, and environmentalist petitioners challenged EPA's final rule in litigation in the Court of Appeals. See *Clean Air Implementation Project v. EPA,* No. 92–1303 (D.C. Cir.). Petitioners identified dozens of issues to which they objected in the part 70 rule, and EPA decided to conduct broad-based settlement discussions with all petitioners concerning these issues. These discussions occurred for over a year following the commencement of the litigation, and resulted in EPA, with the consultation of all of the litigants, developing proposed revisions to many provisions in the part 70 rule. These provisions mainly concerned the flexibility provisions of part 70, which governed when permits would need to be revised to reflect changes in operation at sources, and the procedures by which permits would be revised. On August 29, 1994, EPA published proposed substantial revisions to part 70 reflecting the outcome of these discussions (59 FR 44460) (hereafter ''August 1994 proposed revisions to part 70''). That proposal reflected EPA's

most current thinking at the time concerning the proper implementation of title V, and departed in numerous respects from positions taken in the existing promulgated part 70 rule.

When EPA began developing part 71 in the fall of 1993, settlement discussions concerning part 70 were still ongoing and were yielding what appeared to be fruitful results. The Agency believed at the time that any needed revisions to part 70 would be finalized well in advance of the deadline for establishing any necessary Federal programs, and so decided to develop part 71 based on contemplated proposed revisions to part 70, as EPA wished to model part 71 on its long-term implementation goals for title V, rather than on provisions of a part 70 rule that EPA did not believe would remain as promulgated in the current rule.

When EPA published its proposed revisions to part 70 in August 1994, the Agency still believed that the revisions would be finalized in time for EPA to base its part 71 Federal program rule on the revised part 70. Consequently, when EPA published its proposed part 71 regulations on April 27, 1995, the proposal was based on the August 1994 proposed revisions to part 70 (60 FR 20804; hereafter, ''part 71 proposal''). The part 71 proposal thus contained provisions concerning critical definitions under title V, the scope of applicability of the program to sources, requirements governing applications and permit content, and, most significantly, operational flexibility and permit revisions that departed from the current part 70 rule's corresponding provisions. In the proposal notice, the Agency specifically solicited comment on whether the Agency had appropriately based part 71 upon the relevant provision of the existing part 70 rule and the recently proposed revision to part 70. See 60 FR at 20805.

At the time of proposal of part 71, the Agency was aware of many adverse comments on the August 1994 proposed revisions to part 70, and EPA had engaged in discussions with stakeholders to obtain recommendations for publishing a supplemental proposal to revise the flexibility provisions of part 70. See 60 FR at 20805, 20817. The part 71 proposal notice indicated that the Agency believed it might not be possible to promulgate final permit revision procedures for part 71, in light of the ongoing discussions to develop part 70 permit revision procedures in time to meet the statutory deadline for establishing Federal programs in States lacking approved part 70 programs. As a result, the notice suggested that EPA may have to finalize the part 71 rule in two phases, the first without any provisions for revising permits, which would be addressed in a later supplemental proposal. Id. Indeed, EPA's supplemental proposal for both parts 70 and 71, published on August 31, 1995, described how part 71's future permit revision procedures would be modelled upon the part 70 procedures for permit revisions proposed in that notice (60 FR 45530; hereafter, ''August 1995 supplemental proposal'').

B. The Need for Part 71 To Facilitate Transition

In the part 71 proposal notice, EPA stressed the need for implementation of part 71 to facilitate a smooth transition to State implementation of title V through approved part 70 programs. See 60 FR at 20805, 20816. The EPA continues to believe that Congress envisioned that States would have primary responsibility for implementing title V, just as they do for implementing much of the rest of the Act. See, for example, section 101(a)(3) of the Act, in which Congress found that air pollution prevention and air pollution control at its source is the primary responsibility of States and local governments (42 U.S.C. section 7401(a)(3)). Note also that under title V of the Act, Congress gave States the initial opportunity to develop and administer title V programs, while directing EPA to function as a backstop if States are unable to adopt provisions under State law to take on title V responsibilities, rather than directing EPA to establish the Federal program first and then allowing States to apply to take over title V administration, as under prior permitting programs such as the prevention of significant deterioration (PSD) and the national pollutant discharge elimination system (NPDES) under the Clean Water Act.

The EPA believes that granting States primary responsibility to implement title V makes good policy sense. States are far better positioned than EPA to administer permitting programs covering their resident sources for several reasons. First, States are more familiar with the operational characteristics of resident sources, and with the applicable requirements to which they are subject. In having had the lead on developing State implementation plans (SIP's) and implementing other provisions of the Act that apply to these sources, States have developed substantial expertise in, among other things, running air permit programs that govern new construction and changes in emissions of air pollutants such as the new source review (NSR) and PSD programs. States have developed enforcement programs based on this structure, and are able to coordinate their permitting programs with the goals and needs of their overall air pollution control programs. Finally, compared to EPA Regional offices, States are simply closer to their sources, have greater resources, and are better able to respond to the regulated community and its needs for expeditious permit processing.

In light of this, EPA has repeatedly stated its belief that federally-implemented part 71 programs would be of short duration, lasting only until the few remaining States that have not developed approvable part 70 programs are able to submit title V programs that meet the requirements of the Act. Rather than viewing part 71 only as a means of exerting leverage in States that have not yet adopted adequate part 70 programs, EPA has also viewed part 71 as an opportunity to aid States in taking up responsibility to implement title V. To this end, EPA has attempted to structure the rule so that States in which part 71 programs are established will be able to use the program as an aid to adopting and implementing their own part 70 programs. For example, today's rule provides that States can take delegation of administration of the Federal program in their States. If a State that for whatever reason has not been successful in developing its own statutes and regulations to implement title V is nevertheless capable of running a Federal program, EPA sees no reason not to offer the State the opportunity to more efficiently run the permit program than EPA believes the Agency could. The EPA also believes that the experience of running the Federal program may assist States in overcoming any remaining hurdles that have so far prevented them from adopting adequate title V programs under State law.

C. Basing Part 71 on the Part 70 Program

In the part 71 proposal notice, EPA stated its view that it is appropriate to model part 71 procedures on those required by part 70, in order to promote national consistency between title V programs that are administered throughout the country. See 60 FR at 20816. Such national consistency would ensure that sources are not faced with substantially different programs simply because EPA, as opposed to State agencies, is the relevant title V permitting authority, would promote uniformity in affected State and public participation, and would provide a level playing field for sources. Basing part 71 on part 70 would also encourage States

that are still developing their title V programs to take delegation of the part 71 program, as it would be more consistent with the programs they are preparing to implement under State law. States taking delegation would in turn ensure smoother transition to State administration of part 70 programs, as sources would have already become familiar with the State as the title V permitting authority and would not need to restart their permit application process anew when the State program receives EPA approval.

Since at the time the part 71 proposal was being developed it appeared to EPA that part 70 would soon be revised in many significant respects, EPA chose to base the proposal upon the recent proposed revisions to part 70, rather than on the existing promulgated rule. This was due in part to the fact that the August 1994 proposed revisions to part 70 addressed a number of basic issues under title V that necessarily would govern how those issues are addressed in part 71 (such as the definition of major source and the necessary provisions to implement section 502(b)(10) of the Act), and in part to the Agency's wish to provide in the Federal rule many of the benefits of the August 1994 proposed revisions to part 70. As noted above, however, EPA specifically asked commenters to address whether EPA had inappropriately either followed or departed from the approaches taken in both the current part 70 rule and its proposed revisions.

Echoing their comments on the August 1994 proposed revisions to part 70, industry commenters unanimously argued that the permit revisions procedures contained in the part 71 proposal were too complex and confusing and would hinder sources' abilities to make rapid changes in response to market needs. In addition, most industry commenters presented three general arguments in response to EPA's proposal to establish a uniform national part 71 rule based on the August 1994 proposed revisions to part 70. The first type of argument was that EPA should not promulgate a uniform national part 71 rule at all, but rather should develop part 71 programs case-by-case, taking into account the specific characteristics of the State's existing air program, and basing the State's part 71 program as much as possible on the State's part 70 program that it has developed to date and that EPA had not found to be inadequate. According to this argument, the best way to facilitate transition from Federal to State implementation of title V is to make sure the Federal and State programs are virtually identical in each relevant State, even if that means the Federal programs would differ from State to State. It would follow that EPA should approve whatever adequate elements a State had adopted for its title V program, and then only fill the remaining gaps with Federal provisions as necessary. This argument also held that section 502 of the Act actually requires a case-by-case approach to developing part 71 programs for States, and that the Act does not authorize EPA to promulgate a nationally uniform rule.

While EPA agrees that in theory the smoothest transition from Federal to State implementation might occur where the Federal program is identical to the State's, the Agency does not agree that it is inappropriate to promulgate a nationally uniform rule for part 71. At the outset, EPA disagrees with the assertion that the Agency lacks legal authority to establish a nationally uniform rule for part 71. While section 502(d)(3) of the Act does require EPA to promulgate, administer and enforce a title V program ''for'' any State that does not obtain part 70 approval, 42 U.S.C. section 7661a(d)(3), that language does not compel a separate State-by-State approach to establishing a Federal title V program; nor does it compel a Federal program that is based on the State's existing but as yet unapproved State program. Indeed, EPA would be hard-pressed to base a Federal program on a State program where no State program has ever been adopted or submitted for EPA evaluation. Even if a State had adopted and submitted a program, EPA stresses that the Agency can only evaluate the adequacy of State programs through notice and comment rulemaking, which might not occur before a Federal program is due. The EPA believes Congress must have recognized the possibility that EPA would be called upon to establish a Federal program even where a State has never adopted any State program of its own or where a program had not been submitted in time for EPA to find it adequate; in such situations, it would be impossible for EPA to base the Federal program on the State's. The EPA also believes that the resource burden of establishing and implementing different case-by-case programs for States would overwhelm EPA Regional offices and establishing a generic template for part 71 is a far more efficient use of Agency resources to get the Federal program up and running. The EPA has consequently concluded that a nationally uniform regulation is necessary for purposes of carrying out the Agency's functions under title V. Section 301(a)(1) of the Act authorizes EPA to prescribe such regulations as are necessary to carry out the Administrator's functions under the Act (42 U.S.C. section 7601(a)(1)). Thus, EPA believes it has ample statutory authority to establish the most efficient and nationally consistent part 71 regulation possible. Finally, EPA notes that EPA's other permitting programs under its environmental statutes, such as the NPDES program and the PSD program, are governed by nationally uniform regulations, implementation of which have been very successful. The EPA sees no reason to depart from this established approach for purposes of running Federal title V programs, especially since Congress clearly did anticipate that EPA would first address title V through establishing regulations that would govern the minimum elements of title V programs to be administered by any air pollution control agency. See section 502(b) of the Act, 42 U.S.C. section 7661a(b).

The second type of industry argument in response to basing the part 71 proposal on the proposed revisions to part 70 stressed that EPA should delay promulgation of any part 71 rule until the revisions to part 70 are finalized. This argument pointed out that promulgating part 71 based on the August 1994 proposed revisions to part 70 would result in the part 71 rule being based on an approach that the Agency itself had begun to revise in developing the supplemental proposed revisions to part 70 (which were eventually published just 4 months after the date of the part 71 proposal). The argument noted that since EPA is envisioning substantial changes to the part 70 rule, the part 71 rule should not finalize title V issues that will remain in transition until the part 70 rule is finally revised. This argument also specifically responded adversely to EPA's statement in the proposal that it may be necessary to split finalization of part 71 into two phases in which the operational flexibility and permit revision procedures would remain reserved until a second phase. In the view of these commenters, such provisions are critical components of any part 71 rule that is adopted, and it would not be appropriate to leave them out of part 71 for any unspecified time. This argument also stated that finalizing part 71 now based upon the proposed revisions to part 70 would actually impede transition to approved State part 70 programs, since the Federal program, and the approved State program based on the current part 70 that replaces it, would take very different approaches to such fundamental issues as applicability of the program, operational flexibility

and permit revision procedures. Finally, this argument offered a theory that title V actually does not require EPA to adopt part 71 programs for States until May 15, 1997; under this theory, a commenter argued that the Act actually gives States until May 15, 1995, rather than November 15, 1993, to submit initial title V programs, since States have 18 months following the first ''due date'' to submit any remedies to deficient programs and avoid sanctions that would fall after that 18-month period. The commenter would interpret the date on which the 18-month period expires as the date referred to in section 502(d)(3) and argues that EPA is not required to promulgate a Federal program until 2 years after the expiration of the 18-month period.

First, EPA is not persuaded by the commenter's argument that part 71 programs are not due until May 15, 1997. Section 502(d)(1) of the Act clearly provides that States are to submit their title V programs ''[n]ot later than 3 years after the date of enactment of the Clean Air Act Amendments of 1990,'' 42 U.S.C. section 7661a(d)(1), which occurred on November 15, 1990. Moreover, section 502(d)(3) clearly refers to ''the date required for submission of such a program under paragraph (1) (of section 502),'' 42 U.S.C. section 7661a(d)(3), as the trigger for the 2-year period after which EPA must establish Federal programs. There is no reference to any 18-month grace-period in section 502(d)(3), and EPA disputes the assertion that the date on which a sanctions clock expires under section 502(d)(2) can be viewed as the ''real'' deadline for submission of State programs in the face of the plain language of section 502(d)(1) and section 502(d)(3)'s reference to the deadline in section 502(d)(1). Thus, while EPA is sympathetic to concerns that finalizing part 71 in advance of the Agency finally revising part 70 could result in the Agency promulgating provisions that are essentially moving targets in the Federal rule, EPA does not believe it has the authority to delay issuance of part 71 beyond the deadline prescribed by Congress. Moreover, as a policy matter, EPA believes it is necessary to put part 71 in place to aid States that to date have unsuccessfully struggled to develop approvable title V programs, as it is a potential vehicle for State administration of title V (through delegation of part 71) even where obstacles remain that block certain States from obtaining part 70 approval. The EPA does not believe that the environmental benefits of title V should be delayed simply due to the fact that some States have not been successful at developing title V programs. Moreover, EPA does not feel it would be appropriate to attempt to justify delaying promulgation and implementation of the Federal program because of the continuing difficulties in revising the part 70 rule. However, EPA is persuaded by commenters that the part 71 rule should not contain gaps to be filled in at a second stage for provisions for operational flexibility and permit revisions, and is sympathetic to concerns that basing these provisions on the August 1994 proposed revisions to part 70 might even interfere with transition to State programs approved under the current part 70 rule. These latter points are discussed in more detail below.

The third general type of industry argument in response to basing part 71 on the August 1994 proposal was that if EPA must establish a Federal program now, it should do so based on the existing part 70 rule, and revise the program later when part 70 is revised. This argument recognized that EPA may simply be unable in certain cases to base a State-specific part 71 program on an existing State program, but stressed the fact that any program that the State is still struggling to adopt would be based on the existing part 70 rule, rather than on the proposed revisions thereto. The argument pointed out the fact that under the August 1994 proposed revisions to part 70, EPA planned to allow States several years following final promulgation before States would be expected to implement new part 70 programs based on the revised rule. Thus, commenters observed, States would likely be developing and implementing part 70 programs based on the July 1992 rule for considerable time. In light of this, it would actually interfere with smooth transition from Federal to State implementation to base part 71 on the future part 70 rule, especially in light of the fact that at this point how part 70 will be ultimately revised is only speculative; rather, transition could be facilitated only where the Federal rule resembles the model that the State rule is expected to follow. States might be less inclined to take delegation of a Federal rule that does not resemble existing part 70 and the State analogues that are being developed, and thus sources would be more likely to be faced with different permitting authorities under part 71 and part 70 programs. Moreover, the relevant guidance that EPA had issued to date to aid implementation of the current rule, such as the Agency's ''White Paper for Streamlined Development of Part 70 Permit Applications'' (herein referred to as the ''first white paper'') and the March 5, 1996 guidance document entitled ''White Paper Number 2 for Improved Implementation of the Part 70 Operating Permits Program, could be less valuable as an aid in implementing a Federal rule that is not based on the current part 70, and both sources and part 71 permitting authorities could be forced to start somewhat from scratch in implementing the program.

The EPA agrees that the most appropriate course of action is to promulgate, on an interim basis, part 71 based on the current part 70 rule. In reaching this conclusion, EPA was persuaded by concerns about impeding transition to part 70 approval under the current rule and by industry concerns about issuing a rule containing gaps regarding operational flexibility and permit revisions. Moreover, as many issues in part 70 are still outstanding following the August 1994 and August 1995 proposals, and as many of those issues concern key definitions and procedures under title V, it would be premature for EPA to finalize part 71 based upon the proposed revisions to part 70 until it makes final decisions on these issues in part 70. Thus, the only way EPA can fulfill its mandate to step in as the title V permitting authority for States that have not obtained part 70 approval at this time, and to do so by establishing a complete part 71 program that provides the flexibility needed by industry and mandated by title V, is to promulgate the rule based upon the current part 70 regulation. The EPA stresses, however, that by finalizing this interim approach in part 71, the Agency does not preclude itself from revising part 71 in the future as based on appropriate aspects of either the August 1994, April 1995, or August 1995 proposals for parts 70 and 71. In fact, EPA intends to issue a second round of final rulemaking for part 71 (hereafter ''phase II rulemaking) in the future once the Agency has resolved with relevant stakeholders the outstanding issues and is prepared to promulgate final revisions to part 70. As a general matter, EPA stresses that the most current reflection of the Agency's intended policy regarding many of these provisions is the August 31, 1995 supplemental proposal. Consequently, while the provisions adopted today in part 71 that relate to outstanding issues under the definitions, applicability, permit application, permit content, permit revisions and reopenings, and affected State and EPA review sections are consistent with the corresponding

provisions in the existing part 70 rule, rather than with provisions in the proposals mentioned above, it should be expected that EPA will issue a second final rulemaking, without a second round of proposal, to conform part 71 to the revised part 70 rule when the Agency is prepared to issue it.

The EPA believes that this approach is a logical outgrowth of the part 71 proposal issued in April 1995. While that proposal only contained regulatory provisions based on the August 1994 proposed revisions to part 70, EPA explicitly solicited comment on whether the proposal was in any way inappropriately inconsistent with the current part 70 rule. Clearly, the commenters noted such inconsistencies, and the proposal facilitated meaningful comment on what approach the Agency should take in promulgating part 71 vis-a-vis the outstanding issues in the part 70 revision process. As discussed above, the proposal enabled industry commenters to fall into three basic categories in response to the proposal—in fact, many commenters advanced more than one of the basic types of arguments in their comments, realizing that the different arguments might have different force depending upon the extent to which States had actually developed and submitted their own programs. The approach adopted today was urged by numerous industry commenters as the most reasonable in light of the need to issue a part 71 program now, as opposed to leaving gaps to be filled in later at a second stage of final rulemaking. In addition, today's rule is consistent with the existing part 70 rule under which States continue to submit programs, and under which EPA continues to approve those programs. Thus, EPA does not believe that a second round of proposed rulemaking is necessary before finalizing part 71 to conform to the Agency's currently effective regulation implementing title V, part 70.

In the following sections of this notice, the specific provisions that are being finalized based upon current part 70 rather than upon the provisions of the part 71 proposal are identified and further discussed. For each of them, the general governing principle is that while the Agency has proposed to revise part 70 to modify many of the provisions corresponding to the part 71 provisions adopted today, EPA is not yet prepared to adopt final positions on those issues and so, in the interests of promoting smooth transition from Federal to State implementation of title V, is choosing to issue, on an interim basis, a part 71 rule that matches as closely as possible the existing part 70 rule. The EPA's finalization of those provisions today in no way reflects the Agency's ultimate decision to renounce any of the positions articulated in the proposed revisions to part 70 or the corresponding proposals for part 71.

II. Summary of Promulgated Rule

A. Applicability

The Federal operating permits program requires all part 71 sources to submit permit applications to the permitting authority no later than within 1 year of the effective date of the program. The operating permit program applies to the following sources:

1. Major sources, defined as follows:

a. Air toxics sources, as defined in section 112 of the Act, with the potential to emit 10 tons per year (tpy), or more, of any hazardous air pollutant (HAP) listed pursuant to 112(b); 25 tpy, or more, of any combination of HAP listed pursuant to 112(b); or a lesser quantity of a given pollutant, if the Administrator so specifies (501(2)(A)).

b. Sources of air pollutants, as defined in section 302, with the potential to emit 100 tpy, or more, of any pollutant (501(2)(B)).

c. Sources subject to the nonattainment area provisions of title I, part D, with the potential to emit, depending on the nonattainment area designation 10 or more tpy of volatile organic compound (VOC) or oxides of nitrogen, 50 or more tpy of carbon monoxide, and seventy or more tpy of particulate matter (501(2)(B)).

2. Any other sources subject to a standard under section 111 or 112.

3. Sources subject to the acid rain program (501(1)).

4. Any source subject to the PSD program or the NSR program under title I, part C or D.

5. Any other stationary source in a category EPA designates, in whole or in part, by regulation, after notice and comment.

For purposes of determining applicability, a source's total emissions of a pollutant are found by summing the potential emissions of that pollutant from all emissions units under common control at the same plant site. If a source is a major source, even if only due to the total emissions from one pollutant, then a source must submit (with few exceptions) a permit application that includes all emissions of all regulated air pollutants from all emissions units located at the plant.

Part 71 follows the approach of part 70 in deferring nonmajor sources from permitting requirements. The permitting requirements for nonmajor sources subject to a standard under section 111 or 112 of the Act prior to July 21, 1992 are deferred for 5 years from the effective date of the first approved part 70 program that deferred nonmajor sources. The EPA may determine on a case-by-case basis permitting requirements for nonmajor sources when they become subject to new section 111 or 112 standards. Sources subject to the new source performance standard for new residential wood heaters or the national emission standards for hazardous air pollutants for asbestos as it applies to demolition and renovation activities are permanently exempt from permitting requirements.

B. Program Implementation

The EPA will administer a part 71 program for those portions of a State that lack EPA approval for its operating permits program or for a State that fails to adequately administer and enforce an approved program. However, the requirement that EPA establish a Federal program for States lacking a fully approved program is suspended if a State program is granted interim approval. The EPA will also administer part 71 programs in Tribal areas. Should a part 71 program become effective prior to the issuance of part 70 permits to all sources (under an approved part 70 program), EPA will require part 71 permit applications from sources that have not received part 70 permits. Applications shall be due within a year of the effective date of the part 71 program. The EPA will take final action on at least one-third of the applications annually.

Section 71.4 also establishes procedures that would be used for issuing permits to certain sources located on the Outer Continental Shelf (OCS) and after EPA objects to a proposed or issued State permit.

The EPA may also delegate the responsibility for administering the part 71 program to the State or eligible Tribe if the requirements of section 71.10 have been met. However, delegation will not constitute approval of a State or Tribal operating permits program under part 70.

The EPA will suspend the issuance of part 71 permits upon publication of notice of approval of a State or Tribal operating permits program under part 70. The EPA or the delegate agency will continue to administer and enforce part 71 permits until they are replaced by permits issued under the approved part 70 program.

The EPA will publish a notice in the Federal Register informing the public of the effective dates or delegation of any part 71 programs for States, Tribal areas,

and OCS sources. Where practicable, EPA will also publish notice in a newspaper of general circulation within the area subject to the part 71 program and will notify the affected government.

C. Permit Applications

Each source meeting the applicability criteria of this part is required to submit timely and complete information on standard application forms provided by the permitting authority. Streamlined forms for electronic formats may be provided.

An initial part 71 permit application is required within 12 months of the later of:

1. The effective date of this part in a State, Tribal area, or OCS area where a source is located, unless the source has an existing part 70 permit;
2. The expiration of any deferral for a nonmajor source;
3. The date a source commences operation; or
4. The date a source meets any of the applicability criteria of section 71.3.

Sources with part 70 permits in force at the time part 71 becomes effective in the area where they are located would not have to apply for a part 71 permit until their part 70 permit expires. Prior to its expiration, the part 70 permit may be modified by EPA.

Sources would be notified of the requirement to submit an application at least 180 days prior to when the application is due.

The permitting authority will perform a completeness determination within 60 days of receipt of an application, or the application will be deemed complete by default. A complete application would contain all the information needed to begin processing the permit application, including, at a minimum, a completed standard application form (or forms) and a compliance plan.

The compliance plan describes how the source plans to maintain or to achieve compliance with all applicable air quality requirements under the Act. This plan must include a schedule of compliance and a schedule for the source to submit progress reports to the permitting authority. Each source must submit a compliance certification report in which it certifies its status with respect to each requirement, and the method used to determine the status.

Each operating permit application, report, or compliance certification submitted pursuant to part 71 must include a certification signed by a responsible official attesting to the truth, accuracy, and completeness of the information submitted.

Applicants may be required to update information in the application after the filing date and prior to the release of the draft permit.

D. Permit Content

Part 71 permits must meet all applicable requirements of the Act and, among other things, must contain:

1. A 5-year term for acid rain sources, up to a 12-year term for certain municipal waste combustors, and up to a 5-year term for all other sources.
2. Limits and conditions to assure compliance with all applicable requirements under the Act.
3. A schedule of compliance, where applicable.
4. Inspection, entry, monitoring, compliance certification, recordkeeping, and reporting requirements to assure compliance with the permit terms and conditions.
5. A provision describing permit reopening conditions.
6. Provisions under which the permit can be revised, terminated, modified, or reissued for cause.
7. Provisions ensuring operational flexibility so that certain changes can be made within a permitted facility without a permit revision.
8. A provision that nothing in the permit or compliance plan affects allowances under the acid rain program.

All terms and conditions in a part 71 permit, including any provisions designed to limit a source's potential to emit, are enforceable by the Administrator and citizens under the Act.

Like part 70, part 71 would allow sources to apply for a permit shield, i.e., a provision in the permit that states that if the source complies with terms and conditions of the permit, the source shall be deemed in compliance with any applicable requirements reflected in the permit as of the date of permit issuance.

E. Permit Issuance and Review

Regulations concerning the processes for permit issuance, review, renewal, revision, and reopening are found in sections 71.7 and 71.11. Briefly, these include:

1. Action on Applications for Permit Issuance and Permit Renewal

Section 71.7(a) describes the conditions that must be satisfied before EPA or a delegate agency may issue a permit. These include receipt of a complete application, compliance with public participation requirements, and notification of affected States, Indian Tribes, and EPA (if the program has been delegated). Except during the initial phase-in of the program, the permitting authority is required to act on permit applications within 18 months after receiving a complete application.

The timely submittal of a complete application and any additional required information creates a ''shield'' against enforcement for failure to have a part 70 or part 71 permit. Permits being renewed are subject to the same procedural requirements that apply to initial permit issuance, as provided in section 71.7(c). The administrative procedures for permit issuance are contained in section 71.11 and are generally based on analogous provisions governing other EPA permitting programs at 40 CFR part 124.

2. Permit Revisions

Sections 71.7 (d) and (e) outline the mechanisms for permit modification and administrative amendments that are needed to revise part 71 permits to accommodate changes that would otherwise violate terms and conditions of the permit.

Administrative amendments can be accomplished by the permitting authority without public or EPA review. These permit revisions include correction of typographical errors, changes in address or source ownership, as well as incorporation of requirements established under State preconstruction review that meet certain procedural and compliance requirements.

If a change is not prohibited or addressed by the permit, the permittee may make the change after submitting a notice, and the permit is revised at renewal.

The regulations establish minor and significant permit modification procedures for changes that go beyond the activities allowed in the original permit or that increase the total emissions allowed under the permit.

Minor permit modifications reflect increases in permitted emissions that do not amount to modifications under any requirement of title I and that do not meet certain other requirements. Minor permit modification procedures require a source to provide advance notice of the proposed change, but allow a change to take effect prior to the conclusion of the revision procedures.

A source that makes a change before the minor permit modification has been issued does so at its own risk. It is not protected from underlying applicable requirements by any shield. It is only afforded a temporary exemption from the formal requirement that it operate in accordance with the permit terms that it seeks to change in its modification application. Should the proposed permit modification be rejected, the source would be subject to enforcement

proceedings for any violation of these requirements.

Significant permit modifications are inherently more complex, and will require additional time to accomplish. Permitting authorities will initiate their review of the proposed changes after receipt of an application.

Sources subject to requirements of the acid rain program must hold allowances to cover their emissions of sulfur dioxide (SO_2). Allowance transactions registered by the Administrator will be incorporated into the source's permit as a matter of law, without following either the permit modification or amendment procedures described above.

3. Reopening for Cause

The permitting authority may terminate, modify, or revoke and reissue a permit for cause. Reopening and reissuing procedures follow the same procedures as apply to initial issuance. Advance notice is required before permit reopenings may be initiated.

Section 71.7(f) requires that permits issued to major sources with 3 or more years remaining in the permit's term be reopened to incorporate applicable requirements which are promulgated after the issuance of the permit. Revisions must be made as expeditiously as practicable, but no later than 18 months after the promulgation of such additional requirements.

4. Permit Notification to EPA and Affected States

Consistent with 40 CFR section 70.8(b), EPA or the delegate agency would be required to provide notice of draft permits to all affected States and to certain Indian Tribes.

Affected States are those whose air quality may be affected and that are contiguous to the State in which the source is located, or that are within 50 miles of the source. The permitting authority must give affected States an opportunity to submit written recommendations for the permit and notify any affected State in writing of any refusal to accept all of its recommendations.

Although Indian Tribes are not considered affected States unless they establish their compliance with criteria for being treated in the same manner as States pursuant to section 301(d) of the Act, the Agency believes federally recognized Tribes should be given notice of draft permits that may be issued to sources that could affect Tribal air quality. The regulation requires that the permitting authority send such notices.

The Act authorizes EPA to object to any permit that would not be in compliance with the applicable requirements of the Act. In the case of a delegated program, the permitting authority may not issue a part 71 permit if the Administrator has objected to its issuance in writing within 45 days of receipt of the proposed permit.

5. Administrative and Judicial Review

After the close of the public comment period on a draft permit, the permitting authority will issue a final permit decision. Within 30 days of the final permit decision, anyone who filed comments on the draft permit or participated in the public hearing may petition the Environmental Appeals Board (EAB) to review any condition of the permit. In general, the objections in the petition must have been raised during the public participation period on the permit. The petition will stay the effectiveness of the specific terms of the permit which are the subject of the request for review, pending conclusion of the appeal proceedings.

The EAB will issue an order either granting or denying the petition for review. To the extent review is denied, the conditions of the final permit decision become final agency action and are subject to judicial review in the United States Court of Appeals under section 307(b) of the Act. The decision of the EAB to issue or deny the permit is also subject to judicial review.

Interested persons (including permitees) are authorized to petition the Administrator to reopen an already issued permit for cause. Petitions would be required to be in writing and to contain facts or reasons supporting the request.

F. Permit Fees

Section 71.9 establishes the Federal operating permits program fee requirements for owners or operators of part 71 sources. The fees must be sufficient to cover the permits program costs, including the following:

1. Reviewing and acting on any permit, permit revision, or permit renewal, and processing permit reopenings.
2. Administering the permit program.
3. Implementing and enforcing the terms of any part 71 permit.
4. Monitoring, modeling, manipulating, and tracking emissions.
5. Providing support to small business stationary sources.

Consistent with the two-phased approach to part 71 promulgation described in this notice, EPA is today implementing a two-phased approach to part 71 fee requirements. Phase I fee collection will be sufficient to cover Phase I costs. Since Phase II fee collection is associated with permit revision procedures, a fee amount for Phase II cannot be finalized in today's rule. The Phase II fee will add the costs for the permit revision procedures that are finalized in that rulemaking.

The dollar per ton fee will vary depending on the implementation mechanism EPA uses to administer a part 71 program. A program that is administered completely by EPA would charge $32 per ton per year (ton/yr). Permit fees for a program for which EPA relies on contractor assistance to the greatest extent possible would be approximately $57 per ton/yr. Program costs (and fees) would vary among part 71 programs depending on the hourly rate paid to the contractor for its work on the particular State's part 71 program. The costs of a program that is staffed in part by EPA employees and in part by contractors or by the delegate agency would vary in accordance with the percentage of personnel time allocated to non-EPA staff and the hourly rate paid to the contractor for its work on the State's part 71 program.

The EPA may suspend collection of part 71 fees for part 71 programs which are fully delegated to States and for which EPA incurs no administrative costs.

The EPA may promulgate a separate fee schedule for a particular part 71 program if the Administrator determines that the fee schedule in the rule does not adequately reflect the cost of administering the program.

Sources are required to submit fee calculation worksheets and fees at the same time as their initial permit applications are due and thereafter on an annual basis.

Part 71 program costs and permit fees will be reviewed by the Administrator at least every 2 years, and changes will be made to the fee schedule as necessary to reflect permit program costs.

G. Federal Oversight of Delegated Programs

Section 71.10 establishes the procedures EPA would follow when delegating the authority to administer a part 71 program to a State, eligible Indian Tribe, or other air pollution control agency. The EPA will delegate authority to run the program where possible in order to take advantage of existing expertise of the delegate agency or where it seems probable that the delegate agency's submitted part 70 program will be approved within a short time by EPA, provided in both cases that the delegate agency has the authority to administer the program that would be delegated.

A delegate agency must submit a formal request for delegation and other documentation that shows the agency or eligible Tribe has adequate legal authority and capacity to administer and enforce the part 71 program. If the request for delegation is accepted, EPA and the delegate agency will enter into an agreement that sets forth the terms and conditions of the delegation.

As part of its oversight of delegated programs, EPA would review copies of applications, compliance plans, proposed permits and final permits that the delegate agency would be required to send to EPA. The EPA would have 45 days in which to review proposed permits. If EPA objects to the issuance of a permit within that time, the delegate agency would be required to revise and resubmit the proposed permit to EPA.

Delegation of a part 71 program would not relieve a State of its obligation to submit an approvable part 70 program, nor from any sanctions that the Administrator may apply for the State's failure to have an approved part 70 program.

H. Enforcement

The Federal enforcement authority available under section 113 of the Act for violations of title V and the regulations thereunder provides broader enforcement authority than States are required to have under the part 70 regulations. Examples of the Federal enforcement authorities available under the Act include, but are not limited to, the authority to: (1) restrain or enjoin immediately any person by order or by suit in court from engaging in any activity in violation of the Act that is presenting an imminent and substantial endangerment to the public health or welfare, or the environment; (2) seek injunctive relief in court to enjoin any violation of the Act; (3) issue administrative orders that assess civil administrative penalties; (4) assess and recover civil penalties; and (5) assess criminal fines.

III. Significant Changes to the Proposed Regulations

A. Section 71.2—Definitions

The Agency has adopted definitions in today's rulemaking that are consistent with and are mainly modelled on corresponding definitions in the current part 70 rule, rather than on the part 71 proposal. Consequently, many of the definitions adopted today differ from those contained in the part 71 proposal which were largely based upon the August 1994 proposed revisions to corresponding definitions in part 70 which the Agency is not yet prepared to finalize.

Several definitions found in the proposed section 71.2 have been revised to conform more closely to the definitions used in the current part 70 rule. These include ''affected State,'' ''applicable requirements,'' ''final permit,'' ''major source,'' ''permit revision,'' ''permitting authority,'' and ''responsible official,'' each of which is discussed briefly below. Similarly, EPA adopted definitions for ''permit modification'' and ''section 502(b)(10) change'' from the current part 70 rule, because these terms are integral parts of today's rulemaking, which is based on the existing part 70 regulations. Also, several definitions in the part 71 proposal describe terms and concepts that the Agency has concluded are either not necessary or are not ready to be finalized in today's rulemaking. The terms for which EPA has not adopted a definition include ''insignificant activity or emissions,'' ''major new source review,'' ''minor new source review,'' ''potential to emit,'' ''title I modification,'' and ''Tribal area.'' To the extent these proposed terms were based on the August 1994 proposed revisions to part 70, EPA will finally address them in the Phase II rulemaking.

In addition, the Agency has retained several definitions found in the part 71 proposal that are not found in the current part 70 rule, but are needed for part 71. These include definitions for ''delegate agency,'' ''part 71 permit,'' ''part 71 program,'' and ''part 71 source.'' The Agency has also adopted definitions for ''eligible Indian Tribe,'' ''Federal Indian reservation,'' and ''Indian Tribe,'' which were added to clarify which Tribes would be eligible to receive delegation of the part 71 program and to be considered ''affected States.''

The part 71 proposal and the August 1995 supplemental proposal reflect the Agency's position on what definitions would be appropriate in conjunction with the permit revision procedures, operational flexibility provisions, and other provisions that have been proposed for finalization in the Phase II rulemaking. Subsequent to reviewing all of the comments on both of these proposals, EPA may finalize definitions that differ from those adopted today.

1. Affected States

a. *Indian Tribes.* The EPA received numerous comments from Indian Tribes suggesting that federally recognized Indian Tribes should be considered to be ''affected States'' if their air quality may be affected or the Tribal area is contiguous to the State in which the permittee is located or is within 50 miles of the permittee. They contended that Tribes should not have to meet any type of eligibility criteria in order to be considered an ''affected State.'' Contrary to the view of these commenters, the EPA interprets section 301(d)(2) of the Act as authorizing the Agency to treat Indian Tribes in the same manner as a State for purposes of being an ''affected State'' only when EPA has determined that the Indian Tribe has demonstrated that it has met the eligibility criteria of section 301(d)(2) of the Act. The second paragraph of the proposed definition of ''affected State'' was inconsistent with this interpretation in that it would have treated Tribes in the same manner as States if the permitting action concerned a source located in a Tribal area, regardless of the Tribe's eligibility status. Therefore, EPA has amended this paragraph to include the same eligibility requirement as the first paragraph. That is, that the Indian Tribe must have demonstrated that it has met the eligibility criteria of section 301(d)(2). However, in the interest of furthering government-to-government relationships with Tribes, EPA has adopted a provision in section 71.8 that requires the part 71 permitting authority to provide notice of draft permits to any federally recognized Indian Tribe whose air quality may be affected by the permitting actions and whose reservation or Tribal area is contiguous to the jurisdiction in which the part 71 permit is proposed or is within 50 miles of the permitted source. (See discussion at section III.G. of this notice.)

b. *Local agencies.* The proposed definition of ''affected State'' in the part 71 proposal added language not found in the current part 70 definition of ''affected State'' to the effect that, when a part 71 permit, permit modification, or permit renewal is proposed for a source located within the jurisdiction of a local agency, that agency would be considered an affected State. Today's rulemaking retains this approach because it pertains to a situation which is unique to part 71, i.e., when EPA administers a part 71 program in an area where the local agency would normally be the permitting authority of record under an approved part 70 program. The proposal also differed from today's rulemaking in that under the proposal, local agencies would not otherwise be considered affected States. Since the approach taken to such jurisdictions is an issue for both parts 70 and 71, it will be addressed in the Phase II rulemaking. In the interim, the proposed language has been deleted to comport with the current part 70 definition.

2. Applicable Requirements

The part 71 proposal expanded the part 70 definition of ''applicable requirement'' to include the provision that any requirement enforceable by the Administrator and by citizens under the Act which limits emissions for the purpose of creating offset credits or avoiding any applicability requirement is itself an applicable requirement. This addition, while helpful for understanding what constitutes an applicable requirement, was based on the August 1994 proposed revisions to part 70, which EPA is not yet prepared to finally promulgate. As such, EPA believes it is not appropriate to finalize this change for purposes of part 71 at this time, but intends to address this issue in the Phase II rulemaking. It was therefore deleted to comport with the current part 70 definition.

The definition of ''applicable requirement'' in the part 71 proposal also differed from the definition in the current part 70 rule in that it limited the title VI requirements that would have to be included in a title V permit. This proposed language, while consistent with the August 1994 proposed revisions to part 70, which, again, EPA is not yet prepared to finalize, was removed so that the definition would conform to the definition in the current part 70 regulation.

3. Final Permit

The proposal contained a proposed definition of ''final action or final permit action.'' The final rule changes this term to ''final permit'' in order to better harmonize the definition with the term ''final permit'' in the current part 70 regulation promulgated at section 70.2.

4. Major Source

The proposed part 71 rule contained a definition of ''major source'' that was based on the proposed change to the term contained in the August 1994 proposed revisions to part 70. Since publication of the part 71 proposal, EPA has also proposed additional changes to the term in the August 1995 supplemental proposal for parts 70 and 71. The EPA is currently in the process of reviewing, evaluating and developing positions in response to comments on this very important term and other issues raised in the August 1995 proposal. Consequently, EPA is not yet prepared to promulgate part 71 in general, or the major source definition in particular, as based on the August 1994, April 1995 or August 1995 proposals. The only exception to this approach is in regard to source categories for which fugitive emissions are to be counted in determining whether a source is a major source under section 302 of the Act.

Consistent with PSD and nonattainment NSR, current part 70 requires the counting of fugitive emissions from source categories which have been listed pursuant to section 302(j) in major source applicability determinations. See the definition of ''major source'' at 40 CFR section 70.2. The one difference, however, between the list of source categories under PSD and nonattainment NSR and current part 70 is in regard to the 27th category of sources that are required to count fugitive emissions. In parts 51 and 52, the 27th category is stated as follows:

> Any other stationary source category which, as of August 7, 1980, is being regulated under section 111 or 112 of the Act.

In current part 70, the 27th category reads as follows:

> All other stationary source categories regulated by a standard promulgated under section 111 or 112 of the Act, but only with respect to those air pollutants that have been regulated for that category;

As can be seen from the above, one of the principal differences between these two paragraphs is the date of August 7, 1980, which is specified in the PSD and nonattainment NSR regulations, but is absent from the current part 70 regulation. The result of this difference is that part 70 literally requires sources to count fugitives even where those sources are not required to do so in determining whether they are major for purposes of PSD or nonattainment NSR. As stated in the preamble to the August 1994 part 70 proposal, EPA acknowledges that it did not follow the procedural steps necessary under section 302(j) to expand the scope of sources in this category for which fugitives must be counted in part 70 major source determinations. See memorandum of June 2, 1995, entitled ''EPA Reconsideration of Application of Collocation Rules to Unlisted Sources of Fugitive Emissions for Purposes of Title V Permitting,'' from Lydia Wegman, Deputy Director, Office of Air Quality Planning and Standards, to Regional Air Directors. Instead of perpetuating this problem by following this aspect of current part 70, and even though the Agency is not yet ready to finalize the approach taken in the August 1995 supplemental proposal for parts 70 and 71, EPA believes that an appropriate interim solution is to finalize this category similar to how it was proposed in the April 1995 part 71 proposal and consistent with the provisions in the PSD and nonattainment NSR regulations. As a result, the 27th category will read as follows:

> Any other stationary source category which, as of August 7, 1980, is being regulated under section 111 or 112 of the Act.

Use of the above language best ensures that, until EPA is prepared to finalize part 70's proposed revisions, there will be no discrepancy between the treatment of fugitive emissions under PSD and nonattainment NSR and the corresponding provision in this phase I part 71 rule. This language further ensures that sources which are considered major sources under PSD and nonattainment NSR are also major sources under part 71. This consistency is compelled by section 501(2) which requires any stationary source to be considered major under title V if it is a major source under section 112 or a major stationary source under section 302 or part D of title I.

It is important to remember that EPA has proposed additional modifications to the list of source categories, including this 27th category, in the August 1995 proposal for parts 70 and 71. However, as EPA is currently in the process of reviewing and evaluating comments regarding these revisions, EPA cannot at this time finalize any of these proposed modifications.

The EPA stresses that the definition of major source in today's rulemaking does not constitute a decision to reject other proposed changes to the term contained in the recent proposals. Rather, EPA expects the Phase II part 71 rulemaking to make whatever changes to the term are necessary in order to maintain harmonization with part 70, if the part 70 definition of major source is ultimately revised as the Agency intends. In the meantime, however, in order to avoid delay in fulfilling the Agency's responsibilities under title V, and in order to avoid repeating a procedural mistake that occurred in the development of the first part 70 rule, EPA has concluded, in response to the commenters, that at this point it is most reasonable to promulgate a definition that is consistent with the major source definition contained in the current part 70 rule, except for the 27th category of sources listed pursuant to section 302(j). As EPA has already told States that they may receive interim approval of their State programs even if they do not literally match with current part 70's 27th category, due to EPA's concession that the Agency did not take the procedural steps necessary in part 70 to constitute a section 302(j) rulemaking, EPA believes it is reasonable to take this limited departure from part 70. The EPA will respond to specific comments on

the major source definition as proposed in April 1995 and August 1995 in the context of finalizing the Phase II part 71 rule.

5. Permit Modification and Permit Revision

For the purposes of this rulemaking, EPA adopted the definition of permit modification in the current part 70 regulation and revised the definition of ''permit revision'' to be consistent with the current part 70 definition.

6. Permitting Authority

The final rule changes the proposed definition of ''permitting authority'' to more closely match the definition of the term currently promulgated at section 70.2.

7. Potential to Emit

Today's rule does not include a final regulatory definition of the term ''potential to emit.'' The part 71 proposal contained a proposed definition of potential to emit that was based on the August 1994 proposed revisions to part 70. The current part 70 definition of the term provides that physical or operational limits on a source's capacity to emit an air pollutant shall be considered part of the source's design if the limitation is enforceable by the Administrator. Under the proposed definition, the phrase ''and by citizens under the Act'' would have been added. The EPA is still in the process of evaluating comments on the proposed revisions to part 70 with respect to this issue, and is not yet prepared to adopt the revision to the definition into a final rule. Consequently, it is premature to adopt this change into the final part 71 rule at this time.

In addition, EPA also received substantial adverse comment on the proposed requirement that limitations on potential to emit be enforceable by the Administrator (i.e., ''federally enforceable''). Industry commenters noted that EPA's policy on Federal enforceability was the subject of several pending lawsuits against the Agency in the Court of Appeals. These commenters have long held that emissions limitations enforceable under State law should not have to be federally enforceable in order to be considered part of a source's physical or operational design and a valid limit on potential to emit. These commenters also urged EPA to codify the Agency's January 25, 1995, memorandum in which EPA stated it would not require certain sources that otherwise have the potential to emit an air pollutant in major amounts to obtain permits under state part 70 programs. See, memorandum of January 25, 1995, entitled ''Options for Limiting the Potential to Emit (PTE) of a Stationary Source Under Section 112 and Title V of the Clean Air Act (Act),'' from John Seitz, Director, Office of Air Quality Planning and Standards, to Regional Air Division Directors (hereafter ''January 25, 1995 memorandum from John Seitz'').

Since the close of the comment period, the U.S. Court of Appeals for the District of Columbia Circuit has ruled on two occasions that EPA in two separate regulations had failed to explain why the Agency had adopted a restrictive interpretation of ''potential to emit.'' See *National Mining Association v. EPA,* 59 F.3d 1351 (D.C. Cir. July 21, 1995), and *Chemical Manufacturers Association v. EPA,* No. 89–1514 (D.C. Cir. Sept. 15, 1995). In response to these rulings, EPA has begun a rulemaking effort that would consistently apply to all of its regulations and programs that base applicability on sources' potential to emit. This rulemaking will address potential to emit not only in the regulations that were the subject of the two court rulings (EPA's ''General Provisions'' regulations under section 112 of the Act promulgated at 40 CFR part 63, and the NSR and PSD regulations at parts 51 and 52), but also to parts 70 and 71.

In the meantime, however, the Agency believes it would not be appropriate to delay issuance of the part 71 regulation (and implementation of the Federal operating permit program in States that have not yet obtained part 70 approval) due to the pendency of the Agency's general potential to emit rulemaking. At the same time, EPA does not believe it would be appropriate to merely recodify the part 70 definition of potential to emit in this Phase I part 71 rule, in light of the recent court decisions concerning the section 112 and NSR and PSD regulations. Consequently, for this interim part 71 rule, EPA is not adopting a regulatory definition of potential to emit for purposes of part 71. This definition will be added to part 71 at a later time, when the Agency completes its general rulemaking to define potential to emit for its various stationary source programs under the Act.

Nevertheless, the absence of a regulatory definition of potential to emit in today's rule should not prevent sources from being able to determine whether they are subject to the part 71 program because they are major sources. The EPA stresses that the term ''major source'' is already defined as a statutory matter in title V at section 501(2) of the Act to mean a major source as defined in section 112 and a major stationary source as defined in section 302 or part D of title I of the Act. Moreover, the definition of major source adopted today also tracks these statutory provisions, and, as discussed in the recent memorandum entitled ''Interim Policy on Federal Enforceability Requirement for Limitations on Potential to Emit,'' from John Seitz, Director, Office of Air Quality Planning and Standards (hereafter January 22, 1996 memorandum from John Seitz), most current regulatory requirements and policies regarding potential to emit, including the interim policy discussed in the January 25, 1995 Seitz memorandum, remain in effect while EPA conducts expedited rulemaking to address these issues in detail. Consequently, in determining whether a source is major, the part 71 permitting authority and source operator should look to the regulatory definition of major source adopted in today's rule and the statutory definitions in section 112, section 302, and part D of title I (as those provisions are implemented by applicable regulations thereunder) as controlling for purposes of this Phase I part 71 rule.

In *National Mining Association v. EPA,* 59 F.3d 1351 (D.C. Cir. July 21, 1995), the Court dealt with the potential to emit definition under the hazardous air pollutant programs promulgated pursuant to section 112. In this decision, the Court agreed with EPA that only ''effective'' State-issued controls should be cognizable in limiting potential to emit. In addition, the Court did not question the validity of current federally enforceable mechanisms in limiting potential to emit. However, the Court found that EPA had not adequately explained why only federally enforceable measures should be considered in assessing the effectiveness of State-issued controls. Accordingly, the Court remanded the section 112 General Provisions regulation to EPA for further proceedings. Thus, EPA must either provide a better explanation as to why Federal enforceability promotes the effectiveness of State controls, or remove the exclusive Federal enforceability requirement. The Court did not vacate the section 112 regulations, and they remain in effect pending completion of EPA rulemaking proceedings in response to the Court's remand.

The EPA reiterates that independent from the decision in *National Mining,* current EPA policy already recognizes State-enforceable potential to emit limits under section 112 and title V in many circumstances under the

transition policy discussed in the January 25, 1995 John Seitz memorandum, as recently revised by the January 22, 1996 John Seitz memorandum. In recognition of the absence in some States of suitable federally enforceable mechanisms to limit potential to emit applicable to sources that might otherwise be subject to section 112 major source requirements or to title V, EPA's policy provides for the consideration of State-enforceable limits as a gap-filling measure during a transition period that extends until January 1997. Under this policy, restrictions contained in State permits issued to sources that actually emit more than 50 percent, but less than 100 percent, of a relevant major source threshold are treated by EPA as acceptable limits on potential to emit, provided that the permit and the restriction in particular are enforceable as a practical matter. In addition, sources with consistently low levels of actual emissions relative to major source thresholds can avoid section 112 major source requirements even absent any permit or other enforceable limit on potential to emit. Specifically, the policy provides that sources which maintain their emissions at levels that do not exceed 50 percent of any applicable major source threshold are not treated as major sources and do not need a permit to limit potential to emit, so long as they maintain adequate records to demonstrate that the 50 percent level is not exceeded.

Under today's Phase I part 71 rule, sources that are not treated as major under this policy would also not be treated as major for purposes of part 71. However, if a source would be treated as major under the applicable regulations implementing section 112 and this policy, the source would be required to obtain a part 71 permit. The EPA notes that this policy is to end in January 1997. In conjunction with the general rulemaking on potential to emit, EPA will consider whether it is appropriate to extend the transition period beyond January 1997.

In *Chemical Manufacturers Association* v. *EPA*, No. 89–1514 (D.C. Cir. Sept. 15, 1995), the Court addressed the potential to emit definition in the PSD and NSR programs. Specifically, this case challenged the June 1989 rulemaking in which EPA reaffirmed the requirement for Federal enforceability of potential to emit limits taken to avoid major source permitting requirements in these programs. In a briefly worded judgment, the Court, in light of *National Mining*, remanded the PSD and NSR regulations to EPA. In addition, in contrast to its disposition of the section 112 regulations in *National Mining*, the Court in *Chemical Manufacturers* vacated the federal enforceability requirement of the potential to emit definitions in the PSD and NSR regulations.

The EPA interprets the Court's decision to vacate the PSD/NSR Federal enforceability requirement as causing an immediate change in how EPA regulations should be read, although EPA expects that the effect of this change will be limited. Specifically, regarding provisions of the definitions of potential to emit and related definitions requiring that physical or operational changes or limitations be ''federally enforceable'' to be taken into account in determining PSD/NSR applicability, the term ''federally enforceable'' should now be read to mean ''federally enforceable or legally and practically enforceable by a State or local air pollution control agency.''

However, the effects of the vacatur will be limited during the period prior to completion of new EPA rulemaking on this issue. Thus, during this interim period, Federal enforceability is still required to create ''synthetic minor'' new and modified sources in most circumstances pending completion of EPA rulemaking. This is because EPA interprets the order vacating certain provisions of the PSD/NSR regulations as not affecting the provisions of any current State or Federal implementation plan (SIP or FIP), or of any permit issued under any current SIP or FIP. Thus, previously issued federally enforceable permits issued under such programs remain in effect.

Moreover, new or modified sources that seek to lawfully avoid compliance with the major source requirements of PSD or nonattainment NSR by limiting potential to emit to achieve synthetic minor status must still obtain a general or ''minor'' NSR preconstruction permit under section 110(a)(2)(C) of the Act and 40 CFR section 52.23. (This requirement was not at issue in the *Chemical Manufacturers* case, and is unaffected by the Court's ruling.) Every SIP contains a minor NSR program that applies generally to new or modified sources of air pollutants, and permits issued under such programs are, like all other SIP measures, federally enforceable. In sum, the precise impact of the vacatur on PSD/NSR applicability in any State, and hence the applicability of part 71 under the section 302 and part D of title I prongs of the definition of major source adopted in part 71, can be definitively established only by reviewing the provisions of the particular SIP or FIP to which the source is subject.

8. Regulated Air Pollutant

In the August 1995 supplemental proposal, EPA proposed a less inclusive definition than is currently promulgated in part 70 or was proposed for part 71 in the April 1995 notice. However, for purposes of today's rulemaking, EPA is retaining the definition in the part 71 proposal, which is consistent with the current part 70 definition. The EPA intends to take final action on the term as proposed in the supplemental proposal in the Phase II rulemaking.

9. Responsible Official

Although EPA has proposed, in the August 1994 proposed revisions to part 70, to clarify that the criteria for selecting the designated representative is the same at an affected source as at other sources, the Agency has adopted a definition of this term for purposes of today's rulemaking that is consistent with the definition in current part 70. The EPA will take final action in Phase II consistent with the Agency's final resolution of this issue in response to comments on the August 1994 notice.

10. Section 502(b)(10) Changes

The part 71 proposal, in omitting the definition of ''section 502(b)(10) changes'' from section 71.2, followed the approach used in the August 1994 proposed revisions to part 70. The Agency's reasons for the omission are articulated in that proposal at 59 FR 44467–8. As indicated in the August 1995 supplemental proposal, this is still the Agency position. However, EPA will not adopt a final position on proposed revisions regarding operational flexibility for part 70 or 71 until the Phase II rulemaking. For purposes of today's rulemaking, EPA has adopted a definition of the section 502(b)(10) changes that comports with the current part 70 regulation, in order to better harmonize the Phase I part 71 rule and the current part 70 regulation.

11. Title I Modification

The part 71 proposal, based on the August 1994 proposed revision to part 70, contained a proposed definition of the phrase ''Title I modification or modification under any provision of title I of the Act.'' Subsequently, EPA issued a revised proposed definition in the August 1995 supplemental proposal for parts 70 and 71. The EPA is in the process of reviewing and developing a position in response to the comments on the several proposals with respect to this issue, and is not yet prepared to define the term in a final rule. The EPA will add a definition in the Phase II rulemaking that is consistent with how

EPA ultimately defines the term under part 70.

A detailed discussion of the history of this definition is contained in the preamble to the August 1995 part 70 proposal (60 FR 45545). At issue is whether the phrase ''modifications under any provision of title I'' as used in section 502(b)(10) of the Act includes not only modifications subject to major NSR requirements of parts C and D of title I but also modifications subject to minor NSR programs established by the States pursuant to section 110(a)(2)(C).

In August 1994, EPA proposed to interpret the title I modification language of part 70 to include minor as well as major NSR modifications (55 FR 44527). The EPA received many comments from industry and States contesting this interpretation. The commenters argued that EPA had defined title I modification in the preamble to the May 1991 proposed part 70 rule to exclude minor NSR (56 FR 21746–47 and footnote 6) and did not redefine it in the final July 1992 rule. As a result, they argued that they were relying on the current rule to be interpreted consistent with the proposed rule preamble and that EPA could not change its interpretation without undertaking further rulemaking.

Based in part on the arguments raised by commenters, EPA revised its proposed interpretation of the definition of title I modification in the August 1995 supplemental notice to exclude modifications subject to minor NSR. In addition, EPA proposed regulatory language defining title I modification which excluded the reference to section 110(a)(2) of the Act.

While EPA is not yet prepared to adopt a final definition for the term, in implementing the Phase I part 71 program EPA will treat the issue consistently with the approach the Agency has advised States to take under the current part 70 regulation. Consequently, it will not consider title I modifications to include changes subject to State minor NSR programs.

B. Section 71.3—Sources Subject to Permitting Requirements

The final rule promulgates provisions regarding applicability of the program at section 71.3. These provisions are based on their counterparts in the currently promulgated part 70 rule at section 70.3. Consequently, in several aspects, they differ from section 71.3 as proposed, which was based on the August 1994 proposed revisions to section 70.3 which the Agency is not yet prepared to finalize.

Paragraph (a)(1) of the part 71 proposal contained an exemption from title V for major sources that would be subject to title V only if they have the potential to accidentally release pollutants listed pursuant to section 112(r)(3) in major amounts. This exemption has been deleted, even though it garnered reviewer support, consistent with the decision to match the part 70 requirements except where unique circumstances make a change necessary. If EPA ultimately revises part 70 to add the deleted language, the Agency would intend to revise part 71 consistently.

Proposed section 71.3(a)(4) which was modelled upon the August 1994 proposed revisions to part 70 and would have stated that any source subject to title I parts C or D would be required to obtain a permit was also deleted from the final regulation to comport with the part 70 regulation. The purpose of this provision was to ensure that all sources subject to preconstruction permitting as major sources under parts C or D of the Act are also subject to title V permitting. Again, if part 70 is ultimately revised to add this provision, EPA would intend to revise part 71 to add it as well.

Similarly, paragraph (b)(2) has been changed to conform with section 70.3(b)(2), which addresses applicability for sources subject to section 111 or 112 standards promulgated after July 21, 1992. Proposed section 71.3(b)(2) differed from both existing section 70.3(b)(2) and the August 1994 proposed revisions thereto. If section 70.3(b)(2) is ultimately revised, EPA would expect to revise section 71.3(b)(2) to harmonize it with part 70.

Paragraphs (c) and (d) of this section, found in the proposal at sections 71.6(a)(1)(iv) and 71.5(f)(3)(i), respectively, were moved to this section for compatibility with the current part 70 provisions at sections 70.3 (c) and (d).

C. Section 71.4—Program Implementation

The major issues raised by commenters on proposed section 71.4 related to the need to base part 71 on finalized (as opposed to proposed) provisions of part 70, how the part 71 program should be customized to fit the unique needs of the State or area for which the program is administered, and jurisdictional issues with respect to programs on Tribal lands. The Agency's approach to the first issue is discussed at length in section II of this document. This section addresses the second and third issues in addition to several minor changes to the proposed rule that were adopted today.

1. National Template Approach

With respect to the second issue, EPA received divergent comments. For example, commenters suggested that a national template should be flexible, that a national template should be used only to fill in the gaps of deficient State programs, and that there should be no national template because title V does not authorize EPA to develop such a rule.

The Agency carefully considered the statutory framework for the program and interprets title V as authorizing a national template approach. For a further discussion of this issue, see section II of this document. The EPA chose a national template approach because EPA believes the national template is flexible enough to be an effective program in nearly all areas, and individual rulemakings for each area that has a part 71 program would be needlessly burdensome on the Agency. Since the national template will serve the needs of most areas, it is more efficient to promulgate the program once while allowing for separate rulemakings, as needed, in some areas. The EPA recognizes the desirability of providing a flexible approach to administering the program, as the commenters have suggested, when the national template does not adequately fit the unique State or Tribal situation. Such flexibility is already contained in section 71.4. When EPA determines that the national template rule is not appropriate for a State, EPA may adopt, through a separate rulemaking, appropriate portions of a State or Tribal program in combination with provisions of part 71 in order to craft a suitable part 71 program, as provided in section 71.4(f). Furthermore, section 71.9(c)(7) provides that when the national fee structure would not reflect the cost of administering a part 71 program, the Administrator shall through a separate rulemaking set an appropriate fee. Finally, as provided in section 71.5 and as discussed in section III.D of this document, EPA has designed part 71 to provide significant flexibility to accommodate the localized air quality issues. For example, EPA will use State application forms whenever possible and will try to match the list of trivial activities which may be left off application forms to the lists established in the State operating permit program.

2. Part 71 Programs in Tribal Areas

The EPA is deferring promulgation of regulations that would describe how the Agency would determine the boundaries of a part 71 program for a

Tribal area. The EPA has published a proposed rule, pursuant to section 301(d)(2) of the Act, specifying the provisions of the Act for which EPA believes it is appropriate to treat Indian Tribes in the same manner as States and outlining the Agency's position on the authority of Indian Tribes to administer air programs under the Act. See 59 FR 43956 (Aug. 25, 1994)(''Indian Tribes: Air Quality Planning and Management,'' hereafter ''proposed Tribal rule''). As indicated in the part 71 proposal, EPA intends to follow the approach of the Tribal rule with respect to issues of jurisdiction and resolution of jurisdictional disputes. The EPA agrees that it would be more practical to defer addressing jurisdictional issues until the promulgation of the Tribal rule. The Agency will finalize an approach to jurisdiction as well as a definition of Tribal area in the Phase II rulemaking or in conjunction with finalizing the Tribal rule. In the interim, the Agency will not be able to implement part 71 programs in Tribal areas unless it completes a rulemaking that establishes the boundaries of the part 71 program in the Tribal area. Rulemakings for the Tribal rule and Phase II will be completed well in advance of the November 1997 deadline for EPA to implement part 71 programs on Tribal lands. Therefore, EPA does not expect that the deferral of jurisdictional issues will delay implementation of the part 71 program. Although part 71 contains no definition of ''Tribal area,'' EPA will provide (and will require delegate agencies to provide) notice of proposed permitting actions pursuant to section 71.8(d) even prior to the Phase II rulemaking. In the interim, federally recognized Indian Tribes will receive notice with respect to permitting actions related to sources whose emissions may affect Tribal air quality and that are located in contiguous jurisdictions or are within 50 miles of the exterior boundaries of the reservation.

3. Expiration of Part 71 Permits

The Agency received comments suggesting that part 71 permits should be rescinded automatically, without the Agency taking any action, when they are replaced by a part 70 permit. The EPA agrees that no separate agency action should be required when a part 71 permit is replaced by a part 70 permit issued under the approved part 70 program because unless the rescission happens simultaneously with the issuance of the part 70 permit, a source could be subject to a part 70 and a part 71 permit which may contain different requirements. Accordingly, EPA has deleted proposed section 71.4(l)(3) which provided that the Administrator would rescind part 71 permits when they were replaced with part 70 permits. Further, the EPA has adopted section 71.6(a)(11) which provides that part 71 permits shall contain a provision to ensure that a part 71 permit will expire when the source is issued a part 70 permit.

4. Suspension of Issuance of Part 71 Permits

The EPA revised the first paragraph of proposed section 71.4(l) to clarify, consistent with EPA's original intent, that EPA may suspend issuance of part 71 permits whenever the Agency has granted full or interim approval to a State part 70 program. Section 502(e), which addresses suspension of the issuance of part 71 permits, provides that the triggering event for suspension is publication of notice of approval. Thus, there is no statutory requirement that a State program must ''fully'' meet the requirements of part 70 or be fully approvable in order for EPA to suspend permit issuance. The Agency believes it is appropriate to suspend issuance of part 71 permits when a State program substantially meets the requirements of part 70 and has received interim approval because it would be confusing and burdensome to have two title V permit programs operating simultaneously in the same jurisdiction. Therefore, EPA has deleted the word ''fully'' from the first paragraph of proposed section 71.4(l).

5. Delegation Agreements

The final rule makes a minor change to proposed section 71.4(j) in parallel with a change to proposed section 71.10(b) to reflect the fact that under the final rule, EPA will not publish its delegation agreement with a delegate agency. Therefore, section 71.4(j) provides that the roles of the delegate agency and EPA in administering the part 71 program will be defined in a delegation agreement, not in a Federal Register notice. The EPA will follow the procedures for delegation agreements established for the PSD program under which EPA does not publish its delegation agreements. Delegation agreements reflect the understanding of EPA and the delegate agency as to their respective responsibilities and are not subject to any notice requirement. This approach allows EPA and the delegate agency to modify their agreement as circumstances change, without the burden of publishing a Federal Register notice.

6. Early Reductions Permits

The Agency retained in section 71.4(i)(3) the requirement that the permitting authority take action on complete permit applications containing an early reduction demonstration within 12 months of receipt of the complete application. Although the current part 70 regulation sets a 9 month deadline for State action, EPA Regional offices are allowed 12 months to take action on the permit applications submitted under the interim permitting rule for early reduction sources that EPA adopted prior to the approval of any State part 70 programs. See 40 CFR section 71.26(a)(2). The Agency believes that this time frame is reasonable given the effort required to process the permits and the need for sources qualifying for a compliance extension under the Early Reductions Rule to obtain a permit prior to certain deadlines set by the rule.

D. Section 71.5—Permit Applications

The part 71 proposal addressed permit applications at proposed section 71.5 (a) through (i). This proposed section was based upon a combination of corresponding provisions in the existing part 70 rule and in the August 1994 proposed revisions to part 70, and was presented in a slightly different structure from the part 70 rule. In light of EPA's decision to promulgate part 71 on an interim basis, more consistently with the existing part 70 rule, the provisions based upon the August 1994 proposal are not being adopted today. Moreover, in order to facilitate transition from implementing part 71 to part 70 programs, the final rule is being adopted in a structure that is more consistent with that of the current part 70 rule.

1. Timely Application

Under section 71.5(b)(1) of the proposal all initial permit applications would have to be submitted within 12 months or an earlier date after the source becomes subject to part 71. The proposal would have required that the permitting authority provide notice of the earlier date to the source and that this notice would be given at least 120 days in advance of the application submittal date.

Several commenters argued that the 120 days (4 months) minimum notice would not give sources sufficient time to prepare an application. They also argued that 4 months was insufficient time for sources to submit their applications early for purposes of addressing deficiencies and ensuring they receive the application shield.

In response to these comments, EPA has lengthened the notice period from 4

months to 6 months. Section 503(c) of the Act requires the submittal of all applications within 12 months of the effective date of a permit program or such earlier date as the permitting authority may establish and that one-third of these applicants be issued permits in this first year. In order to issue one-third of the permits in the first year, EPA must receive at least one-third of the applications prior to 12 months after the effective date of the program.

The EPA considered and rejected commenters' suggestions for 8 to 12 months' advance notice because they would interfere with EPA's requirement to issue one-third of the permits in the first year. The EPA believes that the 6 month alternative will allow EPA enough time to process and issue permits. The EPA believes that 6 months is sufficient time for sources to prepare applications for several reasons that had not been announced at time of proposal. First, on July 10, 1995, EPA issued the first white paper that examines options for simplifying part 70 permit applications and sets minimum expectations concerning how much information must be included in order for the application to be found complete. In today's notice EPA announces its intention to implement both of the white papers for part 71 program purposes. Second, EPA has revised the rule to clarify that part 71 permit application forms may be developed by the delegate agency or the EPA allowing a part 71 application form to be based on a State form developed for part 70 purposes, as long as the form meets the minimum requirements of part 71 (discussed in more detail below). Third, because the final rule more closely follows the part 70 program upon which most State operating programs are based, sources will be familiar with most part 71 permit application requirements.

In addition, proposed sections 71.5(b)(2) and (3) have been deleted because they referred to off-permit changes and a four-track permit revision system which the Agency is not finalizing today.

2. Complete Applications

The final rule adopts the language from the current part 70 rule concerning complete applications. However, EPA believes that several clarifications will help applicants understand the flexibility available for submitting simplified permit applications that can be found complete. The terms ''simplified permit application'' or ''streamlined permit application'' refer to applications that require less information.

In the part 71 proposal, EPA proposed to adopt language from the August 29, 1994 part 70 revision notice (59 FR 44518) that would have clarified that an application would be found complete if it contained information ''sufficient to begin processing the application.'' As stated previously, today's rulemaking is based on provisions of current part 70; therefore, this language does not appear in today's rulemaking. However, EPA believes, as stated more fully in the first white paper, that considerable flexibility already exists in the part 70 rule to find simplified permit applications complete. Since the white papers will be implemented for part 71 purposes, this flexibility also exists in the part 71 permit program.

Furthermore, the proposed revisions to part 70 (August 29, 1994) and the part 71 proposal discussed several additional options currently available to States for developing simplified permit applications and finding them complete, and did not propose any rule changes necessary to implement these options. These options were: (1) a two-step application completeness determination process for simplified applications and (2) simplified application content requirements for applicable requirements with future compliance dates. After the publication of these proposal notices, the first white paper included these two flexibility options, as well as many additional options, and reaffirmed EPA's interpretation that implementation of these options does not depend on making changes to the part 70 rule or State part 70 programs.

The EPA believes this approach will provide flexibility for sources to prepare simplified permit applications and for permitting authorities to find them complete. This approach will also promote consistency between the part 71 and part 70 programs, which in turn, will provide for a smoother transition between the programs. Guidance on the implementation of the white papers and other flexibility options for completeness determinations for a part 71 program implemented in a particular State may be provided by the EPA or delegate agency soon after the program takes effect.

Additionally, proposed section 71.5(d), concerning the treatment of business confidential information, has been revised in the final rule. The language of the proposal discussed the responsibilities of permitting authorities to process requests for confidential treatment and included a general reference to 40 CFR part 2. Considering the structure of these regulations and this section's position in these regulations, the Agency believes that the promulgated language clarifies the procedures that applicants must follow to request confidential treatment for business information in applications, provides a more precise cross-reference to those procedures, and does not add any new requirements regarding the treatment of confidential information not intended by the proposal.

Note also that certain technical changes are being made to part 71's completeness provisions as a result of the final rule's greater harmonization with the existing part 70 rule. First, the completeness criteria are being promulgated at section 71.5(a)(2) while the proposal addressed completeness at section 71.5(c). In addition, the final rule references section 71.5(c) as the provision setting out required information in permit applications, while the proposal referenced proposed section 71.5(f). Moreover, the final rule cites section 71.5(d) as the provision concerning certification by a responsible official, while the proposal cited proposed section 71.5(i). Finally, the citation in the proposal to section 71.7(a)(3) has been changed in the final rule to section 71.7(c)(4) as a result of the changes to section 71.7.

3. Standard Application Form and Required Application

Proposed section 71.5(f) would have required part 71 sources to submit ''applications provided by the permitting authority, or if provided by the permitting authority, an electronic reporting method'' and did not include any preamble discussion of the interpretation of this phase. One commenter on the proposal encouraged EPA to use existing State forms in States where EPA assumes part 71 authority. Final section 71.5(c) has been revised to more closely follow the corresponding language of section 70.5(c). The EPA agrees with the commenter and will provide forms developed by delegate agencies (States), or the EPA, including electronic application methods, for purposes of applying for part 71 permits. This approach to application development is possible because ''permitting authority'' is defined in section 71.2 as including the EPA or the delegate agency. This approach to providing part 71 forms will lead to less disruption and a smoother transition for sources preparing initial part 71 applications because, in many cases, sources will be familiar with the State form on which the part 71 form is based. For example, sources may already be collecting information and drafting an operating permit using the State form in expectation of part 70 program approval by EPA. In addition, commenters asked

that EPA clarify and simplify the requirements for emissions-related information in part 71 applications consistent with EPA's guidance in the first white paper. In response to these comments, EPA intends to implement the white paper guidance with respect to the collection and reporting of emission-related information and EPA believes that no changes to part 71 are necessary to do so.

Numerous technical changes have been made to the final rule regarding information to be required in permit applications to better match the current part 70 rule. In the proposal, information requirements were addressed at proposed sections 71.5(f) through (i), while the final rule follows part 70 by covering these requirements in sections 71.5(c) and (d). New citations to other provisions of part 71 are also due to the final rule's harmonization with part 70.

4. Insignificant Activities and Emission Levels

Extensive comments were received on the proposed insignificant activity and emission levels provisions of proposed section 71.5(g). Commenters argued, in part, that activities subject to applicable requirements should be eligible for the exemption for insignificant activities and emission levels, that the requirement that applications not exclude information needed to determine whether a source is subject to the requirement to obtain a part 71 permit would be too restrictive, that the list of insignificant activities in the final rule should be expanded, that the list of trivial activities in the first white paper should be codified in part 71, that the exemption for mobile sources as insignificant activities should be removed, that the single emissions unit emissions thresholds for insignificant emissions should be raised, and that the aggregate source-wide emission thresholds for insignificant emissions should be deleted.

a. *Eligibility for Insignificant Treatment and Information Required in Applications.* Section 71.5(c) of the final rule addresses, in part, information that must not be omitted from permit applications. These requirements have special relevance for applicants when determining what information must be included in applications for emission units that are eligible for insignificant treatment. To be consistent with current part 70, final section 71.5(c) deletes certain proposed provisions that do not follow the corresponding language of section 70.5(c) and that were based upon the proposed revisions to part 70 published in August 1994. Accordingly, deleted from final section 71.5(c) is the proposed language that would have not allowed the application to omit information needed to: (1) Determine whether a source is major, and (2) determine whether a source is subject to the requirement to obtain a part 71 permit. Notwithstanding these deletions, EPA continues to believe that the definition of major source at section 71.2 controls the determination of which units are counted for major source applicability purposes and that emissions of units that qualify for insignificant treatment in the application are not exempt from these determinations. Consistent with the Agency's approach in implementing the current part 70 rule, the EPA is reversing its interpretation, first expressed in the proposed preamble, that would have excluded the eligibility of activities for treatment as insignificant when such activities are subject to applicable requirements. The EPA believes that no change to the final rule is necessary to implement this new interpretation.

Industry commenters were particularly concerned that EPA's interpretation that proposed section 71.5(g) would not allow activities with applicable requirements to be eligible for insignificant treatment would render the insignificant activity and emissions level provisions meaningless because few sources would be eligible for streamlined treatment in the application.

The EPA now believes that it was overly broad in stating that emission units were precluded from eligibility as ''insignificant'' if such units would be subject to applicable requirements. As discussed below, EPA believes there are circumstances in which an emission unit or activity can be treated as ''insignificant'' under a Federal operating permits program, even if it is subject to an applicable requirement. However, a title V application must still contain information needed to determine the applicability of or to impose any applicable requirement or any required fee and a permit must still meet the requirements of section 71.6 for all emission units subject to applicable requirements, including those eligible for insignificant treatment.

Both sections 71.5(c) and 71.5(c)(3)(i) require sufficient information to verify the requirements applicable to the source and to collect appropriate permit fees.

This means that some of the information required by sections 71.5(c)(3) through (9) may be needed in the permit application for insignificant activities in order for the permitting authority to draft an adequate operating permit. As an example, where an insignificant activity is not in compliance with an applicable requirement at the time of permit issuance, the permit application would need to contain a compliance plan, including a compliance schedule, for achieving compliance with the applicable requirement. As another example, if a source has some insignificant activities within a category that are subject to an applicable requirement and some within that same category that are not subject to that applicable requirement because the applicability criteria for the applicable requirement are different from the applicability criteria for insignificant activities, the permit application would generally be required to include sufficient information on the insignificant activity for the permitting authority to determine which units are subject to the applicable requirement and to include that applicable requirement in the permit for the subject insignificant activity. The EPA believes that a part 71 permit application may simply list the applicable requirements that apply to insignificant activities generally, rather than requiring the permit application to explicitly identify which insignificant activities are subject to which applicable requirements. The permitting authority would then issue a permit imposing the applicable requirements in the permit, but not specifically identifying which insignificant activities are subject to those applicable requirements. (For a more detailed discussion, see the first white paper and the proposed interim approval and proposed notice of correction for the State of Washington's part 70 program, 60 FR 50166 (September 28, 1995).)

b. *Insignificant Activity Lists.* Section 70.5(c), in part, allows States to develop lists of insignificant activities and emission levels that need not be included in applications and requires activities (or equipment) exempted due to size or production rate to be listed in the application. State part 70 program submittals were approved by EPA that implement this provision in a variety of ways. The structure of the proposed regulations was based on the structure of these State implementing regulations, and included a short list of insignificant activities and provisions setting insignificant emissions levels. The proposed list of insignificant activities, section 71.5(g)(1), included a list of specific source categories, activities, or equipment that could be left off the application. The proposed insignificant

emissions provisions, section 71.5(g)(ii), allowed sources the flexibility to treat additional source categories, equipment, or activities as insignificant, provided certain eligibility criteria were met, including not exceeding certain emissions levels, and provided that the activities were listed in the application. The EPA believed that the proposed insignificant emissions approach was flexible enough that extensive lists of insignificant activities would not be needed in the final rule. The EPA reasoned that no list of insignificant activities would ever be so inclusive as to list every type of activity potentially eligible for insignificant treatment at industrial sources, and therefore, additions to the list would require resource-intensive notice and comment rulemaking on an ongoing basis. The proposal asked for comment on its approach and asked whether the proposed approach would be compatible with approaches developed by States.

Numerous industry commenters argued, in general, that the proposed part 71 list was not extensive enough to provide meaningful relief for industry from the administrative burdens associated with submitting detailed information for emission units or activities that pose little or no environmental risk and that the part 71 list was not as extensive as lists developed by States for their part 70 programs.

The EPA is finalizing the proposed list of insignificant activities with one revision. The EPA believes that the commenters' concerns that there be more opportunities for streamlining the information required by part 71 permit applications is best addressed by implementing the white papers for part 71 purposes, and that no changes to the final rule are necessary to implement this approach. The EPA believes that the white papers provide for application streamlining that is comparable and, in many ways, superior to approaches based on omitting certain emission unit or activities from the application only when eligibility for insignificant treatment is established in a rule. In general, the white papers allow sources to provide little or no detailed source-specific information for emissions units or activities where the information is not reasonably available and to the extent the information is not needed to resolve disputed questions of major source status, applicability of requirements, compliance with applicable requirements, or needed to calculate fees.

For example, section B.3. *Insignificant Activities* of the first white paper allows trivial activities to be completely omitted from applications. The white paper defines trivial activities as activities without specific applicable requirements (although they may have ''generic'' applicable requirements, explained below) and with extremely small emissions and included a list of trivial activities in Appendix A. Many of the trivial activities identified in the first white paper are common to State lists of insignificant activities. Under part 71, sources may rely on this list, and EPA or the delegate agency may add to it without the need for Federal rulemaking. This allows EPA to expand the list of trivial activities for a part 71 program in a specific location, consistent with trivial activity lists established in the State operating permit program, thus tailoring the program for a specific program implemented in a State.

Also providing considerable streamlining is section B.4 *Generic Grouping of Emission Units and Activities* of the first white paper which allows emissions units or activities with ''generic'' applicable requirements to be omitted from the application, independent of eligibility for insignificant treatment. Under this section, sources may provide little or no detailed source-specific information, even for units with ''generic'' requirements, provided that the ''generic'' requirements are described in the application such that their scope and manner of enforcement are clear. ''Generic'' requirements are certain broadly applicable requirements that apply and are enforced in the same manner for all subject units or activities and that are often found in the SIP. Examples of such requirements include requirements that apply identically to all emissions units at a facility (e.g., source-wide opacity limits), general housekeeping requirements, and requirements that apply identical emissions limits to small units (e.g., certain process weight requirements). Where the applicable requirement is amenable to this approach, part 71 permitting authorities may follow this approach regardless of whether subject activities have been listed as trivial or insignificant. A lengthy list of the types of requirements suitable for this treatment is not possible here because, among other reasons, the examples of which EPA is aware are SIP requirements, and so vary from State to State. The EPA or delegate agency will decide which SIP requirements can be treated in this generic fashion for specific locations where part 71 programs are implemented.

The EPA has determined that the insignificant activity exemption for air-conditioning units used for human comfort at final section 71.5(c)(11)(i)(B) should be changed to clarify that substances other than class I or II substances may be regulated under title VI of the Act. This change is necessary because effective November 15, 1995, title VI requires recycling or recovery of substitute refrigerants regardless of whether or not they are ozone depleting substances (Class I and Class II substances) unless EPA makes a refrigerant-specific decision that the substitute will not harm human health or the environment and can, therefore, be vented.

c. *Insignificant Emissions Levels.* In response to comments, EPA has revised proposed section 71.5(g)(2)(i), which is section 71.5(c)(11)(ii)(A) of the final rule, to increase the insignificant emissions threshold for regulated air pollutants other than (HAP) from a single emissions unit from 1 tpy to 2 tpy and to delete the 1,000 pounds (lb) per year threshold in extreme ozone nonattainment areas. The EPA believes this decision is appropriate since, as commenters pointed out, EPA has previously stated in part 70 approval notices that insignificant emissions thresholds set at 2 tpy would be approvable in most locations. The EPA believes that due to the similarity between part 70 and part 71 programs it can logically conclude that this level is also appropriate for a part 71 program, regardless of where it is located. This level will provide a measure of additional flexibility for sources to exempt insignificant activities, thus simplifying the application, with little additional risk that significant emission units will be excluded from the application. As further discussed below, there are several safeguards available in the final rule that should ensure that significant units are not excluded from applications due to their eligibility for insignificant treatment. In addition, EPA is deleting the proposed 1,000 lb per year threshold for extreme ozone nonattainment areas. This will simplify the rule by setting the same tpy emission thresholds for attainment and nonattainment pollutants, while requiring the thresholds in relative terms to be no more than 20 percent of the major source threshold for nitrogen oxides and VOC and 2 percent of the major source threshold for the remaining criteria pollutants. Two tpy is considered trivial by EPA for all pollutants other than HAP in relation to major source thresholds in all attainment or

nonattainment areas and will not prevent the EPA from collecting information of a consequential or significant nature. In addition, these levels are more commonly found in State part 70 programs and therefore should help to ease the transition from part 71 to part 70 operating permit programs.

In response to comments, EPA has decided to delete the aggregate source-wide emissions criteria for insignificant emissions of regulated air pollutants (sections 71.5(c)(11)(ii) (A) and (B) of the final rule). The EPA proposed these aggregate source-wide emissions criteria as an additional means to ensure that emissions that might otherwise trigger the applicability of applicable requirements or major source status would not be excluded from applications. However, EPA now believes that the proposed aggregate emissions thresholds would have significantly limited the value of the insignificant emissions provisions for most medium to large sources. This deletion should not impede the permitting authority's ability to write permits which assure compliance with applicable requirements and the requirements of part 71. The EPA also believes that the utility of aggregate plant-wide thresholds is negligible because of various other safeguards already provided in the rule; in particular, section 71.5(c)(11) requires applications to not exclude information needed to determine the applicability of, or to impose, any applicable requirement. In addition, the requirement of section 71.5(c)(11)(ii) that units or activities with insignificant emissions be listed in the application provides an opportunity for the permitting authority to review the source's decision to treat emissions as insignificant, while the single-unit emissions thresholds of sections 71.5(c)(11)(ii) (A) and (B) limit the size of emissions to levels that would normally ensure that the units are not covered by extensive control requirements.

5. Compliance Certification

The part 71 proposal would have required sources to submit certifications that they were in compliance with all applicable requirements. Commenters requested further clarification of the certification requirements and argued that it was not clear exactly what efforts a source was required to make to determine its compliance status prior to certifying that it was in compliance with all applicable requirements, and that it was unclear whether or not a source was obliged to reconsider past applicability determinations prior to making such a certification. The EPA does not believe that any revisions to the rule are necessary to address the commenters' points. This is true because the white papers for part 70 address these issues and sources may follow that guidance for purposes of completing part 71 permit applications.

E. Section 71.6—Permit Content

Today's permit content provisions more closely track the provisions contained in current 70.4 and 70.6 than did those in the proposal. Thus, the order of the paragraphs in section 71.6 is more similar to the permit content section of current part 70 than to the part 71 proposal. For example, the provisions dealing with the permitting authority's duty to address emissions units in the permit has been moved from section 71.6(a)(iv) to section 71.3(c), consistent with current part 70. In addition, using current part 70 as the template for permit content means that the provisions for ''off-permit'' contained in today's rulemaking mirror those found at section 70.4(b), while the off-permit provisions of the proposed rule tracked those contained in the August 1994 proposed revisions to part 70. Similarly, today's rulemaking adopts the requirements for emissions trading and operational flexibility that are found in current part 70.

In addition, EPA retains a provision related to the prompt reporting of deviations from permit conditions from the part 71 proposal. Current part 70 requires States to define ''prompt'' in their own programs, and today's rulemaking defines the term for the part 71 program and closes this gap in the proposed rule. Today's rulemaking also establishes a part 71 permit expiration date.

The EPA reiterates that today's rulemaking finalizes provisions for permit content on an interim basis in order to better facilitate smooth transition from implementation of part 71 to approved State programs established pursuant to the current part 70 rule. With respect to permit content provisions, the April 1995 and August 1995 proposals contain provisions which reflect the Agency's current best thinking, and subsequent to reviewing all of the comments on both proposals, EPA may finalize provisions for permit content that differ from those adopted today consistent with the approaches EPA eventually takes in promulgating final revisions to part 70.

