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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 910

[Lemon Regulation 677]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 677 establishes the quantity of fresh California-Arizona lemons that may be shipped to market at 340,000 cartons during the period August 6 through August 12, 1989. Such action is needed to balance the supply of fresh lemons with market demand for the period specified, due to the marketing situation confronting the lemon industry.

DATES: Regulation 677 (§ 910.977) is effective for the period August 6 through August 12, 1989.

FOR FURTHER INFORMATION CONTACT: Beatriz Rodriguez, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2523, South Building, P.O. Box 86456, Washington, DC 20090-6456; telephone: (202) 475-3861.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

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

There are approximately 85 handlers of lemons grown in California and Arizona subject to regulation under the lemon marketing order and approximately 2500 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.2] as those having annual gross revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of handlers and producers of California-Arizona lemons may be classified as small entities.

This regulation is issued under Marketing Order No. 910, as amended [7 CFR Part 910], regulating the handling of lemons grown in California and Arizona. The order is effective under the Agricultural Marketing Agreement Act (the "Act," 7 U.S.C. 601-674), as amended. This action is based upon the recommendation and information submitted by the Lemon Administrative Committee (Committee) and upon other available information. It is found that this action will tend to effectuate the declared policy of the Act.

This regulation is consistent with the California-Arizona lemon marketing policy for 1989-90. The Committee met publicly on August 1, 1989, in Los Angeles, California, to consider the current and prospective conditions of supply and demand and unanimously recommended a quantity of lemons deemed advisable to be handled during the specified week. The Committee reports that overall demand for lemons is good.

Pursuant to 5 U.S.C. 553, it is further found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice and engage in further public procedure with respect to this action and that good cause exists for not postponing the effective date of this action until 30 days after publication in the Federal Register because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared purposes of the Act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. It is necessary, in order to effectuate the declared purposes of the Act, to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

List of Subjects in 7 CFR Part 910

Marketing agreements and orders, California, Arizona, Lemons.

For the reasons set forth in the preamble, 7 CFR Part 910 is amended as follows:

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

1. The authority citation for 7 CFR Part 910 continues to read as follows:


2. Section 910.977 is revised to read as follows:

Note: This section will not appear in the Code of Federal Regulations.

§ 910.977 Lemon Regulation 677.

The quantity of lemons grown in California and Arizona which may be handled during the period August 6, 1989, through August 12, 1989, is established at 340,000 cartons.


Charles R. Brader, Director, Fruit and Vegetable Division.

BILLING CODE 3410-02-M

FEDERAL RESERVE SYSTEM

12 CFR Part 229

[Reg. CC; Docket No. R-0648]

RIN 7100-AB01

Availability of Funds and Collection of Checks

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board is publishing amendments to its Regulation CC,
Availability of Funds and Collection of Checks (12 CFR Part 229). The rule changes will alleviate the operational difficulties and additional risks associated with the acceptance for deposit of bank payable through checks.

**EFFECTIVE DATE:** The effective date for the amendments to § 229.38 of the regulation and commentary is February 1, 1990. The effective date for the amendments to § 229.39 of the regulation and commentary is February 1, 1991.

**FOR FURTHER INFORMATION CONTACT:** Louise L. Roseman, Assistant Director (202/452-3874), Gayle Thompson, Manager (202/452-3917), or Kathleen M. Connor, Senior Financial Services Analyst (202/452-3917), Division of Federal Reserve Bank Operations; Oliver Ireland, Associate General Counsel (202/452-3825), or Stephanie Martin, Attorney (202/452-3198), Legal Division: for the hearing impaired only: Telecommunications Device for the Deaf, Earnestine Hill or Dorothea Thompson (202/452-3544).

**SUPPLEMENTARY INFORMATION:** The Board has adopted two amendments to Regulation CC, which: (1) Require bank payable through checks to be conspicuously labeled with the name, location, and first four digits of the routing number of the bank on which the check is written and the legend “payable through” followed by the name and location of the payable through bank; and (2) Place the risk of loss for return of bank payable through checks being returned by a nonlocal payable through bank on the bank on which such checks are written, to the extent that the return from the nonlocal payable through bank took longer than would have been required if the check had been returned expeditiously by the bank on which it is written. The test for expeditious return would be based on the two-day/four-day test in § 229.30(9)(1) of the regulation. These amendments will become effective on February 1, 1991, and February 1, 1990, respectively.

**Background**

As adopted in May 1988, Regulation CC provided that checks written on an account at one bank but payable through another bank were to be considered local or nonlocal under Regulation CC and the Expedited Funds Availability Act ("Act") based on the routing number of the bank designated as the payable through bank. This treatment of "bank payable through checks" was consistent with the scheme set forth in the Act to permit banks to place longer holds on checks that must be sent to nonlocal banks for collection because such checks generally take longer to collect and return than checks sent to local banks for collection and, therefore, could pose greater risks for depositary banks. In addition, treating the payable through bank as the paying bank would have facilitated the handling of these checks by depositary banks because it would have permitted them to use automated equipment to read the routing number of the payable through bank encoded on a check, which indicates the location of the payable through bank. Availability could have been assigned for the check automatically on the basis of that number. 1

Shortly after the Board adopted Regulation CC defining the payable through bank as the paying bank and thus allowing bank payable through checks to be treated as local or nonlocal according to the routing number of the payable through bank, the Credit Union National Association ("CUNA") and one of its member credit unions brought suit asserting that this rule was contrary to the provisions of the Act. The suit asserted that such checks, in particular credit union share drafts, should be treated as local or nonlocal on the basis of the routing number of the bank on which they are written, rather than the location of the payable through bank. CUNA believed that the treatment of bank payable through checks adopted by the Board would have an adverse effect on the acceptability of these checks as a form of payment because most credit union shares payable through checks would be treated as nonlocal, even though they would generally be deposited in a bank local to the credit union. CUNA argued that if these checks were generally treated as nonlocal, a large number of credit unions that offer payable through share draft accounts would be disadvantaged.

On July 28, 1988, the Board adopted interim amendments to Regulation CC to implement the court's decision and requested comment on the interim rule pending consideration of a longer term response to the court's interpretation of the Act. The interim rule applied the court's decision to all bank payable through checks rather than only those written on credit unions.

One hundred fifty-five comments were received on the interim rule. The overwhelming majority of these commenters objected to the treatment of bank payable through checks as local or nonlocal based on the location of the bank on which they are written, asserting that the rule creates operational difficulties and increased risks for depositary banks. Many of the commenters suggested various means of addressing these operational problems and risks.

On November 2, 1988, the Board adopted the interim rule, with minor technical changes, as a final rule, and also published for comment proposed amendments to Regulation CC designed to alleviate the operational difficulties and increased risks resulting from the new rule. The Board requested comment would:

(1) Require bank payable through checks to be conspicuously labeled with the name, location, and nine-digit routing number of the bank on which the check is written and the legend "payable through" followed by the name and location of the payable through bank;
Generally, commercial bank commenters supported all four proposals, but particularly stressed the need to require that bank payable through checks bear a routing number local to the bank on which such checks are written. Credit union commenters strongly opposed this proposal, as well as the proposal authorizing direct presentment to the banks on which payable through checks are written. Credit union commenters generally did not oppose implementation of the proposal to require bank payable through checks to be conspicuously labeled with specific information related to both the bank on which the check is written and the payable through bank and the proposal to shift the risk of loss to banks issuing payable through checks, for return of such checks from nonlocal payable through banks, to the extent that the return of a payable through check from the nonlocal payable through bank took longer than would have been required if the check had been returned expeditiously by the bank on which it is written. A summary discussion of the Board’s analysis of each proposed amendment follows.

Require bank payable through checks to be conspicuously labeled with the name, location, and nine-digit routing number of the bank on which the check is written and the legend “payable through” followed by the name and location of the payable through bank. In order for banks to be able to manually identify payable through checks from other checks, and determine by visual inspection the appropriate hold, rather than rely on the routing number encoded on the check to determine availability, the Board proposed that certain information pertaining to the payable through bank and the bank on which the check is written must be included on the check.

Other than the routing number of the bank on which the payable through checks are written, the information specified in this proposal is currently required by either existing law or Federal Reserve operating circular. This proposal would clarify that this information is required and would apply to all bank payable through checks, including those checks collected outside the Federal Reserve. It would also require that such labeling be conspicuous, setting a minimum type size standard. In addition, through inclusion in the regulation, liability for noncompliance would be established.

The Board specifically requested comment on the cost savings and operational benefits to depository banks and the costs to banks using payable through checks that would result from adoption of this proposal. Of the 235 comment letters addressing this issue, 214 commenters supported this proposal and 81 opposed it.

The commenters in support of the conspicuous labeling requirement stated that identification would aid in compliance with the availability requirements of Regulation CC. They noted that the additional information could facilitate manual handling of payable through checks, although it would not permit their identification on an automated basis. The Bank Administration Institute stated, “While this proposal would not appreciably reduce risk, it would aid in compliance with Regulation CC hold rules.

Some credit union commenters stated that this proposal was not objectionable provided they would be given a reasonable period of time to handle the reprinting of their share drafts. The Credit Union National Association generally supported a revised version of this proposal. CUNA commented that “only the first four digits of the credit union’s routing number should be required. The additional digits will not facilitate identification of items as local or nonlocal; in fact, they will only further clutter the drawers and complicate identification by consumers and bank tellers. Inclusion of all nine digits will also promote direct presentment of payable through share drafts to credit unions * * * .”
Independent Bankers Association of America supported this proposal, but noted, "Most community bankers indicated that including another nine digit routing number on the face of the check could result in unnecessary confusion for the teller making the identification.'

The Board had noted, in its request for comment on this proposal, that an ancillary benefit to requiring the nine-digit routing number of the bank on which the check is written be printed on the face of the check is that it would provide information needed to establish arrangements for automated clearinghouse (ACH) transfers to or from an account—information that is generally obtained from a check of the customer requesting the ACH service. The Board believed that the identification on the face of the check of the routing number of the bank on which the check is written would facilitate sending ACH transfers to the account-holding bank rather than to the payable through bank, which generally rejects the transfer. A major payable through bank, however, indicated to Board staff that it handles ACH transfers for a number of credit unions for which it also performs payable through processing and that inclusion of the nine-digit routing number of the credit union could cause ACH transfers to be misdirected to the credit union.

Inclusion of only the first four digits of the routing number of the bank on which the payable through check is written would be sufficient to permit depositary bank personnel to assign local or nonlocal availability to those checks because these digits identify the check processing region in which the bank on which the check is written is located. This would eliminate the need to refer to a list of cities and towns in the depositary bank's check processing region to determine if the location of the bank on which the check is written is local for purposes of Regulation CC. The Board believes that requiring the identification of the entire nine-digit routing number, rather than only the first four digits, on the face of bank payable through checks would not provide any incremental significant benefits, and has modified the proposal to require inclusion of only the first four digits of the routing number of the bank on which the check is written on the face of the check.

CUNA also stated, "Because of the advantage to consumers, CUNA urges a requirement that the drawer's area of all checks contain the first four digits of the drawer's routing number." The Board does not believe it is necessary that the requirement apply to all checks because tellers and consumers can determine local or nonlocal availability by referring to the first four digits of the routing number in the MICR line for all checks other than bank payable through checks.

A few commenters suggested that the Board should specify where the required information is to be placed on the face of the check. The Board has provided in the commentary to § 229.36 that the required information is deemed conspicuous if it is located in the title plate on the check.

The Board proposed that the rule become effective one year after adoption. A small number of commenters discussed the appropriate effective date for this proposal. Bank commenters either supported the proposed one year implementation period or requested an effective date of less than one year. Credit union commenters generally stated that they would need additional time for their members to use existing check stock and reorder the new checks. The Credit Union National Association stated, "A more reasonable effective date of this proposal would be two years after adoption of the amendment to allow credit union members to use their current supply of share drafts." While on average customers reorder checks annually, additional time would allow for the check printers to make title plates and for credit union members to reorder checks. The Board believes that eighteen months will provide sufficient time for both the manufacture of new plates and check reorderers.

The 81 commenters that opposed the conspicuous labeling proposal stated that it encourages manual handling. A number of commenters indicated that they opposed this proposal because they believed that the proposal requiring a local routing number in the MICR line is a better solution. First Virginia Banks, Inc., Falls Church, Virginia, stated, "First Virginia does not favor this proposal as it places the burden of recognizing payable through checks on the teller. This proposal invites human error and Regulation CC violations and will only add to delay item processing, because these checks will have to be handled as exception items."

Maryland National Bank, Baltimore, Maryland, stated that this proposal "does not permit the automated processing of payable through draft checks which is critical to maintaining the integrity of the payment system. This would create an indeterminate degradation of customer service at the branch level of financial institutions and a corresponding increase in expenses due to the visual inspection required which would be eventually passed on to the customer."

A small number of commenters discussed the costs of this proposal. These commenters indicated that without the concurrent adoption of the proposal requiring a local routing number in the MICR line, the costs to banks would be prohibitive because they would have to manually process the payable through checks. Bank One, Milwaukee, Wisconsin, stated, "**A** sight review would significantly increase a bank's processing costs because it would require adding employees to the teller proof or transit operation." Bank One estimated $225,000 per year as "the labor expense we would incur if we have to visually inspect all items deposited, and manually make float adjustments for share draft or payable through items."

A number of commenters expressed concern that the labeling requirement could have an adverse impact on the acceptance of payable through drafts. The Chicago Clearinghouse Association, Chicago, Illinois, commented, "This requirement would make obvious visual distinction between a regular check and a payable through check and would be detrimental to institutions using payable through checks. The distinction may create negotiability problems with merchants and consumers who may not understand the reasons for such obvious labels. Because of the label, some merchants may not honor payable through checks as cash items." The specified labeling is already required, however, except for the first four digits of the routing number, which is necessary for the depositary bank to determine availability. Consequently, the Board does not believe the labeling requirement will cause negotiability problems for payable through checks.

The requirement that specified information be printed on the face of the check does not address the potential risks of bank payable through checks becoming attractive vehicles for fraud because it does not accelerate the collection of payable through checks. Under this proposal, the bank on which the payable through checks are written or its customers would incur costs to reissue its checks. Given an eighteen month lead time, the cost of reissuance should be minimal. This proposal would not require any bank to move its
The Board is adopting an amendment to Regulation C that would require bank payable through checks to be conspicuously labeled with the name, location, and first four digits of the routing number of the bank on which the check is written and the legend “payable through” followed by the name and location of the payable through bank. This rule becomes effective eighteen months after final adoption.

The majority of the bank commenters that supported the proposal shifting the risk of loss to the bank on which the payable through check is written recommended that this proposal should be adopted immediately as an interim measure until the proposal requiring a local routing number in the MICR line could be implemented. The Citywide Bank of Denver, Denver, Colorado, stated, “Until such time as (the proposal requiring a local routing number in the MICR line) can be fully implemented, our bank strongly recommends your proposal shifting the risk of loss to the bank on which the payable through check is written.”

The Family National Bank, Grand Rapids, Michigan, stated, “The Federal Reserve should take measures to accommodate these banks who have suffered such liability and losses to easily recoup these losses from the payable bank.”

Some credit unions expressed limited support for the proposal shifting the risk of loss to the bank on which a payable through check is written. The Family Community Credit Union, Charles City, Iowa, commented that this proposal “is also a proposal that could be workable for credit unions. Either one of these proposals (the conspicuous labeling proposal or the proposal shifting the risk of loss to the bank on which the payable through check is written) would not require the expense, equipment and staff that the other two would require.”

The Chase Manhattan Corporation, New York, New York, a major payable through processor, stated, “Of the four approaches the Board has proposed, Chase prefers this approach because it would provide an effective means of protecting depository banks from the risk of loss of return of bank payable through checks without dismantling the present efficient and cost effective payable through system.”

Some commenters suggested that the proposal be modified to limit the risk that could be allocated to the bank on which the check is written. The Credit Union National Association generally supported a modified version of the proposal. CUNA commented, “Credit unions should only assume actual direct losses caused by a delayed return from a payable through bank; that is, only losses of amounts that exceed the $100 next-day availability rule and are under the $2,500 amount covered by the large-dollar item notice requirements of the Regulation.”

Under the proposed rule to shift the risk of loss, the bank on which the check is written would only be responsible for losses that occurred between the time that the check would have been required to be returned if returned expeditiously by that bank and the actual time that it takes to return the check from the payable through bank. If the payable through bank complies with the current notice of nonpayment requirement for returned checks of $2.500 or more and the depositary bank takes action to minimize its risk upon receipt of the notice, no loss should occur that could be allocated to the bank on which the check is written. If the depositary bank takes no action upon receipt of the notice, it may be liable for losses incurred under the liability provisions of §229.39(a). Thus, the Board does not believe it is necessary to modify the rule
to address CUNA’s suggestion that liability should only apply to those checks that are less than $2,500 and thus not covered by the notice of nonpayment requirements.

CUNA also suggested that the allocation of liability be limited to only those amounts that exceed the $100 next-day availability rule. The Act and Regulation CC require depositary banks to provide next-day availability for the first $100 of the aggregate amount of a customer’s check deposits made during a banking day. The proposed rule would only shift the risk of loss to the bank on which the check is written in cases where the loss would not have occurred if the check had been returned under the local time frame. If losses occurred because the depositary bank made funds available for withdrawal before it could learn of a local return, such losses would not be shifted to the bank on which the payable through check is written. In addition, because a customer’s check deposit may include a mixture of payable through checks and other checks, the Board does not believe it would be appropriate to release the bank on which the payable through check is written from liability for the first $100 of a day’s deposit.

The Board had specifically requested comment on what standard(s) should be applied to determine whether the return from a nonlocal payable through bank took longer than would have been required if the check had been returned expeditiously by the bank on which the check is written. CUNA indicated that a one-day/one-day test requirements banks to return checks expeditiously. It allows banks to utilize two tests to determine whether a check has been returned expeditiously. Under the two-day/four-day test, a check is returned expeditiously if a local check is returned under the depositary bank on or before the second business day after the banking day on which the check was presented to the depositary bank or if a nonlocal check is received by the depositary bank on or before the fourth business day after the banking day on which the check was presented to the paying bank. Under the forward collection test, a check is returned expeditiously if a paying bank sends the returned check in a manner that would ordinarily be used by a bank in the paying bank’s community to collect a check drawn on the depositary bank. Generally, this test would be satisfied if a transportation method or collection path is used for returns that is comparable to that used for forward collection.

Several bank commenters indicated concern over the practicality of claiming a loss under the proposal, indicating that it would be particularly difficult to prove responsibility for loss under the forward collection test. Several credit union commenters, including CUNA, suggested that both tests be applicable. The Board believes that the four-day test provides a measurable standard to ascertain whether the return of the payable through check is expeditious. In contrast, the determination of whether return of a check is expeditious under the forward collection test is made based on the manner by which the paying bank returned the check, rather than the time within which the depositary bank received the return. Since a payable through bank nonlocal to the bank on which the check is written would not use the same manner of return as that used by the bank on which the check is written to collect checks, the forward collection test could not be used as a standard for expeditious return by the payable through bank.

Bank commenters opposed to the proposal shifting the risk of loss to the bank on which the payable through check is written stated that this proposal does not address the operational problem of identifying payable through checks. Eastover Bank for Savings, Jackson, Mississippi, stated, “Shifting the risk of loss is not enough. This will simply lead to many operational difficulties in identifying these checks and will not aid in reaching the goal of a more speedy check collection and return processing system.” First Virginia Banks commented, “First Virginia does not favor this proposal, as it will only serve to increase Late Return Claims, litigation expenses, and does not allow for expedited processing of these items.” A number of credit union commenters who opposed the proposal were concerned about its implementation. The Southern Nevada State Savings & Credit Union, Las Vegas, Nevada, described this proposal as complicated and unmanageable. It commented, “* * * strict time limits would have to be imposed on the receiving banks as well as a detailed record keeping, timed, system that would record the flow of the items. Otherwise, anytime there was A DISPUTE for a loss, we’ve never had one in 20 years, the receiving institution could simply claim a delayed processing schedule. A tracking mechanism would be required.”

A small number of credit union commenters stated that they did not think this proposal was necessary. The Navy Federal Credit Union, Merrillfield, Virginia, commented, “We are not aware of any evidence of actual losses which would justify the presumed need. Without further justifications, no change to the liability assignments is recommended.” A few credit union commenters indicated that the payable through bank should be responsible for the loss instead of the credit union.

The Board is adopting the proposal shifting risk of loss to the bank on which the payable through check is written. The test for expeditious return under this final rule will be based on the two-day/four-day test under § 229.30(a)(1) of the regulation.

The Board also requested comment on the appropriate lead time for implementation of the proposal. Although CUNA indicated that a one-year lead time would allow credit unions to issue payable through drafts sufficient time to modify their insurance coverage to cover any increased risk of loss, CUNA commented that the risk of loss associated with bank payable through checks is virtually nonexistent. On the other hand, many bank commenters indicated that this proposal should be implemented immediately. The Board believes that insurance coverage can be obtained in less than one year. In any event, variations in the effective date of this proposal should have minimal effect on the banks on which payable through checks are written. Therefore, this proposal will become effective six months after adoption.

Require bank payable through checks to be presentable locally and bear a local routing number in the MICR line. Commenters on the interim rule expressed concern about the operational problems posed by the court ruling and interim amendments. They indicated that the Board should require credit unions to encode their own routing numbers on their checks or that of a local payable through bank.

The Board specifically requested comment on the cost savings to depositary banks and the costs to banks issuing payable through checks so that the benefits and costs of this proposal could be more fully assessed. Seven hundred twenty-two comment letters addressed this proposal. Two hundred eighty-two commenters supported this proposal and 440 commenters opposed this proposal.

The commenters in support of the proposal to require a local routing number in the MICR line, predominantly banks, described it as the only practical solution to their operational problems and risk concerns. Several supporters also noted that the proposal would reduce confusion for the consumer. The American Bankers Association stated, “Currently, there is no practical or comprehensible way to describe to a consumer how to distinguish between
Local and nonlocal checks and payable through checks except to advise them generally to inquire when they deposit a payable through check. The proposal will allow consumers simply to refer to the MICR line to ascertain whether a deposit is subject to a local or nonlocal check hold."

Several commenters in support of this proposal discussed how it relates to the intent of Regulation CC. The Independent Bankers Association of America commented, "We believe that requiring a local payable through bank is most consistent with the Act's linkage between the availability of funds and the time it takes to collect and return a check." Great Western Financial Corporation, Beverly Hills, California, stated, "By requiring bank payable through checks to be presentable locally and bear a local routing number in the MICR line, Great Western believes that the problems associated with the acceptance for deposit of payable through checks will be addressed, the intent of Regulation CC will be upheld and the best interests of the consumer will be served."

Continental Bank, Chicago, Illinois, stated, "Any proposal that does not allow banks to rely on the MICR line will slow the automated check clearing process considerably and thus retard the goals set by EFAA. As the Board observes, payable through checks account for less than 3% of the processed check volume. Any proposal that does not allow a bank to rely on the MICR line will slow down the processing of the 97% remainder of the checks which today are being efficiently processed. (This proposal) not only confirms the axiom, 'if it ain't broke, don't fix it,' it also encourages credit unions to process their items in a manner that will enhance the goals of EFAA."

Bank commenters noted that requiring a local routing number in the MICR line was the only proposal that placed the time and expense of processing payable through checks on the bank on which the checks are written. Branch County Bank, Coldwater, Michigan, commented, "The requirement to make bank payable through checks bear a local routing number is the only one which places the time and expense of processing where it rightly belongs."

Bank commenters stated that it was difficult to estimate the operational cost savings that would result if this proposal were adopted. AmSouth Bank, Birmingham, Alabama, estimated that its annual dollar cost in teller staffing to implement a manual inspection approach to payable through checks would be $8,607,500. Bank One stated, "There is a cost avoidance (through requiring a local routing number in the MICR line) of about $225,000 per year. This is the labor expense we would incur if we have to visually inspect all items deposited, and manually make float adjustments for share draft or payable through items." Citicorp, New York, New York, stated, "As for the costs associated with the proposal, it is practically impossible to provide meaningfully accurate figures; it is not unreasonable, however, to project some figures for the automated routing process itself. For the banking industry nationwide (not including credit unions and the processors), Citicorp estimates that it would take a teller approximately two/three seconds to determine whether or not an item is payable through draft and whether or not it is local based on an examination of the check itself."

Factoring in the number of tellers employed, their hours, salary, other benefits and the approximate total number of items processed by all banks in the course of a year, we would project a cost figure of five hundred million dollars * * * for the banking community to comply with the regulation as amended as a result of the CUNA suit—absent adoption of the proposed amendments."

This estimate, however, assumes that all banks apply differential holds to deposits of local and nonlocal checks, as permitted in the regulation. According to a study conducted by the Bank Administration Institute, 83 percent of all banks provide immediate or next-day availability with the option to apply holds on a case-by-case or exception basis. The BAI study is corroborated by surveys conducted by trade associations in coordination with the Federal Reserve, which indicated that 75 percent of banks provide immediate or next-day availability with the option to apply holds on a case-by-case or exception basis. Applying case-by-case holds generally entails manual intervention to determine those checks on which holds should be imposed. Thus, the need for a method to apply automated holds appears to be limited to a minority (approximately 20 percent) of banks. Even though only a small number of banks place differential holds, these banks are often large and represent a greater proportion of all checks deposited.

By imposing differential holds for local and nonlocal checks, these banks have indicated a high level of concern about the risk of making funds available for withdrawal before learning whether a check has been returned. The Board recognizes that by not adopting the proposal requiring local routing numbers for payable through checks, a depository bank electing to grant local availability for all checks drawn on the routing numbers of nonlocal payable through banks would increase this risk by granting local availability for checks that would not be subject to the local schedules under the regulation. In addition, banks applying differential holds are subject to litigation risk and could be liable for exceeding the maximum availability schedules if they do not grant local availability for a payable through check bearing a nonlocal routing number. Inaccurate assignment of availability could result when a teller makes errors in outsorting payable through checks or when the bank fails to accurately identify all nonlocal banks acting as payable

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5 A survey by Board staff identified 65 routing numbers that are used on bank payable through checks.
through banks for local banks. The Board believes that a depositary bank can control the risks through the diligent application of the process if it chooses to use in applying holds to assure that it grants local availability for payable through checks issued by local banks.

Commenters in support of the proposal requiring local routing numbers also indicated that they would receive faster availability and incur lower collection costs for payable through checks drawn on local banks under this proposal than they can receive when sending the checks to the nonlocal payable through bank for collection. Suntrust Service Corporation, Orlando, Florida, stated, "Current volume from Suntrust Service Corporation Florida Operations to just the New York and Minneapolis share draft processors is approximately 6,500,000 items per year at a cost over $30,000 per year for transportation expenses. Several commenters noted that this proposal would limit delayed disbursement. These commenters indicated that the credit unions using nonlocal payable through banks have an unfair float advantage over other banks. The Litchville State Bank, Litchville, North Dakota, commented, "For the credit unions to have special treatment is to give the banks and savings and loans unfair treatment. Please make the laws the same for all."

The president of the Citizens Bank of Oviedo, Oviedo, Florida, commented, "I think it should be illegal for any financial institution to carry its clearing account on the other side of the country so they can take advantage of float."

Payable through banks have indicated that many collecting banks receive availability for payable through checks drawn on a nonlocal payable through bank equivalent to that for checks collected locally by sending the checks directly to the nonlocal payable through bank. The payable through banks indicated that these "direct send" arrangements can only be cost effective for the collecting banks when sufficient volumes are being delivered to one presentment point and that maintenance of the payable through system is necessary to achieve these critical volume levels. The majority of the banks commented that the potential risk of loss and increased exposure to fraud is also difficult to quantify. Bank of America stated, "The greatest potential savings, however, would not be operational. It would result from the reduced exposure to fraud losses. ** **. We have not attempted to estimate the fraud potential, as the processor of an estimated $850 million per year in payable through share drafts, our exposure is evident." Florida National Bank, Jacksonville, Florida, commented, "** ** this proposal would eliminate the likelihood that these checks would become vehicles for check fraud. It would reduce the collection time, reduce overall float, as well as reduce the risk for depositary bank."

The 440 commenters that opposed the proposal, predominantly credit unions, indicated that requiring payable through checks to bear a local routing number in the MICR line was totally unacceptable and that its burden and high costs would far outweigh any benefits. Several commenters questioned the justification for the proposal. United States Senators Rudy Boschwitz and David Durenberger commented, "** ** the Federal Reserve has yet to demonstrate that a drastic step such as local MICR number is necessary in order to address perceived problems with the payable-through system. There are other solutions that should be explored before destroying a system that works well for credit unions." The Arizona Credit Union League, Inc., Phoenix, Arizona, stated, "** ** there is no evidence that the proposed changes are warranted. Indeed there are cases of fraud or embezzlement on record that suggest problems with the payable through system to the degree suggested by the proposed regulations."

CUNA commented that this proposal would "reduce efficiencies of the check collection system by creating thousands of additional endpoints."

Commenters expressed concern that this proposal could lead to the dismantlement of all national and regional payable through systems and thereby result in the loss of the efficiencies gained through economies of scale achieved from these systems. They explained that the payable through share draft program was initiated as a means for credit unions to provide a checking system to their members at a reasonable cost. Many credit unions stated that they are able to provide checking services only through the use of payable through processors, which provide efficient processing at a cost much lower than in-house processing. The Sherwin-Williams Employees Credit Union, Chicago, Illinois, stated, "Credit unions on a national or regional payable through program should not be forced to abandon their cost efficient, truncated system. This system has worked well for almost 15 years and has allowed thousands of credit unions to offer share drafts to millions of their members." The Alpena Alcona Area Credit Union, Alpena, Michigan, commented, "** ** the dismantlement of the payable through system would deprive members of a viable service, and at the same time increase the operational costs of the credit union— all without significant advantage."

The Motorola Employees Credit Union, Schaumberg, Illinois, stressed that it chose Travelers Express as its payable through processor because the payable through program is both efficient and economical. It noted that it would be too costly to convert to in-house or local processing or to arrange for local interrupt points.

Commenters expressed concern that local processors would not be able to provide the truncation services currently provided by the major payable through processors. They described the current truncation system as very cost efficient.

H&E Telephone Federal Credit Union, Rochelle Park, New Jersey, noted that it previously used local banks to clear its checks but switched to a national processor that was superior. Problems with its local bank included: "1) The return of actual checks to us which resulted in a mountain of paper and work to organize data; (2) poor reporting capabilities and longer time lags for information availability; and (3) more costly service charges."

Credit union commenters cited two costs of implementing the proposal requiring local routing numbers on payable through checks. First, credit unions and other banks issuing payable through checks would be required to either convert to in-house processing or establish a local presentment point for their payable through checks. They commented that these alternatives would be so costly that the continued share draft service would not be cost effective and would result in their imposing excessive fees on their members. Many commenters stated that an in-house system would not be economically feasible because of their small size and volume. The IBEW Federal Credit Union, Knoxville, Tennessee, commented that conforming to the proposed amendments would be cost prohibitive due to increased processing costs, risk involved, and additional staff and data processing needs."

The City of Huntington Federal Credit Union, Huntington, West Virginia, indicated that a local bank estimated that it would charge approximately $30,000 per year to process the credit union's share drafts, compared to an annual charge of approximately $10,300 assessed by Chase Manhattan Bank to perform similar services. Another credit union estimated that current share draft account fees charged to credit union

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members would triple if the credit union closed and they were forced to use local banks. A third credit union with 850 share draft accounts indicated that its per account cost would increase an estimated $41.41 annually as a result of this proposal. A credit union that uses the Travelers Express payable through draft processing service stated that its average per item cost is $0.06 and the time required to receive and post accounts is less than one hour per day. This credit union estimated that this proposed amendment would require the purchase of additional equipment costing approximately $200,000 and the addition of one staff person at approximately $15,000 per year.

Commenters also noted that a second type of cost associated with the proposal is the cost of reissuing checks to customers. In addition to the cost of reissuing check stock, a change in routing number requires the additional cost of dual processing during the transition period when the processor must process checks with both the old and new routing numbers. The cost associated with dual processing will vary based on the time required to replace check stock. The Board believes that banks can minimize this time through diligent instruction to its customers in reordering and using new checks. These costs would either be borne directly by the customer, who would have to pay for new check stock, or indirectly by the customer through increased service charges imposed by the bank that bore the cost of replacing the check stock.

In addition to the cost/benefit analysis, the Board considered the competitive implications of this proposal. This analysis included competitive factors vis-a-vis credit unions vs. commercial banks. Credit union commenters indicated that because this proposal has the effect of limiting a credit union’s choice of payable through bank, its adoption could prompt local banks to raise their fees. In addition, many credit unions believe that local banks may not have the incentive to keep costs down for the credit union issuing payable through checks because many of these local banks are competing for the same customer accounts as those held by the credit union. The Redford Township Community Credit Union, Redford, Michigan, stated, “This proposal would eliminate most of the competition which is a healthy situation for cost control.”

Some credit unions indicated that they had no local processing options. The Fort Harrison VAF Federal Credit Union, Fort Harrison, Montana, stated, “there is no Montana-based processing point at this time and one could not be set up within the one year deadline.” The Jackson USDA Federal Credit Union, Jackson, Mississippi, commented that “there are no banks in the state of Mississippi that we know of that will process share drafts for credit unions.” The manager of the Jackson USDA FCU contacted two local banks about processing share drafts and was informed that their market studies indicated there would be insufficient credit union share draft volume to make the share draft processing profitable.

Other comments indicated that the competitive issues between commercial banks and credit unions are broader than the issues raised by these payable through check proposals. Bank commenters indicated that the credit unions’ tax-free status and liberal common bond restrictions give the credit unions an unfair advantage in competing for customers, which is only exacerbated by the credit unions’ ability to issue payable through checks. Commenters also noted that this proposal would have an anti-competitive effect on consumers by limiting choice of bank. The majority of small credit unions that commented on this proposal indicated that they would have to discontinue their share draft programs if the proposal were adopted because they would be unable to finance the increased human and equipment resource requirements. They expressed concern that they would no longer be able to offer a low cost checking alternative to lower income customers. The Pennsylvania Mennonite Federal Credit Union, Scottsdale, Pennsylvania, stated that “in this day when the U.S. Congress is considering ‘life line banking’ and providing basic financial services that ordinary people can afford, we find it incongruous for a major organization such as the Federal Reserve System to mandate regulations which will either increase the cost of these services to our members or result in their discontinuance altogether.”

