Docket No. RP94–340–000, Carnegie Natural Gas Company
CAG–14.
Docket Nos. RP93–99–000, 003 and 004, Colorado Interstate Gas Company
CAG–15.
Docket Nos. RP93–186–000 and 001, Carnegie Natural Gas Company
CAG–16.
Docket No. RP95–08–000, NorAm Gas Transmission Company
CAG–17.
Docket No. RP94–365–003, Williams Natural Gas Company
CAG–18.
Docket No. RP94–374–001, Trunkline Gas Company
CAG–19.
Docket Nos. AC94–65–001 and AC94–121–001, Columbia Gulf Transmission Company
CAG–20.
Docket Nos. RP94–380–001 and RP94–67–013, et al., Southern Natural Gas Company
CAG–21.
Docket Nos. RP90–137–017, TM93–6–49–008, RP93–175–005 and RS92–13–000, Williston Basin Interstate Pipeline Company
CAG–22.
Docket No. RP91–166–026, Northwest Pipeline Corporation
CAG–23.
Docket Nos. TM91–6–37–005 and TM92–7–37–003, Northwest Pipeline Corporation
CAG–24.
Docket Nos. RP94–183–004, CP79–374–012 and CP79–382–014, Southern Natural Gas Company
CAG–25.
Docket No. RP85–122–023, Colorado Interstate Gas Company
CAG–26.
Docket Nos. RP94–309–002, RP93–151–014 and RP94–309–001, Tennessee Gas Pipeline Company
CAG–27.
Docket No. RP93–166–003, Tennessee Gas Pipeline Company
CAG–28.
Docket No. RP94–176–001, Tennessee Gas Pipeline Company
CAG–29.
Omitted
CAG–30.
Docket No. GP95–1–000, State of California, Division of Oil and Gas, Tight Formation Area Determination, FERC No. JD93–00528T (California-2)
CAG–31. Docket No. MG88–14–004, Black Marlin Pipeline Company
Docket No. MG88–3–009, Florida Gas Transmission Company
Docket No. MG88–7–006, Northern Natural Gas Company
Docket No. MG88–9–008, Transwestern Pipeline Company
CAG–32.
Docket No. CP89–2173–004, Arkla Energy Resources Company and Mississippi River Transmission Corporation
Docket No. CP89–2195–004, ANR Pipeline Company
CAG–33
Docket No. CP93–500–001, Natural Gas Pipeline Company of America
CAG–34.
Docket No. CP94–137–001, Tennessee Gas Pipeline Company
CAG–35.
Docket No. CP94–161–002, Avoca Natural Gas Storage
CAG–36.
Docket No. CP91–2206–009, Tennessee Gas Pipeline Company
CAG–37.
Docket Nos. CP92–498–004 and 000, Trunkline Gas Company
CAG–38.
Docket Nos. CP93–57–002 and CP92–189–002, Superior Offshore Pipeline Company
CAG–39.
Docket Nos. CP93–79–003 and 005, Mid Louisiana Gas Company and Fairbanks Gathering Company
CAG–40.
Docket No. CP93–281–001, Paiute Pipeline Company
CAG–41.
Docket No. CP93–306–001, Caprock Pipeline Company
Docket No. CP94–55–001, Transwestern Pipeline Company
Docket No. CP94–302–001, Northern Natural Gas Company
CAG–42.
Docket No. CP93–326–001, Eastern American Energy Corporation
Docket No. CP93–328–001, Columbia Gas Transmission Corporation
CAG–43.
Docket No. CP93–567–001, Texas Gas Transmission Corporation
CAG–44.
Docket No. CP94–36–001, Arkla Gathering Services Company
CAG–45.
Docket No. CP94–147–001, Williams Natural Gas Company Docket No. CP94–163–001, Kansas Gas Supply Corporation
CAG–46.
Docket No. CP94–201–001, BCF Gas, Ltd.
Docket No. CP94–107–001, NorAm Gas Transmission Company
CAG–47.
Docket Nos. CP93–232–000, CP93–256–000 and CP93–275–000, Alabama-Tennessee Natural Gas Company
CAG–48.
Docket No. CP94–214–000, Natural Gas Pipeline Company of America
CAG–49.
Docket No. CP94–219–000, Tennessee Gas Pipeline Company
CAG–50.
Docket No. CP94–656–000, General Services Administration
CAG–51.
Docket Nos. CP93–637–000 and 001, ANR Pipeline Company
CAG–52.
Docket No. CP94–79–000, Panhandle Eastern Pipe Line Company
CAG–53.
Docket No. CP94–550–000, Washington Natural Gas Company
CAG–54.
Docket No. CP94–145–000, Hobbs Processing Company
Docket No. CP94–142–000, Northern Natural Gas Company
CAG–55.
Docket No. CP94–20–000, Field Gas Gathering Inc.
Docket Nos. CP94–19–000 and RS92–82–000, Superior Offshore Pipeline Company
CAG–56.
Docket No. CP94–279–000, Minerals, Inc.
CAG–57.
Docket No. CP94–388–000, Texas Gas Transmission Corporation
Docket No. CP94–390–000, Enron Louisiana Energy Company
CAG–58.
Docket No. RS92–23–026, Tennessee Gas Pipeline Company
Docket No. RS92–33–010, East Tennessee Natural Gas Company
CAG–59.
Docket No. CP87–39–002, Granite State Gas Transmission, Inc.
CAG–60.
Docket No. CP92–184–010, Texas Eastern Transmission Corporation
CAG–61.
Docket No. CP94–88–001, Great Lakes Gas Transmission Limited Partnership

Hydro Agenda

H–1. Project No. P–5797–002, B&C Energy, Inc.. Order on license application.

Electric Agenda

E–1.
Docket No. TX94–4–000, Tex-La Electric Cooperative, of Texas, Inc.
Docket No. ER94–1385–000, West Texas Utilities Company. Request for transmission service under section 211 of the Federal Power Act.

Miscellaneous Agenda

M–1.
Docket No. RM91–12–000, Alternative Dispute Resolution. Notice of Proposed Rulemaking.

Oil and Gas Agenda

I. Pipeline Rate Matters

PR–1.
Reserved

II. Restructuring Matters

RS–1.
Reserved

III. Pipeline Certificate Matters

PC–1.
Docket Nos. CP93–258–000, 001 and 003, Mojave Pipeline Company. Application for certificate authorizing major pipeline expansion.

Dated: November 2, 1994.

Lois D. Cashell,

Secretary.

[FR Doc. 94–27700 Filed 11–3–94; 4:07 pm]

BILLING CODE 6717–01–P

FEDERAL COMMUNICATIONS COMMISSION

FCC to Hold Open Commission Meeting, Thursday, November 10, 1994

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Thursday, November 10, 1994, which is scheduled to commence at 9:30 a.m., in Room 856, at 1919 M Street, N.W., Washington, D.C.

Item No., Bureau, and Subject

1—Private Radio—Title: Implementation of Section 309(j) of the Communications Act—Competitive Bidding (PP Docket No. 93-253). Summary: The Commission will consider petitions for reconsideration of rules established for the entrepreneurs' blocks in the broadband Personal Communications Service.

2—Cable Services—Title: Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992—("Going-Forward" Issues) (MM Docket Nos. 92-266 and 93-215). Summary: The Commission will consider revised "going forward" rules governing rates for regulated cable services and related issues.

3—Cable Services—Title: Implementation of the Cable Television Consumer Protection and Competition Act of 1992—Development of Competition and Diversity in Video Programming Distribution and Carriage (MM Docket No. 92-265). Summary: The Commission will consider petitions for reconsideration of the cable television program access rules other than issues raised in the National Rural Telecommunications Cooperative's (NRTC) petition relating to exclusive contracts with non-cable multichannel video programming (DBS) distributors.

4—Field Operations—Title: Amendment of Part 73, Subpart G, of the Commission's Rules Regarding the Emergency Broadcast System (FO Docket Nos. 91-171 and 91-301). Summary: The Commission will consider replacing the Emergency Broadcast System with a new technical and operational structure.

5—Mass Media—Title: Amendment of Parts 73 and 74 of the Commission's Rules to Permit Unattended Operation of Broadcast Stations and to Update Broadcast Station Transmitter Control and Monitoring Requirements. Summary: The Commission will consider action concerning broadcast station operator and transmitter control requirements.

6—Mass Media—Title: 4,295 Applications for Authority to Construct and Operate Multipoint Distribution Service Stations at 62 Transmitter Sites; 96 Applications for Authority to Construct and Operate Multipoint Distribution Service Stations. Summary: The Commission will consider 4,560 reconsideration petitions regarding applications for new MDS stations.

7—Mass Media—Title: Amendment of Parts and 74 of the Commission's Rules with Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service and Implementation of Section 309(j) of the Communications Act—Competitive Bidding (PP Docket No. 93-253) Summary: The Commission will consider alternatives for streamlining the procedures by which applications for new Multipoint Distribution Service are filed and processed.

8—Common Carrier—Title: Policies and Rules Concerning Letters of Agency for Changing Long Distance Carriers ("Slamming"). Summary: The Commission will consider proposing rules concerning letters of agency for changing long distance carriers.

Additional information concerning this meeting may be obtained from Audrey Spivack or Susan Lewis Sallet, Office of Public Affairs, telephone number (202) 418-0500.

Dated: November 3, 1994.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 94-27745 Filed 11-4-94; 1:19 pm]

BILLING CODE 6712-01-M

NATIONAL TRANSPORTATION SAFETY BOARD

TIME AND PLACE: 9:30 a.m., Tuesday, November 15, 1994.

PLACE: The Board Room, 5th Floor, 490 L'Enfant Plaza, S.W., Washington, D.C. 20594.

STATUS: Open.

MATTERS TO BE CONSIDERED:

6481—Safety Study: Commuter Airline Safety.

6247A—Railroad Accident Report: Collision and Derailment of Burlington Northern Train 01-111-10 and Union Pacific Train NPSEZ-09 in Kelso, Washington, November 11, 1993.

NEWS MEDIA CONTACT: Telephone: (202) 382-0660.

FOR MORE INFORMATION CONTACT: Bea Hardesty, (202) 382-6525.

Dated: November 4, 1994.

Bea Hardesty,

Federal Register Liaison Officer.

[FR Doc. 94-27735 Filed 11-4-94; 10:53 am]

BILLING CODE 7533-01-P

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of November 7, 14, 21, and 28, 1994.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of November 7

Thursday, November 10

2:30 p.m.

Periodic Meeting with Advisory Committee on Nuclear Waste (ACNW) (Public Meeting)

(Contact: John Larkins, 301-415-7360)

4:00 p.m.

Affirmation/Discussion and Vote (Public Meeting)

a. Final Amendments to 10 CFR Parts 30, 32, and 35: Preparation, Transfer of Commercial Distribution, and Use of Byproduct material for Medical Use (Tentative)

(Contract: Anthony Tse, 301-415-6233)

Week of November 14—Tentative

There are no meetings schedule for the Week of November 14.

Week of November 21—Tentative

There are no meetings schedule for the Week of November 21.

Week of November 28—Tentative

There are no meetings schedule for the Week of November 28.

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. if there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

The schedule for Commission meetings is subject to change on short notice. to verify the status of meetings call (Recording)—(301) 504-1292.

CONTACT PERSON FOR MORE INFORMATION: Dr. Andrew Bates (301) 504-1963.

Dated: November 3, 1994.

Andrew L. Bates,

Chief, Operations Branch, Office of the Secretary.

[FR Doc. 94-27730 Filed 11-4-94; 10:52 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

Agency Meetings

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meetings during the week of November 7, 1994.

A closed meeting will be held on Wednesday, November 9, 1994, at 10:00 a.m. An open meeting will be held on Thursday, November 10, 1994, at 10:00 a.m., in Room 1C30.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c) (4), (8), (9)(A) and (10) and 17 CFR 200.402(a) (4), (8), (9)(1) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Roberts, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the closed meeting scheduled for Wednesday, November 9, 1994, at 10:00 a.m., will be:

Settlement of administrative proceedings of an enforcement nature.
Institution of injunctive actions.
Institution of administrative proceedings of an enforcement nature.
Settlement of injunctive action.
Formal order of investigation.
Opinion.

The subject matter of the open meeting scheduled for Thursday, November 10, 1994 at 10:00 a.m., will be:

1. Consideration of proposed Rule 15c2–13 and proposed amendments to Rule 10b–10 under the Securities Exchange Act of 1934, which would require brokers and dealers to provide customers immediate written notification of certain additional information relevant to their securities transactions. For further information, please contact C. Dirk Peterson at (202) 942–0073.

2. Consideration of whether to adopt amendments to Rule 15c2–12 under the Securities Exchange Act of 1934 which require a broker, dealer, or municipal securities dealer underwriting municipal securities to reasonably determine that an issuer of municipal securities or an obligated person has agreed to make available annual financial information an event notices; and which impose requirements on brokers, dealers, and municipal securities dealers recommending the purchase or sale of municipal securities covered by the rule. For further information, please contact Janet W. Russell-Hunter at (202) 942–0073; or Amy Meltzer Starr at (202) 942–1875.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary (202) 942–7070.

Dated: November 3, 1994.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–27744 Filed 11–4–94; 1:18 am]

BILLING CODE 8010–01–M

federal register

Tuesday
November 8, 1994

Part II

Office of Management and Budget

Office of Federal Procurement Policy

48 CFR Parts 9903, 9905

Cost Accounting Standards Board; Application of Cost Accounting Standards Board Regulations to Educational Institutions; Final Rule

OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Procurement Policy

48 CFR Parts 9903, 9905

Cost Accounting Standards Board; Application of Cost Accounting Standards Board Regulations to Educational Institutions

AGENCY: Cost Accounting Standards Board, Office of Federal Procurement Policy, OMB.

ACTION: Final rule.

SUMMARY: The Cost Accounting Standards Board (CASB) hereby amends the regulatory provisions contained in Chapter 99 of Title 48. The amendments being promulgated today as a final rule apply to educational institutions receiving a negotiated Federal contract or subcontract award, in excess of $500,000 (excluding contracts awarded for the operation of Federally Funded Research and Development Centers (FFRDCs) which are already subject to CASB regulations), and require that such educational institutions comply with certain specified CASB rules, regulations and Cost Accounting Standards (CAS).

EFFECTIVE DATE: This rule is effective on January 9, 1995.

FOR FURTHER INFORMATION CONTACT: Rudolph J. Schuhbauer, Project Director, Cost Accounting Standards Board (telephone: 202–395–3254).

SUPPLEMENTARY INFORMATION:

A. Regulatory Process

The CASB's rules, regulations and Standards are codified at 48 CFR Chapter 99. Section 26(g)(1) of the Office of Federal Procurement Policy Act, 41 U.S.C. 422(g), requires that the Board, prior to the establishment of any new or revised CAS, complete a prescribed rulemaking process. The process generally consists of the following four steps:

1. Consult with interested persons concerning the advantages, disadvantages and improvements anticipated in the pricing and administration of Government contracts as a result of the adoption of a proposed Standard.
2. Promulgate an Advance Notice of Proposed Rulemaking (ANPRM).
3. Promulgate a Notice of Proposed Rulemaking (NPRM).
4. Promulgate a final rule.

This promulgation completes the four step process.

B. Background

Prior Promulgations: Based on information that some institutions of higher education were improperly allocating indirect costs to Federal research programs and charging unallowable costs to Federal awards (e.g., contracts, grants and cooperative agreements), the CASB published three Federal Register (FR) proposals requesting public comments from interested parties concerning the proposed application of the Board's rules, regulations and Standards to educational institutions. A Staff Discussion Paper was published on October 8, 1991 (56 FR 50737). After consideration of the public comments received in response to the Staff Discussion Paper, the CASB published an Advance Notice of Proposed Rulemaking (ANPRM) on June 2, 1992 (57 FR 23189). On December 21, 1992, after consideration of the public comments received in response to the ANPRM, the CASB published a Notice of Proposed Rulemaking (NPRM) (57 FR 60503) concerning proposed amendments to Chapter 99 of Title 48 that, when issued as a final rule, would require educational institutions to comply with certain specified CASB rules, regulations and Standards.

Public Comments: Seventy sets of public comments were received in response to the NPRM from educational institutions, Government agencies, public accounting firms, a professional accounting association, other associations, and an individual.

Many commenters opposed the CASB's proposal to independently promulgate CAS coverage for application to colleges and universities. The commenters' concerns centered primarily on the premise that the Board's proposal would result in a "second" set of accounting rules that may conflict with the accounting principles specified in Office of Management and Budget (OMB) Circular A–21, Cost Principles For Educational Institutions. Establishment of a "single" set of accounting requirements in Circular A–21 was recommended. In the promulgations referenced above, the Board stated that its proposed requirements are intended to be compatible with the basic requirements of Circular A–21. No conflicting provisions were specifically identified by the commenters. The Board, in its promulgations, repeatedly stated that it expected OMB to extend the CAS coverage established for contracts to grants and other forms of financial assistance by formal revision of Circular A–21.

On July 26, 1993, OMB, in the preamble comments to a Federal Register proposal making certain final revisions to Circular A–21 (58 FR 39997), stated that "Consistent with the Board's stated expectations, OMB plans to extend the CASB's regulations and Standards applicable to educational institutions to all awards (contracts and grants) made to institutions that are major recipients of Federal research funds."

Consistent with the CASB's stated expectations and independent statutory rulemaking authority, the CASB is promulgating this final rule in today's Federal Register. The Board has purposefully delayed the effective date of this final rule by 60 days so that OMB, by separate action, can amend Circular A–21 to incorporate the Board's requirements. Once promulgated, the Circular A–21 amendments incorporating CAS should mitigate the basis for the commenters' concerns regarding "two" sets of rules.

A number of commenters expressed opposition to the Board's proposal from administration and cost of implementation viewpoints, but such commenters generally did not take issue with the technical aspects of the proposed coverage. Some commenters endorsed the Board's proposal. Several commenters provided constructive editorial and technical comments which, in their opinion, would improve and clarify the Board's proposed regulatory coverage.

The commenters' overall concerns and suggestions are addressed in greater detail under Section E., Public Comments. The Board and the CASB staff express their appreciation for the constructive suggestions and criticisms provided by the commenters, particularly those offered to clarify and improve the proposed language in Parts 9903 and 9905, and the content of the proposed Disclosure Statement. Many of the commenters' suggested improvements have been incorporated into the final rule being promulgated today.

Benefits: After consideration of the public comments received, it is the Board's opinion that the application of the CAS provisions being promulgated today will improve the cost accounting practices followed by educational institutions when estimating, accumulating and reporting costs under Federal awards, and that the incremental costs of compliance with the Board's specific requirements will be minimal. Costs associated with the initial preparation and maintenance of a Disclosure Statement should be offset by reductions in the recurring administrative costs currently associated with the preparation of cost accounting data being submitted routinely to the cognizant Federal agencies for informational support, evaluation and negotiation of the institutions' indirect cost rate proposals. Use of the Disclosure Statement being promulgated today should also reduce the potential for disagreements between the contracting parties regarding an institution's cost accounting practices.

The Board believes this final rule will promote uniformity and consistency in the educational institutions' cost accounting practices. The potential benefits accruing to the Government's audit, negotiation and general contract administration processes will be substantial and will greatly outweigh any added costs.

Proposed Amendments: A brief description of the proposed amendments follows:

Part 9903, Contract Coverage: In Subpart 9903.2, CAS Program Requirements, existing subparagraph 9903.201–1(b)(10), exempting certain contracts awarded to educational institutions from CAS, is deleted. Subsections 9903.201–1 and 9903.201–2 are amended to identify which Standards shall continue to be applied to contractors other than educational institutions, and a new paragraph (9903.201–2(c)) is added to establish the particular Standards and associated contractual provisions to be applied to educational institutions. Subsection 9903.201–3 is amended to conform the prescribed solicitation notice for use by educational institutions. Subsection 9903.201–4 is amended to establish a unique contract clause for inclusion in CAS-covered contracts awarded to educational institutions. Subsection 9903.201–6 is amended to reference the new contract clause's provision permitting equitable adjustments when a change in cost accounting practice is found to be desirable and not detrimental. Section 9903.201–7 is added to specify cognizant Federal agency responsibilities for administering CAS-covered contracts. Section 9903.202 is amended to establish Disclosure Statement filing requirements for educational institutions (including temporary transition period filing requirements), prescribe the disclosure form to be submitted by educational institutions, and add new provisions requiring the cognizant Federal agency to establish policies and procedures for promptly determining the adequacy of submitted Disclosure Statements. In Subpart 9903.3, CAS Rules and Regulations, Section 9903.301 is amended to incorporate cross-references to definitions for certain new and existing terms.

Part 9905, Cost Accounting Standards For Educational Institutions: A new Part 9905 is added to incorporate four new Standards applicable to educational institutions, i.e., one requiring consistency in estimating, accumulating and reporting costs (Section 9903.501), one requiring consistency in allocating costs (Section 9903.502), one requiring contractor identification of specific unallowable costs (Section 9903.505), and one requiring consistency in the selection and use of a cost accounting period (Section 9903.506).

Summary Description of Amended CAS Coverage: As amended, Part 9903 and Part 9905 apply to educational institutions. A prescribed CAS contract clause must be incorporated in any negotiated Federal contract or subcontract awarded, in excess of $500,000, to an educational institution. An institution receiving a CAS-covered award will be contractually required to (1) consistently follow its established cost accounting practices when estimating (proposed costs), accumulating, and reporting costs under that and any subsequent CAS-covered award(s), (2) consistently allocate costs incurred for the same purpose, (3) identify unallowable costs and exclude from its billings, claims and proposals costs that are expressly unallowable or mutually agreed to be unallowable, and (4) consistently use the same cost accounting period for purposes of estimating, accumulating and reporting costs. Institutions receiving CAS-covered contracts will also be required to formally disclose, in a prescribed Disclosure Statement, and consistently follow their disclosed cost accounting practices, when a business unit of an institution:

(a) receives a CAS-covered contract or subcontract of $25 million, or more,

(b) received more than $25 million of CAS-covered contracts and subcontracts in its preceding cost accounting period, of which at least one award exceeded $1 million, or

(c) receives a CAS-covered contract or subcontract in excess of $500,000 *and* is one of the major recipients of Federal funds that is listed in Exhibit A of OMB Circular A–21.

Transition period Disclosure Statement filing requirements and temporary agency waiver authority are provided so agencies can phase-in the basic disclosure requirements in an orderly manner.

The CAS contract clause further provides for equitable price and cost adjustments in the event an institution is required to or elects to change its established or disclosed cost accounting practices (including cost accounting practice changes mandated by future amendments, if any, to Circular A–21), fails to consistently follow its established or disclosed cost accounting practices, or fails to comply with applicable Standards.

C. Paperwork Reduction Act

The information collection aspects of this rule have been approved by the Office of Management and Budget, and assigned Control Number 0348–0055.

D. Executive Order 12866 and the Regulatory Flexibility Act

This rule affects educational institutions receiving negotiated Federal contracts or subcontracts in excess of $500,000. The economic impact on educational institutions resulting from this rule is expected to be minor. Therefore, the Board has determined that this is not a "major rule" under Executive Order 12866, and that a regulatory impact analysis is not required. Furthermore, this regulation will not have a significant effect on a substantial number of small entities because small businesses are exempt from the application of the Cost Accounting Standards. Therefore, this final rule does not require a regulatory flexibility analysis under the Regulatory Flexibility Act of 1980.

E. Public Comments

This final rule is based upon the NPRM published in the **Federal Register** on December 21, 1992, 57 FR 60503, wherein public comments were invited. Seventy commenters responded. Their comments were considered. The Board's actions taken in response thereto are summarized in the paragraphs that follow:

OMB Circular A–21

Comment: Many educational institutions opposed the CASB proposal to independently promulgate regulations for application to colleges and universities. Instead, they recommended that the Board "adopt" the provisions contained in the OMB Circular A–21 which they stated is also being revised to resolve the same type of problems cited as the reason for applying the proposed CAS provisions to educational institutions. Such commenters stated:

The proposed Standards duplicate A–21 requirements.

Extra Standards are unnecessary, A–21 is adequate with planned changes, etc.

CAS will increase the potential for conflicts between the two regulations.

The Government has failed to demonstrate the need for two sets of regulations.

The Board should work with OMB to develop a mutually acceptable single A–21 rule.

Response: In the NPRM, the Board specifically responded to virtually identical concerns which were expressed by commenters in response to the ANPRM.

The Board strongly disagrees with the commenters' perceptions that the Board's proposal is duplicative of the accounting principles specified in Circular A–21 and therefore is unnecessary.

Circular A–21 does not require educational institutions to formally disclose the cost accounting practices they use to estimate, accumulate and report the costs of performing Federal awards. Information currently obtained by Federal officials concerning an institution's cost accounting practices is generally limited to data (1) indirectly reflected in an institution's individual cost proposals or reimbursement claims, (2) sampled, reviewed and reported on by auditors, and/or (3) provided in conjunction with the submission of the institution's indirect cost rate proposals to the extent specifically required by the Federal negotiator. Consequently, when such cost accounting information is obtained by Federal officials, it is acquired sporadically, in varying degrees of uniformity and thoroughness.

Circular A–21 does not contain the specific criteria and guidance provided in the four Standards under consideration. Proposed Standards 9905.501 and 9905.502 establish fundamental consistency requirements, define terms, detail techniques and provide illustrations for achieving compliance with the Standards' fundamental requirements. These two Standards constitute a significant expansion and clarification of the general consistency concepts specified in Circular A–21. Standard 9905.505 prescribes alternate methods that may be applied in meeting the fundamental requirement to identify and exclude costs that are not allowable under the terms of Federal awards. Standard 9905.506 requiring that a consistent cost accounting period be used, additionally specifies how an institution can comply with that requirement, including the use of specified transition periods in cases where a change in cost accounting periods is necessary or alternate methods where use of a twelve month period is not appropriate. Again, the specificity and detailed guidance contained in the four Standards is not contained in Circular A–21.

Accordingly, it is the Board's view that:

The commenters general objections appear to deal more with the form of regulatory coverage rather than the substance of the coverage.

Promulgation of the Board's proposal will provide for disclosure of an institution's cost accounting practices in a structured manner that is more efficient and effective than the current unspecified process.

Disclosure and application of the proposed Standards will facilitate and improve the administration of Federal payments to recipients of Federal funds and provide greater assurances that the educational institutions follow their cost accounting practices in a consistent manner.

The Board's statutory authority for promulgating cost accounting rules, regulations and Standards resides with the Board. Delegation of such authority to other Federal officials is not authorized under the statute.

The Board's proposed provisions augment, but do not duplicate, the requirements of Circular A–21. Thus, adoption of Circular A–21 requirements in lieu of the Board's proposal would be inappropriate.

Comment: Several commenters stated that CAS should be implemented after expected OMB Circular A–21 "accounting" changes go into effect. This would avoid the necessity for filing Disclosure Statement (DS) revisions and cost impact statements.

Response: The referenced accounting principle changes were incorporated in Circular A–21 on July 15, 1993. The Circular's amended provisions are to be "* * * implemented with the establishment of indirect cost rates for all fiscal years beginning on or after January 1, 1994." It is the Board's understanding that these amendments need not be implemented during any fiscal years where predetermined indirect cost rates have already been established. Thus, the date the Circular's provisions "go into effect" will vary from institution to institution. The CASB's provisions are designed to be compatible with existing and future amended A–21 accounting principles. Whenever an OMB Circular A–21 mandated accounting principle change requiring an institution to change its cost accounting practice(s) is actually implemented, only the page(s) in the DS pertaining to the changed practice(s) need be amended and filed prior to actual implementation of the change. In such cases, the institution, pursuant to provision (a)(4)(iv) of the contract clause at 9903.201–4(e), must also resolve with their cognizant Federal agency officials whether an equitable adjustment is or is not required under existing CAS-covered contracts. Guidance for effecting equitable price adjustments is contained in 9903.305, Materiality, and 9903.306, Interpretations.