1. Off-permit Operations

Under today's rulemaking, sources are allowed to make changes at a facility that are not addressed or prohibited by the permit terms, provided they meet the requirements of section 71.6(a)(12). The provision adopted today is patterned on 70.4(b) (14) and (15), the analogous provisions in current part 70. Like part 70, part 71 requires that the source provide the permitting authority with contemporaneous written notification for these types of changes, that these changes be incorporated into the permit at renewal, and that the source keep certain records of these changes. Consistent with current part 70, section 71.6(a)(12) limits off-permit changes to those that do not constitute title I modifications, are not subject to any requirements under title IV of the Act, and meet all applicable requirements of the Act. In applying this provision, the Agency will use the interpretation of the term ''title I modification'' that States are allowed to use under the current part 70 rule. EPA expects that allows a significant number of minor NSR changes, to the extent that they are not prohibited by the title V permit, to qualify for off-permit treatment.

Like part 70, part 71 does not allow off-permit changes to alter the permitted facility's obligation to comply with the compliance provisions of its title V permit and does not grant the permit shield to off-permit changes. For a more thorough discussion of the concept of off-permit changes, see the rationale for part 70's off-permit provision found at 57 FR 32269.

The part 71 proposal contained a modified off-permit provision at proposed section 71.6(q) that was designed in light of the four-track permit revision procedures contained in the proposal and modeled on the off-permit provision contained in the August 1994 proposed revisions to part 70. Proposed section 71.6(q) would have allowed certain changes to remain off-permit but would have required the source to submit an application to revise its permit to reflect that change within 6 months of commencing operation of that change. In the August 1995 supplemental proposal to parts 70 and 71, the Agency indicated that off-permit provisions may be unnecessary if the streamlined permit revisions procedures for parts 70 and 71 are adopted as proposed therein. After reviewing comments on both proposals, EPA will decide whether to retain an off-permit provision in the Phase II rulemaking, consistent with the approach EPA takes in finalizing permit revisions procedures. Off-permit treatment is available in the interim, consistent with that provided by current part 70, but EPA does not believe that many permits

will be issued prior to the Phase II rulemaking and that the off-permit provision therefore will not be greatly utilized.

2. Operational Flexibility

Under the rule adopted today, sources will enjoy the same operational flexibility as is provided to part 70 sources under current part 70. Section 502(b)(10) of the Act requires that the minimum elements of an approvable permit program include provisions to allow changes within a permitted facility without requiring a permit revision. In the current part 70 rule at section 70.4(b)(12) (i)–(iii), and the rule adopted today, there are three different methods for implementing this mandate. Accordingly, section 71.6(a)(13)(i) provides for sources to make certain changes within a permitted facility that contravene specific permit terms without requiring a permit revision, as long as the source does not exceed the emissions allowable under the permit and the change is not a title I modification. Under the interpretation of the term ''title I modification'' that EPA is allowing States to take under the current part 70 rule, section 502(b)(10) changes may include changes subject to minor NSR, provided the change does not exceed the emissions allowable under the permit. Section 71.6(a)(13)(ii) also allows emissions trading at the facility to meet limits in the applicable implementation plan when the plan provides for such trading on 7-days notice in cases where trading is not already provided for in the permit. Additionally, section 71.6(a)(13)(iii) allows emissions trading for the purpose of complying with a federally-enforceable emissions cap that is established in the permit independent of otherwise applicable requirements. For a thorough discussion of the flexibility allowed under the analogous part 70 provisions, see 57 FR 32266.

The part 71 proposal contained an approach to operational flexibility that was modeled on the August 1994 proposed revisions to part 70, not current part 70. The August 1995 supplemental proposal suggested further refinements to the concept. After reviewing comments on both proposals, EPA may adopt an approach to operational flexibility that is different from the one found in today's rulemaking, consistent with the approach EPA takes in finally revising part 70. While the approach adopted today differs significantly from that of the proposal, the Agency is adopting it on an interim basis in order to better facilitate transition to the State part 70 programs that are similarly based on the provisions governing operational flexibility under the current part 70 rule.

3. Affirmative Defense

In order to remain consistent with current part 70, EPA is adopting a provision from the part 71 proposal that would allow sources to assert an affirmative defense to an enforcement action based on noncompliance with certain requirements due to an emergency. Such a defense would be independent of any emergency or upset provision contained in an applicable requirement. See section 71.6(g). This provision is consistent with that found in the current part 70 rule at section 70.6(g).

As a result of concerns identified in legal challenges to part 70, the Agency, in the August 1995 supplemental proposal, solicited comment on the need for, scope and terms of an emergency affirmative defense provision. The Agency is reviewing those comments, but has not yet made a decision on whether or not to modify or remove this additional affirmative defense provision from part 70. The Agency will make part 71 consistent with the decision reached for part 70 in the part 71 Phase II promulgation. In the interim, sources may rely on the affirmative defense offered by section 71.6(g).

4. Definition of Prompt Reporting

The proposal contained provisions concerning prompt reporting of deviations from permitting requirements at proposed sections 71.6(f) (3) and (4). The final rule at section 71.6(a)(3)(iii) requires that each permit contain provisions for prompt notification of deviations.

Two commenters requested that the prompt reporting deadlines in part 71 be adjusted to reflect other environmental regulation timelines or to reflect State program guidelines that have been approved by the Agency for part 70 programs. The Agency disagrees with the request. Section 503(b)(2) of the Act requires permittees to promptly report any deviations from permit requirements to the permitting authority. Since individual permitting authorities are responsible for having programs to attain and/or maintain air quality within their geographical boundaries, they are obligated under the operating permits program to determine, among other things, what constitutes a prompt notification. Included as factors in determining prompt notification would be elements such as pollutant concentration, deviation duration, and authority response time. Because sources and pollutants of concern vary among permitting authorities, States have adopted differing prompt reporting schedules. The Agency has reviewed its obligation to protect air quality on a national level, and has determined that its prompt reporting deadline is appropriate for this obligation. Therefore the deadlines contained in part 71 remain unchanged from the proposal.

Two commenters requested that part 71 clarify prompt reporting requirements for deviations other than those associated with hazardous, toxic, or regulated air pollutants, as described in sections 71.6(a)(3)(iii)(B)(1) and (2). The Agency believes that the requirement contained in section 71.6(a)(3)(iii)(A), in which sources are to report all instances of deviations from permit requirements at least every 6 months, provides the basis for prompt reporting of all other deviations. However, the Agency is willing to clarify this reporting requirement and has modified section 71.6(a)(3)(iii)(B) by adding a statement that directs sources to submit all other deviation reports in accordance with the timeframe given in section 71.6(a)(3)(iii)(A).

5. Inclusion of Federally Enforceable Applicable Requirements in Permits

Two commenters requested that EPA include in part 71 the analogue to section 70.6(b)(2), a provision that requires the permitting authority to identify in the permit any applicable requirements that are not federally enforceable. The EPA disagrees with this request because part 71 permits will not include any non-federally enforceable applicable requirements; therefore, a requirement for the Agency to identify such terms as non-federally enforceable would be moot, and a part 71 analogue to section 70.6(b)(2) is not needed. Part 71 differs from part 70 in this respect. However, section 71.6(b) is consistent with the first paragraph of section 70.6(b), which provides that part 70 permit terms and conditions are to otherwise be federally enforceable.

6. General Permits

The proposal contained provisions at proposed section 71.6(l) addressing general permits, which were based on the proposed revisions to the general permits provisions in the August 1994 notice. Under part 70, the EPA afforded other permitting authorities the choice of utilizing general permits, and the Agency intended to provide this flexibility to itself. The Agency believes that general permits offer cost-effective means of issuing permits for certain

source categories. The Agency has not yet decided on the proper approach concerning opportunities for public review and judicial review associated with general permits, and in the interim, has decided to remain consistent with the current part 70 rule. Therefore, under today's notice, EPA's authorization to allow a source to operate pursuant to a general permit may proceed without public notice and does not constitute final permit action for judicial review purposes. Today's part 71 general permit provisions are found at section 71.6(d) and are patterned after the analogous provisions at current section 70.6(d). In the Phase II rulemaking, EPA intends to revise the part 71 general permit provisions if necessary to remain consistent with the approach the Agency ultimately takes in the final revisions to part 70.

7. Permit Expiration

The proposed rule contained a provision for rescinding part 71 permits at proposed section 71.4(l)(3). Under today's rulemaking at section 71.6(a)(11), part 71 permits would contain a provision that automatically cancels the part 71 permit upon expiration of the initial permit term or upon issuance of a part 70 permit, without the need for separate action to rescind the permit. The Agency believes that a clear expiration date is necessary in order to avoid potential confusion over which title V permit terms and conditions are valid. The majority of permitting authorities are moving towards final approval of part 70 programs. In those few instances where a particular permitting authority may not have final part 70 program acceptance by the deadline for implementation of part 71, the Agency expects that final program approval will occur well before the 5-year part 71 permit term (12 years for certain municipal waste combustors) has expired. Once the part 70 program is approved, sources and permitting authorities may desire to begin implementation as soon as possible. The Agency has no desire to be a stumbling block in those efforts, nor does the Agency wish to promote confusion over which permit (part 71 or 70) would be in effect at a particular time.

One of the purposes of title V was to provide sources with certainty as to their applicable requirements. Part 71 and part 70 permits will be similar, but not necessarily congruent, e.g., part 71 permits would contain only federally-enforceable requirements, insignificant activities could differ, and reporting provisions would differ. In order to prevent the potential confusion stemming from an unexpired part 71 permit remaining in effect concurrent with a part 70 permit, the Agency has decided to preclude the event from occurring. No such comparable provisions are needed in part 70 because that program provides just one title V permit per source. Consequently, section 71.6(a)(11) provides that a part 71 permit automatically expires upon the earlier of the expiration of its term or the issuance of a part 70 permit to the source.

F. Section 71.7—Permit Review, Issuance, Renewal, Reopenings, and Revisions

As discussed above, EPA is, on an interim basis, promulgating final regulations regarding permit issuance, renewal, reopenings, and revisions for part 71 that are based upon the existing provisions governing State title V programs at 40 CFR, section 70.7. Consequently, the provisions adopted today differ from those contained in the part 71 proposal, which were based upon the August 1994 proposed revisions to part 70. The EPA is still in the process of adopting revisions to part 70, and thus is not able at this time to base part 71's provisions on the expected future changes to part 70. As a result, EPA has concluded, in response to comments, that the most reasonable approach is to model part 71's permit issuance, renewal, reopenings, and revisions procedures on the corresponding provisions in the existing part 70 rule. These changes from the proposal, in addition to other changes in response to comments, are identified below.

1. Permitting Authority's Action on Permit Application

First, the organization of the paragraphs has been changed from the proposal to be consistent with 40 CFR section 70.7(a). In addition, in section 71.7(a)(1), the word ''modification'' is now used in place of the word ''revisions,'' which was used in the proposal. This is a technical change to the rule to make it conform with the language used in corresponding provisions in the current part 70 rule. Also, section 71.7(a)(1)(ii) has been changed to track section 70.7(a)(1)(ii) by explicitly providing that changes subject to minor permit modification procedures need not comply with the public participation requirements of sections 71.7 and 71.11. This change from the proposal is a result of the Agency's adoption in today's rule of permit revision procedures modelled on those contained in the existing part 70 rule. Moreover, section 71.7(a)(1)(iv) has been adopted without the language providing that, in some cases, the terms of the permit need not provide for compliance with all applicable requirements that are in force as of the date of permit issuance. Again, this change is necessary to make section 71.7(a)(1)(iv) consistent with the corresponding provision at section 70.7(a)(1)(iv), which does not contain the proposal's language. That language was first proposed in the August 1994 proposed revisions to part 70, and the Agency is not yet prepared to adopt it into a final title V rule. Likewise, section 71.7(a)(1)(v) is being promulgated without references to the administrative amendment and *de minimis permit* revision procedures contained in the proposal in order to better match the current part 70 provisions at section 70.7(a)(1)(v).

Section 71.7(a)(2) is being adopted without the language in the proposal which would have required permitting authorities to take final action within 12 months after receipt of a complete application for early reductions permits under section 112(i)(5) of the Act because regulatory language addressing this requirement was moved to section 71.4(i)(3). Furthermore, this provision is being adopted without the language in the proposal that would have allowed permitting authorities to delay final action where an applicant fails to provide additional information in a timely manner as requested by the permitting authority, as section 70.7(a)(2) currently does not provide such authority.

A new section 71.7(a)(3) is being promulgated to require the permitting authority to ensure that priority is given to taking action on applications for construction or modification under title I of the Act. This change is made to make part 71 consistent with the corresponding provision in current part 70 at section 70.7(a)(3).

Section 71.7(a)(4) (section 71.7(a)(3) in the proposal) deletes the references in the proposal to the proposed regulatory provisions addressing administrative amendments, *de minimis* permit revisions, and minor permit revisions, and tracks current section 70.7(a)(4) by providing that permitting authorities need not make completeness determinations for applications for minor permit modifications. This change is a result of EPA's basing section 71.7 on the current section 70.7. In addition, sections 71.7(a) (5) and (6) (sections 71.7(a) (4) and (5) in the proposal) are renumbered in order to track existing sections 70.7(a) (5) and (6).

The proposal contained a provision at proposed section 71.7(a)(6) addressing how draft and final permits may be issued with respect to applicable requirements that are approved or promulgated by EPA during the permit process. This provision was proposed in the August 1994 proposed revisions to part 70 and is not contained in the current part 70 rule. For the reasons stated above, EPA is not yet prepared to adopt it into part 71, and so is deleting the proposed provision from today's final rule.

2. Requirement To Apply for a Permit

One commenter suggested revising 71.7(b) regarding the application shield to say that the permitting authority must set a reasonable deadline for the submission of additional information, and commented that EPA should not be able to request information that is ''needed to process the application'' but only that which is ''reasonable and necessary to issue the permit''. The Agency disagrees that the regulation should set a specific deadline for the submission of additional information because the determination of what is a reasonable time will vary depending on the information requested. Also, EPA disagrees that there is a distinction between information needed to process the application and information that is reasonable and necessary to issue the permit.

One commenter suggested revising section 71.7(b) to allow sources to operate subsequent to submission of a complete, but late, application or application for renewal. The Agency believes that extending an application shield to sources that fail to submit timely applications is inconsistent with the Act. The proposal for part 70 contained a provision that would have provided a grace period of up to three months to submit applications after the required submittal date. The EPA deleted this provision from the final part 70 rule because extending the application shield to sources that did not submit a timely application would have been inconsistent with section 503(c) of the Act. The Agency is promulgating section 71.7(b) to closely track the corresponding provision at current section 70.7(b). Consequently, the references in proposed section 71.7(b) to the proposed provisions addressing administrative amendments, de minimis permit revisions, and minor permit revisions have been deleted and replaced by references to provisions addressing section 502(b)(10) changes and minor permit modifications. In addition, the proposal's reference to section 71.7(a)(3) has been replaced with a reference to section 71.7(a)(4), due to the restructuring of section 71.7(a).

3. Permit Renewal and Expiration

Section 71.7(c) is being promulgated to more closely match the corresponding provision under current section 70.7(c) than did the proposal. The references in proposed section 71.7(c)(2) to proposed sections 71.5(b) and 71.5(c) have been replaced by a reference to section 71.5(a)(1)(iii), due to the restructuring of section 71.5. Moreover, section 71.7(c)(2) (section 71.7(c)(3) in the proposal) is being promulgated without the language that would have provided that, where the permitting authority fails to act on a timely renewal application before the end of the term of title V permit, the permit shall remain in effect until the permitting authority does take final action. Instead that language (which is based upon the existing section 70.4(b)(10) of the current part 70 rule) is being promulgated at section 71.7(c)(3).

4. Permit Revisions

Commenters remarked that the Federal title V permit program as proposed in April 1995 would establish a new, added layer of permitting which would add unacceptably to the amount of time needed before a source could implement process changes. They suggested that even though the April 1995 permit revision tracks attempt to build on existing preconstruction programs, they still pose substantial new requirements (e.g., new criteria for adequate prior review in NSR). These commenters opined that if EPA believes that insufficient public review is afforded by existing programs, the Agency should address those shortcomings, not start a new process. Another commenter suggested that clerical changes should be handled through notification of the change by an amendment letter to the permitting authority that would then be attached to the permit without any EPA review until permit renewal. The commenter further suggested that all minor source changes which do not violate any permit term and do not render the source newly subject to an applicable requirement should be allowed to follow this amendment procedure. Other commenters opined that the April 1995 proposed four track permit revision procedures were fundamentally flawed and must be replaced with simpler procedures. One commenter suggested that EPA Regions, not just delegated States, should be authorized to conduct ''merged processing'' to add NSR or section 112(g) terms to title V permits, if such processing is retained in the final rule. Some suggested that EPA promote consistency between part 70 and part 71 permit programs to reduce confusion for sources that have to make a transition between different regulatory programs.

In light of these and other comments, EPA proposed in August 1995 a revised permit revision process, developed with extensive stakeholder input, which proposes several ways of streamlining permit revisions, particularly for those changes subject to prior State review (e.g., NSR changes). In the interim, as discussed earlier in this preamble, rather than adopting the four-track permit revision system that the Agency proposed for part 71 on April 25, 1995, the EPA has decided to adopt, for the first phase of part 71, the permit revision system in the current (July 1992) part 70 rule. Current part 70 provides three ways to revise a permit: the administrative amendment process, the minor permit modification process and the significant permit modification process. The specific regulatory changes to proposed part 71 taken to adopt these procedures are described below.

One commenter requested that EPA not follow the approach to ''title I Modification'' in the August 1994 proposed revisions to part 70 in defining the term for part 71. In implementing the current part 70 permit revision procedures during the interim period, EPA would apply the interpretation of ''title I modifications'' that States are allowed to apply under the current part 70 rule. Under this interpretation, minor NSR actions may be incorporated into the title V permit using the minor permit modification procedures of current part 70, or alternatively, may be made as off-permit changes if they are eligible.

a. *Rationale for Providing Interim Permit Revision Procedures.* The proposal indicated that due to the ongoing discussions with stakeholders regarding permit revision procedures under title V, EPA was considering finalizing part 71 in the interim without provisions for permit revision procedures. Several commenters suggested that EPA not finalize any portion of part 71 until permit revision procedures are finalized because they will influence how sources design their initial permit applications. The commenters argued that sources will need the ability to obtain expeditious revisions to permits, and that there is thus a need for provisions governing modifications. As discussed previously, EPA has decided to include the permit revision procedures of current part 70 in

this interim part 71 rule, while reserving the right to adopt procedures based upon future changes to part 70, when part 70 revisions are promulgated and Phase II of this rule is completed.

The EPA agrees with commenters that including current part 70 revision procedures is most appropriate for several reasons. First, EPA believes that it is premature to adopt the procedures proposed in April 1995 for part 71, or in August 1995 for part 70, because both of these proposals involve outstanding issues. Although the August 1995 proposal contains the latest thinking on streamlined permit revision procedures, it would be inappropriate to rush to promulgate a proposed system before the Agency has taken time to consider comments on the August 1995 proposal and arrive at a final position. In the meantime, the Agency has at its disposal the permit procedures of the current part 70 rule under which the Agency continues to approve State programs.

Second, industry commenters note that a clear understanding of permit revision procedures is important as sources prepare their part 71 permit applications. The revision procedures of part 70 are more clearly understood than any proposed procedures, having been promulgated by EPA and adopted by many State programs. Third, adopting the existing part 70 permit revision procedures insures a smooth transition from a Federal operating permits program to a State program due to the similarity between the two programs.

Finally, the Agency does not believe that many permit revisions will occur during Phase I of this program. The timing of permit issuance under part 71 is such that the Agency believes that few part 71 permits will be issued and fewer will need to be revised before States receive part 70 approval or before Phase II of part 71 is promulgated. Permit revision procedures in Phase I of the part 71 rule become more essential the longer part 71 programs are in place without a Phase II rule, which is possible if the Phase II rulemaking is delayed.

b. *Description of Permit Revision Procedures.* The part 71 proposal addressed permit revisions at proposed sections 71.7(d)–(h) using proposed provisions from the August 1994 part 70 notice. Proposed section 71.7(d) would have defined when a permit revision is necessary; proposed section 71.7(e) would have addressed administrative amendments; proposed sections 71.7 (f) and (g) would have addressed de minimis permit revisions and minor permit revisions, respectively; and proposed section 71.7(h) would have covered significant permit revisions. All of these provisions have been deleted in today's rule, and replaced with new provisions at sections 71.7 (d) and (e) that track the corresponding provisions in the current part 70 rule governing administrative amendments, minor permit modifications, and significant permit modifications. The EPA directs interested persons to the preamble to the final part 70 rule, 57 FR 32250 (July 21, 1992) for a detailed description of these permit revision procedures.

Under section 71.7(d), changes eligible to be processed as administrative amendments include administrative changes such as correction of typographical errors, changes in mailing address, ownership of the source (or part of the source) unless restricted by title IV, contact persons, and changes in individuals who have assigned responsibilities, (including the responsibility to sign permit applications). Administrative permit amendments can be handled by direct correspondence from the permitting authority to the facility after the appropriate information related to the changes has been supplied by the facility. As under current part 70, administrative amendments could also be used to address ''enhanced NSR'' changes, to which the permitting authority could also extend the permit shield. Sections 71.7(e) (1) and (2), which address minor permit modification procedures, are designed for small changes at a facility which will not involve complicated regulatory determinations. A source may make a change immediately upon filing an application for a minor permit modification, prior to the time the permitting authority, affected States, and EPA (in the case of a program delegated pursuant to section 71.10) review the application. Eligible changes could be processed individually or in groups, but the permit shield may not extend to these changes. Section 71.7(e)(3) covers significant modifications. In this track, the public, the permitting authority, affected States, and EPA (in the case of a program delegated pursuant to section 71.10) will review the modification in the same manner as review during permit issuance. The permit shield may extend to changes processed under this track.

5. Permit Reopenings

The proposal addressed permit reopenings at proposed 71.7 (i) and (j). These provisions were modeled on the existing provisions at section 70.7 (f) and (g), as proposed to be revised in the August 1994 notice. One of the features of that approach was a specific provision for reopening permits to incorporate new maximum achievable control technology (MACT) standards promulgated under section 112 of the Act. As part 70 has not yet been finally revised to adopt this approach, it is premature at this time to adopt it for part 71. Consequently, in order to more closely track the current part 70 rule and promote consistency with State programs developed and approved under the current rule, the part 71 provisions for permit reopenings adopted today at sections 71.7 (f) and (g) are modeled on the existing provisions at sections 70.7 (f) and (g), and do not include the proposed provisions concerning reopening permits to incorporate new MACT standards.

G. Section 71.8—Affected State Review

The provisions of section 71.8 differ from provisions proposed in the part 71 proposal in several respects. First, because today's rulemaking adopts permit revision procedures based on the current part 70 rule, rather than those that were proposed in April, the cross references to section 71.7 were changed and the reference to de minimis permit revisions has been deleted. In addition, the final rule specifically provides, consistent with part 70, that timing of notice to affected States of major permit modifications is not tied to the timing of notice to the public.

Second, section 71.8(b) is being adopted to more consistently follow section 70.8(b)(2) in providing that where EPA delegates administration of a part 71 program, the permitting authority shall transmit notice of refusal to accept recommendations of an affected State as part of the permitting authority's submittal of the proposed permit to EPA.

Third, as discussed in section III.B of this document, a new paragraph (d) has been added to section 71.8 that requires that part 71 permitting authorities provide notice of certain permitting actions to federally recognized Indian Tribes. While this is a departure from what part 70 currently requires of State permitting authorities, EPA agrees with commenters who suggested that federally recognized Indian Tribes should not be required to establish compliance with any eligibility criteria in order to be entitled to notice of Federal permitting decisions that may affect Tribal air quality. One commenter suggested that applying for treatment in the same manner as a State was a time consuming and burdensome process for Indian Tribes and urged the elimination of that requirement for Tribes to receive notice of permitting actions. Consistent

with the Agency's policy of maintaining government-to-government relationships with Indian Tribes, EPA (and delegate agencies) will notify federally recognized Indian Tribes of draft permits that may be issued to sources that could affect Tribal air quality, including all draft permits issued by EPA for the Tribal area and all draft permits for sources that are within 50 miles of the reservation boundary or the Tribal area. Accordingly, the Agency has added a new paragraph that provides that the part 71 permitting authority shall send notices of draft permits to federally recognized Indian Tribes whose air quality may be affected by the permitting action. The EPA is imposing upon itself this responsibility in order to further its government-to-government relationship with Tribes.

H. Section 71.9—Permit Fees

1. Two-Phase Promulgation of Fee Requirements

Consistent with the two-phased approach to part 71 promulgation described in this notice, EPA is today adopting a two-phased approach to part 71 fee requirements. Upon Phase I promulgation, collection of fees should be sufficient to cover the anticipated program costs of Phase I. On the other hand, because the cost of Phase II is tied to procedures which will not be finalized until the Phase II rulemaking (i.e., revised and streamlined permit revision procedures), a fee amount for Phase II cannot be finalized in today's rule. Thus, the Phase I fee covers all program costs except those associated with permit revisions which are excluded because the Phase II rulemaking will finalize streamlined permit revision procedures that will ultimately differ substantially from those contained in today's rule. Instead, the Phase II rulemaking will add to the fee the costs for the new permit revision procedures when they are finalized. More information on the determination of specific activities and costs associated with each phase is contained in the document entitled ''Federal Operating Permits Program Costs and Fee Analysis (Revised),'' which is contained in the docket for this rulemaking.

The two-phased approach to fee requirements will not impact the ultimate fee amount owed by a source. For the majority of sources, EPA expects that the part 71 application and associated fee submittal will occur after the Phase II rulemaking. For these sources, the fee will be paid all at once. Sources that submit their applications prior to the Phase II rulemaking will pay a Phase I fee in full at the time of application. The balance of the fee necessary to cover the costs of the Phase II provisions will be collected once the Phase II rule is promulgated. The specific timing and amount of the Phase II fee collection will be discussed in the Phase II rulemaking.

The EPA fully expects that the Phase II rulemaking finalizing permit revision procedures will be completed before any part 71 permits are issued and that no program costs will be incurred in the interim period as a result of permit revisions. However, EPA recognizes that in the unlikely event that a part 71 permit is both issued and revised (under the interim revision procedures in today's rule) fees will not have yet been collected to cover the cost of the revision and that if the Phase II fee is finalized based on a streamlined permit revision process, there may be a shortfall in revenue. However, the alternative would be to finalize today a Phase I fee based on the interim revision procedures that potentially overcharges sources and would necessitate, if and when the permit revision procedures are streamlined as expected, a refund. The EPA wishes to avoid this unnecessary and burdensome process.

2. Fee Amount

The part 71 proposal proposed a base fee amount of $45 per ton/year which was based on a fee analysis which projected EPA's direct and indirect costs for implementing the part 71 program nationwide and dividing that by the total emissions subject to the fee. A detailed discussion of this methodology is found in ''Federal Operating Permits Program Costs and Fee Analysis,'' which is contained in the docket for this rulemaking. Using the same basic methodology as the original fee analysis, EPA has calculated the costs of Phase I and has set the base Phase I fee amount at $32 per ton/year to cover these costs. The determination of this amount is contained in the report entitled, ''Federal Operating Permits Program Costs and Fee Analysis (Revised)'' (hereafter ''Revised Fee Analysis''), which is contained in the docket for this rulemaking. As proposed, the fee will be adjusted based on the level of contractor support needed for those programs where it is necessary for EPA to use contractors.

One commenter suggested that the $3 per ton surcharge to cover EPA oversight of contractor and delegated programs should be eliminated, noting that EPA does not charge oversight fees for State part 70 programs. The EPA agrees and believes that such a surcharge would be inconsistent with the approach taken in part 70. A full evaluation of the April 1995 comments was made after the development of the August 1995 proposal, in which EPA proposed to eliminate the surcharge. This evaluation of comments confirmed the direction EPA took in the August 1995 proposal. Therefore, today's action both responds to the April comments and is consistent with the August 1995 proposal. Accordingly, EPA is today deleting the surcharge provisions from sections 71.9(c)(2) and (3). The EPA will continue to consider any comments received on the supplemental proposal, and, if necessary, will take any additional action on the surcharge in the Phase II rulemaking.

For reasons similar to those described in the preceding paragraphs on the surcharge, the EPA is deleting ''preparing generally applicable guidance regarding the permit program or its implementation or enforcement'' from the list of activities in section 71.9(b) whose costs are subject to fees. The EPA believes that this category partially duplicates the fourth category under section 71.9(b), general administrative costs. To the extent that it is not duplicative, it refers to guidance that is issued before an individual part 71 program is in place. The EPA does not require that States charge fees for these activities for part 70 programs, and the Agency does not believe that such costs should be included in part 71 fees. This change does not result in a change in the fee structure because costs of activities which occur before the effective date of the part 71 program were not included in the original fee analysis. This change simply adjusts the list of activities in section 71.9(b) to more accurately reflect the activities whose costs were included in the fee analysis. Consistent with the deletion of the surcharge, the EPA is taking this action based on comments received on the part 71 proposal. If adverse public comment is received regarding this change as proposed in the August 1995 supplemental proposal, the EPA will take additional action as necessary in the Phase II rulemaking.

3. Fees for Delegated Programs

As discussed in the part 71 proposal, EPA intends to allow delegation of part 71 programs to States in many cases. Originally, EPA envisioned funding these delegated part 71 programs with revenue generated from part 71 fees. However, EPA is aware that many delegate agencies have the authority under State or local law to collect fees adequate to fund delegated part 71 programs. In some cases, these agencies could continue to collect fees even

though EPA would be collecting part 71 fees. Several commenters pointed out that this would result in the undesirable situation of paying fees to two permitting authorities. On the other hand, one commenter noted that if a delegate agency, in deference to part 71, rescinds its authority to collect fees, funding for the Small Business Assistance Program (SBAP) in that State could be adversely affected.

The EPA believes that the best way to address both of these situations is to suspend collection of part 71 fees for part 71 programs which are fully delegated to States and for which the State has adequate authority under State law to fund fully-delegated part 71 activities with fees collected from part 71 sources. This ensures that State revenue is available to administer the program, including the SBAP, while addressing the commenters' concerns about double fees. However, EPA cannot suspend fee collection for partially delegated part 71 programs, since in those situations EPA will still incur substantial administrative costs. Suspension of EPA fee collection does not constitute approval of the State's fee structure for part 70 purposes. Rule language codifying this approach has been added to section 71.9(c)(2).

The suspension of part 71 fees for delegated programs was proposed in the August 1995 supplemental proposal. While the timing of today's promulgation has not allowed thorough evaluation of comments on that proposal, the EPA agrees with the concerns about duplicate fees and the SBAP which were raised in reference to the part 71 proposal. A full evaluation of these comments was made after the development of the August 1995 proposal on this issue. This evaluation confirmed the direction EPA had taken in the August 1995 proposal. Therefore, today's action both responds to the April comments and is consistent with the August proposal. Furthermore, today's action is consistent with EPA's position that its fees be based on program costs, because EPA will not incur any program costs after it fully delegates a part 71 program. The EPA will still evaluate all comments received on the August 1995 proposal and will take any necessary additional regulatory action on the suspension of part 71 fees for delegated programs in the Phase II rulemaking.

For part 71 programs that are delegated but for which EPA does not waive fee collection, EPA's policy will be to continue to collect part 71 fees itself. The proposed fee amount for part 71 programs was based on the assumption that certain activities would be more costly for EPA to implement than for States due to increased travel, unfamiliarity with individual sources, etc. However, commenters pointed out that when a program is delegated, this assumption is not applicable. The EPA agrees with this comment, and is today promulgating language establishing a lower part 71 fee for delegated programs which omits the increased cost assumption made for EPA-administered part 71 programs. Where EPA continues to collect part 71 fees for a fully-delegated program, the Phase I part 71 fee amount will be $24 per ton/year. The determination of this amount is contained in the Revised Fee Analysis. Furthermore, for partially delegated programs, the part 71 fee that EPA collects will be lower than the fee for an EPA-administered program because the fee will be adjusted to account for the proportion of effort performed by the delegate agency at a lower cost. For these programs, the Administrator will determine the fee according to the formula in section 71.9(c)(4).

4. Timing of Fee Payment

The part 71 proposal provided that sources submitting their initial fee calculation worksheets must pay one-third of the initial fee upon submittal, and must pay the balance of the fee within 4 months. However, EPA believes that two changes discussed in today's preamble make this installment approach to fee payment infeasible. First, EPA is promulgating a later due date for permit applications, which would mean that under the proposed installment approach, receipt of two-thirds of the fee revenues would be delayed until the end of the first year of the program, which would not provide adequate funding for initial program activities. Second, EPA is promulgating a two-phased approach to fee collection. The EPA believes that it would be unnecessarily complicated and potentially confusing to provide for installment payment of the fee for one or both phases. For these reasons, EPA is promulgating language at section 71.9(e)(1) which clarifies that payment of the full fee amount for the first year is due upon submittal of the initial fee calculation worksheet.

In addition, because today's rule changes the due date for permit applications, a change must also be made to the deadlines for the initial part 71 fee calculation worksheets in the event that EPA withdraws approval of a part 70 program. The proposal contained a schedule for submission of the fee calculation worksheet based on SIC code. The due dates ranged from 4 to 7 months after the effective date of the part 71 program. Changes to section 71.9(f)(1) adjust the fee calculation worksheet due dates to range from 6 to 9 months after the part 71 effective date, depending on SIC code.

5. Computation of Emissions Subject to Fees

A commenter pointed out that the rule language in proposed section 71.9(c)(5)(ii) inadvertently limits the 4000 ton cap on emissions subject to fees solely to programs administered by EPA, not delegated or contractor-administered programs. Accordingly, the EPA has amended this paragraph to clarify that the 4000 ton cap applies to all types of part 71 programs.

6. Penalties

The part 71 proposal contained a penalty charge of 50 percent of the fee amount if the fee is not paid within 30 days of the due date. In addition, the proposal assessed a penalty of 50 percent on underpayments with the 50 percent penalty assessed on the amount by which the source underpaid the fee owed. The proposal also provided relief from the penalty for certain underpayments where the source is making an initial fee calculation based on estimated rather than actual emissions. The proposal provided that where the underpayment results from an underestimate of future emissions and where the underpayment does not exceed 20 percent of the fee amount (i.e., where the source pays more than 80 percent of the fee owed), no penalty would be assessed.

Some industry commenters were concerned that establishing a penalty for underpayment for a source that underpays by as little as 20 percent would be too harsh in light of the uncertainty in making emissions estimates. Although title V requires a penalty to be assessed for failure to pay any fee lawfully imposed by the Administrator, the EPA agrees that there is a degree of uncertainty in estimating emissions, particularly for HAP sources, which are often smaller, and for which emission factors are not well-defined.

Upon consideration of comments and evaluation of the relative uncertainty of emission estimates for HAP listed pursuant to section 112(b) of the Act, the EPA is today promulgating in section 71.9(l)(4) an underpayment penalty which differs slightly from the proposal. For sources who base their initial fee calculation worksheet on estimated rather than actual emissions, the EPA will, for HAP emissions, apply the penalty to an underpayment of 50 percent or more. The penalty will still apply to an underpayment of 20 percent

or more for non-HAP emissions. If a source is subject to fees for both HAP and non-HAP emissions, the underpayment which would trigger a penalty will be prorated based on what portion of the source's emissions are HAP versus non-HAP. Thus, to determine whether an underpayment would incur a penalty, such a source's HAP emissions would be multiplied by the 50 percent rate, and its non-HAP emissions would be multiplied by the 20 percent rate. The sum of these emissions rates determines the level of underpayment which, if exceeded, would incur the underpayment penalty. The EPA believes that this approach offers significant relief to sources faced with difficulty in accurately estimating their emissions, while still ensuring that adequate fee revenues can be collected in a fair and timely manner.

7. Certification Requirement

The EPA believes that the correct interpretation of the part 71 certification requirement at section 71.5(d) is that it applies to all fee calculation documents. However, for clarity, EPA is today adding a requirement to sections 71.9(e) and (h) which requires certification of the fee calculation worksheets by a responsible official. The added language in section 71.9 is simply a cross reference to the language in section 71.5(d).

I. Section 71.10—Delegation of Part 71 Program

1. Delegation of Authority Agreement

With respect to the content of Delegation of Authority Agreements, EPA wishes to clarify that the adequacy of State permit fees must be addressed when EPA waives collection of part 71 permit fees. As described in section III.F.3 of this preamble, when EPA has determined that a delegate agency has raised adequate fee revenue from sources subject to title V to administer a fully-delegated part 71 program absent any financial assistance from EPA, then EPA will waive collection of part 71 fees. In such a case, the Delegation of Authority Agreement would specify that the delegate agency has sufficient revenue and will collect sufficient revenue from sources subject to title V to administer all of its duties as outlined in the Agreement. The EPA will not waive fees when the part 71 program is partially delegated or when the delegate agency lacks sufficient revenue to fund the delegated part 71 program.

2. Appeal of Permits

The Agency has revised proposed section 71.10(i), which addresses the petition process for permits issued by delegate agencies. In lieu of restating which persons and parties may submit petitions to the Environmental Appeal Board pursuant to section 71.11(l)(1), section 71.10(i) provides that the appeals of permits under delegated program shall follow the procedures of section 71.11(l)(1).

3. Transmission of Information to EPA, Prohibition of Default Issuance, and EPA Objections

The final rule also makes certain changes to the proposed provisions addressing transmission of information to the Administrator, the prohibition of default issuance of permits, and EPA objections to proposed permits at sections 71.10(d), (f) and (g). Essentially, these changes are being made today in order to better harmonize the final rule with corresponding provisions in the currently promulgated part 70 rule at 70.8(a), (c) and (e). Regarding transmission of information to EPA, the reference in proposed section 71.10(d)(1) to proposed section 71.7(a)(1)(v) has been rewritten, and proposed paragraphs (2) and (3) have been merged into it in order to more closely track part 70. New paragraph (2) has been adopted in order to achieve consistency with section 70.8(a)(2).

The provision on prohibition of default issuance has been changed to follow the existing provision at section 70.8(e). In proposed section 71.10(f)(2), EPA had provided that the prohibition would not apply to permit revisions processed through the proposed de minimis permit revision track, following the August 1994 proposed revisions to part 70. As that track is not being adopted in this Phase I rule, the exception has been deleted.

Finally, section 71.10(g) on EPA objections has been changed from the proposal in order to follow the test established under the current part 70 rule for when EPA would object to proposed permits, and to follow the promulgated part 70 language providing for what shall happen when a permitting authority refuses to respond adequately to an EPA objection. This change includes deletion of the proposed reference to proposed section 71.7(a)(6), which is not being adopted as proposed in this final rule.

J. Section 71.11—Administrative Record, Public Participation, and Administrative Review

The Agency has chosen to establish part 71-specific rules in today's promulgated section 71.11 for administrative procedures in order to clarify for the public and the regulated community those requirements associated specifically with Federal operating permits under title V of the Act. Today's promulgated section 71.11 is based closely on the provisions of 40 CFR part 124. Part 124 covers a number of EPA permitting programs, and the process of identifying the separate and distinct requirements associated with those individual programs can be complex. The Agency feels that it is advantageous in this case to describe the administrative procedures for today's promulgated part 71 within the rule itself, since that will avoid potential confusion as to which provisions of part 124 apply to the part 71 program, and since interested parties will not be required to refer to separate regulations in discerning applicable administrative procedures.

Certain aspects of section 71.11 that would correspond to proposed streamlined part 71 permit revision processes discussed in the preamble to the supplemental part 70 and 71 proposed rules published on August 31, 1995 (60 FR 45529), are not addressed in today's notice because the Agency is not yet prepared to conduct final rulemaking for those processes. In the meantime, EPA is promulgating permit revision processes based on the current part 70 rule in response to numerous comments on the proposed part 71.

To accommodate basing part 71's permit revision procedures on the existing part 70 rule, today's notice makes certain changes to the regulatory language of section 71.11 as proposed on April 27, 1995 (60 FR 20804) in order to apply administrative procedures to the permit revision tracks as appropriate. Changes to the regulatory language that make reference to permit revision procedures were made in the first paragraph of section 71.11 and in section 71.11(l)(1). These sections make reference to specific types of permit revisions which in this promulgated rule are those permit revision procedures found in 40 CFR part 70, rather than the four-track permit revision procedures in the April 27, 1995 proposed part 71. Section 71.11(l)(1) describes the 30-day period within which a person may request review of a final permit decision. For significant modifications, the 30-day period begins with the service of notice of the permitting authority's action. This is unchanged from the proposal. For minor permit modifications and administrative amendments, the 30-day period begins on the date the minor permit modification or administrative amendment is effective.

Section 71.11(d)(3)(i)(D) has been modified in response to comments

received which noted that under the proposal a requirement to notify any unit of local government having jurisdiction over the area where a source is located would result in notices to components of government which have no relationship to air quality and its impacts. Promulgated section 71.11(d)(3)(i)(D) stipulates that the local emergency planning committee (not ''any'' unit of local government) and State agencies having authority under State law with respect to the operation of the source are among the entities to receive a copy of notices of activities described in section 71.11(d)(1)(i).

Additional changes to the regulatory language of section 71.11 relate to treatment of a final permit decision as enforceable and effective where review by the EAB has been requested. In proposed sections 71.11(i)(2) and 71.11(l)(6), the Agency proposed that a final permit decision would become effective immediately upon issuance of that decision unless a later effective date were specified in the decision. It was pointed out by several commenters that, in other EPA permitting programs, such as the Resource Conservation and Recovery Act and PSD programs, an appeal request stays the effectiveness of a final permit decision. See 40 CFR section 124.15(b)(2). The EPA agrees that it would be unfair to force permittees to comply with permit terms during the time that they are subject to appeal, and that the proposal was inappropriately inconsistent with part 124 on this point. Thus, sections 71.11(i)(2) and 71.11(l)(6) have been promulgated to conform to the longstanding Agency approach reflected in 40 CFR section 124.15, so that permittees are not unfairly required to comply with permit terms pending their review by the EAB. Under the final rule, those specific permit terms and conditions that are the subject of an appeal to EAB would be stayed, while the rest of the permit would become effective as otherwise provided in section 71.11(i)(2). Moreover, section 71.11 (i)(2) itself has been changed so that it better tracks part 124, which makes final permit issuance decisions immediately effective only where no comments requested a change in the draft permit; otherwise, permits are effective than sooner than 30 days after the issuance decision or following the conclusion of appeal proceedings, as applicable.

In response to comments which expressed concern that applicants should be able to appeal a final permit decision even in the absence of having commented on a draft permit, the Agency believes that applicants can appeal if the final permit differs from the draft permit, even if the applicant did not submit comments on the draft permit. The Agency does not believe it would be appropriate to allow applicants to appeal where the final permit is identical to the draft permit, and the applicant had not commented on the draft permit. It is a far more efficient use of resources to resolve permitting issues in the administrative issuance process, rather than to allow applicants to raise issues on draft permits for the first time on appeal. To further clarify the ability of the applicant to appeal a final permit, the following language has been added to section 71.11(l)(1): ''or other new grounds that were not reasonably foreseeable during the public comment period on the draft permit''.

Section 71.11(l)(6) has been added, incorporating language from 40 CFR part 124. Part 124 establishes general procedures clarifying the rules to which appellants are subject in all permit programs under part 124, and therefore EPA believes it is appropriate to extend these provisions to part 71 as well. This section outlines procedures for motions for reconsideration of appeals of final orders. It stipulates a 10 day deadline for motions, and notes that motions are to be directed to the EAB, unless the case had been referred to the Administrator by the Board, and in which the Administrator had issued the final order. The effective date of the final order is not stayed unless specifically so ordered by the Board.

One commenter suggested that the proposal's requirement of a right to appeal every permit decision would be overly burdensome, commenting that even de minimis revisions would be subject to appeal. The EPA notes that final part 71 permitting actions are final actions for purposes of judicial review under section 307(b)(1) of the Act. Consequently, EPA does not have the discretion to eliminate the opportunity for judicial review of final part 71 permitting actions. Moreover, EPA disagrees that requiring administrative appeal to the EAB as a prerequisite to judicial review is either redundant or jeopardizes a source's ability to rely on its permit. Requiring administrative exhaustion of remedies is longstanding practice in EPA permit programs, and EPA notes that States with approved part 70 programs generally require administrative appeal as a prerequisite to challenging permits in State court. Also, in requiring administrative exhaustion, litigation in Federal court over permit actions will often be avoided, thus conserving both public and private resources. Finally, since pending administrative appeal sources will be able to rely on the application shield, they will not be placed in any greater ''jeopardy'' than if they had directly appealed the final permit to Federal court.

Changes have been made to section 71.11(n) to replace the term ''Administrator'' with ''permitting authority,'' to allow for those circumstances where a State has been delegated a part 71 program by EPA.

IV. Administrative Requirements

A. Docket

The docket for this regulatory action is A–93–51. All the documents referenced in this preamble fall into one of two categories. They are either reference materials that are considered to be generally available to the public, or they are memoranda and reports prepared specifically for this rulemaking. Both types of documents can be found in Docket No. A–93–51.

B. Executive Order 12866

Under Executive Order 12866 (58 FR 51735 (October 4, 1993)), the Agency must determine whether the regulatory action is ''significant'' and therefore subject to the Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines ''significant'' regulatory action as one that is likely to lead to a rule that may:

(1) Have an annual effect on the economy of $100 million or more, adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan program or the rights and obligation of recipients thereof;

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that this rule is a ''significant'' regulatory action. As such, this action was submitted to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

The EPA has estimated the annualized cost of the part 71 program based on the number of sources that would be subject to part 71 permitting requirements in the 8 States where EPA

believes the program will be implemented. A survey of those States showed that the number of part 71 sources in those States (many of which are not heavily industrialized) is much smaller than EPA's original estimates. The EPA had previously assumed that part 71 sources in 8 States would comprise 16 percent of all title V sources. However, in the States where EPA is likely to administer a part 71 program, the part 71 source population comprises slightly less than 6 percent of all title V sources. The estimated annualized cost of implementing the part 71 program is $19.8 million to the Federal government and $18.1 million to respondents, for a total of $37.9 million which reflects industry's total expected costs of complying with the program. Since any costs incurred by the Agency in administering a program would be recaptured through fees imposed on sources, the true cost to the Federal government is zero. The requirements for the costs result from section 502(d) of title V which mandates that EPA develop a Federal operating permits program. The draft regulatory impact analysis (RIA) was made available for public comment as part of the April 27, 1995 proposal. The primary difference between the current RIA and the prior draft is that the RIA now assesses impacts based on the streamlined permit revision procedures that were proposed for part 70 and 71 in August of 1995, in lieu of the more cumbersome 4-track permit revision procedure that was contained in the part 71 proposal. The proposed program is designed to improve air quality by: indirectly improving the quality of State-administered operating permits programs; encouraging the adoption of lower cost control strategies based on economic incentive approaches; improving the effectiveness of enforcement and oversight of source compliance; facilitating the implementation of other titles of the Act, such as title I; and improving the quality of emissions data and other source-related data.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601) requires EPA to consider potential impacts of proposed regulations on small entities. If a preliminary analysis indicates that a proposed regulation would have a significant adverse economic impact on a substantial number of small entities, then a regulatory flexibility analysis must be prepared.

The original part 70 rule and the recently proposed revisions to part 70 were determined to not have a significant adverse impact on small entities. *See* 57 FR 32250, 32294 (July 21, 1992), and 60 FR 45530, 45563 (Aug. 31, 1995). Similarly, a regulatory flexibility screening analysis of the part 71 rule revealed that the rule would not have a significant adverse impact on a substantial number of small entities, since few small entities would be subject to part 71 permitting requirements as a result of the rule's deferral of the requirement to obtain a permit for nonmajor sources.

Consequently, I hereby certify that the part 71 regulations will not have a significant adverse effect on a substantial number of small entities.

D. Paperwork Reduction Act

The OMB has approved the information collection requirements contained in this rule under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et. seq. and has assigned OMB control number 2060–0336.

The information is planned to be collected to enable EPA to carry out its obligations under the Act to determine which sources are subject to the Federal Operating Permits Program and what requirements should be included in permits for sources subject to the program. Responses to the collection of information will be mandatory under section 71.5(a) which requires owners or operators of sources subject to the program to submit a timely and complete permit application and under sections 71.6 (a) and (c) which require that permits include requirements related to recordkeeping and reporting. As provided in 42 U.S.C. 7661b(e), sources may assert a business confidentiality claim for the information collected under section 114(c) of the Act.

The annual average burden on sources for the collection of information is approximately 678,000 hours per year, or 329 hours per source. The annual cost for the collection of information to respondents is $18.1 million per year. The EPA has estimated the annualized costs based on the number of sources that would be subject to part 71 permitting requirements in the 8 States where EPA believes the program will be implemented, most of which have fewer than average number of part 71 sources per State. There is no burden for State and local agencies. The annual cost to the Federal government is $19.8 million (assuming part 71 programs are delegated), which is recovered from sources through permit fees. Thus, the total annual cost to sources would be $37.9 million. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15. The EPA is amending the table in 40 CFR part 9 of currently approved information collection request (ICR) control numbers issued by OMB for various regulations to list the information requirements contained in this final rule.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques, to the Director, Regulatory Information Division, Office of Policy, Planning, and Evaluation, U.S. Environmental Protection Agency (2136), 401 M Street, S.W., Washington, DC 20460, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th St., N.W., Washington, DC 20503, marked ''Attention: Desk Officer for EPA.'' Include the ICR number in any correspondence.

E. Unfunded Mandates Reform Act

As noted in the ICR document, today's action imposes no costs on State, local and Tribal governments. This is because the EPA incurs all costs in cases where it implements a part 71 program. A State, local, or Tribal government will incur costs where it elects to take delegation of a part 71 program. As noted in the ICR document, EPA expects that, of the estimated eight part 71 programs, States will take delegation of all eight programs. However, the costs of running these delegated programs do not represent costs imposed by today's action. This is because the costs of running a delegated part 71 program are essentially the same

as those of running an approved part 70 program. Furthermore, taking delegation is optional on the part of States. Regardless of whether a State, local, or Tribal agency chooses to take delegation of a part 71 program, the costs to these agencies imposed by this rule over and above the costs of existing part 70 requirements are zero.

Regarding the private sector, the EPA estimates that the total cost of complying with the part 71 program would be $37.9 million per year, assuming that the part 71 program is in effect in 8 States. The estimated costs of collection of information would be $18.1 million per year, and $19.8 million would be collected in fees.

For these reasons, EPA believes that the total direct costs to industry under today's action would not exceed $100 million in any 1 year. Therefore, the Agency concludes that it is not required by Section 202 of the Unfunded Mandates Reform Act of 1995 to provide a written statement to accompany this regulatory action because promulgation of the rule would not result in the expenditure by State, local, and Tribal governments, in the aggregate or by the private sector, of $100,000,000 or more in any 1 year.

F. Submission to Congress and the General Accounting Office

Under section 801(a)(1)(A) of the Administrative Procedure Act (APA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the General Accounting Office prior to publication of the rule in today's Federal Register. This rule is not a ''major rule'' as defined by section 804(2) of the APA as amended.

List of Subjects

40 CFR Part 9

Reporting and Recordkeeping Requirements

40 CFR Part 55

Environmental Protection Air pollution control, Outer continental shelf, Operating permits.

40 CFR Part 71

Air pollution control, Prevention of significant deterioration, New source review, Fugitive emissions, Particulate matter, Volatile organic compounds, Nitrogen dioxide, Carbon monoxide, Hydrocarbons, Lead, Operating permits, Indian Tribes, Air pollution control—Tribal authority.

Dated: June 19, 1996.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is amended as set forth below.

PART 9—[AMENDED]

1. In Part 9:

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

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

b. Section 9.1 is amended by adding the new entries to the table under the indicated heading in numerical order to read as follows:

§ 9.1 OMB approvals under the Paperwork Reduction Act.

* * * * *

40 CFR Citation	OMB control No.
* * * * *	
Federal Operating Permit Programs	
71.5	2060–0336
71.6(a),(c),(d),(g)	2060–0336
71.7	2060–0336
71.9(e)–(j)	2060–0336
* * * * *	

PART 55—[AMENDED]

2. The authority citation for part 55 continues to read as follows:

Authority: Section 328 of the Clean Air Act (Act) (42 U.S.C. 7401, et seq.) as amended by Public Law 101–549.

3. Section 55.6 is amended by adding paragraph (c)(3) to read as follows:

§ 55.6 Permit requirements.

* * * * *

(c) * * *

(3) If the COA does not have an operating permits program approved pursuant to 40 CFR part 70 or if EPA has determined that the COA is not adequately implementing an approved program, the applicable requirements of 40 CFR part 71, the Federal operating permits program, shall apply to the OCS sources. The applicable requirements of 40 CFR part 71 will be implemented and enforced by the Administrator. The Administrator may delegate the authority to implement and enforce all or part of a Federal operating permits program to a State pursuant to § 55.11 of this part.

* * * * *

4. Section 55.10 is amended by revising paragraph (a)(1) and by adding paragraph (b) to read as follows:

§ 55.10 Fees.

(a) * * *

(1) The EPA will calculate and collect operating permit fees from OCS sources in accordance with the requirements of 40 CFR part 71.

* * * * *

(b) The OCS sources located beyond 25 miles of States' seaward boundaries. The EPA will calculate and collect operating permit fees from OCS sources in accordance with the requirements of 40 CFR part 71.

5. Section 55.13 is amended by adding paragraph (f) to read as follows:

§ 55.13 Federal requirements that apply to OCS sources.

* * * * *

(f) 40 CFR part 71 shall apply to OCS sources:

(1) Located within 25 miles of States' seaward boundaries if the requirements of 40 CFR part 71 are in effect in the COA.

(2) Located beyond 25 miles of States' seaward boundaries.

(3) When an operating permits program approved pursuant to 40 CFR part 70 is in effect in the COA and a Federal operating permit is issued to satisfy an EPA objection pursuant to 40 CFR 71.4(e).

* * * * *

PART 71—[AMENDED]

6. The authority citation for part 71 continues to read as follows:

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

7. Subpart A of part 71 consisting of §§ 71.1 through 71.12 is added to read as follows:

Subpart A—Operating Permits

Sec.
71.1 Program overview.
71.2 Definitions.
71.3 Sources subject to permitting requirements.
71.4 Program implementation.
71.5 Permit applications.
71.6 Permit content.
71.7 Permit issuance, renewal, reopenings, and revisions.
71.8 Affected State review.
71.9 Permit fees.
71.10 Delegation of part 71 program.

71.11 Administrative record, public participation, and administrative review.
71.12 Prohibited acts.

Subpart A—Operating Permits

§ 71.1 Program overview.

(a) This part sets forth the comprehensive Federal air quality operating permits permitting program consistent with the requirements of title V of the Act (42 U.S.C. 7401 *et seq.*) and defines the requirements and the corresponding standards and procedures by which the Administrator will issue operating permits. This permitting program is designed to promote timely and efficient implementation of goals and requirements of the Act.

(b) All sources subject to the operating permit requirements of title V and this part shall have a permit to operate that assures compliance by the source with all applicable requirements.

(c) The requirements of this part, including provisions regarding schedules for submission and approval or disapproval of permit applications, shall apply to the permitting of affected sources under the acid rain program, except as provided herein or as modified by title IV of the Act and 40 CFR parts 72 through 78.

(d) Issuance of permits under this part may be coordinated with issuance of permits under the Resource Conservation and Recovery Act (42 U.S.C. 6901 *et seq.*) and under the Clean Water Act (33 U.S.C. 1251 *et seq.*), whether issued by the State, the U.S. Environmental Protection Agency (EPA), or the U.S. Army Corps of Engineers.

(e) Nothing in this part shall prevent a State from administering an operating permits program and establishing more stringent requirements not inconsistent with the Act.

§ 71.2 Definitions.

The following definitions apply to part 71. Except as specifically provided in this section, terms used in this part retain the meaning accorded them under the applicable requirements of the Act.

Act means the Clean Air Act, as amended, 42 U.S.C. 7401 *et seq.*

Affected source shall have the meaning given to it in 40 CFR 72.2.

Affected States are:

(1) All States and Tribal areas whose air quality may be affected and that are contiguous to the State or Tribal area in which the permit, permit modification or permit renewal is being proposed; or that are within 50 miles of the permitted source. A Tribe and any associated Tribal area shall be treated as a State under this paragraph (1) only if EPA has determined that the Tribe is an eligible Tribe.

(2) The State or Tribal area in which a part 71 permit, permit modification, or permit renewal is being proposed. A Tribe and any associated Tribal area shall be treated as a State under this paragraph (2) only if EPA has determined that the Tribe is an eligible Tribe.

(3) Those areas within the jurisdiction of the air pollution control agency for the area in which a part 71 permit, permit modification, or permit renewal is being proposed.

Affected unit shall have the meaning given to it in 40 CFR 72.2.

Applicable requirement means all of the following as they apply to emissions units in a part 71 source (including requirements that have been promulgated or approved by EPA through rulemaking at the time of issuance but have future compliance dates):

(1) Any standard or other requirement provided for in the applicable implementation plan approved or promulgated by EPA through rulemaking under title I of the Act that implements the relevant requirements of the Act, including any revisions to that plan promulgated in part 52 of this chapter;

(2) Any term or condition of any preconstruction permits issued pursuant to regulations approved or promulgated through rulemaking under title I, including parts C or D, of the Act;

(3) Any standard or other requirement under section 111 of the Act, including section 111(d);

(4) Any standard or other requirement under section 112 of the Act, including any requirement concerning accident prevention under section 112(r)(7) of the Act;

(5) Any standard or other requirement of the acid rain program under title IV of the Act or 40 CFR parts 72 through 78;

(6) Any requirements established pursuant to section 114(a)(3) or 504(b) of the Act;

(7) Any standard or other requirement governing solid waste incineration, under section 129 of the Act;

(8) Any standard or other requirement for consumer and commercial products, under section 183(e) of the Act;

(9) Any standard or other requirement for tank vessels, under section 183(f) of the Act;

(10) Any standard or other requirement of the program to control air pollution from outer continental shelf sources, under section 328 of the Act;

(11) Any standard or other requirement of the regulations promulgated at 40 CFR part 82 to protect stratospheric ozone under title VI of the Act, unless the Administrator has determined that such requirements need not be contained in a title V permit; and

(12) Any national ambient air quality standard or increment or visibility requirement under part C of title I of the Act, but only as it would apply to temporary sources permitted pursuant to section 504(e) of the Act.

Delegate agency means the State air pollution control agency, local agency, other State agency, Tribal agency, or other agency authorized by the Administrator pursuant to § 71.10 to carry out all or part of a permit program under part 71.

Designated representative shall have the meaning given to it in section 402(26) of the Act and 40 CFR 72.2.

Draft permit means the version of a permit for which the permitting authority offers public participation under § 71.7 or § 71.11 and affected State review under § 71.8.

Eligible Indian Tribe or *eligible Tribe* means a Tribe that has been determined by EPA to meet the criteria for being treated in the same manner as a State, pursuant to the regulations implementing section 301(d)(2) of the Act.

Emissions allowable under the permit means a federally enforceable permit term or condition determined at issuance to be required by an applicable requirement that establishes an emissions limit (including a work practice standard) or a federally enforceable emissions cap that the source has assumed to avoid an applicable requirement to which the source would otherwise be subject.

Emissions unit means any part or activity of a stationary source that emits or has the potential to emit any regulated air pollutant or any pollutant listed under section 112(b) of the Act. This term is not meant to alter or affect the definition of the term ''unit'' for purposes of title IV of the Act.

EPA or the *Administrator* means the Administrator of the U.S. Environmental Protection Agency (EPA) or his or her designee.

Federal Indian reservation, Indian reservation or *reservation* means all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation.

Final permit means the version of a part 71 permit issued by the permitting

authority that has completed all review procedures required by §§ 71.7, 71.8, and 71.11.

Fugitive emissions are those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally-equivalent opening.

General permit means a part 71 permit that meets the requirements of § 71.6(d).

Indian Tribe or *Tribe* means any Indian Tribe, band, nation, or other organized group or community, including any Alaskan native village, which is federally recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

Major source means any stationary source (or any group of stationary sources that are located on one or more contiguous or adjacent properties, and are under common control of the same person (or persons under common control)), belonging to a single major industrial grouping and that are described in paragraph (1), (2), or (3) of this definition. For the purposes of defining ''major source,'' a stationary source or group of stationary sources shall be considered part of a single industrial grouping if all of the pollutant emitting activities at such source or group of sources on contiguous or adjacent properties belong to the same Major Group (i.e., all have the same two-digit code) as described in the Standard Industrial Classification Manual, 1987.

(1) A major source under section 112 of the Act, which is defined as:

(i) For pollutants other than radionuclides, any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit, in the aggregate, 10 tpy or more of any hazardous air pollutant which has been listed pursuant to section 112(b) of the Act, 25 tpy or more of any combination of such hazardous air pollutants, or such lesser quantity as the Administrator may establish by rule. Notwithstanding the preceding sentence, emissions from any oil or gas exploration or production well (with its associated equipment) and emissions from any pipeline compressor or pump station shall not be aggregated with emissions from other similar units, whether or not such units are in a contiguous area or under common control, to determine whether such units or stations are major sources; or

(ii) For radionuclides, ''major source'' shall have the meaning specified by the Administrator by rule.

(2) A major stationary source of air pollutants or any group of stationary sources as defined in section 302 of the Act, that directly emits, or has the potential to emit, 100 tpy or more of any air pollutant (including any major source of fugitive emissions of any such pollutant, as determined by rule by the Administrator). The fugitive emissions of a stationary source shall not be considered in determining whether it is a major stationary source for the purposes of section 302(j) of the Act, unless the source belongs to one of the following categories of stationary source:

(i) Coal cleaning plants (with thermal dryers);

(ii) Kraft pulp mills;

(iii) Portland cement plants;

(iv) Primary zinc smelters;

(v) Iron and steel mills;

(vi) Primary aluminum ore reduction plants;

(vii) Primary copper smelters;

(viii) Municipal incinerators capable of charging more than 250 tons of refuse per day;

(ix) Hydrofluoric, sulfuric, or nitric acid plants;

(x) Petroleum refineries;

(xi) Lime plants;

(xii) Phosphate rock processing plants;

(xiii) Coke oven batteries;

(xiv) Sulfur recovery plants;

(xv) Carbon black plants (furnace process);

(xvi) Primary lead smelters;

(xvii) Fuel conversion plants;

(xviii) Sintering plants;

(xix) Secondary metal production plants;

(xx) Chemical process plants;

(xxi) Fossil-fuel boilers (or combination thereof) totaling more than 250 million British thermal units per hour heat input;

(xxii) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;

(xxiii) Taconite ore processing plants;

(xxiv) Glass fiber processing plants;

(xxv) Charcoal production plants;

(xxvi) Fossil-fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input; or

(xxvii) Any other stationary source category which, as of August 7, 1980, is being regulated under section 111 or 112 of the Act.

(3) A major stationary source as defined in part D of title I of the Act, including:

(i) For ozone nonattainment areas, sources with the potential to emit 100 tpy or more of volatile organic compounds or oxides of nitrogen in areas classified as ''marginal'' or ''moderate,'' 50 tpy or more in areas classified as ''serious''; 25 tpy or more in areas classified as ''severe,'' and 10 tpy or more in areas classified as ''extreme''; except that the references in this paragraph (3)(i) to 100, 50, 25, and 10 tpy of nitrogen oxides shall not apply with respect to any source for which the Administrator has made a finding, under section 182(f) (1) or (2) of the Act, that requirements under section 182(f) of the Act do not apply;

(ii) For ozone transport regions established pursuant to section 184 of the Act, sources with the potential to emit 50 tpy or more of volatile organic compounds;

(iii) For carbon monoxide nonattainment areas:

(A) That are classified as ''serious,'' and

(B) in which stationary sources contribute significantly to carbon monoxide levels as determined under rules issued by the Administrator, sources with the potential to emit 50 tpy or more of carbon monoxide; and

(iv) For particulate matter (PM–10) nonattainment areas classified as ''serious,'' sources with the potential to emit 70 tpy or more of PM–10.

Part 70 permit means any permit or group of permits covering a part 70 source that has been issued, renewed, amended or revised pursuant to 40 CFR part 70.

Part 70 program or *State program* means a program approved by the Administrator under 40 CFR part 70.

Part 70 source means any source subject to the permitting requirements of 40 CFR part 70, as provided in §§ 70.3(a) and 70.3(b).

Part 71 permit, or *permit* (unless the context suggests otherwise) means any permit or group of permits covering a part 71 source that has been issued, renewed, amended or revised pursuant to this part.

Part 71 program means a Federal operating permits program under this part.

Part 71 source means any source subject to the permitting requirements of this part, as provided in §§ 71.3(a) and 71.3(b).

*Permit modification m*eans a revision to a part 71 permit that meets the requirements of § 71.7(e).

Permit program costs means all reasonable (direct and indirect) costs required to administer an operating permits program, as set forth in § 71.9(b).

Permit revision means any permit modification or administrative permit amendment.

Permitting authority means one of the following:

(1) The Administrator, in the case of EPA-implemented programs;

(2) A delegate agency authorized by the Administrator to carry out a Federal permit program under this part; or

(3) The State air pollution control agency, local agency, other State agency, Indian Tribe, or other agency authorized by the Administrator to carry out a permit program under 40 CFR part 70.

Proposed permit means the version of a permit that the delegate agency proposes to issue and forwards to the Administrator for review in compliance with § 71.10(d).

Regulated air pollutant means the following:

(1) Nitrogen oxides or any volatile organic compounds;

(2) Any pollutant for which a national ambient air quality standard has been promulgated;

(3) Any pollutant that is subject to any standard promulgated under section 111 of the Act;

(4) Any Class I or II substance subject to a standard promulgated under or established by title VI of the Act; or

(5) Any pollutant subject to a standard promulgated under section 112 of the Act or other requirements established under section 112 of the Act, including sections 112 (g), (j), and (r) of the Act, including the following:

(i) Any pollutant subject to requirements under section 112(j) of the Act. If the Administrator fails to promulgate a standard by the date established pursuant to section 112(e) of the Act, any pollutant for which a subject source would be major shall be considered to be regulated on the date 18 months after the applicable date established pursuant to section 112(e) of the Act; and

(ii) Any pollutant for which the requirements of section 112(g)(2) of the Act have been met, but only with respect to the individual source subject to section 112(g)(2) requirements.

Regulated pollutant (for fee calculation), which is used only for purposes of § 71.9(c), means any regulated air pollutant except the following:

(1) Carbon monoxide;

(2) Any pollutant that is a regulated air pollutant solely because it is a Class I or II substance subject to a standard promulgated under or established by title VI of the Act; or

(3) Any pollutant that is a regulated air pollutant solely because it is subject to a standard or regulation under section 112(r) of the Act.

Renewal means the process by which a permit is reissued at the end of its term.

Responsible official means one of the following:

(1) For a corporation: a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or a duly authorized representative of such person if the representative is responsible for the overall operation of one or more manufacturing, production, or operating facilities applying for or subject to a permit and either:

(i) the facilities employ more than 250 persons or have gross annual sales or expenditures exceeding $25 million (in second quarter 1980 dollars); or

(ii) the delegation of authority to such representative is approved in advance by the permitting authority;

(2) For a partnership or sole proprietorship: a general partner or the proprietor, respectively;

(3) For a municipality, State, Federal, or other public agency: Either a principal executive officer or ranking elected official. For the purposes of this part, a principal executive officer of a Federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., a Regional Administrator of EPA); or

(4) For affected sources:

(i) The designated representative insofar as actions, standards, requirements, or prohibitions under title IV of the Act or 40 CFR parts 72 through 78 are concerned; and

(ii) The designated representative for any other purposes under part 71.

Section 502(b)(10) changes are changes that contravene an express permit term. Such changes do not include changes that would violate applicable requirements or contravene federally enforceable permit terms and conditions that are monitoring (including test methods), recordkeeping, reporting, or compliance certification requirements.

State means any non-Federal permitting authority, including any local agency, interstate association, or statewide program. The term ''State'' also includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Marianas Islands. Where such meaning is clear from the context, ''State'' shall have its conventional meaning. For purposes of the acid rain program, the term ''State'' shall be limited to authorities within the 48 contiguous States and the District of Columbia as provided in section 402(14) of the Act.

Stationary source means any building, structure, facility, or installation that emits or may emit any regulated air pollutant or any pollutant listed under section 112(b) of the Act.

§ 71.3 Sources Subject to Permitting Requirements.

(a) *Part 71 sources.* The following sources are subject to the permitting requirements under this part:

(1) Any major source;

(2) Any source, including an area source, subject to a standard, limitation, or other requirement under section 111 of the Act;

(3) Any source, including an area source, subject to a standard or other requirement under section 112 of the Act, except that a source is not required to obtain a permit solely because it is subject to regulations or requirements under section 112(r) of the Act;

(4) Any affected source; and

(5) Any source in a source category designated by the Administrator pursuant to this section.

(b) *Source category exemptions.* (1) All sources listed in paragraph (a) of this section that are not major sources, affected sources, or solid waste incineration units required to obtain a permit pursuant to section 129(e) of the Act are exempted from the obligation to obtain a part 71 permit until such time as the Administrator completes a rulemaking to determine how the program should be structured for nonmajor sources and the appropriateness of any permanent exemptions in addition to those provided for in paragraph (b)(4) of this section.

(2) In the case of nonmajor sources subject to a standard or other requirement under either section 111 or 112 of the Act after July 21, 1992 publication, the Administrator will determine whether to exempt any or all such applicable sources from the requirement to obtain a part 70 or part 71 permit at the time that the new standard is promulgated.

(3) Any source listed in paragraph (a) of this section exempt from the requirement to obtain a permit under this section may opt to apply for a permit under a part 71 program.

(4) The following source categories are exempted from the obligation to obtain a part 71 permit:

(i) All sources and source categories that would be required to obtain a permit solely because they are subject to 40 CFR part 60, Subpart AAA—-Standards of Performance for New Residential Wood Heaters; and

(ii) All sources and source categories that would be required to obtain a permit solely because they are subject to 40 CFR part 61, Subpart M—National Emission Standard for Hazardous Air

Pollutants for Asbestos, § 61.145, Standard for Demolition and Renovation.

(c) *Emissions units and part 71 sources.* (1) For major sources, the permitting authority shall include in the permit all applicable requirements for all relevant emissions units in the major source.

(2) For any nonmajor source subject to the part 71 program under paragraphs (a) or (b) of this section, the permitting authority shall include in the permit all applicable requirements applicable to emissions units that cause the source to be subject to the part 71 program.

(d) *Fugitive emissions.* Fugitive emissions from a part 71 source shall be included in the permit application and the part 71 permit in the same manner as stack emissions, regardless of whether the source category in question is included in the list of sources contained in the definition of major source.

§ 71.4 Program implementation.

(a) *Part 71 programs for States.* The Administrator will administer and enforce a full or partial operating permits program for a State (excluding Tribal areas) in the following situations:

(1) A program for a State meeting the requirements of part 70 of this chapter has not been granted full approval under § 70.4 of this chapter by the Administrator by July 31, 1996, and the State's part 70 program has not been granted interim approval under § 70.4(d) of this chapter for a period extending beyond July 31, 1996. The effective date of such a part 71 program is July 31, 1996.

(2) An operating permits program for a State which was granted interim approval under § 70.4(d) of this chapter has not been granted full approval by the Administrator by the expiration of the interim approval period or July 31, 1996, whichever is later. Such a part 71 program shall be effective upon expiration of the interim approval or July 31, 1996 whichever is later.

(3) Any partial part 71 program will be effective only in those portions of a State that are not covered by a partial part 70 program that has been granted full or interim approval by the Administrator pursuant to § 70.4(c) of this chapter.

(b) *Part 71 programs for Tribal areas.* The Administrator may administer and enforce an operating permits program for a Tribal area, as defined in § 71.2, or by a rulemaking, when an operating permits program for the area which meets the requirements of part 70 of this chapter has not been granted full or interim approval by the Administrator by July 31, 1996.

(1) [Reserved]

(2) The effective date of a part 71 program for a Tribal area shall be November 15, 1997.

(3) Notwithstanding paragraph (b)(2) of this section, the Administrator, in consultation with the governing body of the Tribal area, may adopt an earlier effective date.

(4) Notwithstanding paragraph (i)(2) of this section, within 2 years of the effective date of the part 71 program for the Tribal area, the Administrator shall take final action on permit applications from part 71 sources that are submitted within the first full year after the effective date of the part 71 program.

(c) *Part 71 programs imposed due to inadequate implementation.* (1) The Administrator will administer and enforce an operating permits program for a permitting authority if the Administrator has notified the permitting authority, in accordance with § 70.10(b)(1) of this chapter, of the Administrator's determination that a permitting authority is not adequately administering or enforcing its approved operating permits program, or any portion thereof, and the permitting authority fails to do either of the following:

(i) Correct the deficiencies within 18 months after the Administrator issues the notice; or

(ii) Take significant action to assure adequate administration and enforcement of the program within 90 days of the Administrator's notice.

(2) The effective date of a part 71 program promulgated in accordance with this paragraph (c) shall be:

(i) Two years after the Administrator's notice if the permitting authority has not corrected the deficiency within 18 months after the date of the Administrator's notice; or

(ii) Such earlier time as the Administrator determines appropriate if the permitting authority fails, within 90 days of the Administrator's notice, to take significant action to assure adequate administration and enforcement of the program.

(d) *Part 71 programs for OCS sources.* (1) Using the procedures of this part, the Administrator will issue permits to any source which is an outer continental shelf (OCS) source, as defined under § 55.2 of this chapter, is subject to the requirements of part 55 of this chapter and section 328(a) of the Act, is subject to the requirement to obtain a permit under title V of the Act, and is either:

(i) Located beyond 25 miles of States' seaward boundaries; or

(ii) Located within 25 miles of States' seaward boundaries and a part 71 program is being administered and enforced by the Administrator for the corresponding onshore area, as defined in § 55.2 of this chapter, for that source.

(2) The requirements of § 71.4(d)(1)(i) shall apply on July 31, 1996.

(3) The requirements of § 71.4(d)(1)(ii) apply upon the effective date of a part 71 program for the corresponding onshore area.

(e) *Part 71 program for permits issued to satisfy an EPA objection.* Using the procedures of this part and 40 CFR 70.8 (c) or (d), or 40 CFR 70.7(g)(4) or (5) (i) and (ii), as appropriate, the Administrator will deny, terminate, revise, revoke or reissue a permit which has been proposed or issued by a permitting authority or will issue a part 71 permit when:

(1) A permitting authority with an approved part 70 operating permits program fails to respond to a timely objection to the issuance of a permit made by the Administrator pursuant to section 505(b) of the Act and § 70.8(c) and (d) of this chapter.

(2) The Administrator, under § 70.7(g) of this chapter, finds that cause exists to reopen a permit and the permitting authority fails to either:

(i) Submit to the Administrator a proposed determination of termination, modification, or revocation and reissuance, as appropriate; or

(ii) Resolve any objection EPA makes to the permit which the permitting authority proposes to issue in response to EPA's finding of cause to reopen, and to terminate, revise, or revoke and reissue the permit in accordance with that objection.

(3) The requirements of this paragraph (e) shall apply on July 31, 1996.

(f) *Use of selected provisions of this part.* The Administrator may utilize any or all of the provisions of this part to administer the permitting process for individual sources or take action on individual permits, or may adopt through rulemaking portions of a State or Tribal program in combination with provisions of this part to administer a Federal program for the State or Tribal area in substitution of or addition to the Federal program otherwise required by this part.

(g) *Public notice of part 71 programs.* In taking action to administer and enforce an operating permits program under this part, the Administrator will publish a notice in the Federal Register informing the public of such action and the effective date of any part 71 program as set forth in § 71.4 (a), (b), (c), or (d)(1)(ii). The publication of this part in the Federal Register on July 1, 1996

serves as the notice for the part 71 permit programs described in § 71.4(d)(1) (i) and (e). The EPA will also publish a notice in the Federal Register of any delegation of a portion of the part 71 program to a State, eligible Tribe, or local agency pursuant to the provisions of § 71.10. In addition to notices published in the Federal Register under this paragraph (g), the Administrator will, to the extent practicable, publish notice in a newspaper of general circulation within the area subject to the part 71 program effectiveness or delegation, and will send a letter to the Tribal governing body for an Indian Tribe or the Governor (or his or her designee) of the affected area to provide notice of such effectiveness or delegation.

(h) *Effect of limited deficiencies in State or Tribal programs.* The Administrator may administer and enforce a part 71 program in a State or Tribal area even if only limited deficiencies exist either in the initial program submittal for a State or eligible Tribe under part 70 of this chapter or in an existing State or Tribal program that has been approved under part 70 of this chapter.

(i) *Transition plan for initial permit issuance.* If a full or partial part 71 program becomes effective in a State or Tribal area prior to the issuance of part 70 permits to all part 70 sources under an existing program that has been approved under part 70 of this chapter, the Administrator shall take final action on initial permit applications for all part 71 sources in accordance with the following transition plan.

(1) All part 71 sources that have not received part 70 permits shall submit permit applications under this part within 1 year after the effective date of the part 71 program.

(2) Final action shall be taken on at least one-third of such applications annually over a period not to exceed 3 years after such effective date.

(3) Any complete permit application containing an early reduction demonstration under section 112(i)(5) of the Act shall be acted on within 12 months of receipt of the complete application.

(4) Submittal of permit applications and the permitting of affected sources shall occur in accordance with the deadlines in title IV of the Act and 40 CFR parts 72 through 78.

(j) *Delegation of part 71 programs.* The Administrator may promulgate a part 71 program in a State or Tribal area and delegate part of the responsibility for administering the part 71 program to the State or eligible Tribe in accordance with the provisions of § 71.10; however, delegation of a part of a program will not constitute any type of approval of a State or Tribal operating permits program under part 70 of this chapter. Where only selected portions of a part 71 program are administered by the Administrator and the State or eligible Tribe is delegated the remaining portions of the program, the Delegation Agreement referred to in § 71.10 will define the respective roles of the State or eligible Tribe and the Administrator in administering and enforcing the part 71 operating permits program.

(k) *EPA administration and enforcement of part 70 permits.* When the Administrator administers and enforces a part 71 program after a determination and notice under § 70.10(b)(1) of this chapter that a State or Tribe is not adequately administering and enforcing an operating permits program approved under part 70 of this chapter, the Administrator will administer and enforce permits issued under the part 70 program until part 71 permits are issued using the procedures of part 71. Until such time as part 70 permits are replaced by part 71 permits, the Administrator will revise, reopen, revise, terminate, or revoke and reissue part 70 permits using the procedures of part 71 and will assess and collect fees in accordance with the provisions of § 71.9.

(l) *Transition to approved part 70 program.* The Administrator will suspend the issuance of part 71 permits promptly upon publication of notice of approval of a State or Tribal operating permits program that meets the requirements of part 70 of this chapter. The Administrator may retain jurisdiction over the part 71 permits for which the administrative or judicial review process is not complete and will address this issue in the notice of State program approval. After approval of a State or Tribal program and the suspension of issuance of part 71 permits by the Administrator:

(1) The Administrator, or the permitting authority acting as the Administrator's delegated agent, will continue to administer and enforce part 71 permits until they are replaced by permits issued under the approved part 70 program. Until such time as part 71 permits are replaced by part 70 permits, the Administrator will revise, reopen, revise, terminate, or revoke and reissue part 71 permits using the procedures of the part 71 program. However, if the Administrator has delegated authority to administer part 71 permits to a delegate agency, the delegate agency will revise, reopen, terminate, or revoke and reissue part 71 permits using the procedures of the approved part 70 program. If a part 71 permit expires prior to the issuance of a part 70 permit, all terms and conditions of the part 71 permit, including any permit shield that may be granted pursuant to § 71.6(f), shall remain in effect until the part 70 permit is issued or denied, provided that a timely and complete application for a permit renewal was submitted to the permitting authority in accordance with the requirements of the approved part 70 program.

(2) A State or local agency or Indian Tribe with an approved part 70 operating permits program may issue part 70 permits for all sources with part 71 permits in accordance with a permit issuance schedule approved as part of the approved part 70 program or may issue part 70 permits to such sources at the expiration of the part 71 permits.

(m) *Exemption for certain territories.* Upon petition by the Governor of Guam, American Samoa, the Virgin Islands, or the Commonwealth of the Northern Marianas Islands, the Administrator may exempt any source or class of sources in such territory from the requirement to have a part 71 permit under this chapter. Such an exemption does not exempt such source or class of sources from any requirement of section 112 of the Act, including the requirements of section 112 (g) or (j).

(1) Such exemption may be granted if the Administrator finds that compliance with part 71 is not feasible or is unreasonable due to unique geographical, meteorological, or economic factors of such territory, or such other local factors as the Administrator deems significant. Any such petition shall be considered in accordance with section 307(d) of the Act, and any exemption granted under this paragraph (m) shall be considered final action by the Administrator for the purposes of section 307(b) of the Act.

(2) The Administrator shall promptly notify the Committees on Energy and Commerce and on Interior and Insular Affairs of the House of Representatives and the Committees on Environment and Public Works and on Energy and Natural Resources of the Senate upon receipt of any petition under this paragraph (m) and of the approval or rejection of such petition and the basis for such action.

(n) *Retention of records.* The records for each draft, proposed, and final permit application, renewal, or modification shall be kept by the Administrator for a period of 5 years.

§ 71.5 Permit applications.

(a) *Duty to apply.* For each part 71 source, the owner or operator shall submit a timely and complete permit

application in accordance with this section.

(1) *Timely application.* (i) A timely application for a source which does not have an existing operating permit issued by a State under the State's approved part 70 program and is applying for a part 71 permit for the first time is one that is submitted within 12 months after the source becomes subject to the permit program or on or before such earlier date as the permitting authority may establish. Sources required to submit applications earlier than 12 months after the source becomes subject to the permit program will be notified of the earlier submittal date at least 6 months in advance of the date.

(ii) Part 71 sources required to meet the requirements under section 112(g) of the Act, or to have a permit under the preconstruction review program approved into the applicable implementation plan under part C or D of title I of the Act, shall file a complete application to obtain the part 71 permit or permit revision within 12 months after commencing operation or on or before such earlier date as the permitting authority may establish. Sources required to submit applications earlier than 12 months after the source becomes subject to the permit program will be notified of the earlier submittal date at least 6 months in advance of the date. Where an existing part 70 or 71 permit would prohibit such construction or change in operation, the source must obtain a permit revision before commencing operation.

(iii) For purposes of permit renewal, a timely application is one that is submitted at least 6 months but not more that 18 months prior to expiration of the part 70 or 71 permit.

(iv) Applications for initial phase II acid rain permits shall be submitted to the permitting authority by January 1, 1996 for sulfur dioxide, and by January 1, 1998 for nitrogen oxides.

(2) *Complete application.* To be deemed complete, an application must provide all information required pursuant to paragraph (c) of this section, except that applications for permit revision need supply such information only if it is related to the proposed change. To be found complete, an initial or renewal application must remit payment of fees owed under the fee schedule established pursuant to § 71.9(b). Information required under paragraph (c) of this section must be sufficient to evaluate the subject source and its application and to determine all applicable requirements. A responsible official must certify the submitted information consistent with paragraph (d) of this section. Unless the permitting authority determines that an application is not complete within 60 days of receipt of the application, such application shall be deemed to be complete, except as otherwise provided in § 71.7(a)(4). If, while processing an application that has been determined or deemed to be complete, the permitting authority determines that additional information is necessary to evaluate or take final action on that application, it may request such information in writing and set a reasonable deadline for a response. The source's ability to operate without a permit, as set forth in § 71.7(b), shall be in effect from the date the application is determined or deemed to be complete until the final permit is issued, provided that the applicant submits any requested additional information by the deadline specified by the permitting authority.

(3) *Confidential information.* An applicant may assert a business confidentiality claim for information requested by the permitting authority using procedures found at part 2, subpart B of this chapter.

(b) *Duty to supplement or correct application.* Any applicant who fails to submit any relevant facts or who has submitted incorrect information in a permit application shall, upon becoming aware of such failure or incorrect submittal, promptly submit such supplementary facts or corrected information. In addition, an applicant shall provide additional information as necessary to address any requirements that become applicable to the source after the date it filed a complete application but prior to release of a draft permit.

(c) *Standard application form and required information.* The permitting authority shall provide sources a standard application form or forms. The permitting authority may use discretion in developing application forms that best meet program needs and administrative efficiency. The forms and attachments chosen, however, shall include the elements specified below. An application may not omit information needed to determine the applicability of, or to impose, any applicable requirement, or to evaluate the fee amount required under the schedule established pursuant to § 71.9.

(1) Identifying information, including company name and address (or plant name and address if different from the company name), owner's name and agent, and telephone number and names of plant site manager/contact.

(2) A description of the source's processes and products (by Standard Industrial Classification Code) including any associated with each alternate scenario identified by the source.

(3) The following emissions-related information:

(i) All emissions of pollutants for which the source is major, and all emissions of regulated air pollutants. A permit application shall describe all emissions of regulated air pollutants emitted from any emissions unit, except where such units are exempted under this paragraph (c). The permitting authority shall require additional information related to the emissions of air pollutants sufficient to verify which requirements are applicable to the source, and other information necessary to collect any permit fees owed under the fee schedule established pursuant to § 71.9(b).

(ii) Identification and description of all points of emissions described in paragraph (c)(3)(i) of this section in sufficient detail to establish the basis for fees and applicability of requirements of the Act.

(iii) Emissions rates in tpy and in such terms as are necessary to establish compliance consistent with the applicable standard reference test method.