The Newark Aerospace Federal Credit Union, Heath, Ohio, commented, “A life line no service charge share draft account might no longer be available to many of our members because of increased cost. If we could not afford the necessary equipment, 2,200 members would lose their share draft accounts and be forced to open checking accounts at banks. Recent reports indicate the average checking account costs the consumer close to $200 annually.” Congressman Frank Annunzio and Bruce Vento stated, “We believe the Board has consistently failed to balance the adverse effects such a proposed amendment will have on the medium to small credit unions and their life-line services, such as share drafts. Instead the Board cited unsubstantiated allegations of fraud and operation difficulties as its basis for requiring such a proposed amendment to Regulation CC.”

Credit unions and payable through processors noted that this proposal would have an anti-competitive impact by limiting processing choice. The Dearborn Federal Credit Union, Dearborn, Michigan, stated, “Dearborn Federal believes that every credit union should have the right to choose the most efficient and cost effective system available.” The Chase Manhattan Corporation stated, “If this approach were implemented, the Federal Reserve System with its extensive processing facilities and resources in every check processing region would have a competitive advantage over private sector providers in offering a national truncation service.”

The Board believes that provision of truncation services by the Federal Reserve Banks and other private sector providers should help facilitate the payable through system by expediting the delivery of check information to the payable through bank, thereby allowing the payable through bank to provide more efficient, cost-effective payment services to credit unions. The Federal Reserve encourages private sector participation in providing truncation services, and the Reserve Banks developed their truncation service in coordination with private sector truncation service providers through the National Association for Check Safekeeping, which has expressed an interest in supporting the payable through system by means of truncation.

A few commenters noted that this proposal could be difficult to enforce because some credit union members order their own drafts from printing companies and they would be individually responsible for ensuring that their drafts use the proper routing number in the MICR line. A small number of commenters identified as another potential problem that some members would be reluctant to throw away unused drafts even if new drafts were issued free of charge.

The National Association for Check Safekeeping (NACS) proposed an alternative to this proposal. NACS proposed use of the 8000 series routing numbers to identify checks that are payable through a bank nor located in the same check processing region as the issuer of the check. NACS noted that
the only current use of the 8000 series is for travellers checks.

Under the NACS proposal, the first digit of the routing number would be the number 6, identifying the 8000 series. The second and third digits would identify the check processing region of the bank on which the check is drawn. These two digits could be the number 01 through 48, identifying one of the 48 Federal Reserve check processing regions. The fourth and fifth digits would identify the check processing region of the payable through bank. Again, the two digits could be 01 through 48 identifying a check processing region. The sixth, seventh, and eighth digits would identify the particular payable through bank(s) within each check processing region. The ninth digit would be the check digit.

NACS stated, "Depositary banks could easily examine the 8000 series number to determine two things. Banks can determine where to send the check for collection and the funds availability to assign. Only banks using payable through processors in another check processing region will be eligible for an 8000 series routing number." Use of the 8000 series of routing numbers would enable banks to use automated equipment to read the MICR line to assign funds availability. Several commenters urged the Board to first research the NACS proposal further if the Board planned to adopt the proposal to require that payable through checks bear a local routing number in the MICR line. If the NACS proposal was determined to be an effective alternative, the commenters urged the Board to issue the proposal for public comment to determine whether it could provide the same benefits to depositary banks as the local routing number proposal without disrupting the national payable through system.

Board staff discussed the NACS proposal with industry representatives, equipment vendors, and check processing staff at the Federal Reserve Banks. Equipment vendors indicated that use of the 8000 series would require equipment upgrades at collecting banks, and that purchase and installation could take up to two years. Federal Reserve Bank staff indicated that this proposal could impact sort patterns, memory capacity for look-up tables, and processing schedules.

Adoption of the NACS proposal would also require reissuance of all payable through checks. Because the Board is adopting the conspicuous labeling requirement at this time, later adoption of the NACS proposal would require banks issuing payable through checks to reissue their checks twice.

Two reissuances would be costly and burdensome for these banks and their customers.

Adoption of the NACS proposal would only benefit the approximately 20 percent of banks with blanket hold policies. The proposal would not provide incremental benefits to the large majority of banks that generally offer same-day or next-day availability. The NACS proposal would, however, impact all collecting banks because they would have to upgrade equipment to process these checks. Since this proposal would only benefit the minority of banks with blanket hold policies and would be burdensome for credit unions and collecting banks, the Board believes there is not sufficient justification to issue the NACS proposal for public comment.

Sovran Financial Corporation also suggested an alternative to the proposal requiring payable through checks to bear a local routing number in the MICR line. Sovran recommended that the "Board consider setting a specific time limit—two years—by which all issuers of payable through items wishing to obtain better acceptability for their items in the local marketplace must convert to using a local paying agent for the items, and to ensure that the items bear the routing number of the local paying agent. Those institutions which believe the costs of increased acceptability outweigh the benefits will still have the opportunity to use a distinctly located payable through bank, but collecting banks will also have the opportunity to grant nonlocal funds access to depositing customers for these items." The Act does not give the Board the authority to lengthen the availability schedules, which would be the result of this proposed alternative.

Travelers Express Company, Minneapolis, Minnesota, recommended two alternatives to the proposal requiring a local routing number in the MICR line. Travelers suggested using position 44 in the MICR line to identify whether payable through checks are local or nonlocal. The Board believes that, while it would be possible to use position 44 to identify whether or not a check is a payable through check, manual intervention would still be necessary to determine whether such check is local or nonlocal. Thus, this alternative would provide only marginal benefit to depositary banks and should not be pursued at this time.

A second suggestion by Travelers Express was to implement a "requirement that payable through banks notify their local Federal Reserve of every routing number that includes items that would be considered local. The Fed could then publish a directory of these numbers. This would permit automation for the vast majority of the items at issue." As previously indicated, Board staff developed a list of 65 routing numbers that are used on bank payable through checks. The Board believes that, because banks may begin to offer or discontinue payable through services at any time, maintaining the accuracy of such a list and disseminating updated information to all depositary banks would be difficult.

Some commenters discussed the appropriate lead time for implementation of the proposed requirement that bank payable through checks bear a local routing number in the MICR line. The majority of the commenters noted that the proposed one year implementation time period was too short. Oak Ridge Government Federal Credit Union, Oak Ridge, Tennessee, commented, "My only suggestion would be that the implementation date be extended from 12 to 24 months. Any credit union that has gone through the conversion process already will tell you that it is impossible to accomplish in 12 months, and that is after the decision is made. The decision whether to go with a local third party processor or in-house can take 3 to 6 months."

The Board did not find reason to believe that the benefits of implementing the proposal to require payable through checks to bear a local routing number in the MICR line outweigh the reported costs of implementation, and thus is not adopting this proposal.

Authorize direct presentment to the bank on which payable through checks are written. Currently, the law is unclear as to whether a bank payable through check can be presented directly to the bank on which it is written or whether such checks must be presented to the payable through bank. Expressly permitting such checks to be presented directly to the bank on which they are written would enable banks to have such checks collected and returned locally, and thus would avoid delays in collection and return that might occur when the depositary bank sends the checks to nonlocal payable through banks.

The Board specifically requested comment on the cost and operational burden of this proposal on banks that use payable through checks, the potential cost savings to depositary banks, and the appropriate lead time for implementation of this proposal if adopted. Six hundred thirty-seven comment letters addressed this proposal. One hundred seventy-two
commenters supported the proposal and 465 commenters opposed it.

The commenters in support of this proposal commented that direct presentment would minimize the potential for fraud. National City Corporation, Cleveland, Ohio, commented, "To the extent that the proposal is employed, it would allow banks to determine the collectibility of checks/drafts in less time than otherwise would be the case, thereby reducing the risk of loss." The majority of the commenters that supported the direct presentment proposal indicated that they preferred the adoption of both the proposal requiring a local routing number in the MICR line and the direct presentment proposal.

A number of commenters indicated that they would like to have the option of direct presentment but did not indicate if they would actually present directly to the bank on which the checks are written, rather than to the payable through bank, if this proposal were adopted. The Chicago Clearinghouse Association stated, "The Association supports direct presentment of payable through items to the paying institution as an optional method of collecting such items ** **. In many cases, the option of direct presentment would be effective for speeding the forward collection process. However, we recognize that some collecting banks may not wish to exercise this option."

A small number of commenters suggested that the Federal Reserve should facilitate direct presentment. The United States League of Savings Institutions stated, "Having the Federal Reserve make direct presentments overrides the cost prohibitive nature of having individual depositary banks making a presentment. Concentrating payable-through-check volume at District Federal Reserve Banks makes this direct presentment alternative much more feasible."

Continental Bank commented, "Our support for this option is also contingent on the Fed expanding its current fine-sort option to facilitate the direct presentment of payable through checks to the 'paying bank'. If this Fed expansion is not achieved, there would be no economical way to get the payable through checks presented directly to the individual credit unions."

Bank commenters noted that direct presentment would be used primarily by banks that have both the resources to perform this function and the volume to justify the expense. The Key State Bank, Owosso, Michigan, commented, "Allowing banks to present the Items directly to a local credit union is only practical if sufficient volume allows a separate 'break out' of these items and ample capacity in the bank's equipment is available for a separate sort of these items."

Commenters noted that direct presentment would be useful in the case of large-dollar checks. The Bank Administration Institute commented, "Direct presentment does make sense, however, in the case of large dollar items. It is not uncommon for banks to single out large dollar checks for special handling. By presenting these items directly, a bank can often reduce float by accelerating the collection of funds. It also allows banks to determine the collectibility of items more quickly, reducing the risk of loss."

A small number of commenters noted that adoption of this proposal would simply clarify current law that provides that bank payable through checks can be presented directly to the credit union. The American Bankers Association stated, "Currently, old case law and Article 3 of the Uniform Commercial Code (UCC) might suggest that a "drawer bank" (payor bank) may properly refuse to pay a check made payable through a particular bank when the check is not presented to the drawee by that bank. However, we believe that section 4-204(2) of the UCC ** ** already authorizes collecting banks to send items directly to the payor bank. The Board should resolve this ambiguity by stating that banks may present directly to the bank on which the check is written."

The credit union commenters that opposed this proposal indicated that they did not have the operational capabilities to handle direct presentment. The Salt River Project Federal Credit Union, Phoenix, Arizona, commented, "Permitting depositary institutions to present a payable through share draft directly to credit unions for payment will create additional operational problems, especially for small credit unions. Many do not have the personnel nor the cash on hand to respond to direct presentment. They also do not own the equipment to handle direct presentment, and would be reduced to the equivalent of clearing all share drafts by hand! This was the reason the payable through system was set up in the first place, to allow credit unions to offer a transaction account, without the costly capital investment in personnel and equipment. The proposed changes would destroy their ability to offer transaction accounts by destroying the system that allowed them to offer those accounts in the first place."

The Credit Union National Association commented that this proposal would "dismantle the credit union payable through system, thereby eliminating share draft accounts for members of 1,500 to 2,000 small credit unions. Many small credit unions that could afford a local processing option would be put out of the share draft business because they simply cannot handle direct presentments. (Many of them are not capable of handling their own on-us items without depositing them in another financial institution.)"

A number of credit union commenters discussed the cost implications of direct presentment. The Billings Health Affiliated Federal Credit Union, Billings, Montana, stated, "I have 3 full time employee's (sic), including myself, who handle 2,500 members. We could not begin to do the direct presents. Expenses involved would be a new safe which would run about $8,000 to $10,000.00. A new staff person at $12,000.00 per year and any expenses incurred through purchase of new electronic equipment. My net income is $20,699.04. I am sure you can see that to make the required staff increases and equipment purchases would just not be feasible. We would most definitely have to drop our program."

A few credit union commenters discussed the transportation costs of this proposal. The Missouri Credit Union League, St. Louis, Missouri, commented, "If this proposal is adopted, credit unions receiving a direct presentment from a depositary bank would have to arrange for timely delivery of these items to the payable through processor. Besides being a logistical problem it also creates an economic burden. At a minimum, checks would need to be sent by overnight courier service since timely delivery is a key issue. This would result in a minimum daily cost per credit union of approximately $14. The daily cost to Missouri credit unions would be $1,400 under this method. For large cash letters, credit unions would need to consider 'next flight out' arrangements. The daily cost for this type of courier service would be $1,000."

The majority of the credit union commenters stressed the same reasons for opposing the direct presentment proposal as they used in explaining their opposition to the proposal requiring a local routing number in the MICR line. These commenters cited the cost, lack of operational capability, and the potential dismantlement of the national payable through program if this proposal were adopted. These reasons are more fully articulated in the discussion of the proposal requiring bank payable through checks to bear a local routing number in the MICR line.
Bank commenters opposed to this proposal commented that this proposal does not facilitate the assignment of availability on an automated basis. The Maryland National Bank commented, "Although we conceptually support (the direct presentment proposal) * * * we could not support this option in terms of an actual implementation for the following reason: Again, this option would not permit the automated processing of the credit union drafts. We believe that any option which may require special nonautomated check handling will only weaken the check collection system." The Bank of Boston, Boston, Massachusetts, stated, "The Bank believes that this proposal is unworkable since it does not relieve depository institutions from the onerous task of manual identification of bank payable-through drafts."

Bank commenters also noted that direct presentment was only feasible for large organizations because the majority of banks would not receive enough share draft volume from one credit union in one day to make direct presentment worthwhile. The Alamo Savings Association of Texas commented, "This is not a practical alternative because of the transportation and settlement systems that would have to be developed to accommodate such direct presentment."

A small number of bank commenters discussed the cost implications of the direct presentment proposal. Provident National Bank, Philadelphia, Pennsylvania, commented, "It is also not a feasible alternative because of the large number of credit unions and the costs associated with direct presentment (transportation, cash letter processing and transaction costs). In addition to these costs are the costs associated with the manual outsorting of items and the manual intervention in those systems used to assign availability to customer deposits."

The Sovran Financial Corporation stated, "* * * to operate, effectively effect direct presentment, we must manually sort through checks (in the case of one major payable through bank, some 30,000 items per day) to separate out those drawn on local institutions. To preserve some semblance of an audit trail, the items drawn on the distant payable through processor would have to be rerun on our high speed check sorting equipment, and another cash letter created. The smaller groups of items drawn on individual local issuing institutions would similarly have to be rerun. Depending on the internal cost structures of individual banks, the incremental per-item cost to rerun these items could range from $0.005 to $0.012 cents per item pass. We estimate, given current annual volumes of payable through drafts cleared through one major national payable through processor, that reprocessing these items would cost us approximately $70,000 per year—excluding any forward presentment fees that we might also incur. Reconciliation and adjustment costs due to errors following from such a manually intensive endeavor would rise as well." Bank of America estimated that the cost of sorting the checks manually for direct presentment would be $800,000 per year.

Very few commenters commented on the appropriate lead time for implementation of this proposal. Suggested time frames ranged from immediately upon adoption of the amendment to three to four years after adoption.

The Board believes that there is not sufficient justification to clarify by regulation that a bank payable through check can be presented directly to the bank on which it is written. Therefore, the Board has not adopted this proposal.

Miscellaneous Recommendations. A number of commenters suggested alternatives other than the proposals issued by the Board. A small number of commenters noted that they disagreed with the Board's decision not to appeal the court ruling and urged the Board to appeal the ruling. First Pennsylvania Bank, Philadelphia, Pennsylvania commented, "* * * we urge the Board to reconsider their previous position on this matter and to appeal the Federal court ruling concerning the treatment of payable through checks."

Some commenters recommended that the Board should seek amendments to the Act. The United EN Credit Union, St. Paul, Minnesota, stated, "Save the taxpayers money by sending your proposals for comment to all Congressmen and suggest they amend the law. They could amend the law to say checks drawn on local banks are local checks and checks drawn on nonlocal banks are nonlocal checks, PERIOD. The Board supports an amendment to the Act that would amend the definition of "originating depository institution" to mean the branch of a depository institution on which a check is drawn or through which a check is payable. If this amendment were enacted, the payable through bank would be defined as the paying bank in the regulation for the purpose of determining whether a payable through check is a local or nonlocal check.

A number of commenters requested the Board to require that bank payable through checks be deposited with a special deposit slip in order to receive local availability. Marine Midland Bank commented, "If the proposal to MICR encode a routing number which is local to the paying bank is not adopted by the Board, Marine would request the Board to consider permitting banks to require that bank payable through checks be deposited in person with a special deposit slip to a bank employee in order to get availability according to the schedule for local paying banks, if the paying bank is not in the same check processing region as the payable through bank." This would require an amendment to the Act because, under the Act, the Board does not have the authority to lengthen the availability schedules by requiring the use of special deposit slips as a condition for providing local availability to certain payable through checks.

A small number of commenters recommended that the Board should document the fraud, if any, caused by payable through checks and, if necessary, suspend the regulation for payable through checks. The Missouri Credit Union League commented, "Since the Fed has the authority to suspend the Regulation for certain classes of items, this appears to be more than adequate protection for the participants in the check collection system. Rather than be proactive without cause, a more prudent approach is to be reactive with cause."

The Independent Bankers Association of America recommended "that the Board adopt an amendment to Regulation CC requiring credit unions with payable through share draft programs to respond on a timely basis, to all inquiries from depositary banks on items over $500." A similar proposal was issued for public comment in December 1987, which would require banks issuing cashier's or certified checks or certifying checks to respond to such inquiries. Several commenters on that proposal indicated that the provision would not protect depositary banks completely because many forgeries and counterfeits would go undetected. They also noted that depositary banks would not know where to direct the inquiry within the paying bank to obtain reliable information, or may not be able to contact or receive a response from the paying bank within a reasonable time. Therefore, the Board does not believe this proposal should be issued for public comment.

A number of credit union commenters requested that the Board delay consideration of these proposals to
allow sufficient time to evaluate the effects of Regulation CC on the check collection system. CHI Oak Brook Federal Credit Union commented, "... give the new system a year to function and gather some facts and figures on nonlocal payable-through-bank returns. There might be better ways to solve this liability problem in the future (if it exists) than the proposals that have been made." A number of depositary banks have expressed concern about their ability to comply with the revised regulation, and the Board believes it is appropriate to adopt amendments at this time.

Final Regulatory Flexibility Analysis

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires an agency to publish a final regulatory flexibility analysis when it promulgates a final rule. Two of the requirements (5 U.S.C. 605(a) (1) and (2)) of a final regulatory flexibility analysis, (1) a succinct statement of the need for, and the objectives of, the rule and (2) a summary of the issues raised by the public comments in response to the initial regulatory flexibility analysis, a summary of the assessment of the agency of such issues, and a statement of any changes made in the proposed rule as a result of such comments are contained in the supplementary material above.

A third requirement of a final regulatory flexibility analysis (5 U.S.C. 604(a)(3)) is a description of each of the significant alternatives to the rule consistent with the stated objectives of applicable statutes and designed to minimize any significant economic impact of the rule on small entities which was considered by the agency, and a statement of the reasons why each one of such alternatives was rejected. As described in the above preamble, the Board included in its initial proposal several alternative rules, and requested and received comment on the cost and risk associated with each alternative for all affected entities, both large and small.

After considering the comments and the costs and benefits of the various alternatives on the affected entities, the Board adopted a final rule which it believes will have the minimum impact on small entities, generally credit unions, while still achieving the objectives of the rule. The reasons for the Board’s final determinations are more fully described above. The Board did not, however, either propose or adopt an exemption from coverage for small institutions that use payable through checks. The purpose of the rules published today is to alleviate the operational difficulties and risk associated with the acceptance of payable through checks by depositary banks. This purpose would be defeated if the rules did not apply to small institutions that use payable through checks because the operational and risk problems for their checks would remain.

List of Subjects in 12 CFR Part 229

Banks, banking: Federal Reserve System.

For the reasons set out in the preamble, 12 CFR Part 229 is amended as follows:

PART 229—AVAILABILITY OF FUNDS AND COLLECTION OF CHECKS

1. The authority citation for Part 229 continues to read as follows:


2. In § 229.36, the heading is revised and a new paragraph (e) is added to read as follows:

§ 229.36 Presentment and issuance of checks.

(e) Issuance of payable through checks. A bank that arranges for checks payable by it to be payable through another bank shall require that the following information be printed conspicuously on the face of each check:

(1) The name, location, and first four digits of the nine-digit routing number of the bank by which the check is payable; and

(2) The words “payable through” followed by the name and location of the payable through bank.

This provision shall be effective February 1, 1991, and after that date banks that use payable through arrangements must require their customers to use checks that meet the requirements of this provision.

3. In § 229.38, paragraph (d) is redesignated as paragraph (d)(1), a new heading is added to paragraph (d), and a new paragraph (d)(2) is added to read as follows:

§ 229.38 Liability.

(d) Responsibility for certain aspects of checks—(1)

(2) Responsibility for payable through checks. In the case of a check that is payable by a bank and payable through a paying bank located in a different check processing region than the bank by which the check is payable, the bank by which the check is payable is responsible for damages under paragraph (a) of this section, to the extent that the check is not returned to the depositary bank through the payable through bank as quickly as the check would have been required to be returned under § 229.30(a) had the bank by which the check is payable—

(i) Received the check as paying bank on the day the payable through bank received the check; and

(ii) Returned the check as paying bank in accordance with § 229.30(a)(1).

Responsibility under this paragraph shall be treated as negligence of the bank by which the check is payable for purposes of paragraph (c) of this section.

4. Appendix E—Commentary to Part 229 is amended to read as follows:

Section 229.36 Presentment and issuance of checks

(e) Issuance of payable through checks. If a bank arranges for checks payable by it to be payable through another bank, it must require its customers to use checks that contain conspicuously on their face the name, location, and first four digits of the nine-digit routing number of the bank by which the check is payable and the legend “payable through” followed by the name and location of the payable through bank. The first four digits of the nine-digit routing number and the location of the bank by which the check is payable must be associated with the same check processing region. (This section does not affect § 229.36(b).) The required information is deemed conspicuous if it is printed in a type size not smaller than six-point type and if it is contained in the title plate, which is located in the lower left quadrant of the check. The required information may be conspicuous if it is located elsewhere on the check.

If a payable through check does not meet the requirements of this paragraph, the bank by which the check is payable may be liable to the depositary bank or others as provided in § 229.38. For example, a bank by which a payable through check is payable could be liable to a depositary bank if it suffers a loss, such as lost interest or liability under Subpart B, that would not have occurred had the check met the requirements of this paragraph. The bank by which the check is payable may be liable for additional damages if it fails to act in good faith.

b. Section 229.38 is amended by redesignating the first three paragraphs of paragraph (d) as paragraph (d)(3); by adding a new heading to paragraph (d); by adding a new paragraph (d)(2) to follow newly redesignated paragraph (d)(1); and by revising the last paragraph of paragraph (d) to read as follows:
SUMMARY: The Commission is adopting three new forms to be used by accountants when filing examination certificates required under the Investment Company Act of 1940 and the Investment Advisers Act of 1940. The forms will make the examination certificates more accessible for inspection by the Commission staff and the public and will facilitate verification of compliance with examination requirements.


FOR FURTHER INFORMATION CONTACT: Ernest P. Francis, Attorney, or Kenneth J. Berman, Special Counsel, (202) 272-2107, Office of Disclosure and Adviser Regulation, Division of Investment Management, Securities and Exchange Commission, 450 Fifth Street, NW., Mail Stop 5-2, Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission ("Commission") today is adopting Forms N-17f-1, N-17f-2, and ADV-E to serve as cover pages for examination certificates filed by accountants under rules 17f-1, (17 CFR 270.17f-1) and 17f-2 (17 CFR 270.17f-2) under the Investment Company Act of 1940 (15 U.S.C. 80a-1 et seq.) and rule 206(4)-2 (17 CFR 275.206(4)-2) under the Investment Advisers Act of 1940 (15 U.S.C. 80b-1 et seq.). In addition, the Commission is adopting rule revisions to require the use of the proposed forms.

Discussion

On August 2, 1988 the Commission published for comment proposed forms N-17f-1, N-17f-2, and ADV-E and proposed amendments to the rules requiring the filing of examination certificates. The Commission received one comment, from the Financial Planner/Investment Adviser Committee of the North American Securities Administrators Association, Inc. ("NASA"), supporting the proposed forms and rule amendments. Accordingly, the Commission is adopting the forms and rule amendments as proposed.

The forms being adopted today will serve as cover sheets for the examination certificates that Commission rules now require certain investment companies and investment advisers to have accountants file.

2. By revising paragraph (b)(4) of § 270.17f-1 to read as follows:

§ 270.17f-1 Custody of securities with members of national securities exchanges.

(b) * * *

(4) Such securities and investments shall be verified by actual examination at the end of each annual and semi-annual fiscal period by an independent public accountant retained by the investment company and shall be examined by such accountant at least one time, chosen by the accountant, during each fiscal year. A certificate of such accountant stating that an examination of such securities has been made, and describing the nature and extent of the examination, shall be attached to a completed Form N—17f—1 (17 CFR 274.219) and transmitted to the Commission promptly after each examination.

3. By revising paragraph (f) of § 270.17f-2 to read as follows:

§ 270.17f-2 Custody of investments by registered management investment company.

(f) Such securities and similar investments shall be verified by actual examination by an independent public accountant retained by the investment company at least three times during each fiscal year, at least two of which shall be chosen by such accountant without prior notice to such company. A certificate of such accountant stating that an examination of such securities and investments has been made, and describing the nature and extent of the examination, shall be attached to a completed Form N—17f—2 (17 CFR 274.219) and transmitted to the Commission promptly after each examination.

PART 275—RULES AND REGULATIONS, INVESTMENT ADVISERS ACT OF 1940

7. The authority citation for Part 275 continues to read:


8. By revising paragraph (a)(5) of § 275.206(4)—2 as follows:

§ 275.206(4)—2 Custody or possession of funds or securities of clients.

(a) * * *

(5) All such funds and securities of clients are verified by actual examination at least once during each calendar year by an independent public accountant at a time that shall be chosen by such accountant without prior notice to the investment adviser. A certificate of such accountant stating that an examination of such funds and securities has been made, and describing the nature and extent of the examination, shall be attached to a completed Form ADV—E (17 CFR 279.8) and transmitted to the Commission promptly after each examination.

PART 279—FORMS PRESCRIBED UNDER THE INVESTMENT ADVISERS ACT OF 1940

9. The authority citation for Part 279 continues to read:


10. By adding § 279.8 to read as follows:

§ 279.8 Form ADV—E, cover page for certificate of accounting of securities and funds in possession or custody of an investment adviser.

Text of Form ADV—E

See Appendix C. Form ADV—E will not be codified in the Code of Federal Regulations.

By the Commission.

Dated: July 20, 1989.
Jonathan G. Katz,
Secretary.

FORM M—17F—1

Certificate of Accounting of Securities and Similar Investments of a Management Investment Company in the Custody of Members of National Securities Exchanges

OMB APPROVAL

OMB Number: 3235—0359
Expires: July 31, 1991
Estimated average burden hours per response—0.05

Pursuant to Rule 17f—1 [17 CFR 270.17f—1]

Date examination completed:

1. Investment Company Act File Number:
2. State Identification Number:
3. Address of principal executive office:
4. Address of principal business office:
5. Name and address of the accountant:
6. State securities administrator:
7. Name of national exchange:
8. Name of the company:
9. Authority:

OMB Number: 3235—0359, unless otherwise noted.

PART 279—FORMS PRESCRIBED UNDER THE INVESTMENT ADVISERS ACT OF 1940

11. By revising paragraph (b)(4) of § 279.8 to read as follows:

§ 279.8 Form ADV—E, cover page for certificate of accounting of securities and funds in possession or custody of an investment adviser.

Text of Form ADV—E

See Appendix C. Form ADV—E will not be codified in the Code of Federal Regulations.

By the Commission.

Dated: July 20, 1989.
Jonathan G. Katz,
Secretary.

FORM M—17F—1

Certificate of Accounting of Securities and Similar Investments of a Management Investment Company in the Custody of Members of National Securities Exchanges

OMB APPROVAL

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Pursuant to Rule 17f—1 [17 CFR 270.17f—1]

Date examination completed:

1. Investment Company Act File Number:
2. State Identification Number:
3. Address of principal executive office:
4. Address of principal business office:
5. Name and address of the accountant:
6. State securities administrator:
7. Name of national exchange:
8. Name of the company:
9. Authority:
This Form Must Be Given to Your Independent Public Accountant

Note: The estimated average burden hours are made solely for purposes of the Paperwork Reduction Act, and are not derived from a comprehensive or even a representative survey or study of the costs of SEC rules and forms. Direct any comments concerning the accuracy of the estimated average burden hours per compliance with SEC rules and forms to Kenneth A. Fogash, Deputy Executive Director, U.S. Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549 and Gary Waxman, Clearance Officer, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503.

Form M-17f-2
Certificate of Accounting of Securities and Similar Investments in the Custody of Management Investment Companies

Appendix B
OMB Approval
OMB Number: 3235-0160
Expires: July 31, 1991
Estimated average burden hours per response: 0.05
Pursuant to Rule 17f-2 (17 CFR 270.17f-2)

Date examination completed:
1. Investment Company Act File Number: 811-
2. State Identification Number:

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Other (specify):

3. Exact name of investment company as specified in registration statement:
4. Address of principal executive office: (number, street, city, state, zip code)

Instructions
This Form must be completed by investment companies that have custody of securities or similar investments.

Investment Company
1. All items must be completed by the investment company.
2. Gir be given to the independent public accountant who, in compliance with Rule 17f-2 under the Act and applicable state law,

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Other (specify):

3. Full name of investment adviser: (if individual, state last, first, middle name);
4. Name under which business is conducted, if different from above;
5. Address of principal place of business (number, street, city, state, zip code):

Instructions
This Form must be completed by investment advisers who possess or have custody of client funds or securities. This Form may not be used to amend any information included in an investment adviser’s registration statement (e.g., business address).

Investment Adviser
1. All items must be completed by the investment adviser.
2. Give this Form to the independent public accountant who, in compliance with Rule 206(4)-2(a)(5) under the Act and applicable state law, examines client funds and securities in the custody or possession of the investment adviser.

Accountant
3. Submit this Form to the Securities and Exchange Commission and appropriate state securities administrators when filing the certificate of accounting required by Rule 17f-2 under the Act and applicable state law.

This Form Must Be Given to Your Independent Public Accountant

Note: The estimated average burden hours are made solely for purposes of the Paperwork Reduction Act, and are not derived from a comprehensive or even a representative survey or study of the costs of SEC rules and forms. Direct any comments concerning the accuracy of the estimated average burden hours per compliance with SEC rules and forms to Kenneth A. Fogash, Deputy Executive Director, U.S. Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549 and Gary Waxman, Clearance Officer, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503.

Form ADV-E
Certificate of Accounting of Client Securities and Funds in the Possession or Custody of an Investment Adviser

OMB APPROVAL
OMB Number: 3235-0361
Expires: July 31, 1991
Estimated average burden hours per response: 0.05
Pursuant to Rule 206(4)-2 (17 CFR 275.206(4)-2)

Date examination completed:
1. Investment Adviser Act SEC File Number: 801-
2. State Identification Number:

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Other (specify):

3. Exact name of investment adviser:
4. Full name of investment adviser:
5. Address of principal place of business (number, street, city, state, zip code):

DEPARTMENT OF HEALTH AND HUMAN SERVICES
Food and Drug Administration
21 CFR Part 133
[Docket No. 85P-0584]
Cheeses: Amendment of Standards of Identity to Permit Use of Antimycotics on the Exterior of Bulk Cheeses During Curing and Aging and to Update the Formats of Several Standards
AGENCY: Food and Drug Administration.
ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending standards of identity for several cheeses to permit the use of antimycotics on the exterior of bulk cheeses during curing and aging and on the exterior of those cheeses for manufacturing. The agency is also amending several standards to update the format and language of the standards to make them consistent with the natural cheese standards that FDA revised in 1983, to provide for safe and suitable functional ingredient categories, and to provide for optional ingredient labeling requirements. This action, which responds to a citizen petition from the National Cheese Institute, will reduce waste in cheese manufacturing and will promote honesty and fair dealing in the interest of consumers. Elsewhere in this issue of the Federal Register, FDA is publishing a proposal to amend several additional cheese standards of identity to permit the use of antimycotics on the exterior of those cheeses.


ADDRESS: Written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.


SUPPLEMENTARY INFORMATION:

I. The Proposal

In the Federal Register of September 21, 1987 (52 FR 35422), FDA published a proposal that was based on a petition submitted by the National Cheese Institute (NCI), a trade association representing U.S. cheese manufacturers. In that document, FDA proposed to amend the standards of identity for brick cheese (21 CFR 133.108), brick cheese for manufacturing (21 CFR 133.109), washed curd and soaked curd cheese (21 CFR 133.136), washed curd cheese for manufacturing (21 CFR 133.137), edam cheese (21 CFR 133.138), granular and stirred curd cheese (21 CFR 133.144), granular cheese for manufacturing (21 CFR 133.145), monterey cheese and monterey jack cheese (21 CFR 133.153), munster and munster cheese (21 CFR 133.160), munster and munster cheese for manufacturing (21 CFR 133.161), and, by cross-reference, gouda cheese (21 CFR 133.142) and high-moisture jack cheese (21 CFR 133.154) to permit the expanded use of safe and suitable antimycotics (currently permitted on cuts and slices in consumer-sized packages for a number of standardized cheeses) on the exterior of bulk cheeses during curing and aging and on the exterior of cheeses for manufacturing.

FDA also proposed, as requested by NCI, to amend the standards of identity for brick cheese (§ 133.108), washed curd and soaked curd cheese (§ 133.136), granular and stirred curd cheese (§ 133.144), monterey cheese and monterey jack cheese (§ 133.153), and munster and munster cheese (§ 133.160) to make the format and language of those standards consistent with the format and language of the standards for nine natural cheeses that FDA revised to conform more closely to the Codex international standards for those foods (see 48 FR 2738; January 21, 1983). On its own initiative, FDA proposed to similarly update the format and language of the standards of identity for cook cheese, koch kaese (21 CFR 133.127), cream cheese (21 CFR 133.133), cream cheese with other foods (21 CFR 133.134), gammelost cheese (21 CFR 133.140), gorgonzola cheese (21 CFR 133.141), grated cheeses (21 CFR 133.145), neufchatal cheese (21 CFR 133.162), nuworld cheese (21 CFR 133.164), roquefort cheese, sheep's milk blue-mold, and blue-mold cheese from sheep's milk (21 CFR 133.164), spag ago cheese (21 CFR 133.186), spiced cheeses (21 CFR 133.190), and, by cross-reference, part-skim spiced cheeses (21 CFR 133.191).