Accordingly, it is not feasible, desirable or necessary for the Board to establish a concurrent effective date as suggested for implementation of this final rule.

Administrative Costs to Implement CAS

Comment: Many of the commenters stated that the CASB rules impose an administrative cost burden.

Response: The commenters various concerns that application of the Board's proposed CAS coverage will impose an administrative cost burden generally evolved into two basic questions:

1. What presently constitutes an adequate cost accounting system under the terms and conditions of existing Federal awards?

2. What are the additional costs imposed by CAS?

Educational institutions are required to maintain adequate records for the accumulation and identification of allowable costs under the existing regulatory requirements incorporated in their existing Federal awards. It is not altogether clear if the cited administrative cost concerns are solely attributable to the Board's proposal or a possible indication of a lack of compliance with the existing contractual requirements concerning the maintenance of adequate estimating and cost accounting systems. Educational institutions must presently administer their Federal awards and resolve any cost accounting issues raised by Federal officials in accordance with existing administrative processes. The administrative costs that were or are currently being incurred by some of the major universities to resolve the recent Federal challenges to proposed and claimed costs were not mentioned.

When several universities were recently subjected to increased Federal audit scrutiny, millions of dollars of claimed costs were questioned and recovered by Federal agencies. The basis for such Federal challenges were attributed to (1) differing interpretations regarding the propriety of the institutions' cost allocation processes and (2) the institutions' failure to identify and exclude unallowable costs from their proposals and cost-reimbursement claims. The CASB's proposal requires formal disclosure of the major institutions' cost accounting practices; and, provides Standards for attaining consistency and for identification and exclusion of unallowable costs. The additional costs imposed by CAS are the incremental costs required to complete and maintain Disclosure Statements. The CAS consistency and unallowable cost provisions are Standards for meeting existing contractual requirements. Thus, the Board views the administrative costs associated with the latter as part of the normal costs of compliance with the basic contractual requirements that are imposed under existing regulations.

Further, the Board believes the proposal will reduce the potential for after-the-fact disagreements over the educational institutions' cost allocation processes, establish a more structured process for resolving cost accounting issues and will, in the long run, benefit both the Government and the educational institutions.

The expressed concerns did not result in modification of the Board's proposed regulatory requirements. However, the content of the proposed CASB Form DS–2 was significantly reduced to minimize Disclosure Statement preparation costs, as discussed in Paragraph F.

Civilian Agencies are Not Staffed to Administer CAS

Comments: Several commenters stated that they would be adversely impacted because agencies are not staffed to administer Disclosure Statements (DSs) and routine changes in their accounting systems. The Department of Health and Human Services confirmed that it too was concerned about its abilities to immediately implement the proposed CAS requirements for all CAS-covered entities.

Response: In consideration of the expressed concerns, the Board concluded that delayed implementation of the DS submission requirements would benefit the contracting parties. Under the NPRM, educational institutions meeting specified criteria were required to submit a DS prior to receipt of a CAS-covered contract. It is not the Board's intent to preclude the award of a contract where an institution has not yet become familiar with the Board's new disclosure requirements or been provided a reasonable opportunity to disclose its cost accounting practices. Further, the Board views an orderly phased-in implementation period as preferable to the proposed requirement which could clearly strain cognizant Federal agency resources if concurrent receipt of a significant number of DSs occurred. Accordingly, the Board has delayed implementation of the basic requirement and established transition period requirements for the filing of new DSs, applicable exclusively to educational institutions, at 9903.202–1(f).

Under the cited transition period provisions, educational institutions are authorized to file completed DSs *after* receipt of a CAS-covered contract that is placed on or before December 31, 1995. Six month filing periods ending six, twelve, and eighteen months after receipt of such contracts were established to phase-in the basic disclosure requirement in order to minimize the impact on educational institutions and Federal agencies. The twenty largest recipients of Federal funds were expected to submit completed DSs first and are, therefore, subject to the six month after award filing requirement. The next largest group of Federal funds recipients are subject to the twelve month requirement, etc.

Implementation of the basic requirement that a completed DS be provided or be on file with the cognizant Federal agency prior to award applies to CAS-covered contracts placed on or after January 1, 1996. However, where the cognizant Federal agency and the educational institution have established a DS due date falling between January 1, 1996 and June 30, 1997 pursuant to 9903.202–1(f)(3) and (4), individual awarding agencies are provided authorization to waive the preaward filing requirement for contracts placed during that period when necessary to avoid any potential due date conflicts.

For those educational institutions required to disclose their cost accounting practices, the transition provisions are intended to permit the larger recipients of Federal funds to complete and file DSs on or before June 30, 1996 and the smaller recipients to complete and file DSs no later than June 30, 1997. Earlier compliance with the basic disclosure requirement is encouraged.

The Board has also established additional provisions at 9903.201–7 and 9903.202–6 requiring Federal agencies to establish appropriate policies and procedures to administer CAS and to determine the adequacy of submitted DSs in a timely manner.

Predetermined Indirect Cost Rates (PDICRs)

Background: Predetermined fixed rates or negotiated fixed rates are used by some agencies to reimburse educational institutions for indirect costs associated with their cost-reimbursement type contracts and grants. Generally, such PDICRs are negotiated in advance, and are applied to direct base costs incurred and billed in subsequent periods. PDICRs are final rates, i.e., the indirect costs so determined and paid under Federal awards are not subsequently adjusted to reflect the actual allowable indirect costs incurred during the subsequent periods of performance. At some locations where a civilian agency is the cognizant Federal agency, an institution's PDICR proposal may be based on actual costs *extrapolated* from the institution's fund accounting records that were maintained for a completed fiscal year, i.e., a prior base year (e.g., year 1). The base year's costs may be adjusted to reflect estimated base and pool costs for future fiscal years (e.g., PDICRs negotiated in year 2 may cover years 3, 4, etc.). Under the current Federal Acquisition Regulation (FAR), FAR 42.705–3(b) only permits the use of "predetermined final indirect cost rates" for contract awards when specified conditions are met. Predetermined rates covering more than a one year period are prohibited under FAR 42.705–3(b)(6).

Comment: The Department of Health and Human Services asked the Board to "* * * explicitly state that the standards do not preclude the use of * * *" PDICRs.

Response: The use of PDICRs is subject to agency procurement regulations. Where permitted by statute and implementing agency regulations, negotiated PDICRs can continue to be used *provided* that, in the completed base year and in subsequent cost accounting periods, (1) all costs incurred for the same purpose, in like circumstances, are consistently treated as either direct costs only or as indirect costs only and (2) the allocation base costs (e.g., Modified Total Direct Costs) and allowable indirect cost pool amounts are grouped, accumulated and allocated in a consistent manner. The base costs and pool costs used to calculate predetermined or negotiated fixed rates should be estimated by using the same cost accounting practices that were used to measure, assign, and allocate actual base costs and indirect pool costs for a completed fiscal year. If different cost accounting practices are used to estimate and accumulate base or pool costs of a future period, the change in cost accounting practice must be disclosed under the terms of CAS-covered contracts. The cost accounting practices used to determine estimated (predetermined) and actual indirect costs are subject to the Board's CAS and Disclosure Statement requirements.

The use of predetermined or negotiated fixed rates, for administrative convenience or for other reasons, should not be viewed as a CAS noncompliance issue, provided the institution maintains cost accounting records which clearly demonstrate that direct and indirect costs are determined in a consistent manner, when the institution estimates, accumulates and reports costs applicable to Federal awards (See 9905.501).

Comment: One university representative requested the Board to "* * * comment on the significance of

* * *" PDICRs and compliance with CAS. The commenter believes that CAS compliance is achieved if the PDICR is "* * * multiplied by the applicable direct cost base. Any further inquiry into actual indirect costs would be inconsistent with the premise of predetermined rates * * *".

Response: The Board does not agree with the commenter's perceptions. Under existing Federal contractual audit and record keeping requirements, an institution must maintain a complete set of accounting records, supported by source documents, that adequately reflect all costs incurred and claimed under their Federal awards. Such records must also be made available for audit pursuant to applicable Federal audit requirements. Under the CAS being promulgated today, an educational institution is required to maintain cost accounting records which reflect the consistent application of the institution's established cost accounting practices, including those used to classify a cost either as a direct or indirect cost, when estimating, accumulating and reporting costs during *each cost accounting period.* Memorandum or work sheet records are acceptable.

Based on this comment, the Board is concerned that some institutions may not be maintaining annual cost accounting records that adequately identify how their total direct and indirect costs are treated during each cost accounting period. Without such annual records, the institution's internal controls and the "audit trail" (from source documents to final cost accumulation points) would be obscured. Consequently, the institution's ability to demonstrate the consist application of its established cost accounting practices when estimating, accumulating and reporting direct and indirect costs may be irreparably impaired.

Educational institutions are advised that failure to maintain adequate cost accounting records *for each cost accounting period* may be viewed as a violation of their existing contractual record keeping requirements and/or result in a determination that the institution has failed to comply with an applicable CAS or to consistently follow its established cost accounting practices.

Negotiated Fixed Rates and Carry-Forward Provisions (NFR–CFPs)

Background: OMB Circular A–21 provides that where NFR–CFPs are used, the over- or under-recovery in a particular year may be included as an adjustment to the indirect cost recognized as allowable and allocable in a subsequent year.

Comment: An accounting association expressed concerns that use of NFR-CFPs may result in significantly inaccurate measurements of cost for a particular cost accounting period.

Response: To some, this overall adjustment process may raise valid cost assignment and allocation issues. However, the carry forward provision is viewed by the Board as essentially an administrative expedient. It is the Board's understanding that the carry-forward provision is generally used where the number of Federal awards is significant but the volume of Federal activity is relatively stable and predictable. Rather than adjust the individual amounts billed for a large number of awards, necessary adjustments are effected in an overall manner by offsetting different amounts otherwise considered allowable. Such offsets made in a subsequent period for adjustments attributable to a prior period represent, in essence, the implementation of an administrative policy on how to best effect adjustments for any over- or under-payments after the actual allowable costs are determined for a prior period.

Where agency procurement regulations permit the use of NFR-CFPs, the resulting cost adjustment process should not be viewed as a CAS noncompliance issue *per se.* Necessary adjustments may be applied under CAS-covered contracts if the cost accounting practices used to initially determine forecasted or actual indirect costs and rates (exclusive of any carry forward adjustments) for each year comply with the Board's rules, regulations, and Standards. In such cases, however, a distinctive two step procedure must be followed. First, the forecasted or actual indirect expense pool(s) used to initially determine the forecasted rates and the actual prior year rates must be determined exclusive of any carry forward adjustments. The cost accounting practices used to do so must meet applicable CAS requirements. Then, after the rates are so determined, the institution and cognizant Federal negotiator may, if permitted by agency regulations, effect appropriate adjustments to a forecasted year rate to compensate for any over- or under-estimated indirect cost payments made in a prior year.

Part 9903 CAS Applicability Provisions

Comment: A commenter asked if a negotiated contract would be considered CAS-covered, where a contract initially awarded for $325,000 to cover a three year performance period were increased to $625,000 and the performance period were extended to five years.

Response: The CAS applicability threshold is determined at the time the basic contract is awarded based on the total negotiated price for the entire scope of work contemplated, including all options. If only a three year contract was contemplated, the described contract action totaling $325,000 would not incorporate a CAS contract clause. However, if the Government had initially contemplated a five year contract performance period but available funds were obligated to only cover the first three years, CAS applicability would be determined based upon the negotiated contract price for the full five year period. That is, where a negotiated contract is incrementally funded, the individual amounts of funding provided in the basic award and subsequent funding modifications are not to be used individually in determining CAS applicability. Rather, the entire estimated contract cost, plus fee, if any (for the entire period of performance), is used to determine CAS applicability.

Comment: A commenter asked if an existing negotiated contract in excess of $500,000 that is not currently CAS-covered would become CAS-covered after promulgation of this final rule if a contract modification increases the contract price by $100,000.

Response: No. The existing non-CAS-covered contract would not become CAS-covered even if the modification was in excess of $500,000.

Comment: A commenter asked if a $200,000 subcontract awarded under a CAS-covered prime contract would be CAS-covered?

Response: No. Only negotiated subcontracts in excess of $500,000 will be required to be CAS-covered.

Comment: Several commenters expressed opposition to the proposed CAS applicability provision that requires full coverage when an institution receives a single CAS-covered award in excess of $500,000 and the institution is listed in Exhibit A of OMB Circular A–21.

Response: Exhibit A of the Circular lists the 99 educational institutions that receive the preponderant amount of Federal research funds under their contracts and grants. The listed institutions receive Federal funds ranging from more than $25 million annually to amounts in excess of $250 million annually. Unlike commercial organizations, however, many of these educational institutions do not receive large individual dollar value contracts that could be used as an effective applicability threshold, e.g., to trigger a

Disclosure Statement requirement. Rather, they receive a large number of small dollar value contract and grant awards. The Board believes it would be beneficial to the contracting parties if the larger recipients of Federal research funds formally disclosed their cost accounting practices. Accordingly, use of only a $25 million contract threshold to initiate the disclosure requirement being promulgated today was not considered sufficient to meet the Board's objective.

Comment: There is an inconsistency in the proposed threshold coverage: Coverage is set at "$500,000 or more" and at "in excess of $500,000."

Response: The NPRM proposed language has been revised to consistently cite "in excess of $500,000."

Comment: If educational institutions are to be covered by CAS, whereas only their FFRDCs were covered previously, all future CAS-covered contracts awarded to educational institutions should be subject to the same coverage. The proposal to retain modified and full coverage for such FFRDCs should be eliminated.

Response: FFRDCs are generally treated as an independent segment of an educational institution and have been subject to full or modified CAS coverage prescribed by the CASB and incorporated in Part 9903 and Part 9904 by the Board. That prescribed coverage for FFRDCs is not modified or revised by this final rule.

Part 9905 Cost Accounting Standards

Standard 9905.501

Comment: If an institution installs a new accounting system with a new chart of accounts during the performance of a contract and it cannot report actual costs consistent with the way the costs were estimated, does this constitute a violation of the Fundamental Requirement at 9905.501–40(b)?

Response: Yes. Changes made in an institution's general accounting systems used for financial management and reporting purposes that result in a change in the institution's cost accounting practices or noncompliance with a Standard are subject to paragraphs (a)(4) and (a)(5), respectively, of the contract clause at 9903.201–4(e).

Comment: A commenter suggested that the Board clarify that the providing of estimated cost data in greater detail than the institution's accounting system can handle should not constitute a violation of Standard 9905.501.

Response: The Board's proposal was predicated on Standard 9904.401. However, the Interpretation at 9904.401–61 that addressed to what degree the costs for estimated scrap and shrinkage costs in a manufacturing production oriented environment should be accounted for in a contractor's cost accounting records was not included in 9905.501. Scrap and shrinkage costs were not considered a material cost item under research contracts performed by educational institution. The Board believes that the record keeping concepts expressed in the referenced Interpretation apply equally to this commenter's concern and that such guidance would facilitate implementation of 9905.501. Accordingly, the portions of the referenced Interpretation concerning the amount of detail required in accumulating and reporting costs have been incorporated at 9905.501–50(c).

Standard 9905.502

Comment: One commenter expressed difficulty in understanding the concepts of Standard 9905.502 where the university engages in cost sharing, where projects have multiple sponsors particularly in light of the university's desire to accommodate the different requirements imposed by Federal and private supporters and the different fund accounting methods it uses to account for restricted and unrestricted funds.

Response: The statements provided by this commenter infer that, in a university "fund" accounting system, direct and indirect costs for a particular project cannot always be allocated to final cost objectives on a consistent basis. Thus, the proposed Standard requires revision. If that was the commenters intent, the Board does not agree.

One of the Board's primary objectives is to prescribe rules and regulations that will result in the consistent and equitable allocation of direct and indirect costs to CAS-covered contracts. The purpose of Standard 9905.502 is to require consistency in the institution's cost accounting practices followed for determining the direct and indirect costs to be allocated to all final cost objectives. The Standard requires that the institution's cost accounting practices consistently treat costs incurred for the same purpose, in like circumstances, as either a direct cost or an indirect cost, without regard to the source or type of funds (restricted or unrestricted) involved. While multi-sponsored projects and cost-sharing arrangements are not specifically addressed, this Standard requires that direct and indirect costs be allocated to all final cost objectives established for each project on a consistent basis in the institution's cost accounting system. A project's costs may be accumulated under one final cost objective and be identified with individual sponsors on a pro rata basis, and/or project costs may be accumulated and recorded in sub-accounts or individual cost accumulation points (final cost objectives) associated with each sponsor. This Standard does not prescribe criteria for determining what constitutes a project or the number of final cost objectives required to accumulate costs for a project.

Comment: Where a large major research contract involves the management of major subcontracts, complex procurements and equipment fabrications, award and administration costs of such activities may be directly attributable to the research project and are charged directly. Conversely, procurements under smaller projects that are relatively simple to administer, may be administered by the department's general business manager, who is included in Departmental Administration indirect cost pool. The Board should recognize that this is not a violation of the Standard.

Response: Where an institution can demonstrate different circumstances, Standard 9905.502 permits the use of different allocation methods. However, the described circumstances appear identical to the illustration of costs that are incurred for the same purpose, at 9905.502–60(a)(1), where the institution elects to charge travel costs, normally treated as an indirect cost, directly to a contract. That illustration provides that similar travel costs incurred under other contracts may no longer remain in the indirect expense pool. The described subcontract administration costs appear to be incurred for the same purpose, regardless of the subcontracts' size, nature or complexity. Double counting may occur if the costs of administering other subcontracts under the smaller projects are not removed from the Departmental Administration indirect cost pool and charged directly. Determinations on whether different circumstances are or are not involved must be made on a case-by-case basis.

Comment: In 9905.502–30(a)(4), it should be made clear that the term "final cost objective" is not intended to mean each individual contract.

Response: The term "final cost objective" as defined in the Standards, applies to individual cost objectives, e.g., individually sponsored projects (contracts, grants, etc.), co-sponsored projects, in-house projects, and similar cost objectives. Normally, costs accumulated in a final cost objective are not allocated to other cost objectives.

Comment: A Federal agency recommended that, in 9905.502–60(a)(2), the proposed term "planning costs" be replaced with a more representative term such as "purchasing activity" which is a more significant cost item at universities.

Response: The illustration was appropriately revised.

Comment: A commenter suggested that certain prescribed OMB policies and procedures be illustrated as an acceptable practice in the Standard.

Response: The suggestion would result in the duplication and unnecessary proliferation of existing regulations. The commenter did not indicate if there was a potential conflict between CAS and OMB Circular A–21, accordingly the proposed Standard was not modified.

Standard 9905.505

Comment: A commenter from a major university stated that paragraph 9905.505–40(f) describes how to handle a cost overrun on a contract. However, it does not consider the way in which cost overruns must be handled in a fund accounting system. This paragraph should either be deleted or modified to recognize the requirement of a fund accounting contractor.

Response: The Board's Standards pertain to the complete set of cost accounting practices used by an institution to estimate, accumulate and report costs under negotiated Federal awards. Conceptually, the same cost accounting practices are applied to all activities of a segment performing CAS-covered contracts in order to ensure all costs are allocated on a consistent basis to all final cost objectives. The particular provision in question requires that an institution be able to identify the total costs incurred with respect to a particular contract or similar cost objective, regardless of available funding considerations. In cases of a contract cost overrun, the Standard does not prescribe how the cost overrun is to be treated in the educational institution's "fund" accounting system.

The commenter's statements remain a concern to the Board, as this issue was discussed in the preamble comments to the NPRM. The explanatory statements currently provided infer that cost overruns cannot be accumulated and reported in a university environment. Because all costs must be funded in order to be recorded in a fund accounting system, the commenter advised that the direct costs of an overrun contract must be transferred to other projects or to other indirect cost centers (e.g., from Research to Instruction). Within the set of cost accounting practices used for determining the costs of Federal awards, such transfers could result in the allocation of different indirect cost amounts to the same base costs and alter the amount of indirect costs allocated to other final cost objectives. If so, the described practices would not be in compliance with the consistency requirements being promulgated today. The commenting university is encouraged to review, and possibly modify, its cost accounting practices being followed under Federal awards to ensure that they will be in compliance with the Board's consistency requirements.

Comment: One commenter asked: After identifying an indirect cost that has been questioned by the auditor and sustained by the contracting officer, must the university also deduct it from subsequent proposals pending appeal?

Response: No. The type of costs under appeal must be identified in, but need not be excluded from, proposals and reimbursement claims. If, after the appeal is adjudicated, the Contracting Officer's final decision is not overturned and the costs remain unallowable, the Standard's identification and exclusion provisions would apply.

Comment: A commenter suggested that, in 9905.505–60(d), the phrase "interim bidding and billing rates" be replaced by a more commonly used term.

Response: The phrase was replaced by the generic term "indirect cost rates."

Standard 9905.506

Comment: Under paragraph 9905.506–50(a)(2), a commenter suggested adding the words "or cost group" after the words "indirect cost pool." By way of explanation, the commenter advised the only way one could handle a situation of an indirect cost function which exists for only part of a year is to set up a separate cost group *within* one of the A–21 specified indirect cost pools.

Response: This suggestion was partially adopted. The term "expense pool" was added instead of the suggested term.

The commenter's suggestion and rationale could be erroneously interpreted by some to mean that a separate pool and allocation base applicable to the partial period need not be established. This Standard requires the use of a full cost accounting period, e.g., normally the institution's fiscal year. An exception provision permits the use of a shorter period for the allocation of indirect costs that only exist during a portion of the cost accounting period. In such cases, 9905.506–50(a) requires the establishment of a separate allocation base, during the partial period, that is representative of the short term function. That provision also requires that the indirect costs associated with the unique short term function be accumulated in a separate indirect cost pool. The resultant allocation to final cost objectives of the short term period would generally be independent of the normal A–21 allocation process that is predicated on allocation bases and indirect cost pools applicable to all work performed during a full cost accounting period. The Board believes incorporation of the term "expense pool" will clarify that unique indirect costs that only exist during a portion of the cost accounting period may be accumulated in a separate pool and allocated to final cost objectives of that shorter period.

Comment: A commenter stated that, in the illustration at 9905.506–60(a), the proposed phrase "estimated amount of the Organized Research expense pool" was unclear and suggested use of the phrase "estimated amount of indirect costs allocated to Organized Research."

Response: The suggested change was adopted.

Disclosure Statement (DS)

Comment: One commenter recommended that the Board clarify that the different and special handling of direct vs. indirect costs of an FFRDC contract from all other CAS-covered contracts does not constitute a violation of Standard 9905.502.

Response: When the cost accounting practices of the FFRDC activity and other institutional activities differ, the FFRDC should be treated as a separate "segment" and file its own DS. Where costs of the institution are allocated to both FFRDC and non-FFRDC activities, the segments' DSs should appropriately detail how institution-wide costs are allocated to the segments. Each segment must then disclose its particular cost accounting practices.

Likewise, if two departments at a campus location follow different cost accounting practices, the institution must decide if the two departments should be treated as separate segments and file separate DSs for each or if the cost accounting practices of the two departments should be conformed.

Comment: A Federal agency and other commenters advised that the level of detailed cost accounting records maintained by educational institutions to accumulate costs may vary depending upon the indirect cost category or functional activity involved.

Response: In determining the costs of performing Federal awards, an institution's cost accounting records must be able to first identify and accumulate the total costs of each indirect cost category to be allocated to all major functions and activities of the institution. The accounting records maintained for this purpose must be sufficiently detailed to enable the contracting parties to reasonably establish base costs and indirect pool costs, applicable to all functions and activities, in a consistent manner. However, decisions on the level of detailed accounting records to be maintained should be influenced by the materiality of the costs being allocated to Federal awards. Reasonable approximations of costs may be used when the costs are immaterial or the resultant allocations to intermediate and final cost objectives will not differ materially from the amounts that would be obtained if more precise and detailed records were maintained. The level of accounting detail considered necessary in the circumstances must, therefore, be determined on a case-by-case basis and remains a matter subject to review and approval by the cognizant Federal agency.

In light of the commenter's statements, Item 3.1.0. of the Disclosure Statement was expanded to require disclosure of how the costs of the individual indirect cost categories are identified and accumulated. Where the costs associated with a particular indirect cost category are not formally accumulated and recorded in the institution's formal accounting system, the cost accounting practices followed to identify such costs for allocation to the major functions and activities of the institution must be fully described on a continuation sheet.

F. Additional Revisions—Disclosure Statement (DS) Form CASB DS–2

By memorandum dated February 1, 1994, the Deputy Administrator, Office of Information and Regulatory Affairs (OIRA), advised the Board that some representatives from OMB and the Department of Health and Human Services (HHS) had recently informed OIRA that the Board's proposed DS Form CASB DS–2 could be improved.

The Board advised OIRA that in order to meet its primary objective, the promulgation of a useful DS Form, it would consider any additional OMB suggestions or Federal agency elaborations regarding their previously submitted responses to the Board's NPRM. Representatives from OMB's Office of Federal Financial Management, HHS and the Department of Defense proceeded to develop a list of suggested changes which, in their view, would further clarify the proposed disclosure requirements or curtail the amount of disclosure needed for certain cost elements that were not considered to be significant or problematic. The list was informally coordinated with the CASB's staff. A revised CASB Form DS–2 was then prepared by the CASB staff and submitted to the Board. Most of the suggested changes were adopted by the Board and are reflected in the CASB Form DS–2 being promulgated today.

Essentially, a number of DS items contained in the NPRM were deleted and/or restated to facilitate disclosure. Consequently, the Board believes the DS being promulgated today is more useful and cost effective than that proposed in the NPRM. To that end, the Board expresses its appreciation for the assistance provided by OMB and agency representatives.

On July 21, 1994, OMB promulgated a Notice in the **Federal Register** (59 FR 37276) for paperwork clearance purposes and copies of the revised Form CASB DS–2 were made available to interested parties. Based on the public comments received, the promulgated Form CASB DS–2 was further revised as follows:

Item 2.4.0 was revised to clarify that the term "direct personal service costs" may include applicable fringe benefits costs consistent with OMB Circular A–21 provisions.

Item 3.1.0 was revised to include the word "other" to clarify that costs from one indirect cost category may be allocated to "other" indirect cost categories.

In Part VI, the instructions were expanded to provide the reporting unit with the option of completing the form for any costs incurred by another organizational entity where it has access to the necessary data or of requesting that entity to complete the pertinent items.

The Federal Acquisition Streamlining Act of 1994, in Section 2191 titled "Travel Expenses of Government Contractors" repealed Section 24 of the Office of Federal Procurement Policy Act (41 U.S.C. 420). Since proposed item 2.7.1. was predicated on the repealed statutory provisions, it was deleted.

In the General Instructions to the Disclosure Statement, Instruction Number 8, was modified to permit incorporation of written cost accounting polices and procedures by specific reference or alternatively by incorporation as appendices. As promulgated today, Instruction 8 is intended to facilitate full disclosure and minimize Disclosure Statement preparation costs whenever an established cost accounting practice is adequately described in an institution's formal accounting system.

List of Subjects in 48 CFR Parts 9903, 9905

Cost accounting standards, Government procurement.

Richard C. Loeb,

Executive Secretary, Cost Accounting Standards Board.

For the reasons set forth in this preamble, chapter 99 of title 48 of the Code of Federal Regulations is amended as set forth below:

1. The authority citation for Part 9903 continues to read as follows:

Authority: Public Law 100–679, 102 Stat. 4056, 41 U.S.C. 422.

PART 9903—CONTRACT COVERAGE

Subpart 9903.1—General

2. Section 9903.102 is amended by revising the last sentence of this paragraph to read as follows:

9903.102 OMB Approval Under the Paperwork Reduction Act.

* * * OMB has assigned Control Numbers 0348–0051 and 0348–0055 to the paperwork, recordkeeping and forms associated with this regulation.