(iv) The following information to the extent it is needed to determine or regulate emissions: fuels, fuel use, raw materials, production rates, and operating schedules.

(v) Identification and description of air pollution control equipment and compliance monitoring devices or activities.

(vi) Limitations on source operation affecting emissions or any work practice standards, where applicable, for all regulated pollutants at the part 71 source.

(vii) Other information required by any applicable requirement (including information related to stack height limitations developed pursuant to section 123 of the Act).

(viii) Calculations on which the information in paragraphs (c)(3) (i) through (vii) of this section is based.

(4) The following air pollution control requirements:

(i) Citation and description of all applicable requirements; and

(ii) Description of or reference to any applicable test method for determining compliance with each applicable requirement.

(5) Other specific information that may be necessary to implement and enforce other applicable requirements of the Act or of this part or to determine the applicability of such requirements.

(6) An explanation of any proposed exemptions from otherwise applicable requirements.

(7) Additional information as determined to be necessary by the permitting authority to define alternative operating scenarios identified by the source pursuant to § 71.6(a)(9) or to define permit terms and conditions implementing § 71.6(a)(10) or § 71.6(a)(13).

(8) A compliance plan for all part 71 sources that contains all the following:

(i) A description of the compliance status of the source with respect to all applicable requirements.

(ii) A description as follows:

(A) For applicable requirements with which the source is in compliance, a statement that the source will continue to comply with such requirements.

(B) For applicable requirements that will become effective during the permit term, a statement that the source will meet such requirements on a timely basis.

(C) For requirements for which the source is not in compliance at the time of permit issuance, a narrative description of how the source will achieve compliance with such requirements.

(iii) A compliance schedule as follows:

(A) For applicable requirements with which the source is in compliance, a statement that the source will continue to comply with such requirements.

(B) For applicable requirements that will become effective during the permit term, a statement that the source will meet such requirements on a timely basis. A statement that the source will meet in a timely manner applicable requirements that become effective during the permit term shall satisfy this provision, unless a more detailed schedule is expressly required by the applicable requirement.

(C) A schedule of compliance for sources that are not in compliance with all applicable requirements at the time of permit issuance. Such a schedule shall include a schedule of remedial measures, including an enforceable sequence of actions with milestones, leading to compliance with any applicable requirements for which the source will be in noncompliance at the time of permit issuance. This compliance schedule shall resemble and be at least as stringent as that contained in any judicial consent decree or administrative order to which the source is subject. Any such schedule of compliance shall be supplemental to, and shall not sanction noncompliance with, the applicable requirements on which it is based.

(iv) A schedule for submission of certified progress reports no less frequently than every 6 months for sources required to have a schedule of compliance to remedy a violation.

(v) The compliance plan content requirements specified in this paragraph shall apply and be included in the acid rain portion of a compliance plan for an affected source, except as specifically superseded by regulations promulgated under parts 72 through 78 of this chapter with regard to the schedule and method(s) the source will use to achieve compliance with the acid rain emissions limitations.

(9) Requirements for compliance certification, including the following:

(i) A certification of compliance with all applicable requirements by a responsible official consistent with paragraph (d) of this section and section 114(a)(3) of the Act;

(ii) A statement of methods used for determining compliance, including a description of monitoring, recordkeeping, and reporting requirements and test methods;

(iii) A schedule for submission of compliance certifications during the permit term, to be submitted no less frequently than annually, or more frequently if specified by the underlying applicable requirement or by the permitting authority; and

(iv) A statement indicating the source's compliance status with any applicable enhanced monitoring and compliance certification requirements of the Act.

(10) The use of nationally-standardized forms for acid rain portions of permit applications and compliance plans, as required by regulations promulgated under parts 72 through 78 of this chapter.

(11) *Insignificant activities and emissions levels.* The following types of insignificant activities and emissions levels need not be included in permit applications. However, for insignificant activities which are exempted because of size or production rate, a list of such insignificant activities must be included in the application. An application may not omit information needed to determine the applicability of, or to impose, any applicable requirement, or to calculate the fee amount required under the schedule established pursuant to § 71.9 of this part.

(i) *Insignificant activities:*

(A) Mobile sources;

(B) Air-conditioning units used for human comfort that are not subject to applicable requirements under title VI of the Act and do not exhaust air pollutants into the ambient air from any manufacturing or other industrial process;

(C) Ventilating units used for human comfort that do not exhaust air pollutants into the ambient air from any manufacturing or other industrial process;

(D) Heating units used for human comfort that do not provide heat for any manufacturing or other industrial process;

(E) Noncommercial food preparation;

(F) Consumer use of office equipment and products;

(G) Janitorial services and consumer use of janitorial products; and

(H) Internal combustion engines used for landscaping purposes.

(ii) *Insignificant emissions levels.* Emissions meeting the criteria in paragraph (c)(11)(ii)(A) or (c)(11)(ii)(B) of this section need not be included in the application, but must be listed with sufficient detail to identify the emission unit and indicate that the exemption applies. Similar emission units, including similar capacities or sizes, may be listed under a single description, provided the number of emission units is included in the description. No additional information is required at time of application, but the permitting authority may request additional information during application processing.

(A) *Emission criteria for regulated air pollutants, excluding hazardous air pollutants (HAP).* Potential to emit of regulated air pollutants, excluding HAP, for any single emissions unit shall not exceed 2 tpy.

(B) *Emission criteria for HAP.* Potential to emit of any HAP from any single emissions unit shall not exceed 1,000 lb per year or the de minimis level established under section 112(g) of the Act, whichever is less.

(d) Any application form, report, or compliance certification submitted pursuant to these regulations shall contain certification by a responsible official of truth, accuracy, and completeness. This certification and any other certification required under this part shall state that, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete.

§ 71.6 Permit content.

(a) *Standard permit requirements.* Each permit issued under this part shall include the following elements:

(1) Emission limitations and standards, including those operational requirements and limitations that assure compliance with all applicable requirements at the time of permit issuance.

(i) The permit shall specify and reference the origin of and authority for each term or condition, and identify any

difference in form as compared to the applicable requirement upon which the term or condition is based.

(ii) The permit shall state that, where an applicable requirement of the Act is more stringent than an applicable requirement of 40 CFR parts 72 through 78, both provisions shall be incorporated into the permit and shall be enforceable by the Administrator.

(iii) If an applicable implementation plan allows a determination of an alternative emission limit at a part 71 source, equivalent to that contained in the plan, to be made in the permit issuance, renewal, or significant modification process, and the permitting authority elects to use such process, any permit containing such equivalency determination shall contain provisions to ensure that any resulting emissions limit has been demonstrated to be quantifiable, accountable, enforceable, and based on replicable procedures.

(2) *Permit duration.* The permitting authority shall issue permits for a fixed term of 5 years in the case of affected sources, and for a term not to exceed 5 years in the case of all other sources. Notwithstanding this requirement, the permitting authority shall issue permits for solid waste incineration units combusting municipal waste subject to standards under section 129(e) of the Act for a period not to exceed 12 years and shall review such permits at least every 5 years.

(3) *Monitoring and related recordkeeping and reporting requirements.* (i) Each permit shall contain the following requirements with respect to monitoring:

(A) All emissions monitoring and analysis procedures or test methods required under the applicable requirements, including any procedures and methods promulgated pursuant to sections 114(a)(3) or 504(b) of the Act;

(B) Where the applicable requirement does not require periodic testing or instrumental or noninstrumental monitoring (which may consist of recordkeeping designed to serve as monitoring), periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of the source's compliance with the permit, as reported pursuant to paragraph (a)(3)(iii) of this section. Such monitoring requirements shall assure use of terms, test methods, units, averaging periods, and other statistical conventions consistent with the applicable requirement. Recordkeeping provisions may be sufficient to meet the requirements of this paragraph (a)(3)(i)(B); and

(C) As necessary, requirements concerning the use, maintenance, and, where appropriate, installation of monitoring equipment or methods.

(ii) With respect to recordkeeping, the permit shall incorporate all applicable recordkeeping requirements and require, where applicable, the following:

(A) Records of required monitoring information that include the following:

(*1*) The date, place as defined in the permit, and time of sampling or measurements;

(*2*) The date(s) analyses were performed;

(*3*) The company or entity that performed the analyses;

(*4*) The analytical techniques or methods used;

(*5*) The results of such analyses; and

(*6*) The operating conditions as existing at the time of sampling or measurement;

(B) Retention of records of all required monitoring data and support information for a period of at least 5 years from the date of the monitoring sample, measurement, report, or application. Support information includes all calibration and maintenance records and all original strip-chart recordings for continuous monitoring instrumentation, and copies of all reports required by the permit.

(iii) With respect to reporting, the permit shall incorporate all applicable reporting requirements and require the following:

(A) Submittal of reports of any required monitoring at least every 6 months. All instances of deviations from permit requirements must be clearly identified in such reports. All required reports must be certified by a responsible official consistent with § 71.5(d).

(B) Prompt reporting of deviations from permit requirements, including those attributable to upset conditions as defined in the permit, the probable cause of such deviations, and any corrective actions or preventive measures taken. Where the underlying applicable requirement contains a definition of prompt or otherwise specifies a time frame for reporting deviations, that definition or time frame shall govern. Where the underlying applicable requirement fails to address the time frame for reporting deviations, reports of deviations shall be submitted to the permitting authority based on the following schedule:

(*1*) For emissions of a hazardous air pollutant or a toxic air pollutant (as identified in an applicable regulation) that continue for more than an hour in excess of permit requirements, the report must be made with 24 hours of the occurrence.

(*2*) For emissions of any regulated air pollutant, excluding those listed in paragraph (a)(3)(iii)(B)(*1*) of this section, that continue for more than two hours in excess of permit requirements, the report must be made within 48 hours.

(*3*) For all other deviations from permit requirements, the report shall be contained in the report submitted in accordance with the timeframe given in paragraph (a)(3)(iii)(A).

(*4*) A permit may contain a more stringent reporting requirement than required by paragraphs (a)(3)(iii)(B)(*1*), (*2*), or (*3*).

If any of the above conditions are met, the source must notify the permitting authority by telephone or facsimile based on the timetable listed in paragraphs (a)(3)(iii)(B) (*1*) through (*4*) of this section. A written notice, certified consistent with § 71.5(d), must be submitted within 10 working days of the occurrence. All deviations reported under paragraph (a)(3)(iii)(A) of this section must also be identified in the 6 month report required under paragraph (a)(3)(iii)(A) of this section.

(C) For purposes of paragraph (a)(3)(iii)(B) of this section, deviation means any condition determined by observation, by data from any monitoring protocol, or by any other monitoring which is required by the permit that can be used to determine compliance, that identifies that an emission unit subject to a part 71 permit term or condition has failed to meet an applicable emission limitation or standard or that a work practice was not complied with or completed. For a condition lasting more than 24 hours which constitutes a deviation, each 24 hour period is considered a separate deviation. Included in the meaning of deviation are any of the following:

(*1*) A condition where emissions exceed an emission limitation or standard;

(*2*) A condition where process or control device parameter values demonstrate that an emission limitation or standard has not been met;

(*3*) Any other condition in which observations or data collected demonstrates noncompliance with an emission limitation or standard or any work practice or operating condition required by the permit.

(4) A permit condition prohibiting emissions exceeding any allowances that the source lawfully holds under 40 CFR parts 72 through 78.

(i) No permit revision shall be required for increases in emissions that are authorized by allowances acquired pursuant to the acid rain program,

provided that such increases do not require a permit revision under any other applicable requirement.

(ii) No limit shall be placed on the number of allowances held by the source. The source may not, however, use allowances as a defense to noncompliance with any other applicable requirement.

(iii) Any such allowance shall be accounted for according to the procedures established in regulations 40 CFR parts 72 through 78.

(5) A severability clause to ensure the continued validity of the various permit requirements in the event of a challenge to any portions of the permit.

(6) Provisions stating the following:

(i) The permittee must comply with all conditions of the part 71 permit. Any permit noncompliance constitutes a violation of the Act and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application.

(ii) Need to halt or reduce activity not a defense. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

(iii) The permit may be modified, revoked, reopened, and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or of a notification of planned changes or anticipated noncompliance does not stay any permit condition.

(iv) The permit does not convey any property rights of any sort, or any exclusive privilege.

(v) The permittee shall furnish to the permitting authority, within a reasonable time, any information that the permitting authority may request in writing to determine whether cause exists for modifying, revoking and reissuing, or terminating the permit or to determine compliance with the permit. Upon request, the permittee shall also furnish to the permitting authority copies of records required to be kept by the permit or, in the case of a program delegated pursuant to § 71.10, for information claimed to be confidential, the permittee may furnish such records directly to the Administrator along with a claim of confidentiality.

(7) A provision to ensure that a part 71 source pays fees to the Administrator consistent with the fee schedule approved pursuant to § 71.9.

(8) *Emissions trading.* A provision stating that no permit revision shall be required, under any approved economic incentives, marketable permits, emissions trading and other similar programs or processes for changes that are provided for in the permit.

(9) Terms and conditions for reasonably anticipated operating scenarios identified by the source in its application as approved by the permitting authority. Such terms and conditions:

(i) Shall require the source, contemporaneously with making a change from one operating scenario to another, to record in a log at the permitted facility a record of the scenario under which it is operating;

(ii) May extend the permit shield described in paragraph (f) of this section to all terms and conditions under each such operating scenario; and

(iii) Must ensure that the terms and conditions of each such alternative scenario meet all applicable requirements and the requirements of this part.

(10) Terms and conditions, if the permit applicant requests them, for the trading of emissions increases and decreases in the permitted facility, to the extent that the applicable requirements provide for trading such increases and decreases without a case-by-case approval of each emissions trade. Such terms and conditions:

(i) Shall include all terms required under paragraphs (a) and (c) of this section to determine compliance;

(ii) May extend the permit shield described in paragraph (f) of this section to all terms and conditions that allow such increases and decreases in emissions; and

(iii) Must meet all applicable requirements and requirements of this part.

(11) *Permit expiration.* A provision to ensure that a part 71 permit expires upon the earlier occurrence of the following events:

(i) twelve years elapses from the date of issuance to a solid waste incineration unit combusting municipal waste subject to standards under section 112(e) of the Act; or

(ii) five years elapses from the date of issuance; or

(iii) the source is issued a part 70 permit.

(12) *Off Permit Changes.* A provision allowing changes that are not addressed or prohibited by the permit, other than those subject to the requirements of 40 CFR parts 72 through 78 or those that are modifications under any provision of title I of the Act to be made without a permit revision, provided that the following requirements are met:

(i) Each such change shall meet all applicable requirements and shall not violate any existing permit term or condition;

(ii) Sources must provide contemporaneous written notice to the permitting authority (and EPA, in the case of a program delegated pursuant to § 71.10) of each such change, except for changes that qualify as insignificant under § 71.5(c)(11). Such written notice shall describe each such change, including the date, any change in emissions, pollutants emitted, and any applicable requirement that would apply as a result of the change;

(iii) The change shall not qualify for the shield under § 71.6(f);

(iv) The permittee shall keep a record describing changes made at the source that result in emissions of a regulated air pollutant subject to an applicable requirement, but not otherwise regulated under the permit, and the emissions resulting from those changes.

(13) *Operational flexibility.* Provisions consistent with paragraphs (a)(3)(i) through (iii) of this section to allow changes within a permitted facility without requiring a permit revision, if the changes are not modifications under any provision of title I of the Act and the changes do not exceed the emissions allowable under the permit (whether expressed therein as a rate of emissions or in terms of total emissions): Provided, that the facility provides the Administrator (in the case of a program delegated pursuant to § 71.10) and the permitting authority with written notification as required below in advance of the proposed changes, which shall be a minimum of 7 days.

(i) The permit shall allow the permitted source to make section 502(b)(10) changes without requiring a permit revision, if the changes are not modifications under any provision of title I of the Act and the changes do not exceed the emissions allowable under the permit (whether expressed therein as a rate of emissions or in terms of total emissions).

(A) For each such change, the written notification required above shall include a brief description of the change within the permitted facility, the date on which the change will occur, any change in emissions, and any permit term or condition that is no longer applicable as a result of the change.

(B) The permit shield described in § 71.6(f) shall not apply to any change made pursuant to this paragraph (a)(13)(i).

(ii) The permit may provide for the permitted source to trade increases and decreases in emissions in the permitted facility, where the applicable

implementation plan provides for such emissions trades without requiring a permit revision and based on the 7-day notice prescribed in this paragraph (a)(13)(ii) of this section. This provision is available in those cases where the permit does not already provide for such emissions trading.

(A) Under this paragraph (a)(13)(ii), the written notification required above shall include such information as may be required by the provision in the applicable implementation plan authorizing the emissions trade, including at a minimum, when the proposed change will occur, a description of each such change, any change in emissions, the permit requirements with which the source will comply using the emissions trading provisions of the applicable implementation plan, and the pollutants emitted subject to the emissions trade. The notice shall also refer to the provisions with which the source will comply in the applicable implementation plan and that provide for the emissions trade.

(B) The permit shield described in § 71.6(f) shall not extend to any change made under this paragraph (a)(13)(ii). Compliance with the permit requirements that the source will meet using the emissions trade shall be determined according to requirements of the applicable implementation plan authorizing the emissions trade.

(iii) The permit shall require the permitting authority, if a permit applicant requests it, to issue permits that contain terms and conditions, including all terms required under § 71.6 (a) and (c) to determine compliance, allowing for the trading of emissions increases and decreases in the permitted facility solely for the purpose of complying with a federally-enforceable emissions cap that is established in the permit independent of otherwise applicable requirements. The permit applicant shall include in its application proposed replicable procedures and permit terms that ensure the emissions trades are quantifiable and enforceable. The permitting authority shall not be required to include in the emissions trading provisions any emissions units for which emissions are not quantifiable or for which there are no replicable procedures to enforce the emissions trades. The permit shall also require compliance with all applicable requirements.

(A) Under this paragraph (a)(13)(iii), the written notification required above shall state when the change will occur and shall describe the changes in emissions that will result and how these increases and decreases in emissions will comply with the terms and conditions of the permit.

(B) The permit shield described in § 71.6(f) may extend to terms and conditions that allow such increases and decreases in emissions.

(b) *Federally-enforceable requirements.* All terms and conditions in a part 71 permit, including any provisions designed to limit a source's potential to emit, are enforceable by the Administrator and citizens under the Act.

(c) *Compliance requirements.* All part 71 permits shall contain the following elements with respect to compliance:

(1) Consistent with paragraph (a)(3) of this section, compliance certification, testing, monitoring, reporting, and recordkeeping requirements sufficient to assure compliance with the terms and conditions of the permit. Any document (including reports) required by a part 71 permit shall contain a certification by a responsible official that meets the requirements of § 71.5(d).

(2) Inspection and entry requirements that require that, upon presentation of credentials and other documents as may be required by law, the permittee shall allow the permitting authority or an authorized representative to perform the following:

(i) Enter upon the permittee's premises where a part 71 source is located or emissions-related activity is conducted, or where records must be kept under the conditions of the permit;

(ii) Have access to and copy, at reasonable times, any records that must be kept under the conditions of the permit;

(iii) Inspect at reasonable times any facilities, equipment (including monitoring and air pollution control equipment), practices, or operations regulated or required under the permit; and

(iv) As authorized by the Act, sample or monitor at reasonable times substances or parameters for the purpose of assuring compliance with the permit or applicable requirements.

(3) A schedule of compliance consistent with § 71.5(c)(8).

(4) Progress reports consistent with an applicable schedule of compliance and § 71.5(c)(8) to be submitted at least semiannually, or at a more frequent period if specified in the applicable requirement or by the permitting authority. Such progress reports shall contain the following:

(i) Dates for achieving the activities, milestones, or compliance required in the schedule of compliance, and dates when such activities, milestones or compliance were achieved; and

(ii) An explanation of why any dates in the schedule of compliance were not or will not be met, and any preventive or corrective measures adopted.

(5) Requirements for compliance certification with terms and conditions contained in the permit, including emission limitations, standards, or work practices. Permits shall include each of the following:

(i) The frequency (not less than annually or such more frequent periods as specified in the applicable requirement or by the permitting authority) of submissions of compliance certifications;

(ii) In accordance with § 71.6(a)(3), a means for monitoring the compliance of the source with its emissions limitations, standards, and work practices;

(iii) A requirement that the compliance certification include the following:

(A) The identification of each term or condition of the permit that is the basis of the certification;

(B) The compliance status;

(C) Whether compliance was continuous or intermittent;

(D) The method(s) used for determining the compliance status of the source, currently and over the reporting period consistent with paragraph (a)(3) of this section; and

(E) Such other facts as the permitting authority may require to determine the compliance status of the source;

(iv) A requirement that all compliance certifications be submitted to the Administrator as well as to the permitting authority; and

(v) Such additional requirements as may be specified pursuant to sections 114(a)(3) and 504(b) of the Act.

(6) Such other provisions as the permitting authority may require.

(d) *General permits.* (1) The permitting authority may, after notice and opportunity for public participation provided under § 71.11, issue a general permit covering numerous similar sources. Any general permit shall comply with all requirements applicable to other part 71 permits and shall identify criteria by which sources may qualify for the general permit. To sources that qualify, the permitting authority shall grant the conditions and terms of the general permit. Notwithstanding the shield provisions of paragraph (f) of this section, the source shall be subject to enforcement action for operation without a part 71 permit if the source is later determined not to qualify for the conditions and terms of the general permit. General permits shall not be authorized for affected sources under the acid rain

program unless otherwise provided in 40 CFR parts 72 through 78.

(2) Part 71 sources that would qualify for a general permit must apply to the permitting authority for coverage under the terms of the general permit or must apply for a part 71 permit consistent with § 71.5. The permitting authority may, in the general permit, provide for applications which deviate from the requirements of § 71.5, provided that such applications meet the requirements of title V of the Act, and include all information necessary to determine qualification for, and to assure compliance with, the general permit. Without repeating the public participation procedures required under § 71.11, the permitting authority may grant a source's request for authorization to operate under a general permit, but such a grant shall not be a final permit action for purposes of judicial review.

(e) *Temporary sources.* The permitting authority may issue a single permit authorizing emissions from similar operations by the same source owner or operator at multiple temporary locations. The operation must be temporary and involve at least one change of location during the term of the permit. No affected source shall be permitted as a temporary source. Permits for temporary sources shall include the following:

(1) Conditions that will assure compliance with all applicable requirements at all authorized locations;

(2) Requirements that the owner or operator notify the permitting authority at least 10 days in advance of each change in location; and

(3) Conditions that assure compliance with all other provisions of this section.

(f) *Permit shield.* (1) Except as provided in this part, the permitting authority may expressly include in a part 71 permit a provision stating that compliance with the conditions of the permit shall be deemed compliance with any applicable requirements as of the date of permit issuance, provided that:

(i) Such applicable requirements are included and are specifically identified in the permit; or

(ii) The permitting authority, in acting on the permit application or revision, determines in writing that other requirements specifically identified are not applicable to the source, and the permit includes the determination or a concise summary thereof.

(2) A part 71 permit that does not expressly state that a permit shield exists shall be presumed not to provide such a shield.

(3) Nothing in this paragraph or in any part 71 permit shall alter or affect the following:

(i) The provisions of section 303 of the Act (emergency orders), including the authority of the Administrator under that section;

(ii) The liability of an owner or operator of a source for any violation of applicable requirements prior to or at the time of permit issuance;

(iii) The applicable requirements of the acid rain program, consistent with section 408(a) of the Act; or

(iv) The ability of EPA to obtain information from a source pursuant to section 114 of the Act.

(g) *Emergency provision.* (1) *Definition.* An ''emergency'' means any situation arising from sudden and reasonably unforeseeable events beyond the control of the source, including acts of God, which situation requires immediate corrective action to restore normal operation, and that causes the source to exceed a technology-based emission limitation under the permit, due to unavoidable increases in emissions attributable to the emergency. An emergency shall not include noncompliance to the extent caused by improperly designed equipment, lack of preventative maintenance, careless or improper operation, or operator error.

(2) *Effect of an emergency.* An emergency constitutes an affirmative defense to an action brought for noncompliance with such technology-based emission limitations if the conditions of paragraph (g)(3) of this section are met.

(3) The affirmative defense of emergency shall be demonstrated through properly signed, contemporaneous operating logs, or other relevant evidence that:

(i) An emergency occurred and that the permittee can identify the cause(s) of the emergency;

(ii) The permitted facility was at the time being properly operated;

(iii) During the period of the emergency the permittee took all reasonable steps to minimize levels of emissions that exceeded the emission standards, or other requirements in the permit; and

(iv) The permittee submitted notice of the emergency to the permitting authority within 2 working days of the time when emission limitations were exceeded due to the emergency. This notice fulfills the requirement of paragraph (a)(3)(iii)(B) of this section. This notice must contain a description of the emergency, any steps taken to mitigate emissions, and corrective actions taken.

(4) In any enforcement proceeding, the permittee seeking to establish the occurrence of an emergency has the burden of proof.

(5) This provision is in addition to any emergency or upset provision contained in any applicable requirement.

§ 71.7 Permit issuance, renewal, reopenings, and revisions.

(a) *Action on application.* (1) A permit, permit modification, or renewal may be issued only if all of the following conditions have been met:

(i) The permitting authority has received a complete application for a permit, permit modification, or permit renewal, except that a complete application need not be received before issuance of a general permit under § 71.6(d);

(ii) Except for modifications qualifying for minor permit modification procedures under paragraphs (e) (1) and (2) of this section, the permitting authority has complied with the requirements for public participation under this section or § 71.11, as applicable;

(iii) The permitting authority has complied with the requirements for notifying and responding to affected States under § 71.8(a);

(iv) The conditions of the permit provide for compliance with all applicable requirements and the requirements of this part; and

(v) In the case of a program delegated pursuant to § 71.10, the Administrator has received a copy of the proposed permit and any notices required under § 71.10(d) and has not objected to issuance of the permit under § 71.10(g) within the time period specified therein.

(2) Except as provided under the initial transition plan provided for under § 71.4(i) or under 40 CFR part 72 or title V of the Act for the permitting of affected sources under the acid rain program, the permitting authority shall take final action on each permit application (including a request for permit modification or renewal) within 18 months after receiving a complete application.

(3) The permitting authority shall ensure that priority is given to taking action on applications for construction or modification under title I, parts C and D of the Act.

(4) The permitting authority shall promptly provide notice to the applicant of whether the application is complete. Unless the permitting authority requests additional information or otherwise notifies the applicant of incompleteness within 60 days of receipt of an application, the

application shall be deemed complete. For modifications processed through minor permit modification procedures, such as those in paragraphs (e) (1) and (2) of this section, the permitting authority need not make a completeness determination.

(5) The permitting authority shall provide a statement that sets forth the legal and factual basis for the draft permit conditions (including references to the applicable statutory or regulatory provisions). The permitting authority shall send this statement to any person who requests it, and to EPA, in the case of a program delegated pursuant to § 71.10.

(6) The submittal of a complete application shall not affect the requirement that any source have a preconstruction permit under title I of the Act.

(b) *Requirement for a permit.* Except as provided in the following sentence, § 71.6(a)(13), and paragraphs (e)(1)(v) and e(2)(v) of this section, no part 71 source may operate after the time that it is required to submit a timely and complete application under this part, except in compliance with a permit issued under this part. If a part 71 source submits a timely and complete application for permit issuance (including for renewal), the source's failure to have a part 71 permit is not a violation of this part until the permitting authority takes final action on the permit application, except as noted in this section. This protection shall cease to apply if, subsequent to the completeness determination made pursuant to paragraph (a)(4) of this section, and as required by § 71.5(c), the applicant fails to submit by the deadline specified in writing by the permitting authority any additional information identified as being needed to process the application.

(c) *Permit renewal and expiration.* (1) (i) Permits being renewed are subject to the same procedural requirements, including those for public participation, affected State review, and EPA review (in the case of a program delegated pursuant to § 71.10) that apply to initial permit issuance.

(ii) Permit expiration terminates the source's right to operate unless a timely and complete renewal application has been submitted consistent with paragraph (b) of this section and § 71.5(a)(1)(iii).

(2) In the case of a program delegated pursuant to § 71.10, if the permitting authority fails to act in a timely way on permit renewal, EPA may invoke its authority under section 505(e) of the Act to terminate or revoke and reissue the permit.

(3) If a timely and complete application for a permit renewal is submitted, consistent with § 71.5(a)(2), but the permitting authority has failed to issue or deny the renewal permit before the end of the term of the previous part 70 or 71 permit, then the permit shall not expire until the renewal permit has been issued or denied and any permit shield that may be granted pursuant to § 71.6(f) may extend beyond the original permit term until renewal; or all the terms and conditions of the permit including any permit shield that may be granted pursuant to § 71.6(f) shall remain in effect until the renewal permit has been issued or denied.

(d) *Administrative permit amendments.* (1) An ''administrative permit amendment'' is a permit revision that:

(i) Corrects typographical errors;

(ii) Identifies a change in the name, address, or phone number of any person identified in the permit, or provides a similar minor administrative change at the source;

(iii) Requires more frequent monitoring or reporting by the permittee;

(iv) Allows for a change in ownership or operational control of a source where the permitting authority determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittee has been submitted to the permitting authority;

(v) Incorporates into the part 71 permit the requirements from preconstruction review permits authorized under an EPA-approved program, provided that such a program meets procedural requirements substantially equivalent to the requirements of §§ 71.7 and 71.8 (and § 71.10 in the case of a delegated program) that would be applicable to the change if it were subject to review as a permit modification, and compliance requirements substantially equivalent to those contained in § 71.6; or

(vi) Incorporates any other type of change which the Administrator has determined to be similar to those in paragraphs (d)(1)(i) through (iv) of this section.

(2) Administrative permit amendments for purposes of the acid rain portion of the permit shall be governed by 40 CFR part 72.

(3) *Administrative permit amendment procedures.* An administrative permit amendment may be made by the permitting authority consistent with the following:

(i) The permitting authority shall take no more than 60 days from receipt of a request for an administrative permit amendment to take final action on such request, and may incorporate such changes without providing notice to the public or affected States provided that it designates any such permit revisions as having been made pursuant to this paragraph.

(ii) The permitting authority shall submit a copy of the revised permit to the Administrator in the case of a program delegated pursuant to § 71.10.

(iii) The source may implement the changes addressed in the request for an administrative amendment immediately upon submittal of the request.

(4) The permitting authority may, upon taking final action granting a request for an administrative permit amendment, allow coverage by the permit shield in § 71.6(f) for administrative permit amendments made pursuant to paragraph (d)(1)(v) of this section which meet the relevant requirements of §§ 71.6, 71.7, and 71.8 for significant permit modifications.

(e) *Permit modifications.* A permit modification is any revision to a part 71 permit that cannot be accomplished under the provisions for administrative permit amendments under paragraph (d) of this section. A permit modification for purposes of the acid rain portion of the permit shall be governed by 40 CFR part 72.

(1) *Minor permit modification procedures.*

(i) Criteria.

(A) Minor permit modification procedures may be used only for those permit modifications that:

(*1*) Do not violate any applicable requirement;

(*2*) Do not involve significant changes to existing monitoring, reporting, or recordkeeping requirements in the permit;

(*3*) Do not require or change a case-by-case determination of an emission limitation or other standard, or a source-specific determination for temporary sources of ambient impacts, or a visibility or increment analysis;

(*4*) Do not seek to establish or change a permit term or condition for which there is no corresponding underlying applicable requirement and that the source has assumed to avoid an applicable requirement to which the source would otherwise be subject. Such terms and conditions include:

(*i*) A federally enforceable emissions cap assumed to avoid classification as a modification under any provision of title I; and

(*ii*) An alternative emissions limit approved pursuant to regulations

promulgated under section 112(i)(5) of the Act;

(*5*) Are not modifications under any provision of title I of the Act; and

(*6*) Are not required to be processed as a significant modification.

(B) Notwithstanding paragraphs (e)(1)(i)(A) and (e)(2)(i) of this section, minor permit modification procedures may be used for permit modifications involving the use of economic incentives, marketable permits, emissions trading, and other similar approaches, to the extent that such minor permit modification procedures are explicitly provided for in an applicable implementation plan or in applicable requirements promulgated by EPA.

(ii) *Application.* An application requesting the use of minor permit modification procedures shall meet the requirements of § 71.5(c) and shall include the following:

(A) A description of the change, the emissions resulting from the change, and any new applicable requirements that will apply if the change occurs;

(B) The source's suggested draft permit;

(C) Certification by a responsible official, consistent with § 71.5(d), that the proposed modification meets the criteria for use of minor permit modification procedures and a request that such procedures be used; and

(D) Completed forms for the permitting authority to use to notify affected States (and the Administrator in the case of a program delegated pursuant to § 71.10) as required under §§ 71.8 and 71.10(d).

(iii) *EPA and affected State notification.* Within 5 working days of receipt of a complete permit modification application, the permitting authority shall meet its obligation under § 71.8(a) to notify affected States (and its obligation under § 71.10(d) to notify the Administrator in the case of a program delegated pursuant to § 71.10) of the requested permit modification. In the case of a program delegated pursuant to § 71.10, the permitting authority promptly shall send any notice required under § 71.8(b) to the Administrator.

(iv) *Timetable for issuance.* In the case of a program delegated pursuant to § 71.10, the permitting authority may not issue a final permit modification until after EPA's 45-day review period or until EPA has notified the permitting authority that EPA will not object to issuance of the permit modification, whichever is first, although the permitting authority can approve the permit modification prior to that time. Within 90 days of the permitting authority's receipt of an application under minor permit modification procedures (or 15 days after the end of the Administrator's 45-day review period under § 71.10(g) in the case of a program delegated pursuant to § 71.10, whichever is later), the permitting authority shall:

(A) Issue the permit modification as proposed;

(B) Deny the permit modification application;

(C) Determine that the requested modification does not meet the minor permit modification criteria and should be reviewed under the significant modification procedures; or

(D) Revise the draft permit modification (and, in the case of a program delegated pursuant to § 71.10, transmit to the Administrator the new proposed permit modification as required by § 71.10(d)).

(v) *Source's ability to make change.* The source may make the change proposed in its minor permit modification application immediately after it files such application. After the source makes the change allowed by the preceding sentence, and until the permitting authority takes any of the actions specified in paragraphs (e)(1)(iv)(A) through (C) of this section, the source must comply with both the applicable requirements governing the change and the proposed permit terms and conditions. During this time period, the source need not comply with the existing permit terms and conditions it seeks to modify. However, if the source fails to comply with its proposed permit terms and conditions during this time period, the existing permit terms and conditions it seeks to modify may be enforced against it.

(vi) *Permit shield.* The permit shield under § 71.6(f) may not extend to minor permit modifications.

(2) *Group processing of minor permit modifications.* Consistent with this paragraph, the permitting authority may modify the procedure outlined in paragraph (e)(1) of this section to process groups of a source's applications for certain modifications eligible for minor permit modification processing.

(i) *Criteria.* Group processing of modifications may be used only for those permit modifications:

(A) That meet the criteria for minor permit modification procedures under paragraph (e)(1)(i)(A) of this section; and

(B) That collectively are below the threshold level of 10 percent of the emissions allowed by the permit for the emissions unit for which the change is requested, 20 percent of the applicable definition of major source in § 71.2, or 5 tpy, whichever is least.

(ii) *Application.* An application requesting the use of group processing procedures shall meet the requirements of § 71.5(c) and shall include the following:

(A) A description of the change, the emissions resulting from the change, and any new applicable requirements that will apply if the change occurs.

(B) The source's suggested draft permit.

(C) Certification by a responsible official, consistent with § 71.5(d), that the proposed modification meets the criteria for use of group processing procedures and a request that such procedures be used.

(D) A list of the source's other pending applications awaiting group processing, and a determination of whether the requested modification, aggregated with these other applications, equals or exceeds the threshold set under paragraph (e)(2)(i)(B) of this section.

(E) Certification, consistent with § 71.5(d), that, in the case of a program delegated pursuant to § 71.10, the source has notified EPA of the proposed modification. Such notification need only contain a brief description of the requested modification.

(F) Completed forms for the permitting authority to use to notify affected States as required under § 71.8 (and the Administrator as required under § 71.10(d) in the case of a program delegated pursuant to § 71.10).

(iii) *EPA and affected State notification.* On a quarterly basis or within 5 business days of receipt of an application demonstrating that the aggregate of a source's pending applications equals or exceeds the threshold level set under paragraph (e)(2)(i)(B) of this section, whichever is earlier, the permitting authority promptly shall meet its obligation under § 71.8(a) to notify affected States (and its obligation under § 71.10(d) to notify EPA in the case of a program delegated pursuant to § 71.10) of the requested permit modification. The permitting authority shall send any notice required under § 71.8(b) to the Administrator in the case of a program delegated pursuant to § 71.10.

(iv) *Timetable for issuance.* The provisions of paragraph (e)(1)(iv) of this section shall apply to modifications eligible for group processing, except that the permitting authority shall take one of the actions specified in paragraphs (e)(1)(iv) (A) through (D) of this section within 180 days of receipt of the application (or, in the case of a program delegated pursuant to § 71.10, 15 days

after the end of the Administrator's 45-day review period under § 71.10(g), whichever is later).

(v) *Source's ability to make change.* The provisions of paragraph (e)(1)(v) of this section shall apply to modifications eligible for group processing.

(vi) *Permit shield.* The provisions of paragraph (e)(1)(vi) of this section shall also apply to modifications eligible for group processing.

(3) *Significant modification procedures.*

(i) *Criteria.* Significant modification procedures shall be used for applications requesting permit modifications that do not qualify as minor permit modifications or as administrative amendments. Every significant change in existing monitoring permit terms or conditions and every relaxation of reporting or recordkeeping permit terms or conditions shall be considered significant. Nothing herein shall be construed to preclude the permittee from making changes consistent with this part that would render existing permit compliance terms and conditions irrelevant.

(ii) Significant permit modifications shall meet all requirements of this part, including those for applications, public participation, review by affected States, and review by EPA (in the case of a program delegated pursuant to § 71.10), as they apply to permit issuance and permit renewal. The permitting authority shall design and implement this review process to complete review on the majority of significant permit modifications within 9 months after receipt of a complete application.

(f) *Reopening for cause.* (1) Each issued permit shall include provisions specifying the conditions under which the permit will be reopened prior to the expiration of the permit. A permit shall be reopened and revised under any of the following circumstances:

(i) Additional applicable requirements under the Act become applicable to a major part 71 source with a remaining permit term of 3 or more years. Such a reopening shall be completed not later than 18 months after promulgation of the applicable requirement. No such reopening is required if the effective date of the requirement is later than the date on which the permit is due to expire, unless the original permit or any of its terms and conditions have been extended pursuant to paragraph (c)(3) of this section.

(ii) Additional requirements (including excess emissions requirements) become applicable to an affected source under the acid rain program. Upon approval by the Administrator, excess emissions offset plans shall be deemed to be incorporated into the permit.

(iii) The permitting authority (or EPA, in the case of a program delegated pursuant to § 71.10) determines that the permit contains a material mistake or that inaccurate statements were made in establishing the emissions standards or other terms or conditions of the permit.

(iv) The permitting authority (or EPA, in the case of a program delegated pursuant to § 71.10) determines that the permit must be revised or revoked to assure compliance with the applicable requirements.

(2) Proceedings to reopen and issue a permit shall follow the same procedures as apply to initial permit issuance and shall affect only those parts of the permit for which cause to reopen exists, and shall be made as expeditiously as practicable.

(3) Reopenings under paragraph (f)(1) of this section shall not be initiated before a notice of such intent is provided to the part 71 source by the permitting authority at least 30 days in advance of the date that the permit is to be reopened, except that the permitting authority may provide a shorter time period in the case of an emergency.

(g) *Reopenings for cause by EPA for delegated programs.* (1) In the case of a program delegated pursuant to § 71.10, if the Administrator finds that cause exists to terminate, modify, or revoke and reissue a permit pursuant to paragraph (f) of this section, the Administrator will notify the permitting authority and the permittee of such finding in writing.

(2) The permitting authority shall, within 90 days after receipt of such notification, forward to EPA a proposed determination of termination, modification, or revocation and reissuance, as appropriate. The Administrator may extend this 90-day period for an additional 90 days if he or she finds that a new or revised permit application is necessary or that the permitting authority must require the permittee to submit additional information.

(3) The Administrator will review the proposed determination from the permitting authority within 90 days of receipt.

(4) The permitting authority shall have 90 days from receipt of an EPA objection to resolve any objection that EPA makes and to terminate, modify, or revoke and reissue the permit in accordance with the Administrator's objection.

(5) If the permitting authority fails to submit a proposed determination pursuant to paragraph (g)(2) of this section or fails to resolve any objection pursuant to paragraph (g)(4) of this section, the Administrator will terminate, modify, or revoke and reissue the permit after taking the following actions:

(i) Providing at least 30 days' notice to the permittee in writing of the reasons for any such action. This notice may be given during the procedures in paragraphs (g) (1) through (4) of this section.

(ii) Providing the permittee an opportunity for comment on the Administrator's proposed action and an opportunity for a hearing.

§ 71.8 Affected State review.

(a) *Notice of draft permits.* When a part 71 operating permits program becomes effective in a State or Tribal area, the permitting authority shall provide notice of each draft permit to any affected State, as defined in § 71.2, on or before the time that the permitting authority provides this notice to the public pursuant to § 71.7 or § 71.11(d) except to the extent § 71.7(e)(1) or (2) requires the timing of the notice to be different.

(b) *Notice of refusal to accept recommendations.* Prior to issuance of the final permit, the permitting authority shall notify any affected State in writing of any refusal by the permitting authority to accept all recommendations for the proposed permit that the affected State submitted during the public or affected State review period. The notice shall include the permitting authority's reasons for not accepting any such recommendation. The permitting authority is not required to accept recommendations that are not based on applicable requirements or the requirements of this part. In the case of a program delegated pursuant to § 71.10, the permitting authority shall include such notice as part of the submittal of the proposed permit to the Administrator (or as soon as possible after the submittal for minor permit modification procedures allowed under § 71.7(e)(1) or (2)).

(c) *Waiver of notice requirements.* The Administrator may waive the requirements of paragraph (a) of this section for any category of sources (including any class, type, or size within such category) other than major sources by regulation for a category of sources nationwide.

(d) *Notice provided to Indian Tribes.* The permitting authority shall provide notice of each draft permit to any federally recognized Indian Tribe whose air quality may be affected by the permitting action and whose reservation

or Tribal area is contiguous to the jurisdiction in which the part 71 permit is proposed or is within 50 miles of the permitted source.

§ 71.9 Permit fees

(a) *Fee requirement.* The owners or operators of part 71 sources shall pay annual fees, or the equivalent over some other period, that are sufficient to cover the permit program costs, in accordance with the procedures described in this section.

(b) *Permit program costs.* These costs include, but are not limited to, the costs of the following activities as they relate to a part 71 program:

(1) Reviewing and acting on any application for a permit, permit revision, or permit renewal, including the development of an applicable requirement as part of the processing of a permit, or permit revision or renewal;

(2) Processing permit reopenings;

(3) General administrative costs of the permit program, including transition planning, interagency coordination, contract management, training, informational services and outreach activities, assessing and collecting fees, the tracking of permit applications, compliance certifications, and related data entry;

(4) Implementing and enforcing the terms of any part 71 permit (not including any court costs or other costs associated with an enforcement action), including adequate resources to determine which sources are subject to the program;

(5) Emissions and ambient monitoring, modeling, analyses, demonstrations, preparation of inventories, and tracking emissions, provided these activities are needed in order to issue and implement part 71 permits; and

(6) Providing direct and indirect support to small business stationary sources in determining applicable requirements and in receiving permits under this part (to the extent that these services are not provided by a State Small Business Stationary Source Technical and Environmental Compliance Assistance Program).

(c) *Establishment of fee schedule.* (1) For part 71 programs that are administered by EPA, each part 71 source shall pay an annual fee in the amount of $32 per ton (as adjusted pursuant to the criteria set forth in paragraph (n)(1) of this section) times the total tons of the actual emissions of each regulated pollutant (for fee calculation) emitted from the source, including fugitive emissions.

(2) For part 71 programs that are fully delegated pursuant to § 71.10:

(i) Where the EPA has not suspended its part 71 fee collection pursuant to paragraph (c)(2)(ii) of this section, the annual fee for each part 71 source shall be $24 per ton (as adjusted pursuant to the criteria set forth in paragraph (n)(1) of this section) times the total tons of the actual emissions of each regulated pollutant (for fee calculation) emitted from the source, including fugitive emissions.

(ii) Where the delegate State collects fees from part 71 sources under State law which are sufficient to fund the delegated part 71 program, the EPA may suspend its collection of part 71 fees. The specific terms and conditions regarding the suspension of fee collection will be addressed in the applicable delegation agreement pursuant to § 71.10.

(3) For part 71 programs that are administered by EPA with contractor assistance, the per ton fee shall vary depending on the extent of contractor involvement and the cost to EPA of contractor assistance. The EPA shall establish a per ton fee that is based on the contractor costs for the specific part 71 program that is being administered, using the following formula:

$$\text{Cost per ton}=(E\times 32)+[(1-E)\times \$C]$$

Where E represents EPA's proportion of total effort (expressed as a percentage of total effort) needed to administer the part 71 program, $1-E$ represents the contractor's effort, and C represents the contractor assistance cost on a per ton basis. C shall be computed by using the following formula:

$$C=[B+T+N] \text{ divided by } 12{,}300{,}000$$

Where B represents the base cost (contractor costs), where T represents travel costs, and where N represents nonpersonnel data management and tracking costs.

(4) For programs that are delegated in part, the fee shall be computed using the following formula:

$$\text{Cost per ton}=(E\times 32)+(D\times 24)+[(1-E-D)\times \$C]$$

Where E and D represent, respectively, the EPA and delegate agency proportions of total effort (expressed as a percentage of total effort) needed to administer the part 71 program, $1-E-D$ represents the contractor's effort, and C represents the contractor assistance cost on a per ton basis. C shall be computed using the formula for contractor assistance cost found in paragraph (c)(3) of this section and shall be zero if contractor assistance is not utilized.

(5) The following emissions shall be excluded from the calculation of fees under paragraph (c)(1) through (c)(4) of this section:

(i) The amount of a part 71 source's actual emissions of each regulated pollutant (for fee calculation) that the source emits in excess of four thousand (4,000) tpy;

(ii) A part 71 source's actual emissions of any regulated pollutant (for fee calculation) already included in the fee calculation; and

(iii) The insignificant quantities of actual emissions not required to be listed or calculated in a permit application pursuant to § 71.5(c)(11).

(6) ''Actual emissions'' means the actual rate of emissions in tpy of any regulated pollutant (for fee calculation) emitted from a part 71 source over the preceding calendar year. Actual emissions shall be calculated using each emissions unit's actual operating hours, production rates, in-place control equipment, and types of materials processed, stored, or combusted during the preceding calendar year.

(7) Notwithstanding the provisions of paragraph (c) (1) through (4) of this section, if the Administrator determines that the fee structures provided in paragraphs (c)(1) through (4) of this section do not reflect the costs of administering a part 71 program, then the Administrator shall by rule set a fee which adequately reflects permit program costs for that program.

(d) *Prohibition on fees with respect to emissions from affected units.* Notwithstanding any other provision of this section, during the years 1995 through 1999 inclusive, no fee for purposes of title V shall be required to be paid with respect to emissions from any affected unit under section 404 of the Act.

(e) *Submission of initial fee calculation work sheets and fees.* (1) Each part 71 source shall complete and submit an initial fee calculation work sheet as provided in paragraphs (e)(2), (f), and (g) of this section and shall complete and submit fee calculation work sheets thereafter as provided in paragraph (h) of this section. Calculations of actual or estimated emissions and calculation of the fees owed by a source shall be computed by the source on fee calculation work sheets provided by EPA. Fee payment of the full amount must accompany each initial fee calculation work sheet.

(2) The fee calculation work sheet shall require the source to submit a report of its actual emissions for the preceding calendar year and to compute fees owed based on those emissions. For sources that have been issued part 70 or part 71 permits, actual emissions shall be computed using compliance methods required by the most recent permit. If actual emissions cannot be determined

using the compliance methods in the permit, the actual emissions should be determined using federally recognized procedures. If a source commenced operation during the preceding calendar year, the source shall estimate its actual emissions for the current calendar year. In such a case, fees for the source shall be based on the total emissions estimated.

(3) The initial fee calculation worksheet shall be certified by a responsible official consistent with § 71.5(d).

(f) *Deadlines for submission.* (1) When EPA withdraws approval of a part 70 program and implements a part 71 program, part 71 sources shall submit initial fee calculation work sheets and fees in accordance with the following schedule:

(i) Sources having SIC codes between 0100 and 2499 inclusive shall complete and submit fee calculation work sheets and fees within 6 months of the effective date of the part 71 program;

(ii) Sources having SIC codes between 2500 and 2999 inclusive shall complete and submit fee calculation work sheets and fees within 7 months of the effective date of the part 71 program;

(iii) Sources having SIC codes between 3000 and 3999 inclusive shall complete and submit fee calculation work sheets and fees within 8 months of the effective date of the part 71 program;

(iv) Sources having SIC codes higher than 3999 shall complete and submit fee calculation work sheets and fees within 9 months of the effective date of the part 71 program.

(2) Sources that are required under either paragraph (f)(1) or (g) of this section to submit fee calculation work sheets and fees between January 1 and March 31 may estimate their emissions for the preceding calendar year in lieu of submitting actual emissions data. If the source's initial fee calculation work sheet was based on estimated emissions for the source's preceding calendar year, then the source shall reconcile the fees owed when it submits its annual emissions report, as provided in paragraph (h)(3) of this section.

(3) When EPA implements a part 71 program that does not replace an approved part 70 program, part 71 sources shall submit initial fee calculation work sheets and initial fees when submitting their permit applications in accordance with the requirements of § 71.5(a)(1).

(4) Notwithstanding the above, sources that become subject to the part 71 program after the program's effective date shall submit an initial fee calculation work sheet and initial fees when submitting their permit applications in accordance with the requirements of § 71.5(a)(1).

(g) *Fees for sources that are issued part 71 permits following an EPA objection pursuant to § 71.4(e).* Fees for such sources shall be determined as provided in paragraph (c)(1) of this section. However, initial fee calculation work sheets for such sources and full payment of the initial fee shall be due three months after the date on which the source's part 71 permit is issued.

(h) *Annual emissions reports*—(1) *Deadlines for submission.* Each part 71 source shall submit an annual report of its actual emissions for the preceding calendar year, a fee calculation work sheet (based on the report), and full payment of the annual fee each year on the anniversary date of its initial fee calculation work sheet, except that sources that were required to submit initial fee calculation work sheets between January 1 and March 31 inclusive shall submit subsequent annual emissions reports and fee calculation work sheets by April 1.

(2) Annual emissions reports and fee calculation worksheets shall be certified by a responsible official consistent with § 71.5(d).

(3) For sources that have been issued part 70 or part 71 permits, actual emissions shall be computed using methods required by the most current permit for determining compliance.

(4) If the source's initial fee calculation work sheet was based on estimated emissions for the source's current or preceding calendar year, then the source shall reconcile the fees owed when it submits its annual emissions report. The source shall compare the estimated emissions from the initial work sheet and the actual emissions from the report and shall enter such information on the fee calculation work sheet that accompanies the annual report. The source shall recompute the initial fee accordingly and shall remit any underpayment with the report and work sheet. The EPA shall credit any overpayment to the source's account.

(i) *Recordkeeping requirements.* Part 71 sources shall retain, in accordance with the provisions of § 71.6(a)(3)(ii), all work sheets and other materials used to determine fee payments. Records shall be retained for 5 years following the year in which the emissions data is submitted.

(j) *Fee assessment errors.* (1) If EPA determines than a source has completed the fee calculation work sheet incorrectly, the permitting authority shall bill the applicant for the corrected fee or credit overpayments to the source's account.

(2) Each source notified by the permitting authority of additional amounts due shall remit full payment within 30 days of receipt of an invoice from the permitting authority.

(3) An owner or operator of a part 71 source who thinks that the assessed fee is in error shall provide a written explanation of the alleged error to the permitting authority along with the assessed fee. The permitting authority shall, within 90 days of receipt of the correspondence, review the data to determine whether the assessed fee was in error. If an error was made, the overpayment shall be credited to the account of the part 71 source.

(k) *Remittance procedure.* (1) Each remittance under this section shall be in United States currency and shall be paid by money order, bank draft, certified check, corporate check, or electronic funds transfer payable to the order of the U.S. Environmental Protection Agency.

(2) Each remittance shall be sent to the Environmental Protection Agency to the address designated on the fee calculation work sheet or the invoice.

(l) *Penalty and interest assessment.* (1) The permitting authority shall assess interest on payments which are received later than the date due. The interest rate shall be the sum of the Federal short-term rate determined by the Secretary of the Treasury in accordance with section 6621(a)(2) of the Internal Revenue Code of 1986, plus 3 percentage points.

(2) The permitting authority shall assess a penalty charge of 50 percent of the fee amount if the fee is not paid within 30 days of the payment due date.

(3) If a source underpays the fee owed, except as provided in paragraph (l)(4) of this section, the permitting authority shall assess a penalty charge of 50 percent on the amount by which the fee was underpaid. Interest shall also be assessed, computed under paragraph (l)(1) of this section, on the amount by which the fee was underpaid.

(4) If a source bases its initial fee calculation on estimated emissions from the source's current or preceding calendar year, as provided under paragraph (h)(4) of this section, and underpays its fee based on an underestimation of these emissions, the permitting authority shall assess a penalty charge of 50 percent on certain of these underpayments, according to the following provisions:

(i) The penalty charge shall be assessed whenever a source's underpayment exceeds the underpayment penalty cutoff established in paragraph (l)(4)(iii) of this section. The penalty amount shall be 50

percent of the portion of the underpayment which is in excess of the underpayment penalty cutoff.

(ii) Where a source is subject to a penalty for underpayment pursuant to paragraph (l)(4)(i) of this section, interest as computed under paragraph (l)(1) of this section shall be assessed on that portion of the underpayment which is in excess of the underpayment penalty cutoff established in paragraph (l)(4)(iii) of this section.

(iii) The underpayment penalty cutoff for a source shall be the sum of the following:

(A) 50 percent of the portion of the initial fee amount which was calculated from estimated emissions of HAP listed pursuant to 112(b) of the Act, and

(B) 20 percent of the portion of initial fee amount which was calculated from estimated emissions of the remainder of the regulated air pollutants (for fee calculation).

(m) *Failure to remit fees.* The permitting authority shall not issue a final permit or permit revision until all fees, interest and penalties assessed against a source under this section are paid. The initial application of a source shall not be found complete unless the source has paid all fees owed.

(n) *Adjustments of fee schedules.*

(1) The fee schedules provided in paragraphs (c) (1) through (4) of this section shall remain in effect until December 31, 1996. Thereafter, the fee schedules shall be changed annually by the percentage, if any, of any annual increase in the Consumer Price Index.

(2) Part 71 permit program costs and fees will be reviewed by the Administrator at least every 2 years, and changes will be made to the fee schedule as necessary to reflect permit program costs.

(3) When changes to a fee schedule are made based on periodic reviews by the Administrator, the changes will be published in the Federal Register.

(o) *Use of revenue.* All fees, penalties, and interest collected under this part shall be deposited in a special fund in the U.S. Treasury, which thereafter shall be available for appropriation, to remain available until expended, subject to appropriation, to carry out the activities required by this part.

§ 71.10 Delegation of part 71 program.

(a) *Delegation of part 71 program.* The Administrator may delegate, in whole or in part, with or without signature authority, the authority to administer a part 71 operating permits program to a State, eligible Tribe, local, or other non-State agency in accordance with the provisions of this section. In order to be delegated authority to administer a part 71 program, the delegate agency must submit a legal opinion from the Attorney General from the State, or the attorney for the State, local, interstate, or eligible Tribal agency that has independent legal counsel, stating that the laws of the State, locality, interstate compact or Indian Tribe provide adequate authority to carry out all aspects of the delegated program. A Delegation of Authority Agreement (Agreement) shall set forth the terms and conditions of the delegation, shall specify the provisions that the delegate agency shall be authorized to implement, and shall be entered into by the Administrator and the delegate agency. The Agreement shall become effective upon the date that both the Administrator and the delegate agency have signed the Agreement. Once delegation becomes effective, the delegate agency will be responsible, to the extent specified in the Agreement, for administering the part 71 program for the area subject to the Agreement.

(b) *Publication of Notice of Delegation of Authority Agreement.* The Administrator shall publish a notice in the Federal Register informing the public of any delegation of a portion of the part 71 program to a State, eligible Tribe, or local agency.

(c) *Revision or revocation of Delegation of Authority Agreement.* An Agreement may be modified, amended, or revoked, in part or in whole, by the Administrator after consultation with the delegate agency.

(d) *Transmission of information to the Administrator.*

(1) When a part 71 program has been delegated in accordance with the provisions of this section, the delegate agency shall provide to the Administrator a copy of each permit application (including any application for permit modification), each proposed permit, and each final part 71 permit. The applicant may be required by the delegate agency to provide a copy of the permit application (including the compliance plan) directly to the Administrator. Upon agreement with the Administrator, the delegate agency may submit to the Administrator a permit application summary form and any relevant portion of the permit application and compliance plan, in place of the complete permit application and compliance plan. To the extent practicable, the preceding information shall be provided in computer-readable format compatible with EPA's national database management system.

(2) The Administrator may waive the requirements of paragraph (d)(1) of this section for any category of sources (including any class, type, or size within such category) other than major sources by regulation for a category of sources nationwide.

(e) *Retention of records.* The records for each draft, proposed, and final permit, and application for permit renewal or modification shall be kept for a period of 5 years by the delegate agency. The delegate agency shall also submit to the Administrator such information as the Administrator may reasonably require to ascertain whether the delegate agency is implementing, administering, and enforcing the delegated part 71 program in compliance with the requirements of the Act and of this part.

(f) *Prohibition of default issuance.* (1) For the purposes of Federal law and title V of the Act, when a part 71 program has been delegated in accordance with the provisions of this section, no part 71 permit (including a permit renewal or modification) will be issued until affected States have had an opportunity to review the draft permit as required pursuant to § 71.8(a) and EPA has had an opportunity to review the proposed permit.

(2) To receive delegation of signature authority, the legal opinion submitted by the delegate agency pursuant to paragraph (a) of this section shall certify that no applicable provision of State, local or Tribal law requires that a part 71 permit or renewal be issued after a certain time if the delegate agency has failed to take action on the application (or includes any other similar provision providing for default issuance of a permit), unless EPA has waived such review for EPA and affected States.

(g) *EPA objection.* (1) The Administrator will object to the issuance of any proposed permit determined by the Administrator not to be in compliance with applicable requirements or requirements under this part. No permit for which an application must be transmitted to the Administrator under paragraph (d)(1) of this section shall be issued if the Administrator objects to its issuance in writing within 45 days of receipt of the proposed permit and all necessary supporting information. When a part 71 program has been delegated in accordance with the provisions of this section, failure of the delegate agency to do any of the following shall constitute grounds for an objection by the Administrator:

(i) Comply with paragraph (d) of this section;

(ii) Submit any information necessary to review adequately the proposed permit;

(iii) Process the permit under the procedures required by §§ 71.7 and 71.11; or

(iv) Comply with the requirements of § 71.8(a).

(2) Any EPA objection under paragraph (g)(1) of this section shall include a statement of the Administrator's reason(s) for objection and a description of the terms and conditions that the permit must include to respond to the objection. The Administrator will provide the permit applicant a copy of the objection.

(3) If the delegate agency fails, within 90 days after the date of an objection under paragraph (g)(1) of this section, to revise and submit to the Administrator the proposed permit in response to the objection, the Administrator shall issue or deny the permit in accordance with the requirements of this part.

(h) *Public petitions.* In the case of a delegated program, any interested person may petition the Administrator to reopen a permit for cause as provided in § 71.11(n).

(i) *Appeal of permits.* When a part 71 program has been delegated with signature authority in accordance with the provisions of this section, any person or affected State that submitted recommendations or comments on the draft permit, or that participated in the public hearing process may petition the Environmental Appeals Board in accordance with § 71.11(l)(1).

(j) *Nondelegable conditions.* (1) The Administrator's authority to object to the issuance of a part 71 permit cannot be delegated to an agency not within EPA.

(2) The Administrator's authority to act upon petitions submitted pursuant to paragraph (h) of this section cannot be delegated to an agency not within EPA.

§ 71.11 Administrative record, public participation, and administrative review.

The provisions of this section shall apply to all permit proceedings. Notwithstanding the preceding sentence, paragraphs (a) through (h) and paragraph (j) of this section shall not apply to permit revisions qualifying as minor permit modifications or administrative amendments, except that public notice of the granting of appeals of such actions under paragraph (l)(3) of this section shall be provided pursuant to paragraph (d)(1)(i)(E) of this section, and except that affected States shall be provided notice of minor permit modifications under § 71.8 as pursuant to paragraph (d)(3)(i)(B) of this section.

(a) *Draft permits.* (1) The permitting authority shall promptly provide notice to the applicant of whether the application is complete pursuant to § 71.7(a)(3).

(2) Once an application for an initial permit, permit revision, or permit renewal is complete, the permitting authority shall decide whether to prepare a draft permit or to deny the application.

(3) If the permitting authority initially decides to deny the permit application, it shall issue a notice of intent to deny. A notice of intent to deny the permit application is a type of draft permit and follows the same procedures as any draft permit prepared under this section. If the permitting authority's final decision is that the initial decision to deny the permit application was incorrect, it shall withdraw the notice of intent to deny and proceed to prepare a draft permit under paragraph (a)(4) of this section.

(4) If the permitting authority decides to prepare a draft permit, it shall prepare a draft permit that contains the permit conditions required under § 71.6.

(5) All draft permits prepared under this section shall be publicly noticed and made available for public comment.

(b) *Statement of basis.* The permitting authority shall prepare a statement of basis for every draft permit subject to this section. The statement of basis shall briefly describe the derivation of the conditions of the draft permit and the reasons for them or, in the case of notices of intent to deny or terminate, reasons supporting the initial decision. The statement of basis shall be sent to the applicant and, on request, to any other person.

(c) *Administrative record for draft permits.*

(1) The provisions of a draft permit shall be based on the administrative record defined in this section.

(2) For preparing a draft permit, the administrative record shall consist of:

(i) The application and any supporting data furnished by the applicant;

(ii) The draft permit or notice of intent to deny the application or to terminate the permit;

(iii) The statement of basis;

(iv) All documents cited in the statement of basis; and

(v) Other documents contained in the supporting file for the draft permit.

(3) Material readily available at the permitting authority or published material that is generally available, and that is included in the administrative record under paragraphs (b) and (c) of this section need not be physically included with the rest of the record as long as it is specifically referred to in the statement of basis.

(d) *Public notice of permit actions and public comment period.*

(1) *Scope.*

(i) The permitting authority shall give public notice that the following actions have occurred:

(A) A permit application has been initially denied under paragraph (a) of this section;

(B) A draft permit has been prepared under paragraph (a) of this section;

(C) A hearing has been scheduled under paragraph (f) of this section; and

(D) A public comment period has been reopened under paragraph (h) of this section;

(E) An appeal has been granted under paragraph (l)(3) of this section.

(ii) No public notice is required when a request for permit revision, revocation and reissuance, or termination has been denied under paragraph (a)(2) of this section. Written notice of that denial shall be given to the requester and to the permittee.

(iii) Public notices may describe more than one permit or permit action.

(2) *Timing.* (i) Public notice of the preparation of a draft permit, (including a notice of intent to deny a permit application), shall allow at least 30 days for public comment.

(ii) Public notice of a public hearing shall be given at least 30 days before the hearing. Public notice of the hearing may be given at the same time as public notice of the draft permit and the two notices may be combined.

(iii) The permitting authority shall provide such notice and opportunity for participation to affected States on or before the time that the permitting authority provides this notice to the public.

(3) *Methods.* Public notice of activities described in paragraph (d)(1)(i) of this section shall be given by the following methods:

(i) By mailing a copy of a notice to the following persons (any person otherwise entitled to receive notice under paragraph (d) of this section may waive his or her rights to receive notice for any permit):

(A) The applicant;

(B) Affected States;

(C) Air pollution control agencies of affected States, Tribal and local air pollution control agencies which have jurisdiction over the area in which the source is located, the chief executives of the city and county where the source is located, any comprehensive regional land use planning agency and any State or Federal Land Manager whose lands may be affected by emissions from the source;

(D) The local emergency planning committee having jurisdiction over the

area where the source is located, and State agencies having authority under State law with respect to the operation of such source;

(E) Persons on a mailing list developed by:

(*1*) Including those who request in writing to be on the list;

(*2*) Soliciting persons for ''area lists'' from participants in past permit proceedings in that area; and

(*3*) Notifying the public of the opportunity to be put on the mailing list through periodic publication in the public press and, where deemed appropriate by the permitting authority, in such publications as regional and State funded newsletters, environmental bulletins, or State law journals. The permitting authority may update the mailing list from time to time by requesting written indication of continued interest from those listed. The permitting authority may delete from the list the name of any person who fails to respond to such a request.

(ii) By publication of a notice in a daily or weekly newspaper of general circulation within the area affected by the source.

(iii) By any other method reasonably calculated to give actual notice of the action in question to the persons potentially affected by it, including press releases or any other forum or medium to elicit public participation.

(4) *Contents*—(i) *All public notices.* All public notices issued under this subpart shall contain the following minimum information:

(A) The name and address of the permitting authority processing the permit;

(B) The name and address of the permittee or permit applicant and, if different, of the facility regulated by the permit, except in the case of draft general permits;

(C) The activity or activities involved in the permit action;

(D) The emissions change involved in any permit revision;

(E) The name, address, and telephone number of a person whom interested persons may contact for instructions on how to obtain additional information, such as a copy of the draft permit, the statement of basis, the application, relevant supporting materials, and other materials available to the permitting authority that are relevant to the permitting decision.

(F) A brief description of the comment procedures required by paragraph (e) of this section, a statement of procedures to request a hearing (unless a hearing has already been scheduled) and other procedures by which the public may participate in the final permit decision;

(G) The location of the administrative record, the times at which the record will be open for public inspection, and a statement that all data submitted by the applicant are available as part of the administrative record; and

(H) Any additional information considered necessary or proper.

(ii) *Public notices for hearings.* Public notice of a hearing may be combined with other notices required under paragraph (d)(1) of this section. Any public notice of a hearing under paragraph (f) of this section shall contain the following information:

(A) The information described in paragraph (d)(4)(i) of this section;

(B) Reference to the date of previous public notices relating to the permit;

(C) The date, time, and place of the hearing; and

(D) A brief description of the nature and purpose of the hearing, including the applicable rules and the comment procedures.

(5) All persons identified in paragraphs (d)(3)(i) (A), (B), (C), (D), and (E) of this section shall be mailed a copy of the public hearing notice described in paragraph (d)(4)(ii) of this section.

(e) *Public comments and requests for public hearings.* During the public comment period provided under paragraph (a) of this section, any interested person may submit written comments on the draft permit and may request a public hearing, if no hearing has already been scheduled. A request for a public hearing shall be in writing and shall state the nature of the issues proposed to be raised at the hearing. All comments shall be considered in making the final decision and shall be answered as provided in paragraph (j) of this section. The permitting authority will keep a record of the commenters and of the issues raised during the public participation process, and such records shall be available to the public.

(f) *Public hearings.* (1) The permitting authority shall hold a hearing whenever it finds, on the basis of requests, a significant degree of public interest in a draft permit.

(2) The permitting authority may also hold a public hearing at its discretion, whenever, for instance, such a hearing might clarify one or more issues involved in the permit decision.

(3) Public notice of the hearing shall be given as specified in paragraph (d) of this section.

(4) Whenever a public hearing is held, the permitting authority shall designate a Presiding Officer for the hearing who shall be responsible for its scheduling and orderly conduct.

(5) Any person may submit oral or written statements and data concerning the draft permit. Reasonable limits may be set upon the time allowed for oral statements, and the submission of statements in writing may be required. The public comment period under paragraph (d) of this section shall be automatically extended to the close of any public hearing under this section. The hearing officer may also extend the comment period by so stating at the hearing.

(6) A tape recording or written transcript of the hearing shall be made available to the public.

(g) *Obligation to raise issues and provide information during the public comment period.* All persons, including applicants, who believe any condition of a draft permit is inappropriate or that the permitting authority's initial decision to deny an application, terminate a permit, or prepare a draft permit is inappropriate, must raise all reasonably ascertainable issues and submit all reasonably ascertainable arguments supporting their position by the close of the public comment period (including any public hearing). Any supporting materials that are submitted shall be included in full and may not be incorporated by reference, unless they are already part of the administrative record in the same proceeding, or consist of State or Federal statutes and regulations, EPA documents of general applicability, or other generally available reference materials. In the case of a program delegated pursuant to § 71.10, if requested by the Administrator, the permitting authority shall make supporting materials not already included in the administrative record available to EPA. The permitting authority may direct commenters to provide such materials directly to EPA. A comment period longer than 30 days may be necessary to give commenters a reasonable opportunity to comply with the requirements of this section. Additional time shall be granted to the extent that a commenter who requests additional time demonstrates the need for such time.

(h) *Reopening of the public comment period.* (1) The permitting authority may order the public comment period reopened if the procedures of paragraph (h) of this section could expedite the decision making process. When the public comment period is reopened under paragraph (h) of this section, all persons, including applicants, who believe any condition of a draft permit is inappropriate or that the permitting authority's initial decision to deny an application, terminate a permit, or prepare a draft permit is inappropriate, must submit all reasonably available factual grounds supporting their

position, including all supporting material, by a date not less than 30 days after public notice under paragraph (h)(2) of this section, set by the permitting authority. Thereafter, any person may file a written response to the material filed by any other person, by a date, not less than 20 days after the date set for filing of the material, set by the permitting authority.

(2) Public notice of any comment period under this paragraph (h) shall identify the issues to which the requirements of paragraphs (h)(1) through (4) of this section shall apply.

(3) On its own motion or on the request of any person, the permitting authority may direct that the requirements of paragraph (h)(1) of this section shall apply during the initial comment period where it reasonably appears that issuance of the permit will be contested and that applying the requirements of paragraph (h)(1) of this section will substantially expedite the decision making process. The notice of the draft permit shall state whenever this has been done.

(4) A comment period of longer than 30 days may be necessary in complicated proceedings to give commenters a reasonable opportunity to comply with the requirements of this section. Commenters may request longer comment periods and they may be granted to the extent the permitting authority finds it necessary.

(5) If any data, information, or arguments submitted during the public comment period appear to raise substantial new questions concerning a permit, the permitting authority may take one or more of the following actions:

(i) Prepare a new draft permit, appropriately modified;

(ii) Prepare a revised statement of basis, and reopen the comment period; or

(iii) Reopen or extend the comment period to give interested persons an opportunity to comment on the information or arguments submitted.

(6) Comments filed during the reopened comment period shall be limited to the substantial new questions that caused the reopening. The public notice shall define the scope of the reopening.

(7) Public notice of any of the above actions shall be issued under paragraph (d) of this section.

(i) *Issuance and effective date of permit.* (1) After the close of the public comment period on a draft permit, the permitting authority shall issue a final permit decision. The permitting authority shall notify the applicant and each person who has submitted written comments or requested notice of the final permit decision. This notice shall include reference to the procedures for appealing a decision on a permit. For the purposes of this section, a final permit decision means a final decision to issue, deny, revise, revoke and reissue, renew, or terminate a permit.

(2) A final permit decision shall become effective 30 days after the service of notice of the decision, unless:

(i) A later effective date is specified in the decision;

(ii) Review is requested under paragraph (l) of this section (in which case the specific terms and conditions of the permit which are the subject of the request for review shall be stayed); or

(iii) No comments requested a change in the draft permit, in which case the permit shall become effective immediately upon issuance.

(j) *Response to comments.* (1) At the time that any final permit decision is issued, the permitting authority shall issue a response to comments. This response shall:

(i) Specify which provisions, if any, of the draft permit have been changed in the final permit decision, and the reasons for the change; and

(ii) Briefly describe and respond to all significant comments on the draft permit raised during the public comment period, or during any hearing.

(2) Any documents cited in the response to comments shall be included in the administrative record for the final permit decision as defined in paragraph (k) of this section. If new points are raised or new material supplied during the public comment period, the permitting authority may document its response to those matters by adding new materials to the administrative record.

(3) The response to comments shall be available to the public.

(4) The permitting authority will notify in writing any affected State of any refusal to accept recommendations for the permit that the State submitted during the public or affected State review period.

(k) *Administrative record for final permits.* (1) The permitting authority shall base final permit decisions on the administrative record defined in paragraph (k)(2) of this section.

(2) The administrative record for any final permit shall consist of:

(i) All comments received during any public comment period, including any extension or reopening;

(ii) The tape or transcript of any hearing(s) held;

(iii) Any written material submitted at such a hearing;

(iv) The response to comments and any new materials placed in the record;

(v) Other documents contained in the supporting file for the permit;

(vi) The final permit;

(vii) The application and any supporting data furnished by the applicant;

(viii) The draft permit or notice of intent to deny the application or to terminate the permit;

(ix) The statement of basis for the draft permit;

(x) All documents cited in the statement of basis;

(xi) Other documents contained in the supporting file for the draft permit.

(3) The additional documents required under paragraph (k)(2) of this section should be added to the record as soon as possible after their receipt or publication by the permitting authority. The record shall be complete on the date the final permit is issued.

(4) Material readily available at the permitting authority, or published materials which are generally available and which are included in the administrative record under the standards of paragraph (j) of this section need not be physically included in the same file as the rest of the record as long as it is specifically referred to in the statement of basis or in the response to comments.

(l) *Appeal of permits.* (1) Within 30 days after a final permit decision has been issued, any person who filed comments on the draft permit or participated in the public hearing may petition the Environmental Appeals Board to review any condition of the permit decision. Any person who failed to file comments or failed to participate in the public hearing on the draft permit may petition for administrative review only to the extent of the changes from the draft to the final permit decision or other new grounds that were not reasonably foreseeable during the public comment period on the draft permit. The 30-day period within which a person may request review under this section begins with the service of notice of the permitting authority's action unless a later date is specified in that notice, except that the 30-day period within which a person may request review of a minor permit modification or administrative amendment begins upon the effective date of such action to revise the permit. The petition shall include a statement of the reasons supporting that review, including a demonstration that any issues raised were raised during the public comment period (including any public hearing) to the extent required by these regulations unless the petitioner demonstrates that it was impracticable to raise such objections within such period or unless

the grounds for such objection arose after such period, and, when appropriate, a showing that the condition in question is based on:

(i) A finding of fact or conclusion of law which is clearly erroneous; or

(ii) An exercise of discretion or an important policy consideration which the Environmental Appeals Board should, in its discretion, review.

(2) The Board may also decide on its initiative to review any condition of any permit issued under this part. The Board must act under paragraph (l) of this section within 30 days of the service date of notice of the permitting authority's action.

(3) Within a reasonable time following the filing of the petition for review, the Board shall issue an order either granting or denying the petition for review. To the extent review is denied, the conditions of the final permit decision become final agency action. Public notice of any grant of review by the Board under paragraph (l)(1) or (2) of this section shall be given as provided in paragraph (d) of this section. Public notice shall set forth a briefing schedule for the appeal and shall state that any interested person may file an amicus brief. Notice of denial of review shall be sent only to the permit applicant and to the person(s) requesting review.

(4) A petition to the Board under paragraph (l)(1) of this section is, under 42 U.S.C. 307(b), a prerequisite to seeking judicial review of the final agency action.

(5) For purposes of judicial review, final agency action occurs when a final permit is issued or denied by the permitting authority and agency review procedures are exhausted. A final permit decision shall be issued by the permitting authority:

(i) When the Board issues notice to the parties that review has been denied;

(ii) When the Board issues a decision on the merits of the appeal and the decision does not include a remand of the proceedings; or

(iii) Upon the completion of remand proceedings if the proceedings are remanded, unless the Board's remand order specifically provides that appeal of the remand decision will be required to exhaust administrative remedies.

(6) Motions to reconsider a final order shall be filed within ten (10) days after service of the final order. Every such motion must set forth the matters claimed to have been erroneously decided and the nature of the alleged errors. Motions for reconsideration under this provision shall be directed to, and decided by, the Board. Motions for reconsideration directed to the Administrator, rather than to the Board, will not be considered, except in cases that the Board has referred to the Administrator and in which the Administrator has issued the final order. A motion for reconsideration shall not stay the effective date of the final order unless specifically so ordered by the Board.

(m) *Computation of time.* (1) Any time period scheduled to begin on the occurrence of an act or event shall begin on the day after the act or event.

(2) Any time period scheduled to begin before the occurrence of an act or event shall be computed so that the period ends on the day before the act or event, except as otherwise provided.

(3) If the final day of any time period falls on a weekend or legal holiday, the time period shall be extended to the next working day.

(4) Whenever a party or interested person has the right or is required to act within a prescribed period after the service of notice or other paper upon him or her by mail, 3 days shall be added to the prescribed time.

(n) *Public petitions to the Permitting Authority.*

(1) Any interested person (including the permittee) may petition the permitting authority to reopen a permit for cause, and the permitting authority may commence a permit reopening on its own initiative. However, the permitting authority shall not revise, revoke and reissue, or terminate a permit except for the reasons specified in § 71.7(f)(1) or § 71.6(a)(6)(i). All requests shall be in writing and shall contain facts or reasons supporting the request.

(2) If the permitting authority decides the request is not justified, it shall send the requester a brief written response giving a reason for the decision. Denials of requests for revision, revocation and reissuance, or termination are not subject to public notice, comment, or hearings. Denials by the permitting authority may be informally appealed to the Environmental Appeals Board by a letter briefly setting forth the relevant facts. The Board may direct the permitting authority to begin revision, revocation and reissuance, or termination proceedings under paragraph (n)(3) of this section. The appeal shall be considered denied if the Board takes no action within 60 days after receiving it. This informal appeal is, under 42 U.S.C. 307, a prerequisite to seeking judicial review of EPA action in denying a request for revision, revocation and reissuance, or termination.

(3) If the permitting authority decides the request is justified and that cause exists to revise, revoke and reissue or terminate a permit, it shall initiate proceedings to reopen the permit pursuant to § 71.7(f) or § 71.7(g).

§ 71.12 Prohibited acts.

Violations of any applicable requirement; any permit term or condition; any fee or filing requirement; any duty to allow or carry out inspection, entry, or monitoring activities; or any regulation or order issued by the permitting authority pursuant to this part are violations of the Act and are subject to full Federal enforcement authorities available under the Act.

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federal register

Monday
July 1, 1996

Part V

Environmental Protection Agency

40 CFR Part 257, et al.

Criteria for Classification of Solid Waste Disposal Facilities and Practices; Identification and Listing of Hazardous Waste; Requirements for Authorization of State Hazardous Waste Programs; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 257, 261, and 271

[FRL–5528–4]

RIN 2050–AE11

Criteria for Classification of Solid Waste Disposal Facilities and Practices; Identification and Listing of Hazardous Waste; Requirements for Authorization of State Hazardous Waste Programs

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency today is promulgating revisions to the existing criteria for solid waste disposal facilities and practices. These revisions were developed in response to the 1984 Hazardous and Solid Waste Amendments to the Resource Conservation and Recovery Act (RCRA). Today's final revisions establish that only those non-municipal non-hazardous waste disposal units that meet specific standards may receive conditionally exempt small quantity generator (CESQG) hazardous wastes. Today's final revisions establish standards pertaining to location restrictions, ground-water monitoring and corrective action.

The EPA is also finalizing revisions to regulations for hazardous wastes generated by CESQGs. Today's final language will clarify acceptable disposal options under Subtitle D of RCRA by specifying that CESQG hazardous waste may be managed at municipal solid waste landfills subject to Part 258 and at nonmunicipal non-hazardous waste disposal units subject to today's revised Criteria.

EFFECTIVE DATES: January 1, 1998, except §§ 257.21 through 257.28 which are effective July 1, 1998, and §§ 261.5(f), 261.5(g) and 271.1 which are effective January 1, 1997, but which have a compliance date of January 1, 1998. The information collection requirements contained in §§ 257.24, 257.25, and 257.27 have not been approved by the Office of Management and Budget (OMB) and are not effective until OMB has approved them.

ADDRESSES: The public docket for this rulemaking (docket number F–96–NCEF–FFFFF) is located at the U.S. Environmental Protection Agency, Crystal Gateway Building, 1235 Jefferson Davis Highway, First Floor, Arlington, Virginia. The public docket is available for viewing from 9 a.m. to 4 p.m., Monday through Friday, excluding federal holidays. Appointments may be made by calling (703) 603–9230. Copies cost $0.15/page.

FOR FURTHER INFORMATION CONTACT: For specific information on aspects of the final rule, please contact Paul Cassidy of the Industrial Solid Waste Branch of the Office of Solid Waste at 1–703–308–7281. For a paper copy of the Federal Register notice or for general information, please contact the RCRA Hotline at 1–800–424–9346 or at 1–703–412–9810.

SUPPLEMENTARY INFORMATION:

Regulated Entities

Entities potentially regulated by this action are owners/operators of non-municipal non-hazardous waste disposal units that may receive conditionally exempt small quantity generator (CESQG) hazardous waste. Regulated categories and entities include:

Category	Examples of regulated entities
Construction and demolition waste disposal firms.	Owners/operators of construction and demolition waste disposal units that may receive CESQG hazardous waste.
Industrial manufacturing plants.	Owners/operators of non-municipal non-hazardous waste disposal units that may receive CESQG hazardous waste.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the type of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your non-municipal non-hazardous waste disposal unit is regulated by this action, you should carefully examine the applicability section of this final rule (i.e., section 257.5). If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

This Federal Register notice will be available in electronic format on the Internet system through the EPA Public Access Server @ gopher.epa.gov.

How to Access the Net

1. Through Gopher: Go to: gopher.epa.gov. From the main menu, choose ''EPA Offices and Regions''. Next, choose ''Office of Solid Waste and Emergency Response (OSWER)''. Next, choose ''Office of Solid Waste''. Then, choose ''Non-Hazardous Waste—RCRA Subtitle D''. Finally, choose ''Industrial''.

2. Through FTP: Go to: ftp.epa.gov.
Login: anonymous
Password: Your Internet Address
Files are located in directories/pub/gopher. All OSW files are in directories beginning with ''OSW''.

3. Through MOSAIC: Go to: http://www.epa.gov. Choose the EPA Public Access Gopher. From the main (Gopher) menu, choose ''EPA Offices and Regions''. Next, choose ''Office of Solid Waste and Emergency Response (OSWER)''. Next, choose ''Office of Solid Waste''. Then, choose ''Non-Hazardous Waste—RCRA Subtitle D''. Finally, choose ''Industrial''.

4. Through dial-up access: Dial 919–558–0335. Choose EPA Public Access Gopher. From the main (Gopher) menu, choose ''EPA Offices and Regions''. Next, choose ''Office of Solid Waste and Emergency Response (OSWER)''. Next, choose ''Office of Solid Waste''. Then, choose ''Non-Hazardous Waste—RCRA Subtitle D''. Finally, choose ''Industrial''.

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I. Authority

Today's rule is being promulgated under the authority of sections 1008, 2002 (general rulemaking authority), 3001(d)(4), 4004 and 4010 of RCRA, as amended. Section 3001(d)(4) authorizes EPA to promulgate standards for generators who do not generate more than 100 kilograms per month of hazardous waste. Section 4010(c) directs EPA to revise Criteria promulgated under sections 1008 and 4004 for facilities that may receive hazardous household wastes (HHW) or small quantity generator (SQG) hazardous waste.

II. Background

A. Current Solid Waste Controls Under the Resource Conservation and Recovery Act (RCRA)—Non-Hazardous Waste Management: Municipal Wastes

As added by the Hazardous and Solid Waste Amendments (HSWA) of 1984, section 4010(c) requires that the Administrator revise the existing Part 257 Subtitle D Criteria used to classify facilities as sanitary landfills or open dumps by March 31, 1988, for facilities that may receive household hazardous waste or hazardous waste from small quantity generators. The required revisions are those necessary to protect human health and the environment and which take into account the practicable capability of such facilities. At a minimum, the revised Criteria must include ground-water monitoring as necessary to detect contamination, location restrictions, and provide for corrective action, as appropriate.

On October 9, 1991, EPA promulgated revised Criteria for Solid Waste Disposal Facilities accepting household hazardous wastes. Those revisions fulfilled the part of the statutory mandate found in RCRA section 4010 for all facilities that receive household hazardous wastes. (Any facility receiving any household waste is subject to the revised Criteria, which were relocated at 40 CFR part 258 for purposes of clarity). Revisions to the Part 257 Criteria for other Subtitle D disposal facilities that may receive conditionally exempt small quantity generator (CESQG) hazardous wastes were delayed as the Agency had little information concerning the potential or actual impacts that these types of facilities may have on human health and the environment.

B. Sierra Club Lawsuit

The Sierra Club, on October 21, 1993, filed suit against the EPA in the United States District Court for the District of Columbia, seeking to compel the EPA to promulgate revised Criteria for non-municipal facilities that may receive small quantity generator hazardous waste.

As a result of the October 21, 1993 lawsuit, the EPA and the Sierra Club reached agreement on a schedule concerning revised Criteria for non-municipal facilities that may receive CESQG wastes. This schedule requires that the EPA Administrator sign a proposal by May 15, 1995 and a final rule by July 1, 1996. On May 15, 1995, the Administrator signed proposed standards for non-municipal non-hazardous waste disposal units that may receive CESQG hazardous wastes. These proposed standards were published in the Federal Register on June 12, 1995 (see 60 FR 30964).