The agency also proposed to revise the standard of identity for blue cheese (21 CFR 133.106) by removing § 133.106(b)(2). That provision, which established a maximum phenol equivalent value when unpasteurized dairy ingredients are used in the manufacture of the cheese, was erroneously included in the standard when it was revised in 1978 (see 43 FR 42127; September 19, 1978).

Interested persons were given until November 20, 1987, to submit comments.

II. Comments

Six letters, each containing one or more comments, were received from trade associations, industry, and a consumer in response to the proposal.

Three of the letters were in favor of the proposed amendment.

Several comments suggested substantive amendments that require the promulgation of a separate proposal so that interested persons would have the opportunity to comment. One such comment noted that the agency had failed to list the amended version of two cheese standards (edam and gouda) in the proposed regulation, even though the preamble to the proposal clearly indicated that the agency intended to include these two standards among those being amended. Two other comments requested FDA to expand the proposal by permitting the use of antimycotics on swiss and emmentaler cheese and on swiss cheese for manufacturing. Elsewhere in this issue of the Federal Register, FDA is addressing all of these comments by proposing to amend the standards of identity for edam cheese (21 CFR 133.138) and, by cross-reference, gouda cheese (21 CFR 133.142), swiss and emmentaler cheese (21 CFR 133.165), and swiss cheese for manufacturing (21 CFR 133.198) to permit the use of antimycotics in the same manner as provided by the amendments set forth in this document.

One comment expressed concern about the expanded use of antimycotics. That comment stated that the public health might be affected by a regulation that permits the use of safe and suitable antimycotics without any qualitative and quantitative restrictions other than the restriction that the cumulative level of antimycotics not exceed current good manufacturing practices.

The agency does not believe that the concern expressed by the comment is warranted. The provision for “safe and suitable” ingredients governs the use of all optional ingredients in these cheeses, including antimycotics. Thus, any antimycotics used in or on these standardized cheeses must conform to the definition of “safe and suitable” in 21 CFR 190.3(d). That definition requires that the antimycotic: (1) Perform an appropriate function in the food; (2) be used at a level no higher than necessary to achieve its intended purpose; and (3) be generally recognized as safe (GRAS), prior sanctioned, or the subject of a food additive regulation. In light of these requirements, specific qualitative or quantitative restrictions on the use of antimycotics in these standardized cheeses is unnecessary. The agency also notes that label declaration is required for all optional ingredients, including antimycotics, so that consumers will have a means of avoiding these substances if they so choose.
amendments on small entities, including small businesses, was reviewed in accordance with the Regulatory Flexibility Act (Pub. L. 96–354) [5 U.S.C. 601]. No comments were received on the review presented. FDA has concluded that this action will not result in a significant economic impact on a substantial number of small entities. Therefore, FDA certifies, in accordance with section 605(b) of the Regulatory Flexibility Act, that no significant economic impact on a substantial number of small entities will derive from this action.

IV. Objections

Any person who will be adversely affected by this regulation may at any time on or before September 5, 1989 file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection for which a hearing is requested shall specifically state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on that objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 133

Cheese, Food grades and standards.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, Part 133 is amended as follows:

PART 133—CHEESES AND RELATED CHEESE PRODUCTS

1. The authority citation for 21 CFR Part 133 continues to read as follows:

Authority: Secs. 401, 701(e), 52 Stat. 1046, 70 Stat. 919 as amended (21 U.S.C. 341, 371(e)); 21 CFR 5.10 and 5.61

§ 133.106 [Amended]

2. Section 133.106 Blue cheese is amended in paragraph (a)(1) by removing "(a)(3)" and replacing it with "(a)(2)," by removing paragraph (a)(2), and by redesignating existing paragraph (a)(3) as paragraph (a)(2).

3. Section 133.108 is revised to read as follows:

§ 133.108 Brick cheese.

(a) Description. (1) Brick cheese is the food prepared from dairy ingredients and other ingredients specified in this section by the procedure set forth in paragraph (b)(3) of this section, or by any other procedure which produces a finished cheese having the same physical and chemical properties. The minimum milkfat content is 60 percent by weight of the solids and the maximum moisture content is 44 percent by weight, as determined by the methods described in 133.5. If the dairy ingredients used are not pasteurized, the cheese is cured at a temperature of not less than 35 °F for at least 60 days.

(b) Pasteurized dairy ingredients are used, the phenol equivalent value of 0.25 gram of brick cheese is not more than 8 micrograms as determined by the method described in §133.5.

(3) One or more of the dairy ingredients specified in paragraph (b)(1) of this section is brought to a temperature of about 88 °F and subjected to the action of a lactic acid-producing bacterial culture. One or more of the clotting enzymes specified in paragraph (b)(2) of this section is added to set the dairy ingredients to a semisolid mass. The mass is cut into cubes with sides approximately 1/2 inch long, and stirred and heated so that the temperature rises slowly to about 90 °F. The stirring is continued until the curd is sufficiently firm. Part of the whey is then removed, and the mixture diluted with water or salt brine to control the acidity. The curd is transferred to forms, and drained. During drainage it is pressed and turned. After drainage the curd is salted, and the biological curing agents characteristic of brick cheese are applied to the surface. The cheese is then cured to develop the characteristics of brick cheese. One of more of the other optional ingredients specified in paragraph (b)(3) of this section may be added during the procedure.

(b) Optional ingredients. The following safe and suitable ingredients may be used:

(1) Dairy ingredients. Milk, nonfat milk, or cream, as defined in §133.3, used alone or in combination.
(2) Clotting enzymes. Rennet and/or other clotting enzymes of animal, plant, or microbial origin.

(3) Other optional ingredients. (i) Coloring.

(ii) Calcium chloride in an amount not more than 0.02 percent (calculated as anhydrous calcium chloride) of the weight of the dairy ingredients, used as a coagulation aid.

(iii) Enzymes of animal, plant, or microbial origin, used in curing or flavor development.

(iv) Antimycotic agents, the cumulative level of which shall not exceed current good manufacturing practice, may be added to the surface of the cheese.

(c) Nomenclature. The name of the food is "brick cheese".

(d) Label declaration. The common or usual name of each of the ingredients used in the food shall be declared on the label as required by the applicable sections of part 101 of this chapter, except that:

(1) Enzymes of animal, plant, or microbial origin may be declared as "enzymes"; and

(2) The dairy ingredients may be declared, in descending order of predominance, by the use of the terms "milkfat and nonfat milk" or "nonfat milk and milkfat", as appropriate.

5. Section 133.109 is revised to read as follows:

§ 133.109 Brick cheese for manufacturing.

Brick cheese for manufacturing conforms to the definition and standard of identity for brick cheese prescribed by § 133.108, except that the dairy ingredients are not pasteurized and curing is not required.

5. Section 133.127 is revised to read as follows:

§ 133.127 Cook cheese, koch kaese.

(a) Description. (1) Cook cheese, koch kaese, is the food prepared by the procedure set forth in paragraph (a)(2) of this section or by any other procedure which produces a finished cheese having the same physical and chemical properties. The maximum moisture content is 60 percent by weight, as determined by the method described in § 133.5. The dairy ingredients used may be pasteurized.

(2) The phenol equivalent value of 0.25 gram of cook cheese is not more than 3 micrograms as determined by the method described in § 133.5.

(3) One or more of the dairy ingredients specified in paragraph (b)(1) of this section may be warmed and is subjected to the action of a lactic acid-producing bacterial culture. One or more of the clotting enzymes specified in paragraph (b)(2) of this section may be added to coagulate the dairy ingredients. The coagulated mass may be warmed and stirred and it is drained. The moisture content may be adjusted with one or more of the optional ingredients specified in paragraph (b)(3) of this section.

(b) Optional ingredients. The following safe and suitable ingredients may be used:

(1) Dairy ingredients. Nonfat milk as defined in § 133.3.

(2) Clotting enzymes. Rennet and/or other clotting enzymes of animal, plant, or microbial origin.

(3) Other optional ingredients. (i) Calcium chloride in an amount not more than 0.02 percent (calculated as anhydrous calcium chloride) of the weight of the dairy ingredients, used as a coagulation aid.

(ii) Culture of white mold.

(iii) Pasteurized cream.

(iv) Caraway seed.

(v) Salt.

(c) Nomenclature. The name of the food is "cook cheese" or, alternatively, "koch kaese".

(d) Label declaration. The common or usual name of each of the ingredients used in the food shall be declared on the label as required by the applicable sections of Part 101, except that enzymes of animal, plant, or microbial origin may be declared as "enzymes".

6. Section 133.133 is revised to read as follows:

§ 133.133 Cream cheese.

(a) Description. (1) Cream cheese is the soft, uncured cheese prepared by the procedure set forth in paragraph (a)(2) of this section, or by any other procedure which produces a finished cheese having the same physical and chemical properties. The minimum milkfat content is 33 percent by weight of the finished food, and the maximum moisture content is 55 percent by weight, as determined by the methods described in § 133.5. The dairy ingredients used are pasteurized.

(2) The dairy ingredients may be declared, in descending order of predominance, by the use of the terms "milkfat and nonfat milk" or "nonfat milk and milkfat", as appropriate.

7. Section 133.134 is revised to read as follows:

§ 133.134 Cream cheese with other foods.

(a) Description. Cream cheese with other foods is the class of foods prepared by mixing, with or without the aid of heat, cream cheese with one or a mixture of two or more types of foods (except other cheeses) listed in paragraph (b)(1) of this section, in an amount sufficient to differentiate the mixture from cream cheese. One or more of the optional ingredients in paragraph (b)(3) of this section may be used. The maximum moisture content of
the mixture is 60 percent by weight. The minimum milkfat is 33 percent by weight of the cream cheese and in no case less than 27 percent of the finished food. The moisture and fat contents will be determined by the methods described in § 133.5, except that the method for determination of fat content is not applicable when the added food contains fat.

(b) Optional ingredients. The following safe and suitable optional ingredients may be used:

(1) Foods. Properly prepared fresh, cooked, canned, or dried fruits or vegetables; cooked or canned meats, relishes, pickles, or other suitable foods.

(2) Other optional ingredients. (i) Stabilizers, in a total amount not to exceed 0.8 percent, with or without the addition of diocetyl sodium sulfosuccinate in a maximum amount of 0.5 percent of the weight of the stabilizer(s) used.

(ii) Coloring.

(iii) Nomenclature. The name of the food is "cream cheese with ______", the blank being filled in with the usual name of each of the ingredients used in order of predominance by weight.

(d) Labeling. The common or usual name of each of the ingredients used in the food shall be declared on the label as required by the applicable sections of Part 101 of this chapter, except that:

(c) Enzymes of animal, plant, or microbial origin, used in curing or flavor development.

(2) The dairy ingredients may be declared, in descending order of predominance, by the use of the terms "milkfat and nonfat milk" or "nonfat milk and milkfat", as appropriate.

§ 133.136 Washed curd cheese for manufacturing.

(a) Description. (1) Washed curd cheese for manufacturing conforms to the definition and standard of identity prescribed for washed curd cheese by § 133.136, except that the dairy ingredients are not pasteurized and curing is not required.

(b) Label declaration. The common or usual name of each of the ingredients used in the food shall be declared, in descending order of predominance, by the use of the terms "milkfat and nonfat milk" or "nonfat milk and milkfat", as appropriate.

§ 133.137 Washed curd cheese for manufacturing.

Washed curd cheese for manufacturing conforms to the definition and standard of identity prescribed for washed curd cheese by § 133.136, except that the dairy ingredients are not pasteurized and curing is not required.

10. Section 133.140 is revised to read as follows:

§ 133.140 Gammelost cheese.

(a) Description. (1) Gammelost cheese is the food prepared from nonfat milk, as defined in § 133.3, by the procedure set forth in paragraph (a)(2) of this section, and or by any other procedure which produces a finished cheese having the same physical and chemical properties. The maximum moisture content is 52 percent by weight, as determined by the methods described in § 133.5.

(ii) Calcium chloride in an amount not more than 0.02 percent (calculated as anhydrous calcium chloride) of the weight of the dairy ingredients, used as a coagulation aid.

(ii) Enzymes of animal, plant, or microbial origin.

(3) Other optional ingredients. (i) Coloring.

(iii) Antimycotic agents, the cumulative levels of which shall not exceed current good manufacturing practice, may be added to the surface of the cheese.

(iv) Hydrogen peroxide, followed by a sufficient quantity of catalase preparation to eliminate the hydrogen peroxide. The weight of the hydrogen peroxide shall not exceed 0.05 percent of the weight of the dairy ingredients and the weight of the catalase shall not exceed 20 parts per million of the weight of dairy ingredients treated.

(c) Nomenclature. The name of the food is "gammelost cheese" or, alternatively, "soaked curd cheese".

(d) Label declaration. The common or usual name of each of the ingredients used in the food shall be declared on the label as required by the applicable sections of Part 101 of this chapter, except that:

(1) Enzymes of animal, plant or microbial origin may be declared as "enzymes"; and

(2) The dairy ingredients may be declared, in descending order of predominance, by the use of the terms "milkfat and nonfat milk" or "nonfat milk and milkfat", as appropriate.

9. Section 133.137 is revised to read as follows:

§ 133.138 Washed curd cheese for manufacturing.

Washed curd cheese for manufacturing conforms to the definition and standard of identity prescribed for washed curd cheese by § 133.136, except that the dairy ingredients are not pasteurized and curing is not required.

11. Section 133.141 is revised to read as follows:

§ 133.141 Gorgonzola cheese.

(a) Description. (1) Gorgonzola cheese is the food prepared by the procedure set forth in paragraph (a)(2) of this section or by any other procedure which produces a finished cheese having the same physical and chemical properties. It is characterized by the presence of bluish-green mold, Penicillium
roquefortii, throughout the cheese. The minimum milkfat content is 50 percent by weight of the solids and the maximum moisture content is 42 percent by weight, as determined by the methods described in § 133.5. The dairy ingredients used may be pasteurized. Gorgonzola cheese is at least 90 days old.

(2) One or more of the dairy ingredients specified in paragraph (b)(1) of this section may be warmed and is subjected to the action of a lactic acid-producing bacterial culture. One or more of the clotting enzymes specified in paragraph (b)(3) of this section is added to set the dairy ingredients to a semisolid mass. The mass is cut into smaller portions and allowed to stand for a time. The mixed curd and whey is placed into forms permitting further drainage. While being placed in forms, species of the fungus Penicillium roquefortii are added. The forms are turned several times during drainage. When sufficiently drained, the shaped curd is removed from the forms and salted with dry salt or brine. Perforations are then made in the shaped curd and it is held at a temperature of approximately 50 °F at 90 to 95 percent relative humidity, until the characteristic mold growth has developed. During storage, the surface of the cheese may be scraped to remove surface growth of undesirable microorganisms. One or more of the other optional ingredients specified in paragraph (b)(3) of this section may be added during the procedure.

(b) Optional ingredients. The following safe and suitable ingredients may be used:

(1) Dairy ingredients. Milk, nonfat milk, or cream, as defined in § 133.3, or corresponding products of goat origin, used alone or in combination.

(2) Clotting enzymes. Rennet and/or other clotting enzymes of animal, plant, or microbial origin.

(3) Other optional ingredients. (i) Blue or green color in an amount to neutralize the natural yellow color of the curd.

(ii) Calcium chloride in an amount not more than 0.02 percent (calculated as anhydrous calcium chloride) of the weight of the dairy ingredients, used as a coagulation aid.

(iii) Enzymes of animal, plant, or microbial origin, used in curing or flavor development.

(iv) Antimycotic agents, the cumulative levels of which shall not exceed current good manufacturing practice, may be added to the surface of the cheese.

(v) Benzoyl peroxide, or a mixture of benzoyl peroxide with potassium alum, calcium sulfate, and magnesium carbonate used to bleach the dairy ingredients. The weight of the benzoyl peroxide is not more than 0.002 percent of the weight of the dairy ingredients being bleached, and the weight of the potassium alum, calcium sulfate, and magnesium carbonate, singly or combined, is not more than six times the weight of the benzoyl peroxide used. If the dairy ingredients are bleached in this manner, vitamin A is added to the curd in such quantity as to compensate for the vitamin A or its precursors destroyed in the bleaching process, and artificial coloring is not used.

(vi) Vegetable fats or oil which may be hydrogenated, used as a coating for the rind.

(c) Nomenclature. The name of the food is "gorgonzola cheese".

(d) Label declaration. The common or usual name of each of the ingredients used in the food shall be declared on the label as required by the applicable sections of Part 101 of this chapter, except that:

(1) Enzymes of animal, plant, or microbial origin may be declared as "enzymes"; and

(2) The dairy ingredients may be declared, in descending order of predominance, by the use of the terms "milkfat and nonfat milk" or "nonfat milk and milkfat", as appropriate; "milkfat from goat's milk and nonfat goat's milk", etc.

Section 133.144 is revised to read as follows:

§ 133.144 Granular and stirred curd cheese.

(a) Description. (1) Granular cheese, stirred curd cheese is the food prepared by the procedure set forth in paragraph (a)(3) of this section or by any other procedure which produces a finished cheese having the same physical and chemical properties. The minimum milkfat content is 50 percent by weight of the solids and the maximum moisture content is 39 percent by weight as determined by the methods described in § 133.5. If the dairy ingredients used are not pasteurized, the cheese is cured at a temperature of not less than 35 °F for at least 60 days.

(2) If pasteurized dairy ingredients are used, the phenol equivalent value of 0.25 gram of granular cheese is not more than 3 micrograms as determined by the method described in § 133.5.

(b) Optional ingredients. The following safe and suitable ingredients may be used:

(1) Dairy ingredients. Milk, nonfat milk, or cream, as defined in § 133.3, used alone or in combination.

(2) Clotting enzymes. Rennet and/or other clotting enzymes of animal, plant, or microbial origin.

(c) Nomenclature. The name of the food is "granular cheese" or, alternatively, "stirred curd cheese".

(d) Label declaration. The common or usual name of each of the ingredients used in the food shall be declared on the label as required by the applicable sections of Part 101 of this chapter, except that:

(1) Enzymes of animal, plant, or microbial origin may be declared as "enzymes"; and

(2) The dairy ingredients may be declared, in descending order of predominance, by the use of the terms "milkfat and nonfat milk" or "nonfat milk and milkfat", as appropriate.

13. Section 133.145 is revised to read as follows:
§ 133.145 Granular cheese for manufacturing.

Granular cheese for manufacturing conforms to the definition and standard of identity prescribed for granular cheese by § 133.144, except that the dairy ingredients are not pasteurized and curding is not required.

14. Section 133.146 is revised to read as follows:

§ 133.146 Grated cheeses.

(a) Description. Grated cheeses is the class of foods prepared by grinding, grating, shredding, or otherwise comminuting cheese of one variety or a mixture of two or more varieties. The cheese varieties that may be used are those for which there are definitions and standards of identity, except that cream cheese, neufchatel cheese, cottage cheese, creamed cottage cheese, cook cheese, and skim milk cheese for manufacturing may not be used. All cheese ingredients used are either made from pasteurized milk or held at a temperature of not less than 35 °F for at least 60 days. Moisture may be removed from the cheese ingredients in the manufacture of the finished food, but no moisture is added. One or more of the optional ingredients specified in paragraph (c) of this section may be used.

(b) Composition. (1) Each cheese ingredient used is present at a minimum level of 2 percent of the weight of the finished food.

(2) When one variety of cheese is used, the minimum milkfat content of the food is not more than 1 percent lower than the minimum prescribed by the standard of identity for that cheese.

(3) When two or more varieties of cheese are used, the minimum milkfat content is not more than 1 percent below the arithmetical average of the minimum fat content percentages prescribed by the standards of identity for the varieties of cheese used, and in no case is the milkfat content less than 31 percent.

(4) Milkfat and moisture contents are determined by the methods described in § 133.5.

(c) Optional ingredients. The following safe and suitable ingredients may be used:

(1) Antimycotics.

(2) Anticaking agents.

(3) Spices.

(4) Flavorings other than those which, singly or in combination with other ingredients, simulate the flavor of cheese of any age or variety.

(d) Nomenclature. (1) The name of the food is “grated cheese” or “grated cheeses”, as appropriate. The name of the food shall be accompanied by a declaration of the specific variety of cheese(s) used in the food and by a declaration indicating the presence of any added spice or flavoring.

(2) Any cheese varietal names used in the name of the food are those specified by applicable standards of identity, except that the designation “American cheese” may be used for cheddar, washed curd, colby, or granular cheese or for any mixture of these cheeses.

(3) The following terms may be used in place of the name of the food to describe specific types of grated cheese:

(i) If only one variety of cheese is used, the name of the food is “grated cheese”, the name of the cheese filling the blank.

(ii) If only parmesan and romano cheeses are used and each is present at a level of not less than 25 percent by weight of the finished food, the name of the food is “grated cheese”, the blank being filled with the names “parmesan” and “romano” in order of predominance by weight. The name “reggiano” may be used for “parmesan”.

(iii) If a mixture of cheese varieties (not including parmesan or romano) is used and each variety is present at a level of not less than 25 percent of the weight of the finished food, the name of the food is “grated cheese”, the blank being filled in with the names of the varieties in order of predominance by weight.

(iv) If a mixture of cheese varieties in which one or more varieties (not including parmesan or romano) are each present at a level of not less than 25 percent by weight of the finished food, and one or more other varieties (which may include parmesan and romano cheese) are each present at a level of not less than 2 percent but in the aggregate not more than 10 percent of the weight of the finished food, the name of the food is “grated cheese with other grated cheese” or “grated cheese with other grated cheeses”, as appropriate, the blank being filled in with the name or names of those cheese varieties present at levels of not less than 25 percent by weight of the finished food in order of predominance, in letters not more than twice as high as the letters in the phrase “with other grated cheese(s)”. (e) Label declaration. The common or usual name of each of the ingredients used in the food shall be declared on the label as required by the applicable sections of Part 101 of this chapter, except that:

(1) Enzymes of animal, plant, or microbial origin may be declared as “enzymes”; and

(2) The dairy ingredients may be declared, in descending order of predominance, by the use of the terms “milkfat and nonfat milk” or “nonfat milk and milkfat”, “milkfat from goat’s milk and nonfat goat’s milk”, “milkfat from sheep’s milk and nonfat sheep’s milk”, etc., as appropriate.

15. Section 133.163 is revised to read as follows:

§ 133.163 Monterey cheese and monterey jack cheese.

(a) Description. (1) Monterey cheese, monterey jack cheese is the food prepared by the procedure set forth in paragraph (a)(3) of this section, or by any other procedure which produces a finished cheese having the same physical and chemical properties. The minimum milkfat content is 50 percent by weight of the solids, and the maximum moisture content is 44 percent by weight, as determined by the methods described in § 133.5. The dairy ingredients used are pasteurized.

(2) The phenol equivalent of 0.25 gram of monterey cheese is not more than 3 micrograms, as determined by the method described in § 133.5.

(3) One or more of the dairy ingredients specified in paragraph (b)(1) of this section is subjected to the action of a lactic acid-producing bacterial culture. One or more of the clotting enzymes specified in paragraph (b)(2) of this section is added to set the dairy ingredients to a semisolid mass. The mass is so cut, stirred, and heated with continued stirring, as to promote and regulate the separation of whey and curd. Part of the whey is drained off, and water or salt brine may be added. The curd is drained and placed in a muslin or sheeting cloth, formed into a ball, and pressed; or the curd is placed in a cheese hoop and pressed. Later, the cloth bandage is removed, and the cheese may be covered with a suitable coating. One or more of the other optional ingredients specified in paragraph (b)(3) of this section may be added during the procedure.

(b) Optional ingredients. The following safe and suitable ingredients may be used:

(1) Dairy ingredients. Milk, nonfat milk, or cream, as defined in § 133.3, used alone or in combination.
[2] Clotting enzymes. Rennet and/or other clotting enzymes of animal, plant, or microbial origin.

[3] Other optional ingredients. (i) Calcium chloride in an amount not more than 0.02 percent (calculated as anhydrous calcium chloride) by weight of the dairy ingredients, used as a coagulation aid.

(ii) Enzymes of animal, plant, or microbial origin, used in curing or flavor development.

(iii) Salt.

(iv) Antimycotic agents, the cumulative levels of which shall not exceed current good manufacturing practice, may be added to the surface of the cheese.

(v) Vegetable oil, with or without rice flour sprinkled on the surface, used as a coating for the rind.

(c) Nomenclature. The name of the food is “muenster cheese” or alternatively, “munster cheese”.

(d) Label declaration. The common or usual name of each of the ingredients used in the food shall be declared on the label as required by the applicable sections of Part 101 of this chapter, except that:

(1) Enzymes of animal, plant, or microbial origin may be declared as “enzymes”, and

(2) The dairy ingredients may be declared, in descending order of predominance, by the use of the terms “milkfat and nonfat milk” or “nonfat milk and milkfat”, as appropriate.

16. Section 133.160 is revised to read as follows:

§ 133.160 Muenster and munster cheese

(a) Description. (1) Muenster cheese, munster cheese, is the food prepared by the procedure set forth in paragraph (a)(2) of the section or by any other procedure which produces a finished cheese having the same physical and chemical properties. The minimum milkfat content is 50 percent by weight of the solids and the maximum moisture content is 46 percent by weight, as determined by the methods described in § 133.5. The dairy ingredients used are pasteurized.

(2) The phenol equivalent of 0.25 gram of muenster cheese is not more than 3 micrograms, as determined by the methods described in § 133.5.

(3) One of more of the dairy ingredients specified in paragraph (b)(1) of this section may be warmed and is subjected to the action of a harmless lactic acid-producing bacterial culture. One or more of the clotting enzymes specified in paragraph (b)(2) of this section is added to set the dairy ingredients to a semisolid mass. After coagulation the mass is divided into small portions, stirred, and heated, with or without dilution of water or salt brine, so as to promote and regulate the separation of whey and curd. The curd is transferred to forms permitting drainage of the whey. During drainage the curd may be pressed and turned. After drainage the curd is removed from the forms and is salted. One or more of the other optional ingredients specified in paragraph (b)(3) of this section may be added during the procedure.

(b) Optional ingredients. The following safe and suitable ingredients may be used:

(1) Dairy ingredients. Milk, nonfat milk, or cream, as defined in § 133.3, used alone or in combination.

(2) Clotting enzymes. Rennet and/or other clotting enzymes of animal, plant, or microbial origin.

(3) Other optional ingredients. (i) Coloring.

(ii) Calcium chloride in an amount not more than 0.02 percent (calculated as anhydrous calcium chloride) of the weight of the dairy ingredients, used as a coagulation aid.

(iii) Enzymes of animal, plant, or microbial origin used in curing or flavor development.

(iv) Antimycotic agents, the cumulative levels of which shall not exceed current good manufacturing practice, may be added to the surface of the cheese.

(v) Vegetable oil, used as a coating for the rind.

(c) Nomenclature. The name of the food is “muenster cheese” or, alternatively, “munster cheese”.

(d) Label declaration. The common or usual name of each of the ingredients used in the food shall be declared on the label as required by the applicable sections of Part 101 of this chapter, except that:

(1) Enzymes of animal, plant, or microbial origin may be declared as “enzymes”; and

(2) The dairy ingredients may be declared, in descending order of predominance, by the use of the terms “milkfat and nonfat milk” or “nonfat milk and milkfat”, as appropriate.

17. Section 133.161 is revised to read as follows:

§ 133.161 Muenster and munster cheese for manufacturing.

Muenster cheese for manufacturing conforms to the definition and standard of identity for muenster cheese prescribed by § 133.160, except that the dairy ingredients are not pasteurized.

18. Section 133.162 is revised to read as follows:

§ 133.162 Neufchatel cheese.

(a) Description. (1) Neufchatel cheese is the soft uncured cheese prepared by the procedure set forth in paragraph (a)(2) of this section or by any other procedure which produces a finished cheese having the same physical and chemical properties. The milkfat content is not less than 20 percent but less than 33 percent by weight of the finished food and the maximum moisture content is 65 percent by weight, as determined by the methods described in § 133.5. The dairy ingredients used are pasteurized.

(2) One or more of the dairy ingredients specified in paragraph (b)(1) of this section is subjected to the action of a harmless lactic acid-producing bacterial culture, with or without one or more of the clotting enzymes specified in paragraph (b)(2) of this section. The mixture is held until the dairy ingredients coagulate. The coagulated mass may be warmed and stirred and it is drained. The moisture content may be adjusted with one of the optional ingredients in paragraph (b)(3)(i) of this section. The curd may be pressed, chilled, worked, and heated until it becomes fluid. It may then be homogenized or otherwise mixed. One or more of the dairy ingredients may be added during the procedure.

(b) Optional ingredients. The following safe and suitable ingredients may be used:

(1) Dairy ingredients. Milk, nonfat milk, or cream, as defined in § 133.3.

(2) Clotting enzymes. Rennet and/or other clotting enzymes of animal, plant, or microbial origin.

(3) Other optional ingredients. (i) Salt.

(ii) Cheese whey, concentrated cheese whey, dried cheese whey, or reconstituted cheese whey prepared by addition of water to concentrated cheese whey or dried cheese whey.

(iii) Stabilizers, in a total amount not to exceed 0.5 percent of the weight of the finished food, with or without the addition of diocetyl sodium sulfosuccinate in a maximum amount of 0.5 percent of the weight of the stabilizer(s) used.

(c) Nomenclature. The name of the food is “neufchatel cheese”.

(d) Label declaration. The common or usual name of each of the ingredients used in the food shall be declared on the label as required by the applicable sections of Part 101 of this chapter, except that:
(1) Enzymes of animal, plant, or microbial origin may be declared as "enzymes"; and 
(2) The dairy ingredients may be declared, in descending order of predominance, by use of the terms "milkfat and nonfat milk" or "nonfat milk and milkfat", as appropriate.

19. Section 133.164 is revised to read as follows:

§ 133.164 Nuworld cheese.

(a) Description. (1) Nuworld cheese is the food prepared by the procedure set forth in paragraph (a)(2) of this section or by any other procedure which produces a finished cheese having the same physical and chemical properties. It is characterized by the presence of creamy-white mold, a white mutant of Penicillium roquefortii, throughout the cheese. The minimum milkfat content is 50 percent by weight of the solids and the maximum moisture content is 48 percent by weight, as determined by the methods described in § 133.5. The dairy ingredients used may be pasteurized. Nuworld cheese is at least 60 days old.

(2) One or more of the dairy ingredients specified in paragraph (b)(1) of this section may be added, and is subjected to the action of a lactic acid-producing bacterial culture. One or more of the clotting enzymes specified in paragraph (b)(2) of this section is added to set the dairy ingredients to a semi-solid mass. The mass is cut into smaller portions and allowed to stand for a time. The mixed curd and whey is placed into forms permitting further drainage. While being placed in forms, spores of a white mutant of the mold Penicillium roquefortii are added. The forms are turned several times during drainage. When sufficiently drained, the shaped curd is removed from the forms and salted with dry salt or brine. Perforations are then made in the shaped curd and it is held at a temperature of approximately 50 °F at 90 to 95 percent relative humidity, until the characteristic mold growth has developed. During storage, the surface of the cheese may be scraped to remove surface growth of undesirable microorganisms. One or more of the other optional ingredients specified in paragraph (b)(3) of this section may be added during the procedure.

(b) Operational ingredients. The following safe and suitable ingredients may be used:

(1) Dairy ingredients. Milk, nonfat milk, or cream, as defined in § 133.3, used alone or in combination.

(2) Clotting enzymes. Rennet and/or other clotting enzymes of animal, plant, or microbial origin.

(3) Other optional ingredients. (i) Blue or green color in an amount to neutralize the natural yellow color of the curd.
(ii) Calcium chloride in an amount not more than 0.02 percent (calculated as anhydrous calcium chloride) of the weight of the dairy ingredients, used as a coagulation aid.
(iii) Enzymes of animal, plant, or microbial origin, used in curing or flavor development.

(c) Nomenclature. The name of the food is "nuworld cheese".

20. Section 133.164 is revised to read as follows:

§ 133.184 Roquefort cheese, sheep's milk blue-mold and blue-mold cheese from sheep's milk.

(a) Description. (1) Roquefort cheese, sheep's milk blue-mold cheese, blue-mold cheese from sheep's milk, is the food prepared by the procedure set forth in paragraph (a)(2) of this section or by any other procedure which produces a finished cheese having the same physical and chemical properties. It is characterized by the presence of bluish-green mold, Penicillium roquefortii, throughout the cheese. The minimum milkfat content is 50 percent by weight of the solids and the maximum moisture content is 45 percent by weight, as determined by the methods described in § 133.5. The dairy ingredients used may be pasteurized. Roquefort cheese is at least 60 days old.

(2) One or more of the dairy ingredients specified in paragraph (b)(1) of this section may be added, and is subjected to the action of a lactic acid-producing bacterial culture. One or more of the clotting enzymes specified in paragraph (b)(2) of this section is added to set the dairy ingredients to a semi-solid mass. The mass is cut into smaller portions and allowed to stand for a time. The mixed curd and whey is placed into forms permitting further drainage. While being placed in forms, spores of the mold Penicillium roquefortii are added. The forms are turned several times during drainage. When sufficiently drained, the shaped curd is removed from the forms and salted with dry salt or brine. Perforations are then made in the shaped curd and it is held at a temperature of approximately 50 °F at 90 to 95 percent relative humidity, until the characteristic mold growth has developed. During storage, the surface of the cheese may be scraped to remove surface growth of undesirable microorganisms. One or more of the other optional ingredients specified in paragraph (b)(3) of this section may be added during the procedure.

(b) Operational ingredients. The following safe and suitable ingredients may be used:

(1) Dairy ingredients. Forms of milk, nonfat milk, or cream, as defined in § 133.3, of sheep origin, used alone or in combination.

(2) Clotting enzymes. Rennet and/or other clotting enzymes of animal, plant, or microbial origin.

(3) Other optional ingredients. Enzymes of animal, plant, or microbial origin, used in curing or flavor development.

(c) Nomenclature. The name of the food is "roquefort cheese", or alternatively, "sheep's milk blue-mold cheese" or "blue-mold cheese from sheep's milk.

(d) Label declaration. The common or usual name of each of the ingredients used in the food shall be declared on the label as required by the applicable sections of Part 101 of this chapter, except that:

(1) Enzymes of animal, plant, or microbial origin may be declared as "enzymes";

(2) The dairy ingredients may be declared, in descending order of predominance, by use of the terms "milkfat and nonfat milk" or "nonfat milk and milkfat", as appropriate.