Subpart 9903.2—CAS Program Requirements

3. Section 9903.201–1 is amended by revising paragraph (a) and removing and reserving paragraph (b)(10) to read as follows:

9903.201–1 CAS applicability.

(a) This subsection describes the rules for determining whether a proposed contract or subcontract is exempt from CAS. (See 9904 or 9905, as applicable.) Negotiated contracts not exempt in accordance with 9903.201–1(b) shall be subject to CAS. A CAS-covered contract may be subject to full, modified or other types of CAS coverage. The rules for determining the applicable type of CAS coverage are in 9903.201–2.

(b) * * *

(7)–(10) [Reserved]

* * * * *

4. Section 9903.201–2 is amended by revising the first sentence in paragraph (a) and adding a new paragraph (c) to read as follows:

9903.201–2 Types of CAS coverage.

(a) *Full coverage.* Full coverage requires that the business unit comply with all of the CAS specified in Part 9904 that are in effect on the date of the contract award and with any CAS that become applicable because of later award of a CAS-covered contract. * * *

* * * * *

(c) *Coverage for educational institutions*—(1) Regulatory requirements. Parts 9903 and 9905 apply to educational institutions except as otherwise provided in this paragraph (c) and at 9903.202–1(f).

(2) *Definitions.* (i) The following term is prominent in Parts 9903 and 9905. Other terms defined elsewhere in this Chapter 99 shall have the meanings ascribed to them in those definitions unless paragraph (c)(2)(ii) of this subsection below requires otherwise.

Educational institution means a public or nonprofit institution of higher education, e.g., an accredited college or university, as defined in section 1201(a) of Public Law 89–329, November 8, 1965, Higher Education Act of 1965; (20 U.S.C. 1141(a)).

(ii) The following modifications of terms defined elsewhere in this Chapter 99 are applicable to educational institutions:

Business unit means any segment of an educational institution, or an entire educational institution which is not divided into segments.

Segment means one of two or more divisions, campus locations, or other subdivisions of an educational institution that operate as independent organizational entities under the auspices of the parent educational institution and report directly to an intermediary group office or the governing central system office of the parent educational institution. Two schools of instruction operating under one division, campus location or other subdivision would not be separate segments unless they follow different cost accounting practices, for example, the School of Engineering should not be treated as a separate segment from the School of Humanities if they both are part of the same division's cost accounting system and are subject to the same cost accounting practices. The term includes Government-owned contractor-operated (GOCO) facilities, Federally Funded Research and Developments Centers (FFRDCs), and joint ventures and subsidiaries (domestic and foreign) in which the institution has a majority ownership. The term also includes those joint ventures and subsidiaries (domestic and foreign) in which the institution has less than a majority of ownership, but over which it exercises control.

(3) *Applicable Standards.* Coverage for educational institutions requires that the business unit comply with all of the CAS specified in Part 9905 that are in effect on the date of the contract award and with any CAS that become applicable because of later award of a CAS-covered contract. This coverage applies to business units that receive negotiated contracts in excess of $500,000, except for CAS-covered contracts awarded to FFRDCs operated by an educational institution.

(4) *FFRDCs.* Negotiated contracts awarded to an FFRDC operated by an educational institution are subject to the full or modified CAS coverage prescribed in paragraphs (a) and (b) of this subsection. CAS-covered FFRDC contracts shall be excluded from the institution's universe of contracts when determining CAS applicability and disclosure requirements for contracts other than those to be performed by the FFRDC.

(5) *Contract Clauses.* The contract clause at 9903.201–4(e) shall be incorporated in each negotiated contract and subcontract awarded to an educational institution when the negotiated contract or subcontract price exceeds $500,000. For CAS-covered contracts awarded to a FFRDC operated by an educational institution, however, the full or modified CAS contract clause specified at 9903.201–4 (a) or (c), as applicable, shall be incorporated.

(6) *Continuity in Fully CAS-Covered Contracts.* Where existing contracts awarded to an educational institution incorporate full CAS coverage, the contracting officer may continue to apply full CAS coverage, as prescribed at 9903.201–2(a), in future awards made to that educational institution.

* * * * *

5. Section 9903.201–3 is amended by redesignating the introductory heading as the heading of paragraph (a); redesignating the existing introductory text and paragraphs (a) through (d) as paragraph (a)(1) introductory text and paragraphs (a)(1) (i) through (iv) respectively; adding a new paragraph (a)(2); revising the heading of the solicitation notice; adding a new paragraph at the end of the introductory "Note;" amending Part I of the basic provision by revising paragraph (a), the first and second sentences in paragraph (b) and paragraphs (c)(1) and (c)(2); and adding a new Alternate I at the end of the basic provision to read as follows:

9903.201–3 Solicitation provisions.

(a) Cost Accounting Standards Notices and Certifications.

(1) * * *

(2) If an award to an educational institution is contemplated prior to July 1, 1997, the contracting officer shall use the basic provision set forth below with its Alternate I, unless the contract is to be performed by an FFRDC (see 9903.201(c)(5)), or the provision at 9903.201(c)(6) applies.

Cost Accounting Standards Notices and Certification (Oct 1994)

Note: * * *

If the offeror is an educational institution, Part II does not apply unless the contemplated contract will be subject to full or modified CAS-coverage pursuant to 9903.201–2(c)(5) or 9903.201–2(c)(6).

I. Disclosure Statement—Cost Accounting Practices and Certification

(a) Any contract in excess of $500,000 resulting from this solicitation, except contracts in which the price negotiated is based on (1) established catalog or market prices of commercial items sold in substantial quantities to the general public, or (2) prices set by law or regulation, will be subject to the requirements of the Cost Accounting Standards Board (48 CFR, Chapter 99), except for those contracts which are exempt as specified in 9903.201–1.

(b) Any offeror submitting a proposal which, if accepted, will result in a contract subject to the requirements of 48 CFR, Chapter 99 must, as a condition of contracting, submit a Disclosure Statement as required by 9903.202. When required, the Disclosure Statement must be submitted as a part of the offeror's proposal under this solicitation unless the offeror has already submitted a Disclosure Statement disclosing the practices used in connection with the pricing of this proposal. * * *

(c) Check the appropriate box below:

☐ (1) Certificate of Concurrent Submission of Disclosure Statement.

The offeror hereby certifies that, as a part of the offer, copies of the Disclosure Statement have been submitted as follows: (i) Original and one copy to the cognizant Administrative Contracting Officer (ACO) or cognizant Federal agency official authorized to act in that capacity, as applicable, and (ii) one copy to the cognizant Federal auditor.

(Disclosure must be on Form No. CASB DS–1 or CASB DS–2, as applicable. Forms may be obtained from the cognizant ACO or cognizant Federal agency official acting in that capacity and/or from the looseleaf version of the Federal Acquisition Regulation.)

Date of Disclosure Statement: ______

Name and Address of Cognizant ACO or Federal Official where filed: ______

The offeror further certifies that the practices used in estimating costs in pricing this proposal are consistent with the cost accounting practices disclosed in the Disclosure Statement.

☐ (2) Certificate of Previously Submitted Disclosure Statement. The offeror hereby certifies that the required Disclosure Statement was filed as follows:

Date of Disclosure Statement: ______

Name and Address of Cognizant ACO or Federal Official where filed: ______

The offeror further certifies that the practices used in estimating costs in pricing this proposal are consistent with the cost accounting practices disclosed in the applicable Disclosure Statement.

* * * * *

(End of basic provision)

Alternate I (OCT 1994) Insert the following subparagraph (5) at the end of Part I of the basic clause:

☐ (5) Certificate of Disclosure Statement Due Date by Educational Institution. If the offeror is an educational institution that, under the transition provisions of 9903.202–1(f), is or will be required to submit a Disclosure Statement after receipt of this award, the offeror hereby certifies that (check one and complete):

☐ (a) A Disclosure Statement filing Due Date of __________ has been established with the cognizant Federal agency.

☐ (b) The Disclosure Statement will be submitted within the six month period ending __________ months after receipt of this award.

Name and Address of Cognizant ACO or Federal Official where Disclosure Statement is to be filed: ____________________

(End of Alternate I)

6. Section 9903.201–4 is amended by revising the text of paragraphs (a)(1) and (a)(2) preceding the clause and by adding a new paragraph (e) including a new clause to read as follows:

9903.201–4 Contract clauses.

(a) *Cost Accounting Standards.* (1) The contracting officer shall insert the clause set forth below, Cost Accounting Standards, in negotiated contracts, unless the contract is exempted (see 9903.201–1), the contract is subject to modified coverage (see 9903.201–2), or the clause prescribed in paragraphs (d) or (e) of this section is used.

(2) The clause below requires the contractor to comply with all CAS specified in Part 9904, to disclose actual cost accounting practices (applicable to CAS-covered contracts only), and to follow disclosed and established cost accounting practices consistently.

* * * * *

(e) *Cost Accounting Standards—Educational Institutions.* (1) The contracting officer shall insert the clause set forth below, Cost Accounting Standards—Educational Institution, in negotiated contracts awarded to educational institutions, unless the contract is exempted (see 9903.201–1), the contract is to be performed by an FFRDC (see 9903.201–2(c)(5)), or the provision at 9903.201–2(c)(6) applies.

(2) The clause below requires the educational institution to comply with all CAS specified in Part 9905, to disclose actual cost accounting practices as required by 9903.202–1(f), and to follow disclosed and established cost accounting practices consistently.

Cost Accounting Standards—Educational Institution (Oct 1994)

(a) Unless the contract is exempt under 9903.201–1 and 9903.201–2, the provisions of 9903 are incorporated herein by reference and the Contractor in connection with this contract, shall—

(1) (CAS-covered Contracts Only) If a business unit of an educational institution required to submit a Disclosure Statement, disclose in writing the Contractor's cost accounting practices as required by 9903.202–1 through 9903.202–5 including methods of distinguishing direct costs from indirect costs and the basis used for accumulating and allocating indirect costs. The practices disclosed for this contract shall be the same as the practices currently disclosed and applied on all other contracts and subcontracts being performed by the Contractor and which contain a Cost Accounting Standards (CAS) clause. If the Contractor has notified the Contracting Officer that the Disclosure Statement contains trade secrets, and commercial or financial information which is privileged and confidential, the Disclosure Statement shall be protected and shall not be released outside of the Government.

(2) Follow consistently the Contractor's cost accounting practices in accumulating and reporting contract performance cost data concerning this contract. If any change in cost accounting practices is made for the purposes of any contract or subcontract subject to CAS requirements, the change must be applied prospectively to this contract and the Disclosure Statement, if required, must be amended accordingly. If an accounting principle change mandated under Office of Management and Budget (OMB) Circular A–21, Cost Principles for Educational Institutions, requires that a change in the Contractor's cost accounting practices be made after the date of this contract award, the change must be applied prospectively to this contract and the Disclosure Statement, if required, must be amended accordingly. If the contract price or cost allowance of this contract is affected by such changes, adjustment shall be made in accordance with subparagraph (a)(4) or (a)(5) of this clause, as appropriate.

(3) Comply with all CAS, including any modifications and interpretations indicated thereto contained in 48 CFR 9905, in effect on the date of award of this contract or, if the Contractor has submitted cost or pricing data, on the date of final agreement on price as shown on the Contractor's signed certificate of current cost or pricing data. The Contractor shall also comply with any CAS (or modifications to CAS) which hereafter become applicable to a contract or subcontract of the Contractor. Such compliance shall be required prospectively from the date of applicability to such contract or subcontract.

(4)(i) Agree to an equitable adjustment as provided in the Changes clause of this contract if the contract cost is affected by a change which, pursuant to subparagraph (a)(3) of this clause, the Contractor is required to make to the Contractor's established cost accounting practices.

(ii) Negotiate with the Contracting Officer to determine the terms and conditions under which a change may be made to a cost accounting practice, other than a change made under other provisions of subparagraph (a)(4) of this clause; provided that no agreement may be made under this provision that will increase costs paid by the United States.

(iii) When the parties agree to a change to a cost accounting practice, other than a change under subdivision (a)(4)(i) or (a)(4)(iv) of this clause, negotiate an equitable adjustment as provided in the Changes clause of this contract.

(iv) Agree to an equitable adjustment as provided in the Changes clause of this contract, if the contract cost is materially affected by an OMB Circular A–21 accounting principle amendment which, on becoming effective after the date of contract award, requires the Contractor to make a change to the Contractor's established cost accounting practices.

(5) Agree to an adjustment of the contract price or cost allowance, as appropriate, if the Contractor or a subcontractor fails to comply with an applicable Cost Accounting Standard, or to follow any cost accounting practice consistently and such failure results in any increased costs paid by the United States. Such adjustment shall provide for recovery of the increased costs to the United States, together with interest thereon computed at the annual rate established under section 6621 of the Internal Revenue Code of 1986 (26 U.S.C. 6621) for such period, from the time the payment by the United States was made to the time the adjustment is effected. In no case shall the Government recover costs greater than the increased cost to the Government, in the aggregate, on the relevant contracts subject to the price adjustment, unless the Contractor made a change in its cost accounting practices of which it was aware or should have been aware at the time of price negotiations and which it failed to disclose to the Government.

(b) If the parties fail to agree whether the Contractor or a subcontractor has complied with an applicable CAS or a CAS rule or regulation in 9903 and as to any cost adjustment demanded by the United States, such failure to agree will constitute a dispute under the Contract Disputes Act (41 U.S.C. 601).

(c) The Contractor shall permit any authorized representatives of the Government to examine and make copies of any documents, papers, or records relating to compliance with the requirements of this clause.

(d) The Contractor shall include in all negotiated subcontracts which the Contractor enters into, the substance of this clause, except paragraph (b), and shall require such inclusion in all other subcontracts, of any tier, including the obligation to comply with all applicable CAS in effect on the subcontractor's award date or if the subcontractor has submitted cost or pricing data, on the date of final agreement on price as shown on the subcontractor's signed Certificate of Current Cost or Pricing Data, except that—

(1) If the subcontract is awarded to a business unit which pursuant to 9903.201–2

is subject to other types of CAS coverage, the substance of the applicable clause set forth in 9903.201–4 shall be inserted; and

(2) This requirement shall apply only to negotiated subcontracts in excess of $500,000 where the price negotiated is not based on—

(i) Established catalog or market prices of commercial items sold in substantial quantities to the general public; or

(ii) Prices set by law or regulation, and except that the requirement shall not apply to negotiated subcontracts otherwise exempt from the requirement to include a CAS clause as specified in 9903.201–1.

(End of clause)

7. Section 9903.201–6 is amended by revising paragraph (a) to read as follows:

9903.201–6 Findings.

(a) Prior to making any equitable adjustment under the provisions of paragraph (a)(4)(iii) of the contract clause set forth in 9903.201–4(a) or 9903.201–4(e), the Contracting Officer shall make a finding that the change is desirable and is not detrimental to the interests of the Government.

* * * * *

8. A new section 9903.201–7 is added to read as follows:

9903.201–7 Cognizant Federal Agency Responsibilities.

(a) The requirements of Part 9903 shall, to the maximum extent practicable, be administered by the cognizant Federal agency responsible for a particular contractor organization or location, usually the Federal agency responsible for negotiating indirect cost rates on behalf of the Government. The cognizant Federal agency should take the lead role in administering the requirements of Part 9903 and coordinating CAS administrative actions with all affected Federal agencies. When multiple CAS-covered contracts or more than one Federal agency are involved, agencies should discourage Contracting Officers from individually administering CAS on a contract-by-contract basis. Coordinated administrative actions will provide greater assurances that individual contractors follow their cost accounting practices consistently under all their CAS-covered contracts and that changes in cost accounting practices or CAS noncompliance issues are resolved, equitably, in a uniform overall manner.

(b) Federal agencies shall prescribe regulations and establish internal policies and procedures governing how agencies will administer the requirements of CAS-covered contracts, with particular emphasis on inter-agency coordination activities. Procedures to be followed when an agency is and is not the cognizant Federal agency should be clearly delineated. Internal agency policies and procedures shall provide for the designation of the agency office(s) or officials responsible for administering CAS under the agency's CAS-covered contracts at each contractor business unit and the delegation of necessary contracting authority to agency individuals authorized to administer the terms and conditions of CAS-covered contracts, e.g., Administrative Contracting Officers (ACOs) or other agency officials authorized to perform in that capacity. Agencies are urged to coordinate on the development of such regulations.

9. Section 9903.202–1 is amended by adding a new paragraph (f) to read as follows:

9903.202–1 General Requirements.

* * * * *

(f) *Educational institutions—disclosure requirements.* (1) Educational institutions receiving contracts subject to the CAS specified in Part 9905 are subject to the requirements of 9903.202, except that completed Disclosure Statements are required in the following circumstances.

(2) *Basic requirement.* For CAS-covered contracts placed on or after January 1, 1996, completed Disclosure Statements are required as follows:

(i) Any business unit of an educational institution that is selected to receive a CAS-covered contract or subcontract in excess of $500,000 and is part of a college or university location listed in Exhibit A of Office of Management and Budget (OMB) Circular A–21 shall submit a Disclosure Statement before award. A Disclosure Statement is not required, however, if the listed entity can demonstrate that the net amount of Federal contract and financial assistance awards received during its immediately preceding cost accounting period was less than $25 million.

(ii) Any business unit that is selected to receive a CAS-covered contract or subcontract of $25 million or more shall submit a Disclosure Statement before award.

(iii) Any educational institution which, together with its segments, received net awards of negotiated prime contracts and subcontracts subject to CAS totaling $25 million or more in its most recent cost accounting period, of which, at least one award exceeded $1 million, must submit a Disclosure Statement before award of its first CAS-covered contract in the immediately following cost accounting period. However, if the first CAS-covered contract is received within 90 days of the start of the cost accounting period, the institution is not required to file until the end of 90 days.

(3) *Transition period requirement.* For CAS-covered contracts placed on or before December 31, 1995, completed Disclosure Statements are required as follows:

(i) For business units that are selected to receive a CAS-covered contract or subcontract in excess of $500,000 and are part of the first 20 college or university locations (i.e., numbers 1 through 20) listed in Exhibit A of OMB Circular A–21, Disclosure Statements shall be submitted within six months after the date of contract award.

(ii) For business units that are selected to receive a CAS-covered contract or subcontract in excess of $500,000 and are part of a college or university location that is listed as one of the institutions numbered 21 through 50, in Exhibit A of OMB Circular A–21, Disclosure Statements shall be submitted during the six month period ending twelve months after the date of contract award.

(iii) For business units that are selected to receive a CAS-covered contract or subcontract in excess of $500,000 and are part of a college or university location that is listed as one of the institutions numbered 51 through 99, in Exhibit A of OMB Circular A–21, Disclosure Statements shall be submitted during the six month period ending eighteen months after the date of contract award.

(iv) For any other business unit that is selected to receive a CAS-covered contract or subcontract of $25 million or more, a Disclosure Statement shall be submitted within six months after the date of contract award.

(4) *Transition period due dates.* The educational institution and cognizant Federal agency should establish a specific due date within the periods prescribed in 9903.202–1(f)(3) when a Disclosure Statement is required under a CAS-covered contract placed on or before December 31, 1995.

(5) *Transition period waiver authority.* For a CAS-covered contract to be awarded during the period January 1, 1996 through June 30, 1997, the awarding agency may waive the preaward Disclosure Statement submission requirement specified in 9903.202–1(f)(2) when a due date for the submission of a Disclosure Statement has previously been established by the cognizant Federal agency and the educational institution under the provisions of 9903.202–1(f) (3) and (4). **CAUTION:** This waiver authority is not available unless the cognizant Federal agency and the educational institution have established a disclosure statement due date pursuant to a written agreement executed prior to January 1, 1996, and award is made prior to the established disclosure statement due date.

10. Section 9903.202–5 is revised to read as follows:

9903.202–5 Filing Disclosure Statements.

(a) Disclosure must be on Form Number CASB DS–1 or CASB DS–2, as applicable. Forms may be obtained from the cognizant Federal agency (cognizant ACO or cognizant Federal agency official authorized to act in that capacity) or from the looseleaf version of the Federal Acquisition Regulation. When requested in advance by a contractor, the cognizant Federal agency may authorize contractor disclosure based on computer generated reproductions of the applicable Disclosure Statement Form.

(b) Offerors are required to file Disclosure Statements as follows:

(1) Original and one copy with the cognizant ACO or cognizant Federal agency official acting in that capacity, as applicable; and

(2) One copy with the cognizant Federal auditor.

(c) Amendments and revisions shall be submitted to the ACO or agency official acting in that capacity, as applicable, and the Federal auditor of the currently cognizant Federal agency.

11. Section 9903.202–6 is added to read as follows:

9903.202–6 Adequacy of Disclosure Statement.

Federal agencies shall prescribe regulations and establish internal procedures by which each will promptly determine on behalf of the Government, when serving as the cognizant Federal agency for a particular contractor location, that a Disclosure Statement has adequately disclosed the practices required to be disclosed by the Cost Accounting Standards Board's rules, regulations and Standards. The determination of adequacy shall be distributed to all affected agencies. Agencies are urged to coordinate on the development of such regulations.

12. Section 9903.202–10 is added to read as follows:

9903.202–10 Illustration of Disclosure Statement Form, CASB DS–2.

The data which are required to be disclosed by educational institutions are set forth in detail in the Disclosure Statement Form, CASB DS–2, which is illustrated below:

BILLING CODE 3110–01–P

FORM APPROVED OMB NUMBER
0348-0055

COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 100-679 EDUCATIONAL INSTITUTIONS	INDEX

FORM CASB DS-2 (REV 10/94)

COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 100-679 EDUCATIONAL INSTITUTIONS	GENERAL INSTRUCTIONS

1. This Disclosure Statement has been designed to meet the requirements of Public Law 100-679, and persons completing it are to describe the educational institution and its cost accounting practices. For complete regulations, instructions and timing requirements concerning submission of the Disclosure Statement, refer to Section 9903.202 of Chapter 99 of Title 48 CFR (48 CFR 9903).

2. Part I of the Statement provides general information concerning each reporting unit (e.g., segments, business units, and central system or group (intermediate administration) offices). Parts II through VI pertain to the types of costs generally incurred by the segment or business unit directly performing under Federally sponsored agreements (e.g., contracts, grants and cooperative agreements). Part VII pertains to the types of costs that are generally incurred by a central or group office and are allocated to one or more segments performing under Federally sponsored agreements.

3. Each segment or business unit required to disclose its cost accounting practices should complete the Cover Sheet, the Certification, and Parts I through VI.

4. Each central or group office required to disclose its cost accounting practices for measuring, assigning and allocating its costs to segments performing under Federally sponsored agreements should complete the Cover Sheet, the Certification, Part I and Part VII of the Disclosure Statement. Where a central or group office incurs the types of cost covered by Parts IV, V and VI, and the cost amounts allocated to segments performing under Federally sponsored agreements are material, such office(s) should complete Parts IV, V, or VI for such material elements of cost. While a central or group office may have more than one reporting unit submitting Disclosure Statements, only one Statement needs to be submitted to cover the central or group office operations.

5. The Statement must be signed by an authorized signatory of the reporting unit.

6. The Disclosure Statement should be answered by marking the appropriate line or inserting the applicable letter code which describes the segment's (reporting unit's) cost accounting practices.

7. A number of questions in this Statement may need narrative answers requiring more space than is provided. In such instances, the reporting unit should use the attached continuation sheet provided. The continuation sheet may be reproduced locally as needed. The number of the question involved should be indicated and the same coding required to answer the questions in the Statement should be used in presenting the answer on the continuation sheet. Continuation sheets should be inserted at the end of the pertinent Part of the Statement. On each continuation sheet, the reporting unit should enter the next sequential page number for that Part and, on the last continuation sheet used, the words "End of Part" should be inserted after the last entry.

FORM CASB DS-2 (REV 10/94) (I)

COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 100-679 EDUCATIONAL INSTITUTIONS	GENERAL INSTRUCTIONS

8. Where the cost accounting practice being disclosed is clearly set forth in the institution's existing written accounting policies and procedures, such documents may be cited on a continuation sheet and incorporated by reference. In such cases, the reporting unit should provide the date of issuance and effective date for each accounting policy and/or procedures document cited. Alternatively, copies of the relevant parts of such documents may be attached as appendices to the pertinent Disclosure Statement Part. Such continuation sheets and appendices should be labeled and cross-referenced with the applicable Disclosure Statement item number. Any supplementary comments needed to fully describe the cost accounting practice being disclosed should also be provided.

9. Disclosure Statements must be amended when disclosed practices are changed to comply with a new CAS or when practices are changed with or without agreement of the Government (Also see 48 CFR 9903.202-3).

10. Amendments shall be submitted to the same offices to which submission would have to be made were an original Disclosure Statement being filed.

11. Each amendment should be accompanied by an amended cover sheet (indicating revision number and effective date of the change) and a signed certification. For all resubmissions, on each page, insert "Revision Number ___" and "Effective Date ____" in the Item Description block; and, insert "Revised" under each Item Number amended. Resubmitted Disclosure Statements must be accompanied by similar notations identifying the items which have been changed.

ATTACHMENT - Blank Continuation Sheet

FORM CASB DS-2 (REV 10/94) (ii)

COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 100-679 EDUCATIONAL INSTITUTIONS	CONTINUATION SHEET NAME OF REPORTING UNIT
Item No.	Item Description

FORM CASB DS-2 (REV 10/94)

COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 100-679 EDUCATIONAL INSTITUTIONS	COVER SHEET AND CERTIFICATION

0.1 Educational Institution

(a) Name

(b) Street Address

(c) City, State and ZIP Code

(d) Division or Campus of (if applicable)

0.2 Reporting Unit is: (Mark one.)

A. ____ Independently Administered Public Institution
B. ____ Independently Administered Nonprofit Institution
C. ____ Administered as Part of a Public System
D. ____ Administered as Part of a Nonprofit System
E. ____ Other (Specify) ____________

0.3 Official to Contact Concerning this Statement:

(a) Name and Title

(b) Phone Number (include area code and extension)

0.4 Statement Type and Effective Date:

A. (Mark type of submission. If a revision, enter number)

(a) ____ Original Statement
(b) ____ Amended Statement; Revision No. ____

B. Effective Date of this Statement: (Specify) ____________

0.5 Statement Submitted To (Provide office name, location and telephone number, include area code and extension):

A. Cognizant Federal Agency: ____________

B. Cognizant Federal Auditor: ____________

FORM CASB DS-2 (REV 10/94) C-1

COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 100-679 EDUCATIONAL INSTITUTIONS	COVER SHEET AND CERTIFICATION

CERTIFICATION

I certify that to the best of my knowledge and belief this Statement, as amended in the case of a Revision, is the complete and accurate disclosure as of the date of certification shown below by the above-named organization of its cost accounting practices, as required by the Disclosure Regulations (48 CFR 9903.202) of the Cost Accounting Standards Board under 41 U.S.C. § 422.

Date of Certification: ____________

____
(Signature)

____
(Print or Type Name)

____
(Title)

THE PENALTY FOR MAKING A FALSE STATEMENT IN THIS DISCLOSURE IS PRESCRIBED IN 18 U.S.C. § 1001

FORM CASB DS-2 (REV 10/94) C-2

COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 100-679 EDUCATIONAL INSTITUTIONS	PART I - GENERAL INFORMATION NAME OF REPORTING UNIT
Item No.	**Item Description**
	Part I
1.1.0	Description of Your Cost Accounting System for recording expenses charged to Federally sponsored agreements (e.g., contracts, grants and cooperative agreements). (Mark the appropriate line(s) and if more than one is marked, explain on a continuation sheet.) A. ____ Accrual B. ____ Modified Accrual Basis 1/ C. ____ Cash Basis Y. ____ Other 1/
1.2.0	Integration of Cost Accounting with Financial Accounting. The cost accounting system is: (Mark one. If B or C is marked, describe on a continuation sheet the costs which are accumulated on memorandum records.) A. ____ Integrated with financial accounting records (Subsidiary cost accounts are all controlled by general ledger control accounts.) B. ____ Not integrated with financial accounting records (Cost data are accumulated on memorandum records.) C. ____ Combination of A and B
1.3.0	Unallowable Costs. Costs that are not reimbursable as allowable costs under the terms and conditions of Federally sponsored agreements are: (Mark one) A. ____ Specifically identified and recorded separately in the formal financial accounting records. 1/ B. ____ Identified in separately maintained accounting records or workpapers. 1/ C. ____ Identifiable through use of less formal accounting techniques that permit audit verification. 1/ D. ____ Combination of A, B or C 1/ E. ____ Determinable by other means. 1/
	1/ Describe on a Continuation Sheet.