C. Summary of Proposed Regulatory Approach

The June 12, 1995 proposal stated that any non-municipal non-hazardous waste disposal unit [1] that meets the proposed requirements may receive CESQG hazardous waste; if such units do not meet the proposed requirements, they may not receive CESQG waste. Sections 257.5 through 257.30 were proposed to address appropriate facility standards for owners/operators of non-municipal non-hazardous waste disposal units that receive CESQG hazardous wastes. The requirements proposed in §§ 257.5 through 257.30 were substantially the same as 40 CFR part 258. The location restrictions were proposed to be effective 18 months after publication of the final rule, while the ground-water monitoring and corrective action requirements were proposed to be effective 24 months after publication of the final rule.

The June 12, 1995 proposal also proposed to amend the existing language of § 261.5 clarifying acceptable Subtitle D management options for CESQGs. The existing language in § 261.5, paragraphs (f)(3) and (g)(3) allows for a CESQG hazardous waste to be managed at a hazardous waste facility (either in interim status or permitted), a reuse or recycling facility, or a non-hazardous solid waste facility that is permitted, licensed, or registered by a State to manage municipal or industrial waste. The June 12 proposal proposed to continue to allow CESQG waste to be managed at a hazardous waste facility or at a reuse or recycling facility; however, if CESQG waste is managed in a Subtitle D disposal facility, it must be managed in a MSWLF that is subject to part 258 or a non-municipal non-hazardous waste disposal unit that would be subject to the facility standards in §§ 257.5 through 257.30.

III. Summary of Regulatory Approach of Today's Final Rule

Based on comments received on the proposed regulatory approach, the EPA is today finalizing a rule that is almost identical to the proposed requirements for non-municipal non-hazardous waste disposal units that receive CESQG hazardous wastes. Commentors clearly did not favor imposing additional requirements, beyond those proposed, based on the lack of risks presented by non-municipal non-hazardous waste disposal units that receive CESQG hazardous wastes. Furthermore, commentors were somewhat divided on whether to use the part 258 requirements or general performance standards in writing the requirements. The EPA has elected to use the part 258 requirements.

Elsewhere in today's final rule, and again based on comments that agreed with the EPA's proposed regulatory approach for CESQGs, EPA is finalizing the proposed changes to the special requirements for CESQGs (i.e., § 261.5) to clarify the obligation that the generators of CESQG wastes have to ensure proper management of such wastes. CESQGs are those that generate no more than 100 kilograms of hazardous waste or no more than one kilogram of acutely hazardous waste in a month and who accumulate no more than 1000 kilograms of hazardous waste or no more than one kilogram of acutely hazardous waste at one time.

As previously discussed, today's final rule responds to the statutory language in RCRA section 4010(c). In responding initially to the statutory language of section 4010(c), EPA elected to regulate municipal solid waste landfills first, due to the comparatively higher risks presented by these types of facilities. As discussed in the proposed rule, the subject of today's final rule—non-municipal non-hazardous waste disposal units that receive CESQG waste—present a small risk relative to risks presented by other environmental conditions or situations. Given this lower risk, the Agency would have elected not to issue this final rule at this time. In a time of limited resources,

[1] Proposed phrase ''Non-municipal solid waste disposal facility'' has been replaced in the final rule with the phrase ''non-municipal non-hazardous waste disposal unit''. See Section VI, A2 of today's preamble for an explanation.

common sense dictates that we deal with higher priorities first, a principle on which EPA, members of the regulated community, and the public can agree. However, given the D.C Circuit's reading of RCRA section 4010(c), *Sierra Club* v. *EPA*, 992 F.2d 337, 347 (D.C. Cir. 1993), and a schedule established as a result of litigation, the Agency must issue this final rule now. Faced with having to issue this final rule for a class of facilities that do not generally pose risks as high as municipal solid waste landfills, the Agency is finalizing requirements that address only the statutory minimum requirements in an attempt to reduce the economic burden on the regulated community.

A complete discussion of the main issues associated with today's final rule is presented in the next section of today's preamble while a discussion of today's requirements is presented later in today's preamble.

IV. Major Issues

A. Non-Municipal Non-Hazardous Waste Disposal Units That May Receive CESQG Hazardous Waste

The proposed rule was written to provide that only those non-municipal non-hazardous waste disposal units which meet the requirements in §§ 257.5 through 257.30 ''may receive'' CESQG waste, as required by RCRA section 4010(c). Any non-municipal non-hazardous waste disposal unit that did not meet the proposed requirements may not receive CESQG hazardous wastes. The proposal was written to apply to non-municipal non-hazardous waste disposal units that receive CESQG waste for storage, treatment, or disposal, including such units as surface impoundments, landfills, land application units and waste piles. The regulatory definition of the term ''disposal'' cover all placement of wastes on the land. See 40 CFR 257.2.

Several commentors addressed the Agency's interpretation of the statutory language ''may receive''. One commentor supported the Agency's decision to limit the proposed regulatory requirements to only those non-municipal non-hazardous waste disposal units that receive CESQG wastes. Another commentor, however, stated that a closer reading of Section 4010(c) reveals that Congress was not only concerned about modifying the criteria for ''facilities that may receive hazardous household wastes or hazardous wastes from small quantity generators * * *'' but also for ''facilities potentially receiving such wastes.'' According to the commentor, the ''may receive'' clause of the first sentence in Section 4010(c) merely refers to whether a facility may legally receive CESQG waste for disposal. The ''potentially receiving such wastes'' clause of the third sentence of Section 4010(c) refers to the actual potential for such facilities to receive CESQG wastes. The potential for CESQG waste to be disposed of at many types of industrial D landfills is high even with the proposed prohibition under § 261.5. It is the ''potentially receiving'' clause that specifically commands the Agency to promulgate provisions for all industrial facilities that could potentially receive CESQG wastes.

EPA disagrees with the commentor's interpretation of the statutory language in RCRA section 4010(c). More specifically, for a number of reasons, the Agency does not believe that the statutory language cited by the commentor evidences congressional intent that the revised criteria being promulgated today should address disposal of solid waste in all industrial disposal facilities. First, EPA believes that the commentor errs by focusing only on the ''facilities potentially receiving'' language in the last sentence of section 4010(c). If one reviews this language together with the statutory language in RCRA section 4010(a), it is clear that Congress did not intend for the revised criteria being promulgated today to apply to all industrial landfills.

RCRA section 4010(a) required EPA to conduct a study of the then existing guidelines and criteria issued under RCRA sections 1008 and 4004 which were applicable to ''solid waste management and disposal facilities, including, but not limited to landfills and surface impoundments.'' 42 U.S.C. § 6949a(a). This statutory language does indeed suggest that EPA was to study a wide range of solid waste disposal facilities, including industrial landfills. (As the commentor stated, because the information on industrial disposal facilities was quite limited, EPA's report to Congress did focus on municipal landfills.)

However, the statutory language in section 4010(c) directing EPA to promulgate a rule revising the criteria in 40 CFR Part 257 limits the rule's applicability only to those facilities which may receive hazardous household waste or small quantity generator waste. 42 U.S.C. 6949a(c). If Congress had intended the revised criteria under section 4010(c) to apply to all solid waste disposal facilities, including industrial landfills and surface impoundments, it clearly could have done so by enacting language similar to that already used in section 4010(a).

Secondly, the legislative history of RCRA section 4010 suggests that Congress expressly rejected a provision that would have required rules to be promulgated under section 4010(c) to apply to the entire universe of RCRA Subtitle D solid waste disposal facilities. Indeed, the House version of section 4010 would have required EPA to promulgate revised guidelines and criteria such that they would be applicable to all ''solid waste management and disposal facilities, including, but not limited to landfills and surface impoundments * * *.'' H.R. 2867, section 30, 98th Cong., 1st Sess. (as introduced in the Senate on November 9, 1983). However, the Conference Committee instead adopted a Senate amendment which limited the scope of the revised criteria to those facilities that may receive hazardous household waste or small quantity generator waste. H. Rept. No. 98–1133, 98th Cong., 2d Sess., at 116–117.

Another indication that RCRA section 4010(c) was not intended to cover the entire universe of solid waste disposal facilities is the fact that subsequent to the enactment of section 4010(c) (as part of the Hazardous and Solid Waste Amendments in 1984), a number of bills were introduced in Congress which would have either authorized or required EPA to issue additional regulations that would address all disposal facilities receiving industrial waste as opposed to addressing those which may receive CESQG waste as stated in Section 4010(c). See, e.g., H.R. 3735, ''Waste Materials Management Act of 1989,'' section 324 (would have required EPA to promulgate standards for the management of industrial solid waste) (Luken Bill); S. 1113, ''Waste Minimization and Control Act of 1989,'' section 204 (would have required EPA to promulgate requirements for facilities that manage different types of industrial waste) (Baucus Bill). Neither of these provisions (although neither was enacted) would have been necessary if RCRA section 4010(c) required EPA to promulgate revised criteria for all types of industrial disposal facilities.

This same commentor cites to language in both the Report to Congress (as provided for in RCRA section 4010(b)) and the MSWLF rulemaking to suggest that EPA acknowledged that all industrial landfills, even those not receiving CESQG waste, should fall within the scope of today's rule. EPA acknowledges that it expressed a concern about the potential risks that industrial solid waste disposal facilities might pose; however, EPA indicated

that it did not have the level of information necessary to conduct a rulemaking for such disposal facilities. At the time of issuing the final MSWLF rule, EPA indicated that it would attempt to study these facilities to gain a better understanding of the risks that they may pose. See 56 FR 51000 (Oct. 9, 1991).

After investigating available information in more detail, it became clear that of all industrial solid waste disposal facilities, only construction and demolition and off-site commercial facilities typically receive CESQG waste. As discussed in the proposed rule, recent information and discussions with the relevant industries indicate that on-site industrial disposal facilities (which make up the vast majority of industrial disposal facilities) generally do not receive CESQG waste. However, the commentor should be aware that EPA has drafted the rule such that it will apply to such industrial on-site facilities if they receive CESQG waste. See sections 257.5(a) (1) and (3).

B. Decision To Impose or Go Beyond the Statutory Minimum Components

RCRA section 4010(c) requires that the revised criteria must at a minimum include location restrictions, ground-water monitoring as necessary to detect contamination, and corrective action, as appropriate. The June 12, 1995, proposal discussed how the Part 258 Municipal Solid Waste Landfill Criteria went beyond these requirements. (See 60 FR 30968.) The proposal for non-municipal non-hazardous waste disposal units did not, however, go beyond these statutory minimum requirements. The Agency presented data, in the June 12 proposal, which showed that the establishment of additional facility management requirements, beyond these types of requirements, for non-municipal non-hazardous waste disposal units that may receive CESQG waste was not warranted.

The Agency received comments on both sides of this issue. Some commentors felt that the statutory minimum components were adequate to address the potential risks from non-municipal non-hazardous waste disposal units that may receive CESQG wastes. However, other commentors believed that additional regulatory controls should have been required.

Commentors stated that the level of documented releases and environmental problems do not merit extensive regulations. Commentors also stated that the final regulations should be limited to the proposed requirements as they felt that those requirements were indeed adequate given the low risks associated with the disposal of CESQG waste in non-municipal non-hazardous waste disposal units. Some commentors argued that less stringent requirements, less than the proposed requirements, would have been more appropriate.

On the other hand, some commentors raised the concern that the cumulative effect of allowing small quantities of hazardous waste to be disposed of in non-municipal non-hazardous waste disposal units would result in a major source of ground-water pollution. Commentors further felt that because MSWLF owners/operators have upgraded their units to meet the requirements in Part 258 in order to minimize the risk associated with the disposal of household hazardous wastes and CESQG wastes, non-municipal non-hazardous waste disposal units disposing of CESQG wastes should be required to meet the same standards as in Part 258 (e.g., closure and post-closure care, financial assurance and operating requirements). In addition, one commentor believed that the Agency's conclusions, concerning the potential risks associated with non-municipal non-hazardous waste disposal units receiving CESQG wastes, were based on outdated and limited data. The commentor felt that the data cited by EPA failed to justify the Agency's conclusion that non-municipal non-hazardous waste disposal units pose low risk but rather simply indicate a lack of information on the subject.

The Agency agrees with those commentors who believe that the proposed requirements are adequate to address the potential risks from non-municipal non-hazardous waste disposal units that receive CESQG hazardous wastes. In the June 1995 proposal, the Agency took the position that only the proposed requirements were necessary because ''construction and demolition (C&D) waste units, in general, do not currently pose significant risks and that individual damage cases are limited in occurrence'' and that off-site commercial landfills are subject to more ''stringent environmental controls''. The Agency requested additional data concerning C&D units to further assess the potential risks these types of units may pose as well as additional data on commercial industrial solid waste units or other types of units that may be subject to the proposal.

The Agency did not receive any new data concerning the potential risks associated with C&D units or any other types of units potentially subject to the proposal. Thus, EPA has no information suggesting that the facilities subject to this rule pose any risks beyond those limited ones discussed in the proposed rule. (One commentor submitted leachate data on bulky waste landfills but that data was previously considered by the Agency during the development of the proposal.) In response to the commentor that suggested that the cumulative effects of allowing small amounts of hazardous waste would result in a major source of ground-water pollution the Agency disagrees. The Agency believes that the limited number of documented damage cases and cases of ground-water contamination, discussed in the proposal to this rule, do not support the commentor's concern about the creation of major sources of ground-water pollution. As such, the Agency believes that it should not go beyond the requirements that were proposed.

For those commentors who expressed the need to impose Federal controls on C&D units beyond the proposed requirements, in the form of closure/post-closure standards and/or financial assurance requirements, the Agency wishes to point out that these types of standards are prevalent among State programs for C&D units. Most States (44) specify some thickness for a final cover, 34 States require post-closure care for some period of time while 33 and 32 States require financial assurance for closure and post-closure care, respectively, for C&D units. Given the lack of data suggesting that C&D facilities pose the same risks as MSWLFs and the fact that most States already require additional regulatory controls, EPA does not believe it is appropriate to establish requirements that go beyond the statutory minimum requirements of Section 4010(c).

C. Decision To Use the Part 258 Criteria Language or General Performance Language

The June 12, 1995 proposal identified two options for writing the proposed requirements. One was to use the Part 258 criteria as the baseline for these requirements. Part 258 is a combination of performance standards and additional detail to help the owner/operator achieve compliance with the performance standards. Part 258 also establishes minimum national criteria for municipal solid waste landfills, and as such, a minimum national level of protection. The second option was to use general performance standards that could be met by facility owners/operators as they implement the standards as well as to guide States in designing new regulatory programs (or revising existing regulatory programs).

Reasons cited in the proposal for using the Part 258 Criteria included: (1) Part 258 Criteria provide sufficient detail so that an individual owner/operator can self-implement them without State interaction in those instances where States do not seek approval of their permitting program as required in RCRA Section 4005(c); (2) EPA believes that the national minimum requirements are necessary for collection of reliable and consistent ground-water monitoring data and to allow the owner/operator and States to respond to contamination from the unit; (3) They contain a substantial amount of flexibility that allows approved States to tailor standards to individual and classes of facilities; (4) Some States expressed strong support for using 258 standards as the baseline for solid waste disposal facilities that receive CESQG hazardous waste; and (5) While some States have standards for non-municipal facilities that are not identical to the 258 standards, the Agency believed there was a strong likelihood that many State programs would be approvable.

Reasons cited in the preamble in support of using the general performance standard approach included: (1) Although the Part 258 standards contain substantial flexibility for States to tailor the programs to their conditions, the Part 258 standards put certain limits on State flexibility to design a program tailored to local conditions; (2) The Part 258 standards also include certain national minimum requirements (which States can not modify) that EPA promulgated because of the risks posed by MSWLFs; (3) In the absence of a significant Federal program, over half of the States have adopted location standards, ground-water monitoring requirements, and corrective action requirements that are significantly less extensive than the Part 258 standards; and (4) a general performance standard would provide the maximum flexibility for States and owners to adopt new methodologies and technologies (e.g., detecting ground-water contamination using technologies other than monitoring wells) to meet the standard at the lowest possible cost.

Comments were received in support of both approaches. Commentors supported the use of the Part 258 Criteria because they thought general performance standards would be difficult to implement and enforce. Another commentor stated that Section 4010(c) requires EPA to spell-out the requirements that facilities must implement; he argues that by not specifying how to attain the statutory minimum requirements, a performance-based approach would fall short of the statute. The performance-based approach would spawn endless uncertainty, requiring the wheel to be re-invented for each facility. This uncertainty would fall most heavily on citizens who are concerned about individual facilities. Other commentors argued against promulgating general performance standards and stated that the Part 258 rules provide a clear, flexible, common sense approach. Using Part 258 provides both the regulated community and the State Agencies a familiar, well-thought out scheme that is easy to administer and implement and offers sufficient flexibility to address site-specific conditions in approved States. The Agency received extensive comment in the Part 258 rulemaking indicating why general performance standards were inappropriate for landfills; those comments are as relevant today for landfills receiving CESQG waste. Finally, developing a significantly different set of rules from either Part 257 or Part 258 would also be confusing to the regulated community because it would create one set of rules for household wastes (Part 258), one for sites that accept CESQG wastes (this rule) and one for all other non-hazardous wastes (Part 257).

Other commentors supported the use of general performance standards by reiterating the reasons provided in the proposal in support of such an approach. Other commentors stated that due to the nature of the demolition waste stream being landfilled, they supported the use of general performance standards vs. all of the Part 258 standards. Commentors supported maximum State flexibility to address local conditions and requirements tailored to the perceived risk, not automatically adopting the more restrictive MSWLF regime. Another commentor stated that the Part 258 ground-water monitoring standards were developed for MSWLFs and if the ground-water monitoring program for non-municipal non-hazardous waste disposal units is not based on a performance standard that allows for site-specific design, certain facilities will be overregulated. Another commentor stated that the general performance standard is preferable as long as it provides an adequate description of the performance objective. Guidance manuals could be used to implement the general performance standards.

The Agency agrees with the majority of commentors who supported the use of the Part 258 Criteria. The Agency believes, for all of the reasons discussed by the commentors, that the use of the Part 258 criteria is the preferable option to utilize in the final rule. The Part 258 Criteria are a clear, flexible set of regulations that can be tailored by approved States to address site-specific conditions while protecting human health and the environment. The ground-water and corrective action requirements of today's final rule offer owners/operators in approved States great flexibility in establishing a ground-water monitoring program and in selecting a corrective measure should corrective action become necessary.

In a sense, the Part 258 Criteria for ground-water monitoring and corrective action are general performance standards. However, the big difference between the use of the Part 258 Criteria and the use of a general performance standard approach is the detail that is contained in the Part 258 Criteria, the same detail would not be a part of a general performance standard approach. Both the Part 258 Criteria and the general performance standard approach use performance standards; the general performance standard approach would provide only general standards to be followed by the owner/operator, while the Part 258 Criteria would provide additional detail and guidance to an owner/operator in trying to comply with the performance standards contained in Part 258. This additional detail in the Part 258 Criteria is what the Agency believes commentors were referring to when they stated that ''using Part 258 provides both the regulated community and the State Agencies a familiar, well-thought out scheme that is easy to administer and implement and offers sufficient flexibility to address site-specific conditions''. It is this additional detail in Part 258 that if not contained in the general performance standard approach would create confusion among the regulated community and ''spawn endless uncertainty''.

The Agency believes that the use of the detail in the Part 258 Criteria for ground-water monitoring and corrective action, in the form of factors to consider vs. design standards, clearly guides an owner/operator in achieving compliance with the performance standards in Part 258 while maximizing the owners/operators ability to take into account and use site-specific data. Part 258 guides an owner/operator and State Agencies by specifying (1) what factors should be considered in determining the number, depth, and spacing of the wells in the monitoring system, (2) how wells should be cased, (3) that any statistical test comply with basic performance standards, (4) what factors should be considered in establishing an initial list of monitoring parameters and frequency, (5) what factors should be

considered in selecting any potential remedy under corrective action, and (6) what factors should be considered in developing interim measures under a corrective action program. The Agency does not believe that the use of the detail in the Part 258 Criteria will result in ''facilities being overregulated''. EPA also believes that this detail is necessary to protect human health and the environment.

V. Summary of Today's Final Rule

Today's final rule specifies that non-municipal non-hazardous waste disposal units that do not meet the requirements (i.e., location restrictions, ground-water monitoring and corrective action) in sections 257.5 through 257.30 may not receive CESQG hazardous waste. The ground-water monitoring and corrective action requirements being finalized today are substantially the same as those that were proposed. The location restrictions have been changed from the proposal with the major change being that in the proposal 6 location restrictions were proposed but in today's final rule only 2 location restrictions are being finalized (floodplains and wetlands). Differences between the final requirements and those that were proposed are discussed in the appropriate sections of today's preamble.

The location restrictions will be effective 18 months after publication of the final rule. The location restrictions being finalized today are the floodplains and wetlands restrictions. The floodplains restriction is applicable to new units, existing units, and lateral expansions of existing units that receive CESQG waste. Only new units and lateral expansions of existing units that receive CESQG hazardous waste must comply with the wetlands location restriction.

The ground-water monitoring and corrective action requirements will be effective 24 months after publication of the final rule. Any existing unit, new unit, or lateral expansion of an existing unit that receives CESQG hazardous waste after the effective date will be required to comply with the final ground-water monitoring and corrective action requirements. The ground-water monitoring provisions are being finalized to ensure that units that receive CESQG hazardous waste will have monitoring systems in place that will enable the detection of any contamination of ground-waters along with appropriate sampling and analysis procedures to allow for the statistical analysis of monitoring results. The corrective action requirements will allow for the evaluation, selection, and implementation of an appropriate remedial technology to clean-up any contamination of ground-waters.

Today's final rule also amends the existing language of § 261.5 clarifying acceptable Subtitle D management options for CESQGs. The language in § 261.5, paragraphs (f)(3) and (g)(3) currently allows a CESQG hazardous waste to be managed at a hazardous waste facility (either in interim status or permitted), a reuse or recycling facility, or a non-hazardous waste disposal unit that is permitted, licensed, or registered by a State to manage municipal or industrial waste. Today's final rule would continue to allow CESQG waste to be managed at a hazardous waste facility or at a reuse or recycling facility. Today's final rule will require that if CESQG waste is managed in a Subtitle D disposal facility, it may be managed in a MSWLF that is subject to Part 258 or managed in a non-municipal non-hazardous waste disposal unit that is subject to the standards being finalized in §§ 257.5 through 257.30.

VI. Specifics of Today's Final Rule

A. Section 257.5—Applicability

1. Applicability

EPA proposed that any owner/operator of a non-municipal non-hazardous waste disposal unit that wanted to receive CESQG hazardous waste would have to comply with the proposed requirements in §§ 257.5–257.30 prior to the actual receipt of the CESQG waste. The proposal stated that owners/operators of non-municipal non-hazardous waste disposal units that do not meet the proposed criteria may not receive CESQG hazardous waste.

The proposal further stated that owners/operators of non-municipal non-hazardous waste disposal units that receive CESQG hazardous waste after the effective date would have to comply with the location restrictions (§§ 257.7–257.12) within 18 months after the date of publication of the final rule and with the ground-water monitoring and corrective action requirements (§§ 257.21–257.28) within 24 months after the date of publication of the final rule.

The Agency is finalizing the applicability of the final rule as proposed and retaining the effective dates as proposed. The Agency received no specific comments in regard to the effective dates with the exception of one comment that stated that the commentor had no problem with the two-year effective date for the ground-water monitoring and corrective action requirements.

2. Definitions

EPA proposed a number of definitions for terms in the proposal and received limited comments. One commentor thought that the term ''non-municipal solid waste disposal facility'' should be more appropriately called ''non-municipal non-hazardous waste disposal facility''. The commentor stated that by discussing only ''solid waste'' facilities, hazardous waste facilities are not excluded because they are a subset of ''solid waste''. Furthermore, this commentor thought the term ''non-municipal solid waste landfill'' should also more appropriately be called a ''non-municipal non-hazardous waste disposal facility''. This same commentor also expressed a concern that the terms ''facility'' and ''unit'' as used in §§ 257.7 through 257.9 were used interchangeably and that some clarification and/or consistency was necessary.

The EPA agrees that the term ''non-municipal solid waste disposal facility'' could be confusing and that the term ''non-municipal non-hazardous waste disposal facility'' more clearly defines the types of facilities potentially subject to today's final rule. The EPA also agrees that the terms ''facility'' and ''unit'' were used interchangeably and that the term ''unit'' is more appropriate to use in defining what is potentially subject to today's final rule. Therefore, in today's preamble and in the final rule language the term non-municipal non-hazardous waste disposal unit is used. Correspondingly, the terms ''existing facility'' and ''new facility'' have been changed in the final rule to refer to ''exiting unit'' and ''new unit''. Existing unit refers to any non-municipal non-hazardous waste disposal unit that is receiving CESQG hazardous waste as of the effective date (i.e., 18 months after the final rule is published in the Federal Register). A new unit is any non-municipal non-hazardous waste disposal unit that has not received CESQG hazardous waste prior to the effective date (i.e., 18 months after the final rule is published in the Federal Register).

Today's applicability section (§ 257.5) has also been changed to clarify the situation where a non-municipal non-hazardous waste disposal unit decides to receive CESQG hazardous waste after the effective date of today's rule. The applicability section (section 257.5(a)(5)) has been changed to clarify that any non-municipal non-hazardous waste disposal unit that first receives CESQG hazardous waste after the date 18 months after the date of publication of this final rule in the Federal Register

must be in compliance with all the requirements prior to the receipt of the CESQG hazardous waste.

One additional change from the proposed rule language concerns the definition of the term State/Tribal Director. In the proposal the term State/Tribal Director was defined to mean the chief administrative of the State/Tribal agency responsible for implementing the State/Tribal permit program for Subtitle D regulated facilities. The remainder of the proposed rule language, however, consistently used the term State Director. This was done as a means of efficiency and the Agency did not imply any other substantive effect on the character, authority, and/or rights of Tribes. The final rule will include Indian Tribes in the definition of the term ''State'' (as was proposed) and Tribal Director in the definition of ''State Director''. This change is being made to be consistent with the proposed changes to Part 258 language in the proposed State/Tribal Permit Program Determination of Adequacy (See 61 *FR* 2584, January 26, 1996). The State/Tribal Permit Program Determination of Adequacy contains a complete discussion of the opportunities that are available to Indian Tribes to apply for program approval.

B. Sections 257.7–257.13—Location Restrictions

EPA proposed a set of location restrictions for new and existing units that receive CESQG waste which mirrored restrictions already established for MSWLFs. 40 CFR 258.10 to 258.16. However, in response to comment received on the proposal, EPA has modified the proposed location restrictions in a number of ways. Because units receiving CESQG waste pose a smaller risk to human health and the environment than do MSWLF facilities and for the reasons discussed below, EPA believes that the restrictions being promulgated today satisfy the statutory standard contained in RCRA Section 4010(c). 42 U.S.C. § 6949a(c).

1. Airport Safety

EPA proposed that new, existing, and lateral expansions of existing non-municipal non-hazardous waste disposal units, that receive CESQG hazardous waste, demonstrate that the unit does not pose a bird hazard to aircraft. The proposed airport safety provision was the same as the current Part 257 requirement; only the demonstration requirement to the affected airport and to the FAA for new and lateral expansions of existing units was new.

Several commentors objected to the airport safety provision in Section 257.7 and requested that the provision be removed. Commentors stated that units that accept CESQG wastes will be non-putrescible operations that do not provide a source of food or nesting for birds. One commentor stated that actual observations of over 30 sites across the country support the conclusion that birds are virtually nonexistent at C&D units. Lastly, one commentor referenced the recent FAA report titled ''Draft Report to Congress on Potential Hazards to Aircraft by Locating Waste Disposal Sites in Vicinity of Airports'', wherein, the FAA stated that recent FAA sponsored research has shown that non-putrescible waste landfills (i.e., construction and demolition waste landfills, . . .) do not attract wildlife that could create a wildlife/aircraft strike hazard.

In response to commentors concerns, the Agency has eliminated the airport safety provision from today's final rulemaking. The Agency's original requirement under Part 257 was designed to regulate units that dispose of putrescible wastes; based on the fact that units potentially subject to today's final rule do not receive putrescible wastes (e.g., C&D units), the Agency sees no reason to have this requirement as part of today's final rule.

2. Floodplains

EPA proposed that new, existing, and lateral expansions of existing non-municipal non-hazardous waste disposal units, that receive CESQG hazardous wastes, located in the 100-year floodplain demonstrate that the unit will not restrict the flow of the 100-year flood, reduce the temporary water storage capacity of the floodplain or result in washout of solid waste so as to pose a hazard to human health and the environment.

No comments were received on the substance of the floodplain provision; therefore, the Agency is finalizing the floodplain provision as it was proposed.

3. Wetlands

The Agency proposed that new facilities and lateral expansions of existing non-municipal non-hazardous waste disposal units, that receive CESQG hazardous wastes, not be located in a wetland unless specified demonstrations can be met by the owner/operator. The demonstrations were to ensure that if a non-municipal non-hazardous waste disposal unit needed to be located in a wetland, protection of state water quality standards and protection of the wetland will be achieved. Furthermore, the proposal was consistent with the Agency's goal of achieving no net loss of the nation's wetlands.

No comments were received on the substance of the wetlands provision, therefore, the Agency is finalizing the wetlands provision as it was proposed.

4. Fault Areas

EPA proposed that new and lateral expansions of existing non-municipal non-hazardous waste disposal units, that receive CESQG hazardous waste, not be located within 200 feet of a fault that has had displacement in Holocene time unless the owner/operator demonstrates that an alternative setback distance of less than 200 feet will not affect the structural integrity of the unit during displacement and will be protective of human health and the environment.

One commentor questioned the need for a fault area restriction because this location provision is premised on the fact that if movement along a fault occurs, the structural integrity of the engineering features will be disrupted. Given the low risks imposed by many of the facilities potentially subject to the rule and the fact the Agency is not regulating the design features (i.e., liners, leachate collection systems) of these facilities, imposing siting restrictions is not warranted.

The Agency agrees that the fault area restriction is designed to guard against disruptions to the engineering features that provide structural integrity to the unit. Because of the low-risks posed by non-municipal non-hazardous waste units that receive CESQG waste, EPA did not propose any liner requirements or other provisions bearing on the structural integrity of the units. Thus, the Agency agrees that imposing this restriction is not warranted, and as such, the fault area restriction is not a part of today's final rule.

5. Seismic Impact Zones

EPA proposed that new and lateral expansions of existing non-municipal non-hazardous waste disposal units, that receive CESQG hazardous waste, not be located in seismic impact zones unless the owner/operator demonstrates that all containment structures are designed to resist the maximum horizontal acceleration in lithified earth material for the site.

No specific comments were received on this provision. However, this provision like the fault area provision, was designed to guard against disruptions to liners, leachate collection systems, and surface water control systems, therefore, EPA considers that the logic of the comments on fault area

restrictions applies to this restriction as well, and as such, the Agency sees no reason to include this location restriction as part of today's final rulemaking.

6. Unstable Areas

EPA proposed that new, existing and lateral expansions of existing non-municipal non-hazardous waste disposal units, that receive CESQG hazardous waste, located in an unstable area demonstrate that engineering measures have been incorporated into the facility design to ensure that the integrity of the structural components of the facility will not be disrupted.

As with the seismic impact zone restriction, no specific comments were received on this part of the proposal. However, for the same reasons as discussed above under the fault area and seismic impact zone restrictions, this location restriction is also not part of today's final rule.

7. Deadline for Making Demonstrations

EPA proposed that existing non-municipal non-hazardous waste disposal units, that receive CESQG hazardous wastes, that could not make the demonstrations pertaining to airports, floodplains, or unstable areas, would not be allowed to accept CESQG hazardous waste for disposal 18 months after the date of publication of the final rule.

No specific comments were received on this provision of the proposal. As the final rule only applies to existing units located in floodplains, this provision has been changed to require that only existing units in floodplains will not be allowed to accept CESQG hazardous waste for disposal 18 months after the date of publication of the final rule.

C. Sections 257.21–257.28—Ground-Water Monitoring and Corrective Action

1. Applicability

The Agency proposed a number of requirements under the heading ''applicability.'' The Agency proposed that the ground-water monitoring requirements could be suspended by the Director of an approved State if the owner/operator could demonstrate that there was no potential for migration of hazardous constituents from the facility to the uppermost aquifer during the active life plus 30 years.

The Agency also proposed the existing units had to be in compliance with the groundwater monitoring requirements within 2 years after the date of publication of the final rule in the Federal Register. EPA proposed that new facilities meet the ground-water monitoring requirements when waste is first placed in the unit. The Director of an approved State could specify an alternative schedule for compliance for existing units. The proposed alternative schedule called for 50% of existing units to be in compliance within 2 years and for all existing units to be in compliance within 3 years.

The Agency also proposed that ground-water monitoring be conducted throughout the active life plus 30 years. The director of an approved State could decrease the 30 year period.

Lastly, the Agency proposed to grant the Director of an approved State the flexibility to establish and use an alternative list of indicator parameters for some or all of the constituents listed in Appendix I (appendix I to Part 258) and to allow small, dry, remote non-municipal non-hazardous waste disposal units to use an alternative form of detecting ground-water contamination.

The Agency received no adverse comment on most of these provisions. The flexibility for small, dry, remote non-municipal units was considered an example of increased flexibility by a commentor. The Agency has slightly altered the regulatory language for the proposed flexibility for small, dry, remote non-municipal non-hazardous waste disposal units that may be allowed to use alternative forms of detecting ground-water contamination. The proposed language required, in two places, that an owner or operator had to submit results or seek approval of corrective measures within 60 days. These deadlines have been removed to allow for increased flexibility. The deadlines have been replaced with language that allows the Director of an approved State to establish a schedule for the owner or operator for the above mentioned activities. This change is also being done to be consistent with the rule language that was proposed for MSWLFs, allowing small, dry, remote MSWLFs to use alternative forms of detecting ground-water contamination. See 60 *FR* 40799, August 10, 1995. The proposed language allowing for alternatives to be used for small, dry, remote MSWLFs was the basis for the proposed language to allow small, dry, remote non-municipal, nonhazardous waste disposal units to also use alternative forms of detecting ground-water monitoring. See 60 *FR* 30976, June 12, 1995.

The length of the ground-water monitoring period (i.e., active life plus 30 years) generated some disagreement. In regard to the length of the ground-water monitoring period, two commentors concurred with the Agency's decision to impose the ground-water monitoring period through the active life plus 30 years. The commentors believed that the time frame was consistent with other similar rules, and based upon the flexibility in the rule, was not overly burdensome to units in comparison to the environmental protection it affords.

Several commentors requested that the Agency reduce the ground-water monitoring period to a shorter time period or to a time period based on an individual unit's performance standard. In regard to a performance standard, one commentor argued a performance standard could be used by an owner/operator to demonstrate that an alternative time period is appropriate. One example suggested was that the performance standard be based on a specified number of years without significant changes in ground-water quality. No specific number of years was provided.

In regard to a shorter period of time, commentors generally agreed that the 30 years was not reflective of the low risks posed by units that may potentially receive CESQG wastes. One commentor requested 10 years for existing and 15 years for new units. Another commentor stated that a shorter period was necessary because most States have a post-closure period that ranges from 5–10 years. A third commentor stated that applying an extremely burdensome 30 years period places an economic burden on operators that is not remotely balanced by any real environmental benefit. This commentor suggested a 5-year period and that the rules could be extended if problems are discovered during the 5 years. Lastly, one commentor questioned what incentive existed to monitor groundwater for 30 years beyond the final receipt of waste. This commentor considered it unreasonable to expect that the monitoring program will be met after a disposal unit has no further economic value.

After a consideration of the comments, the Agency has elected to retain the requirement that ground-water monitoring be conducted for 30 years after the active life of the unit for the same reasons that were discussed in the proposal. The Agency believes that there is sufficient flexibility within § 257.21(e) for an approved State to decrease the 30-year period. The final regulation allows the Director of an approved State to reduce the length of the monitoring period if the owner/operator demonstrates that a shorter period is adequate to protect human health and the environment. The Agency expects that States will reduce

the length of the monitoring period if an owner/operator can demonstrate, for example, that no adverse changes in ground-water quality have been detected for some period of time less than 30 years. Furthermore, although some commentors expressed concern over the length of the 30-year period, the Agency did not receive any data supporting any such reduction in the length of the monitoring period.

Today's final rule continues to provide flexibility for an approved State to suspend the ground-water monitoring requirements in hydrogeologic settings that may preclude the migration of hazardous constituents from the unit to the ground water.

2. Ground-Water Monitoring Systems

The Agency proposed a number of requirements under the proposed section ''ground-water monitoring systems''. The Agency proposed that ground-water monitoring systems consist of a sufficient number of wells, installed at appropriate locations and depths to yield ground-water samples from the uppermost aquifer that represent the quality of background ground water and the quality of ground water passing the relevant point of compliance. The downgradient monitoring system was to be installed at the relevant point of compliance, as allowed by the Director of an approved State, or at the waste management unit boundary in unapproved States. The relevant point of compliance specified by the Director of an approved State was proposed to be no more than 150 meters from the waste management unit boundary and located on land owned by the owner/operator. Furthermore, the proposal allowed for multi-unit monitoring under specific conditions.

The only area to receive comments was the point of compliance. A number of commentors expressed concern regarding the 150 meter limit for the point of compliance. One commentor requested EPA to either allow a site-specific decision regarding the point of compliance or allow the use of a point of compliance within the facility boundary. A second commentor requested that EPA not specify a specific distance but rather authorize a site-specific identification of a compliance point based on the location for the potential for exposure. For example, if a unit is located a considerable distance from a drinking water well, having the point of compliance 150 meters from the unit boundary may be needlessly stringent. A third commentor stated that a flexible approach to establishing the point of compliance is well suited to low-risk facilities.

After a consideration of the comments, the Agency has decided to retain the proposed language regarding the point of compliance. The final rule will require that the downgradient monitoring wells be installed at the waste management unit boundary in unapproved States or at the relevant point of compliance, as allowed by the Director of an approved State. The relevant point of compliance can be up to 150 meters from the waste management unit boundary. The Agency retained the 150 meter limit because the Agency believes it is essential to set a maximum distance limit for the point of compliance that would limit ground-water contamination, yet still provide flexibility to owners/operators of non-municipal non-hazardous waste disposal units that receive CESQG wastes. A point of compliance set some distance much farther from the unit boundary would result in a situation where ground-water contamination, when first detected, would be more wide-spread and result in higher corrective action costs to remedy the situation.

The Agency realizes that the point of compliance can have significant implications associated with the scope, magnitude and cost of ground-water remedial actions. Because of these implications, the point of compliance continues to be an area of discussion and debate. At this point in time, the Agency is finalizing the point of compliance language for Subtitle D units as described in the proposal for this rule. However, the Agency is addressing the point of compliance issue in an Advance Notice of Proposed Rulemaking (ANPR) (See 61 FR 19432, May 1, 1996) as part of developing regulations concerning ''Corrective Action for Releases from Solid Waste Management Units at Hazardous Waste Management Facilities'' (subpart S of 40 CFR part 264). The Agency intends to use the ANPR to invite comments on a number of issues, including the point of compliance pertaining to corrective action under Subtitle C of RCRA. It is possible that future regulations, which address new point of compliance approaches for Subtitle C facilities, could also address Subtitle D units subject to today's final rule.

3. Ground-Water Sampling and Analysis Requirements

The proposal required the use of consistent sampling and analysis procedures that would be designed to ensure monitoring results that provide an accurate representation of ground-water quality at the background and downgradient monitoring wells. The Agency received no substantial comments on this section of the proposal; therefore, the sampling and analysis requirements are being finalized as proposed. Comments concerning sampling and analysis requirements are addressed in the comment response document associated with this final rule.

4. Detection Monitoring Program

The proposal addressed numerous requirements associated with detection monitoring, the first phase of ground-water monitoring. The majority of the proposed requirements pertained to which constituents had to be monitored for and the required frequency of monitoring. The proposal required that those constituents identified in Appendix I of part 258 were to be monitored for during the detection monitoring phase of ground-water monitoring and that the frequency of monitoring was to be at least semi-annual. The proposal also specified the areas of flexibility that existed for an owner/operator during detection monitoring.

The Agency received no comments on the frequency of monitoring during the detection monitoring period, and as such, the final rule requires at least semi-annual monitoring during detection monitoring. The final rule also continues to allow the Director of an approved State to specify an alternative frequency of monitoring during the active life plus 30 years (no less than annual during the active life).

The Agency did receive some comments regarding the constituents to be monitored for during detection monitoring. A commentor raised the issue of developing a new list of ground-water parameters for facilities that accept CESQG wastes. Another commentor stated that MSWLFs contain a much larger portion of waste that is biodegradable and therefore creates its own chemical degradation byproducts. Unless EPA has data that shows that leachates from non-municipal non-hazardous waste facilities are similar to municipal solid waste landfills, the Agency should not be imposing similar requirements. According to the commentor, the ground-water monitoring program should require testing only for constituents that are related to the waste accepted at the facility, not a list of constituents that could be found at any facility that may accept CESQG wastes. Lastly, the commentor stated that the monitoring parameters should be representative of

those constituents that are most mobile in the ground-water environment so that early detection is accomplished without undue cost of over regulation.

After a consideration of the comments, the Agency has decided to retain the requirements as proposed in the detection monitoring section of the proposal. The Agency believes that developing a new list of ground-water constituents for facilities that accept CESQG wastes would cause undue confusion for the regulated community. However, EPA has provided some flexibility for approved States in regard to testing for constituents that are related to the wastes accepted at the unit. Today's final rule provides flexibility to the Director of an approved State to remove from the detection monitoring list of constituents, any constituent that is not reasonably expected to be in or derived from the waste contained in the unit. Furthermore, the Director of an approved State may establish an alternative list of indicator parameters in lieu of some or all of the constituents in appendix I of part 258, if the alternative indicator parameter(s) provides a reliable indication of releases from the unit to the ground water.

The June 1995 proposal allowed the Director of an approved State to develop only an alternative list of inorganic indicator parameters; the organic parameters in appendix I of part 258 were to be monitored for and no substitutions were allowed. However, in today's final rule, the Agency has provided additional flexibility in that the Director of an approved State can establish an alternative list of indicator parameters for some or all of the constituents in appendix I of part 258 including the organic constituents. The Agency has provided this area of increased flexibility because an alternative list of indicator parameters, approved by the Director of an approved State, could be appropriate in specific circumstances, and the Agency continues to believe that the risks posed by non-municipal non-hazardous waste disposal units that may elect to receive CESQG wastes is relatively small when compared to MSWLFs. Non-municipal non-hazardous waste units that elect to receive CESQG wastes will be mostly C&D units. The Agency stated in the proposal for this rulemaking, that these types of units, in general, do not pose a significant risk. As such, the Agency believes that Directors of approved State programs can exercise additional flexibility in establishing the appropriate list of detection monitoring constituents or indicator parameters.

This area of increased flexibility can serve to alleviate commentor's concerns regarding the appropriate parameters to monitor for during detection monitoring. This area of flexibility will allow the Director of an approved State to tailor the detection monitoring list to those wastes accepted at the facility and/or those that are expected to be a concern due to mobility. One commentor expressed concern that the detection monitoring list (Appendix I to Part 258) for today's final rule should not be identical to the detection monitoring list developed for municipal solid waste landfills. The Agency, however, believes that leachates from non-municipal units are somewhat similar, in that some of same types of organics and inorganics can appear in non-municipal leachates but at lesser concentrations, and as such, saw no reason to create a separate and new detection monitoring list.

5. Assessment Monitoring Program

The proposal would have required that once a statistically significant increase over background was detected during detection monitoring, a full assessment of any impacts on ground-water quality had to be undertaken. The purpose of assessment monitoring was to sample for a larger list of constituents to determine which were present. The assessment monitoring program also required the establishment of ground-water protection standards.

The Agency received no comments on the proposed assessment monitoring requirements; therefore, the assessment monitoring program requirements are being finalized as proposed.

6. Assessment of Corrective Measures, Selection of Remedy, and Implementation of the Corrective Action Program

The proposal required that once a statistically significant increase was detected over the ground-water protection standard for any constituent detected during assessment monitoring, the owner/operator was required to assess available corrective measures. Available corrective measures were those that could meet the performance standards established under the proposed selection of remedy requirements. Lastly, the proposal would have required that once a corrective measure was selected, the owner/operator would be required to implement the selected remedy.

The Agency received no comments on the proposed corrective action requirements; therefore, the corrective action requirements are being finalized as proposed.

D. Section 257.30—Recordkeeping Requirements

EPA proposed that owners/operators of non-municipal non-hazardous waste disposal units record and retain various pieces of information in an operating record. The operating record was proposed to be at the facility or at an alternative location as approved by the Director of an approved State. The following type of information was proposed to be retained: any location restriction demonstration and any demonstration, certification, finding, monitoring, testing, or analytical data required as part of complying with the ground-water monitoring and corrective action requirements.

No comments were received on the substance of the recordkeeping requirements; therefore, the Agency is finalizing the recordkeeping requirements provision as it was proposed.

E. Special Requirements for Hazardous Waste Generated by Conditionally Exempt Small Quantity Generators

1. Changes to Section 261.5

The proposal would have amended the existing language of § 261.5 by establishing acceptable Subtitle D management options for CESQG waste. The existing language in § 261.5, paragraphs (f)(3) and (g)(3), allows for a CESQG hazardous waste to be managed at a hazardous waste facility (either in interim status or permitted), a reuse or recycling facility, or a non-hazardous solid waste facility that is permitted, licensed, or registered by a State to manage municipal or industrial wastes. The proposed rule would have continued to allow CESQG waste to be managed at a hazardous waste facility, or at a reuse or recycling facility; however, the proposal would have required that if CESQG waste was to be managed at a Subtitle D disposal facility, it must be managed in a MSWLF that is subject to Part 258 or a non-municipal non-hazardous waste disposal unit that is subject to the standards that were proposed for units receiving CESQG waste.

Commentors supported the proposed rule changes to paragraphs (f)(3) and (g)(3) in § 261.5 regarding waste generated by CESQGs. Commentors stated that the continuation of the CESQG rules was very important as these rules were developed to ease the burden of small generators. Other commentors also supported the proposed generator changes for various reasons: proposed changes will help CESQGs ensure that their wastes are properly managed, CESQGs may

investigate the recycling or reuse of their waste streams, or use of alternative, less-hazardous materials in their operations, and the proposed changes are a wise-policy decision.

Given the agreement that commentors had with the proposed changes to § 261.5, the Agency has decided to largely finalize the requirements as proposed.

One small change has been made in today's final rule language, however, in paragraphs (f)(3) and (g)(3). This small conforming change deals with final regulatory language that was developed in the universal waste rule (see 60 FR 25541, May 11, 1995). Universal wastes are the following hazardous wastes that are subject to the universal waste rule: batteries as described in 40 CFR 273.2, pesticides as described in 40 CFR 273.3, and thermostats as described in 40 CFR 273.4. The conforming changes are found in today's final rule language in paragraphs (f)(3)(vii) and (g)(3)(vii). The conforming changes in today's final rule allow a CESQG to manage universal wastes in a facility that is a universal waste hauler or destination, provided that facility is subject to the universal waste requirements in 40 CFR Part 273. See 60 FR 25492, May 11, 1995. The possibility that some CESQG waste could be considered a universal waste was discussed in the proposal to this final rule. See 60 FR 30968, June 12, 1996.

RCRA Section 3010(b) states that regulations respecting requirements applicable to the generation, transportation, treatment, or disposal of hazardous waste that are promulgated under Subtitle C shall take effect six months after the date of promulgation. The Administrator is authorized to establish a shorter effective date. 42 U.S.C. 6930(b).

The revisions to 40 CFR Section 261.5 and 271.1 are being promulgated, in part, under RCRA section 3001(d)(4), and thus, are subject to the six month effective date provision in section 3010(b). In the proposed rule, EPA stated that it intended to make these revisions to the Subtitle C regulations effective 18 months after their publication so as to coincide with the effective dates of the Subtitle D provisions. See 60 FR 30979. In the final rule, EPA is making the Subtitle C provisions effective in six months in accordance with RCRA section 3010(b). However, to ensure that there will be consistency in implementation of both the Subtitle C and D provisions, as suggested in the proposal, EPA has chosen to delay the compliance date for the Subtitle C provisions until 18 months after today's date. Thus, although the Subtitle C revisions go into effect in six months, those who generate CESQG waste will have to comply with the revised disposal standards in section 261.5 (f)) and (g) only when the Subtitle D revised location restrictions for CESQG waste go into effect in 18 months. The final rule language for section 261.5 and 271.1 reflect this delayed compliance date.

2. CESQG Wastes

Comments were received concerning various aspects related to the requirements for CESQGs. Comments were also received requesting that the Agency provide a clearer picture of what constitutes a CESQG waste. Lastly, other commentors stated that the final rule needed to have a screening requirement in place for facilities that elect not to receive CESQG wastes.

In regard to the comments concerning the need to better identify what is a CESQG waste, the proposal identified examples of CESQG wastes, particularly for the construction and demolition waste industry. See 60 FR 30967, June 12, 1995. CESQG hazardous wastes generated in the construction, renovation, and demolition waste industry are more likely to be specific chemicals or products used in these activities. Building demolition debris can be a CESQG waste if based on generator knowledge or a representative sample of the entire building debris, the building debris is determined to be a hazardous waste (i.e., it exhibits one of the four characteristics of a hazardous waste), and if hazardous, is under the waste quantity cutoff limit for a CESQG waste (See 60 FR 30967, June 12, 1995).

Commentors requested a comprehensive listing of C&D wastes which may be typically hazardous. The Agency's supporting document ''Construction and Demolition Waste Landfills'' identified a number of wastes that were considered potentially ''hazardous'' by various sources. The Agency continues to believe, as stated in the proposal, that not all of the wastes identified in the report are hazardous as determined under Subtitle C; however, the listing provided in the supporting document provides an indication of the types of wastes that may be present in the construction and demolition waste industry that could be a concern. Given that the Subtitle C and D regulations are generally implemented by the States, the Agency believes that owners/operators should work with their State Agencies to determine what specific rules or guidance applies with regard to the types of wastes that their State Agency considers to be hazardous.

3. Screening Procedures

Comments were also received requesting that the Agency acknowledge the use of existing screening procedures. With regard to the comments concerning the need to acknowledge the use of existing screening procedures and the need to have a screening procedure in place for facilities that elect not to receive CESQG wastes, the proposal did not require non-municipal non-hazardous waste disposal units to screen incoming wastes in order to assure that they were not receiving CESQG wastes. Rather, it left it up to the owner/operator to assure, through what ever means he/she determined, that the facility was not receiving CESQG waste. This could include certifications by waste haulers that their wastes destined for the facility will not contain CESQG wastes, written prohibitions in contracts between waste haulers and the owner/operator stating that the facility does not receive CESQG waste for disposal, and/or random screening procedures at the facility. Commentors were concerned that CESQG wastes would find their way into C&D landfills that elect not to upgrade and comply with today's final requirements, particularly given that the proposal did not require the use of a formal screening procedure to prove that the facility was not receiving CESQG wastes. Specifically, one commentor stated that without a stringent method of restricting wastes and documenting these efforts, C&D landfills that do not meet the proposed requirements may become low-cost alternatives for the unscrupulous. Two other commentors stated that the proposed rule, as written, lacked an affirmative demonstration on the part of a facility that elected not to comply with the proposed requirements, that the facility was in reality not receiving CESQG waste for disposal. The commentor argued that ''without a screening method at facilities that elect not to comply, the proposed rule is insufficient to satisfy the mandate of RCRA Section 4010(c)''. Several of these commentors suggested the use of the screening procedure specified in the Part 258 Criteria for municipal solid waste landfills.

Other commentors acknowledged that screening exists today for C&D facilities and that it is successful. Screening is done at most C&D facilities and, thus, regulatory criteria made applicable to such facilities should take into account screening practices that significantly reduce the risks that C&D facilities present to human health and the environment. These commentors wanted EPA to expressly acknowledge

that screening programs reduce risks at C&D facilities or to develop a regulatory approach that allows C&D facilities with established screening programs to be exempted from a majority of the proposed criteria or EPA should develop relaxed regulatory criteria that take into account such risk-reduction operational practices.

The proposal explained that owners/operators implementing a screening procedure should contact their State Agency to determine that the screening procedure ensures that the facility does not receive CESQG wastes. Responding to this statement, one commentor said that the Agency should not delegate this obligation to the states because doing so will lead to unwarranted lawsuits against owners/operators that do not want to accept CESQG wastes and confusion at the state level caused by widely divergent screening requirements that may or may not be acceptable.

In response to the comments about the need for screening requirements as part of today's final rule, the Agency is concerned that the establishment of specific and/or detailed screening standards would limit flexibility that owners/operators and State Agencies have in developing an appropriate screening method, if one is considered necessary. Under the rule as proposed and promulgated, if an owner/operator of a non-municipal non-hazardous waste disposal unit elects not to receive CESQG wastes, and therefore, does not upgrade to meet the requirements in today's final rule, he/she is not legally allowed to accept CESQG wastes. See 40 CFR 257.5(a)(3). If the owner/operator does accept CESQG wastes, then he/she would be in violation of today's final rule and would be subject to enforcement actions. See 40 CFR 257.5(a)(1). CESQGs that send their CESQG waste to landfills that are not subject to today's requirements for non-municipal units would, likewise, be subject to enforcement actions.

Owners/operators that elect not to upgrade and therefore not receive CESQG hazardous wastes, may on their own elect to develop a screening procedure that is effective in screening out CESQG materials. Owners/operators who elect to develop a screening procedure are encouraged to work with their State Agency to determine what screening procedures, may at a State level be required, recommended or in guidance. The Agency believes that the adoption of a Federal screening program as a condition of not receiving CESQG hazardous waste, will limit the flexibility that both States and owners/operators can exercise in developing a successful screening program. The Agency does not want to interfere in the development of acceptable screening programs that, based on comments received on this rule, can be developed and are being used in the field .

VII. Implementation of Today's Final Rule

A. State Activities Under Subtitle C (Regulation of CESQGs of Hazardous Waste)

1. Hazardous and Solid Waste Amendments to RCRA

Today's final rule changes the existing requirements in § 261.5, paragraphs (f)(3) and (g)(3) pertaining to the special requirements for CESQGs. Under Section 3006 of RCRA, EPA may authorize qualified States to administer and enforce the RCRA program within the State. (See 40 CFR Part 271 for the standards and requirements for authorization.) Following authorization, EPA retains enforcement authority under Sections 3008, 7003 and 3013 of RCRA, although authorized States have primary enforcement responsibilities.

Prior to the Hazardous and Solid Waste Amendments of 1984 (HSWA), a State with final authorization administered its hazardous waste program entirely in lieu of EPA administering the Federal program in that State. The Federal requirements no longer applied in the authorized State, and EPA could not issue permits for any facility which the State was authorized to permit. When new, more stringent, Federal requirements were promulgated or enacted, the State was obliged to enact equivalent authority within specified time frames. New Federal requirements did not take effect in an authorized State until the State adopted the requirements as State law.

In contrast, under Section 3006(g) of RCRA, 42 U.S.C. 6926(g), new requirements and prohibitions imposed by HSWA take effect in authorized States at the same time they take effect in unauthorized States. EPA is directed to carry out these requirements and prohibitions in previously authorized States, including the issuance of permits and primary enforcement, until the State is granted HSWA authorization to do so. While States must still adopt HSWA-related provisions as State law to retain final authorization, the HSWA provisions apply in authorized States in the interim.

The amendments to § 261.5, paragraphs (f)(3) and (g)(3), are finalized pursuant to section 3001(d)(4) of RCRA, which is a provision added by HSWA. Therefore, the Agency has added the requirements to Table 1 in § 271.1(j) which identifies the Federal program requirements that are promulgated pursuant to HSWA and that take effect in all States, regardless of their authorization status. States may apply for either interim or final authorization for the HSWA provisions identified in Table 1.

2. Effect on State Authorizations

As noted above, EPA will implement today's rule (i.e., the revision to § 261.5) in authorized States until they modify their programs to adopt the Section 261.5 rule change and the modification is approved by EPA. Because the rule has been finalized pursuant to HSWA, a State submitting a program modification may apply to receive either interim or final authorization under Section 3006(g)(2) or 3006(b), respectively, on the basis of requirements that are substantially equivalent or equivalent to EPA's. The procedures and schedule for State program modifications for either interim or final authorization are described in 40 CFR 271.21. It should be noted that all HSWA interim authorizations will expire January 1, 2003. (See § 271.24(c) and 57 *FR* 60129 (December 18, 1992)).

40 CFR 271.21(e)(2) provides that States that have final authorization must modify their programs to reflect Federal program changes, and must subsequently submit the modifications to EPA for approval. The deadline by which the State must modify its program to adopt these regulations and submit its application for approval is specified in 40 CFR 271.21(e). These deadlines can be extended in certain cases (40 CFR 271.21(e)(3)). Once EPA approves the modification, the State requirements act in lieu of Subtitle C RCRA requirements.

States with authorized RCRA programs may already have adopted requirements under State law similar to those in today's rule. These State regulations have not been assessed against the Federal regulations being finalized today to determine whether they meet the tests for authorization. Thus, a State is not authorized to implement these requirements in lieu of EPA until the State program modification is approved. Although revisions to 40 CFR Parts 257 and 261 are being finalized, for the purpose of authorization under Subtitle C, only the final changes to § 261.5 would be assessed against the Federal program. Of course, States with existing standards may continue to administer and enforce their standards as a matter of State law. In implementing the Federal program, EPA will work with States under cooperative agreements to minimize

duplication of efforts. In many cases EPA will be able to defer to the States in their efforts to implement their programs, rather than take separate actions under Federal authority.

States that submit their official applications for final authorization less than 12 months after the effective date of these standards are not required to include standards equivalent to these standards in their application. However, the State must modify its program by the deadlines set forth in § 271.21(e). States that submit official applications for final authorization 12 months after the effective date of these standards must include standards equivalent to these standards in their applications. 40 CFR 271.3 sets forth the requirements a State must meet when submitting its final authorization application.

3. States With More Stringent Programs

EPA is aware that a number of States have more stringent requirements for the disposal of waste generated by CESQGs. In particular, some States do not allow the disposal of this waste into any Subtitle D landfill (i.e., some States do not allow permitted MSWLFs to accept CESQG hazardous waste). For these States, today's final rule would clearly be considered less stringent than the applicable provisions in these States' authorized programs. Section 3009 of RCRA allows States to adopt or retain provisions that are more stringent than the Federal provisions. Therefore, regarding today's final rule, EPA believes that States which do not allow the disposal of wastes generated by CESQGs into Subtitle D landfills under their existing authorized Subtitle C program would not be required to revise their programs and obtain authorization for today's proposed rule. Of course this situation would only apply in those cases where a State is not changing its authorized regulatory language. Further, the authorized State requirements in such States, since they would be more stringent than today's final rule, would continue to apply in that State, even though today's rule is proposed pursuant to HSWA authority.

For a State to not be required to submit an authorization revision application for today's final rule, the State must have provisions that are authorized by EPA and that are more stringent than the analogous Subtitle C provisions in today's rule. For those States that would not be required to revise their authorization, EPA encourages States to inform their EPA Regional Office by letter that for this final rule, they are not required to submit a revision application pursuant to 40 CFR 271.21(e), because in accordance with RCRA Section 3009 the authorized State provision currently in effect is more stringent than the requirements contained in today's final rule. Otherwise, EPA might conclude that a revised authorization application is required.

B. State Activities Under Subtitle D (Regulation of Receiving Non-Municipal Non-Hazardous Units)

States are the lead entities in implementing and enforcing Subtitle D rules. The Agency intends to maintain the State's lead in implementing the Subtitle D program. RCRA Section 4005 requires States to adopt and implement, within 18 months of the publication of a final rule, a permit program or other system of prior approval and conditions to ensure that non-municipal non-hazardous waste disposal units receiving CESQG waste comply with today's standards. The statute requires EPA to determine whether States have developed adequate permit programs. States will need to review their existing programs to determine where their programs need to be revised and to complete program changes, if changes are necessary. The process for evaluating the adequacy of State programs has been set forth in a separate proposal, the State/Tribal Permit Program Determination of Adequacy. See 61 *FR* 2584, January 26, 1996.

For the purpose of determining adequacy and granting approval under Subtitle D for today's rule, only the proposed technical changes in §§ 257.5 through 257.30 will be evaluated by the Agency. The State may need to meet other procedural and administrative provisions identified in the State/Tribal Permit Program Determination of Adequacy. EPA policy on approval of permit programs for non-municipal non-hazardous waste disposal units receiving CESQG waste is the same process that the Agency used for determining the adequacy of State programs for the Municipal Solid Waste Landfill Criteria. In States already approved for the Part 258 MSWLF Criteria, changes required by this rulemaking will constitute a program revision.

The Agency believes that for many approved States, changes required by this rulemaking will affect the technical Criteria only and should warrant limited changes to the approved State program. For example, if non-municipal non-hazardous waste disposal units subject to this rule are already subject to an approved State MSWLF program (i.e., the non-municipal non-hazardous waste disposal units receiving CESQG waste are currently subject to the Part 258 location restrictions, ground-water monitoring, and corrective action criteria), the State may only be required to submit documentation that the non-municipal non-hazardous waste disposal units receiving CESQG waste are subject to their approved program. In most cases, the Agency anticipates that a streamlined approval process would be appropriate. States are encouraged to contact their appropriate EPA Regional office to determine the specifics of the approval process.

In the proposed State/Tribal permit program determination of adequacy, the Agency originally proposed that a streamlined approval process would not be used for permit programs that related to additional classifications other than MSWLFs. See 61 *FR* 2599, January 26, 1996. As suggested above, the Agency is re-evaluating its proposed position and a final determination will be made in the final State/Tribal permit program determination of adequacy.

In States that have not been approved for the MSWLF Criteria, these revisions can be incorporated into an application for overall program approval of Part 258 and §§ 257.5 through 257.30. For purposes of today's rule, States that currently restrict CESQG disposal to Subtitle C facilities (and States that may choose to adopt that restriction) or approved States which currently restrict CESQG disposal to Part 258 municipal solid waste landfills will not need to seek further EPA approval of their Subtitle D program. RCRA Section 4005(c)(1)(B) requires States to adopt and implement permit programs to ensure that facilities which receive CESQG waste will comply with the revised Criteria promulgated under Section 4010(c). However, the Agency sees no need for approved States that already require CESQG waste to be disposed of in either Subtitle C facilities or facilities subject to the Part 258 MSWLF Criteria to adopt and implement a permit program based upon the standards being finalized today.

RCRA Section 7004(b)(1) requires the Administrator and the States to encourage and provide for public participation in the development, revision, implementation, and enforcement of this regulation and, once it is promulgated, in the State permit programs which implement it. EPA provides for public participation in its decisions on whether State permit programs are adequate under RCRA Section 4005(c)(1)(c). In developing and implementing permit programs, States must provide for public participation in accordance with the provisions of 40 CFR Part 239 (specifically § 239.6).

Permit programs have been defined in the proposed State/Tribal Permit Program Determination of Adequacy to include other systems of prior approval and conditions, including licenses or registrations.

C. Summary of Comments and EPA Response

Several commenters supported EPA's approach in the proposal toward States with approved Subtitle D programs that have CESQG disposal restrictions in their Subtitle D programs. In particular, the commenters supported EPA's statement that States which require CESQG waste to be disposed of in either Subtitle C facilities or facilities subject to the part 258 MSWLF Criteria do not need EPA approval for a permit program based on today's final (Subtitle D) standards. However, the commenters believed that for these States, the absence of a required EPA approval should be extended to the Subtitle C program.

EPA believes that its approach toward States with programs that are more stringent than this final rule is the same for both the Subtitle C and Subtitle D programs. Those States with approved Subtitle D or authorized Subtitle C program that do not allow CESQG waste to be disposed of in a landfill addressed by today's technical standards do not need approval by EPA for that program. EPA's position is detailed in sections VII.A. and VII.B. above. EPA believes that since the existing approved State requirements are more stringent than the provisions in today's rule, in such States, program revisions are not necessary for the State programs to remain at least equivalent to the Federal rules.

Other commenters raised the possibility of State self-certification for State authorization for both the RCRA Subtitle C and D programs, particularly where the State already has rules that are equivalent to today's rule in its waste management programs. The commenters argued that this self-certification will result in significant resource savings.

Regarding the commenters suggestion on allowing State self-certification, EPA is currently examining this issue for Subtitle C authorization as part of the HWIR-Media rulemaking (see 61 *FR* 18780, April 29, 1996). In the proposed Phase IV LDR rule, EPA proposed an abbreviated authorization process for new minor rule changes (see 60 *FR* 43686, August 22, 1995). Although this authorization proposal did not address the rule changes in the June 12, 1995 proposal, EPA is committed to streamlining the Subtitle C authorization process.

EPA believes that the authorization process for the Subtitle C portion of today's final rule will be very straightforward because today's rule only added two new provisions to the hazardous waste regulations. EPA will work with States and EPA regions to ensure that the Subtitle C authorization process for this rule will be completed swiftly. EPA believes that it can take such certifications into account to a large degree, thereby, greatly reducing review time. Further, EPA believes that many States will not require revisions to their authorized programs because their authorized programs are currently more stringent than today's rule.

D. Owner/Operator Responsibilities

1. Owner/Operator Responsibility and Flexibility in Approved States

The regulatory structure of the Part 258 MSWLF Criteria is based on an owner/operator achieving compliance through self-implementation with the various requirements while allowing approved States the flexibility to consider local conditions in setting appropriate alternative standards that still achieve compliance with the basic goal of the Part 258 Criteria. This flexibility that exists for approved States under Part 258 has been retained in today's final rule and can be used by approved States in determining facility specific requirements. Owners/operators of non-municipal non-hazardous waste disposal units that are receiving CESQG wastes as of the effective dates of today's final rule, due to the self-implementing nature of this final rule, would be required to comply with the promulgated standards regardless of the status of the States approval determination under Subtitle D. If an owner/operator of a non-municipal non-hazardous waste disposal unit is receiving CESQG waste and is located in a State that has not been approved under Subtitle D for these revised criteria, then the owner/operator would have to comply with the promulgated standards, without the benefit of the flexibility allowed to be granted by the Director of an approved State.

Owners/operators of non-municipal non-hazardous waste disposal units that receive CESQG waste and are located in approved States may be subject to alternate requirements based on the approved State standards.

2. CESQG's Responsibilities Relating to the Revisions in § 261.5, Paragraphs (f) and (g)

Today's final rule allows that CESQG waste go to either a hazardous waste facility, a reuse or recycling facility, a municipal solid waste landfill subject to Part 258, a non-municipal solid waste disposal facility that is subject to the requirements being proposed in §§ 257.5 through 257.30 or a solid waste management facility (i.e., incinerator) that is permitted, licensed, or registered by a State to manage municipal or non-municipal waste. Today's final rule does not mandate that CESQG waste go to a MSWLF or to a non-municipal non-hazardous waste disposal unit subject to today's final requirements. These are just two of the options as to where CESQG hazardous waste can be send for management.

The Agency does not believe that today's final rule amendment to § 261.5 will result in a larger obligation for any CESQG. The Agency knows that the majority of CESQG waste is managed off-site. For the CESQG waste managed off-site, recycling is the predominant form of management. The Agency assumes that for the small amount of CESQG waste that is currently being sent off-site to a MSWLF, this practice can continue to occur, as long as allowed under State regulations, as all MSWLFs where CESQG waste could be sent are subject to Part 258. Hazardous waste regulations applicable to CESQGs require that CESQG hazardous waste be managed in a unit permitted, licensed, or registered by the State to manage municipal or industrial waste. Those CESQGs, including construction and demolition waste generators, who wish to send their CESQG waste to a non-municipal non-hazardous waste disposal unit and are uncertain whether the unit has the appropriate permit, license, or registration should contact his/her State Agency to ascertain if the non-municipal non-hazardous waste disposal unit in question can legally accept CESQG waste.

A CESQG may elect to screen-out or segregate out the CESQG hazardous wastes from his non-hazardous waste and then manage the CESQG hazardous portion in compliance with today's final amendments to § 261.5(f)(3) and (g)(3). The remaining non-hazardous waste would not be subject to the final requirements in § 261.5; however, it must be managed in a facility that complies with either the Part 258 Criteria or the existing Criteria in §§ 257.1–257.4. On the other hand, a CESQG may elect not to screen-out or segregate the CESQG hazardous waste

preferring instead to leave it mixed with the mass of non-hazardous waste. If the CESQG elects this option, the entire mass of material must be managed in a Subtitle C or Subtitle D facility as per today's final language in § 261.5.

E. Enforcement

1. Hazardous Waste Enforcement

Today's final rule amends § 261.5, paragraphs (f)(3) and (g)(3), and as such any CESQG who mismanages their CESQG hazardous waste on-site or delivers the CESQG hazardous waste to an inappropriate Subtitle D facility becomes subject to enforcement actions which could include loss of CESQG status for any CESQG waste that is improperly disposed of.

2. Subtitle D Enforcement

States that adopt programs meeting the standards in §§ 257.5 through 257.30 may enforce them in accordance with State authorities. Under RCRA Section 7002, citizens may seek enforcement of the standards in §§ 257.5 through 257.30 independent of any State enforcement program. Section 7002 provides that any person may commence a civil action on his/her own behalf against any person who is alleged to be in violation of any permit, standard, regulation, condition, requirement, prohibition, or order that has become effective pursuant to RCRA. Once the self-implementing provisions in §§ 257.5 through 257.30 become effective, they constitute the basis for citizen enforcement. Federal enforcement by EPA can be done only in States that EPA has determined have inadequate programs. EPA has no enforcement authorities under Section 4005 in approved States. EPA does, however, retain enforcement authority under Section 7003 to protect against imminent and substantial endangerment to health and the environment in all States.

VIII. Executive Order 12866

Under Executive Order No. 12866, EPA must determine whether a new regulation is significant. A significant regulatory action is defined as an action likely to result in a rule that may:

1. Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities;

2. Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

3. Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

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

Pursuant to the terms of the Executive Order 12866, it has been determined that this rule is a ''significant regulatory action'' because it raises novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

A. Cost Impacts

In the Cost and Economic Impact Analysis (May, 1995) accompanying the proposed rule, the Agency estimated the total annual costs to the economy resulting from the proposed rule ranged from $10.0 million to $47.0 million.

The national low-end cost assumes that all CESQG hazardous waste is separated at the point of generation for the construction industry. It assumes there will be no CESQG waste generated by the demolition industry. The CESQG portion is disposed of at hazardous waste facilities while the remaining non-hazardous waste portion is disposed of in non-upgraded construction and demolition waste facilities. The costs include the separation costs at the point of generation, costs of transporting/disposing the hazardous portion at a Subtitle C facility, and the costs of screening incoming wastes at all of the construction and demolition waste facilities.

The national annual high-end cost assumes that generators will not separate out CESQG waste from 30% of construction and demolition wastes and that this fraction will be sent to upgraded construction and demolition waste facilities that elect to comply with today's proposed requirements. Under this scenario, the Agency assumed that most medium to large size construction and demolition waste facilities (162) will upgrade. The costs include separation costs at the point of generation for waste not going to an upgraded landfill, costs of screening incoming wastes at 80% of the affected construction and demolition waste facilities which do not upgrade and costs for 20% of the affected construction and demolition wastes facilities to upgrade. Upgrade costs include ground-water monitoring and corrective action.

Upon receipt and incorporation of public comments, the Agency prepared a revised Cost and Economic Impact Analysis (June, 1996). In the revised analysis, the Agency estimates the total annual costs to the economy for today's final rule will range from $12.65 to $51.0 million dollars. These costs fall upon approximately three types of facilities: 600 manufacturing-sector CESQGs, at an average annual cost of $280 per facility; 10,000 construction-sector CESQGs, at an average cost of $930 per facility; and 700 construction/demolition waste landfills, at an average cost of $4500 per facility.

One commentor suggested that EPA had understated the costs of compliance with the new regulation. The commentor supported this conclusion based on several contentions:

(1) The commentor maintained that EPA's estimates of total construction and demolition wastes were flawed because some data sources were inappropriate, including European data. Although EPA agrees that U.S. data would be preferable, the European information provided an important and relevant insight for our analysis. EPA believes that many aspects of construction technology are similar from one developed western country to another. EPA also notes that the costing methodology used in the analysis rests mostly on costs per facility, rather than costs per ton.

(2) The commentor suggested that EPA underestimated the labor required for screening hazardous waste at construction/demolition waste landfills. Data that EPA has collected from construction/demolition landfill owner/operators, however, indicates that screening programs are already in affect at most of these facilities. EPA has collected information on the number of hours required for screening wastes per year per landfill, and believes that the nationwide estimate of one additional hour of labor per day per landfill is reasonable.

(3) The commentor also suggested that EPA had underestimated the amount of labor which would be required to separate wastes at construction sites. The Cost and Economic Impact Analysis estimated one labor hour per week per company for separating hazardous wastes. Since a company can have multiple job-sites operating simultaneously, the commentor indicated that it would be more reasonable to estimate one hour per job-site, rather than per company. EPA agrees, and notes that the wording in the original analysis was incorrect; the estimate was actually labor hours per establishment, where each establishment represents a group of job sites. Therefore, EPA has used the

costing methodology that the commentor recommends.

(4) Finally, the commentor disputes EPA's estimate of the hourly labor cost for screening wastes at the landfill and separating wastes at the generator site. EPA re-examined the labor costs, consulting with the Bureau of Labor Statistics and a standard construction industry costing guide. As a result, EPA agrees with this comment and has adjusted the labor figure by 27% (from $13.60 per hour to $17.32 per hour).

Further discussion of the cost analysis can be found in Cost and Economic Impact Analysis of the CESQG Rule, June 1996, available in the docket.

B. Benefits

The Agency believes that the requirements being proposed for non-municipal solid waste disposal facilities will result in more Subtitle D facilities providing protection against ground-water contamination from the disposal of small amounts of hazardous waste. Today's action will force some non-municipal solid waste disposal facilities to either upgrade and install ground-water monitoring and perform corrective action if contamination is detected, or stop accepting hazardous waste. Today's action will also cause some generators of CESQG wastes to separate out these small quantities of hazardous waste and send them to more heavily regulated facilities (i.e., Subtitle C facilities or MSWLFs). These are the direct benefits of today's proposal, however, additional benefits will be realized due to this proposal.

Today's final rule will require that any ground-water contamination that is occurring at units that continue to receive CESQG hazardous waste will be quickly detected, and therefore, corrective action can be initiated sooner avoiding a more costly corrective action.

To the extent that existing non-municipal non-hazardous waste disposal units that receive CESQG hazardous waste upgrade their units to include ground-water monitoring, and to the extent that new facilities will be located outside of floodplains and wetlands, public confidence in these types of units will be increased. Having a higher level of confidence should result in these types of units being easier to site in the future.

Finally, to the extent that CESQGs separate out the small volumes of hazardous waste, the resulting mass of clean non-hazardous waste would have a better potential to be recycled.

IX. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, Pub. L. 96–354), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (''SBREFA''), EPA must consider whether a regulatory action will have a significant adverse impact on small entities. For a rule promulgated after June 27, 1996, EPA must either certify that the regulation will not have a significant impact on a substantial number of small entities or prepare a final regulatory flexibility analysis that contains an evaluation of five factors. 5 U.S.C. 604(a). Because EPA promulgated this rule prior to June 28, 1996, the revised requirements of SBREFA for an expanded regulatory flexibility analysis if a certification is not made do not apply. At the same time, however, EPA has conducted an analysis to determine whether the rule will have a significant impact on small entities. On the basis of that analysis, EPA certifies that this rule will not have a significant impact on a substantial number of small entities. The factual basis for this certification is as follows.

EPA anticipates that this rule will increase costs for two classes of facilities. CESQG generators that still handle their CESQG waste on site are expected to send their CESQG waste to Subtitle C facilities, at a maximum per-facility cost of $570 per year. Construction waste generators will incur maximum additional per-firm costs of $1,469 per year, for separation, transportation, and disposal of hazardous wastes. In each case, EPA's analysis shows that the impacts are less than one percent of annual revenues, for all sizes and types of companies.

This determination is based on EPA's projection of the response of CESQG waste generators and disposal facilities to today's rule. EPA performed a high end analysis, predicated on an assumption that C&D landfills upgrade to meet these standards. In this scenario, cost impacts would be higher. EPA does not expect C&D landfills to upgrade, however, since they would be unlikely to recover the high costs of upgrading. The analysis of effects on small entities is predicated on an assumption that the owners of C&D landfills act rationally, *i.e.*, they choose not to upgrade but rather choose to stop accepting CESQG wastes.

Moreover, EPA has modified the proposed rule in a number of ways so that cost to small entities may be decreased. For example, EPA has included a provision which authorizes Directors of approved state programs to establish an alternative list of indicator parameters not only for the inorganic constituents but also for the organic constituents to be monitored for in the detection monitoring phase of ground water monitoring. Thus, owner/operators of non-municipal, non-hazardous waste disposal units in approved states may have lower ground water monitoring costs.

In addition, EPA has removed four location restrictions (airports, fault areas, seismic impact zone, and unstable areas) from the final rule for the reasons set forth in Section VI.B of today's preamble. Costs for small entities that own non-municipal, non-hazardous waste disposal units that must comply with this rule would thus be reduced because no demonstrations to establish that these location restrictions have been met would need to be made.

X. Submission to Congress and the General Accounting Office

Under section 801(a)(1)(A) of the Administrative Procedure Act (APA) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's Federal Register. This rule is not a ''major rule'' as defined by section 804(2) of the APA as amended.

XI. Paperwork Reduction Act

The information collection requirements in this rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. An Information Collection Request (ICR) document has been prepared by EPA (ICR No. 1745.01) and a copy may be obtained from Sandy Farmer, OPPE Regulatory Information Division, U.S. Environmental Protection Agency (2136), 401 M St., S.W. Washington, DC 20460 or by calling (202) 260–2740. The information requirements are not effective until OMB approves them.

The information to be collected under this rulemaking would be used primarily by the States to regulate and ensure that non-municipal non-hazardous waste disposal units that may receive CESQG wastes are complying with the final requirements. The information collected would be used by the State Director to confirm compliance on the part of the owner/operator with the final requirements. All information will be reported to the States or kept in an operating record at the facility. EPA will not collect information from any of the facilities subject to today's requirements, except in any potential enforcement case.

The total annual public recordkeeping and reporting burden is estimated to be 12,100 hours with an average of 67 hours per respondent. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the Director, OPPE Regulatory Information Division, U.S. Environmental Protection Agency (2136), 401 M St., S.W., Washington, DC 20460 or to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th St., N.W., Washington, DC 20503, marked ''Attention: Desk Officer for EPA.'' Include the ICR number in any correspondence.

XII. Environmental Justice

Executive Order 12898 requires Federal Agencies, to the greatest extent practicable, to identify and address disproportionately high adverse human health or environmental effects of its activities on minority and low-income populations.

The Agency does not currently have data on the demographics of populations surrounding the facilities affected by today's final rule (i.e., construction and demolition landfills). The Agency does not believe, however, that today's final rule will adversely impact minority or low-income populations. The facilities affected by the final rule pose limited risk to surrounding populations. In addition, today's final rule would further reduce this risk by requiring the affected facilities to either stop accepting CESQG hazardous waste or to begin ground-water monitoring and, if applicable, corrective action.

Thus, today's final rule will further reduce the already low risk for populations surrounding construction and demolition landfills, regardless of the population's ethnicity or income level. Minority and low-income populations will not be adversely affected.

XIII. Unfunded Mandates Reform Act

Under section 202 of the Unfunded Mandates Reform Act of 1995 (the Act), Public Law 104–4, which was signed into law on March 22, 1995, EPA generally must prepare a written statement for rules with Federal mandates that may result in estimated costs to State, local, and tribal governments in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is required for EPA rules, under section 205 of the Act EPA must identify and consider alternatives, including the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. EPA must select that alternative, unless the Administrator explains in the final rule why it was not selected or it is inconsistent with law. Before EPA establishes regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must develop under section 203 of the Act a small government agency plan. The plan must provide for notifying potentially affected small governments, giving them meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising them on compliance with the regulatory requirements.

EPA has determined that today's final rule does not include a Federal mandate that may result in estimated costs of $100 million or more to State, local, or tribal governments in the aggregate, or to the private sector, in any one year. EPA has estimated that the annual costs of today's final rule on generators of CESQG wastes and those entities which own or operate CESQG disposal facilities, including the private sector, States, local or tribal governments, range from $12.65–48.9M.

In addition to compliance costs for those who own or operate CESQG facilities, States will have a cost of developing permit programs or other systems of prior approval to ensure that CESQG units comply with the final rule. Adoption and implementation of such State permit programs is required under RCRA section 4005(c)(1)(B). 42 USC 6945(c)(1)(B). The Agency has estimated that the costs for a state to develop an application for approval of an MSWLF permit program to be approximately $15,000. Because these state permit programs already contain ground water monitoring, corrective action, and location standards for MSWLFs that are quite similar to those in this final rule, EPA believes that the additional costs for states to revise their permit programs to reflect the CESQG requirements are not expected to be significant. Also, because of the reduced level of regulatory requirements contained in this CESQG final rule as compared to the MSWLF Part 258 criteria, state costs for preparing applications for approval of a CESQG permit program should be considerably less than that $15,000 figure.

Indian tribes are not required to develop permit programs for approval by EPA, but the Agency believes tribal governments are authorized to development such permit programs and have them approved by EPA. This issue is discussed in the proposal STIR. See 61 *FR* 2584, January 26, 1996. EPA has estimated that it will cost a tribal government approximately $7,000 to prepare an application for approval of a MSWLF program. Because of the reduced regulatory provisions of the CESQG final rule, EPA expects that the costs which a tribal government might face in developing a permit program for CESQG units should be less than $7,000.

EPA has also finalized amendments to the requirements for generators of CESQG hazardous waste. These amendments to 40 CFR 261.5 (f)(3) and (g)(3) are finalized pursuant to RCRA Section 3001 (d)(4), which is a provision added by HSWA. The § 261.5 amendments are also more stringent than current Federal hazardous waste regulations. Subtitle C regulatory changes carried out under HSWA authority become effective in all states at the same time and are implemented by EPA until states revise their programs. States are obligated to revise their hazardous waste programs and seek EPA authorization of these program revisions, unless their programs already incorporate more stringent provisions. The Agency believes approximately 24 states already have more stringent CESQG hazardous waste provisions and would not have to take action because of these regulatory changes. About 26 states would have to revise their

hazardous waste programs and seek authorization. States generally incorporate a number of hazardous waste program revisions and seek authorization for them at one time. The Agency estimates the State costs associated with Subtitle C program revision/authorization activity are approximately $7,320 per state. Since this estimate covers several separate program components at one time, the cost for revisions only to Section 261.5 in the remaining 26 States would be substantially less.

As to section 203 of the Act, EPA has determined that the requirements being finalized today will not significantly or uniquely affect small governments, including tribal governments. EPA recognizes that small governments may own or operate waste disposal units that receive CESQG waste. However, EPA continues to estimate that the majority of construction and demolition landfills, which are the primary facilities to be subject to this final rule, are owned by the private sector. Moreover, EPA is aware that a number of states already require owners/operators of C&D landfills to meet regulatory standards that are similar to those being finalized today. Thus, EPA believes that today's final rule contains no regulatory requirements that significantly or uniquely affect small governments.

EPA has, however, sought meaningful and timely input from the private sector, states, and small governments on the development of this final rule by seeking comments on the proposed CESQG rule and by attempting to adequately address issues and concerns expressed by these entities in their comments. Furthermore, the Agency highlighted, in the June 12, 1995 proposal, those actions that it took to get meaningful and timely input from these entities prior to proposal.

List of Subjects

40 CFR Part 257

Environmental protection, Reporting and recordkeeping requirements, Waste disposal.

40 CFR Part 261

Hazardous materials, Recycling, Waste treatment and disposal.

40 CFR Part 271

Administrative practice and procedure, Hazardous materials transportation, Hazardous waste, Indian-lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Dated: June 21, 1996.

Carol M. Browner,

Administrator.

For reasons set out in the preamble, title 40, Chapter I of the Code of Federal Regulations is amended as set forth below:

PART 257—CRITERIA FOR CLASSIFICATION OF SOLID WASTE DISPOSAL FACILITIES AND PRACTICES

1. The authority citation for part 257 is revised to read as follows:

Authority: 42 U.S.C. 6907(a)(3), 6912(a)(1), 6944(a) and 6949(c), 33 U.S.C. 1345 (d) and (e).

§§ 257.1 through 257.4 [Redesignated as Subpart A]

2. Sections 257.1 through 257.4 are designated as Subpart A—Classification of Solid Waste Disposal Facilities and Practices.

3. Section 257.1(a) is revised to read as follows:

§ 257.1 Scope and purpose.

(a) Unless otherwise provided, the criteria in §§ 257.1 through 257.4 are adopted for determining which solid waste disposal facilities and practices pose a reasonable probability of adverse effects on health or the environment under sections 1008(a)(3) and 4004(a) of the Resource Conservation and Recovery Act (The Act). Unless otherwise provided, the criteria in §§ 257.5 through 257.30 are adopted for purposes of ensuring that non-municipal non-hazardous waste disposal units that receive conditionally exempt small quantity generator (CESQG) waste do not present risks to human health and the environment taking into account the practicable capability of such units in accordance with Section 4010(c) of the Act.

(1) Facilities failing to satisfy either the criteria in §§ 257.1 through 257.4 or §§ 257.5 though 257.30 are considered open dumps, which are prohibited under section 4005 of the Act.