21. Section 133.186 is revised to read as follows:

§ 133.186 Sap sago cheese.

(a) Description. (1) Sap sago cheese is the food prepared by the procedure set forth in paragraph (a)(2) of this section or by any other procedure which produces a finished cheese having the same physical and chemical properties. The cheese is pale green in color and has the shape of a truncated cone. The maximum moisture content is 30 percent by weight, as determined by the method described in § 133.5. Sap sago cheese is not less than 5 months old.

(2) One or more of the dairy ingredients specified in paragraph (b)(1) of this section is allowed to become sour, and is heated to boiling
temperature, with stirring. Sufficient sour whey is added to precipitate the casein. The curd is removed, spread out in boxes, and pressed, and while under pressure is allowed to drain and ferment. It is ripened for not less than 5 weeks. The ripened curd is dried and ground; salt and dried clover of the species Melilotus coerules are added. The mixture is shaped into truncated cones and ripened. The optional ingredient in paragraph (b)(2) of this section may be added during this procedure.

(b) Optional ingredients. The following safe and suitable ingredients may be used:

(1) Dairy ingredients. Nonfat milk, as defined in § 133.3.
(2) Other optional ingredients. Buttermilk.
(3) Nomenclature. The name of the food is “spiced cheese”.

(d) Label declaration. The common or usual name of each of the ingredients used in the food shall be declared on the label as required by the applicable sections of Part 101 of this chapter.

22. Section 133.190 is revised to read as follows:

§ 133.190 Spiced cheeses.

(a) Description. (1) Spiced cheeses are cheeses for which specifically applicable definitions and standards of identity are not prescribed by other sections of this part. The food is prepared by the procedure set forth in paragraph (a)(3) of this section or by any other procedure which produces a finished cheese having the same physical and chemical properties. The minimum milkfat content is 50 percent by weight of the solids, as determined by the method described in § 133.5. The food contains spices, in a minimum amount of 0.015 ounce per pound of cheese, and may contain spice oils. If the dairy ingredients are not pasteurized, the cheese is cured at a temperature of not less than 35 °F for at least 60 days.

(2) The phenol equivalent of 0.25 gram of spiced cheese is not more than 3 micrograms, as determined by the method described in § 133.5.

(3) One or more of the dairy ingredients specified in paragraph (b)(1) of this section may be added and is subjected to the action of a harmless lactic acid-producing bacterial culture. One or more of the clotting enzymes specified in paragraph (b)(2) of this section is added to set the dairy ingredients to a semisolid mass. The mass is divided into smaller portions and so handled by stirring, heating, and diluting with water or salt brine as to promote and regulate the separation of whey and curd. The whey is drained off. The curd is removed and may be further drained. The curd is then shaped into forms, and may be pressed. At some time during the procedure, spices are added so as to be evenly distributed throughout the finished cheese. One or more of the other optional ingredients specified in paragraph (b)(3) of this section may be added during the procedure.

(b) Optional ingredients. The following safe and suitable ingredients may be used:

(1) Dairy ingredients. Milk, nonfat milk, or cream, as defined in § 133.3, or corresponding products of goat or sheep origin, used alone or in combination.

(2) Clotting enzymes. Rennet and/or other clotting enzymes of animal, plant, or microbial origin.

(3) Other optional ingredients. (i) Coloring.

(ii) Calcium chloride in an amount not more than 0.02 percent (calculated as anhydrous calcium chloride) of the weight of the dairy ingredients, used as a coagulation aid.

(iii) Salt.

(iv) Spice oils which do not, alone or in combination with other ingredients, simulate the flavor of cheese of any age or variety.

(v) Enzymes of animal, plant, or microbial origin, used in curing or flavor development.

(vi) Antimycotic agents, applied to the surface of slices or cuts in consumer-sized packages.

(c) Nomenclature. The name of the food is “spiced cheese”. The following terms shall accompany the name of the food, as appropriate:

(1) The specific common or usual name of the spiced cheese, if any such name has become generally recognized; or

(2) An arbitrary or fanciful name that is not false or misleading in any particular.

(d) Label declaration. The common or usual name of each of the ingredients used in the food shall be declared on the label as required by the applicable sections of Part 101 of this chapter, except that:

(1) Enzymes of animal, plant, or microbial origin may be declared as “enzymes”; and

(2) The dairy ingredients may be declared, in descending order of predominance, by the use of the terms “milkfat and nonfat milk” or “nonfat milk and milkfat”, or “milkfat from goat’s milk and nonfat goat’s milk”, etc., as appropriate.
rule approved by the Secretary; second, § 206.113(a) stated that the late charge on monthly MIP is "* * one percent of the amount paid." (Both the proposed rule and the final rule approved by the Secretary stated that the late charge actually is four percent); Third, § 206.205(b) as published did not include the servicing charge set aside in the calculation to determine if sufficient funds exist to pay taxes. In addition, § 206.21(d) as published incorrectly stated that the lender must provide at least 25 days notice to the borrower before any adjustment to the "interest rate." The intent of the rule was correctly stated in the preamble, which provided that HUD would apply its regular ARM policy requiring 25-day notice of interest rate adjustments. The regular ARM policy at § 203.49(g) (see 54 FR 111, Jan. 4, 1989), provides that such notice be given 25 days before any adjustment to the borrower's "monthly Payments." In the reverse mortgage program, a borrower does not make monthly payments, and the payments he or she receives would not adjust as a result of the change in interest rate. However, a change in interest rate would affect the rate at which interest accrues on the outstanding mortgage balance. Therefore, under a reverse mortgage, the date that the new interest rate is applied to the outstanding balance is analogous to the date that the monthly payment adjusts under a forward mortgage. The date that the interest rate is applied to the balance is not the same as the date the interest rate changes. In order that the reverse mortgage rule actually apply the regular ARM policy, the words "interest rate" at § 206.21(d) are being corrected to substitute the words "mortgage balance".

Accordingly, the following corrections are made in FR Doc. 89-13639, to 24 CFR parts 200 and 206, published in the Federal Register issue dated June 9, 1989 (54 FR 24822):

PART 200—[AMENDED]

§ 200.310 [Corrected]

1. In § 200.810(d), on page 24832, the second column, remove the comma in the parenthetical phrase, "(home equity conversion insurance)".

PART 206—[AMENDED]

2. On page 24832, in the table of contents for part 206, subpart B, and on page 24834 in the heading to subpart B, add a semicolon so that these headings read as follows: "Subpart B—Eligibility: Applications".

§ 206.3 [Corrected]

3. In § 206.3, on page 24833, in the definition of "Expected average mortgage interest rate", third column, top of page, correct "margrin" to read "margin".

4. In § 206.3, on page 24833, in the definition of "Mortgage", third column, middle of page, in the third sentence, remove the word "both", and in the same definition, in the last sentence, insert the word "the" before "Secretary".

§ 206.9 [Corrected]

5. In § 206.9(a), on page 24834, first sentence, correct "made" to read "make".

§ 206.15 [Corrected]

6. In § 206.15(c), on page 24834, correct reference to "§ 206.27(a)" to read "§ 206.27(d)".

§ 206.21 [Corrected]

7. In § 206.21(b)(1), on page 24835, correct references to "§ 206.49(a), (c)

8. In § 206.21(c)(2), on page 24835, omit the first portion of the sentence, and correct [c][2] in its entirety to read as follows: "Compliance with 12 CFR part 226, as amended at 54 FR 24670 (June 9, 1989) pursuant to the Home Equity Loan Consumer Protection Act of 1988, shall constitute full compliance with paragraph [c][1] of this section.".

9. In § 206.21(d), on page 24835, correct by removing the words "interest rate" and inserting in their place, "mortgage balance".

§ 206.23 [Corrected]

10. In § 206.23(c), on page 24835, correct the first sentence by inserting "or the prepayment" after the word "property". Correct the second sentence by inserting "or prepayment" after the word "sale" both times that the word appears in the sentence.

11. In § 206.23(d), on page 24835, correct the word "mortgage" the last time it appears, to read "mortgage".

§ 206.25 [Corrected]

12. In § 206.25(b)(1)(i), on page 24836, correct "repairs, or property" to read "repairs, property".

13. In § 206.25(b)(1)(ii), on page 24836, correct the paragraph in its entirety to read, "(ii) The mortgage balance at the time of a change in payment option in accordance with § 206.26 plus any portion of the principal limit set aside for repairs, property charges or servicing charges under § 206.19(d) which remains unused; and"

§ 206.26 [Corrected]

14. In § 206.26(a), on page 24836, correct by removing the word "initial".

15. In § 206.26(c), on page 24836, correct by closing the parenthesis after "charges." in the first sentence.

§ 206.27 [Corrected]

16. In § 206.27(b)(6), on page 24837, correct the third sentence by removing the word "property" and inserting in its place, "mortgage".

§ 206.31 [Corrected]

17. In § 206.31(a)(1), on page 24837, correct by using a lower case "t" in the word "that" after the word "Provided".

§ 206.113 [Corrected]

18. In § 206.113(a), on page 24839, correct "one percent" to read "four percent".

§ 206.121 [Corrected]

19. In § 206.121(a), on page 24839, in the first sentence, correct "secretary" the first time it appears to read "Secretary".

20. In § 206.121(b), on page 24839, in the first sentence, correct, "demand, that" to read "demand that that". In the fourth sentence of the same paragraph, correct "mortgagee" to read "mortgagee".

§ 206.125 [Corrected]

21. In § 206.125(a)(2), on page 24840, in the second sentence, correct "mortgage" the first time it appears to read "mortgage".

22. In § 206.125(e), on page 24840, correct by removing "the" the first time it appears, and inserting in its place "a".

23. In § 206.125(g)(1), on page 24840, correct by removing the phrase "to attempt".

§ 206.129 [Corrected]

24. In § 206.129(d)(1), on page 24841, correct by removing "have" the second time it appears, and inserting "has", to read "* * any accrued interest which has not been added * * ".

25. In § 206.129(d)(3)(i), on page 24841, correct § 203.402" to read "§ 203.403".

§ 206.131 [Corrected]

26. In § 206.131(c)(3), on page 24842, correct "conditions" to read "condition".

27. In § 206.131(d), on page 24842, correct "involved" to read "insured".

§ 206.205 [Corrected]

28. In § 206.205(b), on page 24843, third sentence, correct by inserting the phrase "and servicing charges" after the word "repairs" and before the word "has".
EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Parts 1600, 1601, 1610, 1611, 1620, 1626, and 1691

Headquarters Office; Address Change and Updated List of Field Offices


ACTION: Final rule.

SUMMARY: The Equal Employment Opportunity Commission is amending its regulations to reflect the change of its Headquarters office address from 2401 E Street NW., Washington, DC 20507 to 1801 L Street NW., Washington, DC 20507, and the change of its Washington, DC Field office from the Washington Area Office to the Washington Field Office. Included in the amendments is an updated list of all the field offices, as found in 29 CFR 1510.4(c).

EFFECTIVE DATE: August 4, 1989.

FOR FURTHER INFORMATION CONTACT: Nicholas M. Inzeo, Assistant Legal Counsel, or Wendy L. Adams, Staff Attorney, at (202) 663-4669.

For the Commission.

Clarence Thomas,
Chairman.

Accordingly, 29 CFR Parts 1600, 1601, 1610, 1611, 1620, 1626, and 1691 are amended as follows:

PART 1600—EMPLOYEE RESPONSIBILITIES AND CONDUCT

1. The authority citation for part 1600 continues to read:


§ 1600.735-401 [Amended]
2. Section 1600.735-401(b)(4) is amended as follows:

After “and Deputy Directors,” insert “and the Washington Field Office Director.”

PART 1601—PROCEDURAL REGULATIONS

3. The authority citation for part 1601 continues to read:


4. Part 1601 is amended as follows:

Remove “Directors, Regional Programs” and insert “Directors, Field Management Programs” throughout this part, where it appears one or more times in each of the following sections:

Sec.

1601.2
1601.5
1601.9
1601.10
1601.14(b)
1601.16(a)(3)
1601.16(g)
1601.21(d)
1601.22
1601.23(a) and (b)
1601.24(b)
1601.25
1601.28(a), (a)(3), and (c)

§ 1601.19 [Amended]
10. Section 1601.19(a) is amended as follows:


§ 1601.30 [Amended]
11. Section 1601.30(a) is amended as follows:


§ 1601.75 [Amended]
14. Section 1601.75(b)(2) is amended as follows:

Remove “operations Evaluation Division, Office of Field Services” and insert “Systemic Investigations and Individual Compliance Programs, Office of Program Operations”.

PART 1610—AVAILABILITY OF RECORDS

15. The authority citation for part 1610 continues to read:


§ 1610.4 [Amended]
16. Section 1610.4(a) is amended as follows:

After “Commission’s library at” remove “2401 E Street NW., Washington, DC 20507” and insert “1801 L Street NW., Washington, DC 20507”.

17. Section 1610.4(b) is amended as follows:

After “Each” insert “of the Commission’s field offices” and remove “district, area and local offices”.

After “listed in paragraph (c) of this section” insert “, including the District Offices, the Washington Field Office, the Area Offices and the Local Offices,”.
Insert the following list, and remove the existing list.

Albuquerque Area Office (Phoenix District), 505 Marquette, N.W., Suite 1105, Albuquerque, NM 87102, 2530.

Buffalo Local Office (New York District), 28 Church Street, Room 301, Buffalo, NY 14212.

Charlotte District Office, 5500 Central Avenue, Charleston, SC 29412.

Chicago District Office, 530 South Clark Street, Room 600-A, Chicago, IL 60605.

Cincinnati Area Office (Cleveland District), 550 Main Street, Room 715, Cincinnati, OH 45202.

Cleveland District Office, 1375 Euclid Avenue, Room 600, Cleveland, OH 44115.

Dallas District Office, 8300 Elmbridge Drive, Dallas, TX 75247.

Denver District Office, 1905 Sherman Street, 2nd Floor, Denver, CO 80202.

Detroit District Office, 477 Michigan Avenue, Room 1550, Detroit, MI 48226.

El Paso Area Office (San Antonio District), 700 East San Antonio Street, Room 4-105, El Paso, TX 79901.

Greensboro Local Office (Charlotte District), 313 F Street, Suite 103, Greensboro, NC 27401.

Greenville Local Office (Charlotte District), 401 West Washington Street, Room 265, Greenville, SC 29601.

Honolulu Local Office (San Francisco District), 300 South Beretania Street, Honolulu, HI 96814.

Houston District Office, 1919 Smith Street, 7th Floor, Houston, TX 77002.

Indianapolis District Office, 46 East Ohio Street, Suite 404, Indianapolis, IN 46204.

Jackson Area Office (Birmingham District), 127 West Washington Street, Suite 500, Jackson, MI 49201.

Kansas City Area Office (St. Louis District), 300 West Capitol Street, Suite 721, Kansas City, MO 64109.

Little Rock Area Office (Memphis District), 320 West Capitol Avenue, Suite 621, Little Rock, AR 72201.

Los Angeles Area Office, 3600 Wilshire Boulevard, 5th Floor, Los Angeles, CA 90010.

Louisville Area Office (Indianapolis District), 601 West Broadway, Room 613, Louisville, KY 40202.

Memphis District Office, 1407 Union Avenue, Suite 502, Memphis, TN 38104.

Miami District Office, 1 Northeast First Street, 6th Floor, Miami, FL 33132.

Milwaukee Local Office (Milwaukee District), 220 Second Street South, Suite 108, Minneapolis, MN 55401-2141.

Nashville Area Office (Memphis District), 401 James Robertson Parkway, Suite 1100, Nashville, TN 37219-1580.

Newark Area Office (Philadelphia District), 60 Park Place, Room 301, Newark, NJ 07102.

New Orleans Area Office, 701 Loyola Avenue, Suite 600, New Orleans, LA 70113.

New York City Area Office, 90 Church Street, Room 1501, New York, NY 10007.

Norfolk Area Office (Baltimore District), 200 Granby Mall, Room 412, Norfolk, VA 23510.

Oakland Local Office (San Francisco District), 1333 Broadway, Room 430, Oakland, CA 94612.

Oklahoma City Area Office (Dallas District), 900 N.E. 5th Street, Room 763, Oklahoma City, OK 73102.

Philadelphia District Office, 1421 Cherry Street, 10th Floor, Philadelphia, PA 19102.

Phoenix District Office, 4520 N. Central Avenue, Suite 300, Phoenix, AZ 85012-1848.

Pittsburgh Area Office (Philadelphia District), 100 Liberty Avenue, Room 2038-A, Pittsburgh, PA 15222.

Raleigh Area Office (Charlotte District), 127 West Hargett Street, Suite 500, Raleigh, NC 27601.

Richmond Area Office (Baltimore District), 400 North 6th Street, Room 7026, Richmond, VA 23249.

San Antonio Local Office (Los Angeles District), 880 Front Street, Room 45-21, San Diego, CA 92101.

San Francisco District Office, 901 Market Street, Suite 500, San Francisco, CA 94103.

San Jose Local Office (San Francisco District), 300 South 1st Street, Room 401, San Jose, CA 95113.

San Antonio Local Office (San Antonio District), 10 Whitman Street, Suite 200, San Antonio, TX 78232.

Seattle District Office, 1321 Second Avenue, 7th Floor, Seattle, WA 98101.

St. Louis Area Office, 625 N. Euclid Street, 5th Floor, St. Louis, MO 63108.

Tampa Area Office (Miami District), 700 Twigg Street, Room 302, Tampa, FL 33602.


§1610.7 [Amended]
19. Section 1610.7(a) is amended as follows:
After “for the appropriate district, area or local” insert “office”.

After “in the case of the Washington Field Office, shall be submitted to the regional attorney in the Baltimore District Office, at the address listed in” insert “Washington Field Office, 1400 L Street NW., Suite 200, Washington, DC 20005”.

20. Section 1610.7(a)(1) is amended as follows:
After “employees of the” insert “field office” and remove “district, area or local office”.

21. Section 1610.7(a)(2) is amended as follows:
After “relating to the case processing of” insert “field office” and remove “district, area or local office”.

22. Section 1610.7(a)(3) is amended as follows:
After “under the jurisdiction of” insert “field office” and remove “district, area or local office”.

23. Section 1610.7(a)(4) is amended as follows:
After “materials in” insert “field” and remove “district or area”.

24. Section 1610.7(b) is amended as follows:

25. Section 1610.7(d) is amended as follows:
After “actually received by the” insert “appropriate official” and remove “Deputy Legal Counsel or the appropriate regional attorney”.

PART 1611—PRIVACY ACT REGULATIONS

28. The authority citation for part 1611 continues to read:

§ 1611.3 [Amended]
27. Section 1611.3(b) is amended as follows:
After “District” insert “directors, the Washington Field Office Director,”.

Before “area directors” remove “and”.

After “area directors” insert “or”.

After “in accordance with” insert “§ 1610.4(b)”.

District insert “directors, the Washington Field Office Director,”.

Before “area director” remove “and”.

After “area director” insert “or”.

The Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSMRE) is announcing approval of a proposed amendment submitted by the State of North Dakota as a modification to its permanent regulatory program (hereinafter referred to as the North Dakota program approved under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment pertains to changes in the North Dakota Century Code (NDCC), Chapter 38-14.1 by revising the State program to remove the two-acre exemption and, improving operational efficiency of State law dealing with the appropriation of bond forfeiture funds.

EFFECTIVE DATE: August 4, 1989.

FOR FURTHER INFORMATION CONTACT: Jerry R. Ennis, Director, Office of Surface Mining Reclamation and Enforcement, Casper Field Office, Federal Building, 100 East B Street, Room 2126, Casper, Wyoming 82001-1918; Telephone (307) 225-6776.

SUPPLEMENTARY INFORMATION:

I. Background on the North Dakota Program

II. Submission of Amendment

III. Director's Findings

IV. Summary and Disposition of Comments

V. Director's Decision

VI. Procedural Determinations

I. Background on the North Dakota Program

On December 15, 1980, the Secretary of the Interior conditionally approved the North Dakota program. Information regarding the general background on the North Dakota program, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the North Dakota program can be found in the December 15, 1980, Federal Register (45 FR 82246). Subsequent actions taken with regard to North Dakota's program and program amendments can be found at 30 CFR 934.12, 934.13, 934.14, 934.15, 934.16, and 934.30.

II. Submission of Amendment

On April 11, 1989 North Dakota submitted proposed Program Amendment XIII (Administrative Record No. NK-1-01) to OSMRE. The proposed amendment consists of revisions to NDCC Chapter 38-14.1 concerning repeal of the two-acre exemption, and a State initiated change ensuring automatic appropriation to the North Dakota Public Service Commission (the Commission) of bond forfeiture funds.

The Director announced receipt of the proposed amendment in the April 28, 1989, Federal Register (54 FR 18307), and in the same notice opened the public comment period and provided opportunity for a public hearing on the substantive adequacy of the proposed amendment (Administrative Record No. ND-1-05). The public comment period closed on May 30, 1989. The public hearing scheduled for May 23, 1989, was not held because no one requested an opportunity to testify.

III. Director's Findings

The Director finds, in accordance with SMCRA and 30 CFR 732.15 and 732.17, that the amendment submitted by North Dakota on April 11, 1989 meets the requirements of SMCRA and 30 CFR Chapter VII as discussed below.
Two-Acre Exemption

As originally codified, NDCC section 38-14.1-37 excluded coal extraction operations affecting two acres or less from regulation. Similarly, as originally enacted, section 528(2) of SMCRA, 30 U.S.C. Section 1278, exempted from the requirements of SMCRA, all coal extraction operations affecting two acres or less. However, on May 7, 1987 the President signed Public Law (Pub. L.) 100-34, which repealed the section 528 (2) exemption and preempted any acreage-based exemptions included in State laws or regulations. The amendment under consideration in this rulemaking removes the language of NDCC section 38-14.1-37 preempted by Public Law 100-34. Therefore, the Director finds NDCC 38-14.1-37, as revised by this amendment, to be no less stringent than section 528 of SMCRA. Removal of the acreage exemption from the NDCC will avoid confusion on the part of the public which may not be aware of the Federal preemption.

Surface Mining and Reclamation Fund

North Dakota has revised NDCC 38-14.1-39 that addresses the appropriation of monies collected from performance bond forfeitures. Both before and after the statutory revision, NDCC 38-14.1-39 has required that all performance bond forfeitures be deposited in the State treasury and credited to a special account designated as the surface mining and reclamation fund. However, prior to the statutory revision, expenditures from the fund by the commission for the purpose of reclaiming land affected by surface coal mining were permitted only upon specific legislative appropriation. The statutory revision automatically appropriates monies in the surface mining and reclamation fund to the commission, thus removing the need for specific legislative appropriation of such funds. Additionally, based on information supplied to OSMRE by North Dakota, the Director notes that the statutory revision will obviate a past requirement to deposit back into the State's General Fund any monies appropriated but not spent during that biennium. Thus, bond forfeiture monies will be available over the life of the reclamation projects.

Section 509 of SMCRA, 30 U.S.C. 1291, establishes the need for performance bonds in order to conduct surface coal mining and reclamation operations. While it does not specifically discuss how bond monies are to be processed in the event of bond forfeiture, the Director finds that North Dakota's revisions to NDCC section 38-14.1-39 are not inconsistent with and are no less stringent than Section 509 of SMCRA.

IV. Summary and Disposition of Comments

As discussed in the section of this notice entitled "SUBMISSION OF AMENDMENT", the Director solicited public comments and provided opportunity for a public hearing on the proposed amendment. No substantive comments were received, and since no one requested an opportunity to testify at a public hearing, no hearing was held.

Pursuant to section 503(b) of SMCRA and 30 CFR 732.17(h), comments were also solicited from various Federal agencies with an actual or potential interest in the North Dakota program. No comments were received.

V. Director's Decision

Based on the above findings, the Director is approving proposed Program Amendment XIII as submitted by North Dakota on April 11, 1989. The Federal regulations at 30 CFR part 934 codifying decisions concerning the North Dakota program are being amended to implement this decision. However, the Director may require further changes in the future as a result of Federal regulatory revisions, court decisions, and OSMRE oversight of the North Dakota program. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

VI. Procedural Determinations

Compliance With the National Environmental Policy Act

The Secretary of the Interior has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1291(d), no environmental impact statement need be prepared on this rulemaking.

Compliance With Executive Order No. 12291 and the Regulatory Flexibility Act

On July 12, 1984, the Office of Management and Budget (OMB) granted OSMRE an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, for this action, OSMRE is exempt from regulatory review by OMB and the requirements to prepare a regulatory impact analysis. The Department of the Interior has determined that this rule will not have a significant effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR 934

Coal mining, Intergovernmental relations, Surface mining, Underground mining.


Raymond L. Lowrie,
Assistant Director, Western Field Operations.

For the reasons set out in the preamble, Title 30, Chapter VII, Subchapter T of the Code of Federal Regulations is amended as set forth below.

PART 934—NORTH DAKOTA

1. The authority citation for Part 934 continues to read as follows:

Authority: 30 U.S.C. 1201, et seq.

2. In § 934.15, paragraph (l) is added to read as follows:

934.15 Approval of regulatory program amendments.

(l) The following amendment to the North Dakota Regulatory Program, as submitted to OSMRE on April 11, 1989, is approved effective August 4, 1989. Amendment XIII, which removes the two-acre exemption from NDCC section 38-14.1-37 and revised NDCC section 38-14.1-39 to strengthen the State statutes concerning appropriation of funds from performance bond forfeiture.

[FR Doc. 89-18250 Filed 8-3-89; 8:45 am]

BILLING CODE 4510-05-M

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 500

Supplemental List of Specially Designated Nationals (North Korea and Vietnam)

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice of additions to the list of specially designated nationals.

SUMMARY: This notice provides the names of firms that have been added to...
the list of Specially Designated Nationals under the Treasury Department's Foreign Assets Control Regulations (31 CFR part 500).

EFFECTIVE DATE: August 4, 1989.

ADDRESS: Copies of the list of Specially Designated Nationals are available upon request at the following location: Office of Foreign Assets Control, Department of the Treasury, 1331 G Street, NW., Room 300, Washington, DC 20220.

FOR FURTHER INFORMATION CONTACT: Richard J. Hollas, Chief, Enforcement Division, Office of Foreign Assets Control, Tel: (202) 377-0400.

SUPPLEMENTARY INFORMATION: Under the Foreign Assets Control Regulations, persons subject to the jurisdiction of the United States are prohibited from engaging, directly or indirectly, in transactions with any nationals or specially designated nationals of North Korea or Vietnam, or involving any property in which there exists an interest of any national or specially designated national of North Korea or Vietnam, except as authorized by the Treasury Department's Office of Foreign Assets Control by means of a general or specific license.

Section 500.302 of part 500 defines the term "national," in part, as: (A) A subject or citizen domiciled in a particular country, or (b) any partnership, association, corporation, or other organization owned or controlled by nationals of that country, or that is organized under the laws of, or that has had its principal place of business in that country since the effective date (for North Vietnam, i.e., Vietnam north of the 17th parallel of north latitude: May 5, 1964; for South Vietnam, i.e., Vietnam south of the 17th parallel of north latitude: April 30, 1975, at 12:00 p.m. e.d.t; for North Korea, i.e., Korea north of the 38th parallel of north latitude: December 17, 1950), or (c) any person that, directly or indirectly, acted for the benefit or on behalf of any designated foreign country. Section 500.305 defines the term "designated national" as North Korea or Vietnam or any national thereof, including any person who is a specially designated national. Section 500.306 defines "specially designated national" as any person who has been designated as such by the Secretary of the Treasury; any person who, on or since the effective date, has either acted for or on behalf of the government of, or authorities exercising control over Vietnam or North Korea; or any partnership, association, corporation or other organization that, on or since the applicable effective date, has been owned or controlled directly or indirectly by such government or authorities, or by any specially designated national.

Section 500.201 prohibits any transaction, except as authorized by the Secretary of the Treasury, involving property in which there exists an interest of any national or specially designated national of North Korea or Vietnam. The list of Specially Designated Nationals is a partial one, since the Department of the Treasury may not be aware of all the persons located outside North Korea or Vietnam that might be acting as agents or front organizations for North Korea or Vietnam, thus qualifying as specially designated nationals of North Korea or Vietnam. Also, names may have been omitted because it seemed unlikely that those persons would engage in transactions with persons subject to the jurisdiction of the United States. Therefore, persons engaging in transactions with foreign nationals may not rely on the fact that any particular foreign national is not on the list as evidence that it is not a specially designated national.

The Treasury Department regards it as incumbent upon all U.S. persons engaged in transactions with foreign nationals to take reasonable steps to ascertain for themselves whether such foreign nationals are specially designated nationals of North Korea or Vietnam, or other designated countries (at present, Cambodia, Cuba and Libya; the designation of persons or entities acting for or on behalf of Libya pertains only to those persons or entities acting for or on behalf of the Government of Libya, not on behalf of private Libyan nationals). The list of Specially Designated Nationals was last published on December 10, 1986, in the Federal Register (51 FR 44459), and was amended on November 3, 1988 (53 FR 44397), January 24, 1989 (54 FR 3446) and April 10, 1989 (54 FR 14215).

Please take notice that section 16 of the Trading with the Enemy Act (the "Act"), as amended, provides in part that whoever willfully violates any provision of the Act or any license, rule or regulation issued thereunder: "Shall, upon conviction, be fined not more than $50,000, or, if a natural person, imprisoned for not more than ten years, or both; and the officer, director, or agent of any corporation who knowingly participates in such violation shall be punished by a like fine, imprisonment, or both, and any property, funds, securities, papers, or other articles or documents, or any vessel, together with her tackle, apparel, furniture, and equipment, concerned in such violation shall be forfeited to the United States."

In addition, persons convicted of an offense under the Act may be fined a greater amount or imprisoned for a longer period than set forth in the Act, as provided in 18 U.S.C. 3571 and 3581.

Authority: 50 U.S.C. App. 5(b) and 18 U.S.C. 3571 and 3581.

Specially Designated Nationals of North Korea

Chosunbohom (see Korea Foreign Insurance Company), Compania de Coalicion del Comercio de Corea, S.A., Panama

Korea Foreign Insurance Company (s.k.a. Chosunbohom), 123, rue des Tennerolles, 02210 Saint-Cloud, Paris, France

1600 Berlin Glinkastrasse 5, German Democratic Republic Unl. Batteriweg 35, CH-4008 Basel, Switzerland

National General Insurance Co. Ltd., Salah Aldin Al Ayubi Street, Deira-Dubai, United Arab Emirates

Specially Designated Nationals of Vietnam

Canada Kwimex Corp., 713 Somerset Street, West, Ottawa, Ontario, K1R-6C8 Canada

Centre Communautaire de l'Union Generale des Vietnamiens au Canada, 1448 Beaudry Street, Montreal, H2L-3E5 Canada

Centre Communautaire Vietnamiens, 1448 Beaudry Street, Montreal, H2L-3E5 Canada

Indovina International Ltd., Hong Kong

Laser Express Inc., 1444A Beaudry Street, Montreal, H2L-3E5 Canada

Mediapex Inc., 1448 Beaudry Street, Montreal, H2L-3E5 Canada

QTK Express Inc., 1700 Berri, Suite 29, Montreal, H2L-4E4 Canada

Quebec-Vietnam Cultural Association, 1700 Berri, Suite 27, Montreal, H2L-4E4 Canada

Que Vie Tours, 1700 Berri, Suite 27, Montreal, H2L-4E4 Canada

Seine River (Co.), 75 New Bridge Road, Singapore 0105

Services Communautaires Vietnamiens, 1448 Beaudry Street, Montreal, H2L-3E5 Canada

UGVG (see Union Generale des Vietnamiens au Canada)

Union des Vietnamiens (see Union Generale des Vietnamiens au Canada)

Union des Vietnamiens a Montreal (see Union des Vietnamiens au Canada)

Union des Vietnamiens au Canada)
The Coast Guard published a SUPPLEMENTARY INFORMATION: Federal Register (54 FR 15780) for this notice of proposed rulemaking in the Captain Ronald L. Blake, (617) 223-8310. Mariners.

FOR FURTHER INFORMATION CONTACT:

the Coast Guard Local Notice to

on the first or second Sunday of August

EFFECTIVE DATE:

the Coast Guard Local Notice to

on the first or second Sunday of August

AGENCY:

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD1 89-025]

Freeport Grand Prix, Long Beach, NY

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing permanent regulations for the Freeport Grand Prix. The Freeport Grand Prix is a high performance powerboat race held each year in the coastal Atlantic waters south of Long Beach, Long Island, New York. The event is sponsored by Liberty Marine of Freeport, NY. Public notice of the exact dates of the regatta will be published each year in the Federal Register and in the Coast Guard Local Notice to Mariners.

EFFECTIVE DATE: These regulations are effective at 11:00 a.m. on August 5, 1989 and terminate at 3:00 p.m. on August 5, 1989 and will be in effect each year thereafter during the same time period on the first or second Sunday of August as published in the Federal Register and the Coast Guard Local Notice to Mariners.

FOR FURTHER INFORMATION CONTACT:

Captain Ronald L. Blake, (617) 223-6310.

SUPPLEMENTARY INFORMATION: On April 19, 1989, the Coast Guard published a notice of proposed rulemaking in the Federal Register (54 FR 15780) for this regulation. Interested parties were requested to submit comments and no comments were received. Accordingly, no changes are being made to the regulations as proposed.

Drafting Information

The drafters of this notice are LT L. Brown, project officer. First Coast Guard District Boating Safety Division, and LT J.B. Gately, project attorney. First Coast Guard District Legal Division.

Discussion of Regulations

The Freeport Grand Prix is a high performance Indy 500 type powerboat race around an eight (8) mile rectangular course situated approximately one and one quarter (1 1/4) miles south on Long Beach, Long Island, New York. There will be up to 50 vessels participating. The sponsoring organization will provide eight to 12 patrol boats along with turning and finishing mark boats. The regulation will close a portion of the coastal Atlantic waters south of Long Beach, Long Island, New York to all traffic except law enforcement vessels, regatta participants, and official regatta patrol vessels. No vessels other than race participants and patrol craft will be allowed to enter the regulated area which is described below. The regulated area and immediately adjacent waters will be patrolled by several Coast Guard and Coast Guard Auxiliary vessels which will be assisted by local law enforcement authorities and the sponsor provided patrol boats.