FORM CASB DS-2 (REV 10/94) I-1

COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 100-679 EDUCATIONAL INSTITUTIONS	PART I - GENERAL INFORMATION NAME OF REPORTING UNIT
Item No.	**Item Description**
1.3.1	Treatment of Unallowable Costs. (Explain on a continuation sheet how unallowable costs and directly associated costs are treated in each allocation base and indirect expense pool, e.g., when allocating costs to a major function or activity; when determining indirect cost rates; or, when a central office or group office allocates costs to a segment.)
1.4.0	Cost Accounting Period: ____________ (Specify the twelve month period used for the accumulation and reporting of costs under Federally sponsored agreements, e.g., 7/1 to 6/30. If the cost accounting period is other than the institution's fiscal year used for financial accounting and reporting purposes, explain circumstances on a continuation sheet.)
1.5.0	State Laws or Regulations. Identify on a continuation sheet any State laws or regulations which influence the institution's cost accounting practices, e.g., State administered pension plans, and any applicable statutory limitations or special agreements on allowance of costs.
	1/ Describe on a Continuation Sheet.

FORM CASB DS-2 (REV 10/94) I-2

COST ACCOUNTING STANDARDS BOARD
DISCLOSURE STATEMENT
REQUIRED BY PUBLIC LAW 100-679
EDUCATIONAL INSTITUTIONS

PART II- DIRECT COSTS

NAME OF REPORTING UNIT

Item No.	Item Description
	Instructions for Part II Institutions should disclose what costs are, or will be, charged directly to Federally sponsored agreements or similar cost objectives as Direct Costs. It is expected that the disclosed cost accounting practices (as defined at 48 CFR 9903.302-1) for classifying costs either as direct costs or indirect costs will be consistently applied to all costs incurred by the reporting unit.
2.1.0	Criteria for Determining How Costs are Charged to Federally Sponsored Agreements or Similar Cost Objectives. (For all major categories of cost under each major function or activity such, as instruction, organized research, other sponsored activities and other institutional activities, describe on a continuation sheet, your criteria for determining when costs incurred for the same purpose, in like circumstances, are treated either as direct costs only or as indirect costs only with respect to final cost objectives. Particular emphasis should be placed on items of cost that may be treated as either direct or indirect costs (e.g., Supplies, Materials, Salaries and Wages, Fringe Benefits, etc.) depending upon the purpose of the activity involved. Separate explanations on the criteria governing each direct cost category identified in this Part II are required. Also, list and explain if there are any deviations from the specified criteria.)
2.2.0	Description of Direct Materials. All materials and supplies directly identified with Federally sponsored agreements or similar cost objectives. (Describe on a continuation sheet the principal classes of materials which are charged as direct materials and supplies.)
2.3.0	Method of Charging Direct Materials and Supplies. (Mark the appropriate line(s) and if more than one is marked, explain on a continuation sheet.)
2.3.1	Direct Purchases for Projects are Charged to Projects at: A. ____ Actual Invoiced Costs B. ____ Actual Invoiced Costs Net of Discounts Taken Y. ____ Other(s) 1/ Z. ____ Not Applicable
2.3.2	Inventory Requisitions from Central or Common, Institution-owned Inventory. (Identify the inventory valuation method used to charge projects): A. ____ First In, First Out B. ____ Last In, First Out C. ____ Average Costs 1/ D. ____ Predetermined Costs 1/ Y. ____ Other(s) 1/ Z. ____ Not Applicable 1/ Describe on a Continuation Sheet.

FORM CASB DS-2 (REV 10/94) II-1

COST ACCOUNTING STANDARDS BOARD
DISCLOSURE STATEMENT
REQUIRED BY PUBLIC LAW 100-679
EDUCATIONAL INSTITUTIONS

PART II- DIRECT COSTS

NAME OF REPORTING UNIT

Item No.	Item Description
2.4.0	Description of Direct Personal Services. All personal services directly identified with Federally sponsored agreements or similar cost objectives. (Describe on a continuation sheet the personal services compensation costs, including applicable fringe benefits costs, if any, within each major institutional function or activity that are charged as direct personal services.)
2.5.0	Method of Charging Direct Salaries and Wages. (Mark the appropriate line(s) for each Direct Personal Services Category to identify the method(s) used to charge direct salary and wage costs to Federally sponsored agreements or similar cost objectives. If more than one line is marked in a column, fully describe on a continuation sheet, the applicable methods used.)

	Direct Personal Services Category: Faculty (1)	Staff (2)	Students (3)	Other 1/ (4)
A. Payroll Distribution Method (Individual time card/actual hours and rates)	____	____	____	____
B. Plan - Confirmation (Budgeted, planned or assigned work activity, updated to reflect significant changes)	____	____	____	____
C. After-the-fact Activity Records (Percentage Distribution of employee activity)	____	____	____	____
D. Multiple Confirmation Records (Employee Reports prepared each academic term, to account for employee's activities, direct and indirect charges are certified separately.)	____	____	____	____
Y. Other(s) 1/	____	____	____	____

1/ Describe on a Continuation Sheet.

FORM CASB DS-2 (REV 10/94) II-2

COST ACCOUNTING STANDARDS BOARD
DISCLOSURE STATEMENT
REQUIRED BY PUBLIC LAW 100-679
EDUCATIONAL INSTITUTIONS

PART II- DIRECT COSTS

NAME OF REPORTING UNIT

Item No.	Item Description
2.5.1	Salary and Wage Cost Distribution Systems. Within each major function or activity, are the methods marked in Item 2.5.0 used by all employees compensated by the reporting unit? (If "NO", describe on a continuation sheet, the types of employees not included and describe the methods used to identify and distribute their salary and wage costs to direct and indirect cost objectives.) ____ Yes ____ No
2.5.2	Salary and Wage Cost Accumulation System. (Within each major function or activity, describe, on a continuation sheet, the specific accounting records or memorandum records used to accumulate and record the share of the total salary and wage costs attributable to each employee's direct (Federally sponsored projects, non-sponsored projects or similar cost objectives) and indirect activities. Indicate how the salary and wage cost distributions are reconciled with the payroll data recorded in the institution's financial accounting records.)
2.6.0	Description of Direct Fringe Benefits Costs. All fringe benefits that are attributable to direct salaries and wages and are charged directly to Federally sponsored agreements or similar cost objectives. (Describe on a continuation sheet all of the different types of fringe benefits which are classified and charged as direct costs, e.g., actual or accrued costs of vacation, holidays, sick leave, sabbatical leave, premium pay, social security, pension plans, post-retirement benefits other than pensions, health insurance, training, tuition, tuition remission, etc.)
2.6.1	Method of Charging Direct Fringe Benefits. (Describe on a continuation sheet, how each type of fringe benefit cost identified in item 2.6.0. is measured, assigned and allocated (for definitions, See 9903.302-1); first, to the major functions (e.g., instruction, research); and, then to individual projects or direct cost objectives within each function.)
2.7.0	Description of Other Direct Costs. All other items of cost directly identified with Federally sponsored agreements or similar cost objectives. (List on a continuation sheet the principal classes of other costs which are charged directly, e.g., travel, consultants, services, subgrants, subcontracts, malpractice insurance, etc.)

COST ACCOUNTING STANDARDS BOARD
DISCLOSURE STATEMENT
REQUIRED BY PUBLIC LAW 100-679
EDUCATIONAL INSTITUTIONS

PART II- DIRECT COSTS

NAME OF REPORTING UNIT

Item No.	Item Description
2.8.0	Cost Transfers. When Federally sponsored agreements or similar cost objectives are credited for cost transfers to other projects, grants or contracts, is the credit amount for direct personal services, materials, other direct charges and applicable indirect costs always based on the same amount(s) or rate(s) (e.g., direct labor rate, indirect costs) originally used to charge or allocate costs to the project (Consider transactions where the original charge and the credit occur in different cost accounting periods). (Mark one, If "No", explain on a continuation sheet how the credit differs from original charge.) ____ Yes ____ No
2.9.0	Interorganizational Transfers. This item is directed only to those materials, supplies, and services which are, or will be transferred to you from other segments of the educational institution. (Mark the appropriate line(s) in each column to indicate the basis used by you as transferee to charge the cost or price of interorganizational transfers or materials, supplies, and services to Federally sponsored agreements or similar cost objectives. If more than one line is marked in a column, explain on a continuation sheet.)

	Materials (1)	Supplies (2)	Services (3)
A. At full cost excluding indirect costs attributable to group or central office expenses.	____	____	____
B. At full cost including indirect costs attributable to group or central office expenses.	____	____	____
C. At established catalog or market price or prices based on adequate competition.	____	____	____
Y. Other(s) 1/	____	____	____
Z. Interorganizational transfers are not applicable	____	____	____

1/ Describe on a Continuation Sheet.

COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 100-679 EDUCATIONAL INSTITUTIONS	PART III- INDIRECT COSTS NAME OF REPORTING UNIT

Item No.	Item Description

Instructions for Part III

Institutions should disclose how the segment's total indirect costs are identified and accumulated in specific indirect cost categories and allocated to applicable indirect cost pools and service centers within each major function or activity, how service center costs are accumulated and "billed" to users, and the specific indirect cost pools and allocation bases used to calculate the indirect cost rates that are used to allocate accumulated indirect costs to Federally sponsored agreements or similar final cost objectives. A continuation sheet should be used wherever additional space is required or when a response requires further explanation to ensure clarity and understanding.

The following Allocation Base Codes are provided for use in connection with Items 3.1.0 and 3.3.0.

A. Direct Charge or Allocation
B. Total Expenditures
C. Modified Total Cost Basis
D. Modified Total Direct Cost Basis
E. Salaries and Wages
F. Salaries, Wages and Fringe Benefits
G. Number of Employees (head count)
H. Number of Employees (full-time equivalent basis)
I. Number of Students (head count)
J. Number of Students (full-time equivalent basis)
K. Student Hours -- classroom and work performed
L. Square Footage
M. Usage
N. Unit of Product
O. Total Production
P. More than one base (Separate Cost Groupings) 1/
Y. Other(s) 1/
Z. Category or Pool not applicable

1/ List on a continuation sheet, the category and subgrouping(s) of expense involved and the allocation base(s) used.

COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 100-679 EDUCATIONAL INSTITUTIONS	PART III- INDIRECT COSTS NAME OF REPORTING UNIT

Item No.	Item Description

3.1.0 Indirect Cost Categories - Accumulation and Allocation. This item is directed at the identification, accumulation and allocation of all indirect costs of the institution. (Under the column heading, "Accumulation Method," insert "Yes" or "No" to indicate if the cost elements included in each indirect cost category are identified, recorded and accumulated in the institution's formal accounting system. If "No," describe on a continuation sheet, how the cost elements included in the indirect cost category are identified and accumulated. Under the column heading "Allocation Base," enter one of the allocation base codes A through P, Y, or Z, to indicate the basis used for allocating the accumulated costs of each indirect cost category to other applicable indirect cost categories, indirect cost pools, other institutional activities, specialized service facilities and other service centers. Under the column heading "Allocation Sequence," insert 1, 2, or 3 next to each of the first three indirect cost categories to indicate the sequence of the allocation process. If cross-allocation techniques are used, insert "CA." If an indirect cost category listed in this section is not used, insert "NA.")

Indirect Cost Category	Accumulation Method	Allocation Base Code	Allocation Sequence
(a) Depreciation/Use Allowances/Interest			___
Building	___	___	
Equipment	___	___	
Capital Improvements to Land 1/	___	___	
Interest 1/	___	___	
(b) Operation and Maintenance	___	___	___
(c) General Administration and General Expense	___	___	___
(d) Departmental Administration	___	___	
(e) Sponsored Projects Administration	___	___	
(f) Library	___	___	
(g) Student Administration and Services	___	___	
(h) Other 1/	___	___	

1/ Describe on a Continuation Sheet.

COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 100-679 EDUCATIONAL INSTITUTIONS	PART III- INDIRECT COSTS
	NAME OF REPORTING UNIT

Item No.	Item Description

3.2.0 Service Centers. Service centers are departments or functional units which perform specific technical or administrative services primarily for the benefit of other units within a reporting unit. Service Centers include "recharge centers" and the "specialized service facilities" defined in Section J of Circular A-21. (The codes identified below should be inserted on the appropriate line for each service center listed. The column numbers correspond to the paragraphs listed below that provide the codes. Explain on a Continuation Sheet if any of the services are charged to users on a basis other than usage of the services. Enter "Z" in Column 1, if not applicable.)

		(1)	(2)	(3)	(4)	(5)	(6)
(a)	Scientific Computer Operations	___	___	___	___	___	___
(b)	Business Data Processing	___	___	___	___	___	___
(c)	Animal Care Facilities	___	___	___	___	___	___
(d)	Other Service Centers with Annual Operating Budgets exceeding $1,000,000 or that generate significant charges to Federally sponsored agreements either as a direct or indirect cost. (Specify below; use a Continuation Sheet, if necessary)						
	___	___	___	___	___	___	___
	___	___	___	___	___	___	___

(1) Category Code: Use code "A" if the service center costs are billed only as direct costs of final cost objectives; code "B" if billed only to indirect cost categories or indirect cost pools; code "C" if billed to both direct and indirect cost objectives.

(2) Burden Code: Code "A" – center receives an allocation of all applicable indirect costs; Code "B" – partial allocation of indirect costs; Code "C" – no allocation of indirect costs.

(3) Billing Rate Code: Code "A" – billing rates are based on historical costs; Code "B" – rates are based on projected costs; Code "C" – rates are based on a combination of historical and projected costs; Code "D" – billings are based on the actual costs of the billing period; Code "Y" – other (explain on a Continuation Sheet).

(4) User Charges Code: Code "A" – all users are charged at the same billing rates; Code "B" – some users are charged at different rates than other users (explain on a Continuation Sheet).

(5) Actual Costs vs. Revenues Code: Code "A" – billings (revenues) are compared to actual costs (expenditures) at least annually; Code "B" – billings are compared to actual costs less frequently than annually.

(6) Variance Code: Code "A" – Annual variances between billed and actual costs are prorated to users (as credits or charges); Code "B" – variances are carried forward as adjustments to billing rate of future periods; Code "C" – annual variances are charged or credited to indirect costs; Code "Y" – other (explain on a Continuation Sheet).

COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 100-679 EDUCATIONAL INSTITUTIONS	PART III- INDIRECT COSTS
	NAME OF REPORTING UNIT

Item No.	Item Description

3.3.0 Indirect Cost Pools and Allocation Bases

(Identify all of the indirect cost pools established for the accumulation of indirect costs, excluding service centers, and the allocation bases used to distribute accumulated indirect costs to Federally sponsored agreements or similar cost objectives within each major function or activity. For all applicable indirect cost pools, enter the applicable Allocation Base Code A through P, Y, or Z, to indicate the basis used for allocating accumulated pool costs to Federally sponsored agreements or similar cost objectives.)

Indirect Cost Pools	Allocation Base Code
A. Instruction	
___ On-Campus	___
___ Off-Campus	___
___ Other 1/	___
B. Organized Research	
___ On-Campus	___
___ Off-Campus	___
___ Other 1/	___
C. Other Sponsored Activities	
___ On-Campus	___
___ Off-Campus	___
___ Other 1/	___
D. Other Institutional Activities 1/	___

3.4.0 Composition of Indirect Cost Pools. (For each pool identified under Items 3.1.0 and 3.2.0, describe on a continuation sheet the major organizational components, subgoupings of expenses, and elements of cost included.)

1/ Describe on a Continuation Sheet.

COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 100-679 EDUCATIONAL INSTITUTIONS	PART III- INDIRECT COSTS
	NAME OF REPORTING UNIT

Item No.	Item Description
3.5.0	Composition of Allocation Bases. (For each allocation base code used in Items 3.1.0 and 3.3.0, describe on a continuation sheet the makeup of the base. For example, if a modified total direct cost base is used, specify which of the elements of direct cost identified in Part II, Direct Costs, that are included, e.g., materials, salaries and wages, fringe benefits, travel costs, and excluded, e.g., subcontract costs over first $25,000. Where applicable, explain if service centers are included or excluded. Specify the benefitting functions and activities included. If any cost objectives are excluded from the allocation base, such cost objectives and the alternate allocation method used should be identified. If an indirect cost allocation is based on Cost Analysis Studies, identify the study, and fully describe the study methods and techniques applied, the composition of the specific allocation base used, and the frequency of each recurring study .
3.6.0	Allocation of Indirect Costs to Programs That Pay Less Than Full Indirect Costs. Are appropriate direct costs of all programs and activites included in the indirect cost allocation bases, regardless of whether allocable indirect costs are fully reimbursed by the sponsoring organizations? A. ____ Yes B. ____ No 1/
	1/ Describe on a Continuation Sheet.

FORM CASB DS-2 (REV 10/94) III-5

COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 100-679 EDUCATIONAL INSTITUTIONS	PART IV- DEPRECIATION AND USE ALLOWANCES
	NAME OF REPORTING UNIT

Item No. | Item Description

Part IV

4.1.0 Depreciation Charged to Federally Sponsored Agreements or Similar Cost Objectives. (For each asset category listed below, enter a code from A through C in Column (1) describing the method of depreciation; a code from A through D in Column (2) describing the basis for determining useful life; a code from A through C in Column (3) describing how depreciation methods or use allowances are applied to property units; and Code A or B in Column (4) indicating whether or not the estimated residual value is deducted from the total cost of depreciable assets. Enter Code Y in each column of an asset category where another or more than one method applies. Enter Code Z in Column (1) only, if an asset category is not applicable.)

	Asset Category	Depreciation Method (1)	Useful Life (2)	Property Unit (3)	Residual Value (4)
(a)	Land Improvements	____	____	____	____
(b)	Buildings	____	____	____	____
(c)	Building Improvements	____	____	____	____
(d)	Leasehold Improvements	____	____	____	____
(e)	Equipment	____	____	____	____
(f)	Furniture and Fixtures	____	____	____	____
(g)	Automobiles and Trucks	____	____	____	____
(h)	Tools	____	____	____	____
(i)	Enter Code Y on this line if other asset categories are used and enumerate on a continuation sheet each such asset category and the applicable codes. (Otherwise enter Code Z.)	____	____	____	____

Column (1)—Depreciation Method Code

A. Straight Line
B. Expensed at Acquisition
C. Use Allowance
Y. Other or more than one method 1/

Column (2)—Useful Life Code

A. Replacement Experience
B. Term of Lease
C. Estimated service life
D. As prescribed for use allowance by Office of Management and Budget Circular No. A-21
Y. Other or more than one method 1/

Column (3)—Property Unit Code

A. Individual units are accounted for separately
B. Applied to groups of assets with similar service lives
C. Applied to groups of assets with varying service lives
Y. Other or more than one method 1/

Column (4)—Residual Value Code

A. Residual value is deducted
B. Residual value is not deducted
Y. Other or more than one method 1/

1/ Describe on a Continuation Sheet.

FORM CASB DS-2 (REV 10/94) IV-1

COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 100-679 EDUCATIONAL INSTITUTIONS	PART IV- DEPRECIATION AND USE ALLOWANCES
	NAME OF REPORTING UNIT

Item No. — Item Description

4.1.1 Asset Valuations and Useful Lives. Are the asset valuations and useful lives used in your indirect cost proposal consistent with those used in the institution's financial statements? (Mark one.)

A. ____ Yes
B. ____ No 1/

4.2.0 Fully Depreciated Assets. Is a usage charge for fully depreciated assets charged to Federally sponsored agreements or similar cost objectives? (Mark one. If yes, describe the basis for the charge on a continuation sheet.)

A. ____ Yes
B. ____ No

4.3.0 Treatment of Gains and Losses on Disposition of Depreciable Property. Gains and losses are: (Mark the appropriate line(s) and if more than one is marked, explain on a continuation sheet.)

A. ____ Excluded from determination of sponsored agreement costs
B. ____ Credited or charged currently to the same pools to which the depreciation of the assets was originally charged
C. ____ Taken into consideration in the depreciation cost basis of the new items, where trade-in is involved
D. ____ Not accounted for separately, but reflected in the depreciation reserve account
Y. ____ Other(s) 1/
Z. ____ Not applicable

4.4.0 Criteria for Capitalization. (Enter (a) the minimum dollar amount of expenditures which are capitalized for acquisition, addition, alteration, donation and improvement of capital assets, and (b) the minimum number of expected life years of assets which are capitalized. If more than one dollar amount or number applies, show the information for the majority of your capitalized assets, and enumerate on a continuation sheet the dollar amounts and/or number of years for each category or subcategory of assets involved which differs from those for the majority of assets.)

A. Minimum Dollar Amount ____
B. Minimum Life Years ____

4.5.0 Group or Mass Purchase. Are group or mass purchases (initial complement) of similar items, which individually are less than the capitalization amount indicated above, capitalized? (Mark one.)

A. ____ Yes 1/
B. ____ No

1/ Describe on a Continuation Sheet.

FORM CASB DS-2 (REV 10/94) IV-2

COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 100-679 EDUCATIONAL INSTITUTIONS	PART V- OTHER COSTS AND CREDITS
	NAME OF REPORTING UNIT

Item No. — Item Description

Part V

5.1.0 Method of Charging Leave Costs. Do you charge vacation, sick, holiday and sabbatical leave costs to sponsored agreements on the cash basis of accounting (i.e., when the leave is taken or paid), or on the accrual basis of accounting (when the leave is earned)? (Mark applicable line(s))

A. ____ Cash
B. ____ Accrual 1/

5.2.0 Applicable Credits. This item is directed at the treatment of "applicable credits" as defined in Section C of OMB Circular A-21 and other incidental receipts (e.g., purchase discounts, insurance refunds, library fees and fines, parking fees, etc.). (Indicate how the principal types of credits and incidental receipts the institution receives are usually handled.)

A. ____ The credits/receipts are offset against the specific direct or indirect costs to which they relate.
B. ____ The credits/receipts are handled as a general adjustment to the indirect pool.
C. ____ The credits/receipts are treated as income and are not offset against costs.
D. ____ Combination of methods 1/
Y. ____ Other 1/

1/ Describe on a Continuation Sheet.

FORM CASB DS-2 (REV 10/94) V-1

COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 100-679 EDUCATIONAL INSTITUTIONS	PART VI- DEFERRED COMPENSATION AND INSURANCE COSTS
	NAME OF REPORTING UNIT

Item No.	Item Description

Instructions for Part VI

This part covers the measurement and assignment of costs for employee pensions, post retirement benefits other than pensions (including post retirement health benefits) and insurance. Some organizations may incur all of these costs at the main campus level or for public institutions at the governmental unit level, while others may incur them at subordinate organization levels. Still others may incur a portion of these costs at the main campus level and the balance at subordinate organization levels.

Where the segment (reporting unit) does not directly incur such costs, the segment should, on a continuation sheet, identify the organizational entity that incurs and records such costs. When the costs allocated to Federally sponsored agreements are material, and the reporting unit does not have access to the information needed to complete an item, the reporting unit should require that entity to complete the applicable portions of this Part VI. (See item 4, page (i), General Instructions)

6.1.0 Pension Plans.

6.1.1 Defined-Contribution Pension Plans. Identify the types and number of pension plans whose costs are charged to Federally sponsored agreements. (Mark applicable line(s) and enter number of plans.)

	Type of Plan	Number of Plans
A. ____	Institution employees participate in State/Local Government Retirement Plan(s)	____
B. ____	Institution uses TIAA/CREF plan or other defined contribution plan that is managed by an organization not affiliated with the institution	____
C. ____	Institution has its own Defined-Contribution Plan(s) 1/	____

6.1.2 Defined-Benefit Pension Plan. (For each defined-benefit plan (other than plans that are part of a State or Local government pension plan) describe on a continuation sheet the actuarial cost method, the asset valuation method, the criteria for changing actuarial assumptions and computations, the amortization periods for prior service costs, the amortization periods for actuarial gains and losses, and the funding policy.)

1/ Describe on a Continuation Sheet.

FORM CASB DS-2 (REV 10/94) VI-1

COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 100-679 EDUCATIONAL INSTITUTIONS	PART VI- DEFERRED COMPENSATION AND INSURANCE COSTS
	NAME OF REPORTING UNIT

Item No.	Item Description

6.2.0 Post Retirement Benefits Other Than Pensions (including post retirement health care benefits) (PRBs). (Identify on a continuation sheet all PRB plans whose costs are charged to Federally sponsored agreements. For each plan listed, state the plan name and indicate the approximate number and type of employees covered by each plan.)

Z. [ ] Not Applicable

6.2.1 Determination of Annual PRB Costs. (On a continuation sheet, indicate whether PRB costs charged to Federally sponsored agreements are determined on the cash or accrual basis of accounting. If costs are accrued, describe the accounting practices used, including actuarial cost method, the asset valuation method, the criteria for changing actuarial assumptions and computations, the amortization periods for prior service costs, the amortization periods for actuarial gains and losses, and the funding policy.)

6.3.0 Self-Insurance Programs (Employee Group Insurance). Costs of the self-insurance programs are charged to Federally sponsored agreements or similar cost objectives: (Mark one.)

A. ____ When accrued (book accrual only)
B. ____ When contributions are made to a nonforfeitable fund
C. ____ When contributions are made to a forfeitable fund
D. ____ When the benefits are paid to an employee
E. ____ When amounts are paid to an employee welfare plan
Y. ____ Other or more than one method 1/
Z. ____ Not Applicable

6.4.0 Self-Insurance Programs (Worker's Compensation, Liability and Casualty Insurance.)

6.4.1 Worker's Compensation and Liability. Costs of such self-insurance programs are charged to Federally sponsored agreements or similar cost objectives: (Mark one.)

A. ____ When claims are paid or losses are incurred (no provision for reserves)
B. ____ When provisions for reserves are recorded based on the present value of the liability
C. ____ When provisions for reserves are recorded based on the full or undiscounted value, as contrasted with present value, of the liability
D. ____ When funds are set aside or contributions are made to a fund
Y. ____ Other or more than one method 1/
Z. ____ Not Applicable

1/ Describe on a Continuation Sheet.

FORM CASB DS-2 (REV 10/94) VI-2

COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 100-679 EDUCATIONAL INSTITUTIONS	PART VI- DEFERRED COMPENSATION AND INSURANCE COSTS
	NAME OF REPORTING UNIT

Item No.	Item Description
6.4.2	Casualty Insurance. Costs of such self-insurance programs are charged to Federally sponsored agreements or similar cost objectives: (Mark one.)
	A. ____ When losses are incurred (no provision for reserves)
	B. ____ When provisions for reserves are recorded based on replacement costs
	C. ____ When provisions for reserves are recorded based on reproduction costs new less observed depreciation (market value) excluding the value of land and other indestructibles.
	D. ____ Losses are charged to fund balance with no charge to contracts and grants (no provision for reserves)
	Y ____ Other or more than one method 1/
	Z. ____ Not Applicable
	1/ Describe on a Continuation Sheet.