(2) Practices failing to satisfy either the criteria in §§ 257.1 through 257.4 or §§ 257.5 through 257.30 constitute open dumping, which is prohibited under section 4005 of the Act.

* * * * *

4. Part 257 is amended by adding a new Subpart B to read as follows:

Subpart B—Disposal Standards for the Receipt of Conditionally Exempt Small Quantity Generator (CESQG) Wastes at Non-Municipal Non-Hazardous Waste Disposal Units

Sec.
257.5 Disposal standards for owners/operators of non-municipal non-hazardous waste disposal units that receive Conditionally Exempt Small Quantity Generator (CESQG) waste

Location Restrictions

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257.8 Floodplains.
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Ground-Water Monitoring and Corrective Action

257.21 Applicability.
257.22 Ground-water monitoring systems.
257.23 Ground-water sampling and analysis requirements.
257.24 Detection monitoring program.
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Recordkeeping Requirement

257.30 Recordkeeping requirements.

Subpart B—Disposal Standards for the Receipt of Conditionally Exempt Small Quantity Generator (CESQG) Wastes at Non-Municipal Non-Hazardous Waste Disposal Units

§ 257.5 Disposal standards for owners/operators of non-municipal non-hazardous waste disposal units that receive Conditionally Exempt Small Quantity Generator (CESQG) waste.

(a) Applicability. (1) The requirements in this section apply to owners/operators of any non-municipal non-hazardous waste disposal unit that receives CESQG hazardous waste, as defined in 40 CFR 261.5. Non-municipal non-hazardous waste disposal units that meet the requirements of this section may receive CESQG wastes. Any owner/operator of a non-municipal non-hazardous waste disposal unit that receives CESQG hazardous waste continues to be subject to the requirements in §§ 257.3–2, 257.3–3, 257.3–5, 257.3–6, 257.3–7, and 257.3–8 (a), (b), and (d).

(2) Any non-municipal non-hazardous waste disposal unit that is receiving CESQG hazardous waste as of January 1, 1998, must be in compliance with the requirements in §§ 257.7 through 257.13 and § 257.30 by January 1, 1998, and the requirements in §§ 257.21 through 257.28 by July 1, 1998.

(3) Any non-municipal non-hazardous waste disposal unit that does not meet the requirements in this section may not receive CESQG wastes.

(4) Any non-municipal non-hazardous waste disposal unit that is not receiving CESQG Hazardous waste as of January 1, 1998, continues to be subject to the requirements in §§ 257.1 through 257.4.

(5) Any non-municipal non-hazardous waste disposal unit that first receives CESQG hazardous waste after January 1, 1998, must be in compliance with §§ 257.7 through 257.30 prior to the receipt of CESQG hazardous waste.

(b) Definitions.

Active life means the period of operation beginning with the initial receipt of solid waste and ending at the final receipt of solid waste.

Existing unit means any non-municipal non-hazardous waste disposal unit that is receiving CESQG hazardous waste as of January 1, 1998.

Facility means all contiguous land and structures, other appurtenances, and improvements on the land used for the disposal of non-municipal non-hazardous waste.

Lateral expansion means a horizontal expansion of the waste boundaries of an existing non-municipal non-hazardous waste disposal unit.

New unit means any non-municipal non-hazardous waste disposal unit that has not received CESQG hazardous waste prior to January 1, 1998.

State means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands, and Indian Tribes.

State Director means the chief administrative officer of the lead State/Tribal agency responsible for implementing the State/Tribal permit program for Subtitle D regulated facilities.

Uppermost aquifer means the geologic formation nearest the natural ground surface that is an aquifer, as well as, lower aquifers that are hydraulically interconnected with this aquifer within the facility's property boundary.

Waste management unit boundary means a vertical surface located at the hydraulically downgradient limit of the unit. This vertical surface extends down into the uppermost aquifer.

Location Restrictions

§ 257.7 [Reserved]

§ 257.8 Floodplains.

(a) Owners or operators of new units, existing units, and lateral expansions located in 100-year floodplains must demonstrate that the unit will not restrict the flow of the 100-year flood, reduce the temporary water storage capacity of the floodplain, or result in washout of solid waste so as to pose a hazard to human health and the environment. The owner or operator must place the demonstration in the operating record and notify the State Director that it has been placed in the operating record.

(b) For purposes of this section:

(1) ''Floodplain'' means the lowland and relatively flat areas adjoining inland and coastal waters, including flood-prone areas of offshore islands, that are inundated by the 100-year flood.

(2) ''100-year flood'' means a flood that has a 1-percent or greater chance of recurring in any given year or a flood of a magnitude equalled or exceeded once in 100 years on the average over a significantly long period.

(3) ''Washout'' means the carrying away of solid waste by waters of the base flood.

§ 257.9 Wetlands.

(a) Owners or operators of new units and lateral expansions shall not locate such units in wetlands, unless the owner or operator can make the following demonstrations to the Director of an approved State:

(1) Where applicable under section 404 of the Clean Water Act or applicable State wetlands laws, the presumption that a practicable alternative to the proposed landfill is available which does not involved wetlands is clearly rebutted:

(2) The construction and operation of the unit will not:

(i) Cause or contribute to violations of any applicable State water quality standard;

(ii) Violate any applicable toxic effluent standard or prohibition under Section 307 of the Clean Water Act;

(iii) Jeopardize the continued existence of endangered or threatened species or result in the destruction or adverse modification of a critical habitat, protected under the Endangered Species Act of 1973; and

(iv) Violate any requirement under the Marine Protection, Research, and Sanctuaries Act of 1972 for the protection of a marine sanctuary;

(3) The unit will not cause or contribute to significant degradation of wetlands. The owner/operator must demonstrate the integrity of the unit and its ability to protect ecological resources by addressing the following factors:

(i) Erosion, stability, and migration potential of native wetland soils, muds and deposits used to support the unit;

(ii) Erosion, stability, and migration potential of dredged and fill materials used to support the unit;

(iii) The volume and chemical nature of the waste managed in the unit;

(iv) Impacts on fish, wildlife, and other aquatic resources and their habitat from release of the waste;

(v) The potential effects of catastrophic release of waste to the wetland and the resulting impacts on the environment; and

(vi) Any additional factors, as necessary, to demonstrate that ecological resources in the wetland are sufficiently protected.

(4) To the extent required under section 404 of the Clean Water Act or applicable State wetlands laws, steps have been taken to attempt to achieve no net loss of wetlands (as defined by acreage and function) by first avoiding impacts to wetlands to the maximum extent practicable as required by paragraph (a)(1) of this section, then minimizing unavoidable impacts to the maximum extent practicable, and finally offsetting remaining unavoidable wetland impacts through all appropriate and practicable compensatory mitigation actions (e.g., restoration of existing degraded wetlands or creation of man-made wetlands); and

(5) Sufficient information is available to make a reasonable determination with respect to these demonstrations.

(b) For purposes of this section, wetlands means those areas that are defined in 40 CFR 232.2(r).

§ 257.10 [Reserved]

§ 257.11 [Reserved]

§ 257.12 [Reserved]

§ 257.13 Deadline for making demonstrations.

Existing units that cannot make the demonstration specified in § 257.8(a) pertaining to floodplains by January 1, 1998, must not accept CESQG hazardous waste for disposal.

Ground-water monitoring and corrective action.

§ 257.21 Applicability.

(a) The requirements in this section apply to units identified in § 257.5(a), except as provided in paragraph (b) of this section.

(b) Ground-water monitoring requirements under §§ 257.22 through 257.25 may be suspended by the Director of an approved State for a unit identified in § 257.5(a) if the owner or operator can demonstrate that there is no potential for migration of hazardous constituents from that unit to the uppermost aquifer during the active life of the unit plus 30 years. This demonstration must be certified by a qualified ground-water scientist and

approved by the Director of an approved State, and must be based upon:

(1) Site-specific field collected measurements, sampling, and analysis of physical, chemical, and biological processes affecting contaminant fate and transport; and

(2) Contaminant fate and transport predictions that maximize contaminant migration and consider impacts on human health and environment.

(c) Owners and operators of facilities identified in § 257.5(a) must comply with the ground-water monitoring requirements of this section according to the following schedule unless an alternative schedule is specified under paragraph (d) of this section:

(1) Existing units and lateral expansions must be in compliance with the ground-water monitoring requirements specified in §§ 257.22 through 257.25 by July 1, 1998.

(2) New units identified in § 257.5(a) must be in compliance with the ground-water monitoring requirements specified in §§ 257.22 through 257.25 before waste can be placed in the unit.

(d) The Director of an approved State may specify an alternative schedule for the owners or operators of existing units and lateral expansions to comply with the ground-water monitoring requirements specified in §§ 257.22 through 257.25. This schedule must ensure that 50 percent of all existing units are in compliance by July 1, 1998, and all existing units are in compliance by July 1, 1999. In setting the compliance schedule, the Director of an approved State must consider potential risks posed by the unit to human health and the environment. The following factors should be considered in determining potential risk:

(1) Proximity of human and environmental receptors;

(2) Design of the unit;

(3) Age of the unit;

(4) The size of the unit; and

(5) Resource value of the underlying aquifer, including:

(i) Current and future uses;

(ii) Proximity and withdrawal rate of users; and

(iii) Ground-water quality and quantity.

(e) Once established at a unit, ground-water monitoring shall be conducted throughout the active life plus 30 years. The Director of an approved State may decrease the 30 year period if the owner/operator demonstrates that a shorter period of time is adequate to protect human health and the environment and the Director approves the demonstration.

(f) For the purposes of this section, a qualified ground-water scientist is a scientist or engineer who has received a baccalaureate or post-graduate degree in the natural sciences or engineering and has sufficient training and experience in ground-water hydrology and related fields as may be demonstrated by State registration, professional Certifications, or completion of accredited university programs that enable that individual to make sound professional judgments regarding ground-water monitoring, contaminant fate and transport, and corrective-action.

(g) The Director of an approved State may establish alternative schedules for demonstrating compliance with § 257.22(d)(2), pertaining to notification of placement of certification in operating record; § 257.24(c)(1), pertaining to notification that statistically significant increase (SSI) notice is in operating record; § 257.24(c)(2) and (3), pertaining to an assessment monitoring program; § 257.25(b), pertaining to sampling and analyzing appendix II of Part 258 constituents; § 257.25(d)(1), pertaining to placement of notice (appendix II of 40 CFR part 258 constituents detected) in record and notification of notice in record; § 257.25(d)(2), pertaining to sampling for appendix I and II of 40 CFR Part 258; § 257.25(g), pertaining to notification (and placement of notice in record) of SSI above ground-water protection standard; §§ 257.25(g)(1)(iv) and 257.26(a), pertaining to assessment of corrective measures; § 257.27(a), pertaining to selection of remedy and notification of placement in record; § 257.28(c)(4), pertaining to notification of placement in record (alternative corrective action measures); and § 257.28(f), pertaining to notification of placement in record (certification of remedy completed).

(h) Directors of approved States can use the flexibility in paragraph (i) of this section for any non-municipal non-hazardous waste disposal unit that receives CESQG waste, if the non-municipal non-hazardous waste disposal unit:

(1) Disposes of less than 20 tons of non-municipal waste daily, based on an annual average; and

(2) Has no evidence of ground-water contamination; and either

(3) Serves a community that experiences an annual interruption of at least three consecutive months of surface transportation that prevents access to a regional waste management facility; or

(4) Serves a community that has no practicable waste management alternative and the non-municipal solid waste disposal facility is located in an area that annually receives less than or equal to 25 inches of precipitation.

(5) Owners/operators of any non-municipal non-hazardous waste disposal unit that meets the criteria in paragraph (h) of this section must place in the operating record information demonstrating this.

(i) Directors of approved States may allow any non-municipal non-hazardous waste disposal unit meeting the criteria in paragraph (h) of this section to:

(1) Use alternatives to the ground-water monitoring system prescribed in §§ 257.22 through 257.25 so long as the alternatives will detect and, if necessary, assess the nature or extent of contamination from the non-municipal non-hazardous waste disposal unit on a site-specific basis; or establish and use, on a site-specific basis, an alternative list of indicator parameters for some or all of the constituents listed in Appendix I (Appendix I of 40 CFR Part 258. Alternative indicator parameters approved by the Director of an approved State under this section must ensure detection of contamination from the non-municipal non-hazardous waste disposal unit.

(2) If contamination is detected through the use of any alternative to the ground-water monitoring system prescribed in §§ 257.22 through 257.25, the non-municipal non-hazardous waste disposal unit owner or operator must perform expanded monitoring to determine whether the detected contamination is an actual release from the non-municipal solid waste disposal unit and, if so, to determine the nature and extent of the contamination. The Director of the approved State shall establish a schedule for the non-municipal non-hazardous waste disposal unit owner or operator to submit results from expanded monitoring in a manner that ensures protection of human health and the environment.

(i) If expanded monitoring indicates that contamination from the non-municipal non-hazardous waste disposal unit has reached the saturated zone, the owner or operator must install ground-water monitoring wells and sample these wells in accordance with §§ 257.22 through 257.25.

(ii) If expanded monitoring indicates that contamination from the non-municipal non-hazardous waste disposal unit is present in the unsaturated zone or on the surface, the Director of an approved State shall establish a schedule for the owner or operator to submit a description of any necessary corrective measures. The schedule shall ensure corrective

measures, where necessary, are undertaken in a timely manner that protects human health and the environment. The proposed corrective measures are subject to revision and approval by the Director of the approved State. The owner or operator must implement the corrective measures according to a schedule established by the Director of the approved State.

(3) When considering whether to allow alternatives to a ground-water monitoring system prescribed in §§ 257.22 through 257.25, including alternative indicator parameters, the Director of an approved State shall consider at least the following factors:

(i) The geological and hydrogeological characteristics of the site;

(ii) The impact of manmade and natural features on the effectiveness of an alternative technology;

(iii) Climatic factors that may influence the selection, use, and reliability of alternative ground-water monitoring procedures; and

(iv) The effectiveness of indicator parameters in detecting a release.

(4) The Director of an approved State can require an owner or operator to comply with the requirements of §§ 257.22 through 257.25, where it is determined by the Director that using alternatives to ground-water monitoring approved under this paragraph are inadequate to detect contamination and, if necessary, to assess the nature and extent of contamination.

§ 257.22 Ground-water monitoring systems.

(a) A ground-water monitoring system must be installed that consists of a sufficient number of wells, installed at appropriate locations and depths, to yield ground-water samples from the uppermost aquifer (as defined in § 257.5(b)) that:

(1) Represent the quality of background ground water that has not been affected by leakage from a unit. A determination of background quality may include sampling of wells that are not hydraulically upgradient of the waste management area where:

(i) Hydrogeologic conditions do not allow the owner or operator to determine what wells are hydraulically upgradient; or

(ii) Sampling at other wells will provide an indication of background ground-water quality that is as representative or more representative than that provided by the upgradient wells; and

(2) Represent the quality of ground water passing the relevant point of compliance specified by the Director of an approved State or at the waste management unit boundary in an unapproved State. The downgradient monitoring system must be installed at the relevant point of compliance specified by the Director of an approved State or at the waste management unit boundary in an unapproved State that ensures detection of ground-water contamination in the uppermost aquifer. The relevant point of compliance specified by the Director of an approved State shall be no more than 150 meters from the waste management unit boundary and shall be located on land owned by the owner of the facility. In determining the relevant point of compliance the State Director shall consider at least the following factors: the hydrogeologic characteristics of the unit and surrounding land, the volume and physical and chemical characteristics of the leachate, the quantity, quality and direction of flow of ground water, the proximity and withdrawal rate of the ground-water users, the availability of alternative drinking water supplies, the existing quality of the ground water, including other sources of contamination and their cumulative impacts on the ground water, and whether the ground water is currently used or reasonably expected to be used for drinking water, public health, safety, and welfare effects, and practicable capability of the owner or operator. When physical obstacles preclude installation of ground-water monitoring wells at the relevant point of compliance at existing units, the down-gradient monitoring system may be installed at the closest practicable distance hydraulically down-gradient from the relevant point of compliance specified by the Director of an approved State that ensures detection of groundwater contamination in the uppermost aquifer.

(b) The Director of an approved State may approve a multi-unit ground-water monitoring system instead of separate ground-water monitoring systems for each unit when the facility has several units, provided the multi-unit ground-water monitoring system meets the requirement of § 257.22(a) and will be as protective of human health and the environment as individual monitoring systems for each unit, based on the following factors:

(1) Number, spacing, and orientation of the units;

(2) Hydrogeologic setting;

(3) Site history;

(4) Engineering design of the units; and

(5) Type of waste accepted at the units.

(c) Monitoring wells must be cased in a manner that maintains the integrity of the monitoring well bore hole. This casing must be screened or perforated and packed with gravel or sand, where necessary, to enable collection of ground-water samples. The annular space (i.e., the space between the bore hole and well casing) above the sampling depth must be sealed to prevent contamination of samples and the ground water.

(1) The owner or operator must notify the State Director that the design, installation, development, and decommission of any monitoring wells, piezometers and other measurement, sampling, and analytical devices documentation has been placed in the operating record; and

(2) The monitoring wells, piezometers, and other measurement, sampling, and analytical devices must be operated and maintained so that they perform to design specifications throughout the life of the monitoring program.

(d) The number, spacing, and depths of monitoring systems shall be:

(1) Determined based upon site-specific technical information that must include thorough characterization of:

(i) Aquifer thickness, ground-water flow rate, ground-water flow direction including seasonal and temporal fluctuations in ground-water flow; and

(ii) Saturated and unsaturated geologic units and fill materials overlying the uppermost aquifer, materials comprising the uppermost aquifer, and materials comprising the confining unit defining the lower boundary of the uppermost aquifer; including, but not limited to: thicknesses, stratigraphy, lithology, hydraulic conductivities, porosities and effective porosities.

(2) Certified by a qualified ground-water scientist or approved by the Director of an approved State. Within 14 days of this certification, the owner or operator must notify the State Director that the certification has been placed in the operating record.

§ 257.23 Ground-water sampling and analysis requirements.

(a) The ground-water monitoring program must include consistent sampling and analysis procedures that are designed to ensure monitoring results that provide an accurate representation of ground-water quality at the background and downgradient wells installed in compliance with § 257.22(a). The owner or operator must notify the State Director that the sampling and analysis program documentation has been placed in the operating record and the program must include procedures and techniques for:

(1) Sample collection;
(2) Sample preservation and shipment;
(3) Analytical procedures;
(4) Chain of custody control; and
(5) Quality assurance and quality control.

(b) The ground-water monitoring program must include sampling and analytical methods that are appropriate for ground-water sampling and that accurately measure hazardous constituents and other monitoring parameters in ground-water samples. Ground-water samples shall not be field-filtered prior to laboratory analysis.

(c) The sampling procedures and frequency must be protective of human health and the environment.

(d) Ground-water elevations must be measured in each well immediately prior to purging, each time ground water is sampled. The owner or operator must determine the rate and direction of ground-water flow each time ground water is sampled. Ground-water elevations in wells which monitor the same waste management area must be measured within a period of time short enough to avoid temporal variations in ground-water flow which could preclude accurate determination of ground-water flow rate and direction.

(e) The owner or operator must establish background ground-water quality in a hydraulically upgradient or background well(s) for each of the monitoring parameters or constituents required in the particular ground-water monitoring program that applies to the unit, as determined under § 257.24(a), or § 257.25(a). Background ground-water quality may be established at wells that are not located hydraulically upgradient from the unit if it meets the requirements of § 257.22(a)(1).

(f) The number of samples collected to establish ground-water quality data must be consistent with the appropriate statistical procedures determined pursuant to paragraph (g) of this section. The sampling procedures shall be those specified under § 257.24(b) for detection monitoring, § 257.25 (b) and (d) for assessment monitoring, and § 257.26(b) for corrective action.

(g) The owner or operator must specify in the operating record one of the following statistical methods to be used in evaluating ground-water monitoring data for each hazardous constituent. The statistical test chosen shall be conducted separately for each hazardous constituent in each well.

(1) A parametric analysis of variance (ANOVA) followed by multiple comparisons procedures to identify statistically significant evidence of contamination. The method must include estimation and testing of the contrasts between each compliance well's mean and the background mean levels for each constituent.

(2) An analysis of variance (ANOVA) based on ranks followed by multiple comparisons procedures to identify statistically significant evidence of contamination. The method must include estimation and testing of the contrasts between each compliance well's median and the background median levels for each constituent.

(3) A tolerance or prediction interval procedure in which an interval for each constituent is established from the distribution of the background data, and the level of each constituent in each compliance well is compared to the upper tolerance or prediction limit.

(4) A control chart approach that gives control limits for each constituent.

(5) Another statistical test method that meets the performance standards of paragraph (h) of this section. The owner or operator must place a justification for this alternative in the operating record and notify the State Director of the use of this alternative test. The justification must demonstrate that the alternative method meets the performance standards of paragraph (h) of this section.

(h) Any statistical method chosen under paragraph (g) of this section shall comply with the following performance standards, as appropriate:

(1) The statistical method used to evaluate ground-water monitoring data shall be appropriate for the distribution of chemical parameters or hazardous constituents. If the distribution of the chemical parameters or hazardous constituents is shown by the owner or operator to be inappropriate for a normal theory test, then the data should be transformed or a distribution-free theory test should be used. If the distributions for the constituents differ, more than one statistical method may be needed.

(2) If an individual well comparison procedure is used to compare an individual compliance well constituent concentration with background constituent concentrations or a ground-water protection standard, the test shall be done at a Type I error level no less than 0.01 for each testing period. If a multiple comparisons procedure is used, the Type I experiment wise error rate for each testing period shall be no less than 0.05; however, the Type I error of no less than 0.01 for individual well comparisons must be maintained. This performance standard does not apply to tolerance intervals, prediction intervals, or control charts.

(3) If a control chart approach is used to evaluate ground-water monitoring data, the specific type of control chart and its associated parameter values shall be protective of human health and the environment. The parameters shall be determined after considering the number of samples in the background data base, the data distribution, and the range of the concentration values for each constituent of concern.

(4) If a tolerance interval or a predictional interval is used to evaluate ground-water monitoring data, the levels of confidence and, for tolerance intervals, the percentage of the population that the interval must contain, shall be protective of human health and the environment. These parameters shall be determined after considering the number of samples in the background data base, the data distribution, and the range of the concentration values for each constituent of concern.

(5) The statistical method shall account for data below the limit of detection with one or more statistical procedures that are protective of human health and the environment. Any practical quantitation limit (pql) that is used in the statistical method shall be the lowest concentration level that can be reliably achieved within specified limits of precision and accuracy during routine laboratory operating conditions that are available to the facility.

(6) If necessary, the statistical method shall include procedures to control or correct for seasonal and spatial variability as well as temporal correlation in the data.

(i) The owner or operator must determine whether or not there is a statistically significant increase over background values for each parameter or constituent required in the particular ground-water monitoring program that applies to the unit, as determined under §§ 257.24(a) or 257.25(a).

(1) In determining whether a statistically significant increase has occurred, the owner or operator must compare the ground-water quality of each parameter or constituent at each monitoring well designated pursuant to § 257.22(a)(2) to the background value of that constituent, according to the statistical procedures and performance standards specified under paragraphs (g) and (h) of this section.

(2) Within a reasonable period of time after completing sampling and analysis, the owner or operator must determine whether there has been a statistically significant increase over background at each monitoring well.

§ 257.24 Detection monitoring program.

(a) Detection monitoring is required at facilities identified in § 257.5(a) at all ground-water monitoring wells defined under §§ 257.22 (a)(1) and (a)(2). At a minimum, a detection monitoring program must include the monitoring for the constituents listed in appendix I of 40 CFR Part 258.

(1) The Director of an approved State may delete any of the appendix I (Appendix I of 40 CFR Part 258) monitoring parameters for a unit if it can be shown that the removed constituents are not reasonably expected to be contained in or derived from the waste contained in the unit.

(2) The Director of an approved State may establish an alternative list of indicator parameters for a unit, in lieu of some or all of the constituents in appendix I to 40 CFR Part 258, if the alternative parameters provide a reliable indication of releases from the unit to the ground water. In determining alternative parameters, the Director shall consider the following factors:

(i) The types, quantities, and concentrations of constituents in waste managed at the unit;

(ii) The mobility, stability, and persistence of waste constituents or their reaction products in the unsaturated zone beneath the unit;

(iii) The detectability of indicator parameters, waste constituents, and reaction products in the ground water; and

(iv) The concentration or values and coefficients of variation of monitoring parameters or constituents in the groundwater background.

(b) The monitoring frequency for all constituents listed in appendix I to 40 CFR Part 258, or in the alternative list approved in accordance with paragraph (a)(2) of this section, shall be at least semiannual during the active life of the unit plus 30 years. A minimum of four independent samples from each well (background and downgradient) must be collected and analyzed for the appendix I (Appendix I of 40 CFR, Part 258) constituents, or the alternative list approved in accordance with paragraph (a)(2) of this section, during the first semiannual sampling event. At least one sample from each well (background and downgradient) must be collected and analyzed during subsequent semiannual sampling events. The Director of an approved State may specify an appropriate alternative frequency for repeated sampling and analysis for appendix I (Appendix I of 40 CFR Part 258) constituents, or the alternative list approved in accordance with paragraph (a)(2) of this section, during the active life plus 30 years. The alternative frequency during the active life shall be no less than annual. The alternative frequency shall be based on consideration of the following factors:

(1) Lithology of the aquifer and unsaturated zone;

(2) Hydraulic conductivity of the aquifer and unsaturated zone;

(3) Ground-water flow rates;

(4) Minimum distance between upgradient edge of the unit and downgradient monitoring well screen (minimum distance of travel); and

(5) Resource value of the aquifer.

(c) If the owner or operator determines, pursuant to § 257.23(g), that there is a statistically significant increase over background for one or more of the constituents listed in appendix I to 40 CFR Part 258, or in the alternative list approved in accordance with paragraph (a)(2) of this section, at any monitoring well at the boundary specified under § 257.22(a)(2), the owner or operator:

(1) Must, within 14 days of this finding, place a notice in the operating record indicating which constituents have shown statistically significant changes from background levels, and notify the State Director that this notice was placed in the operating record; and

(2) Must establish an assessment monitoring program meeting the requirements of § 257.25 within 90 days except as provided for in paragraph (c)(3) of this section.

(3) The owner/operator may demonstrate that a source other than the unit caused the contamination or that the statistically significant increase resulted from error in sampling, analysis, statistical evaluation, or natural variation in ground-water quality. A report documenting this demonstration must be certified by a qualified ground-water scientist or approved by the Director of an approved State and be placed in the operating record. If a successful demonstration is made and documented, the owner or operator may continue detection monitoring as specified in this section. If, after 90 days, a successful demonstration is not made, the owner or operator must initiate an assessment monitoring program as required in § 257.25.

§ 257.25 Assessment monitoring program.

(a) Assessment monitoring is required whenever a statistically significant increase over background has been detected for one or more of the constituents listed in appendix I of 40 CFR Part 258 or in the alternative list approved in accordance with § 257.24(a)(2).

(b) Within 90 days of triggering an assessment monitoring program, and annually thereafter, the owner or operator must sample and analyze the ground water for all constituents identified in appendix II of 40 CFR Part 258. A minimum of one sample from each downgradient well must be collected and analyzed during each sampling event. For any constituent detected in the downgradient wells as the result of the complete appendix II (Appendix II of 40 CFR Part 258) analysis, a minimum of four independent samples from each well (background and downgradient) must be collected and analyzed to establish background for the new constituents. The Director of an approved State may specify an appropriate subset of wells to be sampled and analyzed for appendix II (Appendix II of 40 CFR Part 258) constituents during assessment monitoring. The Director of an approved State may delete any of the appendix II (Appendix II of 40 CFR Part 258) monitoring parameters for a unit if it can be shown that the removed constituents are not reasonably expected to be in or derived from the waste contained in the unit.

(c) The Director of an approved State may specify an appropriate alternate frequency for repeated sampling and analysis for the full set of appendix II (Appendix II of 40 CFR part 258) constituents, or the alternative list approved in accordance with paragraph (b) of this section, during the active life plus 30 years considering the following factors:

(1) Lithology of the aquifer and unsaturated zone;

(2) Hydraulic conductivity of the aquifer and unsaturated zone;

(3) Ground-water flow rates;

(4) Minimum distance between upgradient edge of the unit and downgradient monitoring well screen (minimum distance of travel);

(5) Resource value of the aquifer; and

(6) Nature (fate and transport) of any constituents detected in response to this section.

(d) After obtaining the results from the initial or subsequent sampling events required in paragraph (b) of this section, the owner or operator must:

(1) Within 14 days, place a notice in the operating record identifying the appendix II (appendix II of 40 CFR part 258) constituents that have been detected and notify the State Director that this notice has been placed in the operating record;

(2) Within 90 days, and on at least a semiannual basis thereafter, resample all wells specified by § 257.22(a) to this section, conduct analyses for all

constituents in appendix I (Appendix I of 40 CFR part 258) to this part or in the alternative list approved in accordance with § 257.24(a)(2), and for those constituents in appendix II to 40 CFR part 258 that are detected in response to paragraph (b) of this section, and record their concentrations in the facility operating record. At least one sample from each well (background and downgradient) must be collected and analyzed during these sampling events. The Director of an approved State may specify an alternative monitoring frequency during the active life plus 30 years for the constituents referred to in this paragraph. The alternative frequency for appendix I (Appendix I of 40 CFR part 258) constituents, or the alternative list approved in accordance with § 257.24(a)(2), during the active life shall be no less than annual. The alternative frequency shall be based on consideration of the factors specified in paragraph (c) of this section;

(3) Establish background concentrations for any constituents detected pursuant to paragraphs (b) or (d)(2) of this section; and

(4) Establish ground-water protection standards for all constituents detected pursuant to paragraph (b) or (d) of this section. The ground-water protection standards shall be established in accordance with paragraphs (h) or (i) of this section.

(e) If the concentrations of all appendix II (Appendix II of 40 CFR part 258) constituents are shown to be at or below background values, using the statistical procedures in § 257.23(g), for two consecutive sampling events, the owner or operator must notify the State Director of this finding and may return to detection monitoring.

(f) If the concentrations of any appendix II (Appendix II of part 258) constituents are above background values, but all concentrations are below the ground-water protection standard established under paragraphs (h) or (i) of this section, using the statistical procedures in § 257.23(g), the owner or operator must continue assessment monitoring in accordance with this section.

(g) If one or more appendix II (Appendix II of CFR part 258) constituents are detected at statistically significant levels above the ground-water protection standard established under paragraphs (h) or (i) of this section in any sampling event, the owner or operator must, within 14 days of this finding, place a notice in the operating record identifying the appendix II (Appendix II of 40 CFR part 258) constituents that have exceeded the ground-water protection standard and notify the State Director and all appropriate local government officials that the notice has been placed in the operating record. The owner or operator also:

(1)(i) Must characterize the nature and extent of the release by installing additional monitoring wells as necessary;

(ii) Must install at least one additional monitoring well at the facility boundary in the direction of contaminant migration and sample this well in accordance with paragraph (d)(2) of this section;

(iii) Must notify all persons who own the land or reside on the land that directly overlies any part of the plume of contamination if contaminants have migrated off-site if indicated by sampling of wells in accordance paragraph (g)(1) of this section; and

(iv) Must initiate an assessment of corrective measures as required by § 257.26 within 90 days; or

(2) May demonstrate that a source other than the non-municipal non-hazardous waste disposal unit caused the contamination, or that the statistically significant increase resulted from error in sampling, analysis, statistical evaluation, or natural variation in ground-water quality. A report documenting this demonstration must be certified by a qualified ground-water scientist or approved by the Director of an approved State and placed in the operating record. If a successful demonstration is made the owner or operator must continue monitoring in accordance with the assessment monitoring program pursuant to this § 257.25, and may return to detection monitoring if the appendix II (Appendix II of 40 CFR part 258) constituents are at or below background as specified in paragraph (e) of this section. Until a successful demonstration is made, the owner or operator must comply with § 257.25(g) including initiating an assessment of corrective measures.

(h) The owner or operator must establish a ground-water protection standard for each appendix II (Appendix II of 40 CFR part 258) constituent detected in the ground-water. The ground-water protection standard shall be:

(1) For constituents for which a maximum contaminant level (MCL) has been promulgated under section 1412 of the Safe Drinking Water Act (codified) under 40 CFR part 141, the MCL for that constituent;

(2) For constituents for which MCLs have not been promulgated, the background concentration for the constituent established from wells in accordance with § 257.22(a)(1); or

(3) For constituents for which the background level is higher than the MCL identified under subparagraph (h)(1) of this section or health based levels identified under paragraph (i)(1) of this section, the background concentration.

(i) The Director of an approved State may establish an alternative ground-water protection standard for constituents for which MCLs have not been established. These ground-water protection standards shall be appropriate health based levels that satisfy the following criteria:

(1) The level is derived in a manner consistent with Agency guidelines for assessing the health risks of environmental pollutants (51 FR 33992, 34006, 34014, 34028, September 24, 1986);

(2) The level is based on scientifically valid studies conducted in accordance with the Toxic Substances Control Act Good Laboratory Practice Standards (40 CFR part 792) or equivalent;

(3) For carcinogens, the level represents a concentration associated with an excess lifetime cancer risk level (due to continuous lifetime exposure) within the 1×10^{-4} to 1×10^{-6} range; and

(4) For systemic toxicants, the level represents a concentration to which the human population (including sensitive subgroups) could be exposed to on a daily basis that is likely to be without appreciable risk of deleterious effects during a lifetime. For purposes of this subpart, systemic toxicants include toxic chemicals that cause effects other than cancer or mutation.

(j) In establishing ground-water protection standards under paragraph (i) of this section, the Director of an approved State may consider the following:

(1) Multiple contaminants in the ground water;

(2) Exposure threats to sensitive environmental receptors; and

(3) Other site-specific exposure or potential exposure to ground water.

§ 257.26 Assessment of corrective measures.

(a) Within 90 days of finding that any of the constituents listed in appendix II (Appendix II of 40 CFR Part 258) have been detected at a statistically significant level exceeding the ground-water protection standards defined under § 257.25 (h) or (i), the owner or operator must initiate an assessment of corrective measures. Such an assessment must be completed within a reasonable period of time.

(b) The owner or operator must continue to monitor in accordance with

the assessment monitoring program as specified in § 257.25.

(c) The assessment shall include an analysis of the effectiveness of potential corrective measures in meeting all of the requirements and objectives of the remedy as described under § 257.27, addressing at least the following:

(1) The performance, reliability, ease of implementation, and potential impacts of appropriate potential remedies, including safety impacts, cross-media impacts, and control of exposure to any residual contamination;

(2) The time required to begin and complete the remedy;

(3) The costs of remedy implementation; and

(4) The institutional requirements such as State or local permit requirements or other environmental or public health requirements that may substantially affect implementation of the remedy(s).

(d) The owner or operator must discuss the results of the corrective measures assessment, prior to the selection of remedy, in a public meeting with interested and affected parties.

§ 257.27 Selection of remedy.

(a) Based on the results of the corrective measures assessment conducted under § 257.26, the owner or operator must select a remedy that, at a minimum, meets the standards listed in paragraph (b) of this section. The owner or operator must notify the State Director, within 14 days of selecting a remedy, that a report describing the selected remedy has been placed in the operating record and how it meets the standards in paragraph (b) of this section.

(b) Remedies must:

(1) Be protective of human health and the environment;

(2) Attain the ground-water protection standard as specified pursuant to §§ 257.25 (h) or (i);

(3) Control the source(s) of releases so as to reduce or eliminate, to the maximum extent practicable, further releases of appendix II (Appendix II of 40 CFR part 258) constituents into the environment that may pose a threat to human health or the environment; and

(4) Comply with standards for management of wastes as specified in § 257.28(d).

(c) In selecting a remedy that meets the standards of § 257.27(b), the owner or operator shall consider the following evaluation factors:

(1) The long- and short-term effectiveness and protectiveness of the potential remedy(s), along with the degree of certainty that the remedy will prove successful based on consideration of the following:

(i) Magnitude of reduction of existing risks;

(ii) Magnitude of residual risks in terms of likelihood of further releases due to waste remaining following implementation of a remedy;

(iii) The type and degree of long-term management required, including monitoring, operation, and maintenance;

(iv) Short-term risks that might be posed to the community, workers, or the environment during implementation of such a remedy, including potential threats to human health and the environment associated with excavation, transportation, and re-disposal or containment;

(v) Time until full protection is achieved;

(vi) Potential for exposure of humans and environmental receptors to remaining wastes, considering the potential threat to human health and the environment associated with excavation, transportation, re-disposal, or containment;

(vii) Long-term reliability of the engineering and institutional controls; and

(viii) Potential need for replacement of the remedy.

(2) The effectiveness of the remedy in controlling the source to reduce further releases based on consideration of the following factors:

(i) The extent to which containment practices will reduce further releases;

(ii) The extent to which treatment technologies may be used.

(3) The ease or difficulty of implementing a potential remedy(s) based on consideration of the following types of factors:

(i) Degree of difficulty associated with constructing the technology;

(ii) Expected operational reliability of the technologies;

(iii) Need to coordinate with and obtain necessary approvals and permits from other agencies;

(iv) Availability of necessary equipment and specialists; and

(v) Available capacity and location of needed treatment, storage, and disposal services.

(4) Practicable capability of the owner or operator, including a consideration of the technical and economic capability.

(5) The degree to which community concerns are addressed by a potential remedy(s).

(d) The owner or operator shall specify as part of the selected remedy a schedule(s) for initiating and completing remedial activities. Such a schedule must require the initiation of remedial activities within a reasonable period of time taking into consideration the factors set forth in paragraphs (d)(1) through (d)(8) of this section. The owner or operator must consider the following factors in determining the schedule of remedial activities:

(1) Extent and nature of contamination;

(2) Practical capabilities of remedial technologies in achieving compliance with ground-water protection standards established under §§ 257.25 (g) or (h) and other objectives of the remedy;

(3) Availability of treatment or disposal capacity for wastes managed during implementation of the remedy;

(4) Desirability of utilizing technologies that are not currently available, but which may offer significant advantages over already available technologies in terms of effectiveness, reliability, safety, or ability to achieve remedial objectives;

(5) Potential risks to human health and the environment from exposure to contamination prior to completion of the remedy;

(6) Resource value of the aquifer including:

(i) Current and future uses;

(ii) Proximity and withdrawal rate of users;

(iii) Ground-water quantity and quality;

(iv) The potential damage to wildlife, crops, vegetation, and physical structures caused by exposure to waste constituent;

(v) The hydrogeologic characteristic of the unit and surrounding land;

(vi) Ground-water removal and treatment costs; and

(vii) The cost and availability of alternative water supplies.

(7) Practicable capability of the owner or operator.

(8) Other relevant factors.

(e) The Director of an approved State may determine that remediation of a release of an appendix II (Appendix II of 40 CFR part 258) constituent from the unit is not necessary if the owner or operator demonstrates to the Director of the approved state that:

(1) The ground-water is additionally contaminated by substances that have originated from a source other than the unit and those substances are present in concentrations such that cleanup of the release from the unit would provide no significant reduction in risk to actual or potential receptors; or

(2) The constituent(s) is present in ground water that:

(i) Is not currently or reasonably expected to be a source of drinking water; and

(ii) Is not hydraulically connected with waters to which the hazardous constituents are migrating or are likely

to migrate in a concentration(s) that would exceed the ground-water protection standards established under § 257.25 (h) or (i); or

(3) Remediation of the release(s) is technically impracticable; or

(4) Remediation results in unacceptable cross-media impacts.

(f) A determination by the Director of an approved State pursuant to paragraph (e) of this section shall not affect the authority of the State to require the owner or operator to undertake source control measures or other measures that may be necessary to eliminate or minimize further releases to the ground-water, to prevent exposure to the ground-water, or to remediate the ground-water to concentrations that are technically practicable and significantly reduce threats to human health or the environment.

§ 257.28 Implementation of the corrective action program.

(a) Based on the schedule established under § 257.27(d) for initiation and completion of remedial activities the owner/operator must:

(1) Establish and implement a corrective action ground-water monitoring program that:

(i) At a minimum, meets the requirements of an assessment monitoring program under § 257.25;

(ii) Indicates the effectiveness of the corrective action remedy; and

(iii) Demonstrates compliance with ground-water protection standard pursuant to paragraph (e) of this section.

(2) Implement the corrective action remedy selected under § 257.27; and

(3) Take any interim measures necessary to ensure the protection of human health and the environment. Interim measures should, to the greatest extent practicable, be consistent with the objectives of and contribute to the performance of any remedy that may be required pursuant to § 257.27. The following factors must be considered by an owner or operator in determining whether interim measures are necessary:

(i) Time required to develop and implement a final remedy;

(ii) Actual or potential exposure of nearby populations or environmental receptors to hazardous constituents;

(iii) Actual or potential contamination of drinking water supplies or sensitive ecosystems;

(iv) Further degradation of the ground-water that may occur if remedial action is not initiated expeditiously;

(v) Weather conditions that may cause hazardous constituents to migrate or be released;

(vi) Risks of fire or explosion, or potential for exposure to hazardous constituents as a result of an accident or failure of a container or handling system; and

(vii) Other situations that may pose threats to human health and the environment.

(b) An owner or operator may determine, based on information developed after implementation of the remedy has begun or other information, that compliance with requirements of § 257.27(b) are not being achieved through the remedy selected. In such cases, the owner or operator must implement other methods or techniques that could practicably achieve compliance with the requirements, unless the owner or operator makes the determination under § 257.28(c).

(c) If the owner or operator determines that compliance with requirements under § 257.27(b) cannot be practically achieved with any currently available methods, the owner or operator must:

(1) Obtain certification of a qualified ground-water scientist or approval by the Director of an approved State that compliance with requirements under § 257.27(b) cannot be practically achieved with any currently available methods;

(2) Implement alternate measures to control exposure of humans or the environment to residual contamination, as necessary to protect human health and the environment; and

(3) Implement alternate measures for control of the sources of contamination, or for removal or decontamination of equipment, units, devices, or structures that are:

(i) Technically practicable; and

(ii) Consistent with the overall objective of the remedy.

(4) Notify the State Director within 14 days that a report justifying the alternative measures prior to implementing the alternative measures has been placed in the operating record.

(d) All solid wastes that are managed pursuant to a remedy required under § 257.27, or an interim measure required under § 257.28(a)(3), shall be managed in a manner:

(1) That is protective of human health and the environment; and

(2) That complies with applicable RCRA requirements.

(e) Remedies selected pursuant to § 257.27 shall be considered complete when:

(1) The owner or operator complies with the ground-water protection standards established under §§ 257.25 (h) or (i) at all points within the plume of contamination that lie beyond the ground-water monitoring well system established under § 257.22(a).

(2) Compliance with the ground-water protection standards established under §§ 257.25 (h) or (i) has been achieved by demonstrating that concentrations of appendix II (Appendix II of Part 258) constituents have not exceeded the ground-water protection standard(s) for a period of three consecutive years using the statistical procedures and performance standards in § 257.23 (g) and (h). The Director of an approved State may specify an alternative length of time during which the owner or operator must demonstrate that concentrations of appendix II (Appendix II of 40 CFR part 258) constituents have not exceeded the ground-water protection standard(s) taking into consideration:

(i) Extent and concentration of the release(s);

(ii) Behavior characteristics of the hazardous constituents in the ground-water;

(iii) Accuracy of monitoring or modeling techniques, including any seasonal, meteorological, or other environmental variabilities that may affect the accuracy; and

(iv) Characteristics of the ground-water.

(3) All actions required to complete the remedy have been satisfied.

(f) Upon completion of the remedy, the owner or operator must notify the State Director within 14 days that a certification that the remedy has been completed in compliance with the requirements of § 257.28(e) has been placed in the operating record. The certification must be signed by the owner or operator and by a qualified ground-water scientist or approved by the Director of an approved State.

Recordkeeping Requirements

§ 257.30 Recordkeeping requirements.

(a) The owner/operator of a non-municipal non-hazardous waste disposal unit must record and retain near the facility in an operating record or in an alternative location approved by the Director of an approved State the following information as it becomes available:

(1) Any location restriction demonstration required under §§ 257.7 through 257.12; and

(2) Any demonstration, certification, finding, monitoring, testing, or analytical data required in §§ 257.21 through 257.28.

(b) The owner/operator must notify the State Director when the documents from paragraph (a) of this section have been placed or added to the operating record, and all information contained in the operating record must be furnished

upon request to the State Director or be made available at all reasonable times for inspection by the State Director.

(c) The Director of an approved State can set alternative schedules for recordkeeping and notification requirements as specified in paragraphs (a) and (b) of this section, except for the notification requirements in § 257.25(g)(1)(iii).

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTES

5. The authority citation for Part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, and 6938.

Subpart A—General

6. Section 261.5 is amended by revising paragraphs (f)(3) and (g)(3) to read as follows:

§ 261.5 Special requirements for hazardous waste generated by conditionally exempt small quantity generators.

* * * * *

(f) * * *

(3) A conditionally exempt small quantity generator may either treat or dispose of his acute hazardous waste in an on-site facility or ensure delivery to an off-site treatment, storage, or disposal facility, either of which, if located in the U.S., is:

(i) Permitted under part 270 of this chapter;

(ii) In interim status under parts 270 and 265 of this chapter;

(iii) Authorized to manage hazardous waste by a State with a hazardous waste management program approved under part 271 of this chapter;

(iv) Permitted, licensed, or registered by a State to manage municipal solid waste and, if managed in a municipal solid waste landfill is subject to Part 258 of this chapter;

(v) Permitted, licensed, or registered by a State to manage non-municipal non-hazardous waste and, if managed in a non-municipal non-hazardous waste disposal unit after January 1, 1998, is subject to the requirements in §§ 257.5 through 257.30 of this chapter; or

(vi) A facility which:

(A) Beneficially uses or reuses, or legitimately recycles or reclaims its waste; or

(B) Treats its waste prior to beneficial use or reuse, or legitimate recycling or reclamation; or

(vii) For universal waste managed under part 273 of this chapter, a universal waste handler or destination facility subject to the requirements of part 273 of this chapter.

(g) * * *

(3) A conditionally exempt small quantity generator may either treat or dispose of his hazardous waste in an on-site facility or ensure delivery to an off-site treatment, storage or disposal facility, either of which, if located in the U.S., is:

(i) Permitted under part 270 of this chapter;

(ii) In interim status under parts 270 and 265 of this chapter;

(iii) Authorized to manage hazardous waste by a State with a hazardous waste management program approved under part 271 of this chapter;

(iv) Permitted, licensed, or registered by a State to manage municipal solid waste and, if managed in a municipal solid waste landfill is subject to Part 258 of this chapter;

(v) Permitted, licensed, or registered by a State to manage non-municipal non-hazardous waste and, if managed in a non-municipal non-hazardous waste disposal unit after January 1, 1998, is subject to the requirements in §§ 257.5 through 257.30 of this chapter; or

(vi) A facility which:

(A) Beneficially uses or reuses, or legitimately recycles or reclaims its waste; or

(B) Treats its waste prior to beneficial use or reuse, or legitimate recycling or reclamation; or

(vii) For universal waste managed under part 273 of this chapter, a universal waste handler or destination facility subject to the requirements of part 273 of this chapter.

* * * * *

PART 271—REQUIREMENTS FOR AUTHORIZATION OF STATE HAZARDOUS WASTE PROGRAMS

7. The authority citation for part 271 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), and 6926.

8. In § 271.1, paragraph (j), Table 1 is amended by adding the following entry in chronological order by publication date:

§ 271.1 Purpose and scope.

* * * * *

(j) * * *

TABLE 1.—REGULATIONS IMPLEMENTING THE HAZARDOUS AND SOLID WASTE AMENDMENTS OF 1984

Promulgation date	Title of regulation	Federal Register reference	Effective date
*	*	*	*
July 1, 1996	Revisions to Criteria applicable to solid waste facilities that may accept CESQG hazardous wastes, excluding MSWLFs.	61 FR 34278	January 1, 1998.

[FR Doc. 96–16585 Filed 6–26–96; 11:51 am]

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federal register

Monday
July 1, 1996

Part VI

Department of the Treasury

Fiscal Service

Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and As Acceptable Reinsuring Companies; Annual List; Notice

DEPARTMENT OF THE TREASURY

FISCAL SERVICE

(Dept. Circular 570; 1996 Revision)

COMPANIES HOLDING CERTIFICATES OF AUTHORITY AS ACCEPTABLE SURETIES ON FEDERAL BONDS AND AS ACCEPTABLE REINSURING COMPANIES

Effective July 1, 1996

This Circular is published annually, solely for the information of Federal bond-approving officers and persons required to give bonds to the United States. Copies of the Circular and interim changes may be obtained directly from the Government Printing Office (202) 512-1800. (Interim changes are published in the FEDERAL REGISTER as they occur.) Other information pertinent to Federal sureties may be obtained from the U.S. Department of the Treasury, Financial Management Service, Surety Bond Branch, 3700 East West Highway, Room 6F04, Hyattsville, MD 20782, Telephone (FTS/202) 874-6850 or (Fax/202) 874-9978.

For the most current list of Treasury authorized companies, all year round, 24 hours a day, free of charge, use your computer modem and dial into our ***computerized public bulletin board*** at (202) 874-6817/6872/6953/7034/8608. The list is also available through the Internet (http://www.ustreas.gov/treasury/bureaus/finman/c570.html). ***Please note that the underwriting limitation published herein is on a per bond basis but this does not limit the amount of a bond that a company can write.*** Companies are allowed to write bonds with a penal sum over their underwriting limitation as long as they protect the excess amount with reinsurance, coinsurance or other methods as specified at 31 CFR 223.10-11. Please refer to footnote (b) at the end of this publication.

The following companies have complied with the law and the regulations of the U.S. Department of the Treasury. Those listed in the front of this Circular are acceptable as sureties and reinsurers on Federal bonds under Title 31 of the United States Code, Sections 9304 to 9308 [See Note (a)]. Those listed in the back are acceptable only as reinsurers on Federal bonds under 31 CFR 223.3(b) [See Note (e)].

If we can be of any assistance, please feel free to contact the Surety Bond Branch at (202) 874-6850.

Diane E. Clark
Assistant Commissioner, Financial Information
Financial Management Service

IMPORTANT INFORMATION IS CONTAINED IN THE NOTES AT THE END OF THIS CIRCULAR. PLEASE READ THE NOTES CAREFULLY.

Acadia Insurance Company
BUSINESS ADDRESS: P.O. BOX 9010, Westbrook, ME 04098-5010. PHONE: (207) 772-4300. UNDERWRITING LIMITATION [b/]: $2,930,000. SURETY LICENSES [c/]: ME, NH, VT. INCORPORATED IN: Maine.

Acceptance Insurance Company
BUSINESS ADDRESS: 222 South 15th Street, Suite 600 North, Omaha, NE 68102. PHONE: (402) 344-8800. UNDERWRITING LIMITATION [b/]: $10,792,000. SURETY LICENSES [c/]: AL, AZ, AR, CO, GA, IL, IA, KY, ME, MI, NE, ND, OH, TN, VA, WI. INCORPORATED IN: Nebraska.

ACCREDITED SURETY AND CASUALTY COMPANY, INC.
BUSINESS ADDRESS: P.O. Box 568529, Orlando, FL 32856-8529. PHONE: (407) 841-8500. UNDERWRITING LIMITATION [b/]: $653,000. SURETY LICENSES [c/]: AL, FL, GA, IN, LA, MD, MS, VA. INCORPORATED IN: Florida.

ACSTAR INSURANCE COMPANY
BUSINESS ADDRESS: P.O. Box 2350, New Britain, CT 06050-2350. PHONE: (860) 224-2000. UNDERWRITING LIMITATION [b/]: $1,769,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Illinois.

Aegis Security Insurance Company
BUSINESS ADDRESS: P.O. Box 3153, Harrisburg, PA 17105. PHONE: (717) 657-9671. UNDERWRITING LIMITATION [b/]: $1,192,000. SURETY LICENSES [c/]: AL, AZ, AR, CA, CO, CT, DE, FL, GA, ID, IL, IN, IA, KS, KY, LA, MD, MA, MI, MN, MS, MO, MT, NE, NV, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Pennsylvania.

Aetna Casualty & Surety Company of America
BUSINESS ADDRESS: One Tower Square, Hartford, CT 06183-9062. PHONE: (860) 277-0111. UNDERWRITING LIMITATION [b/]: $33,358,000. SURETY LICENSES [c/]: AL, AK, AS, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Connecticut.

Aetna Casualty and Surety Company (The)
BUSINESS ADDRESS: One Tower Square, Hartford, CT 06183-9062. PHONE: (860) 277-0111. UNDERWRITING LIMITATION [b/]: $120,052,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Connecticut.

Aetna Casualty and Surety Company of Illinois
BUSINESS ADDRESS: 2525 Cabot Drive, Lisle, IL 60532-3629. PHONE: (708) 245-4001. UNDERWRITING LIMITATION [b/]: $26,379,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Illinois.

Affiliated FM Insurance Company
BUSINESS ADDRESS: Allendale Park, P.O. Box 7500, Johnston, RI 02919-0500. PHONE: (401) 275-3000. UNDERWRITING LIMITATION [b/]: $3,149,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Rhode Island.

Allegheny Mutual Casualty Company
BUSINESS ADDRESS: P.O. Box 1116, Meadville, PA 16335-7116. PHONE: (814) 336-2521. UNDERWRITING LIMITATION [b/]: $952,000. SURETY LICENSES [c/]: CA, DC, FL, ID, IL, IN, LA, MD, MI, MS, NJ, OH, OK, PA, SC, SD, TN, TX, WA, WI. INCORPORATED IN: Pennsylvania.

See Footnotes/Notes at end of Circular

Allendale Mutual Insurance Company

BUSINESS ADDRESS: Allendale Park, P.O. Box 7500, Johnston, RI 02919-0500. PHONE: (401) 275-3000. UNDERWRITING LIMITATION [b/]: $81,347,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Rhode Island.

Alliance Assurance Company of America

BUSINESS ADDRESS: 25 Independence Blvd., Warren, NJ 07059. PHONE: (212) 753-8130. UNDERWRITING LIMITATION [b/]: $15,763,000. SURETY LICENSES [c/]: IN, KY, ME. INCORPORATED IN: New York.

Allied Mutual Insurance Company

BUSINESS ADDRESS: 701 5th Avenue, Des Moines, IA 50391-2007. PHONE: (515) 280-4211. UNDERWRITING LIMITATION [b/]: $19,447,000. SURETY LICENSES [c/]: AZ, AR, CA, CO, DC, ID, IL, IN, IA, KS, KY, MI, MN, MO, MT, NE, NV, NM, ND, OH, OK, OR, SD, TN, TX, UT, WA, WI, WY. INCORPORATED IN: Iowa.

ALLSTATE INSURANCE COMPANY

BUSINESS ADDRESS: 3075 Sanders Rd. STE H1A, Northbrook, IL 60062-7127. PHONE: (847) 402-5000. UNDERWRITING LIMITATION [b/]: $808,517,000. SURETY LICENSES [c/]: AL, AK, AS, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Illinois.

AMCO Insurance Company

BUSINESS ADDRESS: 701 5th Avenue, Des Moines, IA 50391-2007. PHONE: (515) 280-4211. UNDERWRITING LIMITATION [b/]: $15,688,000. SURETY LICENSES [c/]: AZ, CA, CO, DC, ID, IL, IN, IA, KS, KY, MI, MN, MO, MT, NE, NM, ND, OH, OR, SD, TN, TX, UT, WA, WI, WY. INCORPORATED IN: Iowa.

AMERICAN ALLIANCE INSURANCE COMPANY

BUSINESS ADDRESS: 580 Walnut Street, Cincinnati, OH 45202. PHONE: (513) 369-5000. UNDERWRITING LIMITATION [b/]: $712,000. SURETY LICENSES [c/]: AL, AK, AS, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, MD, MA, MI, MN, MS, MO, MT, NE, NV, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Arizona.

American Automobile Insurance Company

BUSINESS ADDRESS: 777 San Marin Drive, Novato, CA 94998. PHONE: (415) 899-2000. UNDERWRITING LIMITATION [b/]: $4,427,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Missouri.

AMERICAN BANKERS INSURANCE COMPANY OF FLORIDA

BUSINESS ADDRESS: 11222 Quail Roost Dr., Miami, FL 33157. PHONE: (305) 253-2244. UNDERWRITING LIMITATION [b/]: $3,322,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Florida.

American Casualty Company of Reading, Pennsylvania

BUSINESS ADDRESS: CNA Plaza, Chicago, IL 60685. PHONE: (312) 822-5000. UNDERWRITING LIMITATION [b/]: $27,814,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Pennsylvania.

AMERICAN CONTRACTORS INDEMNITY COMPANY

BUSINESS ADDRESS: 9841 Airport Blvd,, Suite 1414, Los Angeles, CA 90045. PHONE: (310) 649-0990. UNDERWRITING LIMITATION [b/]: $291,000. SURETY LICENSES [c/]: CA, NM. INCORPORATED IN: California.

See Footnotes/Notes at end of Circular

American Economy Insurance Company

BUSINESS ADDRESS: 500 North Meridian Street, Indianapolis, IN 46204-1275. PHONE: (317) 262-6262. UNDERWRITING LIMITATION [b/]: $38,424,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Indiana.

American Employers' Insurance Company

BUSINESS ADDRESS: One Beacon Street, Boston, MA 02108. PHONE: (617) 725-6000. UNDERWRITING LIMITATION [b/]: $20,119,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Massachusetts.

American Fidelity Insurance Company

BUSINESS ADDRESS: P.O. Box 25523, Oklahoma City, OK 73125-0523. PHONE: (405) 523-2000. UNDERWRITING LIMITATION [b/]: $2,952,000. SURETY LICENSES [c/]: AZ, AR, CA, CO, GA, ID, IA, KS, LA, MS, MO, MT, NE, NV, NJ, NM, ND, OK, OR, PA, SD, TN, TX, UT, VA, WA, WI. INCORPORATED IN: Oklahoma.

American Fire and Casualty Company

BUSINESS ADDRESS: 136 North Third Street, Hamilton, OH 45025. PHONE: (513) 867-3000. UNDERWRITING LIMITATION [b/]: $6,345,000. SURETY LICENSES [c/]: AL, AR, CO, DC, FL, GA, KS, KY, LA, MD, MS, NC, SC, TN, TX, VA. INCORPORATED IN: Ohio.

American Guarantee and Liability Insurance Company

BUSINESS ADDRESS: 1400 American Lane, Schaumburg, IL 60196. PHONE: (847) 605-6000. UNDERWRITING LIMITATION [b/]: $18,478,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New York.

American Home Assurance Company

BUSINESS ADDRESS: 70 Pine Street, New York, NY 10270. PHONE: (212) 770-7000. UNDERWRITING LIMITATION [b/]: $170,300,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New York.

American Insurance Company (The)

BUSINESS ADDRESS: 777 San Marin Drive, Novato, CA 94998. PHONE: (415) 899-2000. UNDERWRITING LIMITATION [b/]: $32,834,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Nebraska.

American International Pacific Insurance Company

BUSINESS ADDRESS: 70 Pine Street, New York, NY 10270. PHONE: (212) 770-7000. UNDERWRITING LIMITATION [b/]: $1,678,000. SURETY LICENSES [c/]: AK, CO, CT, DC, IA, ME, MD, MA, MS, NE, NH, ND, RI, SD, UT, VT, WV. INCORPORATED IN: Colorado.

American Manufacturers Mutual Insurance Company

BUSINESS ADDRESS: 1 Kemper Drive, Long Grove, IL 60049-0001. PHONE: (847) 320-2000. UNDERWRITING LIMITATION [b/]: $19,248,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Illinois.

See Footnotes/Notes at end of Circular

American Motorists Insurance Company

BUSINESS ADDRESS: 1 Kemper Drive, Long Grove, IL 60049-0001. PHONE: (847) 320-2000. UNDERWRITING LIMITATION b/: $25,311,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Illinois.

American National Fire Insurance Company

BUSINESS ADDRESS: 580 Walnut Street, Cincinnati, OH 45202. PHONE: (513) 369-5000. UNDERWRITING LIMITATION b/: $2,181,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New York.

American Re-Insurance Company

BUSINESS ADDRESS: 555 College Road East, P.O. Box 5241, Princeton, NJ 08543. PHONE: (609) 243-4200. UNDERWRITING LIMITATION b/: $110,027,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Delaware.

AMERICAN RELIABLE INSURANCE COMPANY

BUSINESS ADDRESS: 8655 East Via De Ventura, Scottsdale, AZ 85258. PHONE: (602) 483-8666. UNDERWRITING LIMITATION b/: $2,651,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VA, WA, WV, WI, WY. INCORPORATED IN: Arizona.

American Safety Casualty Insurance Company

BUSINESS ADDRESS: 1845 The Exchange, Suite 200, Atlanta, GA 30339. PHONE: (770) 916-1908. UNDERWRITING LIMITATION b/: $766,000. SURETY LICENSES c/: AL, AK, CA, CO, DE, DC, FL, GA, ID, IL, IN, IA, KS, MD, MN, MS, MO, MT, NE, NV, NM, ND, OH, OK, PA, SC, SD, TN, TX, UT, VA, WA, WV, WI. INCORPORATED IN: Delaware.

American States Insurance Company

BUSINESS ADDRESS: 500 North Meridian Street, Indianapolis, IN 46204-1275. PHONE: (317) 262-6262. UNDERWRITING LIMITATION b/: $101,099,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Indiana.

American Surety and Casualty Company

BUSINESS ADDRESS: P.O. Box 24827, Jacksonville, FL 32241-4827. PHONE: (904) 733-6661. UNDERWRITING LIMITATION b/: $427,000. SURETY LICENSES c/: AL, FL, GA. INCORPORATED IN: Florida.

American Surety Company

BUSINESS ADDRESS: 3901 West 86th Street, Suite 450, Indianapolis, IN 46268-0932. PHONE: (317) 875-8700. UNDERWRITING LIMITATION b/: $384,000. SURETY LICENSES c/: AL, CA, FL, MD, NV, ND, TN, TX. INCORPORATED IN: California.

Amwest Surety Insurance Company

BUSINESS ADDRESS: P.O. Box 4500, Woodland Hills, CA 91365-4500. PHONE: (818) 704-1111. UNDERWRITING LIMITATION b/: $3,095,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Nebraska.

Antilles Insurance Company

BUSINESS ADDRESS: P.O. Box 3507, Old San Juan, PR 00902. PHONE: (809) 721-4900. UNDERWRITING LIMITATION b/: $1,829,000. SURETY LICENSES c/: PR. INCORPORATED IN: Puerto Rico.

See Footnotes/Notes at end of Circular

Arkwright Mutual Insurance Company

BUSINESS ADDRESS: 225 Wyman Street,P.O. Box 9198, Waltham, MA 02254-9198. PHONE: (617) 890-9300. UNDERWRITING LIMITATION [b/]: $69,488,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Massachusetts.

Associated Indemnity Corporation

BUSINESS ADDRESS: 777 San Marin Drive, Novato, CA 94998. PHONE: (415) 899-2000. UNDERWRITING LIMITATION [b/]: $3,033,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: California.

ATLANTIC ALLIANCE FIDELITY AND SURETY COMPANY

BUSINESS ADDRESS: P.O. Box 985, Cherry Hill, NJ 08003. PHONE: (609) 795-5575. UNDERWRITING LIMITATION [b/]: $369,000. SURETY LICENSES [c/]: AL, AZ, CT, DE, DC, FL, GA, IL, KY, MD, MA, MO, NJ, NY, PA, TN, TX. INCORPORATED IN: New Jersey.

Atlantic Mutual Insurance Company

BUSINESS ADDRESS: 100 Wall Street, New York, NY 10005. PHONE: (212) 943-1800. UNDERWRITING LIMITATION [b/]: $28,971,000. SURETY LICENSES [c/]: AK, AS, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: New York.

Auto-Owners Insurance Company

BUSINESS ADDRESS: P.O. Box 30660, Lansing, MI 48909. PHONE: (517) 323-1200. UNDERWRITING LIMITATION [b/]: $142,590,000. SURETY LICENSES [c/]: AL, AZ, CO, FL, GA, IL, IN, IA, KS, KY, MI, MN, MO, NE, NM, NC, ND, OH, OR, SC, SD, TN, TX, VA, WI. INCORPORATED IN: Michigan.

BANKERS INSURANCE COMPANY

BUSINESS ADDRESS: P.O. Box 15707, St. Petersburg, FL 33733-5707. PHONE: (813) 823-4000. UNDERWRITING LIMITATION [b/]: $3,037,000. SURETY LICENSES [c/]: AL, AZ, AR, CA, CT, DE, DC, FL, GA, HI, ID, IL, IA, KY, LA, MD, MS, MO, MT, NE, NV, NM, NC, OH, OK, PA, SC, SD, TN, TX, VA, WY. INCORPORATED IN: Florida.

BITUMINOUS CASUALTY CORPORATION

BUSINESS ADDRESS: 320 - 18th Street, Rock Island, IL 61201. PHONE: (309) 786-5401 x-268. UNDERWRITING LIMITATION [b/]: $13,287,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Illinois.

BOND SAFEGUARD INSURANCE COMPANY

BUSINESS ADDRESS: 246 E. Janata Blvd., Lombard, IL 60148. PHONE: (708) 495-9380. UNDERWRITING LIMITATION [b/]: $417,000. SURETY LICENSES [c/]: IL, IN, KS, MO, NC, OK, TN, TX. INCORPORATED IN: Illinois.

Boston Old Colony Insurance Company

BUSINESS ADDRESS: CNA Plaza, Chicago, IL 60685. PHONE: (312) 822-5000. UNDERWRITING LIMITATION [b/]: $1,028,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Massachusetts.

Buckeye Union Insurance Company (The)

BUSINESS ADDRESS: CNA Plaza, Chicago, IL 60685. PHONE: (312) 822-5000. UNDERWRITING LIMITATION [b/]: $31,549,000. SURETY LICENSES [c/]: AK, DC, FL, IL, IN, IA, KS, KY, MD, MI, MO, NY, OH, PA, RI, SD, VA, WV. INCORPORATED IN: Ohio.

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Capitol Indemnity Corporation

BUSINESS ADDRESS: P.O. Box 5900, Madison, WI 53705-0900. PHONE: (608) 231-4450. UNDERWRITING LIMITATION b/: $6,262,000. SURETY LICENSES c/: AZ, AR, CO, DE, FL, ID, IL, IN, IA, KS, KY, LA, MI, MN, MS, MO, MT, NE, NV, NM, ND, OH, OK, OR, PA, SD, TX, UT, WA, WI, WY. INCORPORATED IN: Wisconsin.

Carolina Casualty Insurance Company

BUSINESS ADDRESS: P.O. Box 2575, Jacksonville, FL 32203. PHONE: (904) 363-0900. UNDERWRITING LIMITATION b/: $4,917,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, ME, MD, MI, MN, MS, MO, MT, NE, NV, NH, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Florida.

Centennial Insurance Company

BUSINESS ADDRESS: 100 Wall Street, New York, NY 10005. PHONE: (212) 943-1800. UNDERWRITING LIMITATION b/: $16,638,000. SURETY LICENSES c/: AK, AS, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: New York.

CENTURY SURETY COMPANY

BUSINESS ADDRESS: P.O. Box 163340, Columbus, OH 43216-3340. PHONE: (614) 895-2000. UNDERWRITING LIMITATION b/: $2,032,000. SURETY LICENSES c/: AZ, IN, OH, WV, WI. INCORPORATED IN: Ohio.

Charter Oak Fire Insurance Company (The)

BUSINESS ADDRESS: One Tower Square, Hartford, CT 06183-6014. PHONE: (860) 277-0111. UNDERWRITING LIMITATION b/: $12,717,000. SURETY LICENSES c/: AL, AK, AZ, AR, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Connecticut.

Chartwell Reinsurance Company

BUSINESS ADDRESS: 300 Atlantic Street, Suite 400, Stamford, CT 06901. PHONE: (203) 961-7300. UNDERWRITING LIMITATION b/: $8,901,000. SURETY LICENSES c/: AK, AZ, CA, DE, DC, GA, HI, ID, KS, MD, MS, MT, NE, NV, NJ, NM, NY, ND, OH, PA, TN, TX, UT, WA, WI. INCORPORATED IN: Minnesota.

Chatham Reinsurance Corporation

BUSINESS ADDRESS: 100 Campus Drive, Florham Park, NJ 07932-1006. PHONE: (201) 443-0443. UNDERWRITING LIMITATION b/: $3,060,000. SURETY LICENSES c/: AK, AZ, CA, CO, DC, ID, IL, IA, MD, MA, MN, NE, NJ, NY, OK, OR, PA, SC, SD, TX, UT, WA, WI. INCORPORATED IN: California.

CHRISTIANIA GENERAL INSURANCE CORPORATION OF NEW YORK

BUSINESS ADDRESS: 120 White Plains Road, Tarrytown, NY 10591-0005. PHONE: (914) 333-9200. UNDERWRITING LIMITATION b/: $10,640,000. SURETY LICENSES c/: AL, AK, AR, CA, DC, IA, KY, MD, MS, NV, NY, ND, OH, PA, SD, TN, TX, UT, WA, WI, WY. INCORPORATED IN: New York.

CHRYSLER INSURANCE COMPANY

BUSINESS ADDRESS: P.O. Box 5168, Southfield, MI 48086-5168. PHONE: (810) 948-3443. UNDERWRITING LIMITATION b/: $11,347,000. SURETY LICENSES c/: AL, AK, AS, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Michigan.

CHUBB INDEMNITY INSURANCE COMPANY

BUSINESS ADDRESS: 15 Mountain View Rd.,P.O. Box 1615, Warren, NJ 07061-1615. PHONE: (908) 903-2000. UNDERWRITING LIMITATION b/: $1,113,000. SURETY LICENSES c/: AK, AZ, CA, CT, DE, DC, GA, IL, IN, IA, KY, LA, ME, MD, MA, MI, MN, MO, MT, NJ, NY, NC, OH, OK, OR, PA, RI, SC, SD, TN, TX, VA, WA, WI. INCORPORATED IN: New York.

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CIGNA INDEMNITY INSURANCE COMPANY [1]

BUSINESS ADDRESS: 1601 Chestnut Street, P.O. Box 7716, Philadelphia, PA 19192. PHONE: (215) 761-1000. UNDERWRITING LIMITATION [b/]: $2,569,000. SURETY LICENSES [c/]: AK, AZ, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, MD, MA, MI, MN, MS, MO, MT, NE, NJ, NM, NY, OH, OR, PA, RI, SC, SD, TX, UT, VA, WA, WV, WI, WY. INCORPORATED IN: Pennsylvania.

CIGNA Insurance Company of Illinois

BUSINESS ADDRESS: 8755 West Higgins Rd., Chicago, IL 60631. PHONE: (312) 380-8100. UNDERWRITING LIMITATION [b/]: $3,105,000. SURETY LICENSES [c/]: IL. INCORPORATED IN: Illinois.

CIGNA Insurance Company of Texas

BUSINESS ADDRESS: 600 East Las Colinas Blvd., Suite 620, Irving, TX 75039. PHONE: (214) 869-8500. UNDERWRITING LIMITATION [b/]: $3,019,000. SURETY LICENSES [c/]: NM, OK, TX. INCORPORATED IN: Texas.

CIGNA Insurance Company of the Midwest

BUSINESS ADDRESS: 9200 Keystone Crossing, P.O. Box 80995, Suite 303, Indianapolis, IN 46240. PHONE: (215) 761-1000. UNDERWRITING LIMITATION [b/]: $2,509,000. SURETY LICENSES [c/]: IN. INCORPORATED IN: Indiana.

Cincinnati Casualty Company (The)

BUSINESS ADDRESS: P.O. Box 145496, Cincinnati, OH 45250-5496. PHONE: (513) 870-2000. UNDERWRITING LIMITATION [b/]: $10,684,000. SURETY LICENSES [c/]: AL, AZ, CO, FL, GA, IL, IN, IA, KS, KY, MD, MI, MN, MS, MO, NE, NM, NC, OH, OK, PA, SC, SD, TN, TX, UT, VT, VA, WV, WI, WY. INCORPORATED IN: Ohio.

Cincinnati Insurance Company (The)

BUSINESS ADDRESS: P.O. Box 145496, Cincinnati, OH 45250-5496. PHONE: (513) 870-2000. UNDERWRITING LIMITATION [b/]: $113,660,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Ohio.

COLONIAL AMERICAN CASUALTY AND SURETY COMPANY

BUSINESS ADDRESS: 210 North Charles Street, Baltimore, MD 21201. PHONE: (410) 539-0800. UNDERWRITING LIMITATION [b/]: $1,563,000. SURETY LICENSES [c/]: DC, FL, IL, IN, IA, KS, MD, MI, MO, NJ, NY, OH, OK, TN, TX, VA. INCORPORATED IN: Maryland.

COLONIAL SURETY COMPANY

BUSINESS ADDRESS: 50 Chestnut Ridge Road, Montvale, NJ 07645. PHONE: (201) 573-8788. UNDERWRITING LIMITATION [b/]: $256,000. SURETY LICENSES [c/]: CT, DE, DC, MD, MA, NJ, NM, NY, PA. INCORPORATED IN: Pennsylvania.

Commercial Casualty Insurance Company of Georgia

BUSINESS ADDRESS: 160 Technology Parkway, Norcross, GA 30092-2911. PHONE: (770) 729-8101. UNDERWRITING LIMITATION [b/]: $ 725,000. SURETY LICENSES [c/]: FL, GA. INCORPORATED IN: Georgia.

Commercial Insurance Company of Newark, New Jersey

BUSINESS ADDRESS: CNA Plaza, Chicago, IL 60685. PHONE: (312) 822-5000. UNDERWRITING LIMITATION [b/]: $4,035,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New Jersey.

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Commercial Union Insurance Company

BUSINESS ADDRESS: One Beacon Street, Boston, MA 02108. PHONE: (617) 725-6000. UNDERWRITING LIMITATION [b/]: $48,884,000. SURETY LICENSES [c/]: AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Massachusetts.

CONNECTICUT INDEMNITY COMPANY (THE)

BUSINESS ADDRESS: P.O. Box 420, Hartford, CT 06141. PHONE: (860) 674-6600. UNDERWRITING LIMITATION [b/]: $5,925,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Connecticut.

Connecticut Surety Company (The)

BUSINESS ADDRESS: City Place II 185 Asylum Street, Hartford, CT 06103-3403. PHONE: (860) 527-7806. UNDERWRITING LIMITATION [b/]: $942,000. SURETY LICENSES [c/]: AR, CA, CT, DE, DC, LA, NE, NY, ND, OH, PA, SC, TX. INCORPORATED IN: Connecticut.

Continental Casualty Company

BUSINESS ADDRESS: CNA Plaza, Chicago, IL 60685. PHONE: (312) 822-5000. UNDERWRITING LIMITATION [b/]: $350,353,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Illinois.

Continental Insurance Company (The)

BUSINESS ADDRESS: CNA Plaza, Chicago, IL 60685. PHONE: (312) 822-5000. UNDERWRITING LIMITATION [b/]: $43,603,000. SURETY LICENSES [c/]: AL, AK, AS, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: New Hampshire.

CONTINENTAL INSURANCE COMPANY OF PUERTO RICO (THE)

BUSINESS ADDRESS: B 2 Calle Tabonuco, PMC - Suite 431, Guaynabo, PR 00968-3004. PHONE: (809) 793-6111. UNDERWRITING LIMITATION [b/]: $14,266,000. SURETY LICENSES [c/]: PR. INCORPORATED IN: Puerto Rico.

Continental Reinsurance Corporation

BUSINESS ADDRESS: CNA Plaza, Chicago, IL 60685. PHONE: (312) 822-5000. UNDERWRITING LIMITATION [b/]: $21,227,000. SURETY LICENSES [c/]: AK, AZ, AR, CA, CO, DC, FL, HI, ID, IL, IN, IA, LA, MI, MS, MT, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, TX, UT, VA, WA, WY. INCORPORATED IN: California.

Continental Western Insurance Company

BUSINESS ADDRESS: P.O. Box 1594, Des Moines, IA 50306. PHONE: (515) 278-3000. UNDERWRITING LIMITATION [b/]: $8,110,000. SURETY LICENSES [c/]: AZ, AR, CO, ID, IL, IN, IA, KS, KY, ME, MI, MN, MS, MO, MT, NE, NV, NM, ND, OH, OK, OR, SD, TN, TX, UT, WA, WI, WY. INCORPORATED IN: Iowa.

CONTRACTORS BONDING AND INSURANCE COMPANY

BUSINESS ADDRESS: P.O. Box 9271, Seattle, WA 98109-0271. PHONE: (206) 622-7053. UNDERWRITING LIMITATION [b/]: $1,878,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Washington.

Cooperativa de Seguros Multiples de Puerto Rico

BUSINESS ADDRESS: G.P.O. Box 363846, San Juan, PR 00936-3846. PHONE: (809) 758-8585. UNDERWRITING LIMITATION [b/]: $10,372,000. SURETY LICENSES [c/]: PR. INCORPORATED IN: Puerto Rico.

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CREDIT GENERAL INSURANCE COMPANY

BUSINESS ADDRESS: 3201 Enterprise Pkwy, Beachwood, OH 44122. PHONE: (216) 778-6920. UNDERWRITING LIMITATION [b/]: $2,173,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CA, CO, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, MD, MA, MI, MN, MS, MO, MT, NE, NV, NM, ND, OH, OK, PA, SC, SD, TN, UT, VA, WA, WV, WI. INCORPORATED IN: Ohio.

CUMBERLAND CASUALTY & SURETY COMPANY

BUSINESS ADDRESS: 4311 West Waters Avenue, Suite 401, Tampa, FL 33614. PHONE: (813) 885-2112. UNDERWRITING LIMITATION [b/]: $513,000. SURETY LICENSES [c/]: DE, DC, FL, GA, GU, ID, IN, LA, MD, MA, MO, MT, NE, NV, ND, OR, SC, SD, TX, WY. INCORPORATED IN: Florida.

Cumberland Surety Insurance Company, Inc.

BUSINESS ADDRESS: 367 West Short Street, Lexington, KY 40507. PHONE: (800) 767-8622. UNDERWRITING LIMITATION [b/]: $269,000. SURETY LICENSES [c/]: DC, FL, IL, IN, KY, MS, OH, TN. INCORPORATED IN: Kentucky.

CUMIS INSURANCE SOCIETY, INC.

BUSINESS ADDRESS: Post Office Box 1084, Madison, WI 53701. PHONE: (608) 238-5851. UNDERWRITING LIMITATION [b/]: $21,667,000. SURETY LICENSES [c/]: AL, AK, AS, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Wisconsin.

DAIRYLAND INSURANCE COMPANY

BUSINESS ADDRESS: 1800 North Point Drive, Stevens Point, WI 54481. PHONE: (715) 346-6000. UNDERWRITING LIMITATION [b/]: $7,378,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CA, CO, DE, FL, GA, ID, IL, IN, IA, KS, KY, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NM, NY, NC, ND, OH, OK, OR, PA, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Wisconsin.

DEVELOPERS INSURANCE COMPANY

BUSINESS ADDRESS: P.O. Box 19725, Irvine, CA 92713. PHONE: (714) 263-3300. UNDERWRITING LIMITATION [b/]: $678,000. SURETY LICENSES [c/]: AK, AZ, CA, HI, ID, NV, OR, UT, WA. INCORPORATED IN: California.

Developers Surety and Indemnity Company

BUSINESS ADDRESS: 1603 22nd Street Suite 200, West Des Moines, IA 50266. PHONE: (515) 267-9070. UNDERWRITING LIMITATION [b/]: $524,000. SURETY LICENSES [c/]: AZ, CO, DC, ID, IL, IA, KS, MN, MO, MT, NE, NM, ND, OK, SD, WI, WY. INCORPORATED IN: Iowa.

DIAMOND STATE INSURANCE COMPANY

BUSINESS ADDRESS: Three Bala Plaza East, Suite 300, Bala Cynwyd, PA 19004. PHONE: (610) 664-1500. UNDERWRITING LIMITATION [b/]: $2,535,000. SURETY LICENSES [c/]: AL, AZ, AR, CO, CT, DE, DC, FL, GA, ID, IN, IA, KS, KY, LA, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NC, ND, OH, OK, OR, RI, SC, SD, TN, UT, VT, VA, WA, WV, WY. INCORPORATED IN: Indiana.

Empire Fire and Marine Insurance Company

BUSINESS ADDRESS: 1624 Douglas Street, Omaha, NE 68102. PHONE: (402) 341-0135. UNDERWRITING LIMITATION [b/]: $11,532,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CA, CO, DE, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, ME, MD, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Nebraska.

EMPLOYERS INSURANCE OF WAUSAU A Mutual Company

BUSINESS ADDRESS: P.O. Box 8017, Wausau, WI 54402-8017. PHONE: (715) 845-5211. UNDERWRITING LIMITATION [b/]: $43,790,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Wisconsin.

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Employers Mutual Casualty Company

BUSINESS ADDRESS: P.O. Box 712, Des Moines, IA 50303-0712. PHONE: (515) 280-2511. UNDERWRITING LIMITATION [b/]: $35,930,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Iowa.

Employers Reinsurance Corporation

BUSINESS ADDRESS: P.O. Box 2991, Overland Park, KS 66201-1391. PHONE: (913) 676-5200. UNDERWRITING LIMITATION [b/]: $323,598,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Missouri.

EMPLOYERS' FIRE INSURANCE COMPANY (THE)

BUSINESS ADDRESS: One Beacon Street, Boston, MA 02108. PHONE: (617) 725-6000. UNDERWRITING LIMITATION [b/]: $7,535,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Massachusetts.

Erie Insurance Company

BUSINESS ADDRESS: 100 Erie Insurance Place, Erie, PA 16530. PHONE: (814) 870-2000. UNDERWRITING LIMITATION [b/]: $4,672,000. SURETY LICENSES [c/]: DC, IN, KY, MD, NY, NC, OH, PA, TN, VA, WV. INCORPORATED IN: Pennsylvania.

Everest Reinsurance Company

BUSINESS ADDRESS: 3 Gateway Center, Newark, NJ 07102-4082. PHONE: (201) 802-8000. UNDERWRITING LIMITATION [b/]: $54,464,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WI. INCORPORATED IN: Delaware.

Evergreen National Indemnity Company

BUSINESS ADDRESS: P.O. Box 18295, Columbus, OH 43218. PHONE: (614) 895-1773. UNDERWRITING LIMITATION [b/]: $1,077,000. SURETY LICENSES [c/]: AL, AK, CO, DE, DC, GA, ID, IA, KY, MI, MN, MT, NJ, NM, ND, OH, OK, PA, SC, SD, TN, UT, WA, WI. INCORPORATED IN: Ohio.

EXPLORER INSURANCE COMPANY (THE)

BUSINESS ADDRESS: P.O. Box 85563, San Diego, CA 92186-5563. PHONE: (619) 546-2400. UNDERWRITING LIMITATION [b/]: $2,041,000. SURETY LICENSES [c/]: AZ, CA, ID, IL, IA, MT, NV, NM, OR, TX, UT, WA. INCORPORATED IN: Arizona.

FAR WEST INSURANCE COMPANY

BUSINESS ADDRESS: P.O. Box 4500, Woodland Hills, CA 91365-4500. PHONE: (818) 704-1111. UNDERWRITING LIMITATION [b/]: $587,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CA, CO, DE, DC, HI, ID, IL, IN, IA, KS, KY, MD, MA, MN, MO, MT, NE, NV, NJ, NM, NC, ND, OH, OR, PA, RI, SC, SD, TX, UT, WA, WI, WY. INCORPORATED IN: Nebraska.

Farmers Alliance Mutual Insurance Company

BUSINESS ADDRESS: 1122 North Main Street, McPherson, KS 67460. PHONE: (316) 241-2200. UNDERWRITING LIMITATION [b/]: $5,819,000. SURETY LICENSES [c/]: AZ, CO, ID, IN, IA, KS, MN, MO, MT, NE, NM, ND, OK, SD, TX, WY. INCORPORATED IN: Kansas.

Farmington Casualty Company

BUSINESS ADDRESS: One Tower Square, Hartford, CT 06183-9062. PHONE: (860) 277-0111. UNDERWRITING LIMITATION [b/]: $13,035,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Connecticut.

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Farmland Mutual Insurance Company

BUSINESS ADDRESS: 1963 Bell Avenue, Des Moines, IA 50315. PHONE: (515) 245-8800. UNDERWRITING LIMITATION b/: $6,493,000. SURETY LICENSES c/: CO, ID, IL, IN, IA, KS, KY, MI, MN, MS, MO, MT, NE, NV, ND, OH, OK, OR, SC, SD, TX, UT, WA, WI, WY. INCORPORATED IN: Iowa.

Federal Insurance Company

BUSINESS ADDRESS: 15 Mountain View Rd., P.O. Box 1615, Warren, NJ 07061-1615. PHONE: (908) 903-2000. UNDERWRITING LIMITATION b/: $226,745,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Indiana.

FEDERATED MUTUAL INSURANCE COMPANY

BUSINESS ADDRESS: 121 East Park Square, Owatonna, MN 55060. PHONE: (507) 455-5200. UNDERWRITING LIMITATION b/: $61,810,000. SURETY LICENSES c/: AL, AZ, AR, CA, CO, CT, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Minnesota.

Fidelity and Casualty Company of New York (The)

BUSINESS ADDRESS: CNA Plaza, Chicago, IL 60685. PHONE: (312) 822-5000. UNDERWRITING LIMITATION b/: $13,868,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New Hampshire.