Economic Assessment and Certification

These proposed regulations are considered to be nonmajor under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. The event will draw a number of spectators and participants into the area which will aid the local economy. The primary commercial waterway, the Ambrose Channel, lies over three miles to the south of the regulated area and no adverse impact on commercial traffic is anticipated. Since the impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

Federalism Assessment

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rulemaking does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 33 CFR Part 100


Regulations

In consideration of the foregoing, part 100 of title 33, Code of Federal Regulations, is amended as follows:

PART 100—[AMENDED]

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

Authority: 33 U.S.C. 1223; 49 CFR 1.46 and 33 CFR 100.35.

2. A new § 100.106 is added to read as follows:

§ 100.106 Freeport Grand Prix, Long Beach, NY.

(a) Regulated area. The regulated area is a trapezoidal area on the coastal Atlantic waters of Long Island to the north of the northern boundary of Ambrose Channel and is specifically bounded as follows:

1. Northeast Corner, approximately one and one quarter miles southwest of Jones Inlet breakwater at coordinates 40-33-42 North; 073-35-43 West.
2. Southeast Corner, southwest of Jones Inlet Approach Buoy (R "2"; Light List Number 685) at coordinates 40-31-45 North; 073-36-19 West.
3. Southwest Corner, east of East Rockaway Approach Buoy (R "4"; Light List Number 690) at coordinates 40-31-51 North; 073-42-21 West.

(b) Special local regulations. Vessels not participating in, or operating as a safety/rescue patrol shall:
1. Not operate within the regulated area.
2. Immediately follow any specific instructions given by Coast Guard patrol craft.
3. Exercise extreme caution when operating near the regulated area.
4. Effective Dates. These regulations are effective at 11:00 a.m. on August 5, 1989 and terminate at 3:00 p.m. on August 5, 1989 and will be in effect each year thereafter during the same time period on the first or second Sunday of August as published in a Federal Register Notice and the Coast Guard Local Notice to Mariners.
NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Parts 1202, 1250, and 1254

RIN 3095-AA34

Freedom of Information Act and Privacy Act of 1974 Access Procedures

AGENCY: National Archives and Records Administration.

ACTION: Final rule.

SUMMARY: The National Archives and Records Administration (NARA) is amending its Freedom of Information Act (FOIA) access regulations for NARA administrative records and for records transferred to the custody of the Archivist of the United States. This implements the procedural requirements of Executive Order 12600 of June 23, 1987 (52 FR 23781) governing the disclosure to the public of information that may be of a commercially confidential nature.

NARA is further amending its FOIA and Privacy Act regulations governing access to records for which the NARA Inspector General is the responsible official or system manager. These amendments modify the procedures to direct requests relating to Inspector General records to the Inspector General.

EFFECTIVE DATE: August 4, 1989.

FOR FURTHER INFORMATION CONTACT: John A. Constance, telephone 202-523-3214.

SUPPLEMENTARY INFORMATION: On November 2, 1988, NARA published in the Federal Register (53 FR 44203) proposed regulations to bring its FOIA regulations governing access to NARA administrative records and records transferred to the custody of the Archivist of the United States into conformity with Executive Order 12600. Public comment on the proposed regulation was invited, with the comment period ending on December 2, 1988.

Analysis of Comments Received

One organization, The Reporters Committee for Freedom of the Press, submitted comments on NARA’s proposed regulation. The commenter is concerned that: (1) The time proposed for processing requests is excessive and violates the provisions of the FOIA; and (2) that making requests for all information of a commercial nature, rather than only those for potentially confidential commercial information, subject to the rule will lead to bureaucratic delays in granting access.

NARA shares the commenter’s concern for timeliness in responding to requests. NARA is therefore changing its proposed rule and will adopt the language of the Executive order and substitute a reasonable time as the time allowed for submitters to respond to notices of receipt of request and intent to disclose.

NARA does not agree that bureaucratic delays will result from applying the regulation to all requests for access to commercial information. The need to review all commercial information for possible exemption from release is inherent in the FOIA, explicitly stated in the Executive order, and always a part of the decision to grant or deny access. In fact, NARA does not consider this to be a change in policy, it represents only a formal recognition of the current review process.

Other Changes Made by This Regulation

As required by Public Law 100-504, NARA established an Inspector General unit on April 17, 1989. In keeping with the degree of independence required by Public Law 100-504, all requests made under the FOIA or the Privacy Act of 1974 for access to or to amend a record for records created or maintained by the Inspector General will henceforth be addressed to the Inspector General. Appeals of decisions issued by the Inspector General will be addressed to the Archivist of the United States. This amendment was not published as a part of the proposed rule. However, because an amendment of this nature does not require public comment, it is being incorporated at this time.

This rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981. As required by the Regulatory Flexibility Act, it is hereby certified that this proposed rule will not have a significant impact on small business entities.

List of Subjects

36 CFR Part 1202

Privacy.

36 CFR Part 1250

Freedom of information, confidential business information, archives and records.

36 CFR Part 1254

Freedom of information, confidential business information, archives and records.

For the reasons set forth in the preamble, Chapter XII of Title 36 of the Code of Federal Regulations is amended to read as follows:

PART 1202—REGULATIONS IMPLEMENTING THE PRIVACY ACT OF 1974

1. The authority citation for Part 1202 continues to read as follows:


2. In part 1202, remove the words “Deputy Archivist” from wherever they appear and add, in their place, the words “NARA Privacy Act appeal official.”

3. Section 1202.4 is amended by adding the following definition in alphabetical order:

§ 1202.4 Definitions.

* * * * *

“NARA Privacy Act appeal official” means the Deputy Archivist of the United States for appeals of denial of access to or amendment of records maintained in a system of records, except where the system manager is the Inspector General or the Archivist of the United States. The term means the Archivist of the United States for appeals of denial of access to or amendment of records in systems of records maintained by the Inspector General.

* * * * *

4. Section 1202.46 is amended by redesignating paragraph (d) as paragraph (e) and adding new paragraph (d) to read as follows:

§ 1202.46 Denials of access.

* * * * *

(d) If the system manager is the Inspector General, that person shall retain the responsibility for denying or granting the request.

* * * * *

5. Section 1202.48 is amended by revising paragraph (a) to read as follows:

§ 1202.48 Appeals of denial of access within NARA.

(a) Requesters denied access in whole or part to records pertaining to them, exclusive of those records for which the system manager is the Archivist of the United States, may file with NARA an appeal of that denial.

* * * * *

(d) If the request is for access to or amendment of records for which the Inspector General is the system manager, the request shall be addressed to the Inspector General.

* * * * *

(d) If the request is for access to or amendment of records for which the system manager is the Archivist of the United States, the request shall be addressed to the Archivist of the United States.
system manager should be addressed to NARA Privacy Act Appeal Official (ND), National Archives and Records Administration, Washington, DC 20408.

(2) All other appeals should be addressed to NARA Privacy Act Appeal Official (ND), National Archives and Records Administration, Washington, DC 20408.

6. Section 1202.66 is amended by revising paragraph (a) to read as follows:

§ 1202.66 Denial of requests to amend.
(a) Except where the system manager is the Inspector General, if the system manager determines that an amendment of a record is improper or that the record should be amended in a manner other than that requested by an individual, the request to amend and the system manager's determinations and recommendations shall be referred to the Assistant Archivist for Management and Administration. If the system manager is the Inspector General, that person shall retain the responsibility for granting or denying the request to amend.

7. Section 1202.68 is revised to read as follows:

§ 1202.68 Agreement to alternative amendments.
If the denial of a request to amend a record includes proposed alternative amendments, and if the requester agrees to accept them, the requester shall notify the NARA official who signed the denial letter. That official shall immediately instruct the system manager to make the necessary amendments in accordance with § 1202.64.

8. Section 1202.70 is amended by revising paragraph (a) to read as follows:

§ 1202.70 Appeal of denial of request to amend a record.
(a) A requester who disagrees with a denial of a request to amend a record may file an appeal of that denial.

(1) If the denial was signed by the Assistant Archivist for Management and Administration, the requester shall address the appeal to the NARA Privacy Act Appeal Official (ND), Washington, DC 20408.

(2) If the denial was signed by the Inspector General, the requester shall address the appeal to the NARA Privacy Act Appeal Official (N), Washington, DC 20408.

(3) If the requester is an employee of NARA and the denial to amend involves a record maintained in the employee's Official Personnel Folder, as described in Chapter 263 of the Federal Personnel Manual, the appeal shall be addressed to the Assistant Director, Workforce Information Office, Compliance and Investigations Group, Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415.

PART 1250—PUBLIC AVAILABILITY OF NARA ADMINISTRATIVE RECORDS AND INFORMATIONAL MATERIALS

9. The authority citation for Part 1250 is revised to read as follows:
Authority: 44 U.S.C. 2104(c); 5 U.S.C. 552; E.O. 12900.

10. Section 1250.58 is amended by removing in paragraphs (b) and (c) the words "Deputy Archivist" and adding in their place the words "NARA FOIA Appeal Official" and by revising paragraph (a) to read as follows:

§ 1250.58 Appeal within NARA.
(a) A requester who receives a denial in whole or in part of a request may appeal that decision within NARA to the appropriate NARA FOIA Appeal Official. If the denial was signed by the Assistant Archivist for Management and Administration, the appeal shall be addressed to the Deputy Archivist of the United States, National Archives (ND), Washington, DC 20408. If the denial was signed by the Inspector General, the appeal shall be addressed to the Archivist of the United States, National Archives (N), Washington, DC 20408.

§ 1250.60 [Amended]
11. Section 1250.60 is amended by removing the words "Assistant Archivist for Management and Administration" and adding in their place the words "NARA FOIA Appeal Official."

Subpart G—[Redesignated as Subpart H]

12. Subpart G, consisting of § 1250.80, is redesignated Subpart H. The section number is unchanged.

13. A new Subpart G—Predisclosure Notification Procedures for Commercial Information, consisting of § 1250.75, is added to read as follows:

Subpart G—Predisclosure Notification Procedures for Commercial Information

§ 1250.75 Predisclosure notification procedures for commercial information.
(a) General. Commercial information provided to NARA shall not be disclosed to the public except in accordance with this subpart.

(b) Definitions. "Potentially confidential commercial information" means records provided to NARA by a submitter that may contain material exempt from release under 5 U.S.C. 552(a)(4) because disclosure could reasonably be expected to cause the submitter substantial competitive harm.

"Submitter" means any person or entity providing potentially confidential commercial information to an agency. The term "submitter" includes, but is not limited to, corporations, state governments, and foreign governments.

(c) Designation of potentially confidential commercial information. Submitters of commercial information may designate the information as commercially confidential. The designation must:
(1) Be made by the submitter when the information is submitted to NARA or within 30 workdays thereafter;
(2) Specify precisely which information is claimed as commercially confidential;
(3) Be made in good faith;
(4) Be supported by a certification by the submitter that the information has not been published or previously officially disclosed to the public.

(d) Notice of receipt of a request to release information. (1) NARA shall give the submitter prompt written notice of receipt of a FOIA request for the submitter's potentially confidential commercial information when:
(i) The submitter, in good faith, has designated the material as commercially confidential in accordance with paragraph (c) of this section; and
(ii) The FOIA request is received within 10 years of the date of submission.

(2) The written notice of receipt of an FOIA request shall either describe the potentially confidential commercial information requested, or provide copies of the records containing the information. The notice shall be mailed to the last known address of the submitter.

(3) When notice is given to a submitter pursuant to this section, NARA shall inform the requester that:
(i) The notice has been sent to the submitter;
(ii) That NARA's response to the request may be delayed beyond the limitations specified in 5 U.S.C. 552(a)(6)(A) and (B) to allow for time to notify the submitter, and to consider any response; and
(iii) That the delay may be considered a denial of access to records and the requester may seek judicial review. However, the requester shall be invited...
reasonable period of time.

A detailed statement of any objections to disclosure. The statement shall specify which information is claimed to be of a confidential commercial nature, and shall specify all grounds for withholding any of the information under the exemptions of the FOIA. If exemption (b)(4) of the FOIA is cited, the statement shall explain how the release of the information can be reasonably expected to cause substantial competitive harm to the submitter; and

(ii) Certification that the information has not been published or previously disclosed to the public.

(2) The statement provided pursuant to paragraph (d)(1) of this section shall be subject to disclosure under the FOIA.

(f) Notice of intent to disclose. (1) NARA shall consider any good faith designations of commercial confidentiality made when the information was initially submitted to NARA, and the submitter's timely objections and specific grounds for nondisclosure received in response to the notice of receipt of a request prior to determining whether to disclose the information in question.

(2) When NARA decides to disclose commercial information over the objections of a submitter, whether in response to a request to release or as the result of an appeal of a denial of access, NARA shall provide the submitter a written notice which:

(i) States the reasons why the submitter's objections were not sustained;

(ii) Describes or contains a copy of the information to be disclosed; and

(iii) Specifies a disclosure date. NARA shall inform the submitter that disclosure will be made on the specified disclosure date, unless barred by court order.

(3) NARA shall inform the requester that such notice has been given to the submitter and of the proposed disclosure date.

(4) When NARA and the submitter are in agreement concerning disclosure, disclosure shall take place as soon as possible.

(5) The notice of receipt of a request shall serve as the notice of intent to disclose when the submitter fails to respond to the initial notice within a reasonable period of time.

(g) Notice of lawsuit. NARA will promptly inform the requester and the submitter of any law suit filed by the other concerning possible disclosure.

(h) Exceptions to notice requirement. The notice requirements of this section do not apply when:

(1) NARA determines that the information should not be disclosed in accordance with one or more FOIA exemptions;

(2) The information has been published or officially made available to the public;

(3) Disclosure of the information is required by law (other than 5 U.S.C. 552); or

(4) NARA has no substantial reason to believe that disclosure would result in competitive harm.

PART 1254—AVAILABILITY OF RECORDS AND DONATED HISTORICAL MATERIALS

14. The authority citation for Part 1254 is revised as follows:


15. Section 1254.30 is revised to read as follows:

§ 1254.30 Archives.

The use of archives is subject to the restrictions prescribed by statute or Executive order or by the restrictions specified in writing in accordance with 44 U.S.C. 2108 by the agency from which the records were transferred. NARA will make available any reasonably segregable portion of a record after the restricted portion has been deleted. The restrictions are published in the “Guide to the National Archives of the United States,” and supplemented by restriction statements approved by the Archivist of the United States and set forth in Part 1256 of this chapter. The Guide is available from the Superintendent of Documents, Government Printing Office, Washington, DC 20402. The Guide may also be consulted at the NARA research facilities listed in part 1253 of this chapter.

16. A new § 1254.38 is added to read as follows:

§ 1254.38 Freedom of Information Act requests.

(a) Applicability. This section applies to Freedom of Information Act requests for unclassified and classified archives. This section does not apply to requests for FRC records or donated historical materials.

(b) Definitions.

"Potentially confidential commercial information" means records submitted to any agency by a submitter that may contain material exempt from release under 5 U.S.C. 552(b)(4) because disclosure could reasonably be expected to cause a submitter substantial competitive harm.

"Submitter" means any person or entity providing potentially confidential commercial information to an agency.

The term "submitter" includes, but is not limited to, corporations, state governments, and foreign governments.

(c) Requirements. Requests for access to archives under the FOIA shall reasonably describe the records requested, shall be made in writing to the director of the appropriate NARA component, as listed in part 1253 of this chapter or to the Assistant Archivist for the National Archives, and shall clearly indicate that the request is being made under the Act.

(d) Processing time. NARA shall inform requesters of the availability of records within 10 workdays after receiving a request, except when precluded from doing so by conditions as described in 5 U.S.C. 552a(e)(3), or by the need to consult with a submitter, as set forth in § 1254.39.

(e) Denial of access. Denials under the FOIA of access to archives are made by the appropriate director of a Presidential library or the Assistant Archivist for the National Archives, who, within 10 workdays, shall notify the requester of the reasons for denial and of the procedures for appeal.

(1) Appeals. (1) A requester whose request is denied in whole or in part may appeal that decision within NARA.

The requestor shall direct a written appeal to the Deputy Archivist of the United States (ND), Washington, DC 20408.

(2) The Deputy Archivist must receive an appeal no later than 35 calendar days after the date of the NARA letter of denial to be considered timely.

(3) The appeal letter shall include the words "Freedom of Information Act Appeal” on both the letter and the envelope, and the requester shall enclose with the appeal letter a copy of the initial request and the denial.

(4) In the appeal letter the requester shall briefly state the reasons why NARA should release the records.

(5) The Deputy Archivist shall consult with the agency specifying the request, when appropriate, and make a determination within 20 workdays after the date of receipt by the Deputy Archivist of the appeal. If an extension is required, the Deputy Archivist shall notify the requester within 20 workdays from receipt of the request. Time extensions shall not exceed 10 workdays in the aggregate either solely
in the initial stage or solely in the appellate stage, or divided between them.

(6) If the determination is adverse in whole or in part, the Deputy Archivist shall notify the requester of the right to judicial review.

(7) Denials and appeals of denial of access to information under the FOIA exemption 552(b)(1), national security information, are processed in accordance with the provisions of § 1254.40.

17. A new § 1254.39 is added to read as follows:

§ 1254.39 Requests for commercial information.

(a) Notice of receipt of request. (1) Submitters of potentially confidential commercial information shall be given written notice and an opportunity to object to release when a request is received for information the submitter designated in accordance with the recipient agency’s regulations as commercial confidential, and the request is received less than 10 years after submission of the information.

(2) When the request is for information from a single or small number of submitters, the notice shall be sent to the submitter’s last known address.

(3) When the request is for information from a large number of submitters, notice shall be provided by publication of a notice in the Federal Register.

(4) The notice shall either describe the potentially commercially confidential information requested (if the notice is published in the Federal Register), or provide copies of the records containing the information.

(b) NARA shall inform the requester that:

(i) Notice of receipt of a request has been provided to the submitter;

(ii) The response to the request may be delayed beyond the limitations specified in 5 U.S.C. 552(a)(6) (A) and (B) to allow for time to provide notice to the submitter, and to consider any response; and

(iii) The delay may be considered as a denial of access to records that the requester may seek judicial review. However, the requester shall be invited to agree to a voluntary extension of time so that NARA may consider any claims of commercial confidentiality provided by the submitter.

(b) Opportunity to object to disclosure. (1) Through the notice described in paragraph (a)(1) of this section, NARA shall afford a submitter a reasonable period of time within which to provide NARA with a detailed statement of any objections to disclosure. A reasonable extension of the time limit for response may be granted when appropriate.

(2) The statement shall specify which information is claimed to be of a confidential commercial nature, and shall specify all grounds for withholding any of the information under the exemptions of the FOIA. If exemption (b)(4) of the FOIA is cited, the statement shall explain how the release of the information can be reasonably expected to cause substantial competitive harm to the submitter.

(c) Notice of intent to disclose. NARA shall carefully consider any good faith designations of commercial confidentiality made when the information was initially submitted to an agency, and any timely objections submitted in response to the NARA notice of receipt of a request to release. Except as provided for in paragraph (e) of this section, when NARA determines to disclose, whether in response to a request to release or as the result of an appeal of a denial of access, notice shall be sent to the submitter that:

(1) States why the initial designation or the objections were not sustained;

(2) Describes or encloses a copy of the information proposed for disclosed;

(3) Specifies a date on which it is proposed to release the information unless barred by court order. The requester shall be simultaneously informed of the disclosure date.

(d) Notice of intent to disclose. NARA will promptly inform the requester and submitter of any law suit filed by the other concerning possible disclosure.

(e) Exception to notice requirements. The notice requirements of this section do not apply when:

(1) NARA determines that the information should not be disclosed in accordance with one or more FOIA exemptions;

(2) The information has been published or officially made available to the public;

(3) Disclosure of the information is required by law (other than 5 U.S.C. 552); or

(4) More than 10 years have passed since the date of submission, regardless of any designation as commercially confidential made by the submitter in accordance with the recipient agency’s regulations, and NARA has no substantial reason to believe that disclosure would result in competitive harm.

(5) The submitter failed to respond to notice of receipt of request, in which case this initial notice shall serve as the notice of intent to disclose.

§ 1254.44 [Amended]

18. Section 1254.44(a) is amended by removing “§ 1254.30(b)” and inserting in its place “§ 1254.38”.

Dated: July 18, 1989.

Claudine J. Weiner, Acting Archivist of the United States.

[FR Doc. 89-18290 Filed 8-3-89; 8:45 am]

BILLING CODE 7515-01

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 21

RIN 2900-AC46

Authorization of an Initial Evaluation Under the Vocational Rehabilitation Program for Veterans Not Residing in a State

AGENCY: Department of Veterans Affairs.

ACTION: Final regulatory amendment.

SUMMARY: The Department of Veterans Affairs (VA) is amending certain provisions in order to increase flexibility in arranging an initial evaluation for veterans requesting assistance under the vocational rehabilitation program when the veteran does not reside in a State. Under current provisions a veteran is required to travel to a VA regional office in a State to be provided an initial evaluation. This has created difficulties in arranging for and carrying out initial evaluations for veterans residing outside a State, particularly for veterans residing overseas. The intended effect of these changes is to provide initial evaluations more conveniently for veterans not residing in a State and effect cost savings in the payment of beneficiary travel.

EFFECTIVE DATES: These amendments are effective August 4, 1989.


SUPPLEMENTARY INFORMATION: VA is required to provide an initial evaluation for each service-disabled veteran requesting assistance under the
vocational rehabilitation program. The purposes of the initial evaluation are to determine the veteran's eligibility and entitlement for assistance and to provide a basis for planning a rehabilitation program for those veterans found eligible and entitled to these services. The initial evaluation is provided by counseling psychologists located in the Vocational Rehabilitation and Counseling (VR&C) Division of the VA regional office. The veteran is expected to travel to the regional office in the area in which he or she resides to receive an initial evaluation and VA pays necessary travel costs.

The provisions of 38 CFR 21.100 require that counseling services needed to carry out an initial evaluation and other counseling services are applicable to both requests for assistance filed by veterans residing in a State and those not residing in a State. Therefore veterans not residing in a State who are requesting assistance under the vocational rehabilitation program are also required to report to a VA regional office in order to receive an initial evaluation. There are difficulties for both the veteran and the government in providing initial evaluations for veterans not residing in a State, particularly for veterans living overseas. VA, to protect the interest of both the veteran and the government, is proposing to amend the provisions of 38 CFR 21.100 to allow VA program management greater flexibility in selecting the method by which these services are provided for veterans not residing in a State.

VA finds that good cause exists for making the amended regulation final without prior publication for public notice and comment, and for making these amendments effective on the date of publication. The changes contained in these amendments concern internal VA management rules by which VA arranges for counseling services, and the method under which VA arranges to provide these services for veterans not residing in a State. These changes do not apply to veterans residing in a State, and the amendments do not affect the type or level of services provided to veterans residing in a State. These changes do not meet the criteria for major rules as contained in Executive Order 12291. The change will not have a $100 million annual effect on the economy, will not cause a major increase in costs or prices, and will not have any other significant adverse effect on the economy.

Since a notice of proposed rulemaking is unnecessary and will not be published the Regulatory Flexibility Act (RFA) does not apply to this change. In any case, the Secretary of Veterans Affairs hereby certifies that these amendments will not have a significant economic impact on a substantial number of small entities as they are defined in the RFA, 5 U.S.C. 601-612. Pursuant to 5 U.S.C. 605(b), these amendments are therefore exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604. The reason for this certification is that the changes simply concern the method by which VA arranges to provide counseling and evaluation services to a small number of veterans who do not reside in a State. Thus, no regulatory burdens are imposed on small entities by these changes.

The Catalog of Federal Domestic Assistance Number is 64.116.

List of Subjects in 38 CFR Part 21
Civil rights, Claims, Education, Grant programs, Loan programs, Reporting and recordkeeping requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: July 6, 1989.

Edward J. Derwinski,
Secretary of Veterans Affairs.

38 CFR Part 21, Vocational Rehabilitation and Education, is amended as follows:

PART 21—[AMENDED]

1. In §21.100, paragraph (d) is revised and paragraph (e) is added to read as follows:

§21.100 Counseling.

(d) Limitations. (1) If a veteran resides within a State, counseling services necessary to carry out the initial evaluation and development of a rehabilitation plan or a program of employment services will be furnished by counseling psychologists in the Vocational Rehabilitation and Counseling (VR&C) Division;

(2) If a veteran does not reside in a State the counseling services necessary to carry out an initial evaluation may be accomplished in the same manner as for a veteran residing in a State or through other arrangements when deemed appropriate by the VR&C Division.

These alternative arrangements include, but are not limited to:

(i) Use of counseling centers or individual qualified professionals under contract to VA; and

(ii) Professional staff of other Federal agencies located in the area in which the veteran resides.

(3) Alternative arrangements to provide counseling are subject to the following requirements:

(i) All arrangements must be consistent with the provisions of paragraph (c) of this section regarding utilization of professionally qualified persons to provide counseling services during the initial evaluation;

(ii) All determinations of eligibility, entitlement and the development of a rehabilitation plan will continue to be made by counseling psychologists in the VR&C Division.

(4) If VR&C determines that the evidence of record is insufficient to carry out an initial evaluation in a case in which alternative arrangements were used, VA staff may authorize the veteran to travel to a VA facility to complete the evaluation.

(Authority: 38 U.S.C. 1515)

(e) Definition. For the purposes of this section, the term "State" means each of the several States, the District of Columbia, and the Commonwealth of Puerto Rico.

(Authority: 38 U.S.C. 101)

[FR Doc. 89-18227 Filed 8-3-89; 8:45 am]

BILLING CODE 8320-01-M

POSTAL SERVICE

39 CFR Part 111

Exclusion of "Plus" Issues from Second-Class Mail

AGENCY: Postal Service.

ACTION: Final rule.


FOR FURTHER INFORMATION CONTACT: Grayson M. Poats, (202) 388-2981.

SUPPLEMENTARY INFORMATION: On June 17, 1988, pursuant to 39 U.S.C. 3623, the United States Postal Service filed a request with the Postal Rate Commission for a change in section 200.0123 of the Domestic Mail Classification Schedule concerning the
mailing of "Plus" issues of second-class publications. Pursuant to 39 U.S.C. 3641(e), the Postal Service implemented the proposed classification change, on a temporary basis, on October 9, 1989. At the same time, after notice-and-comment rulemaking, the Postal Service added an implementing regulation to the Domestic Mail Manual, 53 FR 38006 (September 29, 1988). This implementing regulation, Domestic Mail Manual section 423.227, subsequently renumbered 428.227 incident to a complete revision of chapter 4 of the Domestic Mail Manual, 54 FR 9210 (March 6, 1989), reads as follows:

428.227 An "issue" of a newspaper or other periodical also will be deemed to be a separate publication, for postal purposes, and must independently meet the applicable second-class eligibility qualifications in 422.2 through 422.4 and 423, when the following conditions exist:

a. The issue is published on a day different from a regular issue of the same publication, but more frequently than once each month, and
b. At least 10 percent of the total number of copies of the issue is distributed on a regular basis, to recipients who do not subscribe to it or request it, and
c. The number of copies of the issue distributed to nonsubscribers or nonrequesters is more than twice the number of copies of any other regular issue distributed to nonsubscribers or nonrequesters during the same period.

Note: See 423.141, 427.11 for requirements for filing certification forms to establish eligibility of an issue under this section.

As noticed elsewhere in this issue, the temporary classification change became ineffective on July 23, 1989, by operation of law. Therefore, Domestic Mail Manual section 428.227 also became ineffective on that date.

Fred Eggleston,
Assistant General Counsel, Legislative Division.

[FR Doc. 89-18304 Filed 8-3-89; 8:45 am]
BILLING CODE 7710-12-M

ENVIRONMENTAL PROTECTION AGENCY
40 CFR Part 52
[FRL-3624-4]

Approval and Promulgation of Implementation Plans; Illinois
AGENCY: United States Environmental Protection Agency (USEPA).
ACTION: Final rulemaking.
SUMMARY: In a November 18, 1988, (53 FR 46693) notice of proposed rulemaking, USEPA proposed to disapprove a site-specific revision to the Illinois State Implementation Plan (SIP) for ozone. The revision would provide for an alternative compliance plan schedule (compliance data extension) for the Printpack, Incorporated (Printpack) paper coating operation, which is located in Elgin, Illinois.

In today's Final Rulemaking, USEPA is disapproving the SIP revision for Printpack because the requested compliance date extension is inconsistent with relevant portions of the Clean Air Act and USEPA's policy.

EFFECTIVE DATE: This final rulemaking becomes effective on September 5, 1989.

ADDRESSES: Copies of the SIP revision are available at the following addresses for review: (It is recommended that you telephone Uylaine E. McMahan, at (312) 886-6031, before visiting the Region V office.)

U.S. Environmental Protection Agency, Region V, Air and Radiation Branch (SAR-26), 239 South Dearborn Street, Chicago, Illinois 60604.

Illinois Environmental Protection Agency, Division of Air Pollution Control, 2200 Churchill Road, Springfield, Illinois 62706.

A copy of today's revision to the Illinois SIP is available for inspection at:

Environmental Protection Agency, Public Information Reference Unit, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT:

SUPPLEMENTARY INFORMATION:
On November 21, 1983, the Illinois Environmental Protection Agency (IEPA) submitted a proposed revision to its ozone SIP for Printpack. This SIP revision is in the form of a February 5, 1987, Opinion and Order of the Illinois Pollution Control Board (IPCB) PB 80-148. It grants a variance from the existing SIP requirements until December 31, 1985, and provides a legally enforceable compliance schedule.

II. SIP Deficiency—Kane County

In a May 26, 1988, SIP call letter, the USEPA notified the Governor of Illinois, that the ozone SIP is substantially inadequate to achieve the ozone national ambient air quality standards (NAAQS) in the Chicago-Cary-Lake County Consolidated Metropolitan Statistical Area, which includes Kane County. To date, the State of Illinois does not have an approved 1982 ozone SIP (See the October 17, 1988, Federal Register (53 FR 40415)) for Kane County.

III. Compliance Date Extension Policy

USEPA's August 7, 1988, memorandum, "Policy on SIP Revisions Requesting Compliance Date Extensions for VOC Sources", from J. Craig Potter, then Assistant Administrator for Air and Radiation, states that a compliance date extension must be as expeditious as practicable in order to be approved.

In addition, this policy requires the State to demonstrate that the extension will not interfere with the timely attainment and maintenance of the ozone standard and, where relevant, "Reasonable Further Progress" (RFP) towards timely attainment.

IV. Proposed SIP Revision

In a November 16, 1988, (53 FR 46693) notice of proposed rulemaking, USEPA proposed to disapprove the Printpack compliance date extension as a revision to the Illinois SIP for ozone. USEPA found that the State had not shown that the requested compliance date was as expeditious as practicable nor had the State adequately demonstrated that the extension would not interfere with timely attainment of the ozone standard and RFP in the interim. During the public comment period USEPA received no comments.

V. Conclusion

USEPA is disapproving this SIP revision for Printpack because its compliance date extension is inconsistent with relevant portions of the Clean Air Act and USEPA's policy. Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 3, 1989. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

This action has been classified as a Table 2 action by the Regional...
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Administrator under the procedures published in the Federal Register on January 19, 1989, (54 FR 2214–2228). On January 6, 1989, the Office of Management and Budget waived Table 2 and 3 SIP revisions [54 FR 2222] from the requirements of section 3 of Executive Order 12291 for a period of two years.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Ozone, Carbon monoxide, Hydrocarbon, Intergovernmental offices.

Dated: July 20, 1989.

Frank M. Covington, Acting Regional Administrator.

[FR Doc. 89-18275 Filed 8-3-89; 8:45 am]

40 CFR Part 52

[FRL-3624-8]

Approval and Promulgation of Implementation Plans; Illinois, Indiana, Michigan, Minnesota, Ohio and Wisconsin

AGENCY: U.S. Environmental Protection Agency (USEPA).

ACTION: Notice of final rulemaking.

SUMMARY: USEPA is approving declarations by Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin that recent revisions to USEPA's stack height regulations do not necessitate revisions to the State Implementation Plans (SIPs) for certain sources in these States. Under section 487 of the Clean Air Act, each State was required to review its SIP for consistency with the stack height regulations within 9 months of final promulgation. The intent of this action is to formally document that these States have satisfied this obligation for certain sources. (For other sources, as listed in Tables 1 and 2 of this notice, the States are submitting new plans or the sources are affected by a court remand of three elements in the stack height rules. USEPA will rulemake on plans for these sources in future notices.)

This action will be effective in 60 days unless notice is received within 30 days that someone wishes to submit adverse or critical comments.

DATE: This action is effective October 3, 1989 unless notice is received by September 3, 1989 that someone wishes to submit adverse or critical comments. If the effective date is delayed, timely notice will be published in the Federal Register.

ADDRESSES: Copies of the States' submittals and other materials related to this rulemaking are available for inspection by the public during normal business hours at the following addresses: (It is recommended that you telephone Robert Miller, at (312) 353–0396, before visiting the Region V Office.)

U.S. Environmental Protection Agency, Region V, Air and Radiation Branch (5AR–26), 230 South Dearborn Street, Chicago, IL 60604.

Michigan Environmental Protection Agency, Division of Air Pollution Control 2200 Churchill Road, Springfield, IL 62706.

Indiana Department of Environmental Management, Office of Air Management, 105 South Meridian Street, P.O. Box 6015, Indianapolis, IN 46206–6015.

Michigan Department of Natural Resources, Air Quality Division, 7150 Harris Drive, Lansing, MI 48909.

Minnesota Pollution Control Agency, Division of Air Quality, 520 Lafayette Road, St. Paul, MN 55155.

Ohio Environmental Protection Agency, Office of Air Pollution Control, P.O. Box 1049, 1800 Water Mark Drive, Columbus, OH 43266.

Wisconsin Department of Natural Resources, Bureau of Air Management, P.O. Box 7221, 101 South Webster, Madison, WI 53707.

Adverse or critical comments on this rule should be addressed to: (Please submit an original and three copies if possible.)

Gary Gulezian, Chief, Regulatory Analysis Section, Air and Radiation Branch (5AR–26), U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, IL 60604.

FOR FURTHER INFORMATION CONTACT:

Robert Miller, (312) 353–0396.