FORM CASB DS-2 (REV 10/94) VI-3

COST ACCOUNTING STANDARDS BOARD DISCLOSURE STATEMENT REQUIRED BY PUBLIC LAW 100-679 EDUCATIONAL INSTITUTIONS	PART VII- CENTRAL SYSTEM OR GROUP EXPENSES
	NAME OF REPORTING UNIT

Item No.	Item Description
	DISCLOSURE BY CENTRAL SYSTEM OFFICE, OR GROUP (INTERMEDIATE ADMINISTRATION) OFFICE, AS APPLICABLE.
	Instructions for Part VII
	This part should be completed only by the central system office or a group office of an educational system when that office is responsible for administering two or more segments, where it allocates its costs to such segments and where at least one of the segments is required to file Parts I through VI of the Disclosure Statement.
	The reporting unit (central system or group office) should disclose how costs of services provided by the reporting unit are, or will be, accumulated and allocated to applicable segments of the institution. For a central system office, disclosure should cover the entire institution. For a group office, disclosure should cover all of the subordinate organizations administered by that group office.
7.1.0	Organizational Structure.
	On a continuation sheet, list all segments of the university or university system, including hospitals, Federally Funded Research and Development Centers (FFRDC's), Government-owned Contractor-operated (GOCO) facilities, and lower-tier group offices serviced by the reporting unit.
7.2.0	Cost Accumulation and Allocation.
	On a continuation sheet, provide a description of:
	A. The services provided to segments of the university or university system (including hospitals, FFRDC's, GOCO facilities, etc.), in brief.
	B. How the costs of the services are identified and accumulated.
	C. The basis used to allocate the accumulated costs to the benefitting segments.
	D. Any costs that are transferred from a segment to the central system office or the intermediate administrative office, and which are reallocated to another segment(s). If none, so state.
	E. Any fixed management fees that are charged to a segment(s) in lieu of a prorata or allocation basis and the basis of such charges. If none, so state.

FORM CASB DS-2 (REV 10/94) VII-1

BILLING CODE 3110-01-C

Subpart 9903.3—CAS Rules and Regulations

13. Section 9903.301 is amended by redesignating the existing introductory text and definitions as paragraph (a) and by adding a new paragraph (b) to read as follows:

9903.301 Definitions.

* * * * *

(b) The definitions set forth below are applicable exclusively to educational institutions and apply to this chapter 99.

Business unit. See 9903.201–2(c)(2)(ii).

Educational institution. See 9903.201–2(c)(2)(i).

Intermediate cost objective. See 9905.502–30(a)(7).

Segment. See 9903.201–2(c)(2)(ii).

14. A new Part 9905 is added to read as follows:

PART 9905—COST ACCOUNTING STANDARDS FOR EDUCATIONAL INSTITUTIONS

Authority: Public Law 100–679, 102 Stat. 4056, 41 U.S.C. 422.

9905.501 Cost accounting standard—consistency in estimating, accumulating and reporting costs by educational institutions.

9905.501–10 [Reserved]

9905.501–20 Purpose.

The purpose of this Cost Accounting Standard is to ensure that each educational institution's practices used in estimating costs for a proposal are consistent with cost accounting practices used by the institution in accumulating and reporting costs. Consistency in the application of cost accounting practices is necessary to enhance the likelihood that comparable transactions are treated alike. With respect to individual contracts, the consistent application of cost accounting practices will facilitate the preparation of reliable cost estimates used in pricing a proposal and their comparison with the costs of performance of the resulting contract. Such comparisons provide one important basis for financial control over costs during contract performance and aid in establishing accountability for costs in the manner agreed to by both parties at the time of contracting. The comparisons also provide an improved basis for evaluating estimating capabilities.

9905.501–30 Definitions.

(a) The following are definitions of terms which are prominent in this Standard. Other terms defined elsewhere in this Chapter 99 shall have the meanings ascribed to them in those definitions unless paragraph (b) of this subsection requires otherwise.

(1) *Accumulating costs* means the collecting of cost data in an organized manner, such as through a system of accounts.

(2) *Actual cost* means an amount determined on the basis of cost incurred (as distinguished from forecasted cost), including standard cost properly adjusted for applicable variance.

(3) *Estimating costs* means the process of forecasting a future result in terms of cost, based upon information available at the time.

(4) *Indirect cost pool* means a grouping of incurred costs identified with two or more objectives but not identified specifically with any final cost objective.

(5) *Pricing* means the process of establishing the amount or amounts to be paid in return for goods or services.

(6) *Proposal* means any offer or other submission used as a basis for pricing a contract, contract modification or termination settlement or for securing payments thereunder.

(7) *Reporting costs* means the providing of cost information to others.

(b) The following modifications of terms defined elsewhere in this Chapter 99 are applicable to this Standard: None.

9905.501–40 Fundamental requirement.

(a) An educational institution's practices used in estimating costs in pricing a proposal shall be consistent with the institution's cost accounting practices used in accumulating and reporting costs.

(b) An educational institution's cost accounting practices used in accumulating and reporting actual costs for a contract shall be consistent with the institution's practices used in estimating costs in pricing the related proposal.

(c) The grouping of homogeneous costs in estimates prepared for proposal purposes shall not *per se* be deemed an inconsistent application of cost accounting practices under paragraphs (a) and (b) of this subsection when such costs are accumulated and reported in greater detail on an actual cost basis during contract performance.

9905.501–50 Techniques for application.

(a) The standard allows grouping of homogeneous costs in order to cover those cases where it is not practicable to estimate contract costs by individual cost element. However, costs estimated for proposal purposes shall be presented in such a manner and in such detail that any significant cost can be compared with the actual cost accumulated and reported therefor. In any event, the cost accounting practices used in estimating costs in pricing a proposal and in accumulating and reporting costs on the resulting contract shall be consistent with respect to:

(1) The classification of elements of cost as direct or indirect;

(2) The indirect cost pools to which each element of cost is charged or proposed to be charged; and

(3) The methods of allocating indirect costs to the contract.

(b) Adherence to the requirement of 9905.501–40(a) of this standard shall be determined as of the date of award of the contract, unless the contractor has submitted cost or pricing data pursuant to 10 U.S.C. 2306(a) or 41 U.S.C. 254(d) (Pub. L. 87–653), in which case adherence to the requirement of 9905.501–40(a) shall be determined as of the date of final agreement on price.

as shown on the signed certificate of current cost or pricing data. Notwithstanding 9905.501–40(b), changes in established cost accounting practices during contract performance may be made in accordance with Part 9903 (48 CFR part 9903).

(c) The standard does not prescribe the amount of detail required in accumulating and reporting costs. The basic requirement which must be met, however, is that for any significant amount of estimated cost, the contractor must be able to accumulate and report actual cost at a level which permits sufficient and meaningful comparison with its estimates. The amount of detail required may vary considerably depending on how the proposed costs were estimated, the data presented in justification or lack thereof, and the significance of each situation. Accordingly, it is neither appropriate nor practical to prescribe a single set of accounting practices which would be consistent in all situations with the practices of estimating costs. Therefore, the amount of accounting and statistical detail to be required and maintained in accounting for estimated costs has been and continues to be a matter to be decided by Government procurement authorities on the basis of the individual facts and circumstances.

9905.501–60 Illustration. [Reserved]

9905.501–61 Interpretation. [Reserved]

9905.501–62 Exemption.

None for this Standard.

9905.501–63 Effective date.

This Standard is effective as of January 9, 1995.

9905.502 Cost accounting standard—consistency in allocating costs incurred for the same purpose by educational institutions.

9905.502–10 [Reserved]

9905.502–20 Purpose.

The purpose of this Standard is to require that each type of cost is allocated only once and on only one basis to any contract or other cost objective. The criteria for determining the allocation of costs to a contract or other cost objective should be the same for all similar objectives. Adherence to these cost accounting concepts is necessary to guard against the overcharging of some cost objectives and to prevent double counting. Double counting occurs most commonly when cost items are allocated directly to a cost objective without eliminating like cost items from indirect cost pools which are allocated to that cost objective.

9905.502–30 Definitions.

(a) The following are definitions of terms which are prominent in this Standard. Other terms defined elsewhere in this Chapter 99 shall have the meanings ascribed to them in those definitions unless paragraph (b) of this subsection requires otherwise.

(1) *Allocate* means to assign an item of cost, or a group of items of cost, to one or more cost objectives. This term includes both direct assignment of cost and the reassignment of a share from an indirect cost pool.

(2) *Cost objective* means a function, organizational subdivision, contract, or other work unit for which cost data are desired and for which provision is made to accumulate and measure the cost of processes, products, jobs, capitalized projects, etc.

(3) *Direct cost* means any cost which is identified specifically with a particular final cost objective. Direct costs are not limited to items which are incorporated in the end product as material or labor. Costs identified specifically with a contract are direct costs of that contract. All costs identified specifically with other final cost objectives of the educational institution are direct costs of those cost objectives.

(4) *Final cost objective* means a cost objective which has allocated to it both direct and indirect costs, and in the educational institution's accumulation system, is one of the final accumulation points.

(5) *Indirect cost* means any cost not directly identified with a single final cost objective, but identified with two or more final cost objectives or with at least one intermediate cost objective.

(6) *Indirect cost pool* means a grouping of incurred costs identified with two or more cost objectives but not identified with any final cost objective.

(7) *Intermediate cost objective* means a cost objective that is used to accumulate indirect costs or service center costs that are subsequently allocated to one or more indirect cost pools and/or final cost objectives.

(b) The following modifications of terms defined elsewhere in this Chapter 99 are applicable to this Standard: None.

9905.502–40 Fundamental requirement.

All costs incurred for the same purpose, in like circumstances, are either direct costs only or indirect costs only with respect to final cost objectives. No final cost objective shall have allocated to it as an indirect cost any cost, if other costs incurred for the same purpose, in like circumstances, have been included as a direct cost of that or any other final cost objective. Further, no final cost objective shall have allocated to it as a direct cost any cost, if other costs incurred for the same purpose, in like circumstances, have been included in any indirect cost pool to be allocated to that or any other final cost objective.

9905.502–50 Techniques for application.

(a) The Fundamental Requirement is stated in terms of cost incurred and is equally applicable to estimates of costs to be incurred as used in contract proposals.

(b) The Disclosure Statement to be submitted by the educational institution will require that the institution set forth its cost accounting practices with regard to the distinction between direct and indirect costs. In addition, for those types of cost which are sometimes accounted for as direct and sometimes accounted for as indirect, the educational institution will set forth in its Disclosure Statement the specific criteria and circumstances for making such distinctions. In essence, the Disclosure Statement submitted by the educational institution, by distinguishing between direct and indirect costs, and by describing the criteria and circumstances for allocating those items which are sometimes direct and sometimes indirect, will be determinative as to whether or not costs are incurred for the same purpose. Disclosure Statement as used herein refers to the statement required to be submitted by educational institutions as a condition of contracting as set forth in Subpart 9903.2.

(c) In the event that an educational institution has not submitted a Disclosure Statement, the determination of whether specific costs are directly allocable to contracts shall be based upon the educational institution's cost accounting practices used at the time of contract proposal.

(d) Whenever costs which serve the same purpose cannot equitably be indirectly allocated to one or more final cost objectives in accordance with the educational institution's disclosed accounting practices, the educational institution may either use a method for reassigning all such costs which would provide an equitable distribution to all final cost objectives, or directly assign all such costs to final cost objectives with which they are specifically identified. In the event the educational institution decides to make a change for either purpose, the Disclosure Statement shall be amended to reflect the revised accounting practices involved.

(e) Any direct cost of minor dollar amount may be treated as an indirect cost for reasons of practicality where the accounting treatment for such cost is consistently applied to all final cost objectives, provided that such treatment produces results which are substantially the same as the results which would have been obtained if such cost had been treated as a direct cost.

9905.502–60 Illustrations.

(a) Illustrations of costs which are incurred for the same purpose:

(1) An educational institution normally allocates all travel as an indirect cost and previously disclosed this accounting practice to the Government. For purposes of a new proposal, the educational institution intends to allocate the travel costs of personnel whose time is accounted for as direct labor directly to the contract. Since travel costs of personnel whose time is accounted for as direct labor working on other contracts are costs which are incurred for the same purpose, these costs may no longer be included within indirect cost pools for purposes of allocation to any covered Government contract. The educational institution's Disclosure Statement must be amended for the proposed changes in accounting practices.

(2) An educational institution normally allocates purchasing activity costs indirectly and allocates this cost to instruction and research on the basis of modified total costs. A proposal for a new contract requires a disproportionate amount of subcontract administration to be performed by the purchasing activity. The educational institution prefers to continue to allocate purchasing activity costs indirectly. In order to equitably allocate the total purchasing activity costs, the educational institution may use a method for allocating all such costs which would provide an equitable distribution to all applicable indirect cost pools. For example, the institution may use the number of transactions processed rather than its former allocation base of modified total costs. The educational institution's Disclosure Statement must be amended for the proposed changes in accounting practices.

(b) Illustrations of costs which are not incurred for the same purpose:

(1) An educational institution normally allocates special test equipment costs directly to contracts. The costs of general purpose test equipment are normally included in the indirect cost pool which is allocated to contracts. Both of these accounting practices were previously disclosed to the Government. Since both types of costs involved were not incurred for the same purpose in accordance with the criteria set forth in the educational institution's Disclosure Statement, the allocation of general purpose test equipment costs from the indirect cost pool to the contract, in addition to the directly allocated special test equipment costs, is not considered a violation of the Standard.

(2) An educational institution proposes to perform a contract which will require three firemen on 24-hour duty at a fixed-post to provide protection against damage to highly inflammable materials used on the contract. The educational institution presently has a firefighting force of 10 employees for general protection of its facilities. The educational institution's costs for these latter firemen are treated as indirect costs and allocated to all contracts; however, it wants to allocate the three fixed-post firemen directly to the particular contract requiring them and also allocate a portion of the cost of the general firefighting force to the same contract. The institution may do so but only on condition that its disclosed practices indicate that the costs of the separate classes of firemen serve different purposes and that it is the institution's practice to allocate the general firefighting force indirectly and to allocate fixed-post firemen directly.

9905.502–61 Interpretation.

(a) 9905.502, Cost Accounting Standard—Consistency in Allocating Costs Incurred for the Same Purpose by Educational Institutions, provides, in 9905.502–40, that "* * * no final cost objective shall have allocated to it as a direct cost any cost, if other costs incurred for the same purpose, in like circumstances, have been included in any indirect cost pool to be allocated to that or any other final cost objective."

(b) This interpretation deals with the way 9905.502 applies to the treatment of costs incurred in preparing, submitting, and supporting proposals. In essence, it is addressed to whether or not, under the Standard, all such costs are incurred for the same purpose, in like circumstances.

(c) Under 9905.502, costs incurred in preparing, submitting, and supporting proposals pursuant to a specific requirement of an existing contract are considered to have been incurred in different circumstances from the circumstances under which costs are incurred in preparing proposals which do not result from such a specific requirement. The circumstances are different because the costs of preparing proposals specifically required by the provisions of an existing contract relate only to that contract while other proposal costs relate to all work of the educational institution.

(d) This interpretation does not preclude the allocation, as indirect costs, of costs incurred in preparing all proposals. The cost accounting practices used by the educational institution, however, must be followed consistently and the method used to reallocate such costs, of course, must provide an equitable distribution to all final cost objectives.

9905.502–62 Exemption.

None for this Standard.

9905.502–63 Effective date.

This Standard is effective as of January 9, 1995.

9905.505 Accounting for unallowable costs—Educational institutions.

9905.505–10 [Reserved]

9905.505–20 Purpose.

(a)(1) The purpose of this Cost Accounting Standard is to facilitate the negotiation, audit, administration and settlement of contracts by establishing guidelines covering:

(i) Identification of costs specifically described as unallowable, at the time such costs first become defined or authoritatively designated as unallowable, and

(ii) The cost accounting treatment to be accorded such identified unallowable costs in order to promote the consistent application of sound cost accounting principles covering all incurred costs.

(2) The Standard is predicated on the proposition that costs incurred in carrying on the activities of an educational institution—regardless of the allowability of such costs under Government contracts—are allocable to the cost objectives with which they are identified on the basis of their beneficial or causal relationships.

(b) This Standard does not govern the allowability of costs. This is a function of the appropriate procurement or reviewing authority.

9905.505–30 Definitions.

(a) The following are definitions of terms which are prominent in this Standard. Other terms defined elsewhere in this Chapter 99 shall have the meanings ascribed to them in those definitions unless paragraph (b) of this subsection requires otherwise.

(1) *Directly associated cost* means any cost which is generated solely as a result of the incurrence of another cost, and which would not have been incurred had the other cost not been incurred.

(2) *Expressly unallowable cost* means a particular item or type of cost which

under the express provisions of an applicable law, regulation, or contract, is specifically named and stated to be unallowable.

(3) *Indirect cost* means any cost not directly identified with a single final cost objective, but identified with two or more final cost objectives or with at least one intermediate cost objective.

(4) *Unallowable cost* means any cost which, under the provisions of any pertinent law, regulation, or contract, cannot be included in prices, cost reimbursements, or settlements under a Government contract to which it is allocable.

(b) The following modifications of terms defined elsewhere in this Chapter 99 are applicable to this Standard: None.

9905.505–40 Fundamental requirement.

(a) Costs expressly unallowable or mutually agreed to be unallowable, including costs mutually agreed to be unallowable directly associated costs, shall be identified and excluded from any billing, claim, or proposal applicable to a Government contract.

(b) Costs which specifically become designated as unallowable as a result of a written decision furnished by a contracting officer pursuant to contract disputes procedures shall be identified if included in or used in the computation of any billing, claim, or proposal applicable to a Government contract. This identification requirement applies also to any costs incurred for the same purpose under like circumstances as the costs specifically identified as unallowable under either this paragraph or paragraph (a) of this subsection.

(c) Costs which, in a contracting officer's written decision furnished pursuant to contract disputes procedures, are designated as unallowable directly associated costs of unallowable costs covered by either paragraph (a) or (b) of this subsection shall be accorded the identification required by paragraph (b) of this subsection.

(d) The costs of any work project not contractually authorized, whether or not related to performance of a proposed or existing contract, shall be accounted for, to the extent appropriate, in a manner which permits ready separation from the costs of authorized work projects.

(e) All unallowable costs covered by paragraphs (a) through (d) of this subsection shall be subject to the same cost accounting principles governing cost allocability as allowable costs. In circumstances where these unallowable costs normally would be part of a regular indirect-cost allocation base or bases, they shall remain in such base or bases. Where a directly associated cost is part of a category of costs normally included in an indirect-cost pool that will be allocated over a base containing the unallowable cost with which it is associated, such a directly associated cost shall be retained in the indirect-cost pool and be allocated through the regular allocation process.

(f) Where the total of the allocable and otherwise allowable costs exceeds a limitation-of-cost or ceiling-price provision in a contract, full direct and indirect cost allocation shall be made to the contract cost objective, in accordance with established cost accounting practices and Standards which regularly govern a given entity's allocations to Government contract cost objectives. In any determination of unallowable cost overrun, the amount thereof shall be identified in terms of the excess of allowable costs over the ceiling amount, rather than through specific identification of particular cost items or cost elements.

9905.505–50 Techniques for application.

(a) The detail and depth of records required as backup support for proposals, billings, or claims shall be that which is adequate to establish and maintain visibility of identified unallowable costs (including directly associated costs), their accounting status in terms of their allocability to contract cost objectives, and the cost accounting treatment which has been accorded such costs. Adherence to this cost accounting principle does not require that allocation of unallowable costs to final cost objectives be made in the detailed cost accounting records. It does require that unallowable costs be given appropriate consideration in any cost accounting determinations governing the content of allocation bases used for distributing indirect costs to cost objectives. Unallowable costs involved in the determination of rates used for standard costs, or for indirect-cost bidding or billing, need be identified only at the time rates are proposed, established, revised or adjusted.

(b)(1) The visibility requirement of paragraph (a) of this subsection, may be satisfied by any form of cost identification which is adequate for purposes of contract cost determination and verification. The Standard does not require such cost identification for purposes which are not relevant to the determination of Government contract cost. Thus, to provide visibility for incurred costs, acceptable alternative practices would include:

(i) The segregation of unallowable costs in separate accounts maintained for this purpose in the regular books of account,

(ii) The development and maintenance of separate accounting records or workpapers, or

(iii) The use of any less formal cost accounting techniques which establishes and maintains adequate cost identification to permit audit verification of the accounting recognition given unallowable costs.

(2) Educational institutions may satisfy the visibility requirements for estimated costs either:

(i) By designation and description (in backup data, workpapers, etc.) of the amounts and types of any unallowable costs which have specifically been identified and recognized in making the estimates, or

(ii) By description of any other estimating technique employed to provide appropriate recognition of any unallowable costs pertinent to the estimates.

(c) Specific identification of unallowable costs is not required in circumstances where, based upon considerations of materiality, the Government and the educational institution reach agreement on an alternate method that satisfies the purpose of the Standard.

9905.505–60 Illustrations.

(a) An auditor recommends disallowance of certain direct labor and direct material costs, for which a billing has been submitted under a contract, on the basis that these particular costs were not required for performance and were not authorized by the contract. The contracting officer issues a written decision which supports the auditor's position that the questioned costs are unallowable. Following receipt of the contracting officer's decision, the educational institution must clearly identify the disallowed direct labor and direct material costs in the institution's accounting records and reports covering any subsequent submission which includes such costs. Also, if the educational institution's base for allocation of any indirect cost pool relevant to the subject contract consists of direct labor, direct material, total prime cost, total cost input, etc., the institution must include the disallowed direct labor and material costs in its allocation base for such pool. Had the contracting officer's decision been against the auditor, the educational institution would not, of course, have been required to account separately for the costs questioned by the auditor.

(b) An educational institution incurs, and separately identifies, as a part of a service center or expense pool, certain costs which are expressly unallowable under the existing and currently effective regulations. If the costs of the service center or indirect expense pool are regularly a part of the educational institution's base for allocation of other indirect expenses, the educational institution must allocate the other indirect expenses to contracts and other final cost objectives by means of a base which includes the identified unallowable indirect costs.

(c) An auditor recommends disallowance of certain indirect costs. The educational institution claims that the costs in question are allowable under the provisions of Office Of Management and Budget Circular A–21, Cost Principles For Educational Institutions; the auditor disagrees. The issue is referred to the contracting officer for resolution pursuant to the contract disputes clause. The contracting officer issues a written decision supporting the auditor's position that the total costs questioned are unallowable under the Circular. Following receipt of the contracting officer's decision, the educational institution must identify the disallowed costs and specific other costs incurred for the same purpose in like circumstances in any subsequent estimating, cost accumulation or reporting for Government contracts, in which such costs are included. If the contracting officer's decision had supported the educational institution's contention, the costs questioned by the auditor would have been allowable and the educational institution would not have been required to provide special identification.

(d) An educational institution incurred certain unallowable costs that were charged indirectly as general administration and general expenses (GA&GE). In the educational institution's proposals for final indirect cost rates to be applied in determining allowable contract costs, the educational institution identified and excluded the expressly unallowable GA&GE costs form the applicable indirect cost pools. In addition, during the course of negotiation of indirect cost rates to be used for bidding and billing purposes, the educational institution agreed to classify as unallowable cost, various directly associated costs of the identifiable unallowable costs. On the basis of negotiations and agreements between the educational institution and the contracting officer's authorized representatives, indirect cost rates were established, based on the net balance of allowable GA&GE. Application of the rates negotiated to proposals, and to billings, for covered contracts constitutes compliance with the Standard.

(e) An employee, whose salary, travel, and subsistence expenses are charged regularly to the general administration and general expenses (GA&GE), an indirect cost category, takes several business associates on what is clearly a business entertainment trip. The entertainment costs of such trips is expressly unallowable because it constitutes entertainment expense prohibited by OMB Circular A–21, and is separately identified by the educational institution. In these circumstances, the employee's travel and subsistence expenses would be directly associated costs for identification with the unallowable entertainment expense. However, unless this type of activity constituted a significant part of the employee's regular duties and responsibilities on which his salary was based, no part of the employee's salary would be required to be identified as a directly associated cost of the unallowable entertainment expense.

9905.505–61 Interpretation. [Reserved]

9905.505–62 Exemption.

None for this Standard.

9905.505–63 Effective date.

This Standard is effective as of January 9, 1995.

9905.506 Cost accounting period—Educational institutions.

9905.506–10 [Reserved]

9905.506–20 Purpose.

The purpose of this Cost Accounting Standard is to provide criteria for the selection of the time periods to be used as cost accounting periods for contract cost estimating, accumulating, and reporting. This Standard will reduce the effects of variations in the flow of costs within each cost accounting period. It will also enhance objectivity, consistency, and verifiability, and promote uniformity and comparability in contract cost measurements.

9905.506–30 Definitions.

(a) The following are definitions of terms which are prominent in this Standard. Other terms defined elsewhere in this Part 99 shall have the meanings ascribed to them in those definitions unless paragraph (b) of this subsection requires otherwise.

(1) *Allocate* means to assign an item of cost, or a group of items of cost, to one or more cost objectives. This term includes both direct assignment of cost and the reassignment of a share from an indirect cost pool.

(2) *Cost objective* means a function, organizational subdivision, contract, or other work unit for which cost data are desired and for which provision is made to accumulate and measure the cost of processes, products, jobs, capitalized projects, etc.

(3) *Fiscal year* means the accounting period for which annual financial statements are regularly prepared, generally a period of 12 months, 52 weeks, or 53 weeks.

(4) *Indirect cost pool* means a grouping of incurred costs identified with two or more cost objectives but not identified specifically with any final cost objective.

(b) The following modifications of terms defined elsewhere in this Chapter 99 are applicable to this Standard: None.

9905.506–40 Fundamental requirement.

(a) Educational institutions shall use their fiscal year as their cost accounting period, except that:

(1) Costs of an indirect function which exists for only a part of a cost accounting period may be allocated to cost objectives of that same part of the period as provided in 9905.506–50(a).

(2) An annual period other than the fiscal year may, as provided in 9905.506–50(d), be used as the cost accounting period if its use is an established practice of the institution.

(3) A transitional cost accounting period other than a year shall be used whenever a change of fiscal year occurs.

(b) An institution shall follow consistent practices in the selection of the cost accounting period or periods in which any types of expense and any types of adjustment to expense (including prior-period adjustments) are accumulated and allocated.

(c) The same cost accounting period shall be used for accumulating costs in an indirect cost pool as for establishing its allocation base, except that the contracting parties may agree to use a different period for establishing an allocation base as provided in 9905.506–50(e).

9905.506–50 Techniques for application.

(a) The cost of an indirect function which exists for only a part of a cost accounting period may be allocated on the basis of data for that part of the cost accounting period if the cost is:

(1) Material in amount,

(2) Accumulated in a separate indirect cost pool or expense pool, and

(3) Allocated on the basis of an appropriate direct measure of the activity or output of the function during that part of the period.

(b) The practices required by 9905.506–40(b) of this Standard shall include appropriate practices for deferrals, accruals, and other adjustments to be used in identifying the cost accounting periods among which any types of expense and any types of adjustment to expense are distributed. If an expense, such as insurance or employee leave, is identified with a fixed, recurring; annual period which is different from the institution's cost accounting period, the Standard permits continued use of that different period. Such expenses shall be distributed to cost accounting periods in accordance with the institution's established practices for accruals, deferrals, and other adjustments.

(c) Indirect cost allocation rates, based on estimates, which are used for the purpose of expediting the closing of contracts which are terminated or completed prior to the end of a cost accounting period need not be those finally determined or negotiated for that cost accounting period. They shall, however, be developed to represent a full cost accounting period, except as provided in paragraph (a) of this subsection.

(d) An institution may, upon mutual agreement with the Government, use as its cost accounting period a fixed annual period other than its fiscal year, if the use of such a period is an established practice of the institution and is consistently used for managing and controlling revenues and disbursements, and appropriate accruals, deferrals or other adjustments are made with respect to such annual periods.