Fidelity and Deposit Company of Maryland

BUSINESS ADDRESS: 210 North Charles Street, Baltimore, MD 21201. PHONE: (410) 539-0800. UNDERWRITING LIMITATION b/: $26,458,000. SURETY LICENSES c/: AL, AK, AS, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Maryland.

FIDELITY AND GUARANTY INSURANCE COMPANY

BUSINESS ADDRESS: TW3001, P.O. Box 1138, Baltimore, MD 21203-1138. PHONE: (410) 547-3000. UNDERWRITING LIMITATION b/: $1,254,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Iowa.

Fidelity and Guaranty Insurance Underwriters, Inc.

BUSINESS ADDRESS: TW3001, P.O. Box 1138, Baltimore, MD 21203-1138. PHONE: (410) 547-3000. UNDERWRITING LIMITATION b/: $1,538,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, ME, MD, MA, MN, MS, MO, MT, NE, NV, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Wisconsin.

Financial Pacific Insurance Company

BUSINESS ADDRESS: P.O. Box 292220, Sacramento, CA 95829-2220. PHONE: (916) 381-8067. UNDERWRITING LIMITATION b/: $1,239,000. SURETY LICENSES c/: CA, OR. INCORPORATED IN: California.

Fireman's Fund Insurance Company

BUSINESS ADDRESS: 777 San Marin Drive, Novato, CA 94998. PHONE: (415) 899-2000. UNDERWRITING LIMITATION b/: $186,323,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: California.

See Footnotes/Notes at end of Circular

Firemen's Insurance Company of Newark, New Jersey

BUSINESS ADDRESS: CNA Plaza, Chicago, IL 60685. PHONE: (312) 822-5000. UNDERWRITING LIMITATION [b/]: $30,962,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New Jersey.

First Community Insurance Company

BUSINESS ADDRESS: 360 Central Avenue, St. Petersburg, FL 33701. PHONE: (813) 823-4000. UNDERWRITING LIMITATION [b/]: $751,000. SURETY LICENSES [c/]: AL, AZ, DC, FL, HI, ID, IL, IN, IA, KS, KY, MD, MA, MS, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New York.

First Excess and Reinsurance Corporation

BUSINESS ADDRESS: P.O. Box 419369, Kansas City, MO 64141-6369. PHONE: (913) 676-5520. UNDERWRITING LIMITATION [b/]: $23,689,000. SURETY LICENSES [c/]: AK, AZ, CA, CT, DC, GA, ID, IL, IN, IA, KS, KY, MI, MS, MO, MT, NE, NM, NY, OH, OK, SD, TX, WA, WV, WI. INCORPORATED IN: Missouri.

FIRST FINANCIAL INSURANCE COMPANY

BUSINESS ADDRESS: 238 Smith School Road, Burlington, NC 27215. PHONE: (910) 538-2800. UNDERWRITING LIMITATION [b/]: $3,041,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CA, CO, DE, FL, GA, HI, ID, IL, IN, IA, KS, KY, MD, MI, MN, MS, MO, MT, NE, NV, NM, NY, ND, OH, OR, RI, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Illinois.

First Insurance Company of Hawaii, Ltd.

BUSINESS ADDRESS: P.O. Box 2866, Honolulu, HI 96803. PHONE: (808) 527-7777. UNDERWRITING LIMITATION [b/]: $8,373,000. SURETY LICENSES [c/]: GU, HI. INCORPORATED IN: Hawaii.

First Liberty Insurance Corporation (The)

BUSINESS ADDRESS: 175 Berkeley Street, Boston, MA 02117. PHONE: (617) 357-9500. UNDERWRITING LIMITATION [b/]: $1,408,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, VI, WV, WI, WY. INCORPORATED IN: Iowa.

First National Insurance Company of America

BUSINESS ADDRESS: SAFECO Plaza, Seattle, WA 98185. PHONE: (206) 545-5000. UNDERWRITING LIMITATION [b/]: $7,410,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, MD, MA, MI, MN, MS, MO, MT, NE, NV, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Washington.

FRONTIER INSURANCE COMPANY [2]

BUSINESS ADDRESS: 195 Lake Louise Marie Road, Rock Hill, NY 12775-8000. PHONE: (914) 796-2100. UNDERWRITING LIMITATION [b/]: $12,546,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: New York.

Frontier Pacific Insurance Company

BUSINESS ADDRESS: 4250 Executive Square, Suite 200, La Jolla, CA 92037. PHONE: (619) 642-5000. UNDERWRITING LIMITATION [b/]: $1,716,000. SURETY LICENSES [c/]: CA, NV. INCORPORATED IN: California.

GENERAL ACCIDENT INSURANCE COMPANY (PUERTO RICO) LIMITED

BUSINESS ADDRESS: P.O. Box 363786, San Juan, PR 00936-3786. PHONE: (809) 765-8700. UNDERWRITING LIMITATION [b/]: $6,035,000. SURETY LICENSES [c/]: PR, VI. INCORPORATED IN: Puerto Rico.

See Footnotes/Notes at end of Circular

GENERAL ACCIDENT INSURANCE COMPANY OF AMERICA

BUSINESS ADDRESS: 436 Walnut Street,P.O. Box 1109, Philadelphia, PA 19105-1109. PHONE: (215) 625-1000. UNDERWRITING LIMITATION [b/]: $139,650,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Pennsylvania.

General Insurance Company of America

BUSINESS ADDRESS: SAFECO Plaza, Seattle, WA 98185. PHONE: (206) 545-5000. UNDERWRITING LIMITATION [b/]: $69,298,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Washington.

General Reinsurance Corporation

BUSINESS ADDRESS: 695 East Main Street, P.O. Box 10350, Stamford, CT 06904-2350. PHONE: (203) 328-5000. UNDERWRITING LIMITATION [b/]: $459,667,000. SURETY LICENSES [c/]: AL, AK, AZ, CA, CO, CT, DE, DC, FL, GA, ID, IL, IN, IA, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Delaware.

Glens Falls Insurance Company (The)

BUSINESS ADDRESS: CNA Plaza, Chicago, IL 60685. PHONE: (312) 822-5000. UNDERWRITING LIMITATION [b/]: $1,469,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Delaware.

Global Surety & Insurance Co.

BUSINESS ADDRESS: 3555 Farnam Street, Omaha, NE 68131. PHONE: (402) 271-2846. UNDERWRITING LIMITATION [b/]: $1,795,000. SURETY LICENSES [c/]: AZ, CA, CO, NE. INCORPORATED IN: Nebraska.

Grain Dealers Mutual Insurance Company

BUSINESS ADDRESS: P.O. Box 1747, Indianapolis, IN 46206. PHONE: (317) 923-2453. UNDERWRITING LIMITATION [b/]: $2,922,000. SURETY LICENSES [c/]: AZ, AR, CO, GA, IL, IN, IA, KS, KY, LA, MN, MS, MO, NE, NV, NM, NC, OH, OK, OR, SD, TN, TX, VA, WA, WI, WY. INCORPORATED IN: Indiana.

GRAMERCY INSURANCE COMPANY

BUSINESS ADDRESS: 110 South French Street, #404, Wilmington, DE 19801. PHONE: (302) 571-0525. UNDERWRITING LIMITATION [b/]: $217,000. SURETY LICENSES [c/]: DE, LA, MD, NM, OK, TX. INCORPORATED IN: Delaware.

GRANITE RE, INC.

BUSINESS ADDRESS: P.O. Box 26967, Oklahoma City, OK 73126. PHONE: (405) 524-7811. UNDERWRITING LIMITATION [b/]: $140,000. SURETY LICENSES [c/]: MN, ND, OK, SD. INCORPORATED IN: Oklahoma.

Granite State Insurance Company

BUSINESS ADDRESS: 70 Pine Street, New York, NY 10270. PHONE: (212) 770-7000. UNDERWRITING LIMITATION [b/]: $1,705,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CA, CO, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Pennsylvania.

Great American Insurance Company

BUSINESS ADDRESS: 580 Walnut Street, Cincinnati, OH 45202. PHONE: (513) 369-5000. UNDERWRITING LIMITATION [b/]: $71,514,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Ohio.

See Footnotes/Notes at end of Circular

Great Northern Insurance Company

BUSINESS ADDRESS: 15 Mountain View Rd., P.O. Box 1615, Warren, NJ 07061-1615. PHONE: (908) 903-2000. UNDERWRITING LIMITATION [b/]: $10,489,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CO, CT, DC, FL, GA, HI, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Minnesota.

Gulf Insurance Company

BUSINESS ADDRESS: P.O. Box 1771, Dallas, TX 75221-1771. PHONE: (214) 650-2800. UNDERWRITING LIMITATION [b/]: $26,918,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Missouri.

Hamilton Mutual Insurance Company of Cincinnati, Ohio (The)

BUSINESS ADDRESS: 1520 Madison Road, Cincinnati, OH 45206-1787. PHONE: (513) 221-6010. UNDERWRITING LIMITATION [b/]: $500,000. SURETY LICENSES [c/]: IN, KY, MI, OH, TN. INCORPORATED IN: Ohio.

Hanover Insurance Company (The)

BUSINESS ADDRESS: 100 North Parkway, Worcester, MA 01605. PHONE: (508) 853-7200. UNDERWRITING LIMITATION [b/]: $98,953,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New Hampshire.

HARCO NATIONAL INSURANCE COMPANY

BUSINESS ADDRESS: P.O. Box 68309, Schaumburg, IL 60168-0309. PHONE: (847) 734-4100. UNDERWRITING LIMITATION [b/]: $4,725,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Illinois.

Harleysville Mutual Insurance Company

BUSINESS ADDRESS: 355 Maple Avenue, Harleysville, PA 19438-2297. PHONE: (215) 256-5000. UNDERWRITING LIMITATION [b/]: $30,707,000. SURETY LICENSES [c/]: AR, CA, CO, DE, DC, GA, IL, IN, IA, KS, KY, MD, MI, MN, MS, MO, NJ, NM, NC, OH, PA, SC, TN, TX, UT, VA, WV, WI. INCORPORATED IN: Pennsylvania.

Hartford Accident and Indemnity Company

BUSINESS ADDRESS: Hartford Plaza, Hartford, CT 06115. PHONE: (860) 547-5000. UNDERWRITING LIMITATION [b/]: $176,288,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Connecticut.

Hartford Casualty Insurance Company

BUSINESS ADDRESS: Hartford Plaza, Hartford, CT 06115. PHONE: (860) 547-5000. UNDERWRITING LIMITATION [b/]: $28,507,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Indiana.

Hartford Fire Insurance Company

BUSINESS ADDRESS: Hartford Plaza, Hartford, CT 06115. PHONE: (203) 547-5000. UNDERWRITING LIMITATION [b/]: $360,512,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Connecticut.

Hartford Insurance Company of Illinois

BUSINESS ADDRESS: Hartford Plaza, Hartford, CT 06115. PHONE: (860) 547-5000. UNDERWRITING LIMITATION [b/]: $38,490,000. SURETY LICENSES [c/]: IL, PA. INCORPORATED IN: Illinois.

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Hartford Insurance Company of the Midwest

BUSINESS ADDRESS: Hartford Plaza, Hartford, CT 06115. PHONE: (860) 547-5000. UNDERWRITING LIMITATION [b/]: $4,120,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CA, CO, CT, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MT, NE, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Indiana.

Hartford Insurance Company of the Southeast

BUSINESS ADDRESS: Hartford Plaza, Hartford, CT 06115. PHONE: (860) 547-5000. UNDERWRITING LIMITATION [b/]: $2,405,000. SURETY LICENSES [c/]: CT, FL, GA, LA, PA. INCORPORATED IN: Florida.

Hartford Underwriters Insurance Company

BUSINESS ADDRESS: Hartford Plaza, Hartford, CT 06115. PHONE: (860) 547-5000. UNDERWRITING LIMITATION [b/]: $20,895,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Connecticut.

Heritage Mutual Insurance Company [3]

BUSINESS ADDRESS: 2800 South Taylor Drive, P.O. Box 58, Sheboygan, WI 53082-0058. PHONE: (414) 458-9131. UNDERWRITING LIMITATION [b/]: $7,291,000. SURETY LICENSES [c/]: AZ, AR, CO, DE, FL, GA, ID, IL, IN, IA, KS, KY, MI, MN, MO, NE, NV, ND, OH, OR, PA, SD, TN, TX, VA, WA, WV, WI, WY. INCORPORATED IN: Wisconsin.

Highlands Insurance Company

BUSINESS ADDRESS: 10370 Richmond Avenue, Houston, TX 77042-4123. PHONE: (713) 952-9555. UNDERWRITING LIMITATION [b/]: $12,010,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Texas.

Highlands Underwriters Insurance Company

BUSINESS ADDRESS: 10370 Richmond Avenue, Houston, TX 77042-4123. PHONE: (713) 952-9555. UNDERWRITING LIMITATION [b/]: $3,005,000. SURETY LICENSES [c/]: AK, AZ, AR, CA, FL, GA, ME, MS, NM, OR, TX. INCORPORATED IN: Texas.

Houston General Insurance Company

BUSINESS ADDRESS: P.O. Box 2932, Fort Worth, TX 76113-2932. PHONE: (817) 377-6000. UNDERWRITING LIMITATION [b/]: $4,476,000. SURETY LICENSES [c/]: AL, AK, AZ, CA, CO, CT, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, MD, MI, MN, MS, MO, MT, NJ, NM, NY, NC, ND, OH, OR, PA, SC, SD, TN, TX, UT, VA, WA, WI, WY. INCORPORATED IN: Texas.

ILLINOIS NATIONAL INSURANCE CO.

BUSINESS ADDRESS: 500 West Madison Street, Chicago, IL 60606-2511. PHONE: (312) 930-5417. UNDERWRITING LIMITATION [b/]: $2,293,000. SURETY LICENSES [c/]: AK, IL, IN, IA, KY, MD, MI, MO, MT, NE, NV, NH, NM, NY, ND, OH, RI, SD, TX, UT, VT, WV, WY. INCORPORATED IN: Illinois.

Indemnity Company of California

BUSINESS ADDRESS: P.O. Box 19725, Irvine, CA 92713. PHONE: (714) 263-3300. UNDERWRITING LIMITATION [b/]: $1,098,000. SURETY LICENSES [c/]: AK, AZ, CA, HI, ID, NV, OR, UT, WA. INCORPORATED IN: California.

Indemnity Insurance Company of North America [4]

BUSINESS ADDRESS: 1601 Chestnut St., P.O. Box 7716, Philadelphia, PA 19192. PHONE: (215) 761-1000. UNDERWRITING LIMITATION [b/]: $27,688,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Pennsylvania.

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Independence Casualty and Surety Company

BUSINESS ADDRESS: P.O. Box 85563, San Diego, CA 92186-5563. PHONE: (619) 546-2400. UNDERWRITING LIMITATION [b/]: $219,000. SURETY LICENSES [c/]: TX. INCORPORATED IN: Texas.

Indiana Lumbermens Mutual Insurance Company

BUSINESS ADDRESS: P.O. Box 68600, Indianapolis, IN 46268-1168. PHONE: (800) 428-1441 x-710. UNDERWRITING LIMITATION [b/]: $2,524,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CA, CO, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, MD, MI, MN, MS, MO, MT, NE, NV, NM, NC, ND, OH, OK, OR, PA, SC, SD, TN, TX, UT, VA, WA, WV, WI, WY. INCORPORATED IN: Indiana.

Inland Insurance Company

BUSINESS ADDRESS: P.O. Box 80468, Lincoln, NE 68501. PHONE: (402) 435-4302. UNDERWRITING LIMITATION [b/]: $4,920,000. SURETY LICENSES [c/]: AZ, CO, IA, KS, MN, MT, NE, ND, OK, SD, WY. INCORPORATED IN: Nebraska.

Insurance Company of North America

BUSINESS ADDRESS: 1601 Chestnut St.,P.O. Box 7716, Philadelphia, PA 19192. PHONE: (215) 761-1000. UNDERWRITING LIMITATION [b/]: $30,492,000. SURETY LICENSES [c/]: AL, AK, AS, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Pennsylvania.

Insurance Company of the State of Pennsylvania

BUSINESS ADDRESS: 70 Pine Street, New York, NY 10270. PHONE: (212) 770-7000. UNDERWRITING LIMITATION [b/]: $51,806,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Pennsylvania.

Insurance Company of the West

BUSINESS ADDRESS: P.O. Box 85563, San Diego, CA 92186-5563. PHONE: (619) 546-2400. UNDERWRITING LIMITATION [b/]: $15,722,000. SURETY LICENSES [c/]: AK, AZ, CA, CO, HI, ID, IL, IA, KS, KY, MD, MI, MN, MS, MO, MT, NE, NV, NM, NC, OH, OK, OR, RI, SC, SD, TN, TX, UT, WA, WI, WY. INCORPORATED IN: California.

Insurors Indemnity Company

BUSINESS ADDRESS: P.O. Box 23004, Waco, TX 76702-3004. PHONE: (817) 750-8128. UNDERWRITING LIMITATION [b/]: $207,000. SURETY LICENSES [c/]: TX. INCORPORATED IN: Texas.

INTEGRAND ASSURANCE COMPANY

BUSINESS ADDRESS: P.O. Box 70128, San Juan, PR 00936-8128. PHONE: (787) 781-0707 x-269. UNDERWRITING LIMITATION [b/]: $3,739,000. SURETY LICENSES [c/]: PR, VI. INCORPORATED IN: Puerto Rico.

Intercargo Insurance Company

BUSINESS ADDRESS: 1450 East American Lane, 20th Floor, Schaumburg, IL 60173. PHONE: (847) 517-2990. UNDERWRITING LIMITATION [b/]: $2,664,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VA, VI, WA, WI, WY. INCORPORATED IN: Illinois.

International Business & Mercantile REassurance Company

BUSINESS ADDRESS: 307 N. Michigan Ave., Chicago, IL 60601. PHONE: (312) 346-8100. UNDERWRITING LIMITATION [b/]: $8,896,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Illinois.

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International Fidelity Insurance Company

BUSINESS ADDRESS: One Newark Center, 20th Floor, Newark, NJ 07102-5207. PHONE: (201) 624-7200 x-226. UNDERWRITING LIMITATION [b/]: $3,035,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WY. INCORPORATED IN: New Jersey.

ISLAND INSURANCE COMPANY, LIMITED

BUSINESS ADDRESS: P.O. Box 1520, Honolulu, HI 96806. PHONE: (808) 531-1311. UNDERWRITING LIMITATION [b/]: $8,481,000. SURETY LICENSES [c/]: HI. INCORPORATED IN: Hawaii.

ITT Lyndon Property Insurance Company [5]

John Deere Insurance Company

BUSINESS ADDRESS: 3400 80th Street, Moline, IL 61265. PHONE: (800) 447-0633. UNDERWRITING LIMITATION [b/]: $11,898,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Illinois.

Kansas Bankers Surety Company (The)

BUSINESS ADDRESS: P. O. Box 1654, Topeka, KS 66601-1654. PHONE: (913) 234-2631. UNDERWRITING LIMITATION [b/]: $4,275,000. SURETY LICENSES [c/]: AR, CO, ID, IL, IN, IA, KS, KY, MI, MN, MO, MT, NE, NM, ND, OK, SD, TN, WI, WY. INCORPORATED IN: Kansas.

Kansas City Fire and Marine Insurance Company

BUSINESS ADDRESS: CNA Plaza, Chicago, IL 60685. PHONE: (312) 822-5000. UNDERWRITING LIMITATION [b/]: $1,613,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Missouri.

KEMPER REINSURANCE COMPANY

BUSINESS ADDRESS: 1 Kemper Drive, Long Grove, IL 60049. PHONE: (847) 320-2600. UNDERWRITING LIMITATION [b/]: $46,027,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CA, CT, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, MI, MN, MS, NE, NV, NJ, NM, OH, OK, OR, PA, RI, TN, UT, WA, WI. INCORPORATED IN: Illinois.

Liberty Mutual Insurance Company

BUSINESS ADDRESS: 175 Berkeley Street, Boston, MA 02117. PHONE: (617) 357-9500. UNDERWRITING LIMITATION [b/]: $281,809,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Massachusetts.

Lincoln General Insurance Company

BUSINESS ADDRESS: 3350 Whiteford Road, York, PA 17402. PHONE: (717) 757-0000. UNDERWRITING LIMITATION [b/]: $2,266,000. SURETY LICENSES [c/]: AL, CO, DE, GA, ID, IN, IA, KS, KY, LA, ME, MD, MN, MS, MO, MT, NE, NV, NJ, NM, NC, ND, OH, OK, OR, PA, SC, SD, TN, UT, VA, WA, WV, WI, WY. INCORPORATED IN: Pennsylvania.

LM Insurance Corporation

BUSINESS ADDRESS: 175 Berkeley Street, Boston, MA 02117. PHONE: (617) 357-9500. UNDERWRITING LIMITATION [b/]: $1,408,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, VI, WV, WI, WY. INCORPORATED IN: Iowa.

See Footnotes/Notes at end of Circular

London Assurance of America Inc. (The)

BUSINESS ADDRESS: 25 Independence Blvd., Warren, NJ 07059. PHONE: (212) 753-8130. UNDERWRITING LIMITATION [b/]: $24,363,000. SURETY LICENSES [c/]: AK, IA, ME, MI, MN, NJ, NY, ND, OH, UT, VT. INCORPORATED IN: New York.

Lumbermens Mutual Casualty Company

BUSINESS ADDRESS: 1 Kemper Drive, Long Grove, IL 60049-0001. PHONE: (847) 320-2000. UNDERWRITING LIMITATION [b/]: $80,330,000. SURETY LICENSES [c/]: AL, AK, AS, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Illinois.

Lyndon Property Insurance Company [5]

BUSINESS ADDRESS: 645 Maryville Centre Drive, St. Louis, MO 63141. PHONE: (314) 275-5200. UNDERWRITING LIMITATION [b/]: $4,251,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, MD, MA, MI, MN, MS, MO, MT, NE, NV, NJ, NM, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Missouri.

MARKEL INSURANCE COMPANY

BUSINESS ADDRESS: Shand Morahan Plaza, Evanston, IL 60201. PHONE: (847) 866-2800. UNDERWRITING LIMITATION [b/]: $3,905,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Illinois.

Massachusetts Bay Insurance Company

BUSINESS ADDRESS: 100 North Parkway, Worcester, MA 01605. PHONE: (508) 853-7200. UNDERWRITING LIMITATION [b/]: $1,582,000. SURETY LICENSES [c/]: AL, AR, CA, CO, CT, DC, FL, GA, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, NE, NH, NJ, NY, NC, OH, OK, OR, PA, RI, SC, TN, TX, VT, VA, WA, WV, WI. INCORPORATED IN: New Hampshire.

Merchants Bonding Company (Mutual)

BUSINESS ADDRESS: 2100 Fleur Drive, Des Moines, IA 50321-1158. PHONE: (515) 243-8171. UNDERWRITING LIMITATION [b/]: $1,504,000. SURETY LICENSES [c/]: AL, AZ, AR, CA, CO, FL, GA, ID, IL, IN, IA, KS, KY, LA, MD, MI, MN, MS, MO, MT, NE, NV, NM, NC, ND, OH, OK, OR, PA, SC, SD, TN, TX, UT, VA, WA, WI, WY. INCORPORATED IN: Iowa.

Michigan Millers Mutual Insurance Company

BUSINESS ADDRESS: P.O. Box 30060, Lansing, MI 48909-7560. PHONE: (517) 482-6211. UNDERWRITING LIMITATION [b/]: $6,900,000. SURETY LICENSES [c/]: AZ, AR, CA, CO, ID, IN, KS, KY, MI, MO, NE, NY, NC, OH, OK, PA, VA, WI. INCORPORATED IN: Michigan.

Mid-Century Insurance Company

BUSINESS ADDRESS: P. O. Box 2478, Terminal Annex, Los Angeles, CA 90051. PHONE: (213) 932-3200. UNDERWRITING LIMITATION [b/]: $51,474,000. SURETY LICENSES [c/]: AZ, AR, CA, CO, FL, GA, ID, IL, IN, IA, KS, KY, MI, MN, MO, MT, NE, NV, NM, NY, ND, OH, OK, OR, SD, TN, TX, UT, VT, VA, WA, WI, WY. INCORPORATED IN: California.

MID-CONTINENT CASUALTY COMPANY

BUSINESS ADDRESS: P.O. Box 1409, Tulsa, OK 74101. PHONE: (918) 587-7221 x-200. UNDERWRITING LIMITATION [b/]: $5,505,000. SURETY LICENSES [c/]: AL, AZ, AR, CO, IL, IN, IA, KS, MN, MS, MO, MT, NE, NM, ND, OK, TX, UT, WA. INCORPORATED IN: Oklahoma.

Mid-State Surety Corporation

BUSINESS ADDRESS: 3400 East Lafayette, Detroit, MI 48207. PHONE: (313) 882-7979. UNDERWRITING LIMITATION [b/]: $599,000. SURETY LICENSES [c/]: KY, MI, OH, PA. INCORPORATED IN: Michigan.

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MIDWESTERN INDEMNITY COMPANY (THE) [6]

BUSINESS ADDRESS: 1700 Edison Drive, Milford, OH 45150. PHONE: (513) 576-3200. UNDERWRITING LIMITATION [b/]: $2,034,000. SURETY LICENSES [c/]: AL, GA, IL, IA, KS, KY, MI, MN, MS, MO, NE, NJ, NC, OH, PA, TN, VA, WV, WI. INCORPORATED IN: Ohio.

Millers Mutual Fire Insurance Company (The)

BUSINESS ADDRESS: P.O. Box 2269, Fort Worth, TX 76113-2269. PHONE: (817) 332-7761. UNDERWRITING LIMITATION [b/]: $5,661,000. SURETY LICENSES [c/]: AL, AZ, AR, CA, CO, DC, ID, IL, IN, IA, KS, KY, LA, MI, MN, MS, MO, MT, NE, NM, ND, OH, OK, OR, SC, SD, TN, TX, UT, WA, WI, WY. INCORPORATED IN: Texas.

Millers Mutual Insurance Association

BUSINESS ADDRESS: 111 East Fourth Street, P.O. Box 9006, Alton, IL 62002-9006. PHONE: (618) 463-3636. UNDERWRITING LIMITATION [b/]: $3,672,000. SURETY LICENSES [c/]: AL, AR, CO, GA, IL, IN, IA, KS, KY, LA, MN, MS, MO, MT, NE, NC, ND, OH, SD, TN, TX, WI. INCORPORATED IN: Illinois.

Minnesota Trust Company of Austin

BUSINESS ADDRESS: P.O. Box 463, Austin, MN 55912-0463. PHONE: (507) 437-3231. UNDERWRITING LIMITATION [b/]: $155,000. SURETY LICENSES [c/]: CO, MN, MT, ND, SD, UT. INCORPORATED IN: Minnesota.

MOTORS INSURANCE CORPORATION

BUSINESS ADDRESS: 3044 West Grand Blvd., Detroit, MI 48202. PHONE: (313) 556-5000. UNDERWRITING LIMITATION [b/]: $84,022,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, DE, DC, FL, GA, ID, IL, IN, IA, KY, LA, ME, MD, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New York.

Mountbatten Surety Company, Inc. (The)

BUSINESS ADDRESS: 33 Rock Hill Road, Bala Cynwyd, PA 19004. PHONE: (610) 664-2259. UNDERWRITING LIMITATION [b/]: $669,000. SURETY LICENSES [c/]: DE, DC, KY, MD, NJ, NY, OH, PA, VA. INCORPORATED IN: Pennsylvania.

Munich American Reinsurance Company

BUSINESS ADDRESS: 560 Lexington Avenue, New York, NY 10022. PHONE: (212) 310-1600. UNDERWRITING LIMITATION [b/]: $32,309,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, GA, HI, ID, IL, IN, IA, KS, KY, LA, MI, MN, MS, MT, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SD, TN, TX, UT, VT, VA, WA, WV, WI. INCORPORATED IN: New York.

MUTUAL SERVICE CASUALTY INSURANCE COMPANY

BUSINESS ADDRESS: P.O. Box 64035, St. Paul, MN 55164-0035. PHONE: (612) 631-7000. UNDERWRITING LIMITATION [b/]: $9,257,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CA, CO, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, MD, MA, MI, MN, MS, MO, MT, NE, NV, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Minnesota.

NAC Reinsurance Corporation

BUSINESS ADDRESS: One Greenwich Plaza, P.O. Box 2568, Greenwich, CT 06836-2568. PHONE: (203) 622-5200. UNDERWRITING LIMITATION [b/]: $61,543,000. SURETY LICENSES [c/]: AL, AK, AZ, CA, CO, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New York.

National American Insurance Company

BUSINESS ADDRESS: 1008 Manvel Avenue, Chandler, OK 74834. PHONE: (405) 258-0804. UNDERWRITING LIMITATION [b/]: $3,034,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CA, CO, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, MD, MI, MN, MS, MO, MT, NE, NV, NM, NY, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VA, WA, WV, WI, WY. INCORPORATED IN: Nebraska.

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National Fire Insurance Company of Hartford
BUSINESS ADDRESS: CNA Plaza, Chicago, IL 60685. PHONE: (312) 822-5000. UNDERWRITING LIMITATION [b/]: $49,618,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Connecticut.

National Grange Mutual Insurance Company
BUSINESS ADDRESS: 55 West Street, Keene, NH 03431. PHONE: (603) 352-4000. UNDERWRITING LIMITATION [b/]: $14,180,000. SURETY LICENSES [c/]: CT, DE, DC, ME, MD, MA, MI, NH, NY, NC, OH, PA, RI, SC, TN, VT, VA, WV, WI. INCORPORATED IN: New Hampshire.

National Indemnity Company
BUSINESS ADDRESS: 3024 Harney Street, Omaha, NE 68131. PHONE: (402) 536-3000. UNDERWRITING LIMITATION [b/]: $704,423,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, ME, MD, MI, MN, MS, MO, MT, NE, NV, NH, NM, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Nebraska.

NATIONAL REINSURANCE CORPORATION
BUSINESS ADDRESS: 777 Long Ridge Road, Stamford, CT 06904-2167. PHONE: (203) 329-7700. UNDERWRITING LIMITATION [b/]: $43,230,000. SURETY LICENSES [c/]: AK, AZ, AR, CA, CO, DE, DC, FL, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MT, NE, NV, NJ, NY, NC, ND, OH, OK, PA, PR, RI, SC, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Delaware.

National Surety Corporation
BUSINESS ADDRESS: 233 South Wacker Drive, Suite 2000, Chicago, IL 60606-6308. PHONE: (312) 441-5400. UNDERWRITING LIMITATION [b/]: $7,486,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Illinois.

National Union Fire Insurance Company of Pittsburgh, PA
BUSINESS ADDRESS: 70 Pine Street, New York, NY 10270. PHONE: (212) 770-7000. UNDERWRITING LIMITATION [b/]: $149,948,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Pennsylvania.

National-Ben Franklin Insurance Company of Illinois
BUSINESS ADDRESS: CNA Plaza, Chicago, IL 60685. PHONE: (312) 822-5000. UNDERWRITING LIMITATION [b/]: $5,575,000. SURETY LICENSES [c/]: DC, IL, IN, IA, KY, MD, MI, MN, NY, NC, ND, RI, SD, WI. INCORPORATED IN: Illinois.

Nationwide Mutual Insurance Company
BUSINESS ADDRESS: One Nationwide Plaza, Columbus, OH 43216. PHONE: (614) 249-7111. UNDERWRITING LIMITATION [b/]: $208,992,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Ohio.

NAVIGATORS INSURANCE COMPANY
BUSINESS ADDRESS: 123 William Street, New York, NY 10038. PHONE: (212) 406-2900. UNDERWRITING LIMITATION [b/]: $6,796,000. SURETY LICENSES [c/]: AL, AK, AZ, CT, DE, DC, GA, HI, ID, IL, IN, IA, KS, KY, LA, MD, MI, MN, MS, MO, NE, NV, NJ, NY, NC, ND, OH, OK, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WI, WY. INCORPORATED IN: New York.

Netherlands Insurance Company (The)
BUSINESS ADDRESS: 62 Maple Avenue, Keene, NH 03431. PHONE: (603) 352-3221. UNDERWRITING LIMITATION [b/]: $1,269,000. SURETY LICENSES [c/]: AZ, CA, CT, DC, GA, HI, ID, IL, IN, IA, KY, ME, MD, MI, NV, NH, NJ, NY, NC, OH, RI, SC, UT, VT, VA, VI, WA, WI. INCORPORATED IN: New Hampshire.

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New Hampshire Insurance Company
BUSINESS ADDRESS: 70 Pine Street, New York, NY 10270. PHONE: (212) 770-7000. UNDERWRITING LIMITATION b/: $26,349,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Pennsylvania.

Nobel Insurance Company
BUSINESS ADDRESS: 8001 LBJ Freeway - Suite 300, Dallas, TX 75251-1301. PHONE: (214) 644-0434. UNDERWRITING LIMITATION b/: $3,362,000. SURETY LICENSES c/: AL, AK, AS, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Texas.

NORTH AMERICAN SPECIALTY INSURANCE COMPANY
BUSINESS ADDRESS: 650 Elm Street, Manchester, NH 03101-2524. PHONE: (603) 644-6600. UNDERWRITING LIMITATION b/: $4,794,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New Hampshire.

North Star Reinsurance Corporation
BUSINESS ADDRESS: P.O. Box 120052, Stamford, CT 06912-0052. PHONE: (203) 328-5000. UNDERWRITING LIMITATION b/: $1,000,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, GA, ID, IL, IN, IA, KS, KY, MD, MI, MN, MS, MT, NE, NV, NJ, NM, NY, ND, OH, OK, OR, PA, RI, SC, SD, UT, VT, VA, WA, WV, WI. INCORPORATED IN: Delaware.

NORTHBROOK PROPERTY AND CASUALTY INSURANCE COMPANY
BUSINESS ADDRESS: 3075 Sanders Rd., STE H1A, Northbrook, IL 60062-7127. PHONE: (847) 551-2000. UNDERWRITING LIMITATION b/: $20,728,000. SURETY LICENSES c/: AL, AK, AS, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Illinois.

Northern Assurance Company of America (The)
BUSINESS ADDRESS: One Beacon Street, Boston, MA 02108. PHONE: (617) 725-6000. UNDERWRITING LIMITATION b/: $20,134,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Massachusetts.

NORTHWESTERN PACIFIC INDEMNITY COMPANY
BUSINESS ADDRESS: 15 Mountain View Rd., P.O. Box 1615, Warren, NJ 07061-1615. PHONE: (908) 903-2000. UNDERWRITING LIMITATION b/: $2,486,000. SURETY LICENSES c/: CA, OR, TX, WA. INCORPORATED IN: Oregon.

Ohio Casualty Insurance Company (The)
BUSINESS ADDRESS: 136 North Third Street, Hamilton, OH 45025. PHONE: (513) 867-3000. UNDERWRITING LIMITATION b/: $69,104,000. SURETY LICENSES c/: AL, AK, AZ, AR, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Ohio.

Ohio Farmers Insurance Company
BUSINESS ADDRESS: P.O. Box 5001, Westfield Center, OH 44251-5001. PHONE: (216) 887-0101. UNDERWRITING LIMITATION b/: $46,987,000. SURETY LICENSES c/: AL, AK, AZ, AR, CO, DE, DC, FL, GA, ID, IL, IN, IA, KY, LA, MD, MA, MI, MN, MS, MO, MT, NE, NV, NJ, NM, NY, NC, ND, OH, OK, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Ohio.

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Oklahoma Surety Company
BUSINESS ADDRESS: P.O. Box 1409, Tulsa, OK 74101. PHONE: (918) 587-7221 x 260. UNDERWRITING LIMITATION b/: $760,000. SURETY LICENSES c/: AR, KS, OK, TX. INCORPORATED IN: Oklahoma.

Old Republic Insurance Company
BUSINESS ADDRESS: P.O. Box 789, Greensburg, PA 15601-0789. PHONE: (412) 834-5000. UNDERWRITING LIMITATION b/: $37,331,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Pennsylvania.

Old Republic Surety Company
BUSINESS ADDRESS: P.O. Box 1635, Milwaukee, WI 53201. PHONE: (414) 797-2840. UNDERWRITING LIMITATION b/: $1,458,000. SURETY LICENSES c/: AL, AZ, AR, CA, CO, DC, FL, GA, ID, IL, IN, IA, KS, MD, MN, MS, MO, MT, NE, NV, NM, NC, ND, OH, OK, OR, PA, SC, SD, TN, TX, UT, VA, WA, WV, WI, WY. INCORPORATED IN: Wisconsin.

Pacific Employers Insurance Company
BUSINESS ADDRESS: 1601 Chestnut Street, P.O. Box 7716, Philadelphia, PA 19192. PHONE: (215) 761-1000. UNDERWRITING LIMITATION b/: $16,911,000. SURETY LICENSES c/: AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: California.

Pacific Indemnity Company
BUSINESS ADDRESS: 15 Mountain View Rd., P.O. Box 1615, Warren, NJ 07061-1615. PHONE: (908) 903-2000. UNDERWRITING LIMITATION b/: $50,063,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: California.

Pacific Insurance Company, Limited
BUSINESS ADDRESS: 150 Federal Street, Boston, MA 02110. PHONE: (617) 526-7600. UNDERWRITING LIMITATION b/: $31,112,000. SURETY LICENSES c/: CT, HI. INCORPORATED IN: Connecticut.

Peerless Insurance Company
BUSINESS ADDRESS: 62 Maple Avenue, Keene, NH 03431. PHONE: (603) 352-3221. UNDERWRITING LIMITATION b/: $8,386,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MI, MN, MS, MO, MT, NE, NV, NH, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New Hampshire.

Pekin Insurance Company
BUSINESS ADDRESS: 2505 Court Street, Pekin, IL 61558. PHONE: (309) 346-1161. UNDERWRITING LIMITATION b/: $3,824,000. SURETY LICENSES c/: IL, IN, IA, WI. INCORPORATED IN: Illinois.

Pennsylvania General Insurance Company
BUSINESS ADDRESS: 436 Walnut Street, P.O. Box 1109, Philadelphia, PA 19105-1109. PHONE: (215) 625-1000. UNDERWRITING LIMITATION b/: $12,169,000. SURETY LICENSES c/: AL, AZ, AR, CA, CO, CT, DE, DC, GA, IL, IN, KS, KY, LA, MD, MA, MI, MN, MS, MO, NE, NH, NJ, NM, NY, NC, OH, OR, PA, RI, SC, TN, TX, VA, WA, WV, WI. INCORPORATED IN: Pennsylvania.

Pennsylvania Manufacturers' Association Insurance Company
BUSINESS ADDRESS: 380 Sentry Parkway, Blue Bell, PA 19422-2328. PHONE: (800) 222-2749. UNDERWRITING LIMITATION b/: $22,502,000. SURETY LICENSES c/: CA, CO, CT, DE, DC, FL, GA, ID, IL, IA, KY, LA, MD, MA, MI, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, OH, OK, PA, RI, SC, SD, TN, TX, UT, VT, WA, WV. INCORPORATED IN: Pennsylvania.

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Pennsylvania Millers Mutual Insurance Company

BUSINESS ADDRESS: P. O. Box 2, Wilkes-Barre, PA 18773-0016. PHONE: (717) 822-8111. UNDERWRITING LIMITATION [b/]: $1,394,000. SURETY LICENSES [c/]: AL, AK, CT, DC, FL, GA, IL, IN, KS, KY, ME, MD, MA, MS, MO, NH, NJ, NY, NC, OH, PA, RI, SC, TN, VT, VA. INCORPORATED IN: Pennsylvania.

Pennsylvania National Mutual Casualty Insurance Company

BUSINESS ADDRESS: P.O. Box 2361, Harrisburg, PA 17105-2361. PHONE: (717) 234-4941. UNDERWRITING LIMITATION [b/]: $17,709,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CO, DE, FL, GA, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NJ, NM, NY, NC, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI. INCORPORATED IN: Pennsylvania.

Phoenix Assurance Company of New York

BUSINESS ADDRESS: 25 Independence Boulevard, Warren, NJ 07059. PHONE: (212) 755-8120. UNDERWRITING LIMITATION [b/]: $5,825,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New Hampshire.

Phoenix Insurance Company (The)

BUSINESS ADDRESS: One Tower Square, Hartford, CT 06183-6014. PHONE: (860) 277-0111. UNDERWRITING LIMITATION [b/]: $53,060,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Connecticut.

Pioneer General Insurance Company

BUSINESS ADDRESS: 1900 East Mexico Avenue, Suite 330, Denver, CO 80210. PHONE: (303) 756-8122. UNDERWRITING LIMITATION [b/]: $141,000. SURETY LICENSES [c/]: CO. INCORPORATED IN: Colorado.

PLANET INDEMNITY COMPANY

BUSINESS ADDRESS: 216 Sixteenth Street, Suite 1300, Denver, CO 80202. PHONE: (303) 534-5300. UNDERWRITING LIMITATION [b/]: $665,000. SURETY LICENSES [c/]: CO. INCORPORATED IN: Colorado.

PREFERRED NATIONAL INSURANCE COMPANY

BUSINESS ADDRESS: P.O. Box 687003, Ft. Lauderdale, FL 33340-7003. PHONE: (954) 752-1322. UNDERWRITING LIMITATION [b/]: $2,048,000. SURETY LICENSES [c/]: FL, SC. INCORPORATED IN: Florida.

Progressive Casualty Insurance Company

BUSINESS ADDRESS: 6300 Wilson Mills Road, Mayfield Village, OH 44143-2182. PHONE: (216) 461-5000. UNDERWRITING LIMITATION [b/]: $8,161,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Ohio.

PROTECTION MUTUAL INSURANCE COMPANY

BUSINESS ADDRESS: 300 S. Northwest Highway, Park Ridge, IL 60068. PHONE: (847) 825-4474. UNDERWRITING LIMITATION [b/]: $38,259,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Illinois.

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Protective Insurance Company

BUSINESS ADDRESS: 1099 North Meridian Street, Indianapolis, IN 46204. PHONE: (317) 636-9800. UNDERWRITING LIMITATION [b/]: $18,742,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Indiana.

Providence Washington Insurance Company

BUSINESS ADDRESS: P.O. Box 518, Providence, RI 02901-0518. PHONE: (401) 453-7000. UNDERWRITING LIMITATION [b/]: $6,230,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Rhode Island.

Ranger Insurance Company

BUSINESS ADDRESS: P.O. Box 2807, Houston, TX 77252. PHONE: (713) 954-8100. UNDERWRITING LIMITATION [b/]: $8,333,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Delaware.

Reinsurance Corporation of New York (The)

BUSINESS ADDRESS: 80 Maiden Lane, New York, NY 10038. PHONE: (212) 363-4440. UNDERWRITING LIMITATION [b/]: $2,455,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CA, CO, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, MD, MI, MN, MS, MO, MT, NE, NV, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New York.

Reliance Insurance Company

BUSINESS ADDRESS: 4 Penn Center Plaza, Philadelphia, PA 19103. PHONE: (215) 864-4000. UNDERWRITING LIMITATION [b/]: $73,555,000. SURETY LICENSES [c/]: AL, AK, AS, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Pennsylvania.

Reliance Insurance Company of Illinois [Z]

BUSINESS ADDRESS: 4 Penn Center Plaza, Philadelphia, PA 19103. PHONE: (215) 864-4000. UNDERWRITING LIMITATION [b/]: $2,526,000. SURETY LICENSES [c/]: IL. INCORPORATED IN: Illinois.

Reliance National Indemnity Company

BUSINESS ADDRESS: 4 Penn Center Plaza, Philadelphia, PA 19103. PHONE: (215) 864-4000. UNDERWRITING LIMITATION [b/]: $4,234,000. SURETY LICENSES [c/]: AL, AK, AS, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Wisconsin.

Reliance Surety Company

BUSINESS ADDRESS: 4 Penn Center Plaza, Philadelphia, PA 19103. PHONE: (215) 864-4000. UNDERWRITING LIMITATION [b/]: $2,135,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CA, CO, DE, DC, GA, HI, ID, IL, IN, IA, KS, KY, LA, MD, MA, MN, MS, MO, MT, NE, NV, NJ, NM, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VA, WA, WV, WI, WY. INCORPORATED IN: Delaware.

Republic Western Insurance Company

BUSINESS ADDRESS: 2721 North Central Avenue, Phoenix, AZ 85004-1163. PHONE: (602) 263-6755. UNDERWRITING LIMITATION [b/]: $9,827,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Arizona.

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RLI INSURANCE COMPANY

BUSINESS ADDRESS: 9025 N. Lindbergh Drive, Peoria, IL 61615. PHONE: (309) 692-1000. UNDERWRITING LIMITATION [b/]: $15,265,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Illinois.

Royal Indemnity Company

BUSINESS ADDRESS: 9300 Arrowpoint Boulevard, P.O. Box 1000, Charlotte, NC 28201-1000. PHONE: (704) 522-2000. UNDERWRITING LIMITATION [b/]: $16,450,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Delaware.

SAFECO Insurance Company of America

BUSINESS ADDRESS: SAFECO Plaza, Seattle, WA 98185. PHONE: (206) 545-5000. UNDERWRITING LIMITATION [b/]: $92,236,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Washington.

SAFECO Insurance Company of Illinois

BUSINESS ADDRESS: SAFECO Plaza, Seattle, WA 98185. PHONE: (708) 490-2900. UNDERWRITING LIMITATION [b/]: $11,308,000. SURETY LICENSES [c/]: AZ, CO, IL, KS, KY, MD, MI, MN, MS, NE, NM, OH, OR, PA, TN, TX, UT, WI, WY. INCORPORATED IN: Illinois.

SAFECO National Insurance Company

BUSINESS ADDRESS: SAFECO Plaza, Seattle, WA 98185. PHONE: (206) 545-5000. UNDERWRITING LIMITATION [b/]: $5,715,000. SURETY LICENSES [c/]: CO, KY, MD, MO, NY, UT, WI, WY. INCORPORATED IN: Missouri.

SCOR REINSURANCE COMPANY

BUSINESS ADDRESS: 2 World Trade Center, New York, NY 10048. PHONE: (212) 390-5200. UNDERWRITING LIMITATION [b/]: $27,237,000. SURETY LICENSES [c/]: AL, AK, AZ, CA, DE, ID, IL, IN, IA, MI, MS, NE, NM, NY, NC, ND, OH, OK, OR, PA, TN, TX, UT, WV. INCORPORATED IN: New York.

Sea Insurance Company of America (The)

BUSINESS ADDRESS: 25 Independence Blvd., Warren, NJ 07059. PHONE: (212) 753-8130. UNDERWRITING LIMITATION [b/]: $14,269,000. SURETY LICENSES [c/]: AK, AZ, AR, CA, CT, DE, FL, ID, IL, IN, IA, KS, KY, LA, MD, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SD, TN, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New York.

Seaboard Surety Company

BUSINESS ADDRESS: Burnt Mills Road and Route 206, Bedminster, NJ 07921. PHONE: (908) 658-3500. UNDERWRITING LIMITATION [b/]: $13,895,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: New York.

SECURITY INSURANCE COMPANY OF HARTFORD

BUSINESS ADDRESS: P.O. Box 420, Hartford, CT 06141. PHONE: (860) 674-6600. UNDERWRITING LIMITATION [b/]: $14,486,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Connecticut.

Security National Insurance Company

BUSINESS ADDRESS: P.O. Box 655028, Dallas, TX 75265-5028. PHONE: (214) 360-8000. UNDERWRITING LIMITATION [b/]: $1,418,000. SURETY LICENSES [c/]: AL, AR, CA, CO, GA, ID, IL, IN, IA, KS, KY, MS, MO, MT, NE, NM, OH, OK, OR, TX, WA, WI, WY. INCORPORATED IN: Texas.

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Select Insurance Company

BUSINESS ADDRESS: P.O. Box 1771, Dallas, TX 75221-1771. PHONE: (214) 650-2800. UNDERWRITING LIMITATION [b/]: $2,997,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CA, CO, DE, DC, FL, GA, ID, IL, IN, IA, KY, LA, MD, MI, MS, MO, MT, NE, NV, NM, NC, OH, OR, SC, SD, TN, TX, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Texas.

Selective Insurance Company of America

BUSINESS ADDRESS: Wantage Avenue, Branchville, NJ 07890. PHONE: (201) 948-3000. UNDERWRITING LIMITATION [b/]: $18,694,000. SURETY LICENSES [c/]: AL, DE, DC, GA, MD, MS, NJ, NY, NC, PA, SC, TX, VA. INCORPORATED IN: New Jersey.

SENTINEL INSURANCE COMPANY, LTD.

BUSINESS ADDRESS: 1001 Bishop Street, Honolulu, HI 96807. PHONE: (808) 546-5700. UNDERWRITING LIMITATION [b/]: $1,881,000. SURETY LICENSES [c/]: HI. INCORPORATED IN: Hawaii.

Sentry Insurance A Mutual Company

BUSINESS ADDRESS: 1800 North Point Drive, Stevens Point, WI 54481. PHONE: (715) 346-6000. UNDERWRITING LIMITATION [b/]: $113,684,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Wisconsin.

Signet Star Reinsurance Company

BUSINESS ADDRESS: 100 Campus Drive, P.O. Box 853, Florham Park, NJ 07932-0853. PHONE: (201) 301-8000. UNDERWRITING LIMITATION [b/]: $24,373,000. SURETY LICENSES [c/]: AK, CA, CO, DE, DC, FL, ID, IL, IA, LA, MD, MI, MN, NE, OH, OK, OR, SD, TN, TX, UT, WA. INCORPORATED IN: Delaware.

Skandia America Reinsurance Corporation

BUSINESS ADDRESS: One Liberty Plaza, New York, NY 10006. PHONE: (212) 978-4700. UNDERWRITING LIMITATION [b/]: $22,931,000. SURETY LICENSES [c/]: AL, AZ, CA, DE, DC, GA, ID, IL, IN, IA, MI, MS, MT, NE, NY, OH, OK, OR, PA, TN, TX, UT, VA, WA, WI. INCORPORATED IN: Delaware.

SOREMA NORTH AMERICA REINSURANCE COMPANY

BUSINESS ADDRESS: 199 Water Street, New York, NY 10038-3526. PHONE: (212) 480-1900. UNDERWRITING LIMITATION [b/]: $16,012,000. SURETY LICENSES [c/]: AK, AZ, CA, CO, CT, DE, DC, FL, HI, ID, IL, IN, IA, KS, KY, LA, MD, MA, MI, MN, MS, MO, MT, NE, NV, NJ, NM, NY, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, WA, WV, WI, WY. INCORPORATED IN: New York.

St. Paul Fire and Marine Insurance Company

BUSINESS ADDRESS: 385 Washington Street, St. Paul, MN 55102. PHONE: (612) 310-7911. UNDERWRITING LIMITATION [b/]: $120,687,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Minnesota.

ST. PAUL GUARDIAN INSURANCE COMPANY

BUSINESS ADDRESS: 385 Washington Street, St. Paul, MN 55102. PHONE: (612) 310-7911. UNDERWRITING LIMITATION [b/]: $3,050,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NH, NM, NY, NC, ND, OH, OK, OR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Minnesota.

St. Paul Mercury Insurance Company

BUSINESS ADDRESS: 385 Washington Street, St. Paul, MN 55102. PHONE: (612) 310-7911. UNDERWRITING LIMITATION [b/]: $5,814,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Minnesota.

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Standard Fire Insurance Company (The)

BUSINESS ADDRESS: One Tower Square, Hartford, CT 06183-9062. PHONE: (860) 277-0111. UNDERWRITING LIMITATION [b/]: $59,191,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Connecticut.

Star Insurance Company

BUSINESS ADDRESS: 26600 Telegraph Road, Southfield, MI 48034. PHONE: (810) 358-4020. UNDERWRITING LIMITATION [b/]: $5,530,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CA, CO, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, MD, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Michigan.

State Automobile Mutual Insurance Company

BUSINESS ADDRESS: 518 East Broad Street, Columbus, OH 43215-3976. PHONE: (614) 464-5000. UNDERWRITING LIMITATION [b/]: $50,098,000. SURETY LICENSES [c/]: AL, AZ, AR, CO, FL, GA, IL, IN, IA, KS, KY, MD, MI, MN, MS, MO, MT, NE, NC, ND, OH, OK, PA, SC, SD, TN, VA, WV, WI, WY. INCORPORATED IN: Ohio.

State Farm Fire and Casualty Company

BUSINESS ADDRESS: 112 East Washington Street, Bloomington, IL 61701. PHONE: (309) 766-2311. UNDERWRITING LIMITATION [b/]: $159,668,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Illinois.

Statewide Insurance Company

BUSINESS ADDRESS: 325 North Genesee Street, Waukegan, IL 60085. PHONE: (847) 662-0073. UNDERWRITING LIMITATION [b/]: $1,044,000. SURETY LICENSES [c/]: AZ, AR, IL, IN, IA, KY, MN, MO, MT, NE, NV, NC, OH, SD, TN, WI. INCORPORATED IN: Illinois.

Sun Insurance Office of America Inc.

BUSINESS ADDRESS: 25 Independence Blvd., Warren, NJ 07059. PHONE: (212) 753-8130. UNDERWRITING LIMITATION [b/]: $17,756,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, ND, OH, OK, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New York.

Surety Company of the Pacific

BUSINESS ADDRESS: P.O. Box 10289, Van Nuys, CA 91410-0289. PHONE: (818) 609-9232. UNDERWRITING LIMITATION [b/]: $761,000. SURETY LICENSES [c/]: CA. INCORPORATED IN: California.

Swiss Reinsurance America Corporation

BUSINESS ADDRESS: 237 Park Avenue, New York, NY 10017. PHONE: (212) 907-8000. UNDERWRITING LIMITATION [b/]: $85,452,000. SURETY LICENSES [c/]: AL, AK, AZ, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WI. INCORPORATED IN: New York.

TEXAS PACIFIC INDEMNITY COMPANY

BUSINESS ADDRESS: 15 Mountain View Rd., P.O. Box 1615, Warren, NJ 07061-1615. PHONE: (908) 903-2000. UNDERWRITING LIMITATION [b/]: $745,000. SURETY LICENSES [c/]: AR, TX. INCORPORATED IN: Texas.

TIG Insurance Company

BUSINESS ADDRESS: P. O. Box 152870, Irving, TX 75015-8810. PHONE: (214) 831-5000. UNDERWRITING LIMITATION [b/]: $71,284,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: California.

See Footnotes/Notes at end of Circular

TIG Insurance Company of Michigan

BUSINESS ADDRESS: 70 West Michigan Avenue, Battle Creek, MI 49017. PHONE: (214) 831-5000. UNDERWRITING LIMITATION [b/]: $2,085,000. SURETY LICENSES [c/]: AR, ID, IL, IN, IA, KS, KY, MI, MN, NY, SD, TX, UT, WY. INCORPORATED IN: Michigan.

TIG Premier Insurance Company

BUSINESS ADDRESS: P.O. BOX 152870, IRVING, TX 75015. PHONE: (214) 831-5000. UNDERWRITING LIMITATION [b/]: $2,701,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NJ, NM, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: California.

TRANSATLANTIC REINSURANCE COMPANY

BUSINESS ADDRESS: 80 Pine Street, New York, NY 10005. PHONE: (212) 770-2000. UNDERWRITING LIMITATION [b/]: $71,171,000. SURETY LICENSES [c/]: AK, AZ, CO, DE, DC, GA, ID, IL, IN, IA, KY, LA, MS, NE, NV, NM, NY, OH, OK, PA, UT, WA, WI. INCORPORATED IN: New York.

Transcontinental Insurance Company

BUSINESS ADDRESS: CNA Plaza, Chicago, IL 60685. PHONE: (312) 822-5000. UNDERWRITING LIMITATION [b/]: $18,253,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New York.

Transportation Insurance Company

BUSINESS ADDRESS: CNA Plaza, Chicago, IL 60685. PHONE: (312) 822-5000. UNDERWRITING LIMITATION [b/]: $6,874,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Illinois.

Travelers Indemnity Company (The)

BUSINESS ADDRESS: One Tower Square, Hartford, CT 06183-6014. PHONE: (860) 277-0111. UNDERWRITING LIMITATION [b/]: $160,592,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Connecticut.

TRAVELERS INDEMNITY COMPANY OF AMERICA (THE)

BUSINESS ADDRESS: 211 Perimeter Center Parkway, Atlanta, GA 30346. PHONE: (860) 277-0111. UNDERWRITING LIMITATION [b/]: $8,331,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Georgia.

Travelers Indemnity Company of Connecticut (The)

BUSINESS ADDRESS: One Tower Square, Hartford, CT 06183-6014. PHONE: (860) 277-0111. UNDERWRITING LIMITATION [b/]: $21,517,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Connecticut.

Travelers Indemnity Company of Illinois (The)

BUSINESS ADDRESS: 2500 Cabot Drive, Lisle, IL 60532. PHONE: (860) 277-0111. UNDERWRITING LIMITATION [b/]: $5,453,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Illinois.

See Footnotes/Notes at end of Circular

Tri-State Insurance Company of Minnesota

BUSINESS ADDRESS: One Roundwind Road, Luverne, MN 56156. PHONE: (507) 283-9561. UNDERWRITING LIMITATION [b/]: $3,714,000. SURETY LICENSES [c/]: CO, IL, IN, IA, MI, MN, MO, NE, ND, OH, SD, WI. INCORPORATED IN: Minnesota.

Trinity Universal Insurance Company

BUSINESS ADDRESS: P.O. Box 655028, Dallas, TX 75265-5028. PHONE: (214) 360-8000. UNDERWRITING LIMITATION [b/]: $28,138,000. SURETY LICENSES [c/]: AL, AZ, AR, CA, CO, GA, ID, IL, IN, IA, KS, KY, LA, MI, MS, MO, MT, NE, NM, OH, OK, OR, TN, TX, WA, WI, WY. INCORPORATED IN: Texas.

Trinity Universal Insurance Company of Kansas, Inc.

BUSINESS ADDRESS: P.O. Box 655028, Dallas, TX 75265-5028. PHONE: (214) 360-8000. UNDERWRITING LIMITATION [b/]: $920,000. SURETY LICENSES [c/]: AL, AZ, CO, GA, ID, IN, IA, KS, KY, LA, MS, MO, MT, NE, OH, OK, OR, TX, WA, WI, WY. INCORPORATED IN: Kansas.

Trumbull Insurance Company

BUSINESS ADDRESS: Hartford Plaza, Hartford, CT 06115. PHONE: (860) 547-5000. UNDERWRITING LIMITATION [b/]: $2,418,000. SURETY LICENSES [c/]: AL, AK, CO, CT, DE, DC, ID, IL, IN, IA, MA, MI, MN, MO, NE, NJ, ND, OH, OK, RI, SC, SD, TX, VT, VA, WY. INCORPORATED IN: Connecticut.

Twin City Fire Insurance Company

BUSINESS ADDRESS: Hartford Plaza, Hartford, CT 06115. PHONE: (860) 547-5000. UNDERWRITING LIMITATION [b/]: $10,816,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Indiana.

ULICO CASUALTY COMPANY

BUSINESS ADDRESS: 111 Massachusetts Avenue, NW, Washington, DC 20001. PHONE: (202) 682-0900. UNDERWRITING LIMITATION [b/]: $4,904,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, MD, MA, MI, MN, MS, MO, MT, NE, NV, NJ, NM, NY, ND, OH, OK, OR, PA, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Delaware.

Underwriters Indemnity Company

BUSINESS ADDRESS: 8 Greenway Plaza, Suite 400, Houston, TX 77046. PHONE: (713) 961-1300. UNDERWRITING LIMITATION [b/]: $368,000. SURETY LICENSES [c/]: AL, GA, KY, MS, NM, NC, SC, TX, WY. INCORPORATED IN: Texas.

UNDERWRITERS REINSURANCE COMPANY

BUSINESS ADDRESS: P.O. Box 4030, Woodland Hills, CA 91365. PHONE: (818) 225-1000. UNDERWRITING LIMITATION [b/]: $30,069,000. SURETY LICENSES [c/]: AZ, CA, DE, DC, ID, IL, IN, IA, KY, MI, MS, NE, NV, NM, NY, OH, PA, RI, TX, UT, WI, WY. INCORPORATED IN: New Hampshire.

Unigard Security Insurance Company

BUSINESS ADDRESS: 1215 Fourth Avenue, Suite 1800, Seattle, WA 98161-0196. PHONE: (206) 292-7861. UNDERWRITING LIMITATION [b/]: $9,011,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CO, CT, DE, DC, FL, GA, IN, IA, KS, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NM, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI. INCORPORATED IN: Washington.

Union Insurance Company

BUSINESS ADDRESS: P.O. Box 80439, Lincoln, NE 68501-0439. PHONE: (402) 423-7688. UNDERWRITING LIMITATION [b/]: $3,070,000. SURETY LICENSES [c/]: AR, CO, DC, ID, IA, KS, MD, MN, MS, MO, MT, NE, ND, OK, SD, TX, UT, VA, WA, WY. INCORPORATED IN: Nebraska.

United Capitol Insurance Company [g]

BUSINESS ADDRESS: 400 Perimeter Center Terrace, Suite 345, Atlanta, GA 30346. PHONE: (770) 677-0330. UNDERWRITING LIMITATION [b/]: $6,803,000. SURETY LICENSES [c/]: AZ, WI. INCORPORATED IN: Wisconsin.

See Footnotes/Notes at end of Circular

United Coastal Insurance Company [2]

BUSINESS ADDRESS: 233 Main Street, P.O. Box 2350, New Britain, CT 06050-2350. PHONE: (860) 223-5000. UNDERWRITING LIMITATION [b/]: $4,048,000. SURETY LICENSES [c/]: AZ. INCORPORATED IN: Arizona.

United Fire & Casualty Company

BUSINESS ADDRESS: P.O. Box 73909, Cedar Rapids, IA 52407. PHONE: (319) 399-5700. UNDERWRITING LIMITATION [b/]: $15,805,000. SURETY LICENSES [c/]: AK, AZ, AR, CA, CO, ID, IL, IN, IA, KS, KY, LA, MD, MI, MN, MS, MO, MT, NE, NV, NJ, NM, NY, ND, OH, OK, OR, SC, SD, TX, UT, WA, WI, WY. INCORPORATED IN: Iowa.

UNITED NATIONAL INSURANCE COMPANY

BUSINESS ADDRESS: Three Bala Plaza East, Suite 300, Bala Cynwyd, PA 19004. PHONE: (610) 664-1500. UNDERWRITING LIMITATION [b/]: $11,093,000. SURETY LICENSES [c/]: PA. INCORPORATED IN: Pennsylvania.

United Pacific Insurance Company

BUSINESS ADDRESS: 4 Penn Center Plaza, Philadelphia, PA 19103. PHONE: (215) 864-4000. UNDERWRITING LIMITATION [b/]: $5,528,000. SURETY LICENSES [c/]: AL, AK, AS, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Pennsylvania.

United States Fidelity and Guaranty Company

BUSINESS ADDRESS: TW3001, P.O. Box 1138, Baltimore, MD 21203-1138. PHONE: (410) 547-3000. UNDERWRITING LIMITATION [b/]: $72,225,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Maryland.

UNITED STATES FIRE INSURANCE COMPANY

BUSINESS ADDRESS: 6 Sylvan Way, Parsippany, NJ 07054. PHONE: (201) 285-9300. UNDERWRITING LIMITATION [b/]: $49,428,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: New York.

UNITED SURETY AND INDEMNITY COMPANY

BUSINESS ADDRESS: P.O. Box 2111, San Juan, PR 00922-2111. PHONE: (809) 273-1818. UNDERWRITING LIMITATION [b/]: $706,000. SURETY LICENSES [c/]: PR. INCORPORATED IN: Puerto Rico.

UNIVERSAL BONDING INSURANCE COMPANY

BUSINESS ADDRESS: 518 Stuyvesant Avenue, Lyndhurst, NJ 07071. PHONE: (201) 438-7223. UNDERWRITING LIMITATION [b/]: $1,177,000. SURETY LICENSES [c/]: NJ, NY. INCORPORATED IN: New Jersey.

UNIVERSAL INSURANCE COMPANY

BUSINESS ADDRESS: G.P.O. Box 71338, San Juan, PR 00936. PHONE: (809) 793-7202. UNDERWRITING LIMITATION [b/]: $6,509,000. SURETY LICENSES [c/]: PR. INCORPORATED IN: Puerto Rico.

Universal Surety Company

BUSINESS ADDRESS: P.O. Box 80468, Lincoln, NE 68501. PHONE: (402) 435-4302. UNDERWRITING LIMITATION [b/]: $2,883,000. SURETY LICENSES [c/]: AZ, AR, CO, ID, IL, IA, KS, MI, MN, MO, MT, NE, NM, ND, OH, OK, OR, SD, UT, WA, WI, WY. INCORPORATED IN: Nebraska.

See Footnotes/Notes at end of Circular

Universal Surety of America

BUSINESS ADDRESS: P.O. Box 1068, Houston, TX 77251-1068. PHONE: (713) 722-4600. UNDERWRITING LIMITATION b/: $918,000. SURETY LICENSES c/: AL, AK, AR, CA, CO, DC, FL, GA, IN, IA, KS, KY, LA, MI, MS, MO, NE, NV, NM, NC, OK, SC, SD, TN, TX, VA. INCORPORATED IN: Texas.

UNIVERSAL UNDERWRITERS INSURANCE COMPANY

BUSINESS ADDRESS: 6363 College Blvd., Overland Park, KS 66211. PHONE: (913) 339-1000. UNDERWRITING LIMITATION b/: $46,793,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Missouri.

Utica Mutual Insurance Company

BUSINESS ADDRESS: P.O. Box 530, Utica, NY 13503-0530. PHONE: (315) 734-2000. UNDERWRITING LIMITATION b/: $25,818,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New York.

Valley Forge Insurance Company

BUSINESS ADDRESS: CNA Plaza, Chicago, IL 60685. PHONE: (312) 822-5000. UNDERWRITING LIMITATION b/: $14,562,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Pennsylvania.

VAN TOL SURETY COMPANY, INCORPORATED

BUSINESS ADDRESS: 424 Fifth Street, Brookings, SD 57006. PHONE: (605) 692-6294. UNDERWRITING LIMITATION b/: $218,000. SURETY LICENSES c/: SD. INCORPORATED IN: South Dakota.

VESTA FIRE INSURANCE CORPORATION

BUSINESS ADDRESS: P.O Box 43360, Birmingham, AL 35243-3360. PHONE: (205) 970-7000. UNDERWRITING LIMITATION b/: $31,900,000. SURETY LICENSES c/: AL, AK, AZ, AR, CO, DC, IL, IN, IA, KS, KY, LA, MA, MN, MO, MT, NE, NV, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VA, WA, WV, WI, WY. INCORPORATED IN: Alabama.

Vigilant Insurance Company

BUSINESS ADDRESS: 15 Mountain View Rd., P.O. Box 1615, Warren, NJ 07061-1615. PHONE: (908) 903-2000. UNDERWRITING LIMITATION b/: $43,574,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: New York.

Washington International Insurance Company

BUSINESS ADDRESS: 1930 Thoreau Drive, Suite 101, Schaumburg, IL 60173. PHONE: (847) 490-1850. UNDERWRITING LIMITATION b/: $1,789,000. SURETY LICENSES c/: AL, AK, AZ, AR, CA, CO, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, MD, MA, MI, MN, MS, MO, MT, NE, NV, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VA, WA, WI, WY. INCORPORATED IN: Arizona.

West American Insurance Company 10

BUSINESS ADDRESS: 136 North Third Street, Hamilton, OH 45025. PHONE: (513) 867-3000. UNDERWRITING LIMITATION b/: $52,095,000. SURETY LICENSES c/: AL, AZ, AR, CO, CT, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, MD, MA, MI, MN, MS, MO, MT, NE, NV, NJ, NM, NY, NC, ND, OH, OR, PA, SC, SD, TN, TX, UT, VA, WA, WV, WI, WY. INCORPORATED IN: Indiana.

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Westchester Fire Insurance Company

BUSINESS ADDRESS: Six Concourse Parkway, Suite 2700, Atlanta, GA 30328-5346. PHONE: (770) 393-9955. UNDERWRITING LIMITATION [b/]: $19,425,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New York.

Western Surety Company

BUSINESS ADDRESS: P.O. Box 5077, Sioux Falls, SD 57117-5077. PHONE: (605) 336-0850. UNDERWRITING LIMITATION [b/]: $3,335,000. SURETY LICENSES [c/]: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: South Dakota.

Westfield Insurance Company

BUSINESS ADDRESS: P.O. Box 5001, Westfield Center, OH 44251-5001. PHONE: (216) 887-0101. UNDERWRITING LIMITATION [b/]: $25,269,000. SURETY LICENSES [c/]: AL, AZ, AR, CO, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, MD, MA, MI, MN, MS, MO, MT, NE, NV, NJ, NM, NY, NC, ND, OH, OK, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Ohio.

Westfield National Insurance Company

BUSINESS ADDRESS: P.O. Box 5001, Westfield Center, OH 44251-5001. PHONE: (216) 887-0101. UNDERWRITING LIMITATION [b/]: $7,055,000. SURETY LICENSES [c/]: CA, IA, OH. INCORPORATED IN: Ohio.

WINTERTHUR REINSURANCE CORPORATION OF AMERICA

BUSINESS ADDRESS: Two World Financial Ctr, 225 Liberty Street, 42 Fl, New York, NY 10281. PHONE: (212) 416-5700. UNDERWRITING LIMITATION [b/]: $24,220,000. SURETY LICENSES [c/]: AL, AZ, CA, DE, DC, IL, IN, IA, KY, MD, MI, MN, MS, MT, NE, NJ, NM, NY, ND, OH, OK, OR, PA, RI, SC, SD, TX, UT, VT, WA, WV, WI. INCORPORATED IN: New York.

ZENITH INSURANCE COMPANY

BUSINESS ADDRESS: 21255 Califa Street, Woodland Hills, CA 91367. PHONE: (818) 713-1000. UNDERWRITING LIMITATION [b/]: $20,156,000. SURETY LICENSES [c/]: AL, AZ, AR, CA, CO, FL, GA, HI, ID, IL, IN, IA, KY, LA, MA, MS, NE, NJ, NM, OK, OR, PA, SC, SD, TX, UT. INCORPORATED IN: California.

See Footnotes/Notes at end of Circular

COMPANIES HOLDING CERTIFICATES OF AUTHORITY AS ACCEPTABLE REINSURING COMPANIES UNDER SECTION 223.3(b) OF TREASURY CIRCULAR NO. 297, REVISED SEPTEMBER 1, 1978 [See Note (e)]

Capital Reinsurance Company
BUSINESS ADDRESS: 1325 Avenue of the Americas, New York, NY 10019. PHONE: (212) 974-0100. UNDERWRITING LIMITATION [b/]: $28,804,000.

European Reinsurance Corporation of America [11]
BUSINESS ADDRESS: 380 Madison Avenue, New York, NY 10017. PHONE: (212) 973-5800. UNDERWRITING LIMITATION [b/]: $11,448,000.

FOLKSAMERICA REINSURANCE COMPANY
BUSINESS ADDRESS: One Liberty Plaza,19th Floor, New York, NY 10006. PHONE: (212) 312-2500. UNDERWRITING LIMITATION [b/]: $12,002,000.

Generali - U.S. Branch
BUSINESS ADDRESS: One Liberty Plaza, New York, NY 10006. PHONE: (212) 602-7600. UNDERWRITING LIMITATION [b/]: $8,120,000.

GREAT LAKES AMERICAN REINSURANCE COMPANY
BUSINESS ADDRESS: 88 Pine Street, New York, NY 10005. PHONE: (212) 809-1061. UNDERWRITING LIMITATION [b/]: $10,152,000.

Munich Reinsurance Company, U.S. Branch
BUSINESS ADDRESS: 560 Lexington Ave., New York, NY 10022. PHONE: (212) 310-1800. UNDERWRITING LIMITATION [b/]: $53,281,000.

Tokio Marine and Fire Insurance Company, Limited (The), U.S. Branch
BUSINESS ADDRESS: 101 Park Avenue, New York, NY 10178. PHONE: (212) 297-6600. UNDERWRITING LIMITATION [b/]: $19,867,000.

Western Atlantic Reinsurance Corporation [11]

Zurich Insurance Company, U.S. Branch
BUSINESS ADDRESS: 1400 American Lane, Schaumburg, IL 60196. PHONE: (847) 605-6000. UNDERWRITING LIMITATION [b/]: $61,034,000.

See Footnotes/Notes at end of Circular

FOOTNOTES

1 CIGNA INDEMNITY INSURANCE COMPANY changed its state of incorporation from Iowa to Pennsylvania, effective October 16, 1995.

2 FRONTIER INSURANCE COMPANY is required by state law to conduct business in the states of Arkansas, Florida, Louisiana, North Dakota, Texas and Utah as Frontier Insurance Company, DBA Frontier Insurance Company of New York. In Missouri, FRONTIER INSURANCE COMPANY is required by state law to conduct business as New York Frontier Insurance Company.

3 This Company has a name very similar to another company that is NOT certified by this Department. Please ensure that the name of the Company and the state of incorporation are exactly as they appear in this Circular.

4 Indemnity Insurance Company of North America changed its state of incorporation from New York to Pennsylvania, effective December 31, 1995.

5 ITT Lyndon Property Insurance Company changed its name to Lyndon Property Insurance Company, effective December 1, 1995.

6 This Company has a name very similar to another company that is NOT certified by this Department. Please ensure that the name of the Company and the state of incorporation are exactly as they appear in this Circular.

7 Reliance Insurance Company of Illinois is an approved surplus lines carrier. Such approval by the State Insurance Department may indicate that the Company is authorized to write surety in a particular state, even though the Company is not licensed in the state. Questions related to this, may be directed to the appropriate State Insurance Department. Refer to the list of the Departments at the end of this publication.

8 United Capitol Insurance Company is an approved surplus lines carrier. Such approval by the State Insurance Department may indicate that the Company is authorized to write surety in a particular state, even though the Company is not licensed in the state. Questions related to this, may be directed to the appropriate State Insurance Department. Refer to the list of the Departments at the end of this publication.

9 United Coastal Insurance Company is an approved surplus lines carrier. Such approval by the State Insurance Department may indicate that the Company is authorized to write surety in a particular state, even though the Company is not licensed in the state. Questions related to this, may be directed to the appropriate State Insurance Department. Refer to the list of the Departments at the end of this publication.

10 West American Insurance Company changed its state of incorporation from California to Indiana, effective April 17, 1995.

11 Western Atlantic Reinsurance Corporation changed its name to European Reinsurance Corporation of America, effective May 17, 1996.

NOTES

(a) All Certificates of Authority expire June 30, and are renewable July 1, annually. Companies holding Certificates of Authority as acceptable sureties on Federal bonds are also acceptable as reinsuring companies.

(b) The Underwriting Limitations published herein are on a per bond basis. Treasury requirements do not limit the penal sum (face amount) of bonds which surety companies may provide. However, when the penal sum exceeds a company's Underwriting Limitation, the excess must be protected by co-insurance, reinsurance, or other methods in accordance with Treasury Circular 297, Revised September 1, 1978 (31 CFR Section 223.10, Section 223.11). Treasury refers to a bond of this type as an Excess Risk. When Excess Risks on bonds in favor of the United States are protected by reinsurance, such reinsurance is to be effected by use of a Federal reinsurance form to be filed with the bond or within 45 days thereafter. In protecting such excess risks, the underwriting limitation in force on the day in which the bond was provided will govern absolutely.

(c) A surety company must be licensed in the State or other area in which it provides a bond, but need not be licensed in the State or other area in which the principal resides or where the contract is to be performed [28 Op. Atty. Gen. 127, Dec. 24, 1909; 31 CFR Section 223.5 (b)]. The term "other area" includes the District of Columbia, American Samoa, Guam, Puerto Rico, and the Virgin Islands.

License information in this Circular is provided to the Treasury Department by the companies themselves. For updated license information, you may contact the company directly or the applicable State Insurance Department. For further assistance, contact the Surety Bond Branch.

(d) FEDERAL PROCESS AGENTS: Treasury approved surety companies are required to appoint Federal process agents in accord with 31 U.S.C. 9306 and 31 CFR 224 in the following districts: Where the principal resides; where the obligation is to be performed; and in the District of Columbia where the bond is returnable or filed. No process agent is required in the State or other area where the company is incorporated (31 CFR Section 224.2). The name and address of a particular surety's process agent in a particular Federal Judicial District may be obtained from the Clerk of the U.S. District Court in that district. (The appointment documents are on file with the clerks.) (NOTE: A surety company's underwriting agent who furnishes its bonds may or may not be its authorized process agent.)

SERVICE OF PROCESS: Process should be served on the Federal process agent appointed by a surety in a judicial district, except where the appointment of such agent is pending or during the absence of such agent from the district. Only in the event an agent has not been duly appointed, or the appointment is pending, or the agent is absent from the district, should process be served directly on the Clerk of the court pursuant to the provisions of 31 U.S.C. 9306.

(e) Companies holding Certificates of Authority as acceptable reinsuring companies are acceptable only as reinsuring companies on Federal bonds.

(f) Some companies may be approved surplus lines carriers in various states. Such approval may indicate that the company is authorized to write surety in a particular state, even though the company is not licensed in the state. Questions related to this may be directed to the appropriate State Insurance Department.

STATE INSURANCE DEPARTMENTS	TELEPHONE NO.
Alabama, Montgomery 36130-3401	(205) 269-3550
Alaska, Juneau 99811-0805	(907) 465-2515
Arizona, Phoenix 85012	(602) 912-8420
Arkansas, Little Rock 72204	(501) 686-2900
California, Sacramento 95814	(916) 445-5544
Colorado, Denver 80202	(303) 894-7499
Connecticut, Hartford 06142-0816	(203) 297-3802
Delaware, Dover 19901	(302) 739-4251
D. C., Washington 20013-7200	(202) 727-8000
Florida, Tallahasse 32399-0300	(904) 922-3100
Georgia, Atlanta 30334	(404) 656-2056
Hawaii, Honolulu 96811	(808) 586-2799
Idaho, Boise 83720	(208) 334-2250
Illinois, Springfield 62767	(217) 782-4515
Indiana, Indianapolis 46204-2787	(317) 232-2385
Iowa, Des Moines 50319	(515) 281-5705
Kansas, Topeka 66612	(913) 296-7801
Kentucky, Frankfort 40602	(502) 564-3630
Louisiana, Baton Rouge 70804	(504) 342-5900
Maine, Augusta 04333	(207) 582-8707
Maryland, Baltimore 21202	(410) 333-6300
Massachusetts, Boston 02114	(617) 521-7794
Michigan, Lansing 48909	(517) 373-9273
Minnesota, St. Paul 55101	(612) 296-6848
Mississippi, Jackson 39205	(601) 359-3569
Missouri, Jefferson City 65102-0690	(314) 751-4126
Montana, Helena 59604-4009	(406) 444-2040
Nebraska, Lincoln 68508	(402) 471-2201
Nevada, Carson City 89710	(702) 687-4270
New Hampshire, Concord 03301	(603) 271-2261
New Jersey, Trenton 08625	(609) 292-5360
New Mexico, Sante Fe 87504-1269	(505) 827-4500
New York, New York 10013	(518) 474-6630
North Carolina, Raleigh 27611	(919) 733-7349
North Dakota, Bismarck 58505	(701) 224-2440
Ohio, Columbus 43266-0566	(614) 644-2651
Oklahoma, Oklahoma City 73152-3408	(405) 521-2828
Oregon, Salem 97310	(503) 378-4271
Pennsylvania, Harrisburg 17120	(717) 787-5173
Puerto Rico, Santurce 00910-8330	(809) 722-8686
Rhode Island, Providence 02903	(401) 277-2223
South Carolina, Columbia 29202-3105	(803) 737-6117
South Dakota, Pierre 57501	(605) 773-3563
Tennessee, Nashville 37243-0565	(615) 741-2241
Texas, Austin 78714-9104	(512) 463-6464
Utah, Salt Lake City 84114-1201	(801) 538-3800
Vermont, Montpelier 05620-3101	(802) 828-3301
Virginia, Richmond 23209	(804) 371-9741
Virgin Islands, St. Thomas 00802	(809) 774-2991
Washington, Olympia 98504	(206) 753-7301
West Virginia, Charleston 25305	(304) 558-3394
Wisconsin, Madison 53707-7873	(608) 266-0102
Wyoming, Cheyenne 82002	(307) 777-7401

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Monday
July 1, 1996

Part VII

Department of Education

Postsecondary Education Programs for Individuals with Disabilities; Notices

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services; Postsecondary Education Programs for Individuals With Disabilities

AGENCY: Department of Education.

ACTION: Notice of a final funding priority.

SUMMARY: The Secretary announces a final funding priority for four Regional Centers on Postsecondary Education for Individuals who are Deaf, a program administered by the Office of Special Education and Rehabilitative Services (OSERS) under the Individuals with Disabilities Education Act. The Secretary may use this priority in Fiscal Year 1996 and subsequent years. The Secretary takes this action to focus Federal assistance on identified needs to improve educational opportunities and outcomes for postsecondary students who are deaf and hard of hearing. The final funding priority is intended to ensure wide and effective use of program funds. The Secretary also announces selection criteria that will be applied in evaluating applications submitted for this competition.

EFFECTIVE DATE: This priority takes effect on July 31, 1996.

FOR FURTHER INFORMATION CONTACT: Ramon Rodriguez, U.S. Department of Education, 600 Independence Avenue, SW., Switzer Building, Room 3125, Washington, DC 20202–2524. Telephone: (202) 205–8555. Fax: (202) 205–9252. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–9156. Internet: Ramon__Rodriguez@ed.gov

SUPPLEMENTARY INFORMATION: This notice contains information on the Regional Centers on Postsecondary Education for Individuals who are Deaf, authorized under section 625 of the Individuals with Disabilities Education Act, the Postsecondary Education Program for Individuals with Disabilities. The purpose of this program is to provide assistance for the development, operation, and dissemination of specially designed model programs of postsecondary, academic, vocational, technical, continuing, or adult education for individuals with disabilities.

This final funding priority supports the National Education Goal of every adult American being literate and possessing the knowledge and skills necessary to compete in a global economy by helping students who are deaf and hard of hearing to reach higher levels of academic achievement.

Funding of particular projects depends on the availability of funds, the content of the final funding priority, and the quality of the applications received. Further, the activities of the projects funded under this priority could be affected by the enactment of legislation reauthorizing the program. The publication of the final funding priority does not preclude the Secretary from proposing additional priorities, nor does it limit the Secretary to funding only this priority, subject to meeting applicable rulemaking requirements.

Note: This notice of final funding priority does not solicit applications. A notice inviting applications under this competition is published in a separate notice in this issue of the Federal Register.

Analysis of Comments and Changes

On March 18, 1996, the Secretary published a notice of proposed priority for this program in the Federal Register (61 FR 11086).

It was brought to our attention during the comment period that it is necessary to clarify what population is to be served by the regional centers. These centers have traditionally served individuals who are deaf and hard of hearing. This priority is not intended to change the population being served by the centers. The Secretary has therefore added references to individuals who are hard of hearing throughout the priority.

In response to the Secretary's invitation in the notice of proposed priority, 28 comments were received. All 28 commenters expressed interest in the Department holding a competition under the proposed priority. Eleven of the commenters suggested changes in the activities the regional centers must complete. An analysis of the comments and of the changes in the proposed priority follows. Technical and other minor changes—as well as suggested changes the Secretary is not legally authorized to make under the applicable statutory authority—are not addressed.

Comment: Eight commenters recommended that the Secretary fund direct student support services programs such as interpreting and notetaking at current levels.

Discussion: Although funding of direct student support services such as interpreting and notetaking was allowed through this program in the past, the Secretary believes that the limited funds available to support four regional centers are more effectively used for the activities described in the priority, including assisting institutions of higher education that are currently not serving students who are deaf and hard of hearing. Each of the currently funded regional centers has developed a model of providing support services to students who are deaf and hard of hearing, and provided limited technical assistance and outreach services to other postsecondary institutions. The Secretary believes a technical assistance model will most efficiently use scarce resources and is the most effective strategy to ultimately increase postsecondary educational opportunities for students who are deaf and hard of hearing. Further, under Section 504 of the Rehabilitation Act of 1973, as amended, and the Americans with Disabilities Act (ADA), institutions of higher education have the responsibility to provide these direct services. Under paragraph (e) of the priority, each center is required to disseminate information about these responsibilities and financial and other resources available for such purposes.

Changes: None.

Comment: Nineteen commenters recommended that the Secretary continue funding the current regional centers located at St. Paul Technical College, Seattle Community College, California State University at Northridge and the University of Tennessee at Knoxville.

Discussion: The Secretary does not have authority to non-competitively continue the current grantees. Section 625(a)(6) of the Individuals with Disabilities Education Act required the Secretary to continue to provide assistance to the current grantees operating the four regional centers for the deaf through September 30, 1995. Because current law does not provide authority for continuation of the current grantees, the Secretary must conduct a competition for fiscal year 1996 funds for this activity.

Change: None.

Comment: Three commenters suggested that the priority address the need to recruit or train interpreters, stenographers and other service specialists to provide services at a reasonable cost. In addition, an effort should be made to standardize training and develop compensation policies for interpreters and other support services personnel.

Discussion: The Secretary is aware of the need to train more interpreters and other service providers. The Office of Special Education Programs, Division of Personnel Preparation, and the Rehabilitation Services Administration have specific authorities to train both educational and general-service interpreters and are currently funding 28 projects for this purpose. It is anticipated that through technical assistance and outreach, the regional centers will be able to assist these

institutions in locating resources and to provide leadership to address support service issues.