SUPPLEMENTARY INFORMATION:

I. Background

On February 8, 1982 (47 FR 5864), USEPA promulgated final regulations limiting stack height credits and other dispersion techniques as required by Section 123 of the Clean Air Act (the Act). These regulations were challenged in the U.S. Court of Appeals by the Natural Resources Defense Council, Inc., the National Resources Defense Council, Inc., and the Commonwealth of Pennsylvania in Sierra Club v. EPA, 719 F.2d 436 (D.C. Cir. 1983). On October 11, 1983, the court issued its decision ordering USEPA to reconsider portions of the stack height regulations, reversing certain portions and upholding other portions.

On February 28, 1984, the electric power industry filed a petition for a rule of certiorari with the U.S. Supreme Court. On July 2, 1984, the Supreme Court denied the petition (104 S.Ct. 3571), and on July 18, 1984, the Court of Appeals' mandate was formally issued, implementing the court's decision and requiring USEPA to promulgate revisions to the stack height regulations within six months. The promulgation deadline was ultimately extended to June 27, 1985.

Revisions to the stack height regulations were proposed on November 9, 1984 (49 FR 47078), and finalized on July 8, 1985 (50 FR 27892). The revisions redefine a number of specific terms including "excessive concentrations," "dispersion techniques," "nearby," and other important concepts, and modified some of the bases for determining good engineering practice (GEP) stack height. The stack height regulations were challenged in NRDC v. Thomas, 838 F.2d 1224 (D.C. Cir. 1988). On January 22, 1988, the U.S. Court of Appeals for the D.C. Circuit issued its decision affirming the regulations in large part, but remanding three provisions to the EPA for reconsideration. These are:

1. Grandfathering pre-October 11, 1983
   within-formula stack height increases from demonstration requirements [40 CFR 51.100 (kk)(2)];

2. Dispersion credit for sources orginally designed and constructed with merged or multi-flue stacks [40 CFR 51.100 (hh)(2)(ii)(A)]; and

3. Grandfathering pre-1979 use of the refined H + 1.5L formula [40 CFR 51.100 (ii)(2)].

Pursuant to section 406(d)(2) of the Act, all States were required to (1) review and revise, as necessary, their State Implementation Plans (SIPs) to include provisions that limit stack height credits and dispersion techniques in accordance with the revised regulations, and (2) review all existing emission limitations to determine whether any of these limitations has been affected by stack height credits above GEP or any other dispersion techniques. For any limitations so affected, States were to prepare revised limitations consistent with their revised SIPs. All SIP revisions and revised emission limits were to be submitted to USEPA within nine months of promulgation, as required by section 406. Subsequently, USEPA issued detailed guidance on the performance of the required reviews.

This notice evaluates the reviews performed by Illinois, Indiana, Michigan, Minnesota, Ohio and Wisconsin. The Illinois review was submitted on April 8, 1988, July 17, 1988, May 21, 1988, June 17, 1987, and October 27, 1987; the Indiana
review on April 3, 1986, May 27, 1986, September 30, 1986, January 26, 1987, and March 12, 1987; the Michigan review on April 11, 1986, January 23, 1987, April 22, 1987, and December 30, 1987; the Minnesota review on April 18, 1986, July 16, 1986, October 1, 1986, January 14, 1987, and September 25, 1987; the Ohio review on June 30, 1986, July 3, 1986, July 21, 1986, October 2, 1986, December 18, 1986, July 15, 1987, and December 28, 1987; and the Wisconsin review on November 6, 1985. Major pieces of documentation relied on by each State are as follows: Illinois (State files, and individual source submittals), Michigan (District field staff reports, and source permits), Indiana (State files, individual source submittals, and State reporting form) Minnesota (State survey form), Ohio (State Questionnaire, Federal Power Commission Form 67, State files, and individual source submittals). The notice first evaluates the extent to which each State has complied with the requirement to review its SIP for consistency with the new regulations. Then, the requirement to review emission limits is evaluated. (Sources affected by the recent Court remand will not be acted on here.)

II. SIP Review

Each State was required to review its existing SIP to ensure that State provisions limiting stack height credits and techniques are consistent with USEPA's revised regulations. The results of each review are described below.

• Illinois—On September 22, 1980 [45 FR 62806], USEPA approved a provision as part of Illinois' SIP entitled "Dispersion Enhancement Techniques." This proviso dealt with USEPA's stack height regulations; therefore, USEPA has determined that no additional revision to the SIP is necessary. In its April 8, 1986, and May 21, 1987, submittals, Illinois committed that all future sources which are subject to the Act's New Source Review (NSR) and Prevention of Significant Deterioration (PSD) provisions will comply with the provisions of USEPA's stack height regulations. These commitments apply to all new sources and modifications in Illinois as required in 40 CFR 51.104 as well as existing sources as required in 40 CFR 51.118. This means that these commitments apply to all sources that were or are constructed, reconstructed or modified subsequent to December 31, 1970. USEPA is approving these commitments.

• Indiana—Indiana has no federally approved stack height rules. However, on September 30, 1986, and on March 12, 1987, Indiana committed to review all NSR and PSD permit applications and revisions to the SIP to ensure conformance with USEPA's stack height regulations and implementation guidance. These commitments apply to all new sources and modifications in Indiana as required in 40 CFR 51.164 as well as existing sources as required in 40 CFR 51.118. This means that these commitments apply to all sources that were or are constructed, reconstructed or modified subsequent to December 31, 1970. USEPA has reviewed these commitments and has determined that they are consistent with USEPA's requirements for GEP stack height and dispersion techniques as revised on July 8, 1985. USEPA is approving these commitments.

• Michigan—Michigan has no federally approved stack height rules. However, on April 11, 1986, Michigan stated its intention to develop and submit a stack height rule. This rule is not required, because the State also committed, in its April 11, 1986, submittal and a submittal of April 22, 1987, to comply with USEPA's stack height regulations in its review of sources subject to NSR and PSD. These commitments apply to all new sources and modifications in Michigan as required in 40 CFR 51.104 as well as existing sources as required in 40 CFR 51.118. This means that these commitments apply to all sources that were or are constructed, reconstructed or modified subsequent to December 31, 1970. USEPA is approving these commitments.

• Minnesota—Minnesota has no federally approved stack height rules. However, on October 1, 1986, and on January 14, 1987, Minnesota committed that it would conform with USEPA's stack height regulations in issuing permits for all new or modified sources. Furthermore, the State noted that it would rely on USEPA's interpretations in cases where the regulations are not clear. These commitments apply to all new sources and modifications in Minnesota as required in 40 CFR 51.104 as well as existing sources as required in 40 CFR 51.118. This means that these commitments apply to all sources that were or are constructed, reconstructed or modified subsequent to December 31, 1970. USEPA is approving these commitments.

• Ohio—Ohio submitted a stack height regulation to USEPA. This regulation has been addressed in a separate rulemaking notice. (Note, on August 25, 1986, USEPA approved in final Ohio's rule—53 FR 32392.) On July 3, 1986, the State committed to review new sources subject to NSR and PSD to ensure compliance with USEPA's stack height regulations. This commitment applies to all new sources and modifications in Ohio as required in 40 CFR 51.164 as well as existing sources as required in 40 CFR 51.118. This means that this commitment applies to all sources that were or are constructed, reconstructed or modified subsequent to December 31, 1970. USEPA is approving this commitment.

• Wisconsin—Wisconsin has no federally approved stack height rules. However, on November 6, 1985, the State committed to conform with USEPA's stack height regulations in its review of new and modified sources subject to NSR and PSD. This commitment applies to all new sources and modifications in Wisconsin as required in 40 CFR 51.104 as well as existing sources as required in 40 CFR 51.118. This means that this commitment applies to all sources that were or are constructed, reconstructed or modified subsequent to December 31, 1970. USEPA is approving this commitment.

III. Review of Emission Limitations

Each State was required to review existing SIP emission limitations to determine whether any of these limitations were affected by stack height credits above GEP or by any other dispersion technique. States were asked...
to develop an inventory of sources with stack heights greater than 65 meters (m), and sources whose allowable sulfur dioxide (SO₂) emissions exceed 5,000 tons per year (TPY). These cutoffs correspond to the de minimis stack height exemption and the de minimis SO₂ emissions exemption provided in USEPA's regulations. At a December 5, 1985, workshop, USEPA Region V provided to the States detailed guidance memos and a workshop notebook on performing this review. The notebook contained sample forms for documenting the review for each source. The results of USEPA's review of each State are described below.

It should be noted that the modeling techniques used by the States in the attainment demonstrations are based on the modeling guidelines in place at the time the analyses were performed (i.e., either the "Guideline on Air Quality Models", April 1978, and "Regional Workshops on Air Quality Modeling: A Summary Report", April 1981, or "Guideline on Air Quality Models (Revised)", July 1986). Since that time, USEPA has promulgated revisions to its modeling guidelines (i.e., July 1986 revision and July 1987 "Supplement A to the Guideline on Air Quality Models (Revised)"). Because the modeling was completed and submitted to USEPA prior to the latest revisions, USEPA accepts the analyses for the purposes of today's rulemaking. Summaries of the modeling analyses are available for inspection at the regional office. USEPA is not acting on the sources identified in Table 2 because they currently receive credit under one of the provisions remedied to the USEPA in NRDC v. Thomas, 838 F.2d 1224 (D.C. Cir. 1988). The States and USEPA will review these sources for compliance with any revised requirements when the USEPA completes rulemaking to respond to the NRDC remand.

**Illinois**

The review of source emission limits showed that no limitations were affected by stack height credits above GEP or by any other dispersion techniques. Two sources (EEL-Joppa, Com Ed-Collins) are affected by the recent court remand. Documentation was submitted to support the State's findings and will be included in the SIP as additional material. Further details on the review are provided below:

**Stack Height**—Illinois identified 145 stacks greater than 65m. The State determined based on correspondence, field operations reports, memos, and company reports contained in the State permit files that 124 stacks were in existence before December 31, 1970, and are thus "grandfathered". Illinois also determined that:

1. Nine stacks are less than, or equal to, the GEP formula height (i.e., H + 1.5L) or, if the stack was in existence on or before January 12, 1979 and the source can show reliance, 2.5H). (Note: reliance on the 2.5H formula was shown for five stacks, given that the actual stack height does not exceed 2.5H.)

2. One stack has an existing emission limit based on modeling assuming the grandfathered stack height (Kincaid).

3. Four stacks were never modeled before (LTV-Chicago, CIPS-Mederosia, CWLP-Dallman 3, and Shell Oil-Wood River) (Note, per USEPA's guidance memo dated February 11, 1986, entitled "Clarification of Existing Guidance on Dispersion Modeling Requirements for Plants with Tall Stacks' and Other Prohibited Dispersion Techniques", only emission limits for sources which have been included in some type of dispersion analysis need to be reviewed now).

4. Two stacks serve source(s) that do not emit SO₂. The remaining stacks (three at EEL-Joppa and two at Com Ed-Collins) are affected by the recent Court remand (i.e., Joppa: grandfathering pre-1983 within formula stack height increases from demonstration requirements (40 CFR 51.100(ii)(2)), and Collins: original design and construction exemption (40 CFR 51.100(hh)(ii)(A) for merged stacks.)

**Dispersion Techniques**—Illinois identified 84 facilities with allowable SO₂ emissions greater than 5,000 TPY. The only dispersion technique identified by Illinois was stack merging (after 1970). Illinois determined that:

1. Two facilities implemented stack merging by December 31, 1970 (CIPS Coffeen and CWLP Lakeport).

2. One facility demonstrated that merging was not significantly motivated by an intent to gain emissions credit for greater dispersion (Com Ed-Kincaid).

3. Four facilities were never modeled before (CIPS Mederosia, Shell Oil, Chanute Air Force Base, U.S. Industrial Chemicals).

4. Forty-four facilities have no record of merged stacks since 1970 (i.e., sources and stacks or number of stacks per units were, in existence prior to 1971), and

5. Eleven facilities have only one stack per unit. The remaining sources (Com Ed-Collins and EEL-Joppa) are affected by the recent Court remand, as noted above.

**Action**—USEPA approves Illinois' determination that no emission limitations need to be revised at this time. USEPA is approving the negative declarations, except for the sources shown in Table 2. USEPA is also hereby notifying the State that if the six facilities which were never modeled are included in any dispersion analysis in the future, it will be necessary to address the stack height issues at that time.

**Indiana**

On January 19, 1986, USEPA approved the Indiana SO₂ SIP for 77 counties. The State's review of source emission limits showed that no limitations were affected by stack height credits above GEP or any other dispersion techniques for sources in these 77 counties. Three sources (AE Staley, NIPSCo Schafer, and IMEC Rockport) are affected by the recent Court remand. (Note: USEPA has dealt with the stack height issues for sources in the remaining 15 counties (see Table 1) in separate rulemaking actions on the emission limits for these counties.) Documentation was submitted on forms suggested by USEPA. Further details on the review are provided below:

**Stack Height**—Indiana identified 22 stacks greater than 65m. The State determined based on information contained in the State construction permit log that 12 stacks were in existence before December 31, 1970, and are thus "grandfathered". Indiana also determined that two stacks are less than, or equal to, the applicable GEP formula height (i.e., H + 1.5L).

For one stack, Indiana performed a reference dispersion modeling analysis (New Energy Co. of Indiana) at the credible GEP height. This analysis demonstrated attainment of the SO₂ NAAQS at the current emission limitation and creditable GEP height. The remaining seven stacks are affected by the recent Court remand (i.e., IMEC-Rockport, both grandfathering for the refined GEP formula height [40 CFR 51.100(ii)(2)], and the original design and construction exemption [40 CFR 51.100(hh)(ii)(A)] for merged stacks; AE Staley, original design and construction exemption, and NIPSCo-Schafer, original design and construction exemption).

**Dispersion Techniques**—Indiana identified 16 facilities with allowable SO₂ emissions greater than 5,000 TPY. The only dispersion technique discovered by Indiana was stack merging (after 1970). Indiana determined that:

1. Six facilities have no record of merged stacks since 1970 (i.e., sources and stacks in existence prior to 1971), and

2. Seven facilities have only one stack per unit.

The remaining three sources are affected by the court remand as noted.
above (i.e., IMEC Rockport, AE Staley, NIPSCO-Schahler).

Action—USEPA approves Indiana's determination that no emission limitations in 77 counties need to be revised at this time. USEPA approves the negative declaration for these counties, except for those sources shown in Table 2.

**Michigan**

The review of source emission limits showed that no limitations were affected by stack height credits above GEP or any other dispersion techniques. Seven sources (Dow-Midland, CP-Cobb, UP Presque Isle, Marquette BWL-Shiras, LBWLP-Eckert/Moore's Park, Grand Haven-Sims, and National Gypsum-Cement Division) are affected by the recent Court remand. Further details on the review are provided below:

**Stack Height—**Michigan identified 59 stacks greater than 65m. The State determined based on District Field Staff Reports and Sources-specific Permits that 33 stacks were in existence before December 31, 1970, and are thus "grandfathered". Michigan also determined that eight stacks are less than, or equal to, the GEP formula height (i.e., H+1.5L or, if the stack was in existence on or before January 12, 1979 and the source can show reliance, 2.5H). (Note, reliance on the 2.5H formula was shown for seven stacks, given that the actual stack height does not exceed 2.5H.)

Michigan performed a reference dispersion modeling analysis for three stacks (one at Michigan State University, and two at Detroit Edison—Belle River) at the creditable GEP height. These analyses demonstrated attainment of the SO\textsubscript{2} NAAQS at the current emission limitation and creditable GEP height.

The remaining 15 stacks are affected by the Court remand (i.e., National Gypsum-Cement Division, Grand Haven-Sims, CP-Cobb, Dow-Midland, UP Presque Isle, Marquette BWL-Shiras, LBWLP-Eckert/Moore’s Park, Grand Haven-Sims, National Gypsum-Cement Division) are affected by the recent Court remand. Documentation was submitted to support the State's findings and will be included in the SIP as additional material. Further details on the review are provided below:

**Stock Height—**Michigan identified 37 stacks greater than 65m. (Four stacks at Koch and Ashland are not included in this notice, see Table 1.) The State determined based on its GEP survey form that 21 stacks were in existence before December 31, 1970; and are, thus, "grandfathered" (including the stack for Boiler 8 at NSP Riverside which was not in operation but for which NSP had made a contractual commitment). Michigan also determined that five stacks are less than, or equal to, the GEP formula height (i.e., H+1.5L or, if the stack was in existence on or before January 12, 1979, and the source can show reliance, 2.5H). (Note, reliance on the 2.5H formula was shown for one stack given that the actual stack height does not exceed 2.5H.)

Michigan performed a reference dispersion modeling analysis for one stack (University of Minnesota—Southeast Steam Plant) at the creditable GEP height. These analyses demonstrated attainment of the SO\textsubscript{2} NAAQS at the current emission limitation and creditable GEP height.

The remaining six stacks are affected by the Court remand (i.e., NSP-Black Dog, NSP-High Bridge, MB-Boswell; grandfathering pre-1983 within formula stack height increases from demonstration requirements [40 CFR 51.100(a)(2)] and UP-Presque Isle; original design and construction exemption [40 CFR 51.100(hh)(2)(i)(A)] for merged stacks.)

**Dispersion Technique—**Michigan identified 35 facilities with allowable SO\textsubscript{2} emissions greater than 5,000 TPY. The only dispersion technique discovered by Michigan was stack merging (after 1970). Michigan determined that:

1. One facility implemented stack merging prior to December 31, 1970.
2. Nineteen facilities have no record of merged stacks since 1970 (i.e., sources and stacks in existence prior to 1971), and
3. Four facilities have only one stack per unit.

The remaining six facilities (National Gypsum-Cement Division, CP-Cobb, Dow-Midland, UP-Presque Isle, Marquette BWL-Shiras, and LBWLP-Eckert/Moore’s Park) are affected by the Court remand, as noted above.

**Action—**USEPA approves Michigan's determination that no emission limitations need to be revised at this time. USEPA is approving the negative declarations, except for those sources shown in Table 2.

**Minnesota**

The review of source emission limits showed that no limitations (with the possible exception of two sources) were affected by stack height credits above GEP or by any other dispersion techniques. Four sources are affected by the recent Court remand. Documentation was submitted to support the State's findings and will be included in the SIP as additional material. Further details on the review are provided below:

**Stack Height—**Minnesota identified 37 stacks greater than 65m. (Four stacks at Koch and Ashland are not included in this notice, see Table 1.) The State determined based on its GEP survey form that 21 stacks were in existence before December 31, 1970; and are, thus, "grandfathered" (including the stack for Boiler 8 at NSP Riverside which was not in operation but for which NSP had made a contractual commitment). Minnesota also determined that five stacks are less than, or equal to, the GEP formula height (i.e., H+1.5L or, if the stack was in existence on or before January 12, 1979, and the source can show reliance, 2.5H). (Note, reliance on the 2.5H formula was shown for one stack given that the actual stack height does not exceed 2.5H.)

Minnesota performed a reference dispersion modeling analysis for one stack (University of Minnesota—Southeast Steam Plant) at the creditable GEP height. These analyses demonstrated attainment of the SO\textsubscript{2} NAAQS at the current emission limitation and creditable GEP height.

The remaining six stacks are affected by the Court remand (i.e., NSP-Black Dog, NSP-High Bridge, MB-Boswell; grandfathering pre-1983 within formula stack height increases from demonstration requirements [40 CFR 51.100(a)(2)] and NSP-Sherco; original design and construction exemption [40 CFR 51.100(hh)(2)(i)(A)] for merged stacks.)

**Dispersion Technique—**Minnesota identified 35 facilities with allowable SO\textsubscript{2} emissions greater than 5,000 TPY. The only dispersion technique discovered by Minnesota was stack merging (after 1970). Minnesota determined that:

1. One facility was never modeled before.
2. Twenty five facilities have no record of merged stacks since 1970 (i.e., sources and stacks in existence prior to 1971), and
3. Three facilities have only one stack per unit.

The State performed a reference dispersion modeling analysis for one facility (Waldorf Corporation) without merged stack credit. This analysis demonstrated attainment of the SO\textsubscript{2} NAAQS at the current emission limitation and creditable GEP height.

The remaining sources are either affected by the Court remand (MP-Clay Boswell, NSP-Sherco, NSP-Black Dog, and NSP-High Bridge) as noted above or not included in this notice (Koch and Ashland).

**Action—**USEPA approves Minnesota's determination that no emission limitations, with the possible exception of Koch and Ashland, need to be revised at this time. USEPA is approving the negative declarations, except for those sources shown in Table 1 and Table 2.

**Ohio**

The review of source emission limits showed that no limitation (with the possible exception of three sources) were affected by stack height credits above GEP or by any other dispersion techniques. Ten sources are affected by the recent Court remand (see Table 2). Documentation was submitted to support the State's findings and will be included in the SIP as additional material. Further details on the review are provided below:

**Stack Height—**Ohio identified 121 stacks greater than 65m. (The 13 stacks at CEI-Eastlake, CEI-Avon Lake, CSP-Cronesville, and CGE Miami Fort are not included in this notice, see Table 1.) The State determined based on the State's Questionnaire, construction records, Federal Power Commission forms, photographs that 81 stacks were in existence before December 31, 1970, and are thus "grandfathered". Ohio also determined that:

1. Five stacks (Cargill, Mead, University of Cincinnati, Ashland Petroleum boiler Armco) are less than, or equal to, the GEP formula height (i.e., H+1.5L or, if the stack was in existence on or before January 12, 1979, and the
source can show reliance, 2.5H). (Note, reliance on the 2.5H formula was shown for eight stacks, given that the actual stack height does not exceed 2.5H, or the 2.5H height was used in the attainment demonstration.

(2) Three stacks have existing emission limits based on modeling assuming grandfathered height (OVEC-Kyger Creek, SouthPoint Ethanol, OE-Niles).

(3) One stack (Ashland Petroleum—a replacement unit) was never modeled before, and

(4) One stack serves boilers that recently shutdown (LTV-Massillon).

Ohio performed a reference dispersion modeling analysis for three stacks (LTV-Warren, Champion Papers, and Shelby Municipal) at the creditable GEP height. These analyses demonstrated attainment of the SO2 NAAQS at the current emission limitation and creditable GEP height.

The remaining 18 stacks are at sources affected by the Court remand (i.e., grandfathering pre-1983 within-formula stack height increases from demonstration requirements [40 CFR 51.100(hh)](2)); TE-BayShore, CSP-Poston, Elkem Metals, GMAD; original design and construction exemption for merged stacks [40 CFR 51.100(hh)[iii][A]]; CSP Conesville, Columbus Municipal, OP-Gavin, Sun Refining Toledo, GMAD; and grandfathering pre-1979 use of H+15L formula [40 CFR 51.100(ii)(2)]; DPL-Killen, OP-Gavin, and OP-Cardinal).

(Not, USEPA will publish a separate rulemaking action addressing the negative declaration for CEI-Eastlake and CEI-Avon Lake)

Dispersion Techniques—Ohio identified 69 facilities with allowable SO2 emissions greater than 5,000 TPY. Five sources (ALCOA, CSP-Conesville, CEI-Eastlake, CEI-Avon Lake, and CGE-Miami Fort) are not included in this notice, see Table 1. The only dispersion technique discovered by Ohio was stack merging (after 1970). Ohio determined that:

(1) Seven facilities implemented stack merging prior to December 30, 1970 (including OP-Muskimgum River and OE-Benjara).

(2) Four facilities merged stacks in conjunction with the installation of emissions control equipment and there was no increase in the emission limitation (or, if no limit existing prior to merging, no increase in actual emissions—i.e., post-merging allowable does not exceed pre-merging actual) (WPSC-Yorkville, Dover Municipal, OVEC-Kyger Creek, Martin Marietta),

(3) One facility demonstrated that merging was not significantly motivated by an intent to gain emissions credit for greater dispersion (Goodyear Plant II),

(4) Four facilities have existing emission limits based on modeling assuming no credit for merged stacks (OE-Nile, Crown Zellerbach, South Point Ethanol, Orient Correctional),

(5) One facility has shown that merging was performed in conjunction with other plant modifications which resulted in no increase in final plume rise (Champion Papers).

(6) Twenty eight facilities have no record of merged stacks since 1970 (i.e., sources and stacks in existence prior to 1971).

(7) Eight facilities have only one stack per unit,

(8) One facility has merged stacks which do not emit SO2 (Portsmouth Gaseous), and

(9) One facility recently shutdown (LTV-Massillon).

The State performed an up-to-date reference dispersion modeling analysis for one facility (Shelby Municipal) without merged stack credit. This analysis demonstrated attainment of the SO2 NAAQS at the current emission limitation and creditable GEP height.

The remaining sources are affected by the remand (i.e., TE-Bay Shore, CSP-Poston, Elkem Metals, DPL-Killen, OP-Cardinal, OP-Gavin, Sun-Toledo, Columbus Municipal) as noted above.

Action—USEPA approves Ohio’s determination that no emission limitation needs to be revised at this time, with the possible exception of Conesville, Miami Port, and ALCOA. USEPA is approving the negative declarations, except for these sources shown in Table 1 and Table 2.

Wisconsin

The review of source emission limits will be discussed in a separate rulemaking notice.
Agency, Division of Air Pollution Control, 2200 Churchill Road, Springfield, Illinois 62706.

FOR FURTHER INFORMATION CONTACT: Randolph O. Cano (SAR-20), (312) 826-6598.

SUPPLEMENTARY INFORMATION: Under section 107(d) of the Clean Air Act (Act) the Administrator of USEPA has promulgated the National Ambient Air Quality Standards (NAAQS) attainment status for each area of every State. See 43 FR 8962 (March 3, 1978) and 43 FR 45993 (October 5, 1978). Consistent with the applicable provisions of section 107(d), these area designations may be revised whenever the data warrant.

On January 27, 1983, the Illinois Environmental Protection Agency (IEPA) submitted a request for Kane and DuPage Counties to be redesignated as attaining the ozone NAAQS. This request was based on a lack of monitored ozone standard violations. USEPA’s June 12, 1984 (48 FR 46062), final rulemaking rejected the State’s request to redesignate Kane and DuPage Counties. IEPA and the Illinois State Chamber of Commerce disagreed with USEPA’s final rulemaking action and jointly petitioned for review of USEPA’s action before the Seventh Circuit of the United States Court of Appeals. In its November 4, 1985, decision, Illinois State Chamber of Commerce v. USEPA, 775 F.2d 1141 (7th Cir. 1985), the Court remanded the rulemaking to USEPA, calling for a clarification of USEPA’s ozone designation policy and the rationale for its application to the attainment status for Kane and DuPage Counties.

A May 23, 1986, technical support document (TSD) thoroughly reviewed USEPA’s ozone redesignation policy memora and available studies supporting USEPA’s views on ozone formation and transport and the assignment of ozone precursor source culpability for the purposes of ozone nonattainment designations. On December 29, 1988 (53 FR 52727), the USEPA proposed revised rulemaking on the redesignation request for Kane and DuPage Counties. This proposal summarized the discussions contained in the May 23, 1986, TSD and proposed to again disapprove the redesignation of Kane and DuPage Counties.

A number of public comments were received in response to USEPA’s proposed denial of the State’s redesignation request. These comments and USEPA’s response are summarized below.

Public Comments

Comment No. 1. USEPA has failed to comply with its mandatory duty to respond to State-submitted redesignation requests within sixty (60) days of submittal.

Response. Section 107(d) of the Act does not impose a sixty (60) day time frame for responding to a redesignation request. The commenter apparently derives the 60-day time frame from section 107(d)(2). 42 U.S.C. 7407(d)(2). The time frame for USEPA action set forth in section 107(d)(2) applies only to the “list under paragraph 1 of this subsection.” Id. The “paragraph 1” referred to deals only with the initial promulgation of attainment status designations for air quality control regions. The subsequent redesignation of those regions is addressed by section 107(d)(5), which is silent as to any deadline for USEPA action. Had Congress intended to impose the 60-day time frame on subsequent redesignations, it would have included the limit in subsection (d)(5).

This interpretation is consistent within the context of the 1977 amendments, which introduced the concept of nonattainment areas to the Act. See, generally, Chevron U.S.A. v. Natural Resources Defense Council, 467 U.S. 867, 847–848. Sections 107(d)(1) and (d)(2) were part of an expeditious schedule designed by Congress to address the perceived failures of the pre-1977 Act. The States had 120 days to initially designate each air quality control region, and USEPA had 60 days to promulgate the States’ list with whatever modifications USEPA deemed necessary. This tight time frame was essential if the States were to comply with the Act’s new requirement that all nonattainment areas submit a revised State Implementation Plan (SIP) by January 1, 1979. (See 42 U.S.C. 7502.) Once this initial planning was
completed, the need for expedited action diminished. In this context, USEPA does not have a duty to respond to a State’s redesignation request within 60 days. Moreover, even if USEPA had such a duty, the passage of 60 days since submittal of the redesignation request would not have precluded USEPA from acting now on the request.

Comment No. 2. USEPA still has not developed any coherent rationale which addresses the Court’s mandate. USEPA continues to rely on two separate theories which the court found internally inconsistent and concluded that “until USEPA has done one or the other, its action will appear to be arbitrary and rational review by this court will be impossible.” See Illinois State Chamber of Commerce v. USEPA, 775 F.2d 1141, 1147 (7th Cir. 1985).

Response. In concluding that review was impossible, the Seventh Circuit concluded that USEPA had either changed its policy without giving a reasoned analysis to support the change or if no policy change were involved, USEPA had failed to explain how disapproval was consistent with past policy. In its proper context, the language quoted by the commentor was used by the court to require USEPA to explain either why the policy was changed or how current policy was consistent with past policy. The court stated:

If it has changed its policy, it must explain how and why; if it has not, it must articulate an explanation that will account for both the earlier and most recent actions it has taken. Until it has done one or the other, its actions will appear arbitrary, and rational review in this court will be impossible.

Id. at 1147. In the December 29, 1988, Federal Register notice (53 FR 52727), USEPA explained in great detail how the proposed disapproval of the Kane and DuPage Counties redesignation request was consistent with past actions. Therefore, USEPA has complied with the Seventh Circuit’s mandate.

Comment No. 3. USEPA relies upon two mutually inconsistent nonattainment designation theories. First, USEPA states that a nonattainment area must include all of the sources that contribute to pollution in that area. Second, the USEPA states that an urban ozone nonattainment area must include the entire urbanized area. USEPA must choose between one or the other theory.

USEPA’s designation theory is internally inconsistent because no attempt was made to draw up the nonattainment boundaries for the Chicago area in such a way as to track the movement of the ozone away from the precursor sources (nor has this been done for New York, Los Angeles, Philadelphia, Detroit, San Francisco, Boston, or Washington, DC). Moreover the controls available to the USEPA from nonattainment designations could be applied to areas that suffer from but do not produce the pollution. The leverage from such controls should only be available where it will be useful.

USEPA’s designation theory is also irrational. Neither has USEPA has not identified how the attainment status of an urban area is to be changed or where the monitoring for evaluating the attainment status will take place, nor has USEPA explained why it has chosen to use urban area as defined by the census.

Response. USEPA does not rely upon two mutually exclusive designation theories, but as articulated in the December 29, 1988 notice, relies upon a single, internally consistent, nonattainment designation theory. USEPA’s approach is predicated upon the initial nonattainment designation decision being only the first step in the ozone control process; the important subsequent step is the implementation of planning and control obligations upon nonattainment areas in order to achieve attainment. Nevertheless, the nonattainment designation is crucial; it determines what sort of planning or control obligations an area will have. Obviously the control obligations implemented by the state for a nonattainment area will differ according to the area’s ozone contribution. Thus, a nonattainment area emitting substantial ozone precursors would normally have more strict controls placed upon it than a nonattainment area emitting fewer precursors. The nonattainment designation is the threshold decision to control an area’s ozone emissions in order to successfully achieve compliance with the standard.

As an initial starting point in the nonattainment designation process, all areas—urban or rural—experiencing ozone exceedances, are, by definition, nonattainment areas. If an area does not have clean air, then it probably needs controls to bring it into attainment or to prevent further violations downwind; thus, it should be labelled nonattainment.

If violations occur within an urbanized area (as defined by the Bureau of the Census), then the entire urbanized area is designated as “nonattainment.” This is done because of the simple fact that an ozone exceedance cannot generally be attributed to any particular source, and instead results from emissions from numerous stationary, mobile, and area sources. USEPA will then examine the areas immediately surrounding the urbanized area experiencing the violations. If adjacent areas have significant ozone precursor sources because of population, growth potential, or significant existing stationary sources, then those “fringe” areas will also be designated as nonattainment because of their current and/or future contribution to the ozone problem in and near the urbanized areas experiencing the violations.

Rural areas may also experience ozone violations because they are downwind of an area emitting ozone precursors or they, themselves, have significant precursor emissions. If violations have occurred in an isolated rural area due to the downwind drift of ozone from another area or locally generated ozone, then it too must be designated as nonattainment because controls may be necessary to reduce the ozone in this area or to prevent the propagation of ozone violations further downwind.

The manner in which the areas surrounding the violations of the ozone standard have been divided has been left to the individual States. Of course one State may not include another State’s territory within its nonattainment areas. Many States, like Illinois, chose to identify the nonattainment and attainment areas on a county by county basis. Because USEPA did not draw the States’ nonattainment boundaries, it could not draw them specifically to track the movement of ozone precursors. Nevertheless in designating the polluted fringe areas as nonattainment, USEPA has identified those areas that are emitting ozone precursors or experiencing violations, and thus has performed the functional equivalent of defining the boundaries to track ozone precursors. USEPA has utilized the same designation theory for all areas across the country.

In this particular case, USEPA has continued to use its nonattainment designation approach in a consistent manner. Illinois chose to break the Chicago area into counties for ozone designation purposes. Since the Chicago urbanized area experiences ozone violations, the fringe areas surrounding Chicago must also be designated as nonattainment because of their contribution to the ozone problem. Because Kane and DuPage counties qualify as fringe areas, they must retain

Footnote: Portions of DuPage County are within the Chicago and Aurora Urbanized Areas and parts...
their nonattainment designation despite the lack of monitored ozone exceedances. The downwind areas in Wisconsin experiencing violations of the ozone standard have also been labelled nonattainment. Thus while it may make sense to group all of these areas together for purposes of the designation, the designation of these areas was performed on a State-by-State basis utilizing the articulated designation theory.