(e) The contracting parties may agree to use an annual period which does not coincide precisely with the cost accounting period for developing the data used in establishing an allocation base: Provided,

(1) The practice is necessary to obtain significant administrative convenience,

(2) The practice is consistently followed by the institution,

(3) The annual period used is representative of the activity of the cost accounting period for which the indirect costs to be allocated are accumulated, and

(4) The practice can reasonably be estimated to provide a distribution to cost objectives of the cost accounting period not materially different from that which otherwise would be obtained.

(f)(1) When a transitional cost accounting period is required under the provisions of 9905.506–40(a)(3), the institution may select any one of the following: (i) The period, less than a year in length, extending from the end of its previous cost accounting period to the beginning of its next regular cost accounting period,

(ii) A period in excess of a year, but not longer than 15 months, obtained by combining the period described in paragraph (f)(1) of this subsection with the previous cost accounting period, or

(iii) A period in excess of a year, but not longer than 15 months, obtained by combining the period described in subparagraph (f)(1) of this subsection with the next regular cost accounting period.

(2) A change in the institution's cost accounting period is a change in accounting practices for which an adjustment in the contract price may be required in accordance with subdivision (a)(4)(ii) or (iii) of the contract clause set out at 9903.201–4(e).

9905.506–60 Illustrations.

(a) An institution allocates indirect expenses for Organized Research on the basis of a modified total direct cost base. In a proposal for a covered contract, it estimates the allocable expenses based solely on the estimated amount of indirect costs allocated to Organized Research and the amount of the modified total direct cost base estimated to be incurred during the 8 months in which performance is scheduled to be commenced and completed. Such a proposal would be in violation of the requirements of this Standard that the calculation of the amounts of both the indirect cost pools and the allocation bases be based on the contractor's cost accounting period.

(b) An institution whose cost accounting period is the calendar year, installs a computer service center to begin operations on May 1. The operating expense related to the new service center is expected to be material in amount, will be accumulated in an intermediate cost objective, and will be allocated to the benefiting cost objectives on the basis of measured usage. The total operating expenses of the computer service center for the 8-month part of the cost accounting period may be allocated to the benefiting cost objectives of that same 8-month period.

(c) An institution changes its fiscal year from a calendar year to the 12-month period ending May 31. For financial reporting purposes, it has a 5-month transitional "fiscal year." The same 5-month period must be used as the transitional cost accounting period; it may not be combined as provided in 9905.506–50(f), because the transitional period would be longer than 15 months. The new fiscal year must be adopted thereafter as its regular cost accounting period. The change in its cost accounting period is a change in accounting practices; adjustments of the contract prices may thereafter be required in accordance with subdivision (a)(4) (ii) or (iii) of the contract clause at 9903.201–4(e).

(d) Financial reports are prepared on a calendar year basis on a university-wide basis. However, the contracting segment does all internal financial planning, budgeting, and internal reporting on the basis of a twelve month period ended June 30. The contracting parties agree to use the period ended June 30 and they agree to overhead rates on the June 30 basis. They also agree on a technique for prorating fiscal year assignment of the university's central system office expenses between such June 30 periods. This practice is permitted by the Standard.

(e) Most financial accounts and contract cost records are maintained on the basis of a fiscal year which ends November 30 each year. However, employee vacation allowances are regularly managed on the basis of a "vacation year" which ends September 30 each year. Vacation expenses are estimated uniformly during each "vacation year." Adjustments are made each October to adjust the accrued liability to actual, and the estimating rates are modified to the extent deemed appropriate. This use of a separate annual period for determining the amounts of vacation expense is permitted under 9905.506–50(b).

9905.506–61 Interpretation. [Reserved]

9905.506–62 Exemption.

None for this Standard.

9905.506–63 Effective date.

This Standard is effective as of January 9, 1995. For institutions with no previous CAS-covered contracts, this Standard shall be applied as of the start of its next fiscal year beginning after receipt of a contract to which this Standard is applicable.

[FR Doc. 94–27439 Filed 11–7–94; 8:45 am]
BILLING CODE 3110–01–P

federal register

Tuesday
November 8, 1994

Part III

Environmental Protection Agency

40 CFR Part 264, et al.

Standards Applicable to Owners and Operators of Closed and Closing Hazardous Waste Management Facilities; Post-Closure Permit Requirement; Closure Process; State Corrective Action Enforcement Authority; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 264, 265, 270, and 271

[FRL–5100–2]

RIN 2050–AD55

Standards Applicable to Owners and Operators of Closed and Closing Hazardous Waste Management Facilities; Post-Closure Permit Requirement; Closure Process; State Corrective Action Enforcement Authority

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule and request for public comment.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to amend the regulations under the Resource Conservation and Recovery Act (RCRA) in two areas. First, the Agency is proposing to remove the current requirement for a post-closure permit, and allow the Agency to use alternative authorities to address facilities with units requiring post-closure care. In addition, the Agency is proposing to amend the regulations governing State authorization to require authorized States to adopt, as part of an adequate enforcement program, authority to address corrective action at interim status facilities. This action also solicits comment on several issues related to closure and corrective action at hazardous waste management facilities.

DATES: Comments must be received on or before January 9, 1995.

ADDRESSES: Written comments on today's proposal should be addressed to the docket clerk at the following address: Environmental Protection Agency, RCRA Docket (OS–305), 401 M St., SW., Washington, DC 20460. Commentors should send one original and two copies and place the docket number (F–94–PCPP–FFFFF) on the comments. The docket is open from 9:00 a.m. to 4:00 p.m., Monday through Friday, except for Federal holidays. Docket materials may be reviewed by appointment by calling 202–260–9327. A maximum of 100 pages of material may be copied at no cost from any one regulatory docket. Additional copies are $0.15 per page.

FOR FURTHER INFORMATION CONTACT: The RCRA/Superfund Hotline (1–800–424–9346) toll free, or (202–260–9327) in Washington, D.C. (for technical information); Barbara Foster (703–308–7057), Office of Solid Waste, Mail Code 5303W, U.S. Environmental Protection Agency, Washington D.C. 20460 (issues related to closure or post-closure care), or Ellen Kandell (703–603–8996), Office of Enforcement and Compliance Assurance, Mail Code 5502G, U.S. Environmental Protection Agency, Washington, DC 20460 (enforcement-related issues).

SUPPLEMENTARY INFORMATION:

Preamble Outline

I. Authority

These regulations are proposed under the authority of sections 2002(a), 3004, 3005, and 3006 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. 6912(a), 6924, 6925, and 6926.

II. Proposed Provisions Related to Closure and Post-Closure Requirements

A. Background Information

1. Overview of RCRA Permit Requirements

Section 3004 of the Resource Conservation Recovery Act (RCRA) requires the Administrator of EPA to develop regulations applicable to owners and operators of hazardous waste treatment, storage, or disposal facilities, as necessary to protect human health and the environment. Section 3005 requires the EPA Administrator to promulgate regulations requiring each person owning or operating a treatment, storage, or disposal facility to have a permit, and to establish requirements for permit applications. Recognizing that the Agency would require a period of time to issue permits to all facilities, Congress provided, under section 3005(e) of RCRA, that qualifying owners and operators could obtain "interim status" and be treated as having been issued permits until EPA takes final administrative action on their permit applications. The privilege of continuing hazardous waste management operations during interim status carries with it the responsibility of complying with appropriate portions of the section 3004 standards.

EPA has issued numerous regulations to implement RCRA requirements for hazardous waste management facilities. These regulations include the standards of 40 CFR part 264 (which apply to facilities that have been issued RCRA permits), part 265 (which apply to interim status facilities), and part 270 (which provide standards for permit issuance). The general requirements for closure are found at 40 CFR parts 264 and 265, subpart G.

2. The Closure Process

The closure regulations at 40 CFR parts 264 and 265, subpart G require owners and operators of hazardous waste management units to close these units in a manner that is protective of human health and the environment and that minimizes the post-closure release of hazardous constituents to the environment. These regulations also establish procedures for closure: they require owners and operators to submit closure plans to the Agency for their hazardous waste management units, and they require Agency approval of those closure plans.

In addition, parts 264 and 265 establish specific requirements for closure of different types of units. Under parts 264 and 265, subpart L, owners and operators of landfills are required to cover the unit with an impermeable cap designed to prevent infiltration of liquid into the unit; then owners or operators must conduct post-closure care (including maintenance of the cap and groundwater monitoring). Owners and operators of surface impoundments and waste piles have the option either to remove or decontaminate all hazardous waste and constituents from the unit, or to leave waste in place, cover the unit with an impermeable cap, and conduct post-closure care. Closure of land treatment facilities must be conducted in accordance with closure and post-closure care procedures of §§ 264.280 and 265.280. As part of the closure plan approval process, the Agency has the authority to require owners and operators to remove some or all of the waste from any type of unit at the time of closure, if doing so is necessary for the closure to meet the performance standard of § 264.111 or § 265.111.

Owners and operators of incinerators and storage and treatment units (e.g., tanks and containers) are required to remove or decontaminate all soils, structures, and equipment at closure. Owners and operators of tanks who are unable to do so must close the unit as a landfill and conduct post-closure care.

3. Post-Closure Care

As discussed above, owners and operators of hazardous waste management units that close with waste in place must conduct post-closure care at those units, including groundwater monitoring and maintenance of the cap. EPA's current regulations anticipate that these requirements, for the most part, will be imposed through RCRA permits. Under 40 CFR 270.1, permits are required for the post-closure period for any landfill, waste pile, surface impoundment, or land treatment unit that received waste after July 26, 1982, or ceased the receipt of wastes prior to July 26, 1982, but did not certify closure until after January 26, 1983. In addition, § 270.1(c)(5) requires owners and operators of surface impoundments, land treatment units, and waste piles that closed by removal or decontamination under former part 265 standards to obtain a post-closure permit unless they demonstrate that the closure met the current standards for closure by removal or decontamination.

In the case of operating land disposal facilities, the RCRA permit, when first issued, incorporates the closure plan and applicable post-closure provisions. These post-closure conditions become effective after the facility ceases to manage hazardous waste and the closure plan has been implemented. The permit, when issued, also requires compliance with part 264 subpart F groundwater monitoring standards, and (if the permit was issued after November, 1984) it would include terms implementing the facility-wide corrective action requirements of RCRA section 3004(u). Like the post-closure care provisions, these requirements remain in effect after closure of the hazardous waste management unit.

For interim status facilities that close without having obtained an operating permit, the post-closure permit (typically issued after completion of closure) performs a critical regulatory function. First, in securing a permit, the facility must meet the permit application requirements of part 270, which require extensive information on the hydrogeologic characteristics of the site and extent of any groundwater contamination. Second, once the post-closure permit has been issued, the facility then becomes subject to the standards of part 264 rather than part 265, most significantly to the site-specific groundwater monitoring requirements of part 264, subpart F. Third, the post-closure permit imposes facility-wide corrective action to satisfy the requirements of section 3004(u). Finally, the public involvement procedures of the permitting process assure that the public is informed of and has an opportunity to comment on permit conditions.

4. Developments Since 1982

Though EPA has amended the 1982 subpart G regulations on several occasions, the basic closure process and the requirement for a post-closure permit remain in place. Several significant developments since 1982, however, suggest that the closure process and standards should be revisited.

a. *The agency has gained experience in the area of closure and post-closure.* In 1982, when the regulatory structure for closure was established, the Agency had no experience with closure of RCRA regulated units. Since 1982, the Agency and authorized States have approved thousands of closure plans, and overseen the closure activities taking place under those plans. It has become evident that closure of these units is frequently more complex than EPA envisioned in 1982. In many cases, particularly with unlined land-based units, the unit has released hazardous waste and constituents into the surrounding soils and groundwater. In these cases, the closure activity is not simply a matter of capping a unit, or removing waste from the unit, but instead may require a significant undertaking to clean up contaminated soil and groundwater. The procedures established in the closure regulations were not designed to address these types of activities.

For example, it has become evident that the two options for closure provided in the current regulations (i.e., remove or decontaminate all waste from the unit, or cover the entire unit with an impermeable cap) do not provide the best remedy in all situations. In fact, the requirement that an impermeable cap be placed on the unit if all waste has not been removed may, if read narrowly, discourage implementation of more protective remedies. This issue is discussed later in this preamble.

In addition to gaining experience in the closure process, EPA and the States have issued more than 150 post-closure permits since 1982. In the course of reviewing post-closure permit applications, however, the EPA Regions and States have encountered many facilities where post-closure permit issuance proved difficult or, in some cases, impossible. Generally, the Regions and States have found two major difficulties in post-closure permit issuance. The first is that, in many cases, the facility chose to close, or was forced to close, because it could not comply with part 265 standards—particularly, groundwater monitoring and financial assurance. If a facility cannot meet these requirements, EPA cannot issue a permit to it because section 3005(c) of RCRA requires facilities to be in compliance with applicable requirements at the time of permit issuance. The second difficulty is that the owner or operator often has little incentive to seek a post-closure permit. Without a strong incentive on the part of the facility owner or operator to provide a complete application, the permitting process can be significantly protracted. These difficulties are discussed further in section IV.A. of this preamble.

b. *The agency has acquired new corrective action authority.* In 1984, the Hazardous and Solid Waste Amendments (HSWA) to RCRA provided EPA with broad new authorities, under sections 3004(u), 3004(v), and 3008(h), to compel corrective action (i.e., cleanup) of facilities subject to regulation under RCRA Subtitle C. Corrective action has since become a major component of the RCRA Subtitle C program. Approximately 1100 hazardous waste management facilities are now in the process of implementing corrective action requirements specified under orders or permits.

The RCRA corrective action authorities, and the process that has been developed for implementing these authorities, require owners and operators to investigate the nature and extent of releases of hazardous waste or hazardous constituents at RCRA facilities (i.e., to soils, groundwater, and other environmental media). Owners and operators are required to investigate releases from solid waste management units at the facility, including releases from "regulated units" not addressed under subpart F of part 264. At the direction of the Agency, owners and operators are also required to characterize the sources of releases (i.e., the units from which wastes or constituents have been released), and to develop options for remediation of the facility. Remediation will typically address cleanup of the media contaminated by releases, and removal or containment of the source.

In practice, the corrective action process is highly site-specific, and involves direct oversight by the reviewing Agency. The process provides considerable flexibility to the Agency to tailor investigations, and to decide on remedies that reflect the conditions and the complexities of each facility. The process of investigating and achieving cleanup goals at facilities is often technically complex, and can take many years to complete. This is the case particularly for groundwater contamination in complex hydrogeologic conditions. Given the site-specific nature of corrective action, the technical challenges involved, and the large number of RCRA facilities that may require cleanup, EPA is pursuing an implementation strategy for the corrective action program that involves assessing the environmental priority of each facility from the standpoint of its need for corrective action, and focusing the program's resources on high priority facilities. This implementation strategy is discussed in more detail below.

c. *The agency has developed a strategy for addressing worst sites first under RCRA.* In 1990, EPA conducted the RCRA Implementation Study (RIS). This was the Agency's first comprehensive, in-depth evaluation of the RCRA hazardous waste program, its evolution, and its future. EPA produced the RIS after extensive discussion with stakeholders, private and public, in the RCRA program (i.e., industry, environmental groups, States, and the Agency). The RIS set forth a series of detailed recommendations regarding how to best ensure effective implementation of the RCRA program. An underlying theme throughout was the need to identify sound, environmentally-based implementation priorities in each area of the RCRA program and to demonstrate that those priorities are being effectively and efficiently addressed. The RIS advocated the use of strategic planning to define expectations and make choices among competing priorities.

In response to the RIS recommendations, EPA has developed and is implementing a comprehensive strategy for addressing the RCRA treatment, storage, and disposal universe. At the heart of this strategy is the principle that EPA and the authorized States should address the universe of hazardous waste management facilities on the basis of environmental priorities. Further, at any given site, EPA or the State should use whatever regulatory authority is best suited to achieving environmental success. One essential element of this strategy is a system to prioritize facilities based upon their risk. This allows the Agency to address the RCRA universe on a "worst-site-first" basis. Another is providing the regulator flexibility in choosing regulatory options to address a given problem, rather than focusing on the number of particular regulatory actions taken.

This approach is consistent with the Agency's response to recent recommendations from the General Accounting Office (GAO). In two recently issued reports, GAO evaluated EPA's progress in implementing the RCRA closure and post-closure program at land disposal facilities. In the first report, entitled *Progress in Closing and Cleaning Up Hazardous Waste Facilities*, issued in May of 1991, GAO criticized the Agency's progress in closing land disposal facilities that lost interim status in 1985. The report cited limited progress in this area as a basis for its concern that the Agency was placing too little emphasis on closing land disposal facilities, even though these facilities may pose some of the greatest environmental threats. In April of 1992, GAO issued another report entitled *Impediments Delay Timely Closing and Cleanup of Facilities*. This report criticized the Agency's progress in issuing post-closure permits and cited facility non-compliance with groundwater monitoring requirements as a result of permitting delays. In both of these reports, GAO recommended that EPA devote more of its time and resources specifically to addressing closed and closing land disposal facilities.

The Agency agrees with GAO's concerns about addressing risk at closed and closing land disposal facilities, but believes that those risks must be addressed within the context of the Agency's overall strategy for implementing the RCRA program. The Agency has, for several years, been carrying out a combined closure and corrective action strategy that relies on all of EPA's authorities to address environmental issues at all RCRA facilities on a worst-site-first basis. The foundation of this strategy is the Agency's system for ranking RCRA facilities based on environmental priority. This system was developed to enable EPA to focus its resources on deterring violations and remediating contamination at RCRA facilities that present the highest priority for risk reduction and prevention. (It should be noted that, because of their nature, closed and closing land disposal facilities often rank as high priority.) EPA's priority-based approach dictates that resource commitments be made based on the priority ranking of facilities. This strategy acknowledges that activities to address risk at high priority facilities may take precedence over procedural activities (e.g., permitting) at lower priority facilities. EPA believes that this priority-based approach to RCRA implementation provides the best use of available resources by ensuring progress at high priority facilities across the RCRA universe, including closed and closing land disposal facilities.

5. Response to Post-1982 Developments

In light of the developments discussed above, the Agency is reviewing the current closure and post-closure regulations. EPA's goals are to make the closure process more realistic, integrate the closure and corrective action processes, and provide greater flexibility in addressing risks at closed sites. Today's notice is the first step in that direction. It sets out several amendments to the closure regulations, including a new approach to addressing post-closure needs at facilities currently subject to post-closure permit requirements.

In addition to the regulatory changes in today's proposal, section IV of this preamble solicits comment on further changes to the closure process. After reviewing public comment submitted in response to today's notice, the Agency will consider proposing further revisions to the closure process.

6. State Involvement in Development of This Proposed Rule

Under the terms of Executive Order 12875, the Federal Government is urged to establish regular and meaningful consultation and collaboration with State, local, and tribal governments on Federal matters that significantly or uniquely affect their communities.

Because this proposed rule would affect State RCRA programs, we provided the rule to the Association of State and Territorial Solid Waste Management Officials (ASTSWMO) to obtain their reaction. Seven States submitted written comments and nine States participated in a conference call with EPA on April 7, 1994, to discuss States' concerns. The States' written comments and a summary of the April 7 conference call can be found in the docket for this proposed rule.

The States supported the proposal to remove the post-closure permit requirement. The States strongly supported removing the distinction between closing regulated units and solid waste management units, which is discussed in section III.B. of this preamble.

Generally, States supported the inclusion of a corrective action order authority as part of an adequate enforcement program. Concerns were expressed that the Agency's review procedure of such order authorities would be duplicative of efforts undertaken during a State's authorization of HSWA corrective action at permitted facilities. The Agency recognizes that in some cases States' corrective action enforcement authorities may, indeed, have been reviewed by EPA during the authorization process for section 3004(u) authority, and determined to meet the requirements of this proposal. Where EPA determines this is the case, this proposed rule would not require States to submit additional information; in addition, EPA would minimize its review.

B. Summary and Discussion of Proposed Provisions

Today's notice proposes a new approach to addressing post-closure environmental needs at facilities that have not received an operating permit, and that have units requiring post-closure care. It proposes to modify the post-closure permit requirement to allow the Agency either to issue a permit to address post-closure care at a facility, or to impose the same substantive requirements at the facility using alternative legal authorities (e.g., a post-closure plan to address the regulated unit, and an enforcement action to address the solid waste management units at the facility).

Today's proposal reaffirms that post-closure care requirements apply to all landfills, waste piles, surface impoundments, and land treatment units that received waste after July 26, 1982, or that ceased the receipt of wastes prior to July 26, 1982, but did not certify closure until after January 26, 1983. Under current regulations at § 270.1(c), all facilities subject to post-closure care requirements must obtain RCRA permits. Today's proposal is intended to allow EPA or an authorized State to use any other available legal authority as an alternative to the post-closure permit, as long as that authority provides the same level of protection and public participation as does the post-closure permit.

As discussed above, under the current regulations, facilities that cease operation without obtaining a permit are required to close and conduct post-closure care under the self-implementing standards of Part 265 until the Agency issues a post-closure permit to the facility. This proposed rule would not modify those interim status standards applicable to closed and closing land disposal facilities. Thus, for example, those facilities would continue to be required to conduct closure under approved closure plans, conduct post-closure care under an approved post-closure plan, and obtain financial assurance.

As a result of this proposal, rather than issue a post-closure permit to impose requirements beyond the self-implementing interim status standards, the Agency could use a variety of regulatory authorities. To ensure that the authority chosen by the Agency will provide the same level of environmental protection, this proposal specifically requires owners and operators to comply with the same regulatory requirements that would be imposed through a post-closure permit when those requirements are imposed by the Agency, regardless of the regulatory authority selected. Those requirements include the requirements of Part 264, Subpart F, facility-wide corrective action, and public involvement at the time of remedy selection (if corrective action is required).

The Agency is proposing to remove the permit requirement and allow the use of other authorities at post-closure facilities because it has concluded that a permit is not always the best authority for addressing environmental risk at these facilities. In fact, as was mentioned earlier, in the course of issuing post-closure permits over the past several years, EPA and the States have encountered many facilities at which post-closure permit issuance was difficult or, in some cases, impossible. Several obstacles to post-closure permit issuance have been identified.

One obstacle is a lack of incentive on the part of post-closure permit applicants. Unlike facility owners or operators seeking operating permits, owners or operators of closed or closing facilities often have little incentive to obtain post-closure permits, particularly where the post-closure unit is the only unit at the facility. While permit denial is a significant threat to a facility owner seeking an operating permit, it makes little difference to the owner of a facility that is already closed and that no longer actively manages hazardous waste. In the past, where the owner or operator has been uncooperative in obtaining a post-closure permit, the Agency and authorized States have taken enforcement actions to facilitate the permit issuance process, and to bring facilities into compliance with the applicable regulatory requirements so that a permit could be issued. Today's rule would allow the Agency to bring an uncooperative facility into compliance with the regulations through an enforcement action, and relieve the Agency of its obligation to force the facility through the permit application process, which was generally designed under the assumption that the permit applicant desired a permit. Under the proposal, while the Agency would not lose its authority to issue a post-closure permit at the facility by taking action under an alternative authority (e.g., an enforcement action), it would no longer be required to do so if all applicable regulatory requirements have been imposed at the facility.

The financial status of the facility owner or operator is often another obstacle. Closed and closing land disposal facilities subject to post-closure permit requirements are in many cases businesses that are no longer operating and may be in poor financial condition, or they may be without significant resources. In fact, many facilities currently in the closure universe were forced to close because they could not meet the RCRA financial assurance requirements. Yet meeting these requirements is a precondition for receiving an RCRA permit, regardless of whether it is an operating permit or a post-closure permit. Where an owner or operator is financially unable to meet the threshold post-closure financial requirements for permit issuance, the current regulations do not allow EPA to issue a post-closure permit—despite the regulatory requirement that these facilities obtain such a permit.

Similarly, some closing facilities are located in areas where it is difficult to satisfy the Part 264, Subpart F and Part 270 groundwater monitoring standards. For example, in some areas of complex hydrogeology, it may be technically impractical for a facility to install an adequate groundwater monitoring system. The regulatory agency would deny a permit application from an operating facility in such a situation, because denial prevents further receipt of waste and forces the facility to close. Denial of a post-closure permit application from a closed facility, however, is meaningless in such a situation, because it would have no effect on management of wastes already disposed of at the site and would leave any environmental problems there unaddressed.

To address environmental risk at facilities such as those described above, Regions and States have frequently utilized legal authorities other than permits. Use of enforcement actions enables the Agency to place these facilities on a schedule of compliance for meeting financial assurance and/or groundwater monitoring requirements over a period of time. And, even where enforcement actions cannot bring about full regulatory compliance (e.g., where the owner or operator cannot secure financial assurance), they will enable the Agency to prescribe actions to address the most significant environmental risks at the facility. For example, EPA has often issued corrective action orders under the authority of section 3008(h) to address releases from solid waste management units at these facilities. In other cases, Federal or State Superfund authorities have been used to address cleanup at sites. However, under the current regulations, EPA or the State is still required to issue a post-closure permit even where the environmental risks associated with the facility have been addressed through other authorities.

EPA believes that this proposed rule, by allowing the use of alternative authorities will enable the Agency more effectively to address post-closure care at a significant number of uncooperative and financially burdened facilities. The Agency recognizes, however, that today's proposal may have little practical effect on the Agency's ability to address those facilities that are in too precarious a financial state to meet even an extended schedule of compliance for financial assurance or groundwater monitoring. It is important to note, however, that EPA's prioritization strategy considers the financial status of facilities and elevates in importance those whose financial condition indicates that timely action will increase the likelihood that owners or operators will be able to meet their post-closure obligations. And, in some cases, where the owner or operator's financial condition prevents it from fulfilling its obligations under RCRA, the facility may be referred to Superfund.

EPA believes that more flexible use of the full range of available authorities will provide a more comprehensive approach to ensuring effective post-closure care at RCRA facilities. This approach will enable the Agency to address facilities on a worst-site-first basis using the regulatory or legal authority that is most effective at a given site. Examples of when an authority other than a post-closure permit may be most appropriately applied include cases where the owner or operator is financially incapable of meeting the threshold requirements for permit issuance, such as compliance with the financial assurance requirements, or where the owner or operator may be uncooperative and an enforcement action is necessary.

On the other hand, a post-closure permit will generally be the preferable mechanism for cooperative facilities capable of meeting financial assurance requirements. It has been the experience of several EPA Regions and States that many facility owners or operators will cooperate in the development of a post-closure permit, while they would oppose the same conditions in an enforcement order. Additionally, permit issuance may be advantageous in some situations because it enables the Regional Administrator or State Director to invoke the omnibus authority of section 3005(c)(3) of RCRA at facilities with special environmental needs that are outside the scope of the current regulations. In these cases, post-closure permits would continue to provide the best means of addressing the needs of the facility.

EPA has always interpreted sections 3004(a) and 3005 of RCRA to authorize—but not compel—the issuance of permits to implement post-closure care requirements at facilities that have ceased operating. As EPA explained when it first established the post-closure permit requirement, it "could have issued regulations * * * that are enforceable independent of a permit to impose many of the requirements that apply to a facility after closure * * *" (47 FR 32366, July 26, 1982). EPA, however, believed that permits would be the most effective enforcement vehicle, primarily because they facilitate the development of site-specific conditions tailored to individual waste management facilities. *Id.* The U.S. Court of Appeals for the District of Columbia Circuit has also ruled that the statute authorizes, but does not require, post-closure permits. (*See In re Consolidated Land Disposal Regulation Litigation*, 938 F2d 1386, 1388–89 (D.C. Cir. 1991)).

Today's proposed amendments would eliminate the regulatory requirement that EPA issue permits to all facilities subject to post-closure care requirements. This proposal, EPA has concluded, not only makes policy sense but is fully consistent with the statute, because the post-closure permit requirement is a regulatory rather than a statutory construct.