Changes: None.

Comment: Twelve commenters strongly stressed that the needs assessment to be performed by each regional center should also address the technical assistance needs of postsecondary institutions related to retaining and instructing students who are deaf and hard of hearing.

Discussion: The Secretary agrees with the commenters that the centers must identify the needs of institutions related to retaining and instructing deaf and hard of hearing students in order to provide assistance to postsecondary education institutions in developing strategies that will result in more deaf and hard of hearing students completing their programs.

Changes: The issue of retaining and instructing deaf and hard of hearing students has been added to the list of areas in paragraph (a) of the priority that must be addressed in the technical needs assessment to be performed by each regional center.

Comment: One commenter recommended that the Secretary add ''and accommodation'' to paragraph (b). The commenter states that the Secretary should distinguish between ''access'' and ''accommodation.'' If this is not stressed, he suspects that many applications will focus on recruitment and admission variables, and give inadequate attention to factors which sustain the student throughout his or her postsecondary educational experiences. The commenter indicated also that the ability of applicants to articulate what ''accommodation'' means will help distinguish between strong and weak applications.

Discussion: The Secretary agrees with the commenter that adding ''and accommodation of individuals who are deaf and hard of hearing throughout their postsecondary educational experiences,'' to paragraph (b) will clarify the distinction between ''access'' and ''accommodation.'' Furthermore, it will ensure that the regional centers will not only provide postsecondary institutions with consultation and technical assistance related to special needs such as interpreters, notetakers, assistive devices and other essential aids, but continue providing accommodation support throughout the students' postsecondary educational programs.

Change: The phrase ''and accommodation of individuals who are deaf and hard of hearing, including traditionally underserved populations who are deaf and hard of hearing, throughout their postsecondary educational experiences'' has been added to paragraph (b).

Comment: One commenter asked the Secretary to clarify what is meant by ''develop training materials'' in paragraph (f) and expressed concern that resources could be drained unless the regional centers collaborate on what materials should be developed and cooperate in their dissemination. Five commenters recommended that the Secretary require the centers to plan for national networking, coordination and collaboration to expand and share resources. These commenters expressed concern that the centers will duplicate many activities and that the centers should coordinate activities.

Discussion: The Secretary agrees with the commenters that clarification is needed regarding paragraph (f) and the phrase ''develop training materials.'' It is the intent of the Secretary to have the regional centers make available, through development or acquisition, awareness-training materials for administration, faculty, and staff of postsecondary education institutions. It is anticipated that the regional centers will cooperate and collaborate in developing materials, standards, and other criteria that are needed. The regional centers are expected to collaborate in developing and conducting all major activities, such as the content of needs assessment and other instruments to be used, information about postsecondary education programs, administration/faculty/staff orientation materials used in serving students who are deaf and hard of hearing, training materials, evaluation criteria and instruments and other similar materials.

Change: Paragraph (f) is changed by deleting ''develop training materials'' and inserting: ''Make available through development and acquisition, awareness-training materials for administrators, faculty and staff * * *.'' In order to ensure coordination and collaboration among the regions, paragraph (j) has been changed to: ''Coordinate and collaborate on the development and establishment of needs-assessment activities, material development, technical assistance, outreach, information dissemination, and evaluation of the regional center's activities for the purpose of avoiding overlap and duplication of efforts * * *.''

Comment: One commenter recommended that three regional centers and a national center be funded. Another commenter suggested that the Secretary fund six regional centers. Two commenters recommended five centers, two to be located in the southwest. They also suggested that a national research and evaluation component be added.

Discussion: The Secretary is aware that the centers will need to form a network for intra/inter-regional cooperation. As noted in paragraphs (d) and (j) of the priority, the centers must undertake such efforts. The centers are also required to carry out evaluation activities, as described in paragraph (i). Finally, the Secretary believes that four regional centers, rather than three or six as suggested, represents the best combination of effort and national scope.

Changes: None.

Comments: One commenter recommended that the northeast region could be served by the two national institutions, Gallaudet University and the National Technical Institute for the Deaf at the Rochester Institute of Technology and, instead, the Secretary should create an additional region in the west. Four commenters recommended that the States in the four proposed regions be realigned. They indicated that the southern region accounted for approximately 33 percent of the Nation's population.

Discussion: The Secretary believes that the proposed regions represent a fair and reasonable geographical distribution. However, he agrees that each application must be assessed for the evidence of need in the target area and scope of work proposed by the project. The application notice, published elsewhere in this issue of the Federal Register, specifies a range of award amounts to allow the Secretary to take these factors into consideration in making awards.

Changes: None.

Comment: One commenter recommended that the priority stress cooperation with participating postsecondary educational institutions within each region in order to develop consistent outreach strategies and disseminate information to individuals who are deaf and hard of hearing to enhance their awareness of available postsecondary educational opportunities both within and outside the region.

Discussion: The Secretary agrees with the commenter on the need for coordination and collaboration of major center activities within each region and the need to develop consistent outreach strategies and disseminate information to individuals who are deaf and hard of hearing to enhance their awareness of available postsecondary educational opportunities both within and outside the region.

Change: Language has been added to paragraph (d) to ensure cooperation

with participating postsecondary educational institutions within the region in developing outreach strategies and disseminating information to individuals who are deaf and hard of hearing to enhance their awareness of available postsecondary educational opportunities, both within and outside the region.

Comment: Two commenters recommended that the Secretary require the centers to provide technical assistance and transitional outreach services to secondary schools serving students who are deaf and hard of hearing, and linkages with other programs. One of the commenters indicated that there is no mention of a job-placement component to ensure linkages to employment opportunities. The commenter added that emphasis should be placed on these activities because, at the present time, there are few programs that offer strong job-placement activities for individuals graduating from postsecondary institutions.

Discussion: In paragraph (g), the Secretary directs the centers to ''address the educational, remedial, support service, transitional, independent living, and employment needs of individuals who are deaf and hard of hearing.'' While the Secretary is aware of the need for comprehensive transitional services for students who are deaf and hard of hearing in secondary schools, scarce resources limit the level of regional centers' interaction with these schools to providing information about postsecondary educational opportunities. In order to ensure linkages to employment opportunities, the Secretary anticipates that the regional centers will coordinate their programs and activities with vocational rehabilitation and independent living agencies.

Change: None.

Comment: Two commenters recommended that the Secretary direct the centers to provide technical assistance to postsecondary education institutions in implementing strategies that will enhance the integration of students who are deaf and hard of hearing with other students.

Discussion: The Secretary expects the regional centers to provide training materials and disseminate information about proven models, components of models, and other exemplary practices that enhance the integration of students who are deaf and hard of hearing with other students. The Secretary believes that this issue is adequately addressed in paragraph (f).

Change: None.

Comments: Three commenters recommended the utilization of distance learning and other technologies in order to provide consultation and support services to a variety of postsecondary institutions regarding technical accommodations and model service programs.

Discussion: The Secretary anticipates that applicants will recommend creative and innovative ways that postsecondary institutions can provide services to students who are deaf and hard of hearing. Distance learning technology would be one appropriate method. However, the Secretary does not believe that it is appropriate to suggest or limit the potential methods for meeting the needs of students who are deaf and hard of hearing.

Changes: None.

Comments: Nine commenters indicated that for a support services program to be efficient and cost beneficial, a ''critical mass'' or significant number of deaf and hard of hearing students is required.

Discussion: The Department's survey, *Deaf and Hard of Hearing Students in Postsecondary Education,* by the National Center for Education Statistics through its postsecondary education quick information system (PEQIS), indicated that 1,850 institutions were providing services to varying numbers of deaf and hard of hearing students. The Secretary believes that many of these institutions, including those who do not have a significant number of deaf and hard of hearing students, need assistance. The type of assistance needed will depend on the type and size of the program and needs of the students enrolled. The centers will be able to provide technical assistance and outreach services to many institutions that wish to develop or improve service delivery.

Changes: None.

Comment: Three commenters recommended that the centers emphasize services to individuals from traditionally underserved populations. These individuals are late-deafened, deaf-blind, have multiple disabilities, or are from minority populations, including language minorities, who typically do not have services or resources readily available to them.

Discussion: The Secretary believes that the technical assistance needs assessments to be performed by each center will identify the technical assistance needs of the institutions of higher education, including how to serve deaf and hard of hearing populations that may be underserved. These identified needs will generate the necessary technical assistance services. However, the Secretary agrees that it is important to emphasize that technical assistance to enhance the access and accommodation of individuals who are deaf and hard of hearing to postsecondary education and training must include individuals from traditionally underserved populations.

Changes: In order to address the needs of individuals from traditionally underserved populations, ''including those from language minorities'' has been added to paragraph (a), and ''including traditionally underserved populations who are deaf and hard of hearing'' has been added to paragraph (b).

Comment: One commenter recommended that the Secretary include a provision to involve families of students who are deaf and hard of hearing, and students themselves, and to include parent training and information centers and the National Parent Network on Disabilities among the organizations listed in paragraph (h).

Discussion: The majority of students who are deaf and hard of hearing have reached the age of maturity as they prepare to attend postsecondary education programs. Therefore, they are the primary targets of this assistance. The Secretary anticipates that information about postsecondary education opportunities provided to students who are deaf and hard of hearing and their teachers and counselors in secondary programs through informational materials and orientation as indicated in paragraphs (d), (e), and (g) also will be shared with parents and families. Further, information for parents and families will be available through the clearinghouses and organizations listed in paragraph (h).

Change: None.

Priority

Under 34 CFR 75.105(c)(3) the Secretary gives an absolute preference to applications that meet this priority. The Secretary will fund under this competition only applications that meet the priority.

Absolute Priority—Regional Centers on Postsecondary Education for Individuals who are Deaf.

Purpose

The purpose of this priority is to support projects that assist educational institutions to implement proven models, components of models, and other exemplary practices, including innovative technology, to increase and

improve postsecondary educational opportunities for individuals who are deaf and hard of hearing.

Background

This priority would support four regional centers on postsecondary education for individuals who are deaf and hard of hearing. Each center will provide technical assistance to a range of postsecondary institutions, including academic, vocational, technical, continuing, and adult education programs, to expand the array of educational opportunities within the region that are available to students who are deaf and hard of hearing. The centers must provide technical assistance to institutions currently not serving students who are deaf and hard of hearing to assist them to develop services. The centers must also provide technical assistance to institutions currently serving students who are deaf and hard of hearing to assist them to improve existing programs. In carrying out the objectives of this priority, projects must distribute technical assistance services and resources equitably, taking into account population and geographic size, within each State in its targeted geographic region.

Each regional center must:

(a) Conduct assessments of the technical assistance needs of postsecondary education institutions related to recruiting; enrolling; retaining; instructing; addressing the varying communication needs and methods used by individuals who are deaf and hard of hearing, including those from language minorities; and, otherwise effectively serving students who are deaf and hard of hearing;

(b) Provide consultation, in-service training, and planning and development assistance to postsecondary education institutions and their staff to enhance the access and accommodation of individuals who are deaf and hard of hearing, including traditionally underserved populations who are deaf and hard of hearing, throughout their postsecondary educational experiences, to postsecondary education and training;

(c) Provide technical assistance on the responsibilities of postsecondary education institutions under Federal statutes, including Section 504 of the Rehabilitation Act of 1973, as amended, and the Americans with Disabilities Act;

(d) Cooperate with participating postsecondary educational institutions within the region in developing outreach strategies and disseminating information to individuals who are deaf and hard of hearing to enhance their awareness of available postsecondary educational opportunities, both within and outside the regions;

(e) Disseminate information about financial and other resources available to students who are deaf and hard of hearing and to postsecondary institutions to help them accommodate these students;

(f) Make available, through development and acquisition, awareness-training materials for administrators, faculty and staff, and disseminate information on proven models, components of models, and other exemplary practices, including innovative technology, among postsecondary educational programs to assist them in implementing effective and cost-efficient service-delivery systems that foster integration of students who are deaf and hard of hearing with other students;

(g) Encourage the use of consortia of postsecondary education institutions and other cooperative arrangements to provide services and assistance to students who are deaf and hard of hearing, including coordination of postsecondary education options with existing public and private community services that may address the educational, remedial, support service, transitional, independent living, and employment needs of individuals who are deaf and hard of hearing;

(h) Coordinate technical assistance and dissemination activities with relevant information clearinghouses and organizations such as the National Clearinghouse on Postsecondary Education for Individuals with Disabilities (HEATH), National Information Center for Children and Youth with Disabilities, National Transition Alliance, and Association of Higher Education and Disability;

(i) Evaluate the impact, effectiveness, and results of postsecondary institutions within the region in accommodating students who are deaf and hard of hearing; and

(j) Coordinate and collaborate on the development and establishment of needs-assessment activities, material development, technical assistance, outreach, information dissemination, and evaluation of the regional centers' activities for the purpose of avoiding overlap and duplication of efforts; ensuring that individuals who are deaf and hard of hearing have information on postsecondary programs throughout the country that provide accommodations; and ensuring that information on proven models, components of models, and other exemplary practices, including innovative technology, are equally available in each of the four regions. This coordination must include carrying out collaborative activities and cross-regional initiatives, where appropriate.

The Secretary anticipates funding four cooperative agreements, each for a project period of up to 60 months, subject to the requirements of 34 CFR 75.253(a), for continuation awards. In determining whether to continue a center for the fourth and fifth years of the project period, in addition to applying the requirements of 34 CFR 75.253(a), the Secretary will consider the recommendations of a review team consisting of three experts selected by the Secretary. The services of the review team, including a two-day visit to the center, are to be performed during the last half of the center's second year and must be included in that year's evaluation required under 34 CFR 75.590. Funds to cover the costs of the review team must be included in the center's budget for year two. These costs are estimated to be approximately $4,000.

To ensure that all States benefit from these projects, the Secretary intends to support four projects which will be required to serve each State within one of the following geographic regions:

Northeast Region—Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Puerto Rico, Rhode Island, and Vermont.

Southern Region—Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, Virginia, Virgin Islands, and West Virginia.

Midwest Region—Iowa, Illinois, Indiana, Kansas, Ohio, Michigan, Minnesota, Missouri, Nebraska, North Dakota, South Dakota, and Wisconsin.

Western Region—Alaska, American Samoa, Arizona, California, Colorado, Guam, Hawaii, Idaho, Northern Marinas Islands, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming.

Selection Criteria for Evaluating Applications

The Secretary will use the following weighted criteria to evaluate an application under the Regional Centers on Postsecondary Education for Individuals who are Deaf competition.

The maximum score for all the criteria is 100 points.

(a) *Project design*. (40 points)

(1) The Secretary reviews each application to evaluate the quality of the proposed technical assistance project design.

(2) The Secretary determines the extent to which—

(i) The technical assistance objectives are designed to meet the purpose of the priority and are clearly defined, measurable, and achievable; and

(ii) The proposed technical assistance addresses the needs of a range of postsecondary institutions, including academic, vocational, technical, continuing, and adult education programs.

(3) The Secretary determines the extent to which each application provides for—

(i) Use of current research findings and information on model practices;

(ii) Methods for linking postsecondary institutions in need of technical assistance;

(iii) Innovative procedures for disseminating information and imparting skills to postsecondary institutions, staff of these institutions, and postsecondary students and potential postsecondary students who are deaf and hard of hearing; and

(iv) Innovative procedures for collaborating and coordinating with other entities that are involved with broader technical assistance efforts.

(b) *Plan of operation.* (20 points)

(1) The Secretary reviews each application to determine the quality of the plan of operation for the project.

(2) The Secretary considers—

(i) The extent to which the management plan will ensure proper and efficient administration of the project;

(ii) The quality of the activities proposed to accomplish the goals and objectives;

(iii) The adequacy of proposed timelines for accomplishing those activities; and

(iv) Effectiveness in the ways in which the applicant plans to use the resources and personnel to accomplish the program's goals and objectives.

(3) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or disability.

(c) *Quality of key personnel.* (15 points)

(1) The Secretary reviews each application to determine the qualifications of the key personnel the applicant plans to use.

(2) The Secretary considers—

(i) The qualifications of the project director and project coordinator (if one is used);

(ii) The qualifications of each of the other key project personnel;

(iii) The time that each person referred in paragraphs (b)(2) (i) and (ii) plans to commit to the project; and

(iv) How the applicant will ensure that personnel are selected for employment without regard to race, color, national origin, gender, age, or disability.

(3) To determine personnel qualifications under (b)(2) (i) and (ii), the Secretary considers—

(i) Experience and training in fields related to the objectives of the project; and

(ii) Any other qualifications that pertain to the quality of the project.

(d) *Budget and cost effectiveness.* (10 points)

(1) The Secretary reviews each application to determine whether the project has an adequate budget and is cost-effective.

(2) The Secretary considers the extent to which—

(i) The budget for the project is adequate to support project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(e) *Evaluation plan.* (10 points)

(1) The Secretary reviews each application to determine the quality of the evaluation plan for the project.

(2) The Secretary considers—

(i) The extent to which the applicant's methods of evaluation are appropriate to the project; and

(ii) To the degree possible, the extent to which the applicant's methods of evaluation are objective and produce data that are quantifiable.

(f) *Adequacy of resources.* (5 points)

(1) The Secretary reviews each application to determine whether the applicant plans to devote adequate resources to the project.

(2) The Secretary considers the adequacy of the facilities and the technology, equipment, and supplies the applicant plans to use.

Intergovernmental Review

This notice is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance. In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Program Authority: 20 U.S.C. 1424a.

(Catalog of Federal Domestic Assistance Number: Regional Postsecondary Centers for Individuals Who are Deaf, 84.078A)

Dated: June 25, 1996.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 96–16640 Filed 6–28–96; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA No.: 84.078A]

Postsecondary Education Programs for Individuals with Disabilities; Notice Inviting Applications for New Awards for Fiscal Year (FY) 1996

Purpose of Program: To support projects that assist educational institutions to implement proven models, components of models, and other exemplary practices, including innovative technology, to increase and improve postsecondary opportunities for individuals who are deaf and hard of hearing.

This program supports the National Education Goal of every adult American being literate and possessing the knowledge and skills necessary to compete in a global economy by helping students who are deaf and hard of hearing to reach higher levels of academic achievement.

Eligible Applicants: Eligible applicants are State educational agencies, institutions of higher education, junior and community colleges, vocational and technical institutions, and other nonprofit educational agencies.

Applicable Regulations: (a) The regulations in part 338; and (b) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, 79, 80, 81, 82, 85, and 86.

Note: The regulations in 34 CFR Part 86 apply to institutions of higher education only.

Applications Available: July 2, 1996.

Priority:

(a) The priority in the notice of final funding priority for this program, as published elsewhere in this issue of the Federal Register, applies to this competition.

(b) Within this priority, the Secretary particularly invites applications for projects from consortia or partnerships with expertise in accommodating students who are deaf and hard of hearing in a variety of academic, vocational, technical, continuing, and adult education environments. However, in accordance with EDGAR at 34 CFR 75.105 (c)(1), an application that meets this invitational priority receives no competitive or absolute preference

over applications that otherwise meet the priority.

Deadline for Transmittal of Applications: August 2, 1996.

Deadline for Intergovernmental Review: September 5, 1996.

Estimated Number of Awards: 4.

Project Period: Up to 60 months.

Available Funds: In fiscal year 1996, the Department proposes to allocate approximately $4,000,000 to support an estimated 4 projects, with a range of awards of approximately $800,000–$1,200,000 for the first twelve months of the project. Multi-year projects will be level funded unless there are increases in costs attributable to significant changes in activity level.

Average Award: $1,000,000.

Note: The Department of Education is not bound by any estimates in this notice.

For Applications and General Information Contact: Requests for applications and general information should be addressed to: Ramon F. Rodriguez, U.S. Department of Education, 600 Independence Avenue, S.W., Switzer Building, Room 3125, Washington, D.C. 20202–2526. Telephone: (202) 205–8555. FAX: (202) 205–9252. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–9156. Internet: Ramon__Rodriguez@ed.gov

For Technical Information Contact: Michael Ward, U.S. Department of Education, 600 Independence Avenue, S.W., Switzer Building, Room 4624, Washington, D.C. 20202–2732. Telephone: (202) 205–8163. FAX: (202) 205–8971.

Information about the Department's funding opportunities, including copies of application notices for discretionary grant competitions, can be viewed on the Department's electronic bulletin board (ED Board), telephone (202) 260–9950; on the Internet Gopher Server at GOPHER.ED.GOV (under Announcements, Bulletins, and Press Releases); or on the World Wide Web at (http://www.ed.gov/money.html). However, the official application notice for a discretionary grant competition is the notice published in the Federal Register.

Program Authority: 20 U.S.C. 1424a.
Dated: June 25, 1996.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitation Services.

[FR Doc. 96–16639 Filed 6–28–96; 8:45 am]

BILLING CODE 4000–01–P

federal register

Monday
July 1, 1996

Part VIII

Department of Education

Applications Invitation for New Awards Under Certain Programs for Fiscal Year 1997; Notice

DEPARTMENT OF EDUCATION

[CFDA Nos.: 84.133F, 84.133G, and 84.133P]

Office of Special Education and Rehabilitative Services National Institute on Disability and Rehabilitation Research Notice Inviting Applications for New Awards Under Certain Programs for Fiscal Year 1997

Note to Applicants: This notice is a complete application package. Together with the statute authorizing the programs and applicable regulations governing the programs, including the Education Department General Administrative Regulations (EDGAR), this notice contains information, application forms, and instructions needed to apply for a grant under these competitions.

These programs support the National Education Goal that calls for all Americans to possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship.

The estimated funding levels in this notice do not bind the Department of Education to make awards in any of these categories, or to any specific number of awards or funding levels, unless otherwise specified in statute.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR), 34 CFR Parts 74, 75, 77, 80, 81, 82, 85, and 86; and the following program regulations:

Research Fellowships—34 CFR Part 356.

Field Initiated Research—34 CFR Parts 357.

Research Training and Career Development Program—34 CFR Part 360.

Program Title: Rehabilitation Research Fellowships.

CFDA Number: 84.133F.

Purpose: The purpose of this program is to build research capacity by providing support to highly qualified individuals to perform research on the rehabilitation of disabled persons.

Selection Criteria: The Secretary evaluates applications for fellowships according to the following criteria in 34 CFR 356.30.

(a) Quality and level of formal education, previous work experience, and recommendations of present or former supervisors or colleagues that include an indication of the applicant's ability to work creatively in scientific research; and

(b) The quality of a research proposal of no more than 12 pages containing the following information:

(1) The importance of the problem to be investigated to the purpose of the Act and the mission of NIDRR.

(2) The research hypotheses or related objectives and the methodology and design to be followed.

(3) Assurance of the availability of any necessary data resources, equipment, or institutional support, including technical consultation and support where appropriate, required to carry out the proposed activity.

Eligible Applicants: Individuals only are eligible to apply for research fellowships under this program.

Program Authority: 29 U.S.C. 761a(d).

APPLICATION NOTICE FOR FISCAL YEAR 1997 RESEARCH FELLOWSHIPS, CFDA NO. 84.133F

Funding priority	Deadline for transmittal of applications	Estimated number of awards	Maximum award amount (per year)*	Project period (months)
Research Fellowships	8/30/96	10	Merit: $30,000 Distinguished: $40,000	12

Note: The Secretary will reject without consideration or evaluation any application that proposes a project funding level that exceeds the stated maximum award amount (See 34 CFR 75.104(b)).

Program Title: Field-Initiated Research.

CFDA Number: 84.133G.

Purpose: This program is designed to encourage eligible parties to originate valuable ideas for research and demonstration, development, or knowledge dissemination projects to improve the lives of individuals with disabilities, and to support research and demonstration, development, or knowledge dissemination projects as described in program regulations that address important activities not supported by Institute-funded research or that complement that research in a promising way.

Note: The ''Design of the project'' section of the selection criteria for the Field-Initiated Research (FIR) program (Section 357.32(b)) includes different sets of selection criteria relating to three types of projects: research and demonstration projects, knowledge dissemination projects, and development projects. An applicant for an FIR grant should clearly identify on the cover page of the application which *one* of the three types of projects is being proposed. The ''Design of project'' selection criteria that will be used to review an application will be based on the applicant's identification of the type of project that is being proposed.

Selection Criteria: The Secretary uses the following criteria to evaluate an application under this program.

(a) Importance of the problem. (20 points) The Secretary reviews each application to determine the extent to which—

(1) The proposed project addresses a problem that is significant to persons with disabilities or to those who provide services to them;

(2) The proposed project is likely to produce new and useful knowledge, techniques, or devices that will develop or disseminate solutions to problems confronting persons with disabilities; and

(3) The application addresses the needs of individuals with disabilities from minority backgrounds.

(b) *Design of the project.* (45 points)

(1) The Secretary reviews each application for a research and demonstration project to determine the extent to which—

(i) The review of the literature is appropriate and indicates familiarity with the relevant current research;

(ii) The research hypotheses are theoretically sound and based on current knowledge;

(iii) The sample populations are adequate and appropriately selected;

(iv) The data collection instruments and methods are appropriate and likely to be successful;

(v) The data analysis measures are appropriate; and

(vi) The application discusses the anticipated research results and demonstrates how those results would satisfy the original hypotheses.

(2) The Secretary reviews each application for a knowledge dissemination project to determine the extent to which—

(i) The need for the information has been demonstrated;

(ii) The target populations are appropriately specified;

(iii) The dissemination methods are appropriate to the target population;

(iv) The materials for dissemination are prepared in media accessible to the target population; and

(v) There are adequate means of documenting and evaluating the effectiveness of the dissemination activity.

(3) The Secretary reviews each application for a development project to determine the extent to which—

(i) The proposed project will use the most effective and appropriate technology available in developing the new device or technique;

(ii) The proposed development is based on a sound conceptual model that demonstrates an awareness of the state-of-the-art in technology;

(iii) Devices or techniques will be developed and tested in an appropriate environment;

(iv) The applicant considers the cost-effectiveness and usefulness of the device or technique to be developed for persons with disabilities; and

(v) The applicant discusses the potential for commercial or private manufacture, marketing, and distribution of the product.

(c) *Personnel.* (20 points) The Secretary reviews each application to determine the extent to which—

(1) The key personnel have adequate training and experience in the required discipline to conduct the proposed activities;

(2) The allotment of staff time is adequate to accomplish the proposed activities; and

(3) The applicant ensures that personnel are selected for employment without regard to race, color, national origin, gender, age, or handicapping conditions.

(d) *Management and Evaluation.* (15 points) The Secretary reviews each application to determine the extent to which—

(1) The resources of the applicant are adequate, appropriate, and accessible to individuals with disabilities;

(2) The proposed budget is adequate and appropriate for the activities to be carried out;

(3) There is a plan, appropriate to the type of field-initiated project, to evaluate the effectiveness of the project in accomplishing its goals and objectives;

(4) The applicant provides a plan of operations, appropriate to the type of field-initiated project, indicating that it will achieve the project objectives in a timely and effective manner; and

(5) Appropriate collaboration with other agencies is assured.

Eligible Applicants: Public and private organizations, including institutions of higher education and Indian tribes and tribal organizations, are eligible to apply for awards under this program.

Program Authority: 29 U.S.C. 762.

APPLICATION NOTICE FOR FISCAL YEAR 1997 FIELD-INITIATED RESEARCH, CFDA NO. 84.133G

Funding Priority	Deadline for transmittal of applications	Estimated number of awards	Maximum award amount (per year)*	Project period (months)
Field-Initiated Research	9/30/96	25	$125,000	36

NOTE: The Secretary will reject without consideration or evaluation any application that proposes a project funding level that exceeds the stated maximum award amount (See 34 CFR 75.104(b)).

Program Title: Research Training and Career Development Program

CFDA Number: 84.133P.

Purpose: The purpose of this program is to expand capability in the field of rehabilitation research by supporting projects that provide advanced training in rehabilitation research. These projects provide research training and experience at an advanced level to individuals with doctorates or similar advanced degrees who have clinical or other relevant experience, including experience in management or basic science research, in fields pertinent to rehabilitation, in order to qualify those individuals to conduct independent research on problems related to disability and rehabilitation.

Invitational Priorities: The Secretary is particularly interested in applications that address one of the following invitational priorities. However, under 34 CFR 75.105(c)(1) an application that meets an invitational priority does not receive competitive or absolute preference over other applications. The invitational priorities are:

1. Training individuals with disabilities in advanced research in disability and rehabilitation-related fields.

2. Training individuals from minority backgrounds, particularly individuals with disabilities from minority backgrounds, in advanced disability and rehabilitation research.

Selection Criteria: The Secretary uses the following criteria in 34 CFR 360.31 to evaluate applications under this program.

(a) Importance and potential contribution. (20 points) The Secretary reviews each application to determine to what degree—

(1) The applicant is responsive to any priority established under § 360.32;

(2) The applicant proposes to provide training in a rehabilitation discipline or area of study in which there is a shortage of qualified researchers, or to provide training to a trainee population in which there is a need for more qualified researchers, such as clinicians in rural areas, or clinicians who are directly experienced with underserved populations; and

(3) The applicant is likely to make a significant increase in the number of trained rehabilitation researchers.

(b) *Quality of proposed training program.* (40 points) The Secretary reviews each application to determine to what degree—

(1) The applicant's proposed recruitment program is likely to be effective in recruiting highly qualified trainees;

(2) The proposed didactic and classroom training programs emphasize scientific methodology are multidisciplinary, comprehensive, and appropriate to the level of the trainees, and are likely to produce qualified independent researchers;

(3) The quality and extent of the academic mentorship, guidance, and supervision to be provided to each individual trainee are of a high level and are likely to produce highly qualified researchers;

(4) The type, extent, and quality of the proposed clinical and laboratory research experience, including the opportunity to participate in research on meaningful topics at an advanced level, are likely to develop individuals with the capacity to perform independent research; and

(5) The opportunities for collegial and collaborative activities, exposure to outstanding scientists in the field, and opportunities to participate in the preparation of scholarly or scientific publications and presentations are extensive and appropriate.

(c) *Personnel and resources committed to the project.* (30 points) The Secretary evaluates each application to determine to what degree—

(1) The activities of the project will be implemented by sufficient and qualified staff who are outstanding scientists in the field;

(2) The project director and other key staff are experienced in the delivery of advanced research training as well as knowledgeable about the methodology and literature of pertinent subject areas;

(3) All required disciplines are effectively included; and

(4) The applicant possesses the appropriate facilities, laboratories, and access to clinical populations and organizations representing persons with disabilities to support the conduct of advanced clinical rehabilitation research.

(d) Management and operating plans. (l0 points) The Secretary evaluates each application to determine to what degree—

(1) There is an effective plan of operation that ensures proper and efficient administration of the project;

(2) There is an effective plan for collaboration with other institutions of higher education and organizations whose participation is necessary to ensure effective classroom and clinical research training;

(3) The applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected without regard to race, color, national origin, gender, age or handicapping condition;

(4) The applicant has provided an adequate plan for the use of facilities, resources, supplies and equipment;

(5) The budget for the project is reasonable and adequate to support the proposed activities; and

(6) The applicant provides an appropriate plan for the evaluation of all phases of the project.

Eligible Applicants: Institutions of higher education are eligible to receive awards under this program.

Program Authority: 29. U.S.C. 761a(k).

Application Notice for Fiscal Year 1997 Research Training and Career Development Program, CFDA No. 84.133P

Funding priority	Deadline for transmittal of applications	Estimated number of awards	Maximum award amount (per year)*	Project period (months)
Research Training and Career Development Program	8/30/96	3	$150,000	60

Note: The Secretary will reject without consideration or evaluation any application that proposes a project funding level that exceeds the stated maximum award amount (See 34 CFR 75.104(b)).

Instructions for Application Narrative

The Secretary strongly recommends that the narrative for Field-Initiated Research and Research Training and Career Development applications be limited to no more than 40 double-spaced, typed pages (on one side only), not including appendices. This recommended page limit applies only to the narrative and not to the application forms, assurances, certifications and attachments to those forms, assurances, and certifications.

The research proposal for a Fellowship application must be limited to no more than 12 pages (34 CFR 356.30(b)).

Instructions for Transmittal of Applications

(a) If an applicant wants to apply for a grant, the applicant shall—

(1) Mail the original and two copies of the application on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA # [Applicant must insert number and letter]), Washington, DC 20202–4725, or

(2) Hand deliver the original and two copies of the application by 4:30 p.m. [Washington, DC time] on the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA # [Applicant must insert number and letter]), Room #3633, Regional Office Building #3, 7th and D Streets, SW., Washington, DC.

(b) An applicant must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

(c) If an application is mailed through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Notes: (1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

(2) An applicant wishing to know that its application has been received by the Department must include with the application a stamped self-addressed postcard containing the CFDA number and title of this program.

(3) The applicant *must* indicate on the envelope and—if not provided by the Department—in Item 10 of the Application for Federal Assistance (Standard Form 424) the CFDA number—and letter, if any—of the competition under which the application is being submitted.

Application Forms and Instructions

The appendix to this application is divided into four parts. These parts are organized in the same manner that the submitted application should be organized. These parts are as follows:

PART I: Application for Federal Assistance (Standard Form 424 (Rev. 4–88)) and instructions.

PART II: Budget Form—Non-Construction Programs (Standard Form 524A) and instructions.

PART III: Application Narrative.

Additional Materials

Estimated Public Reporting Burden.

Assurances—Non-Construction Programs (Standard Form 424B).

Certification Regarding Lobbying, Debarment, Suspension, and Other Responsibility Matters: and Drug-Free Work-Place Requirements (ED Form 80–0013).

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: Lower Tier Covered Transactions (ED Form 80–0014) and instructions. (NOTE: ED Form GCS–014 is intended for the use of primary participants and should not be transmitted to the Department.)

Disclosure of Lobbying Activities (Standard Form LLL (if applicable) and instruction. This document has been marked to reflect statutory changes. See the notice published by the Office of Management and Budget at 61 FR 1413 (January 19, 1996).

An applicant may submit information on a photostatic copy of the application and budget forms, the assurances, and the certifications. However, the application form, the assurances, and the certifications must each have an

original signature. No grant may be awarded unless a completed application form has been received.

For Applications Contact: In order to obtain an application package, contact William H. Whalen, U.S. Department of Education, 600 Independence Avenue SW., Switzer Building, Room 3411, Washington, DC 20202. Telephone: (202) 205–9141. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–8887.

Information about the Department's funding opportunities, including copies of application notices for discretionary grant competitions, can be viewed on the Department's electronic bulletin board (ED Board), telephone (202) 260–9950; on the Internet Gopher Server at GOPHER.ED.GOV (under Announcements, Bulletins, and Press Releases); or on the World Wide Web at http://www.ed.gov/.money.html.

However, the official application notice for a discretionary grant competition is the notice published in the Federal Register.

Program Authority: 29 U.S.C. 760–762.

Dated: June 19, 1996.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

Appendix

Application Forms and Instructions

Applicants are advised to reproduce and complete the application forms in this Section. Applicants are required to submit an original and two copies of each application as provided in this Section.

Frequent Questions

1. CAN I GET AN EXTENSION OF THE DUE DATE?

No! On rare occasions the Department of Education may extend a closing date for all applicants. If that occurs, a notice of the revised due date is published in the Federal Register. However, there are no extensions or exceptions to the due date made for individual applicants.

2. WHAT SHOULD BE INCLUDED IN THE APPLICATION?

The application should include a project narrative, vitae of key personnel, and a budget, as well as the Assurances forms included in this package. Vitae of staff or consultants should include the individual's title and role in the proposed project, and other information that is specifically pertinent to this proposed project. The budgets for both the first year and all subsequent project years should be included.

If collaboration with another organization is involved in the proposed activity, the application should include assurances of participation by the other parties, including written agreements or assurances of cooperation. It is *not* useful to include general letters of support or endorsement in the application.

If the applicant proposes to use unique tests or other measurement instruments that are not widely known in the field, it would be helpful to include the instrument in the application.

Many applications contain voluminous appendices that are not helpful and in many cases cannot even be mailed to the reviewers. It is generally not helpful to include such things as brochures, general capability statements of collaborating organizations, maps, copies of publications, or descriptions of other projects completed by the applicant.

3. WHAT FORMAT SHOULD BE USED FOR THE APPLICATION?

NIDRR generally advises applicants that they may organize the application to follow the selection criteria that will be used. The specific review criteria vary according to the specific program, and are contained in this Consolidated Application Package.

4. MAY I SUBMIT APPLICATIONS TO MORE THAN ONE NIDRR PROGRAM COMPETITION OR MORE THAN ONE APPLICATION TO A PROGRAM?

Yes, you may submit applications to any program for which they are responsive to the program requirements. You may submit the same application to as many competitions as you believe appropriate. You may also submit more than one application in any given competition.

5. WHAT IS THE ALLOWABLE INDIRECT COST RATE?

The limits on indirect costs vary according to the program and the type of application. Applicants in the Research Training and Career Development program should limit indirect charges to 8 percent. Applicants in the Field-Initiated Research program should limit indirect charges to the organization's approved rate. If the organization does not have an approved rate, the application should include an estimated actual rate. Fellowship awards are made to individuals, therefore indirect cost rates do not apply.

6. CAN PROFITMAKING BUSINESSES APPLY FOR GRANTS?

Yes. However, for-profit organizations will not be able to collect a fee or profit on the grant, and in some programs will be required to share in the costs of the project.

7. CAN INDIVIDUALS APPLY FOR GRANTS?

No. Only organizations are eligible to apply for *grants* under NIDRR programs. However, individuals are the only entities eligible to apply for fellowships.

8. CAN NIDRR STAFF ADVISE ME WHETHER MY PROJECT IS OF INTEREST TO NIDRR OR LIKELY TO BE FUNDED?

No. NIDRR staff can advise you of the requirements of the program in which you propose to submit your application. However, staff cannot advise you of whether your subject area or proposed approach is likely to receive approval.

9. HOW DO I ASSURE THAT MY APPLICATION WILL BE REFERRED TO THE MOST APPROPRIATE PANEL FOR REVIEW?

Applicants should be sure that their applications are referred to the correct competition by clearly including the competition title and CFDA number, including alphabetical code, on the Standard Form 424, and including a project title that describes the project.

10. HOW SOON AFTER SUBMITTING MY APPLICATION CAN I FIND OUT IF IT WILL BE FUNDED?

The time from closing date to grant award date varies from program to program. Generally speaking, NIDRR endeavors to have awards made within five to six months of the closing date. Unsuccessful applicants generally will be notified within that time frame as well. For the purpose of estimating a project start date, the applicant should estimate approximately six months from the closing date, but no later than the following September 30.

11. CAN I CALL NIDRR TO FIND OUT IF MY APPLICATION IS BEING FUNDED?

No. When NIDRR is able to release information on the status of grant applications, it will notify applicants by letter. The results of the peer review cannot be released except through this formal notification.

12. IF MY APPLICATION IS SUCCESSFUL, CAN I ASSUME I WILL GET THE REQUESTED BUDGET AMOUNT IN SUBSEQUENT YEARS?

No. Funding in subsequent years is subject to availability of funds and project performance.

13. WILL ALL APPROVED APPLICATIONS BE FUNDED?

No. It often happens that the peer review panels approve for funding more

applications than NIDRR can fund within available resources. Applicants who are approved but not funded are encouraged to consider submitting similar applications in future competitions.

BILLING CODE 4000–01–P

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

1. TYPE OF SUBMISSION: *Application* ☐ Construction ☐ Non-Construction; *Preapplication* ☐ Construction ☐ Non-Construction	2. DATE SUBMITTED	Applicant Identifier
	3. DATE RECEIVED BY STATE	State Application Identifier
	4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address *(give city, county, state, and zip code)*:	Name and telephone number of the person to be contacted on matters involving this application *(give area code)*

6. EMPLOYER IDENTIFICATION NUMBER (EIN):

☐☐ – ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: *(enter appropriate letter in box)* ☐

A. State
B. County
C. Municipal
D. Township
E. Interstate
F. Intermunicipal
G. Special District
H. Independent School Dist.
I. State Controlled Institution of Higher Learning
J. Private University
K. Indian Tribe
L. Individual
M. Profit Organization
N. Other (Specify): _____

8. TYPE OF APPLICATION:

☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other *(specify)*:

_____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: ☐☐ . ☐☐☐

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT *(cities, counties, states, etc.)*:

13. PROPOSED PROJECT:

Start Date	Ending Date

14. CONGRESSIONAL DISTRICTS OF:

a. Applicant	b. Project

15. ESTIMATED FUNDING:

a. Federal	$ .00
b. Applicant	$ .00
c. State	$ .00
d. Local	$ .00
e. Other	$ .00
f. Program Income	$ .00
g. TOTAL	$ .00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON:

DATE_____

b NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item: Entry:

1. Self-explanatory.
2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3. State use only (if applicable).
4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7. Enter the appropriate letter in the space provided.
8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:
   - "New" means a new assistance award.
   - "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.
   - "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9. Name of Federal agency from which assistance is being requested with this application.
10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11. Enter a brief descriptive title of the project. if more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

Item: Entry:

12. List only the largest political entities affected (e.g., State, counties, cities).
13. Self-explanatory.
14. List the applicant's Congressional District and any District(s) affected by the program or project.
15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

U.S. DEPARTMENT OF EDUCATION

BUDGET INFORMATION

NON-CONSTRUCTION PROGRAMS

OMB Control No. 1875-0102

Expiration Date: 9/30/98

Name of Institution/Organization

Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

SECTION A - BUDGET SUMMARY
U.S. DEPARTMENT OF EDUCATION FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	**Total (f)**
1. Personnel						
2. Fringe Benefits						
3. Travel						
4. Equipment						
5. Supplies						
6. Contractual						
7. Construction						
8. Other						
9. Total Direct Costs (lines 1-8)						
10. Indirect Costs						
11. Training Stipends						
12. Total Costs (lines 9-11)						

ED FORM NO. 524

Name of Institution/Organization	Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

SECTION B - BUDGET SUMMARY
NON-FEDERAL FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	**Total (f)**
1. Personnel						
2. Fringe Benefits						
3. Travel						
4. Equipment						
5. Supplies						
6. Contractual						
7. Construction						
8. Other						
9. Total Direct Costs (lines 1-8)						
10. Indirect Costs						
11. Training Stipends						
12. Total Costs (lines 9-11)						

SECTION C - OTHER BUDGET INFORMATION (see instructions)

ED FORM NO. 524

BILLING CODE 4000-01-C

Paperwork Burden Statement

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 1820–0027 (Expiration date 11/28/97). The time required to complete this information collection is estimated to average 30 hours per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. If you have any comments concerning the accuracy of the time estimate(s) or suggestions for improving this form, please write to: U.S. Department of Education, Information Management and Compliance Division, Washington, D.C. 20202–4651. If you have comments or concerns regarding the status of your individual submission of this form, write directly to: William H. Whalen, U.S. Department of Education, 600 Independence Avenue, SW., Switzer Building, Room 3411, Washington, DC 20202.

Research Fellowships (CFDA No. 84.133F) 34 CFR Part 356.

Field-Initiated Research (CFDA No. 84.133G) 34 CFR Parts 350 and 357.

Research Training and Career Development Program—34 CFR Part 360.

Public reporting burden for this collection of information is estimated to vary from 13 to 22 hours per response, with an average of 17.5 hours, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Education, Information Management and Compliance Division, Washington, DC 20202–4651; and the Office of Management and Budget, Paperwork Reduction Project 1875–0102, Washington, D.C. 20503.

Instructions for ED Form No. 524

General Instructions

This form is used to apply to individual U.S. Department of Education discretionary grant programs. Unless directed otherwise, provide the same budget information for each year of the multi-year funding request. Pay attention to applicable program specific instructions, if attached.

Section A—Budget Summary—U.S. Department of Education Funds

All applicants must complete Section A and provide a breakdown by the applicable budget categories shown in lines 1–11.

Lines 1–11, columns (a)–(e):

For each project year for which funding is requested, show the total amount requested for each applicable budget category.

Lines 1–11, column (f):

Show the multi-year total for each budget category. If funding is requested for only one project year, leave this column blank.

Line 12, columns (a)–(e):

Show the total budget request for each project year for which funding is requested.

Line 12, column (f):

Show the total amount requested for all project years. If funding is requested for only one year, leave this space blank.

Section B—Budget Summary—Non-Federal Funds

If you are required to provide or volunteer to provide matching funds or other non-Federal resources to the project, these should be shown for each applicable budget category on lines 1–11 of Section B.

Lines 1–11, columns (a)–(e):

For each project year for which matching funds or other contributions are provided, show the total contribution for each applicable budget category.

Lines 1–11, column (f):

Show the multi-year total for each budget category. If non-Federal contributions are provided for only one year, leave this column blank.

Line 12, columns (a)–(e):

Show the total matching or other contribution for each project year.

Line 12, column (f):

Show the total amount to be contributed for all years of the multi-year project. If non-Federal contributions are provided for only one year, leave this space blank.

Section C—Other Budget Information—Pay attention to applicable program specific instructions, if attached.

1. Provide an itemized budget breakdown, by project year, for each budget category listed in Sections A and B.

2. If applicable to this program, enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period. In addition, enter the estimated amount of the base to which the rate is applied, and the total indirect expense.

3. If applicable to this program, provide the rate and base on which fringe benefits are calculated.

4. Provide other explanations or comments you deem necessary.

BILLING CODE 4000–01–P

OMB Approval No. 0348-0040

ASSURANCES — NON-CONSTRUCTION PROGRAMS

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C.§§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

Standard Form 424B (4-88)
Prescribed by OMB Circular A-102

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10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program andto purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

SF 424B (4-88) Back

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transactions

This certification is required by the Department of Education regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, for all lower tier transactions meeting the threshold and tier requirements stated at Section 85.110.

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0014, 9/90 (Replaces GCS-009 (REV. 12/88), which is obsolete)

CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

1. LOBBYING

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a grant or cooperative agreement over $100,000, as defined at 34 CFR Part 82, Sections 82.105 and 82.110, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110 --

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transactions (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

3. DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 --

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about--

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will--

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office Building No. 3),

Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted--

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

_____

_____

_____

Check ☐ if there are workplaces on file that are not identified here.

DRUG-FREE WORKPLACE (GRANTEES WHO ARE INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 --

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office Building No. 3), Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0013, 6/90 (Replaces ED 80-0008, 12/89; ED Form GCS-008, (REV. 12/88); ED 80-0010, 5/90; and ED 80-0011, 5/90, which are obsolete)

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB
0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action:
☐ a. contract
b. grant
c. cooperative agreement
d. loan
e. loan guarantee
f. loan insurance

2. Status of Federal Action:
☐ a. bid/offer/application
b. initial award
c. post-award

3. Report Type:
☐ a. initial filing
b. material change
For Material Change Only:
year _____ quarter _____
date of last report _____

4. Name and Address of Reporting Entity:
☐ Prime ☐ Subawardee
Tier _____, *if known:*
Congressional District, *if known:*

5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:
Congressional District, *if known:*

6. Federal Department/Agency:

7. Federal Program Name/Description:
CFDA Number, *if applicable:* _____

8. Federal Action Number, *if known:*

9. Award Amount, *if known:*
$

10. a. Name and Address of Lobbying ~~Entity~~ Registrant
(if individual, last name, first name, MI):

b. Individuals Performing Services *(including address if different from No. 10a)*
(last name, first name, MI):

~~(attach Continuation Sheet(s) SF-LLL-A, if necessary)~~

11. Amount of Payment *(check all that apply):*
$ _____ ☐ actual ☐ planned

12. Form of Payment *(check all that apply):*
☐ a. cash
☐ b. in-kind; specify: nature _____
value _____

13. Type of Payment *(check all that apply):*
☐ a. retainer
☐ b. one-time fee
☐ c. commission
☐ d. contingent fee
☐ e. deferred
☐ f. other; specify: _____

14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11:

~~(attach Continuation Sheet(s) SF-LLL-A, if necessary)~~

15. ~~Continuation Sheet(s) SF-LLL-A attached:~~ ~~☐ Yes~~ ~~☐ No~~

16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C.1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature: _____
Print Name: _____
Title: _____
Telephone No.: _____ **Date:** _____

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Standard Form - LLL

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. ~~Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate~~. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee", then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, state and zip code of the ~~lobbying entity~~ registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).

11. ~~Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.~~

12. Check the appropriate box(es). ~~Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.~~

13. Check the appropriate box(es). ~~Check all boxes that apply. If other, specify nature.~~

14. Provide a specific and detailed ~~description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.~~

15. ~~Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.~~

16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Public reporting burden for this collection of information is estimated to average 30 mintues per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, D.C. 20503.

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Monday
July 1, 1996

Part IX

Department of Health and Human Services

Health Care Financing Administration

Medicare Program; Schedule of Limits on Home Health Agency Costs Per Visit for Cost Reporting Periods Beginning On or After July 1, 1996; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[BPD–867–NC]

RIN 0938–AH54

Medicare Program; Schedule of Limits on Home Health Agency Costs Per Visit for Cost Reporting Periods Beginning On or After July 1, 1996

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice with comment period.

SUMMARY: This notice sets forth a revised schedule of limits on home health agency costs that may be paid under the Medicare program. These limits replace the per-visit limits that were set forth in our February 14, 1995 notice with comment period (60 FR 8389). This notice also responds to comments on the February 14, 1995 notice. This notice does not provide for a permanent extension of the provision of the Omnibus Budget Reconciliation Act of 1993 (OBRA '93) that there be no changes in the home health agency cost limits for cost reporting periods beginning on or after July 1, 1994, and before July 1, 1996. However, a proposal to extend the effects of the OBRA '93 freeze is included in President Clinton's FY 1997 Budget.

DATES: *Effective Date:* The schedule of limits is effective for cost reporting periods beginning on or after July 1, 1996.

Comment Date: Written comments will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. on August 30, 1996.

ADDRESSES: Mail comments (one original and three copies) to the following address:

Health Care Financing Administration, Department of Health and Human Services,
Attention: BPD–867–NC
P.O. Box 7517
Baltimore, MD 21207–0517

If you prefer, you may deliver your written comments (one original and three copies) to one of the following addresses:

Room 309–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW, Washington, DC 20221, or
Room C5–09–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting please refer to file code BPD–867–NC. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in Room 309–G of the Department's offices at 200 Independence Avenue, SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (Phone: (202) 690–7890).

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FOR FURTHER INFORMATION CONTACT: Michael Bussacca, (410) 786–4602.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1861(v)(1)(A) of the Social Security Act (the Act) authorizes the Secretary to establish limits on allowable costs incurred by a provider of services that may be paid under the Medicare program, based on estimates of the costs necessary in the efficient delivery of needed health services. Under this authority, we have maintained limits on home health agency (HHA) per-visit costs since 1979. The limits may be applied to direct or indirect overall costs or to the costs incurred for specific items or services furnished by the provider. Implementing regulations are located at 42 CFR 413.30. Additional statutory provisions specifically governing the limits applicable to HHAs are contained at section 1861(v)(1)(L) of the Act. Section 1861(v)(1)(L)(i) of the Act specifies that the cost limits are not to exceed 112 percent of the mean of the labor-related and nonlabor per-visit costs for freestanding HHAs. For cost reporting periods beginning on or after July 1, 1986, and before October 1, 1993, section 1861(v)(1)(L)(ii) of the Act requires that the Secretary make an adjustment to the cost limits for the administrative and general (A&G) costs of hospital-based HHAs. Section 1861(v)(1)(L)(iii) of the Act requires that the Secretary establish HHA cost limits on an annual basis for cost reporting periods beginning on or after July 1 of each year (except for cost reporting periods beginning on or after July 1, 1994, and before July 1, 1996). In establishing these limits, the Act directs the Secretary to use the applicable hospital wage index, as discussed below.

On February 14, 1995, we published in the Federal Register (60 FR 8389) a notice with comment period that set forth a revised schedule of limits on HHA costs that may be paid under the Medicare program for cost reporting periods beginning on or after July 1, 1993. These limits replaced the per-visit limits that were set forth in our July 8, 1993 notice with comment period (58 FR 36748). Like the July 8, 1993 limits, the February 14, 1995 limits were computed using the actual cost-per-visit data from cost reporting periods ending on or after June 30, 1989, and before May 31, 1991, and were adjusted by later estimates in the ''market basket'' index to reflect changes in the prices of goods and services furnished by HHAs. The February 14, 1995 notice also provided, in accordance with section 13564(a) of the Omnibus Budget Reconciliation Act of 1993 (OBRA '93) (Public Law 103–66), that there be no changes in the HHA costs limits for cost reporting periods beginning on or after July 1, 1994, and before July 1, 1996 (except as needed to take into account the elimination of the A&G add-on for hospital-based HHAs, effective for cost reporting periods beginning on or after October 1, 1993).

This notice with comment period sets forth cost limits for cost reporting periods beginning on or after July 1, 1996. As required by section 1861(v)(1)(L)(iii) of the Act, we are using the area wage index applicable under section 1886(d)(3)(E) of the Act determined using the survey of the most recent available wages and wage-related costs of hospitals located in the geographic area in which the HHA is located. For purposes of this notice, the HHA wage index is based on the most recent hospital wage index, that is, the hospital wage index effective for hospital discharges on or after October 1, 1995, which uses FY 1992 wage data. As the statute also specifies, in applying the hospital wage index to HHAs, no adjustments are to be made to account for hospital reclassifications under section 1886(d)(8)(B) of the Act, decisions of the Medicare Geographic Classification Review Board under

section 1886(d)(10) of the Act, or decisions by the Secretary.

II. Analysis of and Response to Public Comments

We received 14 items of timely correspondence on the February 14, 1995 notice with comment period. These comments and our responses are discussed below.

Comment: Nine commenters stated that, in view of the elimination, effective for cost reporting periods beginning on or after October 1, 1993, of the payment adjustment for the A&G cost of hospital-based HHAs, it was no longer appropriate to establish cost limits based only on cost reporting data from freestanding HHAs. Although the commenters acknowledged that section 1861(v)(1)(L)(i) of the Act continues to require that the limits be based on the ''* * * per visit costs for freestanding home health agencies'', they suggested that this provision was inconsistent with the elimination of the A&G add-on under section 13564(b) of OBRA '93 and requested that cost reporting data from both hospital-based and freestanding agencies be used in establishing the limits.

Response: As the commenters noted, section 1861(v)(1)(L)(i) of the Act specifies that the Secretary is to establish a single schedule of HHA cost limits based on the mean per-visit costs of freestanding agencies. Although section 13564(b) of OBRA '93 amended section 1861(v)(1)(L)(ii) of the Act to provide that, effective for cost reporting periods beginning on or after October 1, 1993, we no longer make a payment adjustment to the limits to account for the A&G costs of hospital-based agencies, this provision of OBRA '93 did not amend the explicit requirement of section 1861(v)(1)(L)(i) of the Act concerning the agency costs upon which the limits are to be based. Therefore, the limits continue to be based on the costs of freestanding home health agencies, as required by the Act. We have no discretion to include hospital-based providers in the calculation of HHA limits.

Comment: One commenter suggested that certain services be allowed when provided by a pharmacist in the patient's home such as patient counseling/education, clinical assessment, drug regimen review and drug therapy monitoring.

Response: Section 1861(m) of the Act provides for per-visit payment to HHAs solely for those services provided by the six home health disciplines. Current policy does not provide for payment for home visits by pharmacists as suggested by the commenter.

Comment: One commenter asked if the special adjustment factors for cost reporting periods of other than 12 months would have to be revised because of the changes in the revised schedule of limits published on February 14, 1995.

Response: The projected annual rates of inflation used in the July 8, 1993 and February 14, 1995 notices were the same, as were the adjustment factors in both notices. Therefore, no change in the special adjustment factors to be applied by the intermediaries was necessary.

Comment: Two commenters requested clarification on how HCFA applies the add-on adjustment to the limits for those agencies with costs in excess of their limit that are attributable to the Occupational Safety and Health Administration (OSHA) universal precaution requirement.

Response: As discussed in detail later, the OSHA add-on is no longer necessary for cost reporting periods beginning on or after July 1, 1996. Even for cost reporting periods prior to that date, the OSHA add-on is not an automatic adjustment to the home health agency cost limits. An agency must apply to the intermediary for the add-on amount and the agency must demonstrate that it will exceed its cost limit and provide adequate documentation to support the add-on adjustment. The agency must show that it has incurred expenses to comply with the OSHA requirements.

Documentation should include copies of the agency's infection control procedure, invoices documenting the purchase of gloves, gowns and other disposable items. The costs of inoculations of hepatitis B vaccine can also be used to support the adjustment. An HHA can also provide documentation that it has given training to the employees concerning blood-borne pathogens. We provided instructions to HCFA's intermediaries spelling out these requirements in a 1994 program memorandum.

Comment: One commenter stated that the HHA market basket increases have consistently lagged behind actual cost-per-visit increases.

Response: As discussed in detail below in section IV of this notice and the Appendix, we have used a revised and rebased market basket in calculating the cost limits set forth in this notice. Actual aggregate cost-per-visit increases reflect changes in both the mix of visit types and the quantity and intensity of services per visit, as well as discretionary purchase price increases higher than reasonable costs. In contrast, the HHA market basket is designed to measure price to inflation for inputs used to produce HHA service. Thus, we would not expect actual aggregate cost-per-visit increases to equal changes in an HHA market basket that reflects pure price increases for efficient purchases.

Comment: Nine commenters questioned whether HCFA had correctly interpreted the requirement under section 13564(a) of OBRA '93 that there be no changes in the previous per-visit HHA cost limits for cost reporting periods beginning on or after July 1, 1994 and before July 1, 1996. The commenters pointed out that, under our July 8, 1993 notice, the cost limits of HHAs with cost reporting periods beginning on or after July 1, 1993, and before July 1, 1994, were subject to monthly cost reporting period adjustment factors to allow for the effects of inflation on the cost limits of HHAs with different cost reporting periods. Subsequently, under our February 14, 1995 notice, we specified that each HHA's latest per-visit cost limit for a period beginning on or after July 1, 1993, and before July 1, 1994, was to remain in effect until its cost reporting period beginning on or after July 1, 1996. Thus, HHAs with cost reporting periods beginning on July 1, 1993, for example, would be subject to lower limits than HHAs with cost reporting periods that began any time after that date. Commenters asserted that this policy created continuing inequities and suggested several alternatives, including:

- Eliminate the monthly cost reporting period adjustment factors for all HHAs.
- Set the cost reporting period adjustment factor for all HHAs to the level that would have been in effect for an agency whose cost reporting period began on June 30, 1994, effectively equalizing payment to all HHAs at the highest possible level under the limits effective for cost reporting periods beginning on or after July 1, 1993, until the establishment of the new limits effective for cost reporting periods beginning on or after July 1, 1996.
- Amend OBRA '93 to allow for the use of the market basket inflation factors set forth in our July 8, 1993 notice with comment period.

Response: We recognize that the provisions of OBRA '93 produced differences in per-visit limits for HHAs depending on their cost reporting periods. However, we do not believe that the interpretations of OBRA '93 suggested by the commenter are within our authority, given the explicit language of section 13564 of OBRA '93, which precludes ''any change'' to the existing limits (except for those related

to the elimination of the A&G add-on for hospital-based HHAs). The Congress undoubtedly was aware that not all HHAs have the same cost reporting periods, but chose not to make any adjustments to the existing cost limits in setting forth the relevant provisions. In our view, none of the three specific alternatives raised by the commenters could be accomplished through rulemaking, but would require further legislative action.

Comment: Several commenters recommended that HCFA study the weighting and price proxies of the present market basket index.

Response: As discussed in detail below, in the process of developing a revised and rebased market basket, we have thoroughly examined the current market basket cost categories, weights, and price proxies. We have tabulated freestanding HHA 1993 Medicare cost report data, the latest available data that are relatively complete, in order to develop the cost structure of freestanding home health agencies. New cost categories based on the latest Medicare Cost Reports and other sources have been used and revised price proxies have been applied that more accurately represent reasonable price changes of the new cost categories.

The 1993-based weights reflect the latest available structure of costs for HHAs. The 1993-based market basket has 12 cost categories, only three of which replicate the previous, 1976-based market basket cost categories. Both the wages and salaries and employee benefit price proxies are occupational indexes and have relative weights specific to the home health industry. Price proxies reflect economy-wide as well as hospital wages. The occupational indexes each contain four occupational subcategories: professional and technical workers (including registered nurses, therapists, medical social workers and other professional/technical workers); managerial and supervisory workers; clerical workers; and service workers (which includes home health aides). The non-labor proxies include price series which represent specific cost categories such as telephones and postage expenses as well as more general categories, such as All Other Expenses.

We believe that the 1993-based market basket cost categories accurately reflect the structure of HHA costs, and that the price proxies accurately reflect the price changes in the goods and services purchased by prudent HHAs.

Comment: Several commenters recommended that HCFA include service-related measures in order to make the market basket a better prognosticator of costs per visit.

Response: Under a case-mix system of payment, service-related measures may be useful in setting upper limits for particular illness levels for each of the categories of HHA visits, just as prospective payment system for hospitals uses different illness levels for various diagnostic groups. Under the current HHA payment system, however, different intensities of HHA services associated with patients' illness levels and needs for care are reflected in the mix of types of visits used and in the number and length of visits per week. The percent increase in costs per visit per unit of time are approximately the same for all categories of visits. Thus, we apply a uniform HHA market basket inflation adjustment, just as the hospital prospective payment system uses a single hospital market basket adjustment factor for all DRGs.

Comment: One commenter stated that the wage indices in the February 14, 1995 and July 8, 1993 notices should have reflected changes to the Metropolitan Statistical Areas (MSAs) that were included in the hospital prospective payment system proposed rule published on May 26, 1993 (58 FR 30222).

Response: Section 1861(v)(I)(L)(iii) of the Act specifies that in establishing the HHA cost limits, we use the area wage index applicable under section 1886(d)(3)(E) of the Act. The hospital wage index used in both our July 8, 1993 and February 14, 1995 notices was the index applicable on July 1, 1993, the effective date of the July 8, 1993 and February 14, 1995 cost limits notices. (Subsequently, section 13564(a) of OBRA '93 specified that there be no changes in the HHA costs limits, except those related to the elimination of the A&G add-on, for cost reporting periods beginning on or after July 1, 1994 and before July 1, 1996.) As noted in our May 26, 1993 proposed rule and confirmed in the September 1, 1993 hospital prospective payment system final rule, the revisions to MSA designations that were discussed in the May 26, 1993 proposed rule did not take effect until October 1, 1993 (58 FR 46292). Thus, for HHA payment purposes these MSA changes are now taking effect, under this notice, for cost reporting periods beginning on or after July 1, 1996.

III. Updating the Wage Index on a Budget-Neutral Basis

Section 4207(d)(2) of the Omnibus Budget Reconciliation Act of l990 (OBRA '90) (Public Law 101–508) requires that, in updating the wage index, aggregate payments to HHAs will remain the same as they would have been if the wage index had not been updated. Therefore, overall payments to HHAs are not affected by changes in the wage index values.

To comply with the requirement of section 4207(d)(2) of OBRA '90 that updating the wage index be budget neutral, we determined that it is necessary to apply a budget neutrality adjustment factor of 0.91 to the labor-related portion of the cost limits. This adjustment ensures that aggregate payments to HHAs are not affected by the change to a wage index based on the hospital wage index published on September 1, 1995. That is, an adjustment of −9.1 percent in the labor-related portion of the limits results in the same program expenditures as if we had not updated the wage index (See the example in section VIII.A of this notice regarding the adjustment of cost limits by the wage index and the budget neutrality factor.)

IV. Update of Limits

The methodology used to develop the schedule of limits set forth in this notice is the same as that used in setting the limits effective July 1, 1993. We are continuing to use the latest settled cost report data from freestanding HHAs to develop the HHA cost limits. We have updated the cost limits to reflect the expected cost increases occurring between the cost reporting periods for the data contained in the data base and June 30, 1997.

A. Data Used

To develop the schedule of limits effective July 1, 1996, we extracted actual cost per-visit data from settled Medicare cost reports for periods beginning on or after June 1, 1991, and settled by October 1, 1995. The majority of the cost reports were from Federal fiscal year (FY) 1993. We then adjusted the data using the latest available market basket indexes to reflect expected cost increases occurring between the cost reporting periods contained in our data base and June 30, 1997.

In previous cost limits, HCFA used the market basket index to adjust the cost report data to the midpoint (December 31) of the first cost reporting period to which the limits applied (July 1). The present limits adjust the data to the end of the first cost reporting period to which the limits apply (June 30, 1997), a change that will enable fiscal intermediaries to calculate the applicable adjustment factors for HHAs with a cost reporting period of fewer than 12 months. Previously, the

intermediaries had to contact HCFA's central office for this adjustment.

We note that, under this notice, we are no longer providing for an add-on to the HHA cost limits for those HHAs that incur costs associated with the OSHA universal precaution requirements. This add-on is no longer necessary because these updated limits were computed using a data base that includes the costs of complying with the OSHA standards.

B. Wage Index

The wage index is used to adjust the labor-related portion of the limits to reflect differing wage levels among areas. In setting this schedule of limits, we used the FY 1996 hospital wage index, which is based on 1992 hospital wage data.

Each HHA's labor market area is determined based on the definitions of MSAs issued by the Office of Management and Budget (OMB). Section 1861(v)(1)(L) of the Act requires that we use the current hospital wage index (that is, the FY 1996 hospital wage index, which was published in the Federal Register on September 1, 1995 (60 FR 45883)) to establish the HHA cost limits. Therefore, this schedule of limits reflects the MSA definitions that currently are in effect under the hospital prospective payment system.

We are continuing to incorporate exceptions to the MSA classification system for certain New England counties that were identified in the July 1, 1992 notice (57 FR 29410). These exceptions have been recognized in setting hospital cost limits for cost reporting periods beginning on and after July 1, 1979 (45 FR 41218), and were authorized under section 601(g) of the Social Security Amendments of 1983 (Public Law 98–21). Section 601(g) of Public Law 98–21 requires that any hospital in New England that was classified as being in an urban area under the classification system in effect in 1979 will be considered urban for the purposes of the hospital prospective payment system. This provision is intended to ensure equitable treatment under the hospital prospective payment system. Under this authority, the following counties have been deemed to be urban areas for purposes of payment under the inpatient hospital prospective payment system:

- Litchfield County, CT in the Hartford, CT MSA.
- York County, ME and Sagadahoc County, ME in the Portland, ME MSA.
- Merrimack County, NH in the Boston-Brockton-Nashua, MA–NH MSA.
- Newport County, RI in the Providence Fall-Warwick, RI MSA.

We are continuing to grant these urban exceptions for the purpose of applying the HCFA hospital wage index to the HHA cost limits. These exceptions result in the same New England County Metropolitan Area (NECMA) definitions for hospitals, SNFs, and HHAs. In New England, MSAs are defined on town boundaries rather than on county lines but exclude parts of the four counties cited above that would be considered urban under the MSA definition. Under this notice, those four counties are urban under either definition, NECMA or MSA.

V. Provisions of the HHA Schedule of Limits

The schedule of limits set forth below was calculated using 112 percent of the mean per-visit costs of free-standing HHAs and is adjusted by the latest estimates in the market basket index.

The schedule of limits effective for cost reporting periods beginning on or after July 1, 1996 is based on the latest settled cost data available and provides for the following:

- A classification system based on whether an HHA is located within an MSA, a NECMA, or a non-MSA area. (See Tables 7a and 7b in section X of this notice for the listing of MSAs, NECMAs, and rural areas.)
- The use of a single schedule of limits for hospital-based and freestanding agencies. This single limit is based on the cost experience of freestanding agencies.
- The use of a market basket index, which was developed from the price of goods and services purchased by HHAs to account for the impact of changing wage and price levels on HHA costs. The market basket has been rebased and revised as described in section VI of this notice.
- The use of the current hospital wage index. The wage index is used to adjust the labor-related portion of the limits. The employee wage portion of the market basket index, including a proportionate share of contract services (64.226 percent), and the employee benefits portion (13.442 percent) are used to determine the labor component (77.668 percent) of all HHA per-visit costs used to set the limits.
- Separate treatment of the labor-related and nonlabor components of per-visit costs. The separate components of costs are calculated by obtaining actual HHA cost data for each agency for cost periods beginning on or after June 1, 1991 and settled before October 1, 1995, and increasing those data by the actual and projected increases in the HHA market basket index. We then separate each HHA's per-visit costs into labor and nonlabor portions, and divide the labor portion by the wage index value for the agency's location to control for the effect of geographic variations in prevailing wage levels. Separate means are computed for the labor and nonlabor components of per-visit costs. For each comparison group, the resulting amounts are shown in Table 6 of section IX of this notice.
- The application of a cost-of-living adjustment to the nonlabor portion of the limit for HHAs located in Alaska, Hawaii, Puerto Rico, and the U.S. Virgin Islands.
- Limits that are determined for the per-visit cost of each type of home health service: skilled nursing care, physical therapy, speech pathology, occupational therapy, medical social services, and home health aide.
- Application of the limits in the aggregate after an HHA's actual costs are adjusted. An HHA's actual costs are adjusted for individual items of cost that are found to be excessive under Medicare principles of provider payment and for costs that are not included in the limitation amount. The limits are applied in the aggregate to the cost remaining after these adjustments are made. Payment is limited to the lower of the actual costs or the cost limits.

VI. Rebasing and Revising of the Home Health Agency Market Basket

A. Background

Effective for cost reporting periods beginning on or after July 1, 1980, HCFA developed and adopted a home health agency input price index (that is, the home health agency ''market basket''). Although ''market basket'' technically describes the mix of goods and services used to produce home health care, this term is also commonly used to denote the input price index derived from that market basket. Accordingly, the term ''market basket'' used in this notice refers to the home health agency input price index.

The percentage change in the market basket reflects the average change in the price of goods and services purchased by home health agencies to furnish reasonable cost home health care services. HCFA first used the market basket to adjust home health agency cost limits by an amount that reflected the average increase in the prices of the goods and services used to furnish reasonable cost home health care. This approach linked the increase in the cost limits to the efficient utilization of resources. For background information on the home health agency market basket, see the February 15, 1980

Federal Register (45 FR 10451) and the February 14, 1995 Federal Register (60 FR 8392).

The home health agency market basket is a fixed-weight Laspeyres type price index constructed in three steps. First, a base period is selected and total base period expenditures are estimated for mutually exclusive and exhaustive spending categories based upon type of expenditure. Then the proportion of total costs that each category represents is determined. These proportions are called ''cost'' or ''expenditure weights.'' The next step essential for developing an input price index is to match each expenditure category to an appropriate price/wage variable, called a price proxy. These proxy variables are drawn from a publicly available statistical series published on a consistent schedule, preferably at least quarterly. In the final step, the price level for each spending category is multiplied by the expenditure weight for that category. The sum of these products (that is, weights multiplied by proxied indexed levels) for all cost categories yields the composite index level in the market basket in a given year. Repeating the third step (that is, establishing a price proxy for each expenditure category) for other years will produce a time series of market basket index levels. Dividing one index level by an earlier index will produce rates of growth in the input price index.

The market basket is described as a fixed-weight index because it answers the question of how much more or less it would cost, at a later time, to purchase the same mix of goods and services that was purchased in the base period. The effects on total expenditures resulting from changes in the quantity or mix of goods and services purchased subsequent to the base period are by design not considered.

HCFA believes that it is desirable to rebase the market basket so the cost weights reflect changes in the mix of goods and services that HHAs purchase (HHA inputs) in furnishing home health care. The current HHA cost weights are from calendar year 1976. To the extent feasible, the data used to rebase the home health agency market basket are from FY 1993. If data from other periods supplemented FY 1993 data, they were aged forward or backward for price changes.

B. Rebasing and Revising the Home Health Agency Market Basket

The terms ''rebasing'' and ''revising'', while often used interchangeably, actually denote different activities. Rebasing is the term used to define moving the base year for the structure of costs of an input price index (that is, for this notice we are moving the base year cost structure from calendar year 1976 to Federal fiscal year 1993). Revising is the term used to define changing data sources, cost categories, and/or price proxies used in the input price index.

HCFA has rebased and revised the home health agency market basket to:

- Reflect 1993 cost data, the latest available data on the structure of HHA costs, rather than 1976 cost data;
- Create additional cost categories; and
- Modify certain variables used as the price proxies for some of the cost categories, using improved price proxies that were not available when the current market basket was developed.

In developing the revised market basket, HCFA reviewed HHA expenditure data for the market basket cost categories. For each freestanding HHA, we reviewed the latest settled cost report whose cost reporting period began on or after June 1, 1991 and was settled by October 1, 1995. These reports primarily were from FY 1993. Earlier and later year cost data were aged forward or backward for price changes to FY 1993. Data on home health agency expenditures for nine major expense categories (wages and salaries, employee benefits, transportation, operation and maintenance, administrative and general, insurance, fixed capital, movable capital, and a residual ''all other'') were tabulated. Expenditures for contract services were also tabulated from these Medicare cost reports. After totals for these main cost categories were calculated, we then determined the proportion of total costs that each category represents. The proportions represent the major rebased market basket weights.

Weights for the telephone, paper and printing, postage, and residual all other administrative and general subcategories were determined using the latest available (1987) U.S. Department of Commerce Bureau of Economic Analysis (BEA) Input-Output Table, from which data for other medical and health services were extracted. These data were aged from 1987 to 1993 using relative price changes. The BEA Input-Output database, which is updated at 5-year intervals, was most recently described in the Survey of Current Business article, ''Benchmark Input-Output Accounts for the U.S. Economy, 1987'' (April 1994).

This work resulted in the identification of 12 separate cost categories. The 1976-based home health agency market basket had nine separate cost categories. Detailed descriptions of each category and respective price proxy are provided in the Appendix to this notice. The differences between the major categories for the 1993-based index and those used for the current 1976-based index are summarized in Table 1 below. HCFA has allocated the Contracted Services weight to the Wages and Salaries and Employee Benefits cost categories in the 1976-based index in the same way as the 1993-based index for consistency and ease of comparison. See Table 2 for documentation of how HCRIS contract services' labor was allocated to three cost category components.

TABLE 1.—COMPARISON OF 1993 AND 1976 HOME HEALTH AGENCY MAJOR COST CATEGORIES AND WEIGHTS

Cost categories	Rebased 1993 Home Health Agency market basket	1976-based market basket, adjusted for consistency of contract labor with rebased 1993-based market basket
Wages and Salaries, including allocated Contract Services' Labor	64.226	70.724
Employee Benefits, including allocated Contract Services' Labor	13.442	8.577
All Other, including allocated Contract Services' Non-Labor to Other Administrative & General and Other Expenses	22.332	20.699
Total	100.000	100.000

The 1993-based cost categories and weights are listed in Table 2 below.

TABLE 2.—1993-BASED COST CATEGORIES, WEIGHTS, AND PRICE PROXIES

Cost Category	1993-based market basket weight	Price proxy
Compensation, including allocated Contract Services' Labor	77.668	
Wages and Salaries, including allocated Contract Services' Labor	64.226	HHA Occupational Wage Index.
Employee benefits, including allocated Contract Services' Labor	13.442	HHA Occupational Benefits Index.
Operations & Maintenance	0.832	CPI–U Fuel & Other Utilities.
Administrative & General, including allocated Contract Services' Non-Labor	9.569	
Telephone	0.725	CPI–U Telephone.
Paper & Printing	0.529	CPI–U Household Paper, Paper Products & Stationery Supplies.
Postage	0.724	CPI–U Postage.
Other Administrative & General, including allocated Contract services Non-Labor	7.591	CPI–U Services.
Transportation	3.405	CPI–U Private Transportation.
Capital-Related	3.204	
Insurance	0.560	CPI–U Household Insurance.
Fixed Capital	1.764	CPI–U Owner's Equivalent Rent.
Movable Capital	0.880	PPI Machinery & Equipment.
Other Expenses, including allocated Contract Services' Non-Labor	5.322	CPI–U All Items Less Food & Energy.
Total	100.000	

In the 1976-based market basket, the labor-related portion was 79.301 and the remaining share was 20.699. In the revised and rebased market basket, the labor-related share is 77.668. The labor-related share includes wages and salaries, employee benefits, and contracted services' labor. The nonlabor-related share is 22.332. The higher share of nonlabor-related cost in 1993 may reflect in part the changing cost structure associated with the post-prospective payment system case mix of home health agencies. Table 3 details the components of the labor-related share for the 1976-based and 1993-based market baskets.

TABLE 3.—LABOR-RELATED SHARE OF HOME HEALTH AGENCY MARKET BASKET

Cost category	1993-based market basket weight	1976-based market basket weight
Wages and Salaries, including Contract Services' Labor allocation	64.226	70.724
Employee Benefits, including Contract Services' Labor allocation	13.442	8.577
Contracted Services, Labor-Related share	(1)	(1)
Total Labor Related	77.668	79.301
Total Non-Labor Related	22.332	20.699

[1]Included above.

After the 1993 cost weights for the rebased home health agency market basket were computed, we selected the most appropriate wage and price proxies currently available to monitor the rate of increase for each expenditure category. The indicators are based on Bureau of Labor Statistics (BLS) data and are grouped into one of the following BLS categories:

• Employment Cost Indexes—Employment Cost Indexes (ECIs) measure the rate of change in employee wage rates and employer costs for employee benefits per hour worked. These indexes are fixed-weight indexes and strictly measure the change in wage rates and employee benefits per hour. They are not affected by shifts in employment mix. ECIs were not available when we developed the calendar year 1976-based home health agency market basket. ECIs are superior to average hourly earnings as price proxies for input price indexes for two reasons: (1) They measure pure price change, and (2) they are available by occupational groups, not just by industry.

• Consumer Price Indexes—Consumer Price Indexes (CPIs) measure change in the prices of final goods and services bought by the typical consumer. Consumer price indexes were used when the expenditure was more similar to that of retail consumers in general rather than a purchase at the wholesale level, or if no appropriate Producer Price Index (PPI) was available.

• Producer Price Indexes—PPIs are used to measure price changes for goods sold in other than retail markets. For example, a PPI for movable equipment was used, rather than a CPI for equipment. PPIs in some cases are preferable price proxies for goods that home health agencies purchase as inputs utilized in the process of producing their outputs.

• Average Hourly Earnings—Average Hourly Earnings (AHEs) are used to measure the rate of change of earnings for various industries and, therefore, can reflect a changing occupational mix within a particular industry. The AHE series is calculated by dividing gross payrolls by total hours, and it measures actual earnings rather than pure wage rates. It is a current-weight series rather than a fixed-weight index and thus reflects shifts in employment mix. An AHE rather than an ECI is used when there is no corresponding ECI category that is an appropriate measure of growth for a given labor category or when the ECI does not have sufficient length of history to be useful for our purpose. The 1993-based HHA input price index does not use AHE as a price proxy, but the 1976-based index did.

Our price proxies for the rebased home health agency market basket are summarized in the Appendix to this notice. The forecasted rate of growth for the fiscal year, beginning July 1, 1996, for the rebased home health agency market basket is 3.1 percent, while the forecasted rate of growth for the 1976-based home health agency market basket is 3.3 percent. A comparison of the yearly changes from 1993–1998 for the 1976-based market basket and the 1993-based market basket is shown below.

TABLE 4—COMPARISON OF THE 1993-BASED MARKET BASKET AND THE 1976–MARKET BASKET, PERCENT CHANGE, 1993–1998

Fiscal years beginning July 1	Home Health Agency market basket, FY 1993 base	Home Health Agency market basket, CY 1976 base	Difference (1993-based minus 1976-based
Historical:			
July 1992, FY 1993	3.4	3.8	(0.4)
July 1993, FY 1994	3.0	2.7	0.3
July 1994, FY 1995	2.9	3.2	(0.3)
Forecasted:			
July 1995, FY 1996	2.7	3.1	(0.4)
July 1996, FY 1997	3.1	3.3	(0.2)
July 1997, FY 1998	3.2	3.4	(0.2)
Historical Average: 1993–1995	3.1	3.2	(0.1)
Forecasted Average: 1996–1998	3.0	3.3	(0.3)

Source: DRI/McGraw Hill HCC, 1st QTR 1996;@USSIM/TREND25YR0296 @CISSIM/CONTROL961.
Released by HCFA, OACT, Office of National Health Statistics.

Note that the historical average rate of growth for 1993–1995 for the home health agency 1993-based market basket was only 0.1 percentage points less than that of the 1976-based market basket, an insignificant difference. HCFA believes that the 1993-based HHA market basket gives a more accurate measure of the annual increases in reasonable cost care because (1) The cost structure reflects 1993 rather than 1976 costs, and (2) superior new wage-price variables have been incorporated into the 1993-based index. The forecasted average annual rate of growth for 1996–1998 is 3.0 percent for the 1993-based market basket, and 3.3 percent for the 1976-based market basket. Given the complexities of forecasting, this difference is very small.

HCFA has developed a HHA Blended Wage and Salary Index and a HHA Blended Benefits Index. HCFA will use these blended indexes as price proxies for the wages and salary and the employee benefits portions of the market basket. In the 1976-based market basket, the average hourly earnings in the hospital industry (nonsupervisory workers) was used as a price proxy for wages and salaries, and the supplements to wages and salaries per worker in nonagricultural establishments were used as a price proxy for employee benefits.

The new price proxies for these two cost categories are similar to those used in the prospective payment hospital market basket and the excluded hospital market basket, but with occupational weights reflecting the occupational mix in home health agencies. These proxies are a combination of internal and external proxies (health industry specific and economy-wide). HCFA has disaggregated the mix of home health agency workers into specific categories and applied a combination of internal and external price proxies in the HCFA HHA Occupational Wage and Salary and Benefits Indexes. The supply and demand relationships for certain professional-technical occupations such as registered nurses may be more appropriately reflected in the blended indicators of compensation changes for professional and technical employees. The occupational composition of the HHA Occupational Wage and Salary Index and the HHA Occupational Benefits Index are shown in the Appendix to this notice.

VII. Methodology for Determining Cost-per-Visit Limits

A. Data

For this notice, the cost-per-visit limit values were determined by extracting settled actual cost-per-visit data from Medicare cost reports for periods beginning on or after June 30, 1991, and settled before October 1, 1995. We then adjusted the data using the latest available market basket factors to reflect expected cost increases occurring between the cost reporting periods contained in our data base and June 30, 1997. The following adjustment factors were used to compute the per-visit costs:

TABLE 5.—FACTORS FOR INFLATING DATA BASE DOLLARS TO JUNE 30, 1997

[Inflation Adjustment Factors] [1]

Fiscal year end	1992	1993	1994
January 31	.....	1.13729	1.10178
February 28	.....	1.13412	1.09908
March 31	.....	1.13096	1.09642
April 30	.....	1.12782	1.09380
May 31	.....	1.12473	1.09121
June 30	1.15976	1.12172	1.08863
July 31	1.15643	1.11878	1.08606
August 31	1.15316	1.11589	1.08349
September 30	1.14995	1.11301	1.08090
October 31	1.14678	1.11015	1.07830
November 30	1.14363	1.10731	1.07571
December 31	1.14047	1.10453	1.07316

[1] By multiplying nominal dollars for a given fiscal year end by its respective inflation adjustment factor will express those dollars in the dollar levels for June 30, 1997.

Sources: Input Price Index used to develop adjustment factors were obtained from DRI/McGraw-Hill for the period between 1989:4 and 1999:4. The forecasts are from DRI's 1st QTR 1996;@USSIM/TREND25YR 0296 @CISSIM/Control 961 forecast exercise which has historical data through 1995:4.

B. Cost Reporting Periods Consisting of Fewer Than 12 Months

HHAs may have cost reporting periods that are fewer than 12 months in duration. This may happen, for example, when a new provider enters the Medicare program after its selected fiscal year has already begun, or when a provider experiences a change of ownership before the end of the cost reporting period. As explained in section IV of this preamble, the data used in calculating the cost limits were updated to June 30, 1997. Therefore, the cost limits published in this notice are for a 12-month cost reporting period beginning July 1, 1996 and ending June 30, 1997. For 12-month cost reporting periods beginning after July 1, 1996 and before July 1, 1997, cost reporting year adjustment factors are provided in Table 8. However, when a cost reporting period consists of fewer than 12 months, adjustments must be made to the data that have been developed for use with 12-month cost reporting periods. In previous notices, we instructed intermediaries to contact HCFA for short period adjustment factors. In this notice, however, to promote the efficient dissemination of cost limits to providers with cost reporting periods of fewer than 12 months, we are publishing the following examples and tables to enable intermediaries to calculate the applicable adjustment factors.

Cost reporting periods of fewer than 12 months may not necessarily begin on the first of the month or end on the last day of the month. In order to simplify the process in calculating ''short period'' adjustment factors, if the short cost reporting period begins before the sixteenth of the month, we will consider the period have begun on the first of that month. If the start period begins on or after the sixteenth of the month, it will be considered to have begun at the beginning of the next month. Also, if the short period ends before the sixteenth of the month, we will consider the period to have ended at the end of the preceding month; if the short period ends on or after the sixteenth of the month it will be considered to have ended at the end of that month.

Examples

1. After approval by its intermediary, an HHA changes its fiscal year end from June 30 to December 31. Therefore, the HHA had a short cost reporting period beginning on July 1, 1996 and ending on December 31, 1996. The cost limits that apply to this short period must be adjusted as follows:

Step 1—From Table 9, sum the index levels for the months of July, 1996 through December, 1996: 6.84863.

Step 2—Divide the results from Step 1 by the number of months in the short period.

6.84963 ÷ 6 = 1.141438

Step 3—From Table 9, sum the index levels for the months in the common period of July, 1996 through June, 1997.

13.79728

Step 4—Divide the results in Step 3 by the number of months in the common period.