The concern that leverage be applied where it is needed is precisely the reason USEPA includes fringe areas of development within the designated nonattainment area. If USEPA designated the fringe areas as attainment, then these areas could not be required to control their ozone precursors as stringently as if they had been designated as nonattainment and would continue to add to the nearby area's ozone problem. Similarly, as explained further in response to Comment Number 10, if downwind areas experiencing violations do not control their emissions, the ozone problems will be exacerbated and ozone will continue to move and form downwind. The concerns about sanctions placed upon an area, however, are planning and control, not designation issues. The designation decision is based upon whether an area is violating the standard or contributing to ozone exceedances. Any USEPA decision concerning the adequacy of a State or Federal plan to solve an area's ozone problem would be subject to a public rulemaking process (and ultimately judicial review) to insure that the controls imposed are not arbitrary or capricious.

The comments directed at how the attainment status of an area is changed and why the USEPA uses the urbanized area are addressed elsewhere in the responses. Also, the comments on why USEPA has chosen to use urban areas as defined by the Bureau of the Census is addressed in the response to Comment No. 17.

Comment No. 4. USEPA's procedure in making the proposal available for public comment is objectionable. In particular, USEPA relied upon unpublished memoranda and used only selected references on the ozone transport issue. USEPA has failed to include in the record the unpublished memoranda and the references on ozone transport. The official "record" of the Chamber case listed some documents that USEPA did not list in the December 29, 1986 Notice of Proposed Rulemaking.

Response. USEPA is not required to publish all of its policy statements in the Federal Register, as this commenter apparently suggests. To do so is not only unnecessary under the Administrative Procedure Act, but would also impose a huge paperwork burden on the Agency and general public. Contrary to the commenter's contention, all of these memoranda are listed in the May 23, 1986, technical support document and are a part of the record of this rulemaking.

The commenter correctly notes that USEPA has not included every study of the ozone transport issue. The Agency has listed only those studies upon which it relied on in deciding to disapprove the Kane and DuPage redesignation request. The Agency is not obligated to include every scintilla of information regardless of whether or not the Agency relied upon it. During the public comment period, the public is free to submit additional information for the Agency's consideration. In this case, the commenter has submitted some additional information which the Agency has evaluated and is responding to elsewhere in this rulemaking.

Finally, the commenter contends that the certified record supporting the June 12, 1984, denial of redesignation refers to documents which are not included in the present record. USEPA believes that its May 23, 1986, TSD does include all relevant policy documents. Additionally, the TSD refers to all ozone transport studies which USEPA relied upon in the instant rulemaking. Assuming that there are discrepancies, the commenter has not explained why any such discrepancies are significant. Moreover, the Agency is not bound to the 1984 record.

Comment No. 5. Significant economic sanctions can be imposed by the USEPA on areas classified as nonattainment for an air quality standard. The growth sanctions included in the Clean Air Act are directed at stationary sources. Illinois, however, has already imposed reasonably available control technology requirements (RACT) on stationary facilities. The USEPA cannot assume that such sources are causing or contributing to exceedances of the ambient air quality standard.

Designating Kane and DuPage Counties as nonattainment for ozone will impose a ban on construction of new or modified VOC sources in these counties. This will either have an adverse effect upon the Chicago area in terms of impeding economic efficiency or by causing stationary sources to locate further to the west or to the south of the Chicago area. If the latter effect indeed occurs, it will increase vehicular traffic to allow workers to reach the new "greenfield" locations.

USEPA should consider the practical effect that can result from its decision as to what constitutes a "non attainment area." Improved highways may be necessary to avoid over-burdened highway systems in Kane and DuPage counties, and discouraging improved inland highway systems could have the effect of increasing traffic load in the central Chicago and Cook County area. Since the urban Chicago traffic source is most often the cause of the ozone exceedance, the USEPA's decision to keep Kane and DuPage counties as nonattainment may worsen the Chicago area's ozone problem.

Response. All of the comments made are planning and control concerns, not designation concerns. The nonattainment designation, as discussed earlier, is determined by an area's role in ozone exceedances. If an area is important in bringing ozone levels under control, then the area must be designated nonattainment. In this case Kane and DuPage counties are critical in addressing the Chicago area ozone problem. And, for this reason alone, Kane and DuPage counties are designated as nonattainment. In short, these control concerns are irrelevant to the designation determination. Notwithstanding their irrelevance, USEPA will address the commenter's concerns.

Although the State of Illinois has imposed RACT requirements on certain stationary sources in Kane and DuPage Counties, these sources may still be emitting VOC's and contributing to downwind ozone impacts. The controls applied are not 100 percent effective at eliminating emissions. Therefore, the stationary sources, though under RACT requirements, might require additional controls, and these controls will further lower area VOC emissions.

Several points concerning the construction ban concern should be discussed. First, the effectiveness of a construction ban is dependent upon its imposition. Congress has chosen to statutorily require a construction ban in nonattainment areas if the State has failed to produce an adequate plan.
Therefore, the simple act of designating Kane and DuPage Counties as nonattainment for ozone does not automatically result in the imposition of a ban on the construction of new or modified sources of VOCs. The supposed economic effects of a construction ban are purely speculative on the part of the commenter.

With regard to the argument on the potential for increased vehicular traffic (and thus more ozone pollution), several points should be discussed. Ozone control plans must address the potential for the increase in emissions from all source categories including those from mobile sources. If a significant increase in mobile source emissions is expected, additional emission controls will have to be found for either mobile sources or stationary sources within the Chicago ozone nonattainment area, which includes all of the Chicago ozone nonattainment area. Like the effectiveness of the construction ban; the asserted potential increase of mobile emissions due to a nonattainment designation is purely speculative.

Because USEPA has disapproved Illinois' 1987 construction ban plan the existing ban on major new VOC source growth in Kane and DuPage Counties and other portions of the Chicago nonattainment area will continue in effect until the State submits an adequate ozone SIP for the entire area. However, the ban does not prohibit all growth. Rather, new major sources in a nonattainment area would need to meet more stringent emission requirements than in an attainment area. The new source growth ban is statutorily mandated in areas that have disapproved Part D SIPs and is intended to prevent unrestrained source growth and exacerbation of the present ozone nonattainment problem while the SIP is revised or a Federal Implementation Plan (FIP) is prepared (the USEPA is presently pursuing the latter as the result of a January 18, 1989, Court order issued in State of Wisconsin v. United States Environmental Protection Agency, No. 87-C-395, (E.D. Wisc.).

USEPA is aware of the potential for ozone impacts within a nonattainment area due to precursor emissions originating outside of the nonattainment area. Major sources located in such areas must be addressed in new source reviews which must include an assessment of their air quality impacts on downwind areas, including the nonattainment area.2

Comment No. 6. Air parcel trajectories performed for the year 1985 (air parcel trajectories for 1986 were included in the commenter's set of comments) confirm the observation that sources located in Western DuPage County and Kane County cannot be associated with any ozone standard exceedances.

Response. The referenced trajectory analysis for 1985 was reviewed. The analysis is apparently based on ground level wind data and/or pressure gradients for a single height (the documentation lacked specificity with regard to the actual nature and source(s) of the input data), and only considers horizontal transport. By failing to account for three dimensional pollutant/parcel transport and pollutant dispersion, the study's analysis has a significant shortcoming; thus its conclusions are incorrect.

Ozone concentrations are measured over 1 hour averaging periods. During such periods, air parcels covering a range of trajectories and representing varied histories of vertical and horizontal transport (the gusty nature of wind represents this variety of air parcel trajectories and transport histories) arrive at a given monitoring site. Single line trajectories (isolated straight-line trajectories), in the study of air pollution transport are of limited use and are misleading, particularly when pollutant transport occurs over longer time periods, as in the case of ozone formation and transport. If one were to account approximately for pollutant dispersion and varied air parcel trajectories in a backward trajectory analysis, one would predict an ever broadening source areas as one moves back through time. Over the period of time apparently involved in ozone formation in the Chicago area (because most exceedance peaks do not generally occur until early afternoon and can occur as late as the early evening hours, transport times of 6 or more hours are likely in the Chicago area), the source area would take on the dimensions of the urban area. Even if one were to consider the single line trajectories submitted by the Metropolitan Statistical Area (CMSAs). If that rulemaking is finalized as proposed, it would add Will, Kendall, Grundy, and McHenry Counties in Illinois and Kenosha County in Wisconsin to the Chicago urban nonattainment area. Under USEPA's proposed post-1987 ozone attainment policy, future ozone attainment demonstration analyses would include the emissions from major sources located within 25 miles of the MSAs or CMSAs. (Analyses of emissions for the Chicago area Federal Implementation Plan cover the Chicago CMSA and neighboring major sources.) These proposals reflect USEPA's growing concern (in part based on recent long range ozone transport studies) over the impacts of emissions occurring or expected outside of existing ozone nonattainment areas.

U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460.

2 USEPA proposed on June 6, 1986 (51 FR 20722), to expand ozone nonattainment areas to include all of the areas within Metropolitan Statistical Areas (MSAs) or, where such exist, Consolidated...
is located near the northeast corner of DuPage County.) The location of Des Plaines relative to these Counties is such that high ozone concentration impacts from Kane and DuPage emissions could be found here (the presence of local VOC and oxides of nitrogen emissions near Des Plaines would act to push peak ozone impacts even further downwind).

Second, none of the studies cited by USEPA suggests that Kane and DuPage County emissions cannot contribute to the ozone precursor concentrations carried in the “lake breeze” transport often found associated with high ozone concentrations observed near Lake Michigan downwind of Chicago. The very Lyons and Cole article cited by the commenter was reviewed as part of the May 23, 1986, TSD. This article presented possible two dimensional trajectories but made no attempt to present specific subarea culpability with respect to downwind ozone impacts. The article did not state that emissions from Kane and DuPage Counties could not contribute to high downwind ozone concentrations. In fact, the article stated that the Chicago urban area (which includes DuPage County) is the logical source for the high ozone concentrations observed in southeastern Wisconsin. The article did not differentiate the impacts from the various portions of the Chicago area.

Third, the Lyons and Cole article cited by the commenter, as well as other articles and publications, described mechanisms by which emissions from throughout the urban area, including emissions from Kane and DuPage Counties, can be included in the lake breeze transport process. The Lyons and Cole paper implies that prior to the onset of lake breeze fronts, which usually occur between 8 a.m. and 9 a.m. or later, emissions from throughout the urban area can be advected in the surface mixing layer out over Lake Michigan. These pollutants above Lake Michigan may then participate in ozone formation in the lake breeze transport process. A second mechanism is shown in a paper by Lyons and Keen (Lyons, W.A. and Keen, C.S., 1978, “Lake/Land Breeze Circulations on the Western Shore of Lake Michigan”, Journal of Applied Meteorology, 17(12), 1843-1855). In this mechanism, emissions from the urban area are transported above the subsidence inversion at the top of the lake breeze circulation cell. At the furthest offshore extent of the lake breeze cell, the pollutants transported above subsidence inversion can be entrained into the downwind flow within the lake breeze cell and returned to the lake shore.

Fourth, the May 23, 1986, TSD document did reference and consider a prior study of resultant wind directions (effective wind directions vectorially added during the hours of peak ozone formation and transport) and high ozone days in the Chicago and southeastern Wisconsin areas. The study found that high downwind ozone concentrations were predominately associated with resultant winds ranging from east-southeast through west-southwest. Considering the time of the peak ozone concentrations (generally in the late afternoon in southeastern Wisconsin), one could conclude that emissions from most of the Chicago urban area were responsible for the observed high ozone concentrations.

Finally, if the commenter were correct in the assertion that Kane County emissions were physically prevented from interacting with emissions from other portions of the Chicago urban area, it should be noted that the existing ozone monitoring system would not be well suited for detecting the peak ozone impacts of the emissions from Kane County. There are few “inland” monitors north or near-northeast of Kane County. Most downwind ozone monitors are concentrated near Lake Michigan. Past ozone formation and transport observations made by USEPA in other than urban areas would imply that significant, non-monitored ozone impacts could be occurring downwind of Kane County.

Comment No. 8. The proposal is not based on any modeling conducted for the area or on any trajectory analyses.

Response. It is true that USEPA has not relied on modeling for its proposed rulemaking. As noted in responses to other comments herein, however, the USEPA has based its proposed rulemaking on prior observations in the Chicago area and in other urban areas with high ozone concentrations. These observations indicate that emissions from throughout urban areas may contribute to high ozone concentrations observed downwind. The observations support a policy which requires that an entire urban area and its fringe areas of development and or significant precursor sources, at a minimum, be included in an urban ozone nonattainment area. DuPage County includes a portion of the Chicago urban area and fringe areas of development, and Kane County contains a significant fringe area of development.

Furthermore, none of the commenters has applied conclusive modeling data to prove that DuPage and Kane County emissions do not contribute to ozone standard violations in the Chicago area and its downwind environs.

Comment No. 9. USEPA’s proposed rulemaking cannot be defended based on the language of the statute, which requires that the attainment status of an area be based upon monitoring.

Response. Section 171(2) of the Act defines the term “nonattainment area” as “* * * for any air pollutant an area which is shown by monitored data on which is calculated by air quality modeling (or other methods determined by the Administrator to be reliable) to exceed any national ambient air quality standard (NAAQS) for such pollutant.” The Act, thus, explicitly authorizes the Administrator to use monitoring, modeling or other reliable methods in determining an area’s attainment status. In this case, the Administrator relies on monitored exceedance within the Chicago urban area. USEPA believes that sections 107 and 171 provide it with the authority to deny the Kane and DuPage redesignation request, based upon monitored exceedances within the Chicago urban area, even though there were no monitored exceedances in Kane and DuPage Counties.

The Seventh Circuit did not rule out the designation of an area as nonattainment if the area produces but does not suffer from ozone pollution. Illinois State Chamber of Commerce v. USEPA, 775 F.2d 1141, 1150 (7th Cir. 1985). In addition two other Circuit Courts have explicitly endorsed such an approach. The Sixth Circuit stated that the Administrator may “deny redesignation with respect to a component of a nonattainment area which produces a substantial portion of the area’s pollutant even though the air within that component tests at an acceptable level.” State of Ohio v. Ruckelshaus, 776 F.2d 1333, 1340 (6th Cir. 1985). Likewise, the Administrator may designate downwind portions of an area as nonattainment even though the air within that portion satisfies the NAAQS. Western Oil and Gas Association v. USEPA, 767 F.2d 603 (9th Cir. 1985).

USEPA has based its denial of the Kane and DuPage redesignation request on (a) monitored exceedances in the Chicago urban area; (b) the observation of ozone formation and transport processes in a number of urban areas; (c) the desire to require ozone precursor emission controls in the areas where they will be most effective in reducing local and downwind ozone violations; and (d) the desire to prevent further propagation of ozone standard
violations in locations other than the monitored sites. The ozone designation policy discussed in the proposed rulemaking (53 FR 51730) in the May 23, 1988, TSD, and in the policy memoranda discussed in the proposed rulemaking and TSD supports USEPA’s denial of this redesignation request.

Comment No. 10. The proposed rulemaking is not based upon monitoring data from within Kane and DuPage Counties. While USEPA notes the DesPlaines monitor which recorded a recent ozone standard violation is located in Cook County near the northeastern corner of DuPage County, it does not apply the same rationale to the Elgin monitor in Kane County. Application of USEPA’s rationale to the Elgin monitor would indicate that Kane County is not associated with any monitored standard violations.

Response. The ozone standard violation at the DesPlaines monitor was discussed in USEPA’s rationale to show that existing data imply that DuPage County might be experiencing a violation of the ozone standard. The DesPlaines monitor violation, however, is also significant because it supports USEPA’s main argument for retaining the nonattainment designation for DuPage County. USEPA continues to assert that DuPage County should retain its nonattainment designation because it is reasonable to conclude that through its ozone precursor emissions, DuPage County, as both a portion of the Chicago Urbanized area and a fringe area adjacent to the Chicago urban area, contributes to the ozone standard violations monitored in the Chicago area and its downwind environs. The DesPlaines monitor violation substantiates the theory that the areas outside of the Chicago urbanized area have significant ozone precursor emissions which are contributing to the entire area’s ozone problem. The DesPlaines monitor violation is certainly not necessary to the logic of retaining Kane and DuPage Counties as nonattainment areas because if DesPlaines had no monitored violation, Kane and DuPage Counties would nevertheless be considered fringe areas of development (or a portion of the Chicago Urbanized Area) and subject to the nonattainment designation. Thus, USEPA is applying the same logic to both Kane and DuPage Counties with regard to the monitoring that is taking place at DesPlaines and Elgin.

Comment No. 11. Has silo dust been considered for its role in ozone formation?

Response. Silo dust is not considered to be a VOC and, therefore, has not been considered in the ozone formation process. Silo dust may be a source of nitrogen dioxide, but USEPA’s current Illinois emission inventories do not include nitrogen dioxide emissions from this source category. This omission shows how insignificant this source category is of ozone precursor emissions relative to other source categories.

Comment No. 12. Is it possible to consider the impact of jet engine emissions at O’Hare International Airport in the study of the ozone problem in the Chicago area?

Response. VOC emissions from jet engines at the airports in the Chicago area have been considered in the ozone control plans for the Chicago area.

Comment No. 13. USEPA’s criteria for determining air quality planning/ nonattainment boundaries are neither rational nor internally consistent. The current criteria approach the arbitrary and capricious level by affording the USEPA too much discretion in drawing boundaries. Following are examples of the arbitrary manner in which USEPA can establish boundaries:

(a) USEPA can treat a downwind area experiencing monitored ozone standard violations as its own isolated area for the purpose of developing an attainment demonstration.
(b) USEPA can assign the downwind area to the upwind nonattainment area.
(c) USEPA can assign the downwind area to a different, neighboring urban nonattainment area; and
(d) USEPA can designate a nonattainment area to include the urbanized area and its adjacent fringe areas of development containing significant precursor sources.

USEPA has not adequately clarified the basis for selecting one of the above options for any given nonattainment area and, therefore, has not responded to the Order of the Court.

Response. For the purpose of emissions control strategy selection and ozone standard attainment demonstrations, USEPA’s policy allows for various types of assignment of downwind monitored nonattainment areas to upwind, associated urban precursor source areas. The assignment is done on a case-by-case basis, based on such factors as the general wind direction on the days of the monitored ozone standard violations, the timing of the ozone standard exceedances, the distribution of precursor emissions (current and future), and USEPA’s overall understanding of the ozone formation and transport process (based on data from many urban areas). For a downwind area experiencing ozone standard violations, USEPA could recommend or choose any one of options (a) through (c) above. Only one of the options would be selected for a given area. As long as the option selected is appropriate to the situation, it is not arbitrary or capricious. The fact that the selection process has multiple options is indicative of the complexity of the ozone formation/transport process and the selection of the most effective emissions control strategies, particularly in areas affected by multiple source areas and the assignment of precursor emission control requirements.

As discussed in USEPA’s proposal, USEPA policy has long held that, regardless of the source area responsible for a monitored downwind violation, the area in which a violation is recorded should itself be designated as nonattainment for ozone. It is appropriate to apply some emission controls in this area to prevent propagation of the ozone problem further downwind. The decision among options (a) through (c) has no relevance to whether upwind areas contributing to the violations in the downwind area should themselves be designated nonattainment for the purpose of addressing that contribution. As discussed earlier, planning and control decisions are distinct and separate from the nonattainment designation decision. It should be noted that the comment is not relevant to the case at hand. The USEPA has not argued that Kane and DuPage Counties are downwind of the Chicago source area, but rather are part of the source area.

Comment No. 14. The USEPA did not show in 1985 that emissions from Kane and DuPage Counties actually contributed to ozone problems in the urbanized Chicago area or downwind. The USEPA states that it has not conducted area specific modeling to determine the impacts of precursor emissions that impact these downwind areas.

Response. As documented in the May 23, 1988, TSD for the proposed rulemaking, the USEPA has reviewed a number of ozone monitoring studies in the vicinity of major urban areas and has developed a view of the ozone formation and transport process for major urban areas. The available data indicate that high ozone concentrations result from ozone precursor (VOC and oxides of nitrogen—NOx) emissions from large source areas. It is difficult, if not impossible, to distinguish which subarea(s) are culpable for high ozone concentrations occurring hours later downwind. The use of photochemical dispersion models for a finite set of days at best provides a rudimentary and incomplete picture of subarea
culpability. Without considering all possible meteorological and input data scenarios (an approach which is technically infeasible), the use of photochemical models cannot provide a complete picture of high ozone concentration in an urban area. In light of this and the available ozone data, USEPA has adopted the policy that all of an urbanized area and its adjacent fringe areas of development (and hence significant precursor sources) should be considered to be nonattainment for ozone when ozone standard violations are monitored in or downwind of the area. Kane and DuPage Counties are part of the Chicago urbanized area and its adjacent areas of development. It should be noted that USEPA did evaluate surface level wind directions for high ozone days and found that the Chicago source area which includes Kane and DuPage Counties, was generally upwind of the worst-case ozone monitoring sites on the high ozone days. The study concluded that the Chicago area source was the likely precursor source area for the high ozone concentrations observed in northeastern Illinois and in Kenosha and Racine Counties, Wisconsin.

As noted in the May 23, 1986, TSD, a monitor in Des Plaines, which is generally downwind of DuPage on high ozone days and is close to the DuPage County border, recorded a recent ozone standard violation. These monitoring data support the continued nonattainment designation for DuPage County.

Finally, the State of Illinois and commenters have not provided data (modeling or monitoring) to refute USEPA’s view of the ozone formation and transport process for the Chicago area and the probable culpability of the Kane and DuPage County emissions in the formation of high downwind ozone concentrations. USEPA sees no reason to reverse its prior opinions on these issues.

Comment No. 15. The USEPA must stipulate how attainment status can be obtained at the same time USEPA rules on the boundaries for a nonattainment area. This policy specification was ordered by the court in the remand of the Kane and DuPage County redesignation rulemaking. USEPA has not stipulated which monitoring data will be decisive in determining the future attainment status.

Response. No part of this area, including Kane and DuPage Counties, could be redesignated to attainment until, at a minimum: (1) Illinois and Indiana have fully approved ozone plans for this area so as to insure that any improvements in air quality in the area are the result of permanent, enforceable emission reductions and not temporary reductions, and (2) all ozone monitors in the area and its downwind environs show no violations of the ozone standard over the most current 3 years of available data.

It should be noted that the Administrator disapproved the Illinois ozone SIP for the Chicago area on October 17, 1988 (53 FR 30615), and the Indiana ozone SIP for Northwest Indiana (the Indiana portion of the Chicago area) on November 18, 1989 (53 FR 46908). Further, as a result of a suit filed by the State of Wisconsin in the United States District Court for the Eastern District of Wisconsin (State of Wisconsin v. United States Environmental Protection Agency, No. 87-C-0355 (E.D. Wis.), the court ordered the Administrator, on January 18, 1989, to promulgate a Federal ozone implementation plan for the Chicago area (Including Northwestern Indiana) within 14 months. The Federal ozone implementation plan is currently under development and has not been adopted as of yet.

Comment No. 16. USEPA proposes to treat some downwind areas as isolated nonattainment areas for the purpose of developing ozone attainment demonstrations. An isolated downwind area would have no authority to plan for and implement emission control measures in an upwind pollution-causing area. Therefore, the isolated downwind area would never be able to achieve attainment of the ozone standard through its own efforts. This isolated area could be sanctioned for failing to achieve the ozone standard despite the fact that it had no means to bring itself into attainment.

Response. The States containing the nonattainment areas will have the overall responsibility of adopting and implementing the emissions control strategy for their nonattainment areas. As part of this process, each State will have to establish the source emissions responsible for the observed ozone standard exceedances. Although under USEPA policy no attainment demonstration is required for isolated rural nonattainment areas, the State may demonstrate, based on wind direction, wind speed, times of peak ozone concentration, back trajectory calculations (including the consideration of pollutant dispersion), etc., that a separate upwind source area is responsible for the ozone standard violation in the isolated rural area. It will then be necessary for the State to adopt an emissions control strategy for the upwind source area which assures attainment of the ozone standard in the isolated downwind area. If the upwind area is located in a different State, the upwind State will be responsible for the necessary pollution controls. This does not eliminate the need for emission controls in the isolated area. Emission controls are needed there to assist in reducing the local ozone concentrations and to prevent the further propagation of the ozone nonattainment problem downwind. As discussed above, however, the degree of controls necessary in any isolated downwind area, and the planning area for which it is assigned, is irrelevant to the decision whether the upwind contributing areas being designated as nonattainment.

Comment No. 17. The proposed rulemaking has done nothing to support USEPA’s use of the Census Bureau’s defined urbanized area populations or urban area definitions as appropriate support for air quality considerations.

The rulemaking purports to use city areas and populations of sample high-ozone areas as somehow being relevant to all of Kane County and all of its population. There is nothing in the record to show what makes Kane County and DuPage County a significant VOC source area.

Response. The population of an urban area is directly related to some significant area source VOC emissions, such as consumer solvent emissions, automobile refinishing, architectural surface coating, residential fuel combustion, etc., and indirectly to mobile source emissions. Therefore, the higher the population, the higher these emission contributions will be and the greater the potential for downwind ozone impacts. The May 23, 1986, TSD compared the populations and VOC emissions of Kane and DuPage Counties with those of smaller urban areas with observed ozone standard exceedances or significant downwind concentration impacts. The populations and VOC emissions of Kane and DuPage Counties were shown to be similar to, or greater than, those of the comparison urban areas with observed significant ozone impacts. The combination of the Census Bureau’s identification of certain areas in DuPage and Kane as “urbanized areas” adjacent to the Chicago urbanized area, and the high population of those counties and their proximity as fringe areas of development (and hence emissions) warrants the conclusion that they have a similarly significant impact on ozone formation in the Chicago area.

Although the USEPA has not conducted photochemical dispersion modeling to prove the culpability of Kane and DuPage County emissions, the
DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration

[Docket No. 90778-9178]

50 CFR Part 226 and 227

Endangered and Threatened Species; Critical Habitat; Winter-run Chinook Salmon

AGENCY: National Marine Fisheries Service (NMFS) NOAA, Commerce.

ACTION: Emergency interim rule.

SUMMARY: NMFS is taking emergency action to list the winter-run chinook salmon as threatened under the Endangered Species Act (ESA) and to designate portions of the Sacramento River as critical habitat.

Since the fall of 1985, NMFS has been monitoring the status of the winter-run chinook salmon population in the Sacramento River, California, to determine if it qualified for addition to the list of threatened and endangered species under the provisions of the ESA. Between 1987 and 1985 the run declined from a 3-year (1967-1969) mean run size of nearly 64,000 fish to a 3-year (1983-1985) mean run size of 2,362 fish. However, the California Department of Fish and Game (CDFG) has estimated the 1989 return of winter-run chinook salmon to the Sacramento River at about 500 fish. This is a decline of over 75 percent below a consistent run size of 2,000 to 3,000 fish in recent years. NMFS believes this is a precariously low run size, and that the protection afforded by the Endangered Species Act, particularly the section 7 consultation process, is needed immediately to ensure that the spawning and rearing habitat is maintained to maximize production from the fish that spawn in 1989 and to ensure that Federal fishery management programs are providing protection to the population.

Also, NMFS is designating as critical habitat the portion of the Sacramento River from Red Bluff Diversion Dam, Tehama County (River Mile 243) to Keswick Dam, Shasta County (River Mile 302) including the adjacent riparian zones, the water in the river, and the river bottom for the winter-run. This section includes the portion of the river in which suitable conditions can be maintained for spawning, incubating eggs, and rearing juvenile fish.

During the 240 days this emergency rule is in effect, NMFS will publish a proposed and final rule (with comment periods) to add winter-run chinook salmon to the list of threatened species and designate critical habitat.

EFFECTIVE DATE: Winter-run chinook salmon in the Sacramento River are listed as threatened under the ESA and critical habitat is designated effective April 2, 1990.

FOR FURTHER INFORMATION CONTACT: James H. Lecky, NOAA Fisheries, Southwest Region, Protected Species Management Branch, 300 South Ferry Street, Los Angeles, CA 90731, 213-514-6064, or Margaret Lorenz, NMFS, Office of Protected Resources, 1335 East Broadway Highway, Silver Spring, MD 20910, 301-427-2322.

SUPPLEMENTARY INFORMATION:

Background

Winter-run chinook salmon are distinguishable from the other runs of chinook salmon in the Sacramento River based on the timing of their upstream migration and spawning season. They return to the river almost exclusively as 3-year-old fish, thus the population is composed of essentially 3-year classes which are monitored by the California Department of Fish and Game (CDFG) as they migrate through the fish ladders at Red Bluff Diversion Dam.

On November 7, 1985, NMFS received a petition from the American Fisheries Society (AFS) to list the winter-run of chinook salmon in the Sacramento River as a threatened species under the ESA. NMFS reviewed the petition and determined that it contained substantial information indicating that the petitioned action might be warranted. On February 13, 1986, NMFS announced (51 FR 5391) its intention to conduct a review of the status of the run to determine whether listing was appropriate.

The status review was based on a consideration of available information on the run relative to the five criteria specified in section 4(a)(1) of the ESA and a consideration of the conservation efforts of the State of California and Federal resource management agencies to restore the run, as required by section 4(b)(1)(A) of the ESA. Information was provided by the petitioner, the State, Federal agencies that affect the run or its habitat, and the public. The results of the status review, along with the Notice of Determination, were published on February 27, 1987 (52 FR 6041).

In the Notice of Determination, NMFS concluded that the Sacramento River winter-run chinook was a species in the context of the ESA, recognized that the run had declined over a period of less than two decades, and was approaching a level below which genetic diversity might diminish. The primary reasons for this decline were the construction and
operation of Red Bluff Diversion Dam and other human activities that had degraded spawning and rearing habitat in the Sacramento River to a point where productivity of the run declined. Based on its assessment that restoration and conservation efforts being implemented or planned by State and Federal resource management agencies adequately provided for the rebuilding of the population, NOAA Fisheries decided not to list winter-run chinook in the Sacramento River as a threatened species. Subsequent to this determination, these restoration actions were incorporated in a Ten-point Winter-run Restoration Plan and implemented through a Cooperative Agreement signed by the CDFG, the Bureau of Reclamation (BR) in the Department of the Interior (DOI), the Fish and Wildlife Service (FWS) in DOI, and NMFS. The Restoration Plan is reviewing the NOAA Fisheries’ original decision not to list the run (52 FR 6041) and again after reconsideration of that decision (53 FR 49722).

The tasks expected to be of most immediate benefit to winter-run are raising the gates at Red Bluff Diversion Dam from December 1 through April 1 to allow free passage of winter-run to suitable spawning habitat and maintaining water temperatures at levels below lethal limits in the reach of river above Red Bluff Diversion Dam used for spawning.

In the spring of 1988, prevailing weather patterns indicated that the drought conditions that had developed in the spring and summer of 1987 would persist through 1988. These conditions caused concern among the resource agencies that the conservation measures in place to enhance the run might not be adequate to address the adverse effects of anticipated drought conditions. Specifically, water forecasts indicated that river temperatures might reach levels lethal to some developing winter-run eggs. Therefore, NMFS decided to reconsider its decision not to list the run and re-evaluate the adequacy of the Restoration Plan for protecting the run during drought conditions. On June 2, 1988, NMFS announced this decision and requested comments to ensure that all information on the status of the run and factors affecting it was available for the reconsideration (53 FR 20155).

NMFS reviewed the available information and found that the status of the winter-run population had not changed since the original determination not to list the run as threatened. None of the comments received during the reconsideration provided substantial new information indicating listing was necessary. Also, the Ten Point Winter-run Restoration Plan was being implemented, and unprecedented actions were being carried out to minimize the adverse effects of the drought.

On December 9, 1988, NMFS published its determination that the actions of State and Federal agencies to restore the winter-run chinook salmon population and its habitat adequately addressed the threats to the population and that the population was not likely to become in danger of extinction throughout all or a significant portion of its range in the foreseeable future (53 FR 49722).

At the time of NMFS’ review of the status of the winter-run population, the CDFG was conducting an independent review pursuant to a petition for listing the run under the State’s Endangered Species Act. The CDFG concluded its review in February 1989, and recommended to the California Fish and Game Commission that the run not be listed because the restoration actions underway or planned for the future had a high probability of restoring the run.

For the water year beginning in October 1988, precipitation and runoff were again below normal, and, in February 1989, the Bureau of Reclamation (BR) announced cuts of up to 50 percent in water supply for central valley water contractors. However, heavy precipitation in March 1989 in the northern Sacramento River drainage basin restored Lake Shasta storage equal to the storage in October 1987. As a result of the heavy March rains, the BR was able to increase water supplies to contractors and maintain sufficient storage to manage water temperatures in the river. The BR was also able to leave the gates at Red Bluff Diversion Dam out of the water two weeks beyond the April 1 deadline agreed to in the Cooperative Agreement.

Although this provided an additional two weeks of unrestricted access to suitable spawning habitat, lower than expected returns of winter-run were in the river to benefit. For undetermined reasons, the 1989 run returned at much lower levels than expected. The CDFG estimated the size of the 1989 run at about 500 fish ** ** roughly 75 percent below the expected run size. Since 1982, the run has varied at about a mean run size of 2,382 fish, and resource agencies expected the 1989 run to be near that level.

Reasons for Emergency Determination
Based on the low return of fish in 1989 and because the U.S. Fish and Wildlife Service’s hatchery program (a task in the Ten-point Winter-run Restoration Plan) for augmenting natural production has developmental and not likely to produce substantial numbers of juvenile fish for several years, the CDFG reversed its position and recommended at the May 1989 meeting of the California Fish and Game Commission that the Commission list the winter-run as a threatened species under the California Endangered Species Act. After considering the recommendation of the CDFG, the Commission voted to list the run as endangered under State law. The State’s administrative procedures for adding the run to the list will be completed in August 1989.

NMFS believes the 1989 run size is dangerously low since it has estimated that a run size between 400 and 1,000 fish is necessary to maintain genetic diversity in the winter-run population (52 FR 6041). If the returns for the remaining 2 year classes in the population are as low, NMFS believes the population will begin losing genetic diversity through genetic drift and inbreeding. Further, a small population is vulnerable to major losses from random environmental events such as droughts and other climatic episodes. However, because the 1987 and 1988 year classes, which are currently in the ocean, are expected to benefit from the Ten-point Winter-run Restoration Plan, NMFS does not believe that the winter-run currently is in danger of extinction. Nevertheless, the run is likely to become endangered if immediate action is not taken to ensure that conditions are maintained in the river for maximum production from the fish that successfully spawned in 1989. Therefore, NOAA Fisheries believes that it is necessary to take this emergency action to list winter-run chinook salmon in the Sacramento River as a threatened species.