Although EPA is proposing to allow alternatives to post-closure permits, today's proposed regulations ensure that all substantive conditions currently imposed through post-closure permits are imposed at all facilities subject to post-closure care requirements, regardless of which regulatory or legal authority is used. This proposal specifies that the Agency must impose at these facilities, through enforceable legal authorities, the requirements of part 264, subpart F and facility-wide corrective action. In addition, this proposal would require that the owner or operator provide to the Agency the same information required by the permit issuance process. It would also maintain the requirement for facility-wide corrective action, and it would require public involvement at the time of remedy selection, if corrective action were necessary, or when the Agency determines that corrective action is not required at the facility.

These provisions would ensure that all the substantive requirements of a post-closure permit would be imposed when an alternative mechanism was used. In combination with requirements already imposed on interim status facilities through the part 265 interim status standards, these minimum requirements would ensure that all aspects of post-closure care are fully addressed.

C. Section-By-Section Analysis

Today's proposal would modify several provisions of the RCRA regulations in both the permit issuance procedures of part 270, as well as the requirements for interim status facilities of part 265. Each modification is described in detail below.

1. Section 270.1(c)—Use of Alternative Legal Authorities to Address Post-Closure Care

EPA is proposing two amendments to § 270.1(c). First, the Agency is proposing to revise § 270.1(c) to provide an alternative to the requirement that post-closure permits be issued to closed landfills, waste piles, surface impoundments, and land treatment units, where post-closure care and corrective action are imposed through an enforceable alternative authority. Second, EPA is proposing a new § 270.1(c)(7), which allows the EPA Regional Administrator (or an authorized State) to use alternate authorities to impose post-closure care requirements in lieu of a permit. Under this section, the Agency would be required to impose on post-closure facilities subject to alternative authorities the basic requirements imposed through post-closure permits. (These requirements are specified in proposed § 265.121, described below.) However, the Agency would have the discretion to impose those conditions through a permit, a RCRA enforcement authority, a Superfund authority, or a combination of these or other legal authorities. Similarly, an authorized State could impose conditions under a State cleanup authority. What is essential, in EPA's view, is that facilities meet the substantive standards currently imposed through post-closure permits, not that a specific regulatory authority be used to impose these standards.

2. Section 265.121—Interim Status Post-Closure Care Requirements for Facilities Subject to Section 270.1(c)(7)

The current regulations at §§ 265.117 through 265.120 govern post-closure care at interim status regulated units that close and conduct post-closure care without obtaining a permit. Under today's proposal, regulated units would continue to be subject to the requirements of part 265 for post-closure care, including the requirement to obtain a post-closure plan. Following the post-closure care period, the regulated units would remain in interim status until and unless interim status were terminated by the Agency through one of the available means (e.g., final permit determination).

However, the current interim status post-closure care requirements are in some respects less stringent than post-closure permit requirements, specifically, the groundwater requirements of part 264, the facility-wide corrective action requirements, and the public involvement procedures associated with permit issuance. Therefore, to assure that facilities that do not obtain a post-closure permit are subject to the same requirements as those that do, today's proposal would add a new § 265.121. That section, which would be applicable to those facilities subject to the requirements of § 270.1(c)(7) that close and conduct post-closure care without obtaining a permit, would require that those facilities meet the same substantive requirements as permitted facilities must meet before the Regional Administrator can consider the post-closure needs at the facility to be addressed. Those requirements are described below.

a. *Part 264 subpart F ground-water monitoring and corrective action program (sections 264.90–264.100).* Currently, the post-closure permit imposes part 264, subpart F requirements at closed land disposal units. Today's proposal would require that post-closure enforcement actions or other mechanisms used as alternatives to post-closure permits include conditions imposing part 264, subpart F standards on closed and closing land disposal units. Part 265 groundwater monitoring requirements for interim status land disposal units are less comprehensive than those established under the part 264, subpart F standards for permitted facilities. Whereas part 265 sets minimum standards for the installation of detection monitoring wells (e.g., one upgradient and three downgradient wells), part 264 establishes broader standards for establishing a more comprehensive monitoring system to ensure early detection of any releases of hazardous constituents. The specific details of the system are worked out through the permitting process. Consequently, compliance with part 264 standards usually results in a more extensive network of monitoring wells. Similarly, part 265 specifies a limited set of indicator parameters that must be monitored, while part 264 establishes a more comprehensive approach under which the owner or operator is required to design a monitoring program around site-specific indicator parameters. As a result, monitoring systems designed in accordance with part 264 standards are specifically tailored to the constituents of concern at each individual site. Additionally, part 264 compliance monitoring standards are more comprehensive than part 265 standards both in terms of monitoring frequency and the range of constituents that must be monitored. Finally, the part 264, subpart F regulations provide for corrective action for releases to groundwater whereas part 265 does not.

In light of these differences, the Agency is proposing that all units subject to post-closure care requirements be required to meet part 264, subpart F standards. This approach is designed to ensure equivalent protection of human health and the environment at all facilities, regardless of which legal authority used to address post-closure care.

b. *Facility-wide corrective action.* Under section 3004(u) of RCRA, which was added to the statute as part of the 1984 Hazardous and Solid Waste Amendments (HSWA), hazardous waste permits issued after November 8, 1984, must include provisions requiring the facility owner or operator to take corrective action to address releases of hazardous waste or hazardous constituents from solid waste management units (SWMUs) at the facility. Section 3004(v) of HSWA extends corrective action authority to cover releases migrating off-site; section 3008(h) provides EPA enforcement authority to require corrective action at interim status facilities.

EPA has codified corrective action requirements at 40 CFR 264.101 and currently implements these requirements through the permitting process; at the same time, the Agency has made extensive use of the section 3008(h) authority to impose corrective action at interim status facilities. In addition, to facilitate the process, EPA proposed more extensive corrective action regulations in July, 1990, under a new part 264, subpart S, and recently finalized several sections of that proposal related to temporary units and corrective action management units (*see* 58 FR 8658, February 16, 1993). The subpart S proposal set forth EPA's interpretation of the statutory requirements at that time.

EPA recognizes that corrective action requirements are a central aspect of the HSWA amendments and that the post-closure permit currently provides the primary means of ensuring that corrective action will be adequately addressed at RCRA land disposal facilities that close without first receiving an operating permit. In allowing alternatives to the post-closure permit, EPA has no intention of undercutting or limiting its corrective action authority or the scope of the corrective action program. Consistent with this principle, today's proposal would require that authorities used at post-closure facilities as an alternative to post-closure permits impose corrective action requirements consistent with the statute and § 264.101 of the regulations, as described in this preamble.

Today's proposal would not specify the authorities that EPA or a State could use to impose corrective action as an alternative to a post-closure permit—only that the authority must be consistent with RCRA corrective action requirements. Certainly, RCRA section 3008(h) orders would be appropriate, but EPA does not believe it makes sense to limit alternative authorities to this section. For example, many States (including States not yet authorized for section 3004 (u) and (v) corrective action authority), have their own cleanup or State Superfund authorities that are consistent with RCRA corrective action authority. EPA believes that actions under these authorities should be allowed as alternatives to post-closure permits, as long as they are consistent with RCRA corrective action requirements. Similarly, if a facility is being addressed under a federal Superfund action, and the action addresses all releases at the site, issuance of a post-closure permit should be unnecessary.

In requiring facility-wide corrective action consistent with RCRA section 3004 (u) and (v) provisions, EPA does not intend to require that alternative authorities use procedures identical to those in EPA's Subpart S proposal. For example, compliance with the NCP procedures for remedy selection would satisfy these proposed requirements. EPA wishes to emphasize, however, that to be considered consistent, an alternative approach to corrective action at a facility would have to include facility-wide assessments, and it would have to address possible releases (including off-site releases) from all solid waste management units within the facility boundary. Anything less than that, in EPA's view, would not meet the basic requirements of RCRA sections 3004 (u) and (v). EPA believes that this proposed approach is appropriate because it provides reasonable flexibility for regulatory agencies using available authorities to address environmental problems at RCRA sites. At the same time, however, the Agency requests comment on this approach and suggestions for alternatives.

c. *Public participation*. Section 7004 of RCRA requires public participation in the permit issuance process. EPA has codified this requirement and has established specific public participation procedures for RCRA permitting at 40 CFR part 124. In the case of post-closure permits, these procedures assure that the public has access to information gathered by the Agency about the facility, and has an opportunity to review the Agency's decisions related to the regulated unit and to facility-wide corrective action. In addition, EPA's permit regulations in part 270 typically require a permit modification—with public participation—at the time a corrective action remedy is selected, if section 3004(u) corrective action is required as part of a facility's permit.

In developing today's proposal, the Agency sought to assure that by allowing alternative post-closure mechanisms, the Agency would provide adequate, mandatory public participation in the post-closure and corrective action processes. EPA believes that the current interim status procedures for closure and post-closure plan approval and modification (§§ 265.112 and 265.118) provide for acceptable public participation. While the procedures for plan approval are not identical to those used in permit issuance, they do require public notice and provide an opportunity for written public comment; they also include an opportunity for a hearing.[1] In EPA's view, these requirements ensure a reasonable opportunity for public participation in decisions that affect long-term care of the regulated unit.

At the same time, EPA acknowledges that the public currently has no absolute assurance that it will have an opportunity to participate in the corrective action process when corrective action is imposed through an enforcement order. EPA's enforcement programs have retained discretion to limit public participation when circumstances require it. However, where orders will operate in lieu of permits (which always require public participation), EPA is proposing to limit this discretion and require a minimum level of public participation for all facilities, except in rare cases as described below.

In proposing to make public participation mandatory, EPA notes that many cleanup authorities, including the federal Superfund authority and a number of State cleanup programs, already provide for significant levels of public participation in the majority of cases. In the case of CERCLA actions, procedures for public participation at point of remedy selection are established in § 300.430(f) of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). In addition, the CERCLA Community Relations Program guidance ("Community Relations in Superfund, A Handout") provides for extensive involvement of the public in Superfund actions. This guidance sets forth a community relations plan designed to promote two-way communication between the public and the lead Agency. In the case of corrective action imposed through RCRA enforcement orders, EPA has issued guidance announcing its policy to provide opportunity for public involvement at the time of remedy selection (*see* "RCRA Corrective Action Decision Documents: The Statement of Basis and Response to Comment," issued on April 29, 1991, which is available in the docket for this rulemaking).

Today's proposal would establish, at § 265.121(b), minimum requirements for public involvement in the remedy selection process. These requirements would apply to both regulated units and solid waste management units subject to the requirements of § 270.1(c)(7), at which closure and/or corrective action is imposed through an alternative authority, in lieu of a post-closure permit. Section 265.121(b) would require, at the point of remedy selection, public involvement that includes, at a minimum, the following procedures: Public notification of the proposed remedy through a major newspaper; opportunity for public comment (at least 30 days); opportunity for a public meeting; availability of a transcript of the public meeting; availability of written summary of significant comments and information submitted and the EPA or State response; and, if the remedy is significantly revised during the public participation process, a written summary of significant changes or opportunity to comment on a revised remedy selection.

In developing the proposed minimum requirements for public involvement under an alternate mechanism, the Agency intends to provide States and

[1] The specific differences between public participation in permit issuance and post-closure plan approval are: permits allow a 45-day public comment period, plans allow 30 days; opportunity to comment must be noticed in local newspapers and through radio spots for permits, but only in newspapers for plans; the Regional Administrator is required to hold a public hearing if asked in the case of permits, but a hearing on a plan is held at the Regional Administrators discretion; and permit decisions are subject to Agency appeal procedures, while approved plans are not. Both, however, may be challenged in the courts.

Regions the opportunity to continue to use public participation procedures established under existing authorities, provided that they meet the requirements in § 265.121(b). Most Federal and State statutes and regulations already require that affected communities be informed about and involved in decisions regarding response to hazardous releases. In developing today's proposal, the Agency wished to avoid imposing new requirements that would force EPA and States to amend existing public participation procedures in order to use an alternate mechanism in lieu of a permit.

The Agency believes that today's proposal establishes minimum requirements necessary for adequate public involvement that are, at the same time, likely to be met by most public involvement procedures for remedy selection. For example, compliance with either the permit issuance procedures of part 124 or the NCP procedures for remedy selection would satisfy these proposed requirements. Similarly, use of public participation procedures imposed under other Federal and State authorities would also be allowed, if those procedures met the minimum criteria set forth under § 265.121(b) of today's proposal. The Agency solicits comment on the requirements for public involvement at remedy selection proposed today. Specifically, the Agency solicits comment on State or Federal authorities with public involvement requirements that would not satisfy today's proposed rule, and on the adequacy of today's proposed minimum requirements.

While today's proposed rule would require public participation at the point of remedy selection for facilities subject to § 270.1(c)(7), the Agency recognizes that there may be cases where emergency remedial actions may be needed to address immediate threats. Therefore, while today's proposal would ensure a minimum 30-day public comment period for corrective action remedies imposed under an alternative mechanism in most cases, EPA is proposing to allow reduction or elimination of the public comment period if the Regional Administrator determines that even a short delay in the implementation of the remedy would adversely impact human health or the environment. The Agency anticipates that this discretionary authority will be invoked only in rare circumstances. Where the Agency finds it is necessary to implement the remedy prior to the public comment period, § 265.121(b) of today's proposal would require the Regional Administrator to solicit public comment on the remedy before making a determination that the facility's corrective action needs have been addressed in full.

As an alternative to providing an exemption to the public involvement procedures for section 3008(h), as described above, EPA solicits comment on whether to rely on RCRA, CERCLA, and State imminent and substantial endangerment authorities where immediate action is necessary.

Also, the Agency recognizes that corrective action at some facilities subject to § 270.1(c)(7) may have been implemented through a non-permit authority prior to the effective date of today's proposal. In these cases, § 265.121(c) would require the Regional Administrator to evaluate whether the remedy satisfies the requirements of this rule before considering the facility addressed. This process is discussed in more detail in section II.C.4. of this preamble.

d. *Section 270.27 information requirements.* RCRA permitting regulations do not distinguish between information requirements for operating permits and post-closure permits. Facilities seeking post-closure permits must generally provide EPA, as part of their Part B permit applications, the facility-level information required in § 270.14 as well as relevant unit-specific information required in §§ 270.16, 270.17, 270.18, 270.20, and 270.21. EPA needs this information to ensure compliance with part 264 requirements during operation and throughout the post-closure care period. Information required under § 270.14 includes such areas as general inspection schedules, floodplain information, the post-closure plan, the notice of deed or appropriate alternate instrument, closure and post-closure care cost estimates, site characterization and groundwater monitoring for land disposal facilities, and exposure information for landfills and surface impoundments.

The Agency has found that certain of the 270 information requirements are essential to ensuring proper post-closure while others are generally less relevant to post-closure. The most important information for setting long-term post-closure conditions are groundwater characterization and monitoring data, long-term care of the regulated unit and monitoring systems (e.g., inspections and systems maintenance), and information on SWMUs and possible releases. Therefore, EPA is today proposing to add a new section (§ 270.27) to identify that subset of the Part B application information that must be submitted for post-closure permits. Under today's proposal, an owner or operator seeking a post-closure permit would have to submit only that information specifically required for such permits under newly added § 270.27, unless otherwise specified by the Regional Administrator. The specific items required in post-closure permit applications are:

—A general description of the facility;
—A description of security procedures and equipment;
—A copy of the general inspection schedule;
—Justification for any request for waiver of preparedness and prevention requirements;
—Facility location information;
—A copy of the post-closure plan;
—Documentation that required post-closure notices have been filed;
—The post-closure cost estimate for the facility;
—Proof of financial assurance;
—A topographic map; and
—Information regarding protection of groundwater (e.g., monitoring data, groundwater monitoring system design, site characterization information)
—Information regarding solid waste management units at the facility.

In many cases, this information will be sufficient for the permitting agency to develop a draft permit. However, since RCRA permits are site-dependent, EPA believes it is important that the Regional Administrator have the ability to specify additional information needs on a case-by-case basis. Accordingly, to ensure availability of any information needed to address post-closure care at surface impoundments (§ 270.17), waste piles (§ 270.18), land treatment facilities (§ 270.20) and landfills (§ 270.21), § 270.27 of today's proposal would authorize the Regional Administrator to require any of the Part B information specified in these sections in addition to that already required for post-closure permits at these types of units. This approach would enable the Regional Administrator to require additional information as needed but would not otherwise compel the owner or operator to submit information that is irrelevant to post-closure care determinations.

To ensure substantive equivalency of authorities used in lieu of post-closure permits, today's proposal would require that part 270 information specifically required for post-closure permits must also be provided upon request by the Agency when an alternative authority is used in place of a post-closure permit. EPA requests comment on this approach.

3. Post-Closure Plans and Permits

EPA anticipates that, in many cases where a post-closure permit is inappropriate or difficult to issue, the regulatory agency will choose to issue a post-closure plan under interim status authorities to address long-term care of the regulated unit (e.g., groundwater monitoring and maintenance of the cap) and a section 3008(h) order for facility-wide corrective action. EPA generally believes that this approach provides a reasonable alternative to a post-closure permit, as long as the substantive post-closure care requirements of proposed § 265.121 are satisfied.

EPA believes that, for the most part, proposed § 265.121 requirements can be satisfied using this approach. The section 3008(h) corrective action order would be structured to address all SWMUs on the facility, and public participation, under EPA's current policy, would occur at the time of corrective action remedy selection. The post-closure plan approval would be subject to public comment, in accordance with § 265.118, and it would in most respects impose appropriate long-term care requirements.

To assure that the post-closure plan will provide the same degree of environmental protection as would a permit, EPA is proposing in § 265.121(a)(1) to provide EPA the authority to impose part 264 groundwater monitoring requirements through the part 265 post-closure plan process. In addition, proposed § 265.121(a)(3) would provide EPA the authority to require submission of information necessary to impose part 264 groundwater monitoring requirements through a post-closure plan. This authority would expand the options available to the Agency to address post-closure facilities, without affecting the level of environmental protection or public participation.

4. Alternate Authorities Issued Prior to the Effective Date of the Final Rule

It is likely that prior to final promulgation of this rule, EPA and authorized States will have initiated and, in some cases, completed actions under a variety of regulatory authorities, other than post-closure permits, to address post-closure and corrective action at facilities currently subject to post-closure permit requirements. It also is likely that those actions, if taken after promulgation, would have satisfied the requirements of this rule. The Agency does not believe it would make sense to require EPA or the State to go through procedural steps to satisfy regulatory requirements where environmental needs at a facility have been addressed adequately. Therefore, the Agency is proposing, under § 265.121(c), a procedure for the Agency to review activities initiated or conducted in full prior to promulgation of this rule, to determine whether the requirements applicable to the facility have been met.

Under proposed § 265.121(c), EPA would provide public notice of its activities at the facility and its determination that the facility has been addressed, and solicit public comment. After review of public comment, the Agency would determine whether the activities conducted at the facility were adequate to satisfy the requirements of part 265. If the activities were found to be deficient, EPA would impose additional requirements either by amending the existing order, issuing a new order, modifying the post-closure plan, or requiring a post-closure permit.

III. Request for Public Comment on Closure and Post-Closure Related Issues

Today's notice proposes several amendments to the regulations governing closure and post-closure care. It is important to clarify that the regulatory amendments proposed today represent an initial step in a broader effort to improve the existing closure process. The Agency recognizes the need to amend the existing regulations beyond what is proposed today.

Specifically, the Agency recognizes a need to more effectively integrate the closure and corrective action activities at facilities, and to have closure requirements and timeframes that reflect the complexities of such activities. In the following discussion, the Agency solicits comment on both of these issues. In addition to soliciting comment on both specific issues discussed below, the Agency also solicits general comment on the closure process, including impediments to implementing the current requirements and options to improve the process.

A. Regulatory Timeframes

As was discussed above, the current closure regulations were promulgated before the Agency had any experience with closure under RCRA standards; not surprisingly, therefore, they do not always reflect the complexity of closure activities. One oversimplification in the current closure process is the imposition of timeframes for closure activities and closure plan approval. Expectations built based on these timeframes (as well as other factors) have caused GAO to criticize the pace at which the Agency is bringing facilities to closure.

In a report issued in May of 1991, entitled *Progress in Closing and Cleaning Up Hazardous Waste Facilities*, GAO criticized the Agency's progress in completing closure activities at the approximately 1000 land disposal facilities that lost interim status in 1985. GAO pointed to the regulatory timeframes in the closure process and determined that the closure activities should be complete at those facilities. In a later report entitled *Impediments Delay Timely Closing and Cleanup of Facilities*, issued in April of 1992, GAO expressed concerns that owners and operators can almost indefinitely delay the closure process. GAO suggested that the Agency should use the regulatory closure timeframes to prevent prolonged cleanup activities.

The Agency disagrees that the current regulatory timeframes for closure completion could be used to ensure that closure is completed within those timeframes. Rather, the Agency believes, as was discussed earlier in this preamble, that in many cases the timeframes for closure completion do not reflect the technical complexity of the process. In the following discussion, the Agency solicits comment on options for removing or extending the timeframes in the current closure regulations.

1. Closure Plan Review and Approval Process

In 1982, the Agency promulgated regulations that included timeframes for review and approval of closure plans. At the time, the Agency believed the timeframes were reasonable. Under these regulations, EPA must approve, modify, or disapprove a closure plan within 90 days of its initial submission. Upon disapproval of the plan, the owner or operator must submit a new or revised plan within 30 days. The Agency then has 60 days to approve or modify the resubmitted plan.

These timeframes were developed before the Agency had experience implementing closure, and prior to the enactment of HSWA. Since that time, experience has indicated that closures are often more complex than anticipated, particularly for older units requiring corrective action. Consequently, the timeframes established in the regulations often are not met by the Agency and the regulated community. Based on this experience, the Agency today seeks comment on the need to revise existing timeframes, and on alternative approaches to the review and approval process.

EPA specifically seeks comment on the option of eliminating mandatory timeframes. This change would allow for case-by-case variation in the time allowed for closure plan review and revision. The time required to process individual closure plans varies widely according to the scope and complexity of the closure activity, the quality of the plan submitted, and the extent of revision required. An additional important variable is the need to coordinate closure with corrective action required at the site. In addition to providing flexibility to account for site-specific variation, removing timeframes would allow EPA and the States to prioritize their workloads and to process closure plans on a worst-site first basis.

On the other hand, EPA recognizes the need to maintain accountability for timely and effective implementation of RCRA. Timeframes provide a simple, straightforward means of auditing performance and, by removing them, the Agency may be removing an important means of insuring accountability. In light of this concern, a second alternative may be to retain but extend the current timeframes to more accurately reflect time needed to complete specific closure activities. The Agency is not now suggesting alternate time periods, but solicits comment on specific timeframes that may be more reasonable and appropriate.

2. Timeframes for Completion of Closure Activities

Under existing regulations, facilities must complete closure within 180 days of receipt of the final volume of hazardous waste, or 180 days after the closure plan has been approved, whichever is later. Extensions may be approved upon demonstration of need. These timeframes are designed to prevent closures from dragging on for indefinite periods. The Agency is concerned that if closure is not addressed in a timely manner, there is an increased likelihood of releases from the unit into the environment, and that the financial situation of the facility may deteriorate such that it will be unable to complete closure activities on its own.

On the other hand, the Agency has found that the 180-day time period has been insufficient for a majority of closed and closing RCRA facilities. Activities required to complete closure (e.g. securing contracts, developing plans and specifications, bidding and construction) have proven to be more time consuming and complicated than originally anticipated. As noted above, the size and scope of the closure activities are important variables that may significantly affect time required to achieve final closure. Appropriate timeframes may also vary widely based on the type of remedies pursued. Bioremediation or waste fixation, for example, may constitute effective, albeit longer-term means of meeting closure performance standards. Another important consideration that frequently warrants extension of the closure period is the need to schedule closure activities to correspond with required corrective action.

Extensions may be granted if the owner or operator can demonstrate need in accordance with existing provisions. EPA is concerned, however, that extensions may have become the rule rather than the exception. Based on these concerns, EPA is considering revision of the 180-day closure completion period. Given the site-specific nature of time needed to complete closure, EPA is considering proposing that time periods for completing closure be developed on a facility specific basis through the closure plan process. Another alternative would be to establish a longer more appropriate mandatory time period for completing closure.

Under any alternative, EPA believes it is appropriate to retain the existing provision that, in instances where closure will take longer than 180 days, the owner or operator must certify that he has taken and will continue to take all steps to prevent threats to human health and the environment.

EPA solicits comments on whether the 180-day closure completion period should be revised and, if so, how it should be amended to provide necessary flexibility while ensuring effective and timely closures.

B. Regulatory Distinction Between Regulated Units Undergoing Corrective Action and Non-Regulated Solid Waste Management Units

The universe of closed and closing regulated land disposal units includes a number of units that have released hazardous wastes and constituents into soils and groundwater surrounding the unit. In terms of the environmental risk associated with these regulated units, and the activities necessary to address that risk, these units are indistinguishable from non-regulated solid waste management units. In many cases, particularly in the case of unlined land-based units, closure of the regulated unit will involve many of the same activities as do corrective actions conducted under the authority of § 264.101 or RCRA section 3008(h). However, in the case of regulated units, the regulations of parts 264 and 265 governing groundwater monitoring, closure and post-closure care, and financial assurance continue to apply during cleanup.

The Agency is concerned that this dual regulatory scheme often limits the Agency's ability to determine the best remedy at regulated units. The Agency believes that there are many situations where allowing the Regional Administrator to make a site-specific determination, rather than strictly applying the full range of parts 264 and 265 requirements, would better serve the goal of expedited closure of the unit.

Consider, for example, the situation where EPA or an authorized State addresses, through its corrective action authorities, a collection of adjacent units releasing hazardous constituents to the environment. If one of those units were a regulated unit, while the others were non-regulated solid waste management units, two regulatory regimes would arguably apply. Under the current regulatory structure, EPA might select remedies for the solid waste management units through the proposed 40 CFR subpart S process, while the regulated unit would remain subject to part 264 and part 265 closure and groundwater monitoring requirements. Thus, in one case groundwater cleanup levels would be selected through a balancing process comparable to Superfund's, while for the regulated unit, the owner or operator might be required to clean the site up to background, or seek an Alternative Concentration Limit under § 264.94. In this case, EPA does not believe retaining a dual regulatory structure serves the goal of expedited cleanups. Rather, it believes that the corrective action process, which was specifically designed for remedial activities, would be more appropriate to address the closed regulated units.

In other cases, the regulations might prevent the owner or operator from closing the unit in a manner that meets the closure performance standard of §§ 264.111 and 265.111. For example, where waste has been removed from a unit but contaminated soils remain, the remedy that might best prevent future releases from the unit could include installation of an infiltration system and flushing of soils over time to remove remaining contamination. However, the requirement of §§ 264.310 and 265.310 that the unit be covered with an impermeable RCRA cap would arguably rule out or significantly complicate the remedy, because soils could not be flushed beneath a cap, and the contaminated soils would remain untreated.

The Agency is considering amendments to the requirements of parts 264 and 265 that would reduce or eliminate the regulatory distinction between closed or closing regulated units that require corrective action and other solid waste management units. EPA, therefore, solicits comment on whether to allow the Regional Administrator to establish groundwater monitoring, closure and post-closure care, and financial assurance requirements on a site-specific basis at regulated units addressed through the corrective action process. Under this approach, the Regional Administrator would look to the corrective action process, rather than the unit-specific technical standards designed for regulated units, to determine remedial objectives and standards. This would allow EPA to develop, through the corrective action process, a consistent overall remedy, tailored to the specifics of the situation.

The Agency specifically solicits the following information:

(1) Situations where it is important to retain the regulatory distinction between regulated units undergoing corrective action and other solid waste management units,

(2) Specific requirements applicable to regulated units that should be retained (if any),

(3) Situations where it is important to eliminate the distinction between regulated units undergoing corrective action and other solid waste management units, and

(4) Specific requirements applicable to regulated units that impede cleanup at those units.