13.79728 ÷ 12 = 1.149773

Step 5—Divide the results from Step 2 by the results from Step 4. This is the adjustment factor to be applied to the published limits

1.141438 ÷ 1.149773 = .992751

Step 6—Apply the results from Step 5 to the published cost limits.

a. Urban Skilled Nursing Labor Portion

$76.57 × .992751 = $76.01

b. Urban Skilled Nursing Nonlabor Portion

$21.62 × .992751 = $21.46.

2. A HHA with a fiscal year end of November 30, 1996 changes ownership on September 21, 1997. The HHA is required to file a terminated cost report for the period of December 1, 1996 to September 21, 1997. The cost limits that apply to this short period must be adjusted as follows:

Step 1—From Table 9, sum the index level for the month of December, 1996 through September, 1997.

11.61295

Step 2—Divide the results from Step 1 by the number of months in the short period.

11.61295 ÷ 10 = 1.161295

Step 3—From Table 9, sum the index levels for the months in the common period of July, 1996, through June, 1997.

13.79728

Step 4—Divide the results from Step 3 by the number of months in the common period.

13.79728 ÷ 12 = 1.149773

Step 5—Divide the results from Step 2 by the results from Step 4.

1.161295 ÷ 1.149773 = 1.010021

Step 6—Apply the results from Step 5 to the published cost limits.

a. Urban Skilled Nursing Labor Portion

$76.57 × 1.010021 = $77.34

b. Urban Skilled Nursing Non-Labor Portion

$21.62 × 1.010021 = $21.84

C. Standardization for Wage Levels

After adjustment by the market basket index, we divided each HHA's per-visit

costs into labor and nonlabor portions. The labor portion of costs (77.668 percent as determined by the market basket) represents the employee wage and benefit factor plus the contract services factor from the market basket. We then divided the labor portion of per-visit costs by the wage index applicable to the HHA's location to arrive at an adjusted labor cost.

D. Adjustment for ''Outliers''

We transformed all per-visit cost data into their natural logarithms and grouped them by type of service and MSA, NECMA, or non-MSA location, in order to determine the mean cost and standard deviation for each group. We then eliminated all ''outlier'' costs, retaining only those per-visit costs within two standard deviations of the mean in each service.

E. Basic Service Limit

We calculate a basic service limit equal to 112 percent of the mean labor and nonlabor portions of the per-visit costs of freestanding HHAs for each type of service. (See Table 6 in section IX.)

VIII. Computing the Adjusted Limit

A. Adjustment of Cost Limits by Wage Index

To arrive at the adjusted limit, which is to be applied to each service furnished by an HHA, the HHA's intermediary first determines the adjusted labor-related component by multiplying the labor-related component of the limit by the appropriate wage index and by multiplying the adjusted labor-related component by the special labor adjustment for budget neutrality. (See example below and Tables 7a and 7b in section X of this notice.) The sum of the nonlabor component plus the labor-related component is the adjusted limit applicable to an HHA.

Example—Calculation of Adjusted Occupational Therapy Limit for a Freestanding HHA in Dallas, TX

Labor component (Table 6)	83.41
Wage index value (Table 7a)	0.9804
Labor portion	81.78
Special labor adjustment for budget neutrality	0.91
Adjusted labor portion	74.42
Nonlabor component (Table 6)	23.84
Adjusted occupational therapy limit	98.26

B. Adjustment for Reporting Year

If an HHA has a 12-month cost reporting period beginning on or after August 1, 1996, the adjusted per-visit limit for each service is again revised by an adjustment factor from Table 8 that corresponds to the month and year in which the cost reporting period begins. Each factor represents the compounded rate of monthly increase derived from the projected annual increase in the market basket index, and is used to account for inflation in costs that will occur after the date on which the limits become effective.

For example, if the HHA in the example above had a cost reporting period beginning January 1, 1997, its per-visit therapy limit would be further adjusted as follows:

Computation of Revised Limit for Occupational Therapy

Adjusted per-visit limit	98.26
Adjustment factor from Table 8	1.01524
Revised per-visit limit	99.76

In this example, the revised adjusted per-visit limit for occupational therapy applicable to this HHA for the cost reporting period beginning January 1, l997, is $99.76 per visit.

If an HHA uses a cost reporting period that is not 12 months in duration, a special calculation of the adjustment factor must be made. This results from the fact that projections are computed to June 30, 1997. This calculation is done using the methodology described in section VII.B.

IX. Schedule of Limits

The schedule of limits set forth below applies to cost reporting periods beginning on or after July 1, 1996. The intermediaries will compute the adjusted limits using the wage index published in Tables 7a and 7b of section X and will notify each HHA they service of its applicable cost per-visit limit for each type of service. Each HHA's aggregate limit cannot be determined prospectively, but depends on each HHA's Medicare visits for each type of service for the cost reporting periods subject to this notice.

The HHA costs that are subject to the limits include the cost of medical supplies routinely furnished in conjunction with patient care. Durable medical equipment, orthotics, prosthetics, and other medical supplies directly identifiable as services to an individual patient are excluded from the per-visit costs and are paid without regard to this schedule of limits. (See Chapter IV of the Home Health Agency Manual (HCFA Pub. ll).)

The intermediary will determine the limit for each HHA by multiplying the number of Medicare visits for each type of service furnished by the HHA, by the respective per-visit cost limit. The sum of these amounts is compared to the HHA's total allowable cost.

Example: HHA X, a freestanding agency located in Richmond, VA, furnished 5,000 covered skilled nursing visits, 2,000 physical therapy visits, and 4,000 home health aide visits to Medicare beneficiaries during its 12-month cost reporting period beginning July 1, 1996. The aggregate cost limit for the HHA is calculated as follows:

DETERMINING THE AGGREGATE COST LIMIT

Type of visit	Visits	Nonlabor portion	Adjusted labor portion	Adjusted limit [1]	Aggregate limit
Skilled nursing	5,000	$21.62	$63.09	$84.71	$423,550
Physical therapy	2,000	23.59	69.09	92.65	185,360
Home health aide	4,000	10.56	30.60	41.16	164,640
Total Visits	11,000	.....	.....	.....	.....
Aggregate cost limit	.....	.....	.....	.....	773,5501

[1] Includes special labor adjustment of 0.91 for budget neutrality.

Before the limits are applied during settlement of the cost report, the HHA's actual costs are reduced by the amount of individual items of cost (for example, administrative compensation and contract services) that are found to be excessive under the Medicare principles of provider payment. That is, the intermediary reviews the various reported costs, taking into account all the Medicare payment principles; for example, the cost guidelines for

physical therapy furnished under arrangements (see 42 CFR 413.106) and the limitation on costs that are substantially out of line with those comparable home health agencies (see 42 CFR 413.9).

TABLE 6.—PER VISIT LIMITS FOR HOME HEALTH AGENCIES

Type of visit	Limit	Labor portion	Nonlabor portion [1]
MSA (NECMA) location:			
Skilled nursing care	98.19	76.57	21.62
Physical therapy	107.43	83.84	23.59
Speech pathology	107.99	84.11	23.88
Occupational therapy	107.25	83.41	23.84
Medical social services	142.05	110.59	31.46
Home health aide	47.70	37.14	10.56
Non-MSA location:			
Skilled nursing care	109.62	89.53	20.09
Physical therapy	119.65	97.61	22.04
Speech pathology	130.61	106.31	24.30
Occupational therapy	129.30	105.06	24.24
Medical social services	184.03	149.82	34.21
Home health aide	47.60	38.87	8.73

[1] Nonlabor portion of limits for HHA located in Alaska, Hawaii, Puerto Rico, and the Virgin Islands are increased by multiplying them by the following cost-of-living adjustment factors:

Location	Adjustment factor
Alaska	1.250
Hawaii:	
Oahu	1.225
Kauai	1.175
Maui, Lanai, and Molokai	1.200
Hawaii (Island)	1.150
Puerto Rico	1.100
Virgin Islands	1.125

X. Wage Indexes

TABLE 7A.—WAGE INDEX FOR URBAN AREAS

Urban area (constituent counties or county equivalents)	Wage index
0040 Abilene, TX	0.8546
Taylor, TX	
0060 Aguadilla, PR	0.4744
Aguada, PR	
Aguadilla, PR	
Moca, PR	
0080 Akron, OH	0.9558
Portage, OH	
Summit, OH	
0120 Albany, GA	0.8608
Dougherty, GA	
Lee, GA	
0160 Albany-Schenectady-Troy, NY	0.8818
Albany, NY	
Montgomery, NY	
Rensselaer, NY	
Saratoga, NY	
Schenectady, NY	
Schoharie, NY	
0200 Albuquerque, NM	0.9542
Bernalillo, NM	
Sandoval, NM	
Valencia, NM	
0220 Alexandria, LA	0.7917
Rapides, LA	
0240 Allentown-Bethlehem-Easton, PA	1.0198

TABLE 7A.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
Carbon, PA	
Lehigh, PA	
Northampton, PA	
0280 Altoona, PA	0.9007
Blair, PA	
0320 Amarillo, TX	0.8759
Potter, TX	
Randall, TX	
0380 AK Anchorage, AK	1.3373
Anchorage,	
0440 Ann Arbor, MI	1.2116
Lenawee, MI	
Livingston, MI	
Washtenaw, MI	
0450 Anniston, AL	0.8158
Calhoun, AL	
0460 Appleton-Oshkosh-Neenah, WI	0.8844
Calumet, WI	
Outagamie, WI	
Winnebago, WI	
0470 Arecibo, PR	0.4498
Arecibo, PR	
Camuy, PR	
Hatillo, PR	
0480 Asheville, NC	0.9218
Buncombe, NC	
Madison, NC	
0500 Athens, GA	0.9097
Clarke, GA	

TABLE 7A.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
Madison, GA	
Oconee, GA	
0520 *Atlanta, GA	1.0069
Barrow, GA	
Bartow, GA	
Carroll, GA	
Cherokee, GA	
Clayton, GA	
Cobb, GA	
Coweta, GA	
DeKalb, GA	
Douglas, GA	
Fayette, GA	
Forsyth, GA	
Fulton, GA	
Gwinnett, GA	
Henry, GA	
Newton, GA	
Paulding, GA	
Pickens, GA	
Rockdale, GA	
Spalding, GA	
Walton, GA	
0560 Atlantic City- Cape May, NJ	1.0935
Atlantic City, NJ	
Cape May, NJ	
0600 Augusta-Aiken, GA-SC	0.8955
Columbia, GA	
McDuffie, GA	
Richmond, GA	

TABLE 7A.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
Aiken, SC	
Edgefield, SC	
0640 Austin-San Marcos, TX	0.9255
Bastrop, TX	
Caldwell, TX	
Hays, TX	
Travis, TX	
Williamson, TX	
0680 Bakersfield, CA	1.0502
Kern, CA	
0720 *Baltimore, MD	0.9865
Anne Arundel, MD	
Baltimore, MD	
Baltimore City, MD	
Carroll, MD	
Harford, MD	
Howard, MD	
Queen Annes, MD	
0733 Bangor, ME	0.9360
Penobscot, ME	
0743 Barnstable-Yarmouth, MA	1.3457
Barnstable, MA	
0760 Baton Rouge, LA	0.8670
Ascension, LA	
East Baton Rouge, LA	
Livingston, LA	
West Baton Rouge, LA	
0840 Beaumont-Port Arthur, TX	0.8603
Hardin, TX	
Jefferson, TX	
Orange, TX	
0860 Bellingham, WA	1.2681
Whatcom, WA	
0870 Benton Harbor, MI	0.8258
Berrien, MI	
0875 *Bergen-Passaic, NJ	1.1677
Bergen, NJ	
Passaic, NJ	
0880 Billings, MT	0.8705
Yellowstone, MT	
0920 Biloxi-Gulfport-Pascagoula, MS	0.8448
Hancock, MS	
Harrison, MS	
Jackson, MS	
0960 Binghamton, NY	0.9005
Broome, NY	
Tioga, NY	
1000 Birmingham, AL	0.9144
Blount, AL	
Jefferson, AL	
St. Clair, AL	
Shelby, AL	
1010 Bismarck, ND	0.8299
Burleigh, ND	
Morton, ND	
1020 Bloomington, IN	0.8429
Monroe, IN	
1040 Bloomington-Normal, IL	0.8740
McLean, IL	
1080 Boise City, ID	0.9051
Ada, ID	
Canyon, ID	
1123 *Boston-Brockton-Nashua-MA-NH	1.1684
Bristol, MA	
Essex, MA	
Middlesex, MA	
Norfolk, MA	
Plymouth, MA	
Suffolk, MA	
Worcester, MA	
Hillsborough, NH	
Merrimack, NH	
Rockingham, NH	
Strafford, NH	
1125 Boulder-Longmont, CO	0.9780
Boulder, CO	
1145 Brazoria, TX	0.8814
Brazoria, TX	
1150 Bremerton, WA	1.0295
Kitsap, WA	
1240 Brownsville-Harlingen-San Benito, TX	0.8649
Cameron, TX	
1260 Bryan-College Station, TX	0.8987
Brazos, TX	
1280 *Buffalo-Niagara Falls, NY	0.9186
Erie, NY	
Niagara, NY	
1303 Burlington, VT	0.9252
Chittenden, VT	
Franklin, VT	
Grand Isle, VT	
1310 Caguas, PR	0.4706
Caguas, PR	
Cayey, PR	
Cidra, PR	
Gurabo, PR	
San Lorenzo, PR	
1320 Canton-Massillon, OH	0.8749
Carroll, OH	
Stark, OH	
1350 Casper, WY	0.8429
Natrona, WY	
1360 Cedar Rapids, IA	0.8359
Linn, IA	
1400 Champaign-Urbana, IL	0.8867
Champaign, IL	
1440 Charleston-North Charleston, SC	0.8928
Berkeley, SC	
Charleston, SC	
Dorchester, SC	
1480 Charleston, WV	0.9498
Kanawha, WV	
Putnam, WV	
1520 *Charlotte-Gastonia-Rock Hill, NC-SC	0.9661
Cabarrus, NC	
Gaston, NC	
Lincoln, NC	
Mecklenburg, NC	
Rowan, NC	
Union, NC	
York, SC	
1540 Charlottesville, VA	0.9179
Albemarle, VA	
Charlottesville City, VA	
Fluvanna, VA	
Greene, VA	
1560 Chattanooga, TN–GA	0.9129
Catoosa, GA	
Dade, GA	
Walker, GA	
Hamilton, TN	
Marion, TN	
1580 Cheyenne, WY	0.7935
Laramie, WY	
1600 *Chicago, IL	1.0632
Cook, IL	
DeKalb, IL	
DuPage, IL	
Grundy, IL	
Kane, IL	
Kendall, IL	
Lake, IL	
McHenry, IL	
Will, IL	
1620 Chico-Paradise, CA	1.0531
Butte, CA	
1640 *Cincinnati, OH–KY–IN	0.9418
Dearborn, IN	
Ohio, IN	
Boone, KY	
Campbell, KY	
Gallatin, KY	
Grant, KY	
Kenton, KY	
Pendleton, KY	
Brown, OH	
Clermont, OH	
Hamilton, OH	
Warren, OH	
1660 Clarksville-Hopkinsville, TN–KY	0.7542
Christian, KY	
Montgomery, TN	
1680 *Cleveland-Lorain-Elyria, OH	0.9835
Ashtabula, OH	
Cuyahoga, OH	
Geauga, OH	
Lake, OH	
Lorain, OH	
Medina, OH	
1720 Colorado Springs, CO	0.9294
El Paso, CO	
1740 Columbia, MO	0.9461
Boone, MO	
1760 Columbia, SC	0.9033
Lexington, SC	
Richland, SC	
1800 Columbus, GA–AL.	
Russell, AL	0.7756
Chattanoochee, GA	
Harris, GA	
Muscogee, GA	
1840 *Columbus, OH	0.9734
Delaware, OH	
Fairfield, OH	
Franklin, OH	
Licking, OH	
Madison, OH	
Pickaway, OH	
1880 Corpus Christi, TX	0.8941
Nueces, TX	
San Patricio, TX	
1900 Cumberland, MD–WV	0.8372
Allegany, MD	
Mineral, WV	
1920 *Dallas, TX	0.9804
Collin, TX	
Dallas, TX	
Denton, TX	
Ellis, TX	
Henderson, TX	
Hunt, TX	
Kaufman, TX	
Rockwall, TX	

TABLE 7A.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
1950 Danville, VA	0.8465
Danville City, VA	
Pittsylvania, VA	
1960 Davenport-Rock Island-Moline, IA–IL	0.8347
Scott, IA	
Henry, IL	
Rock Island, IL	
2000 Dayton-Springfield, OH	0.9428
Clark, OH	
Greene, OH	
Miami, OH	
Montgomery, OH	
2020 Daytona Beach, FL	0.8902
Flagler, FL	
Volusia, FL	
2030 Decatur, AL	0.8180
Lawrence, AL	
Morgan, AL	
2040 Decatur, IL	0.7790
Macon, IL	
2080 *Denver, CO	1.0447
Adams, CO	
Arapahoe, CO	
Denver, CO	
Douglas, CO	
Jefferson, CO	
2120 Des Moines, IA	0.8792
Dallas, IA	
Polk, IA	
Warren, IA	
2160 *Detroit, MI	1.0831
Lapeer, MI	
Macomb, MI	
Monroe, MI	
Oakland, MI	
St. Clair, MI	
Wayne, MI	
2180 Dothan, AL	0.7751
Dale, AL	
Houston, AL	
2190 Dover, DE	0.8960
Kent, DE	
2200 Dubuque, IA	0.8054
Dubuque, IA	
2240 Duluth-Superior, MN–WI	0.9660
St. Louis, MN	
Douglas, WI	
2281 Dutchess County, NY	1.0754
Dutchess, NY	
2290 Eau Claire, WI	0.8660
Chippewa, WI	
Eau Claire, WI	
2320 El Paso, TX	0.9266
El Paso, TX	
2330 Elkhart-Goshen, IN	0.8764
Elkhart, IN	
2335 Elmira, NY	0.8460
Chemung, NY	
2340 Enid, OK	0.8170
Garfield, OK	
2360 Erie, PA	0.9196
Erie, PA	
2400 Eugene-Springfield, OR	1.1138
Lane, OR	
2440 Evansville-Henderson, IN–KY	0.8899
Posey, IN	
Vanderburgh, IN	
Warrick, IN	
Henderson, KY	
2520 Fargo-Moorhead, ND–MN	0.8912
Clay, MN	
Cass, ND	
2560 Fayetteville, NC	0.8843
Cumberland, NC	
2580 Fayetteville-Springdale-Rogers, AR	0.7090
Benton, AR	
Washington, AR	
2620 Flagstaff, AZ–UT	0.8619
Coconino, AZ	
Kane, UT	
2640 Flint, MI	1.0738
Genesee, MI	
2650 Florence, AL	0.7700
Colbert, AL	
Lauderdale, AL	
2655 Florence, SC	0.8522
Florence, SC	
2670 Fort Collins-Loveland, CO	1.0595
Larimer, CO	
2680 *Ft. Lauderdale, FL	1.0499
Broward, FL	
2700 Fort Myers-Cape Coral, FL	0.9666
Lee, FL	
2710 Fort Pierce-Port St. Lucie, FL	1.0401
Martin, FL	
St. Lucie, FL	
2720 Fort Smith, AR–OK	0.7588
Crawford, AR	
Sebastian, AR	
Sequoyah, OK	
2750 Fort Walton Beach, FL	0.8705
Okaloosa, FL	
2760 Fort Wayne, IN	0.8691
Adams, IN	
Allen, IN	
DeKalb, IN	
Huntington, IN	
Wells, IN	
Whitley, IN	
2800 *Forth Worth-Arlington, TX	1.0059
Hood, TX	
Johnson, TX	
Parker, TX	
Tarrant, TX	
2840 Fresno, CA	1.0522
Fresno, CA	
Madera, CA	
2880 Gadsden, AL	0.8568
Etowah, AL	
2900 Gainesville, FL	0.9007
Alachua, FL	
2920 Galveston-Texas City, TX	1.0304
Galveston, TX	
2960 Gary, IN	0.9517
Lake, IN	
Porter, IN	
2975 Glens Falls, NY	0.9276
Warren, NY	
Washington, NY	
2980 Goldsboro, NC	0.8165
Wayne, NC	
2985 Grand Forks, ND–MN	0.8946
Polk, MN	
Grand Forks, ND	
2995 Grand Junction, CO	0.8957
Mesa, CO	
3000 Grand Rapids-Muskegon-Holland, MI	1.0055
Allegan, MI	
Kent, MI	
Muskegon, MI	
Ottawa, MI	
3040 Great Falls, MT	0.8913
Cascade, MT	
3060 Greeley, CO	0.9146
Weld, CO	
3080 Green Bay, WI	0.8910
Brown, WI	
3120 *Greensboro-Winston-Salem-High Point, NC	0.9160
Alamance, NC	
Davidson, NC	
Davie, NC	
Forsyth, NC Guilford, NC	
Randolph, NC	
Stokes, NC	
Yadkin, NC	
3150 Greenville, NC	0.9102
Pitt, NC	
3160 Greenville-Spartanburg-Anderson, SC	0.9047
Anderson, SC	
Cherokee, SC	
Greenville, SC	
Pickens, SC	
Spartanburg, SC	
3180 Hagerstown, MD	0.9074
Washington, MD	
3200 Hamilton-Middletown, OH	0.8782
Butler, OH	
3240 Harrisburg-Lebanon-Carlisle, PA	0.9972
Cumberland, PA	
Dauphin, PA	
Lebanon, PA	
Perry, PA	
3283 *Hartford, CT	1.2391
Hartford, CT	
Litchfield, CT	
Middlesex, CT	
Tolland, CT	
3285 Hattiesburg, MS	0.7245
Forrest, MS	
Lamar, MS	
3290 Hickory-Morganton-Lenoir, NC	0.8677
Alexander, NC	
Burke, NC	
Caldwell, NC	
Catawba, NC	
3320 Honolulu, HI	1.1212
Honolulu, HI	
3350 Houma, LA	0.7596
Lafourche, LA	
Terrebonne, LA	
3360 *Houston, TX	0.9874
Chambers, TX	
Fort Bend, TX	
Harris, TX	
Liberty, TX	
Montgomery, TX	
Waller, TX	
3400 Huntington-Ashland, WV–KY–OH	0.8997
Boyd, KY	
Carter, KY	

TABLE 7A.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
Greenup, KY	
Lawrence, OH	
Cabell, WV	
Wayne, WV	
3440 Huntsville, AL	0.8113
Limestone, AL	
Madison, AL	
3480 *Indianapolis, IN	0.9757
Boone, IN	
Hamilton, IN	
Hancock, IN	
Hendricks, IN	
Johnson, IN	
Madison, IN	
Marion, IN	
Morgan, IN	
Shelby, IN	
3500 Iowa City, IA	0.9371
Johnson, IA	
3520 Jackson, MI	0.9132
Jackson, MI	
3560 Jackson, MS	0.7543
Hinds, MS	
Madison, MS	
Rankin, MS	
3580 Jackson, TN	0.8511
Madison, TN	
3600 Jacksonville, FL	0.8953
Clay, FL	
Duval, FL	
Nassau, FL	
St. Johns, FL	
3605 Jacksonville, NC	0.6926
Onslow, NC	
3610 Jamestown, NY	0.7535
Chautaqua, NY	
3620 Janesville-Beloit, WI	0.8786
Rock, WI	
3640 Jersey City, NJ	1.1050
Hudson, NJ	
3660 Johnson City-Kingsport-Bristol, TN–VA	0.8746
Carter, TN	
Hawkins, TN	
Sullivan, TN	
Unicoi, TN	
Washington, TN	
Bristol City, VA	
Scott, VA	
Washington, VA	
3680 Johnstown, PA	0.8948
Cambria, PA	
Somerset, PA	
3710 Joplin, MO	0.7923
Jasper, MO	
Newton, MO	
3720 Kalamazoo-Battlecreek, MI	1.0657
Calhoun, MI	
Kalamazoo, MI	
Van Buren, MI	
3740 Kankakee, IL	0.9114
Kankakee, IL	
3760 *Kansas City, KS–MO	0.9351
Johnson, KS	
Leavenworth, KS	
Miami, KS	
Wyandotte, KS	
Cass, MO	
Clay, MO	
Clinton, MO	

TABLE 7A.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
Jackson, MO	
Lafayette, MO	
Platte, MO	
Ray, MO	
3800 Kenosha, WI	0.8872
Kenosha, WI	
3810 Killeen-Temple, TX	1.0526
Bell, TX	
Coryell, TX	
3840 Knoxville, TN	0.8518
Anderson, TN	
Blount, TN	
Knox, TN	
Loudon, TN	
Sevier, TN	
Union, TN	
3850 Kokomo, IN	0.8834
Howard, IN	
Tipton, IN	
3870 La Crosse, WI–MN	0.8519
Houston, MN	
La Crosse, WI	
3880 Lafayette, LA	0.8443
Acadia, LA	
Lafayette, LA	
St. Landry, LA	
St. Martin, LA	
3920 Lafayette, IN	0.8328
Clinton, IN	
Tippecanoe, IN	
3960 Lake Charles, LA	0.8094
Calcasieu, LA	
3980 Lakeland-Winter Haven, FL	0.8879
Polk, FL	
4000 Lancaster, PA	0.9569
Lancaster, PA	
4040 Lansing-East Lansing, MI	1.0105
Clinton, MI	
Eaton, MI	
Ingham, MI	
4080 Laredo, TX	0.6834
Webb, TX	
4100 Las Cruces, NM	0.8861
Dona Ana, NM	
4120 *Las Vegas, NV–AZ	1.0934
Mohave, AZ	
Clark, NV	
Nye, NV	
4150 Lawrence, KS	0.8549
Douglas, KS	
4200 Lawton, OK	0.8594
Comanche, OK	
4243 Lewiston-Auburn, ME	0.9433
Androscoggin, ME	
4280 Lexington, KY	0.8348
Bourbon, KY	
Clark, KY	
Fayette, KY	
Jessamine, KY	
Madison, KY	
Scott, KY	
Woodford, KY	
4320 Lima, OH	0.8863
Allen, OH	
Auglaize, OH	
4360 Lincoln, NE	0.9093
Lancaster, NE	
4400 Little Rock-North Little Rock, AR	0.8527
Faulkner, AR	

TABLE 7A.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
Lonoke, AR	
Pulaski, AR	
Saline, AR	
4420 Longview-Marshall, TX	0.8727
Gregg, TX	
Harrison, TX	
Upshur, TX	
4480 *Los Angeles-Long Beach, CA	1.2491
Los Angeles, CA	
4520 Louisville, KY–IN	0.9327
Clark, IN	
Floyd, IN	
Harrison, IN	
Scott, IN	
Bullitt, KY	
Jefferson, KY	
Oldham, KY	
4600 Lubbock, TX	0.8443
Lubbock, TX	
4640 Lynchburg, VA	0.8319
Amherst, VA	
Bedford, VA	
Bedford City, VA	
Campbell, VA	
Lynchburg City, VA	
4680 Macon, GA	0.8991
Bibb, GA	
Houston, GA	
Jones, GA	
Peach, GA	
Twiggs, GA	
4720 Madison, WI	1.0055
Dane, WI	
4800 Mansfield, OH	0.8373
Crawford, OH	
Richland, OH	
4840 Mayaguez, PR	0.4644
Anasco, PR	
Cabo Rojo, PR	
Hormigueros, PR	
Mayaguez, PR	
Sabana Grande, PR	
San German, PR	
4880 McAllen-Edinburg-Mission, TX	0.8669
Hidalgo, TX	
4890 Medford-Ashland, OR	0.9944
Jackson, OR	
4900 Melbourne-Titusville-Palm Bay, FL	0.9323
Brevard, FL	
4920 *Memphis, TN–AR–MS	0.8399
Crittenden, AR	
DeSoto, MS	
Fayette, TN	
Shelby, TN	
Tipton, TN	
4940 Merced, CA	1.0877
Merced, CA	
5000 *Miami, FL	1.0163
Dade, FL	
5015 *Middlesex-Somerset-Hunterdon, NJ	1.0809
Hunterdon, NJ	
Middlesex, NJ	
Somerset, NJ	
5080 *Milwaukee-Waukesha, WI	0.9498
Milwaukee, WI	
Ozaukee, WI	

TABLE 7A.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
Washington, WI	
Waukesha, WI	
5120 *Minneapolis-St. Paul, MN–WI	1.0744
Anoka, MN	
Carver, MN	
Chisago, MN	
Dakota, MN	
Hennepin, MN	
Isanti, MN	
Ramsey, MN	
Scott, MN	
Sherburne, MN	
Washington, MN	
Wright, MN	
Pierce, WI	
St. Croix, WI	
5160 Mobile, AL	0.7801
Baldwin, AL	
Mobile, AL	
5170 Modesto, CA	1.1161
Stanislaus, CA	
5190 *Monmouth-Ocean, NJ	1.0562
Monmouth, NJ	
Ocean, NJ	
5200 Monroe, LA	0.7900
Ouachita, LA	
5240 Montgomery, AL	0.7878
Autauga, AL	
Elmore, AL	
Montgomery, AL	
5280 Muncie, IN	0.9125
Delaware, IN	
5330 Myrtle Beach, SC	0.7961
Horry, SC	
5345 Naples, FL	0.9871
Collier, FL	
5360 *Nashville, TN	0.9266
Cheatham, TN	
Davidson, TN	
Dickson, TN	
Robertson, TN	
Rutherford TN	
Sumner, TN	
Williamson, TN	
Wilson, TN	
5380 *Nassau-Suffolk, NY	1.3590
Nassau, NY	
Suffolk, NY	
5483 *New Haven-Bridgeport-Stamford-Danbury-Waterbury, CT	1.2534
Fairfield, CT	
New Haven, CT	
5523 New London-Norwich, CT	1.1899
New London, CT	
5560 *New Orleans, LA	0.9454
Jefferson, LA	
Orleans, LA	
Plaquemines, LA	
St. Bernard, LA	
St. Charles, LA	
St. James, LA	
St. John The Baptist, LA	
St. Tammany, LA	
5600 *New York, NY	1.3815
Bronx, NY	
Kings, NY	
New York, NY	
Putnam, NY	

TABLE 7A.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
Queens, NY	
Richmond, NY	
Rockland, NY	
Westchester, NY	
5640 *Newark, NJ	1.1407
Essex, NJ	
Morris, NJ	
Sussex, NJ	
Union, NJ	
Warren, NJ	
5660 Newburgh, NY-PA	1.0619
Orange, NY	
Pike, PA	
5720 *Norfolk-Virginia Beach-Newport News, VA–NC	0.8411
Currituck, NC	
Chesapeake City, VA	
Gloucester, VA	
Hampton City, VA	
Isle of Wight, VA	
James City, VA	
Mathews, VA	
Newport News City, VA	
Norfolk City, VA	
Poquoson City, VA	
Portsmouth City, VA	
Suffolk City, VA	
Virginia Beach City, VA	
Williamsburg City, VA	
York, VA	
5775 *Oakland, CA	1.5202
Alameda, CA	
Contra Costa, CA	
5790 Ocala, FL	0.8942
Marion, FL	
5800 Odessa-Midland, TX	0.8753
Ector, TX	
Midland, TX	
5880 *Oklahoma City, OK	0.8358
Canadian, OK	
Cleveland, OK	
Logan, OK	
McClain, OK	
Oklahoma, OK	
Pottawatomie, OK	
5910 Olympia, WA	1.1109
Thurston, WA	
5920 Omaha, NE–IA	0.9794
Pottawattamie, IA	
Cass, NE	
Douglas, NE	
Sarpy, NE	
Washington, NE	
5945 *Orange County, CA	1.2299
Orange, CA	
5960 *Orlando, FL	0.9515
Lake, FL	
Orange, FL	
Osceola, FL	
Seminole, FL	
5990 Owensboro, KY	0.7498
Daviess, KY	
6015 Panama City, FL	0.8182
Bay, FL	
6020 Parkersburg-Marietta, WV–OH	0.7751
Washington, OH	
Wood, WV	
6080 Pensacola, FL	0.8183
Escambia, FL	

TABLE 7A.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
Santa Rosa, FL	
6120 Peoria-Pekin, IL	0.8619
Peoria, IL	
Tazewell, IL	
Woodford, IL	
6160 *Philadelphia, PA–NJ	1.1112
Burlington, NJ	
Camden, NJ	
Gloucester, NJ	
Salem, NJ	
Bucks, PA	
Chester, PA	
Delaware, PA	
Montgomery, PA	
Philadelphia, PA	
6200 *Phoenix-Mesa, AZ	0.9808
Maricopa, AZ	
Pinal, AZ	
6240 Pine Bluff, AR	0.7985
Jefferson, AR	
6280 *Pittsburgh, PA	0.9743
Allegheny, PA	
Beaver, PA	
Butler, PA	
Fayette, PA	
Washington, PA	
Westmoreland, PA	
6323 Pittsfield, MA	1.0838
Berkshire, MA	
6360 Ponce, PR	0.4780
Guayanilla, PR	
Juana Diaz, PR	
Penuelas, PR	
Ponce, PR	
Villalba, PR	
Yauco, PR	
6403 Portland, ME	0.9744
Cumberland, ME	
Sagadahoc, ME	
York, ME	
6440 *Portland-Vancouver, OR–WA	1.1248
Clackamas, OR	
Columbia, OR	
Multnomah, OR	
Washington, OR	
Yamhill, OR	
Clark, WA	
6483 Providence-Warwick, RI	1.1027
Bristol, RI	
Kent, RI	
Newport, RI	
Providence, RI	
Washington, RI	
6520 Provo-Orem, UT	0.9843
Utah, UT	
6560 Pueblo, CO	0.8508
Pueblo, CO	
6580 Punta Gorda, FL	0.9402
Charlotte, FL	
6600 Racine, WI	0.8704
Racine, WI	
6640 Raleigh-Durham-Chapel Hill, NC	0.9539
Chatham, NC	
Durham, NC	
Franklin, NC	
Johnston, NC	
Orange, NC	
Wake, NC	

TABLE 7A.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
6660 Rapid City, SD	0.8267
Pennington, SD	
6680 Reading, PA	0.9570
Berks, PA	
6690 Redding, CA	1.1796
Shasta, CA	
6720 Reno, NV	1.1087
Washoe, NV	
6740 Richland-Kennewick-Pasco, WA	1.0011
Benton, WA	
Franklin, WA	
6760 Richmond-Petersburg, VA	0.9055
Charles City County, VA	
Chesterfield, VA	
Colonial Heights City, VA	
Dinwiddie, VA	
Goochland, VA	
Hanover, VA	
Henrico, VA	
Hopewell City, VA	
New Kent, VA	
Petersburg City, VA	
Powhatan, VA	
Prince George, VA	
Richmond City, VA	
6780 *Riverside-San Bernardino, CA	1.1616
Riverside, CA	
San Bernardino, CA	
6800 Roanoke, VA	0.8483
Botetourt, VA	
Roanoke, VA	
Roanoke City, VA	
Salem City, VA	
6820 Rochester, MN	1.0545
Olmsted, MN	
6840 *Rochester, NY	0.9585
Genesee, NY	
Livingston, NY	
Monroe, NY	
Ontario, NY	
Orleans, NY	
Wayne, NY	
6880 Rockford, IL	0.8872
Boone, IL	
Ogle, IL	
Winnebago, IL	
6895 Rocky Mount, NC	0.8760
Edgecombe, NC	
Nash, NC	
6920 *Sacramento, CA	1.2539
El Dorado, CA	
Placer, CA	
Sacramento, CA	
6960 Saginaw-Bay City-Midland, MI	0.9489
Bay, MI	
Midland, MI	
Saginaw, MI	
6980 St. Cloud, MN	0.9549
Benton, MN	
Stearns, MN	
7000 St. Joseph, MO	0.8457
Andrews, MO	
Buchanan, MO	
7040 *St. Louis, MO–IL	0.8880
Clinton, IL	
Jersey, IL	
Madison, IL	
Monroe, IL	
St. Clair, IL	
Franklin, MO	
Jefferson, MO	
Lincoln, MO	
St. Charles, MO	
St. Louis, MO	
St. Louis City, MO	
Warren, MO	
7080 Salem, OR	0.9590
Marion, OR	
Polk, OR	
7120 Salinas, CA	1.4263
Monterey, CA	
7160 *Salt Lake City-Ogden, UT	0.9681
Davis, UT	
Salt Lake, UT	
Weber, UT	
7200 San Angelo, TX	0.7777
Tom Green, TX	
7240 *San Antonio, TX	0.8414
Bexar, TX	
Comal, TX	
Guadalupe, TX	
Wilson, TX	
7320 *San Diego, CA	1.1844
San Diego, CA	
7360 *San Francisco, CA	1.4413
Marin, CA	
San Francisco, CA	
San Mateo, CA	
7400 *San Jose, CA	1.4429
Santa Clara, CA	
7440 *San Juan-Bayamon, PR	0.4514
Aguas Buenas, PR	
Barceloneta, PR	
Bayamon, PR	
Canovanas, PR	
Carolina, PR	
Catano, PR	
Ceiba, PR	
Comerio, PR	
Corozal, PR	
Dorado, PR	
Fajardo, PR	
Florida, PR	
Guaynabo, PR	
Humacao, PR	
Juncos, PR	
Los Piedras, PR	
Loiza, PR	
Luguillo, PR	
Manati, PR	
Morovis, PR	
Naguabo, PR	
Naranjito, PR	
Rio Grande, PR	
San Juan, PR	
Toa Alta, PR	
Toa Baja, PR	
Trujillo Alto, PR	
Vega Alta, PR	
Vega Baja, PR	
Yabucoa, PR	
7460 San Luis Obispo-Atascadero-Paso Robles, CA	1.1405
San Luis Obispo, CA	
7480 Santa Barbara-Santa Maria-Lompoc, CA	1.1136
Santa Barbara, CA	
7485 Santa Cruz-Watsonville, CA	1.3944
Santa Cruz, CA	
7490 Santa Fe, NM	1.1108
Los Alamos, NM	
Santa Fe, NM	
7500 Santa Rosa, CA	1.2693
Sonoma, CA	
7510 Sarasota-Bradenton, FL	0.9737
Manatee, FL	
Sarasota, FL	
7520 Savannah, GA	0.8968
Bryan, GA	
Chatham, GA	
Effingham, GA	
7560 Scranton—Wilkes-Barre—Hazleton, PA	0.8724
Columbia, PA	
Lackawanna, PA	
Luzerne, PA	
Wyoming, PA	
7600 *Seattle-Bellevue-Everett, WA	1.1305
Island, WA	
King, WA	
Snohomish, WA	
7610 Sharon, PA	0.8903
Mercer, PA	
7620 Sheboygan, WI	0.7981
Sheboygan, WI	
7640 Sherman-Denison, TX	0.8780
Grayson, TX	
7680 Shreveport-Bossier City, LA	0.9007
Bossier, LA	
Caddo, LA	
Webster, LA	
7720 Sioux City, IA–NE	0.8436
Woodbury, IA	
Dakota, NE	
7760 Sioux Falls, SD	0.8761
Lincoln, SD	
Minnehaha, SD	
7800 South Bend, IN	0.9475
St. Joseph, IN	
7840 Spokane, WA	1.0377
Spokane, WA	
7880 Springfield, IL	0.8940
Menard, IL	
Sangamon, IL	
7920 Springfield, MO	0.7896
Christian, MO	
Greene, MO	
Webster, MO	
8003 Springfield, MA	1.0517
Hampden, MA	
Hampshire, MA	
8050 State College, PA	1.0162
Centre, PA	
8080 Steubenville-Weirton, OH–WV	0.8455
Jefferson, OH	
Brooke, WV	
Hancock, WV	
8120 Stockton-Lodi, CA	1.1536
San Joaquin, CA	
8140 Sumter, SC	0.8344
Sumter, SC	
8160 Syracuse, NY	0.9531
Cayuga, NY	
Madison, NY	
Onondaga, NY	

TABLE 7A.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
Oswego, NY	
8200 Tacoma, WA	1.0828
Pierce, WA	
8240 Tallahassee, FL	0.8321
Gadsden, FL	
Leon, FL	
8280 *Tampa-St. Petersburg-Clearwater, FL	0.9262
Hernando, FL	
Hillsborough, FL	
Pasco, FL	
Pinellas, FL	
8320 Terre Haute, IN	0.8672
Clay, IN	
Vermillion, IN	
Vigo, IN	
8360 Texarkana, AR-Texarkana, TX	0.8198
Miller, AR	
Bowie, TX	
8400 Toledo, OH	1.0424
Fulton, OH	
Lucas, OH	
Wood, OH	
8440 Topeka, KS	0.9735
Shawnee, KS	
8480 Trenton, NJ	1.0033
Mercer, NJ	
8520 Tucson, AZ	0.9289
Pima, AZ	
8560 Tulsa, OK	0.8245
Creek, OK	
Osage, OK	
Rogers, OK	
Tulsa, OK	
Wagoner, OK	
8600 Tuscaloosa, AL	0.8090
Tuscaloosa, AL	
8640 Tyler, TX	0.9430
Smith, TX	
8680 Utica-Rome, NY	0.8514
Herkimer, NY	
Oneida, NY	
8720 Vallejo-Fairfield-Napa, CA	1.3483
Napa, CA	
Solano, CA	
8735 Ventura, CA	1.1924
Ventura, CA	
8750 Victoria, TX	0.8435
Victoria, TX	
8760 Vineland-Millville-Bridgeton, NJ	0.9966
Cumberland, NJ	
8780 Visalia-Tulare-Porterville, CA	1.0446
Tulare, CA	
8800 Waco, TX	0.7898
McLennan, TX	
8840 *Washington, DC–MD–VA–WV	1.1116
District of Columbia, DC	
Calvert, MD	
Charles, MD	
Frederick, MD	
Montgomery, MD	
Prince Georges, MD	
Alexandria City, VA	
Arlington, VA	
Clarke, VA	
Culpepper, VA	

TABLE 7A.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
Fairfax, VA	
Fairfax City, VA	
Falls Church City, VA	
Fauquier, VA	
Fredericksburg City, VA	
King George, VA	
Loudoun, VA	
Manassas City, VA	
Manassas Park City, VA	
Prince William, VA	
Spotsylvania, VA	
Stafford, VA	
Warren, VA	
Berkeley, WV	
Jefferson, WV	
8920 Waterloo-Cedar Falls, IA	0.8600
Black Hawk, IA	
8940 Wausau, WI	1.0034
Marathon, WI	
8960 West Palm Beach-Boca Raton, FL	1.0217
Palm Beach, FL	
9000 Wheeling, OH–WV	0.7518
Belmont, OH	
Marshall, WV	
Ohio, WV	
9040 Wichita, KS	0.9562
Butler, KS	
Harvey, KS	
Sedgwick, KS	
9080 Wichita Falls, TX	0.7826
Archer, TX	
Wichita, TX	
9140 Williamsport, PA	0.8508
Lycoming, PA	
9160 Wilmington-Newark, DE–MD	1.1539
New Castle, DE	
Cecil, MD	
9200 Wilmington, NC	0.9299
New Hanover, NC	
Brunswick, NC	
9260 Yakima, WA	0.9951
Yakima, WA	
9270 Yolo, CA	1.1615
Yolo, CA	
9280 York, PA	0.9165
York, PA	
9320 Youngstown-Warren, OH	0.9555
Columbiana, OH	
Mahoning, OH	
Trumbull, OH	
9340 Yuba City, CA	1.0611
Sutter, CA	
Yuba, CA	
9360 Yuma, AZ	0.9769
Yuma, AZ	

*Large Urban Area

TABLE 7B.—WAGE INDEX FOR RURAL AREAS

Nonurban area	Wage index
Alabama	0.7164
Alaska	1.2034
Arizona	0.7995
Arkansas	0.6897
California	1.0096

TABLE 7B.—WAGE INDEX FOR RURAL AREAS—Continued

Nonurban area	Wage index
Colorado	0.7988
Connecticut	1.3117
Delaware	0.9019
Florida	0.8668
Georgia	0.7721
Hawaii	0.9847
Idaho	0.8378
Illinois	0.7497
Indiana	0.8067
Iowa	0.7352
Kansas	0.7229
Kentucky	0.7650
Louisiana	0.7275
Maine	0.8425
Maryland	0.8463
Massachusetts	1.0577
Michigan	0.8744
Minnesota	0.8127
Mississippi	0.6697
Missouri	0.7186
Montana	0.8091
Nebraska	0.7219
Nevada	0.8788
New Hampshire	1.0013
New Jersey [1]	.....
New Mexico	0.8329
New York	0.8647
North Carolina	0.7999
North Dakota	0.7265
Ohio	0.8286
Oklahoma	0.6985
Oregon	0.9486
Pennsylvania	0.8521
Puerto Rico	0.4326
Rhode Island [1]	.....
South Carolina	0.7738
South Dakota	0.6987
Tennessee	0.7409
Texas	0.7316
Utah	0.8652
Vermont	0.9043
Virginia	0.7788
Washington	0.9775
West Virginia	0.8036
Wisconsin	0.8391
Wyoming	0.8013

[1] All counties within the State are classified urban.

TABLE 8.—COST REPORTING YEAR ADJUSTMENT FACTOR [1]

If the HHA cost reporting period begins	The adjustment factor is
August 1, 1996	1.00251
September 1, 1996	1.00505
October 1, 1996	1.00759
November 1, 1996	1.01012
December 1, 1997	1.01266
January 1, 1997	1.01524
February 1,1997	1.01788
March 1, 1997	1.02056
April 1, 1997	1.02326
May 1, 1997	1.02599
June 1, 1997	1.02875

[1] Based on compounded projected market basket inflation rates.

These adjustment factors are subject to change based on later estimates of cost increases.

If for any reason we do not publish a new schedule of limits to be effective on July 1, 1997 or do not announce other changes in the current schedule by that date, the current limits will continue in effect. Intermediaries will be notified of the adjustment factors to be applied until a new schedule of limits or other provision is issued.

TABLE 9.—MONTHLY INDEX LEVELS FOR CALCULATING INFLATION FACTORS TO BE APPLIED TO HOME HEALTH AGENCY COST LIMITS

Month	Index level
July 1996	1.13366
August 1996	1.13700
September 1996	1.13999
October 1996	1.14299
November 1996	1.14600
December 1996	1.14899
January 1997	1.15199
February 1997	1.15500
March 1997	1.15700
April 1997	1.15900
May 1997	1.16100
June 1997	1.16466
July 1997	1.16832
August 1997	1.17200
September 1997	1.17499
October 1997	1.17799
November 1997	1.18100
December 1997	1.18466
January 1998	1.18832
February 1998	1.19200
March 1998	1.19433
April 1998	1.19666
May 1998	1.19900

Source: DR/McGraw-Hill HCC, 1st QTR 1996; @USSIM/TREND 25YR0296 @CISSIM/CONTROL961.

XI. Regulatory Impact Statement

For notices such as this, we generally prepare an initial regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612) unless we certify that the notice will not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, all HHAs are treated as small entities.

As discussed below, the aggregate impact of this notice is relatively small, and we have no evidence that the economic impact on most HHAs will be significant. Moreover, this notice is necessary to implement the provisions of section 1861(v)(1)(L) of the Act; thus no alternatives to the provisions set forth in this notice are available. However, because this notice may have some effect on a large number of providers, we are providing a voluntary regulatory flexibility analysis.

This notice with comment period sets forth a schedule of HHA cost limits for cost reporting periods beginning on or after July 1, 1996. The methodology used to develop the schedule of limits set forth in this notice is the same as that used in setting the limits effective July 1, 1993. (As discussed in section IV.A of this notice, we are no longer providing for an add-on to the HHA cost limits for those HHAs that incur costs associated with the OSHA universal precaution requirements, since these updated limits are computed using a data base that includes the costs of complying with the OSHA standards.) In accordance with section 1861(v)(1)(L)(i) of the Act, we are continuing to set the limits not to exceed 112 percent of the mean of the labor-related and nonlabor per-visit costs for freestanding HHAs. As required by section 1861(v)(1)(L)(iii) of the Act, we are using the most recent hospital wage index to calculate the HHA cost limits, that is, the hospital wage index effective for discharges on or after October 1, 1995, which is based on 1992 wage survey data. The wage index is used to adjust the labor-related portion of the limits to reflect differing wage levels among areas. As discussed in section II of this notice, we are applying a budget neutrality adjustment factor of 0.91 to the labor-related portion of the limits to ensure that aggregate payments to HHAs are not affected by the updating of the wage index.

We continue to use the latest settled cost report data to develop the HHA cost-per-visit limit values for each type of home health service: skilled nursing care, physical therapy, speech pathology, occupational therapy, medical social services, and home health aide. Thus, for this notice, we have updated the cost-per-visit limits by using actual cost-per-visit data from settled Medicare cost reports for periods beginning on or after June 1, 1991, and settled by October 1, 1995. The majority of the cost reports were from FY 1993. The data have been adjusted by the most recent market basket factors to reflect the expected cost increases occurring between the cost reporting periods for the data contained in the data base and June 30, 1997. The intermediary determines the aggregate cost limit for each HHA by multiplying the number of Medicare visits for each type of service furnished by the HHA by the respective per-visit cost limit. Each HHA's aggregate limit cannot be determined prospectively, but depends on each HHA's Medicare visits for each type of service and actual costs for the cost reporting period subject to this notice.

The database used to calculate these limits consists of cost reporting data from 3,190 freestanding HHAs, compared with 2,992 freestanding HHAs used in calculating the limits in effect for cost reporting periods beginning on or after July 1, 1993. We estimate that the revised HHA cost limits implemented in this notice with public comment period will result in the following costs to the Medicare program:

TABLE 10.—HHA COST LIMITS

[Medicare Program Costs] [1]

Fiscal year	Costs (in millions)
1996	0
1997	10

[1] Figures are rounded to the nearest million.

The costs associated with the new HHA cost limits represent the difference between projected aggregate Medicare expenditures under the new limits and projected aggregate expenditures using the limits in effect for cost reporting periods beginning on or after July 1, 1993, updated by the market basket increases since those limits took effect. This notice does not provide for a permanent extension of the OBRA '93 provision that there be no changes in the home health agency cost limits for cost reporting periods beginning on or after July 1, 1994, and before July 1, 1996. Because this change would require statutory authority, President Clinton's FY 1997 Budget includes a proposal to do so.

We are unable to identify the effects of changes to the cost limits on individual HHAs. In general, we believe that most HHAs will experience small revenue increases under the new limits; the degree of that increase will vary depending on the proportion of an HHA's revenues that come from Medicare, the distribution of services provided by the HHA, and the HHA's ability to operate within the cost limits. Table 11 below illustrates the proportion of HHAs that are likely to be affected by the limits:

TABLE 11.—HHAS EXCEEDING THE COST LIMITS

	HHAs in database	HHAs exceeding the limits	Percent of HHAs exceeding the limits
Total HHAs	4987	1720	34.5

TABLE 11.—HHAs EXCEEDING THE COST LIMITS—Continued

	HHAs in database	HHAs exceeding the limits	Percent of HHAs exceeding the limits
Free-standing	3190	773	24.2
Hospital-based	1797	947	52.7

Section 1102(b) of the act requires the Secretary to prepare a regulatory impact analysis if a final notice may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital located outside a Metropolitan Statistical Area with fewer than 50 beds.

We are not preparing a rural impact statement because the Secretary has determined, and certifies, that this notice will not have a significant impact on a substantial number of rural hospitals.

In accordance with the provisions of Executive Order 12866, this notice was reviewed by the Office of Management and Budget.

XII. Other Required Information

A. Waiver of Proposed Notice and 30–Day Delay in Effective Date

In adopting notices such as this, we ordinarily publish a proposed notice in the Federal Register with a 60-day period for public comment as required under section 1871(b)(1) of the Act. We also normally provide a delay of 30 days in the effective date for documents such as this. However, we may waive these procedures if we find good cause that prior notice and comment or a delay in the effective date are impracticable, unnecessary, or contrary to public interest.

Section 1861(v)(1)(L)(iii) of the Act requires that the Secretary establish revised HHA cost limits for cost reporting periods beginning on or after July 1, 1991 and annually thereafter (except for cost reporting periods beginning on or after July 1, 1994 and before July 1, 1996). As discussed in section III above, in accordance with the statute, we have used the same methodology to develop the schedule of limits that was used in setting the limits effective for cost reporting periods beginning on or after July 1, 1993. The cost limits have been updated by the appropriate market basket adjustment factor to reflect the cost increases occurring between the cost reporting periods for the data contained in the data base and June 30, 1997. In addition, as required under section 1861(v)(1)(L)(iii) of the Act, we have updated the wage index using the most recent hospital wage index.

If HHAs are to receive timely the benefits of these new cost limits based on the updated wage index and market basket adjustment factors, it is necessary that these limits be published in time to take effect for cost reporting periods beginning on or after July 1, 1996. Because the methodology used to develop this schedule of limits is for the most part dictated by the statute and has been previously published for public comment, we believe that in this instance it would be impracticable, unnecessary, and contrary to the public interest to publish a proposed notice or to provide for a 30-day delay in the effective date of this notice. Therefore, we find good cause to waive publication of a proposed notice and the 30-day delay in the effective date. However, we are providing a 60-day period for public comment, as indicated at the beginning of this notice.

B. Paperwork Reduction Act

This final notice does not impose information collection requirements. Consequently, it does not need to be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995.

C. Public Comments

Because of the large number of items of correspondence we normally receive on a notice with comment period, we are not able to acknowledge or respond to them individually. However, we will consider all comments concerning the provisions of this notice that we receive by the date and time specified in the ''**DATES**'' section of this notice, and we will respond to those comments in a subsequent notice.

Appendix—Technical Features of the HHA Market Basket Index

As discussed in the preamble of this rule, we are rebasing and revising the home health agency market basket. This appendix describes the technical features of the 1993-based index that we are proposing for this notice. We present this description of the market basket in three steps:

- A synopsis of the structural differences between the 1976- and the 1993-based market baskets.
- A description of the methodology used to develop the cost category weights in the 1993-based market basket.
- A description of the data sources used to measure price change for each component of the 1993-based market basket, making note of the differences from the price proxies used in the 1976-based market basket.

I. Synopsis of Structural Changes Adopted in the Rebased 1993 Home Health Agency Market Basket

Three major structural differences exist between the 1976-based and the 1993-based home health agency market baskets.

1. More recent home health agency expenditure data are being used in the revised and rebased home health agency market basket.

The 1976-based market basket contained cost shares that were derived from 1976 Medicare cost reports and other available health industry surveys. The 1993-based market basket uses data from the latest settled Medicare Cost Reports for Freestanding Home Health Agencies whose cost reporting periods began after June 1, 1991 and were settled by October 1, 1995 (one per HHA). These data were primarily reports from Federal fiscal year 1993; earlier and later data were aged forward and backward to Federal fiscal year 1993 using price changes. Additional information from the U.S. Department of Commerce Bureau of Economic Analysis (BEA) 1987 Input-Output Tables was used for some subcategories. It was aged to 1993 for relative price changes.

2. Some cost categories have been disaggregated and some cost categories have been combined. These category changes reflect the availability of data in the cost reports and in the BEA Input-Output Tables.

3. We will use Blended HHA Occupational Wage and Benefits Indexes. This parallels the use of Blended Wage and Salary and Benefits Indexes in the PPS and Excluded Hospital market baskets, but with adjustments for the occupational mix of home health agencies.

II. Methodology for Developing the Cost Category Weights

Cost category weights for the 1993-based market basket were developed in two stages. First, base weights for nine main categories (Wages and Salaries, Employee Benefits, Transportation, Operation and Maintenance, Administrative and General, Insurance, Fixed Capital, Movable Capital, and a residual All Other) were derived from the Home Health Agency Medicare Cost Reports described above. A weight for

Contract Service Labor was derived from the HHA Medicare Cost Reports, and allocated to (a) Wages & Salaries, (b) Employee Benefits, (c) Other Administrative and General, and (d) Other Expenses. Contract Services costs were allocated to the above four categories with proportionally higher weight given to (a) Wages and Salaries and (b) Employee Benefits to reflect that a substantial portion of contract services are from individual independent contractors with lower overhead than the average home health agency. Second, the weight for Administrative and General was divided into subcategories using cost shares from the 1987 Input-Output Table for the Other Medical and Health Services industry, produced by the U.S. Department of Commerce, Bureau of Economic Analysis, aged to 1993 using price changes. The Other Medical and Health Services industry is the residual of the Health Services industry less the Doctors and Dentists, Hospitals, and Nursing and Personal Care Facilities industries. It includes SIC 804, Other Health Practitioners; SIC 807, Medical and Dental Laboratories; SIC 808, Home Health Agencies; SIC 809 Health and Allied Services, not elsewhere classified; and SIC 074, Veterinary Services. The largest share of employment in these industries is in home health agencies.

Below we describe the source of the nine main category weights and their subcategories in the 1993-based market basket.

1. Wages and Salaries, including an allocation for contract services' labor: The wages and salaries cost category is one of the nine base weights derived from using the Medicare Cost Reports. Contract Services, which is also derived from the Medicare Cost Reports, is split among the (a) Wages and Salaries, (b) Employee Benefits, (c) Other Administrative and General, and (d) Other Expenses cost categories. An example of Contract Service Labor is registered nurses who are employed and paid by firms which contract for their work with home health agencies or a registered nurse who is an independent contractor and works out of his or her personal residence. The wages and salaries cost category was disaggregated into four occupational subcategories (professional and technical, executive and administrative, administrative support, home health aides, and all other service occupations) to reflect the mix of occupational inputs used by home health agencies. The 1993-based weights were developed from the Medicare Cost Reports. The 1976-based market basket had a separate cost category for Contracted Services' Labor.

2. Employee Benefits, including an allocation for contract services' labor: The employee benefits cost category is one of the nine base weights derived from the Medicare cost reports. A share of contract services' labor was allocated to this cost category. Like wages and salaries, the employee benefit weight in the 1993-based market basket is a composite of four labor subcategories. These were developed from the Medicare cost reports.

3. Transportation: The weight for Transportation was derived from the Medicare Cost Reports. The 1976-based market basket had a similar cost category.

4. Operations and Maintenance: The weight for Operations and Maintenance was derived from the Medicare Cost Reports. The 1976-based market basket had Utilities and Miscellaneous Cost Categories which have been replaced.

5. Administrative and General, including an allocation for non-labor associated with contract labor services: The weight for Administrative and General was derived from the Medicare cost reports. The subcategories of Telephone, Paper and Printing, Postage, and residual Other Administrative and General expenses were derived from the 1987 BEA Input-Output Tables, moved forward to 1993 using price changes. A share of contract services non-labor expenses (implied other expenses) was allocated to the Other Administrative and General subcategory. The 1976-based market basket contained an Office Administration Costs category.

6. Capital-related: The weights for the subcategories for Insurance, Fixed Capital, and Movable Capital were derived from the Medicare cost reports. The 1976-based market basket did not contain insurance, fixed capital or movable capital as separate categories, but did contain a Miscellaneous Costs, an Office Administration Costs, a Rental and Leasing, and a Medical Nursing Supplies cost category. Capital-related costs include interest expenses.

7. Other Expenses: The weight for Other Expenses was derived from the Medicare Cost Reports. A share of contract services non-labor expenses (implied other expenses) was allocated to the Other Expenses cost category. The 1976-based market basket had a Miscellaneous Costs cost category.

III. Price Proxies Used To Measure Cost Category Growth

1. Wages and Salaries, including an allocation for contract services' labor: For measuring price growth in the 1993-based market basket, price proxies are applied to the five occupational subcategories within the wages and salaries component, as is done in the hospital market baskets, weighted to reflect the home health agency occupational mix. The Professional and Technical occupational subcategory is represented by a blend of health industry and economy-wide price proxies. Therefore, there are five price proxies for four occupational subcategories (the Professional and Technical occupational subcategory has a blend of two). Table 4 at the end of this appendix describes the wages and salaries component of the market basket.

2. Employee Benefits, including an allocation for contract services' labor: For measuring price growth in the 1993-based market basket, price proxies are applied to the four occupational subcategories within the employee benefits component, as is done in the hospital market baskets, weighted to reflect the home health agency occupational mix. The Professional and Technical occupational subcategory is represented by a blend of health industry and economy-wide price proxies. Therefore there are five price proxies for four occupational subcategories (the Professional and Technical subcategory has a blend of two). Table 5 at the end of this appendix describes the employee benefits component of the market basket.

3. Operations and Maintenance: The percentage change in the price of Fuel and Other Utilities as measured by the Consumer Price Index was applied to this component. This is a revision from the 1976-based index in which the percentage change in the price of utilities was measured by a composite fuel and other utilities index.

4. Telephone: The percentage change in the price of Telephone Service as measured by the Consumer Price Index was applied to this component. This is a revision from the 1976-based index when the cost of telephone service was not specifically measured.

5. Paper and Printing: The percentage change in the price of Paper and Printing as measured by the Consumer Price Index for Household Paper Products and Stationery Supplies was applied to this component. This is a revision from the 1976-based index when the cost of paper and printing was not specifically measured.

6. Postage: The percentage change in the price of Postage as measured by the Consumer Price Index was applied to this component. This is a revision from the 1976-based index when the cost of postage was not specifically measured.

7. Other Administrative and General, including an allocation for non-labor

expenses associated with contract services: The percentage change in the price of services as measured by the Consumer Price Index was applied to this component. In the 1976-based market basket the CPI for Services was used as a proxy for Office Administration costs.

8. Insurance: The percentage change in the price of Household Insurance as measured by the Consumer Price Index was applied to this component. This is a revision from the 1976-based market basket in which the price of insurance was not specifically measured.

9. Transportation: The percentage change in the price of Transportation as measured by the Consumer Price Index was applied to this component. The same proxy was used for Transportation in the 1976-based market basket.

10. Fixed capital: The percentage change in the price of Owner's Equivalent Rent as measured by the Consumer Price Index was applied to this component. The percentage change in the price of Residential Rent as measured by the Consumer Price Index was used as a proxy for Rental and Leasing in the 1976-based market basket.

11. Movable Capital: The percentage change in the price of Machinery and Equipment as measured by the Producer Price Index was applied to this component. In the 1976-based market basket the percentage change in the price of Medical Equipment and Supplies as measured by the Consumer Price Index was applied to the Medical Nursing Supplies component.

12. Other Expenses, including an allocation for non-labor expenses associated with contract services: The percentage change in the price of All Items Less Food and Energy as measured by the Consumer Price Index was applied to this component. This is a revision from the 1976-based index, when the percentage change in the price of All Items as measured by the Consumer Price Index was applied to the Miscellaneous Costs component.

A comparison of price proxies used in the 1993-based and the 1976-based home health agency market baskets follows:

APPENDIX TABLE 1.—A COMPARISON OF PRICE PROXIES USED IN THE 1993–BASED AND 1976–BASED HOME HEALTH AGENCY MARKET BASKETS

Cost category	1993–Based price proxy	1976–Based price proxy
Compensation:		
Wages and Salaries	HHA Occupational Wage Index	AHE Hospitals (Private nonsupervisory workers).
Employee Benefits	HHA Occupational Benefits Index	BEA Supplements to Wages & Salaries per Worker (BLS); (BEA Aggregate Supplements/number of workers from BLS).
Operations and Maintenance	CPI–U Fuel & Other Utilities	Index composed of CPI–U Water & Sewage; IPD Fuel & Oil Coal (PCE); IPD Electricity (PCE); IPD Natural Gas (PCE).
Administrative and General		CPI–U Services (category: Office Administration Costs).
Telephone	CPI–U Telephone	
Paper and Printing	CPI–U Household Paper, Paper Products & Stationery Supplies.	
Postage	CPI–U Postage	
Other Administrative and General	CPI–U Services	
Transportation	CPI–U Private Transportation	CPI–U Transportation.
Capital-Related:		
Insurance	CPI–U Household Insurance	
Fixed Capital	CPI–U Owner's Equivalent Rent	CPI–U Residential Rent category: Rental & Leasing.
Movable Capital	PPI Machinery & Equipment	CPI–U Nonprescription Medical Equipment & Supplies.
Other Expenses	CPI–U All Items Less Food & Energy	CPI–U All Items.
Contracted Services	Contained within Wages & Salaries, Employee Benefits, Other Administrative & General & Other Expenses cost categories; see those price proxies	Composite All Other HHA Cost Category Weights with associated price proxy variables.

We allocated the Contract Services' share of home health agency expenses among (a) Wages and Salaries, (b) Employee Benefits, (c) Other Administrative and General, and (d) Other Expenses. The split chosen is one of three alternatives that we examined. In Alternative A, we split the Contract Services cost share only between (a) Wages and Salaries and (b) Employee Benefits. In Alternative B, we split the Contract Services cost share among (a) Wages and Salaries, (b) Employee Benefits, (c) Other Administrative and General, and (d) Other Expenses. In Alternative C, the option selected, we split the Contract Services cost share among (a) Wages and Salaries, (b) Employee Benefits, (c) Other Administrative and General, and (d) Other Expenses, but we gave proportionally more to (a) Wages and Salaries and (b) Employee Benefits, and less to (c) Other Administrative and General and (d) Other Expenses. This third middle-ground option recognizes that personnel in Contract Services may be employees of a firm contracting with home health agencies or may be independent contractors, working out of their personal residences, with relatively small non-labor expenses.

Results of the three alternatives appear in Appendix Table 2, while a comparison of historical and forecasted percent changes are shown in Appendix Table 3.

APPENDIX TABLE 2.—THREE ALTERNATIVES FOR ALLOCATION OF CONTRACT SERVICES; COST SHARE

Cost category	Alternative A: Split of contract services' cost share between (a) wages and salaries and (b) employee benefits	Alternative B: Split of contract services' cost share among (a) wages and salaries, (b) employee benefits, (c) other administrative and general, and (d) other expenses	Alternative C: Split of contract services' cost share among (a) wages and salaries, (b) employee benefits, (c) other administrative and general, and (d) other expenses, with smaller allocation to (c) and (d) and larger allocation to (a) and (b) (selected)
Compensation	79.224	76.479	77.668
Wages & Salaries	65.512	63.243	64.226
Employee Benefits	13.712	13.327	13.442
Operations & Maintenance	0.832	0.832	0.832
Administrative & General	8.791	10.163	9.569
Telephone	0.725	0.725	0.725
Paper & Printing	0.529	0.529	0.529
Postage	0.724	0.724	0.724
Other Administrative & General	6.813	8.165	7.591
Transportation	3.405	3.405	3.405
Capital-Related	3.204	3.204	3.204
Insurance	0.560	0.560	0.560
Fixed Capital	1.764	1.764	1.764
Movable Capital	0.880	0.880	0.880
All Other Expenses	4.544	5.916	5.322
Total	100.000	100.000	100.000

APPENDIX TABLE 3.—A COMPARISON OF THREE ALTERNATIVES FOR ALLOCATION OF CONTRACT SERVICES' COST SHARE FOR THE 1993-BASED HOME HEALTH AGENCY MARKET BASKET, PERCENT CHANGE, 1993–1998

Fiscal Years beginning July 1	Alternative A: Split of Contract Services' cost share between (a) Wages and Salaries and (b) Employee Benefits	Alternative B: Split of Contract Services' cost share among (a) Wages and Salaries, (b) Employee Benefits, (c) Other Administrative and General, and (d) Other Expenses	Alternative C: Split of Contract Services' cost share among (a) Wages and Salaries, (b) Employee Benefits, (c) Other Administrative and General, and (d) Other Expenses, with smaller allocation to (c) and (d) and larger allocation to (a) and (b) (Selected)
Historical:			
July 1992, FY 1993	3.40	3.40	3.40
July 1993, FY 1994	3.00	3.00	3.00
July 1994, FY 1995	2.90	2.90	2.90
Forecasted:			
July 1995, FY 1996	2.70	2.70	2.70
July 1996, FY 1997	3.10	3.10	3.10
July 1997, FY 1998	3.20	3.20	3.20
Historical Average: 1993–1995	3.10	3.10	3.10
Forecasted Average: 1996–1998	3.00	3.00	3.00

Source: DRI/McGraw Hill HCC, 1st Qtr. 1996;@USSIM/TREND25 YR0296@CISSIM/CONTROL961.
Released by HCFA, OACT, Office of National Health Statistics.

Note that there is no difference in historical performance or forecasts among the three alternatives.

The components of the HHA Occupational Wages and Salaries and Occupational Benefit Indexes are listed below:

APPENDIX TABLE 4.— HCFA HHA OCCUPATIONAL WAGES AND SALARIES INDEX

Cost category	Weight	Price proxy.
Skilled Nursing & Therapists & Other Professional/Technical, Including an allocation for Contract Services' Labor.	45.758	50% ECI for Wages & Salaries in Private Industry for Professional. Specialty & Technical Workers and 50% ECI for Wages & Salaries for Civilian Hospital Workers.
Managerial/Supervisory, including an allocation for Contract Services' Labor.	5.527	ECO for Wages & Salaries in Private Industry for Executive, Administrative & Managerial Workers.
Clerical, including an allocation for Contract Services' Labor	15.019	ECI for Wages & Salaries in Private Industry for Administrative Support, Including Clerical Workers.
Service, including an allocation for Contract Services' Labor	33.696	ECI for Wages & Salaries in Private Industry Service Occupations

APPENDIX TABLE 4.— HCFA HHA OCCUPATIONAL WAGES AND SALARIES INDEX—Continued

Cost category	Weight	Price proxy.
Total	100.00	

The total weight for wages and salaries in the 1993-based Home Health Agency market basket is 64.226 percent.

APPENDIX TABLE 5.—HCFA HHA OCCUPATIONAL BENEFITS INDEX (EMPLOYEE BENEFITS COMPONENT OF THE 1993–BASED MARKET BASKET)

Cost category	Weight	Price proxy
Skilled Nursing & Therapists & Other Professional/Technical, including an allocation for Contract Services' Labor.	44.182	50% ECI for Benefits in Private Industry for Professional. Specialty & Technical Workers and 50% ECI for Benefits for Civilian Hospital Workers.
Managerial/Supervisory, including an allocation for Contract Services' Labor.	5.097	ECI for Benefits in Private Industry for Executive, Administrative & Managerial Workers.
Clerical, including an allocation for Contract Services' Labor	15.848	ECI for Benefits in Private Industry for Administrative Support, Including Clerical Workers.
Service, including an allocation for Contract Services' Labor	34.873	ECI for Benefits in Private Industry Service Occupations.
Total	100.00	

The total weight for employee benefits in the 1993-based Home Health Agency market basket is 13.442 percent.

Authority: Section 1861(v)(1)(L) of the Social Security Act (42 U.S.C. 1395x(v)(1)(L)); section 4207(d) of Pub. L. 101–508 (42 U.S.C. 1395x (note)).

(Catalog of Federal Domestic Assistance Program No. 93.773 Medicare—Hospital Insurance)

Dated: June 24, 1996.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

Dated: June 26, 1996.

Donna E. Shalala,

Secretary.

[FR Doc. 96–16883 Filed 6–27–96; 4:08 pm]

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600–End	(869–026–00105–7)	8.00	Apr. 1, 1995
27 Parts:			
1–199	(869–026–00106–5)	37.00	Apr. 1, 1995
200–End	(869–026–00107–3)	13.00	[6] Apr. 1, 1994
28 Parts:			
1-42	(869–026–00108–1)	27.00	July 1, 1995
43-end	(869-026-00109-0)	22.00	July 1, 1995
29 Parts:			
0–99	(869–026–00110–3)	21.00	July 1, 1995
100–499	(869–026–00111–1)	9.50	July 1, 1995
500–899	(869–026–00112–0)	36.00	July 1, 1995
900–1899	(869–026–00113–8)	17.00	July 1, 1995
1900–1910 (§§ 1901.1 to 1910.999)	(869–026–00114–6)	33.00	July 1, 1995
1910 (§§ 1910.1000 to end)	(869–026–00115–4)	22.00	July 1, 1995
1911–1925	(869–026–00116–2)	27.00	July 1, 1995
1926	(869–026–00117–1)	35.00	July 1, 1995
1927–End	(869–026–00118–9)	36.00	July 1, 1995
30 Parts:			
1–199	(869–026–00119–7)	25.00	July 1, 1995
200–699	(869–026–00120–1)	20.00	July 1, 1995
700–End	(869–026–00121–9)	30.00	July 1, 1995
31 Parts:			
0–199	(869–026–00122–7)	15.00	July 1, 1995
200–End	(869–026–00123–5)	25.00	July 1, 1995
32 Parts:			
1–39, Vol. I		15.00	[2] July 1, 1984
1–39, Vol. II		19.00	[2] July 1, 1984
1–39, Vol. III		18.00	[2] July 1, 1984
1–190	(869–026–00124–3)	32.00	July 1, 1995
191–399	(869–026–00125–1)	38.00	July 1, 1995
400–629	(869–026–00126–0)	26.00	July 1, 1995
630–699	(869–026–00127–8)	14.00	[5] July 1, 1991
700–799	(869–026–00128–6)	21.00	July 1, 1995
800–End	(869–026–00129–4)	22.00	July 1, 1995
33 Parts:			
1–124	(869–026–00130–8)	20.00	July 1, 1995
125–199	(869–026–00131–6)	27.00	July 1, 1995
200–End	(869–026–00132–4)	24.00	July 1, 1995
34 Parts:			
1–299	(869–026–00133–2)	25.00	July 1, 1995
300–399	(869–026–00134–1)	21.00	July 1, 1995
400–End	(869–026–00135–9)	37.00	July 5, 1995
35	(869–026–00136–7)	12.00	July 1, 1995
36 Parts			
1–199	(869–026–00137–5)	15.00	July 1, 1995
200–End	(869–026–00138–3)	37.00	July 1, 1995
37	(869–026–00139–1)	20.00	July 1, 1995
38 Parts:			
0–17	(869–026–00140–5)	30.00	July 1, 1995
18–End	(869–026–00141–3)	30.00	July 1, 1995
39	(869–026–00142–1)	17.00	July 1, 1995
40 Parts:			
1–51	(869–026–00143–0)	40.00	July 1, 1995
52	(869–026–00144–8)	39.00	July 1, 1995
53–59	(869–026–00145–6)	11.00	July 1, 1995
60	(869-026-00146-4)	36.00	July 1, 1995
61–71	(869–026–00147–2)	36.00	July 1, 1995
72–85	(869–026–00148–1)	41.00	July 1, 1995
86	(869–026–00149–9)	40.00	July 1, 1995
87–149	(869–026–00150–2)	41.00	July 1, 1995
150–189	(869–026–00151–1)	25.00	July 1, 1995
190–259	(869–026–00152–9)	17.00	July 1, 1995
260–299	(869–026–00153–7)	40.00	July 1, 1995
300–399	(869–026–00154–5)	21.00	July 1, 1995
400–424	(869–026–00155–3)	26.00	July 1, 1995
425–699	(869–026–00156–1)	30.00	July 1, 1995
700–789	(869–026–00157–0)	25.00	July 1, 1995
790–End	(869–026–00158–8)	15.00	July 1, 1995
41 Chapters:			
1, 1–1 to 1–10		13.00	[3] July 1, 1984
1, 1–11 to Appendix, 2 (2 Reserved)		13.00	[3] July 1, 1984
3–6		14.00	[3] July 1, 1984
7		6.00	[3] July 1, 1984
8		4.50	[3] July 1, 1984
9		13.00	[3] July 1, 1984
10–17		9.50	[3] July 1, 1984
18, Vol. I, Parts 1–5		13.00	[3] July 1, 1984
18, Vol. II, Parts 6–19		13.00	[3] July 1, 1984
18, Vol. III, Parts 20–52		13.00	[3] July 1, 1984
19–100		13.00	[3] July 1, 1984
1–100	(869–026–00159–6)	9.50	July 1, 1995
101	(869–026–00160–0)	29.00	July 1, 1995
102–200	(869–026–00161–8)	15.00	July 1, 1995
201–End	(869–026–00162–6)	13.00	July 1, 1995
42 Parts:			
1–399	(869–026–00163–4)	26.00	Oct. 1, 1995
400–429	(869–026–00164–2)	26.00	Oct. 1, 1995
430–End	(869–026–00165–1)	39.00	Oct. 1, 1995
43 Parts:			
1–999	(869–026–00166–9)	23.00	Oct. 1, 1995
1000–3999	(869–026–00167–7)	31.00	Oct. 1, 1995
4000–End	(869–026–00168–5)	15.00	Oct. 1, 1995
44	(869–026–00169–3)	24.00	Oct. 1, 1995
45 Parts:			
1–199	(869–022–00170–7)	22.00	Oct. 1, 1995
200–499	(869–026–00171–5)	14.00	Oct. 1, 1995
500–1199	(869–026–00172–3)	23.00	Oct. 1, 1995
1200–End	(869–026–00173–1)	26.00	Oct. 1, 1995
46 Parts:			
1–40	(869–026–00174–0)	21.00	Oct. 1, 1995
41–69	(869–026–00175–8)	17.00	Oct. 1, 1995
70–89	(869–026–00176–6)	8.50	Oct. 1, 1995
90–139	(869–026–00177–4)	15.00	Oct. 1, 1995
140–155	(869–026–00178–2)	12.00	Oct. 1, 1995
156–165	(869–026–00179–1)	17.00	Oct. 1, 1995
166–199	(869–026–00180–4)	17.00	Oct. 1, 1995
200–499	(869–026–00181–2)	19.00	Oct. 1, 1995
500–End	(869–026–00182–1)	13.00	Oct. 1, 1995
47 Parts:			
0–19	(869–026–00183–9)	25.00	Oct. 1, 1995
20–39	(869–026–00184–7)	21.00	Oct. 1, 1995
40–69	(869–026–00185–5)	14.00	Oct. 1, 1995
70–79	(869–026–00186–3)	24.00	Oct. 1, 1995
80–End	(869–026–00187–1)	30.00	Oct. 1, 1995
48 Chapters:			
1 (Parts 1–51)	(869–026–00188–0)	39.00	Oct. 1, 1995
1 (Parts 52–99)	(869–026–00189–8)	24.00	Oct. 1, 1995
2 (Parts 201–251)	(869–026–00190–1)	17.00	Oct. 1, 1995
2 (Parts 252–299)	(869–026–00191–0)	13.00	Oct. 1, 1995
3–6	(869–026–00192–8)	23.00	Oct. 1, 1995
7–14	(869–026–00193–6)	28.00	Oct. 1, 1995
15–28	(869–026–00194–4)	31.00	Oct. 1, 1995
29–End	(869–026–00195–2)	19.00	Oct. 1, 1995
49 Parts:			
1–99	(869–026–00196–1)	25.00	Oct. 1, 1995
100–177	(869–026–00197–9)	34.00	Oct. 1, 1995
178–199	(869–026–00198–7)	22.00	Oct. 1, 1995
200–399	(869–026–00199–5)	30.00	Oct. 1, 1995
400–999	(869–026–00200–2)	40.00	Oct. 1, 1995
1000–1199	(869–026–00201–1)	18.00	Oct. 1, 1995
1200–End	(869–026–00202–9)	15.00	Oct. 1, 1995
50 Parts:			
1–199	(869–026–00203–7)	26.00	Oct. 1, 1995
200–599	(869–026–00204–5)	22.00	Oct. 1, 1995
600–End	(869–026–00205–3)	27.00	Oct. 1, 1995
CFR Index and Findings Aids	(869–028–00051–7)	35.00	Jan. 1, 1996

Title	Stock Number	Price	Revision Date
Complete 1996 CFR set		883.00	1996
Microfiche CFR Edition:			
Subscription (mailed as issued)		264.00	1996
Individual copies		1.00	1996
Complete set (one-time mailing)		264.00	1995
Complete set (one-time mailing)		244.00	1994
Complete set (one-time mailing)		223.00	1993

[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period Apr. 1, 1990 to Mar. 31, 1996. The CFR volume issued April 1, 1990, should be retained.

[5] No amendments to this volume were promulgated during the period July 1, 1991 to June 30, 1995. The CFR volume issued July 1, 1991, should be retained.

[6] No amendments to this volume were promulgated during the period April 1, 1994 to March 31, 1995. The CFR volume issued April 1, 1994, should be retained.

CFR ISSUANCES 1996
January—April 1996 Editions and Projected July, 1996 Editions

This list sets out the CFR issuances for the January–April 1996 editions and projects the publication plans for the **July, 1996** quarter. A projected schedule that will include the **October, 1996** quarter will appear in the first **Federal Register** issue of October.

For pricing information on available 1995–1996 volumes consult the CFR checklist which appears every Monday in the Federal Register.

Pricing information is not available on projected issuances. The weekly CFR checklist and the monthly List of CFR Sections Affected will continue to provide a cumulative list of CFR titles and parts, revision date and price of each volume.

Normally, CFR volumes are revised according to the following schedule:

Titles 1–16—January 1
Titles 17–27—April 1
Titles 28–41—July 1
Titles 42–50—October 1

All volumes listed below will adhere to these scheduled revision dates unless a notation in the listing indicates a different revision date for a particular volume.

Titles revised as of January 1, 1996:

Title

CFR Index

1–2 (Revised as of Feb. 1, 1996)

3 (Compilation)

4

5 Parts:
1–699
700–1199
1200–End

6 [Reserved]

7 Parts:
0–26
27–45
46–51
52
53–209
210–299
300–399
400–699
700–899
900–999
1000–1199
1200–1499
1500–1899
1900–1939
1940–1949
1950–1999
2000–End

8

9 Parts:
1–199
200–End

10 Parts:
0–50
51–199
200–399
400–499
500–End

11

12 Parts:
1–199
200–219
220–299
300–499
500–599
600–End

13 (Revised as of Mar. 1, 1996)

14 Parts:
1–59
60–139
140–199
200–1199
1200–End

15 Parts:
0–299
300–799
800–End

16 Parts:
0–149
150–999
1000–End

Titles revised as of April 1, 1996:

Title

17 Parts:
1–199
200–239
240–End

18 Parts:
1–149
150–279
280–399
400–End

19 Parts:
1–140
141–199
200–End

20 Parts:
1–399
400–499
500–End

21 Parts:
1–99
100–169
170–199
200–299
300–499
500–599
600–799
800–1299
1300–End

22 Parts:
1–299
300–End

23

24 Parts:
0–199 (Revised May 1, 1996)
200–219 (Revised May 1, 1996)
220–499 (Revised May 1, 1996)
500–699 (Revised May 1, 1996)
700–899 (Revised May 1, 1996)
900–1699 (Revised May 1, 1996)
1700–End (Revised May 1, 1996)

25

26 Parts:
1 (§§ 1.0-1–1.60)
1 (§§ 1.61–1.169)
1 (§§ 1.170–1.300)
1 (§§ 1.301–1.400)
1 (§§ 1.401–1.440)
1 (§§ 1.441–1.500)
1 (§§ 1.501–1.640)
1 (§§ 1.641–1.850)
1 (§§ 1.851–1.907)
1 (§§ 1.908–1.1000)
1 (§§ 1.1001–1.1400)
1 (§ 1.1401–End)
2–29
30–39
40–49
50–299
300–499
500–599 (Cover only)
600–End

27 Parts:
1–199
200–End

Projected July 1, 1996 editions:

Title

28 Parts:
0–42
43–End

29 Parts:
0–99
100–499
500–899
900–1899
1900–1910.999
1910.1000–End
1911–1925
1926
1927–End

30 Parts:
1–199
200–699
700–End

31 Parts:
0–199
200–End

32 Parts:
1–190
191–399
400–629
630–699 (Cover only)
700–799
800–End

33 Parts:
1–124
125–199
200–End

34 Parts:
1–299
300–399
400–End

35

36 Parts:
1–199
200–End

37

38 Parts:
0–17
18–End

39

40 Parts:
1–51
52
53–59
60
61–71
72–80
81–85
86
87–135
136–149
150–189
190–259
260–299
300–399
400–424

425–699
700–789
790–End

41 Parts:
Chs. 1–100
Ch. 101
Chs. 102–200
Ch. 201–End

TABLE OF EFFECTIVE DATES AND TIME PERIODS—JULY 1996

This table is used by the Office of the Federal Register to compute certain dates, such as effective dates and comment deadlines, which appear in agency documents. In computing these dates, the day after publication is counted as the first day.

When a date falls on a weekend or holiday, the next Federal business day is used. (See 1 CFR 18.17)

A new table will be published in the first issue of each month.

DATE OF FR PUBLICATION	15 DAYS AFTER PUBLICATION	30 DAYS AFTER PUBLICATION	45 DAYS AFTER PUBLICATION	60 DAYS AFTER PUBLICATION	90 DAYS AFTER PUBLICATION
July 1	July 16	July 31	August 15	August 30	September 30
July 2	July 17	August 1	August 16	September 3	September 30
July 3	July 18	August 2	August 19	September 3	October 1
July 5	July 22	August 5	August 19	September 3	October 3
July 8	July 23	August 7	August 22	September 6	October 7
July 9	July 24	August 8	August 23	September 9	October 7
July 10	July 25	August 9	August 26	September 9	October 8
July 11	July 26	August 12	August 26	September 9	October 9
July 12	July 29	August 12	August 26	September 10	October 10
July 15	July 30	August 14	August 29	September 13	October 15
July 16	July 31	August 15	August 30	September 16	October 15
July 17	August 1	August 16	September 3	September 16	October 15
July 18	August 2	August 19	September 3	September 16	October 16
July 19	August 5	August 19	September 3	September 17	October 17
July 22	August 6	August 21	September 5	September 20	October 21
July 23	August 7	August 22	September 6	September 23	October 21
July 24	August 8	August 23	September 9	September 23	October 22
July 25	August 9	August 26	September 9	September 23	October 23
July 26	August 12	August 26	September 9	September 24	October 24
July 29	August 13	August 28	September 12	September 27	October 28
July 30	August 14	August 29	September 13	September 30	October 28
July 31	August 15	August 30	September 16	September 30	October 29