IV. Proposed Provisions Related to State Enforcement Authority to Compel Corrective Action at Interim Status Facilities

A. Background Information

The HSWA amendments of 1984 substantially expanded corrective action authorities for both permitted RCRA facilities and facilities operating under interim status. Section 3004(u) requires that any hazardous waste management permit issued after November 8, 1984, address corrective action for releases of hazardous waste or hazardous constituents from any solid waste management unit (SWMU) at the facility. Section 3004(v) extends corrective action authority to cover releases migrating off-site. Section 3008(h) provides EPA with enforcement authority to require corrective action at interim status facilities. Sections 3004 (u) and (v) became immediately effective in all States and are administered by EPA until States become authorized for HSWA corrective action (*see* section VI of this preamble for further discussion). Section 3008(h) also became effective immediately.

On July 15, 1985, and December 1, 1987, the Agency codified in § 264.101 the requirements of sections 3004 (u) and (v) for addressing corrective action at permitted facilities (*see* 50 FR 28747 and 52 FR 45788). As a result, States wishing to obtain or retain authorization to implement subtitle C hazardous waste management programs must adopt permitting authorities that are at least as stringent as the provisions in § 264.101.

Prior to today's rule, however, the Agency had not proposed that States adopt as part of an adequate enforcement program, the authority to issue enforcement orders to compel corrective action at interim status facilities (section 3008(h) authority). While many States may have authorities comparable to section 3008(h), they have not been reviewed by the Agency through the State authorization process. EPA is proposing today to require States to adopt such authority. As with all other EPA enforcement authorities, EPA will maintain it's authority to implement section 3008(h).

B. Summary of Proposed Provisions

The Agency, through today's proposal, would require States to adopt, as part of an adequate enforcement program, the authority to issue enforcement orders to compel corrective action at interim status facilities. States will now need to be authorized for both corrective action at permitted facilities under authorities comparable to sections 3004 (u) and (v) and at interim status facilities under an authority comparable to section 3008(h). States may choose to enhance their enforcement program by adopting an authority comparable to section 3008(h) prior to authorization for corrective action at permitted facilities. For example, a State with a cleanup authority that can address interim status facilities could include such authority as part of its adequate enforcement program, even if it did not yet have authority to address corrective action at permitted facilities.

The Agency would require that the State interim status enforcement authorities be comparable in scope to section 3008(h) authority. Section III.C. of this preamble describes conditions that a State enforcement authority would have to meet to be considered comparable to section 3008(h) authority.

C. Analysis and Discussion

The RCRA regulations at § 271.16 specify the requirements for enforcement authorities that States must meet in order to gain and maintain authorization to administer the RCRA program. The Agency is proposing to amend the requirements for enforcement authorities at § 271.16 to require States to have authority to compel corrective action at interim status facilities.

The Agency believes that requiring States to adopt such authority will enhance the State's role as the primary implementing authority for the RCRA Subtitle C program. Furthermore, today's proposal will ensure that States have the full range of RCRA clean up authority granted EPA by Congress, and, therefore, will promote a more complete and consistent delegation of the corrective action program to the States. As currently practiced, delegation of the corrective action program to address permitted facilities, but not interim status facilities, causes confusion in the regulated community and makes it more difficult for the States to establish priorities and manage resources efficiently. Furthermore, redundant or inconsistent regulation may result. Today's proposal enhances the State's ability to take the lead for RCRA cleanup activities at all RCRA treatment, storage, and disposal facilities—interim status as well as permitted. Furthermore, EPA believes that this will promote consistency between corrective actions compelled by the Federal and State corrective action programs. The proposed regulations will ensure that equivalent corrective action activities are implemented at interim status facilities, regardless of whether the action is initiated by EPA or a State.

The Agency believes that most States, especially those authorized for corrective action under sections 3004 (u) and (v), may already have the type of enforcement authority that would be required by today's proposal. EPA specifically requests comment from States as to whether the Agency is correct in this assumption. In addition, the Agency requests comment regarding the difficulty of obtaining such an enforcement authority in States where it does not already exist.

Requiring States to obtain the ability to issue interim status corrective action orders also complements today's proposal to allow alternative mechanisms (i.e., orders) to replace post-closure permits. Today's proposal ensures that all States have authority to address both corrective action and post-closure care at interim status facilities.

The Agency will retain its ability to issue section 3008(h) orders. The Agency believes that in many cases, it will be more efficient to continue to implement section 3008(h) orders already in place, even if the facility is located in a State which has adopted a corrective action order authority as part of their adequate enforcement program. Issuance of a State corrective action order to an interim status facility would not preclude subsequent corrective action requirements pursuant to sections 3004 (u) and (v). Although EPA would retain the authority to issue section 3008(h) orders to interim status facilities, the Agency anticipates that such actions would be filed in States authorized for interim status corrective action authority only after careful consideration and only in cases that meet any of the following criteria:

(1) The State fails to take timely and appropriate action;

(2) The State's action is clearly inadequate; or

(3) Cases that are of national significance. Of course, the Agency will consider using its section 3008(h) authority to compel corrective action if requested by a State.

The Agency does not intend to duplicate past efforts conducted as part of the State authorization process for HSWA corrective action through this rulemaking. Where appropriate, the Agency will review previously submitted State corrective action authorization packages for permitted facilities to evaluate a State's interim status corrective action order authority. However, it may be necessary for States to augment previous authorization packages with supplemental information to enable the Agency to evaluate fully such order authorities.

Under this proposed rule, States that have not yet been authorized for corrective action at permitted facilities could apply for authorization for corrective action authority at interim status facilities. In such a case, EPA would require the State to develop a Memorandum of Agreement (MOA) with EPA to provide the Agency the opportunity to comment on draft orders prior to issuance. Prior to today's proposal, EPA has not established a right to comment on draft orders. However, in the case where States are not yet authorized for corrective action at permitted facilities, the Agency believes that it would be important to have such opportunity to ensure consistent implementation of the RCRA corrective action program. To accommodate variations in State procedural rules, EPA would allow these States and the Regions to decide exactly how and when EPA would submit comments on State orders in the State/EPA MOA.

D. EPA's Interpretation of the Scope of Section 3008(h)

The Agency uses section 3008(h) authority to address releases at interim status facilities authorized to operate under section 3005(e) of RCRA. In a December 16, 1985, memorandum from J. Winston Porter, then Assistant Administrator of the Office of Solid Waste and Emergency Response, *"Interpretation of Section 3008(h) of the Solid Waste Disposal Act,"* EPA interpreted section 3008(h) to enable the Agency to respond to releases of hazardous waste or hazardous constituents at facilities that have, had, or should have had authorization to operate under interim status by taking either judicial or administrative action. States must demonstrate that their authority can address an equally broad universe of facilities, through either judicial or administrative action, and that their order authorities, at a minimum, meet the criteria discussed below.[2]

1. Definition of Facility

In a recent rule, (Corrective Action Management Units and Temporary Units (58 FR 8658, February 16, 1993)), EPA defined "facility" for corrective action purposes as "all contiguous property under the control of the owner or operator seeking a permit under Subtitle C of RCRA." The Agency interprets "facility" to have the same meaning under section 3008(h). EPA is proposing that States must demonstrate that their cleanup order authorities contain a definition of "facility" that is at least as broad as that available under section 3008(h) or that the State authority otherwise has a scope as broad as section 3008(h).

2. Definition of Release

While the statute does not define the term "release," the Agency has interpreted the term to be at least as broad as the definition of release under CERCLA section 101 (22). The Agency considers a release to be any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment. The legislative history (***) also makes it clear that the term release is not limited to releases to ground water. Therefore, the Agency uses section 3008(h) to address releases of hazardous waste or hazardous constituents[3] from a facility. EPA is proposing that States demonstrate that their corrective action order authorities include a definition of release that is as broad as that being used by EPA under section 3008(h), or otherwise has the authority to address all "releases" as defined under that section.

3. Off-Site Releases

EPA interprets section 3008(h) to include the responsibility to address corrective action beyond the facility boundaries as set out in section 3004(v). Section 3004(v) requires owners and operators to take corrective action beyond the facility boundary where such action is necessary to protect human health and the environment unless the owner or operator of the facility demonstrates that, despite best efforts, it is unable to obtain the necessary permission to undertake such action. EPA proposes to require States to be able to impose similarly stringent requirements.

4. Compelling Compliance

In cases of failure to comply with an order issued under section 3008(h) of RCRA, EPA may assess a civil penalty of up to $25,000 for each day of non-compliance. Section 3008(h) also allows EPA to commence a civil action for appropriate relief including a temporary or permanent injunction, or a suspension or revocation of a facility's authority to operate under interim status.

Before States enforcement programs can be deemed adequate under today's proposal (i.e., authority to address corrective action at interim status facilities), they must have the ability, either judicial or administrative, to assess and collect civil penalties. Current requirements for adequate enforcement programs found in §§ 271.15 and 271.16, require States to have administrative or judicial authority to assess penalties up to $10,000 per day. Although section 3008(h) enables the Agency to assess penalties up to $25,000 per day, at this time, EPA is not proposing to require States programs to meet the penalty amounts currently specified in section 3008(h). However, the Agency is seeking comment on whether §§ 271.15 and 271.16 should be amended to require States to demonstrate that their penalty authority is consistent with EPA's (the ability to collect penalties of up to $25,000 per

[2] The Agency's interpretation of the corrective action authorities under section 3008(h) and sections 3004 (u) and (v) are virtually identical. Therefore, criteria discussed in this section related to the Agency's interpretation of section 3008(h) are applicable to the discussion of sections 3004 (u) and (v) in section IV of this preamble, unless otherwise noted.

[3] Hazardous constituents are the substances listed in 40 CFR, Part 261, Appendix 8.

day for non-compliance with RCRA and/or its regulations).

In addition, EPA will accept any State authority as part of their adequate enforcement program that allows assessment and collection of penalties for non-compliance with a cleanup order. States must be able to apply such penalty authority to facilities subject to interim status requirements under Subtitle C.

Today's proposal would also require States to demonstrate that they have the ability to suspend or revoke a facility's authority to operate under interim status and commence a civil action for appropriate relief, including a temporary or permanent injunction under the cleanup order authority or under a separate authority that can be applied to interim status facilities.

5. Application of Order Authority

EPA believes that State enforcement programs will be enhanced by requiring that such programs have the authority to use orders to address corrective action at interim status facilities. To provide States flexibility to satisfy this newly proposed requirement for authorization, EPA would allow States to request authorization for any State law or enforcement authority that meets the minimum requirements of section 3008(h) as discussed earlier in this section of the preamble.

Furthermore, the Agency has found that in some States, those agencies responsible for the RCRA program may not be responsible for enforcing RCRA order requirements. For example, the State's interim status corrective action orders might only be enforceable through the State Attorney General's Office. In this case, a Memorandum of Agreement (MOA) would be required between the two State agencies to allocate responsibilities for any necessary enforcement. Such MOA must be available for Agency review.

In order to facilitate authorization of State enforcement programs, the Agency requests comment on whether or not it would be appropriate to provide interim authorization for the corrective action order authority as proposed in today's rule.

V. Request for Comment on Authorizing States to Use State Orders to Impose Corrective Action at Permitted Facilities

In the course of authorizing States for sections 3004 (u) and (v) authority, the Agency has recognized that some States would like to compel corrective action at permitted facilities (all TSD facilities) through a State order, in lieu of writing specific permit conditions to implement section 3004 (u) and (v). For example, a State that has years of experience implementing a broad and powerful cleanup order authority may prefer to rely on this authority rather than imposing corrective action through permits; or a State that is already requiring facility-wide cleanup through an order issued under a State statute may find that at the time of permit issuance, no additional permit requirements are necessary.

To ensure that such cleanup orders meet the requirements of sections 3004(u) and (v), EPA would require States to assess the completed cleanup conducted under an order against the requirements of sections 3004(u) and (v). In addition, such orders must be incorporated by reference in the permit, which means the State's normal permit appeal procedures apply to the provisions of the order. Finally, the permit would need to include "reopener" language to ensure that if the requirements of sections 3004(u) and (v) were not met, the State would have the opportunity to modify the permit to require any additional work.

EPA is seeking comment on whether this concept (i.e., using orders in lieu of section 3004(u) and (v) permit conditions) should be made available to the States as an option for implementing corrective action, and whether it would be useful to facilitate cleanups and provide flexibility to States seeking authorization for corrective action. If this concept were eventually adopted, States wishing to use cleanup order authority as the principal vehicle for corrective action at permitted facilities would have to demonstrate to EPA that the order authority is at least as broad as the requirements of sections 3004(u) and (v). The specific requirements for section 3004(u) and (v) can be found under the similar discussion of section 3008(h) requirements found in section IV. of this preamble. Please note, however, that the Agency is not expanding its interpretation of section 3008(h) authority to include permitted facilities. Rather, the Agency believes that some States may have very broad authorities that can address both interim status and permitted facilities.

VI. Public Participation

It is the Agency's policy to provide a meaningful opportunity for members of the public to be informed of, and participate in, decisions that affect them and their communities. This policy applies to corrective action conducted under both orders and permits.

In this notice, the Agency is proposing to:

(1) Allow the use of orders in lieu of post-closure permits, and

(2) Require States to adopt authority, as part of their authorized programs, to address corrective action at interim status facilities. Furthermore, the Agency has asked for comment on allowing States to address corrective action through order authorities in lieu of sections 3004(u) and (v) at permitted facilities. The Agency would involve the public in each of these scenarios through the following procedures.

A. Public Participation Requirements When Issuing a Section 3008(h) Order in Lieu of a Post-Closure Permit

Under today's proposal, all orders issued in lieu of post-closure permit conditions, in conformance with proposed § 270.1(c)(7), must follow the public participation procedures of 40 CFR part 121, which are discussed in section V.A.2.c. of this preamble.

B. Public Participation Requirements for State Corrective Action Orders at Interim Status Facilities

Today's proposal would require States to obtain the ability to address corrective action at interim status facilities with an order authority. Current Agency policy strongly encourages that the opportunity for public participation be provided prior to final remedy selection.[4] Therefore, States seeking authorization for 3008(h) order authority must have a rule or a policy for public participation that is consistent with EPA's current policy.

At this time, the Agency is also asking for comment on whether it would be appropriate to mandate the use of public participation through regulation (specifically the public participation regulations proposed under today's rule at section V A.2.c. (40 CFR part 121)), for all orders addressing RCRA corrective action at interim status facilities.

C. Public Participation Requirements for Orders Used to Address Corrective Action at Permitted Facilities in Lieu of Sections 3004(u) and (v)

The Agency is asking for comment on whether it would be appropriate to allow State corrective action order authorities to address corrective action at permitted facilities in lieu of sections 3004(u) and (v). States seeking to be authorized for such authority would have to demonstrate that their cleanup order authority provides for public participation prior to final remedy

[4] This policy reflects section 7004(b) of RCRA, which requires EPA to provide for and encourage public participation in RCRA actions, including enforcement.

selection. The Agency solicits comment on whether it should require that those public participation requirements be equivalent to the requirements of parts 124 and 270, or whether it should approve the use of alternative procedures.

VII. Effect of Today's Proposed Rule on State Authorization

A. Applicability of Rules in Authorized States

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 the enforcement authorities of sections 3008, 7003, and 3013 of RCRA, although authorized States have primary enforcement responsibility.

Prior to the Hazardous and Solid Waste Amendments of 1984 (HSWA), a State with final authorization administered its hazardous waste program entirely in lieu of the Federal program. The Federal requirements no longer applied in the authorized State, and EPA could not issue permits for any facilities in a State where the State was authorized to permit. When new, more stringent Federal requirements were promulgated or enacted, the State was obligated to enact equivalent authority within specified timeframes. 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 those requirements and prohibitions in authorized States, including issuance of permits, until the State is granted authorization to do so. While States must still adopt more stringent HSWA-related provisions as State law to retain final authorization, the HSWA requirements apply in authorized States in the interim.

B. Effect of Today's Proposed Revisions to Closure and Post-Closure Requirements on State Authorizations

This rule proposes revisions to the post-closure requirements under HSWA and non-HSWA authorities. The proposed requirements in §§ 265.110, 265.121 (except for paragraph 265.121(a)(2)), 270.1, and 270.27 are proposed under non-HSWA authority. Thus, those requirements would become immediately effective only in States that do not have final authorization, and would not be applicable in authorized States unless and until the State revises its program to adopt equivalent requirements. Section 265.121(a)(2) is proposed under HSWA authority. Thus, that section would become immediately effective in all States.

In general, 40 CFR 271.21(e)(2) requires States that have final authorization to modify their programs to reflect Federal program changes and to subsequently submit the modifications to EPA for approval. It should be noted, however, that authorized States are only required to modify their programs when EPA promulgates Federal standards that are more stringent or broader in scope than the existing Federal standards. Section 3009 of RCRA allows States to impose standards more stringent than those in the Federal program. For those Federal program changes that are not more stringent or reduce the scope of the Federal program, States are not required to modify their programs (*See* 40 CFR 271.1(i)).

The provisions of today's rule related to post-closure permit requirements are not more stringent than the existing Federal requirements. Therefore, authorized States are not required to modify their programs to adopt requirements equivalent to the provisions contained in today's proposed rule. If the State does modify its program, EPA must approve the modification for the State requirements to become subtitle C RCRA requirements.

C. Effect of Today's Proposed Revisions to Requirements for Enforcement Authority on State Authorizations

1. Requirement to Adopt Provisions of Today's Proposal

The provisions of today's rule requiring States to adopt enforcement authorities comparable to section 3008(h) are more stringent than the current Federal program. Therefore, States wishing to seek or retain authorization would be required to adopt those provisions.

2. Effect of Proposed Rule on Federal Enforcement Authorities in States that Obtain Authorization for Today's Proposed Provisions

Since 1980, EPA has required States to adopt civil and criminal enforcement authorities to enforce violations of authorized State statutes and regulations. EPA's authority to use its own enforcement authorities, however, does not terminate when it authorizes a State's enforcement program.

Section 3008(a) allows EPA to enforce any "requirement" of subtitle C. This provision allows EPA to bring administrative and/or judicial enforcement actions to enforce subtitle C requirements even in States authorized to implement subtitle C programs in lieu of the federal program. (Section 3008(a)(2) clearly reflects this authority.) EPA has always used this authority sparingly because it believes States should take the lead role in enforcing their authorized programs. Nevertheless, EPA's continuing enforcement authority can be an essential tool in ensuring that the regulated community meets its obligations to manage hazardous waste in a manner that provides adequate protection for human health and the environment. For the same reasons, EPA will retain its authority to issue corrective action orders to interim status facilities under section 3008(h).

VIII. Regulatory Impact Analysis

A. Executive Order 12866

Under Executive Order 12866, which was published in the **Federal Register** on October 4, 1993 (*see* 58 FR 51735), the Agency must determine whether a regulatory action is "significant" and, therefore, subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

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

(3) Materially alter the budgetary impact of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

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

Under the terms of Executive Order 12866, OMB has notified EPA that it considers this a "significant regulatory action" within the meaning of the Executive Order. EPA has submitted this action to OMB for review. Changes made in response to OMB suggestions or recommendations are documented in the public record for this rulemaking (*see* Docket # F–94–PCPP–FFFFF).

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* at the time the Agency publishes a proposed or final rule, it must prepare a Regulatory Flexibility Analysis that describes the impact of the rule on small entities, unless the Administrator certifies that the rule will not have significant economic impact on a substantial number of small entities. The provisions of today's rule would expand the options available to address post-closure care so that a permit would not be required in every case, would impose no requirements on owners and operators in addition to those already in effect—nor would the provisions of this proposal that would require States to adopt, as part of an adequate enforcement program, authority to compel corrective action at interim status facilities. Therefore, pursuant to 5 U.S.C. 601b, I certify that this regulation will not have significant economic impact on a substantial number of small entities.

C. Paperwork Reduction Act

The recordkeeping and reporting requirements of this proposed rule would replace similar requirements already promulgated. Thus, this rule imposes no net increase in recordkeeping and reporting requirements. As a result, the reporting, notification, or recordkeeping (information) provisions of this rule do not need to be submitted for approval to the Office of Management and Budget (OMB) under section 3504(b) of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

List of Subjects

40 CFR Part 264

Air pollution control, Hazardous waste, Insurance, Packaging and containers, Reporting and recordkeeping requirements, Security measures, Surety bonds.

40 CFR Part 265

Air pollution control, Hazardous waste, Insurance, Packaging and containers, Reporting and recordkeeping requirements, Security measures, Surety bonds, Water supply.

40 CFR Part 270

Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Reporting and recordkeeping requirements, Water pollution control, Water supply.

40 CFR Part 271

Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indians—lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Dated: October 25, 1994.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, chapter I, title 40 of the Code of Federal Regulations is proposed to be amended as follows:

PART 264—STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

1. The authority citation for part 264 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6924, and 6925.

2. Section 264.90 is amended by adding a new paragraph (e) to read as follows:

§ 264.90 Applicability.

* * * * *

(e) The regulations of this subpart apply to all owners and operators subject to the requirements of § 270.1(c)(7) of this chapter to obtain either a post-closure permit or equivalent mechanism. Where these facilities are addressed through mechanisms other than a permit, references to "in the permit" in this subpart mean in whatever mechanism the Agency uses to implement the post-closure requirements. In the case of unpermitted facilities that are required by § 265.121 of this chapter to comply with the requirements of this section, any necessary corrective action will be specified in the enforcement order or other enforceable document issued by the Agency in lieu of a post-closure permit.

PART 265—INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

1. The authority citation for part 265 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6924, 6925, 6935, and 6936.

2. Section 265.110 is amended by adding a new paragraph (c) to read as follows:

§ 265.110 Applicability.

* * * * *

(c) Section 265.121 applies to owners and operators of units that are subject to the requirements of § 270.1(c)(7) of this chapter and do not obtain a post-closure permit for the unit.

3. A new § 265.121 is added to subpart G to read as follows:

§ 265.121 Additional post-closure requirements.

(a) The Agency will impose the following additional requirements on owners or operators that do not obtain a post-closure permit but are subject to post-closure care requirements:

(1) The requirements of §§ 264.90–264.100 of this chapter;

(2) Facility-wide corrective action, consistent with § 264.101 of this chapter;

(3) The information submission requirements of § 270.27 of this chapter;

(b) The Regional Administrator must either:

(1) Provide opportunity for public participation, at the point of remedy selection if corrective action is required at the facility, or upon making a determination that corrective action is not needed, that includes the following:

(i) Publication of a notice of availability and a brief analysis of the proposed remedy, or notice of the determination that corrective action is not needed, in a major local newspaper of general circulation;

(ii) A reasonable opportunity, not less than 30 calendar days, for public comment and, upon timely request, extend the public comment for a period by a minimum of 30 additional days;

(iii) Opportunity for a public meeting to be held during the public comment period at a location convenient to the population center nearest the site at issue;

(iv) A tape or written transcript of the public meeting available to the public;

(v) A written summary of significant comments and information submitted during the public comment period and the EPA or State response to each issue available to the public;

(vi) In the written summary required in paragraph (b)(1)(v) of this section, a discussion of significant changes in documentation supporting the final remedy selected or a request for additional comment on a revised remedy selection if, after publication of the proposed remedy and prior to the adoption of the selected remedy, the remedy is changed such that it significantly differs from the original proposal with respect to scope, performance, or cost as a result of new information; or

(2) If the Regional Administrator determines that even a short delay in the implementation of the remedy would adversely affect human health or the environment, the Regional Administrator may comply with the requirements of paragraph (b)(1) of this section after initiation of the remedy. These requirements must be met before the Regional Administrator may consider the facility addressed under § 270.1(c)(7) of this chapter.

(c) If the activities required of the owner or operator by this section were initiated or conducted prior to [effective date of the final rule], the Regional Administrator may make a determination that the requirements of paragraphs (a) (1), (2), and (3) of this section have been met. Upon making that determination, the Regional Administrator must, before considering the facility to be fully addressed under § 270.1(c)(7)(ii) of this chapter, provide the public notice of that determination in accordance with the procedures outlined in paragraph (b)(1) of this section.

PART 270—EPA ADMINISTERED PERMIT PROGRAMS: THE HAZARDOUS WASTE PERMIT PROGRAM

1. The authority citation for part 270 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912, 6924, 6925, 6927, 6939, and 6974.

2. Section 270.1 is amended by revising paragraph (c) introductory text and adding a new paragraph (c)(7) to read as follows:

§ 270.1 Purpose and scope of these regulations.

* * * * *

(c) *Scope of the RCRA permit requirement.* RCRA requires a permit for the "treatment," "storage," and "disposal" of any "hazardous waste" as identified or listed in part 261 of this chapter.

The terms "treatment," "storage," "disposal," and "hazardous waste" are defined in § 270.2. Owners and operators of hazardous waste management units must have permits during the active life (including the closure period) of the unit. Owners and operators of surface impoundments, landfills, land treatment units, and waste pile units that received waste after July 26, 1982, or that certified closure (according to § 265.115 of this chapter) after January 26, 1983, must have post-closure permits, unless they demonstrate closure by removal or decontamination as provided under § 270.1(c) (5) and (6), or they comply with the alternative post-closure requirements of § 270.1(c)(7)(i)(B). If a post-closure permit is required, the permit must address applicable part 264 Groundwater Monitoring, Unsaturated Zone Monitoring, Corrective Action, and Post-closure Care Requirements of this chapter. The denial of a permit for the active life of a hazardous waste management facility or unit does not affect the requirement to obtain a post-closure permit under this section.

* * * * *

(7) *Post-closure care permits.* (i) Unless they demonstrate closure by removal or decontamination as provided by § 270.1 (c)(5) and (c)(6), owners or operators of surface impoundments, landfills, land treatment units, and waste pile units that received wastes after July 26, 1982, or that certified closure (according to § 265.115 of this chapter) after January 26, 1983, must comply with either of the following requirements, as determined by the Regional Administrator:

(A) Obtain a post-closure permit in accordance with § 270.1(c); or

(B) Obtain an enforceable order or other enforceable document (or combination thereof), or be subject to a CERCLA response action or state response action imposing the conditions specified in § 265.121 of this chapter.

(ii) The Regional Administrator must assure that post-closure needs at facilities subject to the requirements of this paragraph (c)(7) are addressed under either paragraph (c)(7)(i)(A) or (c)(7)(i)(B) of this section.

4. Section 270.14 is amended by adding a sentence to the end of paragraph (a) to read as follows:

§ 270.14 Contents of part B: General requirements.

(a) * * * For post-closure permits, only the information specified in § 270.27 is required in Part B of the permit application.

* * * * *

5. A new § 270.27 is added to subpart B to read as follows:

§ 270.27 Part B information requirements for post-closure permits.

For post-closure permits, the owner or operator is required to submit only the information specified in §§ 270.14(b) (1), (4), (5), (6), (11), (13), (14), (16), (18) and (19), 270.14(c), and 270.14(d), unless the Regional Administrator determines that additional information from §§ 270.14, 270.16, 270.17, 270.18, 270.20, or 270.21 is necessary.

PART 271—REQUIREMENTS FOR AUTHORIZATION OF STATE HAZARDOUS WASTE PROGRAMS

1. The authority citation for part 271 continues to read as follows:

Authority: 42 U.S.C 6905, 6912(a), and 6926.

2. Section 271.16 is amended by adding a new paragraph (e) to read as follows:

§ 271.16 Requirements for enforcement authority.

* * * * *

(e) Any State administering a program shall have available judicial or administrative action to respond to releases of hazardous waste or hazardous constituents at interim status facilities as provided by section 3008(h).

[FR Doc. 94–27300 Filed 11–7–94; 8:45 am]

BILLING CODE 6560–50–P