Available Conservation Measures
Conservation measures provided to species that are listed as threatened under the ESA include recognition, recovery actions, implementation of certain protective measures, and designation and protection of critical habitat. One of the most useful protective measures is the section 7 consultation process which requires all Federal agencies to conduct conservation programs for threatened and endangered species and to consult with NMFS concerning the potential effects of their actions on species under NMFS’ jurisdiction.

As soon as this rule becomes effective, NMFS will initiate section 7 consultations with the Federal agencies whose actions may affect the continued existence of the winter-run or adversely
modify or destroy its critical habitat. Those agencies include the Bureau of Reclamation regarding temperature control measures throughout the rearing phase of this year’s class of winter-run, the Army Corps of Engineers on the effects of gravel mining operations, and the Pacific Fishery Management Council on the effects of sport and commercial fishing.

Also, NMFS will continue to coordinate management of this run and its habitat with the State of California. The State’s Endangered Species Act contains a provision for interagency consultation among State agencies similar to section 7 of the Federal ESA. The CDFG will review impacts of State actions on the winter-run to see if there are actions beyond the Ten-point Restoration Plan that can be taken, and they will review the State’s water project for opportunities for improved water conservation. In addition, they will review their own sport and commercial fishing regulations to ensure that those fisheries do not jeopardize the continued existence of the winter-run.

NMFS will also participate in the State’s review of sport and commercial fishing regulations. NMFS is charged with implementing the Magnuson Fishery Conservation and Management Act (MFCMA) and publishes and administers regulations to implement fishery management plans developed by Regional Fishery Management Councils. Generally, interjurisdictional fisheries or fisheries that occur primarily in Federal waters are candidates for management under the MFCMA. The Pacific salmon fisheries are such fisheries. The Pacific Fishery Management Council manages salmon fisheries of the coast of Washington, Oregon, and California. Generally, the Council strives to manage the fishery by consensus among the Federal and state fishery management agencies so that state regulations in state waters are consistent with Federal regulations in Federal waters.

NMFS expects consultations under the respective State and Federal laws to produce a State/Federal regulatory regime that will ensure the winter-run population is not adversely affected by sport or commercial fishing. Therefore, it is exempting fishermen, who incidentally take winter-run chinook salmon and who are fishing lawfully under State law or regulation or Federal regulations under the MFCMA, from the prohibition on taking winter-run chinook salmon. The incidental take of winter-run chinook in recreational and commercial fisheries is not believed to be a primary cause of their decline.

However, NMFS retains its right and responsibility to exert Federal authority in State waters in the event the State develops fishing regulations that are less protective than is commensurate with the designation as a threatened species under the Federal ESA.

Critical Habitat

Section 4(a)(3)(A) of the ESA includes the requirement that critical habitat be designated concurrently with the determination that a species is an endangered species or is a threatened species. Therefore, as part of this emergency rule, NOAA Fisheries is designating the portion of the Sacramento River between Red Bluff Diversion Dam, Tehama County (River Mile 243) and Keswick Dam, Shasta County (River Mile 302) including the adjacent riparian zones, the water in the river, and the river bottom as critical habitat for the winter-run of chinook salmon. This portion of the river contains almost all of the habitat in which winter-run can spawn successfully, if water management strategies for maintaining suitable temperatures are implemented, and habitat in which most juvenile winter-run will rear.

Section 4(b)(2) requires that economic impacts of specifying an area as critical habitat be considered in the process of designating critical habitat. NMFS is designating only that portion of the river that is necessary to ensure the survival and development of spawned eggs and successful rearing of juveniles during the 240 days the emergency rule is in effect. This is the minimum amount of habitat that is necessary to ensure the continued existence of the species. During the development of the proposed rule, other alternatives for critical habitat designation will be considered including habitat in which winter-run has spawned successfully during exceptionally good water years.

Only two Federal agencies, the Bureau of Reclamation and the Corps of Engineers, are expected to experience a direct economic impact from this proposed rule. The Bureau of Reclamation was using the low level outlet for releasing water from Shasta Lake. This was done for the first time in 1987 and again in 1988. Because the low level outlet is below the outlet that runs water to the powerhouse, it releases cold deep water during periods of the year when the powerhouse outlet is draining warmer water nearer the surface. While the low level outlet releases cold water to the benefit of the winter-run, the water bypasses the powerhouse, and power can not be generated from the release of that water. Between July 21 and September 17, 1988, the BR released almost 400,000 acre-feet of water through the low level outlet at the expense of $3.65 million in foregone power revenues. However, this cost should not be attributed to the designation of critical habitat because it would be incurred under the Ten-Point Winter-run Restoration Plan and the Conservation Agreement to which the BR has already agreed.

Since storage in Shasta Lake in March 1988 was approximately 14 river miles above Bend Bridge. Generally, about 80 percent of the run spawns above Cottonwood Creek. In addition, the major action implemented by the BR was using the low level outlet for releasing water from Shasta Lake.

The BR will be required to ensure that suitable water temperatures are maintained in the portion of the critical habitat where spawning, egg development, and growth of juvenile fish are expected to occur. During the 1987–1988 drought, the BR maintained, under the Cooperative Agreement, suitable water temperatures between Keswick Dam and Cottonwood Creek (approximately 14 river miles above Bend Bridge). Generally, about 80 percent of the run spawns above Cottonwood Creek. The major action implemented by the BR was using the low level outlet for releasing water from Shasta Lake. This was done for the first time in 1987 and again in 1988. Because the low level outlet is below the outlet that runs water to the powerhouse, it releases cold deep water during periods of the year when the powerhouse outlet is draining warmer water nearer the surface. While the low level outlet releases cold water to the benefit of the winter-run, the water bypasses the powerhouse, and power can not be generated from the release of that water. Between July 21 and September 17, 1988, the BR released almost 400,000 acre-feet of water through the low level outlet at the expense of $3.65 million in foregone power revenues. However, this cost should not be attributed to the designation of critical habitat because it would be incurred under the Ten-Point Winter-run Restoration Plan and the Conservation Agreement to which the BR has already agreed.

Effects of Designating Critical Habitat

Federal agencies conducting, authorizing, or funding actions will incur additional administrative costs in evaluating the effects of their actions on critical habitat. This expense will be minimal since these agencies will be reviewing these same actions to assess their effects on the continued existence of the species.

The BR will be required to ensure that suitable water temperatures are maintained in the portion of the critical habitat where spawning, egg development, and growth of juvenile fish are expected to occur. During the 1987–1988 drought, the BR maintained, under the Cooperative Agreement, suitable water temperatures between Keswick Dam and Cottonwood Creek (approximately 14 river miles above Bend Bridge). Generally, about 80 percent of the run spawns above Cottonwood Creek. The major action implemented by the BR was using the low level outlet for releasing water from Shasta Lake. This was done for the first time in 1987 and again in 1988. Because the low level outlet is below the outlet that runs water to the powerhouse, it releases cold deep water during periods of the year when the powerhouse outlet is draining warmer water nearer the surface. While the low level outlet releases cold water to the benefit of the winter-run, the water bypasses the powerhouse, and power can not be generated from the release of that water. Between July 21 and September 17, 1988, the BR released almost 400,000 acre-feet of water through the low level outlet at the expense of $3.65 million in foregone power revenues. However, this cost should not be attributed to the designation of critical habitat because it would be incurred under the Ten-Point Winter-run Restoration Plan and the Conservation Agreement to which the BR has already agreed.

Since storage in Shasta Lake in March was equivalent to the level at the beginning of the 1988 water year, NMFS expects the Bureau to use the low level outlet again in 1989 to maintain suitable temperatures for development of eggs and fry throughout the stretch of the river designated as critical habitat. The 1988 cost provides an estimate of the expense that the BR will incur in 1989 as a result of foregone power revenues. However, this cost should not be attributed to the designation of critical habitat because it would be incurred under the Ten-point Winter-run Restoration Plan and the Cooperative Agreement which the Bureau of Reclamation has agreed to.
The BR is expected to raise the gates in the Red Bluff Diversion Dam on December 1, 1989, and keep them raised through April 1, 1990, consistent with past performance under the Cooperative Agreement implementing the Ten-point Winter-run Restoration Plan. This will facilitate passage of juvenile fish downstream in December and provide access for adults to critical habitat. Because this activity occurs during the non-irrigation season, it is not expected to affect agricultural operations that depend on water diverted at the Red Bluff Diversion Dam.

Because the BR has been cooperating in the conservation of habitat by raising the gates at Red Bluff Diversion Dam and by maintaining suitable temperatures and because failure to conduct these actions could adversely modify critical habitat, NMFS has determined that the economic impact of these actions to the BR does not outweigh the benefits to be derived from implementing measures to conserve the winter-run spawning habitat during the 240 days the emergency rule is in effect.

Due to the emergency brought on by the low return of spawning adults in 1989, there has not been an opportunity to complete a more detailed economic analysis. Other Federal actions, such as consideration of the City of Redding's Federal Energy Commission applications, are not likely to progress to the point that resources will be irrevocably or irretrievably committed during the 240 days this emergency rule is in effect. Therefore, these actions were not considered in this brief economic assessment.

A complete economic analysis of the impact of designating critical habitat will be included in the proposed rule for listing this population as threatened.

Classification

Since the Assistant Administrator for Fisheries, NOAA, (Assistant Administrator) has determined that the present situation poses a significant risk to the well-being of the Sacramento River winter-run chinook salmon, emergency regulations can be issued under 16 U.S.C. 1533(b)[7].

The Assistant Administrator finds that reasons justifying promulgation of this rule on an emergency basis make it impracticable and contrary to the public interest to provide notice and opportunity for prior comment or to delay for 30 days its effective date under section 553(b) and (d) of the Administrative Procedure Act.

This emergency rule is exempt from the normal review procedures of Executive Order 12291 as provided in section 8(a)(1) of that order. This rule is being reported to the Director of the Office of Management and Budget with an explanation of why it is not possible to follow the usual procedures of that order.

This rule does not contain a collection of information requirement for purposes of the Paperwork Reduction Act.

The Regulatory Flexibility Act does not apply to this rule, because as an emergency rule, it is issued without opportunity for prior public comment. Since notice and opportunity for comment are not required to be given under section 553 of the Administrative Procedure Act, and since no other law requires that notice and opportunity for comment be given for this rule, under sections 603(a) and 604(a) of the Regulatory Flexibility Act, no initial or final regulatory flexibility analysis has been or will be prepared.

National Environmental Policy Act

The National Oceanic and Atmospheric Administration (NOAA) has determined that certain categories of its activities do not normally have the potential for a significant effect on the human environment and are, therefore, exempt from the requirement for preparation of either an environmental assessment or an environmental impact statement (NOAA Directives Manual 02-10 Sc(3)). Listing actions under section 4(a) of the ESA and designation of critical habitat are among those actions NOAA has determined are exempted (NOAA Directives Manual 02-10 Sc(3)[h]). The main environmental impact from this emergency rule will be modification of water temperatures in the area designated as critical habitat for the benefit of incubating winter-run eggs and developing young. This is not expected to produce a significant impact to the human environment.

List of Subjects in 50 CFR Parts 226 and 227

Designated critical habitat and threatened fish and wildlife.

Date: July 31, 1989.

James E. Douglas, Jr.,

Deputy Assistant Administrator for Fisheries.

Accordingly, Parts 226 and 227 of Chapter II of Title 50 of the Code of Federal Regulations are amended as follows:

PART 226—[AMENDED]

1. The authority citation for Part 226 continues to read as follows:


2. The title of Subpart C under Part 226 is revised to read as follows:

Subpart C—Critical Habitat for Marine and Anadromous Fish

3. Section 228.21 is added to Subpart C to read as follows:

§ 228.21 Sacramento River winter-run chinook salmon (Oncorhynchus tshawytscha).

The Sacramento River, California, between Red Bluff Diversion Dam, Tehama County (River Mile 243) and Keswick Dam, Shasta County (River Mile 302) including the adjacent riparian zone, the water, and the river bottom.

PART 227—[AMENDED]

1. The authority citation for Part 227 continues to read as follows:


2. Section 227.4 under Subpart A is amended by adding a new paragraph (e) to read as follows:

§ 227.4 Enumeration of threatened species. * * *

(e) Sacramento River winter-run chinook salmon (Oncorhynchus tshawytscha).

3. The title of Subpart C under Part 227 is revised to read as follows:

Subpart C—Threatened Marine and Anadromous Fish

4. Section 227.21 is added to Subpart C to read as follows:

§ 227.21 Sacramento River winter-run chinook salmon. (a) Prohibitions. The prohibitions of section 9 of the Act (16 U.S.C. 1538) relating to endangered species apply to the Sacramento River winter-run chinook salmon for the 240-day period the emergency rule is in effect.

(b) Exceptions. Excepted from the prohibitions are any acts involving winter-run chinook salmon which were taken lawfully under a State of California fishing law or regulation, or which were taken lawfully under a fishing regulation under the Magnuson Fishery Conservation and Management Act. There will be a rebuttable presumption that the winter-run chinook salmon involved in any acts are not entitled to the exemption contained in this subsection.

[FR Doc. 89-18302 Filed 8-3-89; 8:45 am]

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Proposed Rules

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

FEDERAL RESERVE SYSTEM

12 CFR Part 226

[Reg. Z; Doc. No. R-0672]

Truth in Lending; Intent To Make Determination of Effect on State Law; Wisconsin

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice of intent to make preemption determination.

SUMMARY: The Board is publishing for comment a proposed determination that certain provisions in the law of Wisconsin dealing with disclosures and adjustment notices for variable-rate transactions are not inconsistent with the Truth in Lending Act and Regulation Z.

DATE: Comments must be received on or before October 11, 1989.

ADDRESSES: Comments should refer to Docket No. R-0672 and be mailed to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551. They may be delivered to Room B-2222 of the Eccles Building between 8:45 a.m. and 5:15 p.m. weekdays or delivered to the guard station in the Eccles Building Courtyard on 20th Street NW. (between Constitution Avenue and C Street NW.) at any time. All comments received at the above address will be available for inspection and copying by any member of the public in the Freedom of Information Office, Room B-1122 of the Eccles Building between 9:00 a.m. and 5:00 p.m. weekdays.

FOR FURTHER INFORMATION CONTACT: Sharon Bowman or Mary Jane Seebach, Staff Attorneys, Division of Consumer and Community Affairs, at (202) 452-3667. For the hearing impaired only, contact Earnestine Hill or Dorothea Thompson, Telecommunications Device for the Deaf (TDD), at (202) 452-3544. Board of Governors of the Federal Reserve System, Washington, DC 20551.

SUPPLEMENTARY INFORMATION:

(1) General

The Board has received a request for a determination that certain provisions of Wisconsin law are inconsistent with the Truth in Lending Act or Regulation Z, and therefore preempted. Section 111(a)(1) of the Truth in Lending Act authorizes the Board to determine whether any inconsistency exists between chapters 1, 2, and 3 of the federal act or the implementing provisions of the regulation and any state law relating to the disclosure of information in connection with consumer credit transactions. These proposed preemption determinations are issued under authority delegated to the Director of the Division of Consumer and Community Affairs, as set forth in the Board's Rules Regarding Delegation of Authority (12 CFR 265.2(b)(3)).

The procedure for requesting a determination and the general procedures followed in making a determination are contained in Appendix A to 12 CFR Part 226.

Section 226.28(a)(1) of Regulation Z, which implements section 111(a)(1) of the Truth in Lending Act, provides that state requirements are inconsistent with, and therefore preempted by, the federal provisions if the state law requires a creditor to make disclosures or take actions that contradict the federal law. Under § 226.28(a)(10), a state law is contradictory, for example, if it requires the use of the same term for a different amount or a different meaning than the federal law, or if it requires the use of a different term than the federal law to describe the same item.

In previous preemption determinations (48 FR 4454, February 1, 1983) the Board developed principles to be applied in making preemption determinations. Such guiding principles require that preemption should occur only in those transactions in which an actual inconsistency exists between the state and federal law. In addition, a state law is not inconsistent merely because it requires more information than federal law or requires disclosure in transactions where federal law requires none.

Preemption determinations are generally limited to those provisions of state law identified in the request for a determination. At the Board's discretion, however, other state provisions that may be affected by the federal law will also be addressed.

(2) Discussion of Specific Request and Proposed Determination

The Board has been asked to determine whether specific provisions of the Wisconsin Statutes requiring disclosures and adjustment notices for certain variable-rate transactions are inconsistent with amendments to the Truth in Lending Act and Regulation Z (12 CFR 226.18(f)(1), 226.19(b)(2), and 226.20(c)) which regulate disclosure of variable-rate transactions. The requesting party asks whether Wisconsin Statutes sections 138.056(4) and (6) requiring creditors to provide consumers with notice of a change in the interest rate and disclosures, respectively, in the case of certain variable-rate transactions are preempted by §§ 226.18(f)(1), 226.19(b) and 226.20(c). The requesting party also questions whether Wisconsin Statutes section 422.421(5), part of the Wisconsin Consumer Act, is preempted by § 226.20(c) of Regulation Z.

A preliminary issue is whether there is an inconsistency between the state and federal definitions of variable-rate transactions. There does not appear to be any substantive difference in the definitions. Furthermore, the term is relevant only with regard to coverage of the respective rules and is not itself a disclosed term. Therefore, there is no basis for preempting the state law definition.

Content of Disclosures Under Wisconsin Statutes Section 138.056(6) and Section 226.19(b) of Regulation Z

The requesting party asked for a determination as to possible inconsistency between the state and federal requirements for early disclosures of variable rate transactions. Section 226.19(b) of Regulation Z applies to transactions secured by the consumer’s principal dwelling with a term greater than one year if the annual percentage rate may increase after consummation. Section 226.19(b) requires that specific disclosures be provided at the time an application form is provided or before the consumer pays a non-refundable fee. Wisconsin Statutes section 138.056 applied to variable rate loans secured by first-lien mortgages on principal residences and requires creditors to make certain disclosures before making a variable rate loan.
The state law requires a disclosure that the loan contains a variable interest rate provision; § 226.19(b)(2)(i) requires a disclosure that the interest rate, as well as the payment or term of the loan can change. The state disclosure does not contradict federal law since a creditor could comply with both the state and federal provisions.

The state law requires an identification of the index used in the loan contract as well as the current base of the index; § 226.19(b)(2)(ii) requires identification of the index or formula used, as well as a source of information about the index or formula. The state disclosure does not contradict federal law since a creditor could comply with both provisions. The state law requirement of additional or different information does not by itself make the provision inconsistent with federal law.

The state law requires disclosure of the borrower’s prepayment rights on receiving notice of a change in the interest rate; § 226.19(b) has no counterpart. Again, a state law provision is not inconsistent merely because it requires more information than federal law.

The state law requires disclosure that a notice of any interest rate increase must be given to the borrower; § 226.19(b)(2)(iii) requires disclosure of the type of information that will be contained in adjustment notices (including information about the index, interest rate, payment amount, and loan balance) as well as the timing of such notices. The state disclosure does not contradict federal law since a creditor could comply with both provisions.

As there is no requirement that the disclosures required by § 226.19(b) be segregated, creditors could comply with both the state and federal requirements by combining the disclosures in one form. It should be noted, however, that Wisconsin Statutes section 138.056(6) does not specify a precise time for providing the disclosures. If a creditor combines the state and federal disclosures, it must provide them at the time specified by § 226.19(b) of Regulation Z (that is, when an application is provided or before the consumer pays a non-refundable fee).

As the provisions of Wisconsin Statutes section 138.056(8) do not contradict federal law, the Board proposes to determine these provisions are not preempted.

Content of Notices Under Wisconsin Statutes Section 138.056(4) and Section 226.20(c) of Regulation Z

The requesting party also asked the Board to determine if the content of the disclosures required under Wisconsin Statutes section 138.056(4) is inconsistent with that of § 226.20(c) of Regulation Z. Section 138.056(4) requires a notice to be sent to the borrower when a change in the interest rate occurs and affects the loan terms. Section 226.20(c) requires a creditor to provide disclosures where an adjustment to the interest rate is made in a variable-rate transaction subject to § 226.19(b).

Section 226.20(c) has two timing rules depending on whether payment changes accompany interest rate changes.

State law requires a disclosure of the effective date of the rate change; § 226.20(c) has no counterpart. A state law provision is not inconsistent merely because it requires more information than federal law.

State law requires disclosure of the amount of the rate change. Section 226.20(c)(1) requires disclosure of the current interest rate, as well as prior interest rates. The state disclosure does not contradict federal law since a creditor could comply with both provisions. State law requires disclosure of changes in the index that resulted in the rate change; § 226.20(c)(2) requires disclosure of the index values upon which both the current and prior rates are based. Again it appears that creditors can comply with both provisions.

State law requires disclosure of the amount of the monthly interest and principal changes resulting from the rate change; § 226.20(c)(4) requires a broader disclosure of the contractual effects of the adjustment, including the new payment due, any change in the term or maturity, and a statement of the loan balance. This state disclosure does not contradict federal law since a creditor could comply with both provisions.

State law requires a disclosure of the borrower’s prepayment rights; federal law has no counterpart under § 226.20(c). A state law provision is not considered inconsistent for requiring more information than federal law.

As the provisions of Wisconsin Statutes section 138.056(4) do not contradict federal law, the Board proposes to determine these provisions are not preempted.

Timing Requirements for Notices Under Wisconsin Statutes Section 138.056(4) and Section 226.20(c) of Regulation Z

The requesting party asked the Board to determine whether the timing requirements for notices under Wisconsin Statutes section 138.056(4) make them inconsistent with federal law. Under state law, if the rate change results in an increase in the payments (other than the final payment), the notice must be delivered at least 30 days before the rate change. Notice of a rate change must also be given no later than 15 days after any other rate change not involving an increase in the payments. Section 226.20(c) of Regulation Z requires notice at least once a year if the interest rate has changed, and at least 25, but no more than 120 days, before a payment at a new level is due. This applies to both increases and decreases in the payment.

Although the state timing requirement differs from that in the federal law, it does not contradict it since a creditor could comply with both state and federal provisions. In addition, the state and federal notice requirements could, in most cases, be combined as there is
no requirement for segregated disclosures, and both timing requirements could be met. However, since the federal notice is triggered by a change in payment (and specifies an outer time limit for notification of 120 days), and the state notice is triggered by a change in rate, there may be cases when a combined federal and state notice would not meet both timing requirements. (See the example above.)

As the timing of the notice requirements under Wisconsin Statutes section 422.421(5) does not contradict federal law, the Board proposes to determine these provisions are not preempted.

### (3) Comment requested

The Board requests comment on the consistency or inconsistency with the federal law of the provisions in the Wisconsin statutes discussed above. After the close of the comment period and analysis of the comments received, notice of final action on the proposal will be published in the Federal Register.

### Lists of Subjects in 12 CFR Part 226

Advertising, Banks, Banking, Consumer protection, Credit, Federal Reserve System, Finance, Penalties, Truth in lending.


Jennifer J. Johnson, Associate Secretary of the Board.

[FR Doc. 89-18213 Filed 8-3-89; 8:45 am]

BILLING CODE 8210-01-M

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### DEPARTMENT OF HEALTH AND HUMAN SERVICES

**Food and Drug Administration**

21 CFR Part 133

[Docket No. 88N-0437]

**Cheeses; Amendment of Standards of Identity to Permit Use of Antimycotics on the Exterior of Bulk Cheeses During Curing and Aging and to Update the Formulas of Several Standards**

**AGENCY:** Food and Drug Administration.

**ACTION:** Proposed rule.

**SUMMARY:** The Food and Drug Administration (FDA) is proposing to amend the standards of identity for edam cheese (and by cross-reference, gouda cheese), swiss and emmentaler cheese, and swiss cheese for manufacturing to permit the use of antimycotics on the exterior of those bulk cheeses during curing and aging and on the exterior of the cheese for manufacturing. This action responds to a comment on a September 21, 1987, proposal to, among other things, permit similar use of antimycotics on a number of other standardized cheeses. The proposed amendment will reduce waste in cheese manufacturing and will promote honesty and fair dealing in the interest of consumers. Elsewhere in this issue of the Federal Register, FDA is amending the standards of identity for several other cheeses to: (1) Permit the use of antimycotics on the exterior of those bulk cheeses, (2) update the formats and language of the standards of identity to make them more consistent with the nine natural cheese standards that FDA revised in 1983 (48 FR 27397, January 21, 1983), (3) provide for safe and suitable functional ingredient categories, and (4) provide for optional ingredient labeling requirements.

**DATES:** Comments by October 3, 1989.

The agency proposes that any final rule that may be issued based upon this proposal shall become effective 60 days after date of publication of the final rule in the Federal Register.

**ADDRESSES:** Written objections to the Division of Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5000 Fishers Lane, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** James F. Lin, Center for Food Safety and Applied Nutrition (HFF-414), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-406-0122.

**SUPPLEMENTARY INFORMATION:** In the Federal Register of September 21, 1987 (52 FR 35420), FDA published a proposal that was based on a petition from the National Cheese Institute (NCI), a trade association representing U.S. cheese manufacturers. In that document, FDA proposed to amend the standards of identity for brick cheese (21 CFR 133.198), brick cheese for manufacturing (21 CFR 133.199), washed curd and soaked curd cheese (21 CFR 133.136), washed curd cheese for manufacturing (21 CFR 133.137), and stirred curd cheese (21 CFR 133.144). Gouda cheese for manufacturing (21 CFR 133.145), monterey cheese and monterey jack cheese (21 CFR 133.153), munster and munster cheese (21 CFR 133.160), and high moisture jack cheese (21 CFR 133.154) to permit the expanded use of safe and suitable antimycotics (currently permitted on cuts and slices in consumer-sized packages for a number of standardized cheeses) on the exterior of bulk cheeses during curing and aging and on the exterior of cheeses for manufacturing.

FDA also proposed to amend several standards to update their format and language to make the standards more consistent with the nine natural cheese standards that FDA had revised to

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conform more closely with the Codex international standards for these foods (48 FR 27386), to provide for functional group designations of safe and suitable optional ingredients, and to provide for optional ingredient labeling requirements. The final rule for the proposed amendments is published elsewhere in this issue of the Federal Register.

However, several comments responding to the September 21, 1987, proposal suggested substantive amendments which require the issuance of a separate proposal so that interested persons will have an opportunity to comment. This proposal is in response to those comments.

One comment noted that the agency had failed to list the amended version of the standard of identity for edam cheese in the proposed regulation even though its intended inclusion was clearly indicated in the preamble. Two other comments requested that FDA expand the proposal by permitting the use of antimycotics on Swiss and emmentaler cheese and Swiss cheese for manufacturing. The latter comments cited cheese losses of 1.5 percent which they attributed to mold growth during curing and aging.

The agency acknowledges that amendment of the standard of identity for edam cheese was inadvertently left out of the proposed regulation and proposes to correct that oversight in this document. FDA also agrees, for the reasons given in the September 21, 1987, proposal, that it is reasonable, and would be in the interest of consumers, to amend the standards of identity for Swiss and Emmentaler cheese and Swiss cheese for manufacturing to permit the optional use of antimycotics.

Accordingly, FDA is proposing to amend the standards of identity for edam cheese (21 CFR 133.138) (and by cross-reference, gouda cheese (21 CFR 133.142)), Swiss and Emmentaler cheese (21 CFR 133.295), and Swiss cheese for manufacturing (21 CFR 133.196) to provide for the optional use of antimycotics on the exterior of the bulk cheeses. The agency notes that the provision for “safe and suitable” ingredients governs the use of all optional ingredients used in these cheeses, including antimycotics. Thus, any antimycotics to be used in or on these standardized cheeses must conform to the definition of safe and suitable in 21 CFR 190.3(d) which requires that the antimycotics: (1) Perform an appropriate function in the food, (2) be used at a level no higher than necessary to achieve its intended purpose, and (3) be generally recognized as safe (GRAS), prior sanctioned, or the subject of a food additive regulation.

The agency notes that label declaration is required for all optional ingredients used in these cheeses, including antimycotics, so that consumers will have a means of avoiding these substances if they so choose. Only one optional ingredient is exempted from label declaration and that is artificial coloring. It is specifically exempted by section 403(k) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 343(k)). In addition, the ingredient declaration requirement may not apply to the use of antimycotics on the exterior of bulk cheeses, i.e., of edam cheese, gouda cheese, and Swiss and Emmentaler cheese during curing and aging and on the exterior of Swiss cheese for manufacturing. The National Milk Producers Federation has stated that approximately 3.4 million pounds of the 223 million pounds (1.5 percent) of the total 1985 U.S. Swiss cheese production was lost through spoilage caused by mold growth during aging. Such loss of Swiss cheese is proportionately higher than that of other cheeses (0.63 percent of the 3.5 billion pounds of semihard and semisoft cheeses produced in the United States are lost through spoilage) because of the proportionately larger surface area that is the result of eye formation in the Swiss cheese block. The expanded optional use of antimycotics is likely to reduce monetary losses caused by product spoilage. Therefore, FDA has concluded that this action will not result in a significant economic impact on a substantial number of small entities. Therefore, FDA certifies, in accordance with section 605(b) of the Regulatory Flexibility Act, that no significant economic impact on a substantial number of small entities will derive from this proposed action.

II. Environmental Impact

The agency has determined under 21 CFR 25.24(b)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

III. Comments

Interested persons may, on or before October 3, 1989, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 133
Cheese, Food grades and standards.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, it is proposed that Part 133 be amended as follows:

PART 133—CHEESES AND RELATED CHEESE PRODUCTS

1. The authority citation for 21 CFR Part 133 continues to read as follows:


2. Section 133.138 is amended by revising paragraph (b)(3)(iv) to read as follows:

§ 133.138 Edam cheese.

(b) * * *

(3) * * *

(iv) Antimycotic agents, the cumulative levels of which shall not exceed current good manufacturing practice, may be added to the surface of the cheese.

* * *

3. Section 133.195 is amended by revising paragraph (b)(3)(iv) to read as follows:

§ 133.195 Swiss and Emmentaler cheese.

(b) * * *

(3) * * *

(iv) Antimycotic agents, the cumulative levels of which shall not exceed current good manufacturing practice, may be added to the surface of the cheese.

* * *

4. Section 133.196 is revised to read as follows:
§ 133.196 Swiss cheese for manufacturing.

Swiss cheese for manufacturing conforms to the definition and standard of identity prescribed for swiss cheese by § 133.195, except that the holes, or eyes, have not developed throughout the entire cheese.

Dated: March 21, 1983.

Richard J. Ronk,
Deputy Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 89-18226 Filed 8-3-89; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE INTERIOR
Office of Surface Mining Reclamation and Enforcement
30 CFR Part 917

Kentucky Permanent Regulatory Program; Cultural and Historic Resources

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Proposed rule, reopening of public comment period.

SUMMARY: OSMRE is announcing the receipt of a proposed program amendment to the Kentucky permanent regulatory program (hereinafter referred to as the Kentucky program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment consists of regulations on cultural and historic resources and a Memorandum of Agreement between the State Historic Preservation Officer (SHPO) and the National Historic Preservation Officer (NREPC).

This notice sets forth the times and locations that the Kentucky program and the proposed amendment are available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendment, and the procedures that will be followed regarding a public hearing, if one is requested.

DATES: Written comments must be received on or before 4:00 p.m. on September 5, 1989. If requested, a public hearing on the proposed amendment will be held at 10:00 a.m. on August 29, 1989. Requests to present oral testimony at the hearing must be received on or before 4:00 p.m. on August 21, 1989.

ADDRESSES: Written comments and requests for a hearing should be mailed or hand delivered to: W. Hord Tipton, Director, Lexington Field Office, Office of Surface Mining Reclamation and Enforcement, 340 Legion Drive, Suite 28, Lexington, Kentucky 40504. Copies of the Kentucky program, the proposed amendment, and all written comments received in response to this notice will be available for review at the addresses listed below, Monday through Friday, 9:00 a.m. to 4:00 p.m., excluding holidays. Each requestor may receive, free of charge, one copy of the proposed amendment by contacting OSMRE's Lexington Field Office.

Office of Surface Mining Reclamation and Enforcement, Lexington Field Office, 340 Legion Drive, Suite 28, Lexington, Kentucky 40504, Telephone: (606) 233-7327

Office of Surface Mining Reclamation and Enforcement, 1100 "L" Street, NW., Room 5131, Washington, DC 20240, Telephone: (202) 343-5492

Office of Surface Mining Reclamation and Enforcement, Eastern Field Operations, Ten Parkway Center, Pittsburgh, Pennsylvania 15230, Telephone: (412) 837-2628

Department for Surface Mining Reclamation and Enforcement, No. 2 Hudson Hollow Complex, Frankfort, Kentucky 40601, Telephone: (502) 564-6940

If a public hearing is held, its location will be: The Harley Hotel, 2143 North Broadway, Lexington, Kentucky 40505.

FOR FURTHER INFORMATION CONTACT: W. Hord Tipton, Director, Lexington Field Office, Telephone (606) 233-7327.

SUPPLEMENTARY INFORMATION:

I. Background

On May 18, 1982, the Secretary of the Interior conditionally approved the Kentucky program. Information pertinent to the general background, revisions, modifications, and amendments to the proposed permanent program submission, as well as the Secretary's findings, the disposition of comments and a detailed examination of the conditions of approval can be found in the May 18, 1982, Federal Register (47 FR 21404-21435). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 917.11, 917.13, 917.16, and 917.17.

II. Discussion of Amendment

By letter dated June 9, 1987, OSMRE notified Kentucky of State regulations that must be amended to be consistent with revised Federal regulations. OSMRE's letter, pursuant to 30 CFR 732.17, identified 5 changes needed in the Kentucky regulatory program for cultural and historic resources. In response to the OSMRE letter Kentucky submitted on December 21, 1988, (Administrative Record No. KY-841) proposed program amendments to the cultural and historic resource regulations contained in the Kentucky program. On January 24, 1989, (54 FR 3490) OSMRE announced receipt of the proposed amendment and the procedures for public comment period and a public hearing. No public hearing was requested and none was held. On February 28, 1989, the comment period was closed.

By letter dated July 5, 1989, (Administrative Record No. KY-903), Kentucky re-submitted to OSMRE a proposed amendment on cultural and historic resources. This amendment supersedes the December 21, 1988, proposal amendment submittal.

The proposed amendments modify portions of the Kentucky Administrative Regulations (KAR) Title 405 Chapters 8 and 24. Specifically, the proposed amendments revise 405 KAR 8:010 by including information on the nature and location of archaeological resources on public and Indian lands as confidential information, and by adding a requirement for a new written findings by the Cabinet relating to properties listed or eligible for listing on the National Register of Historic Places. The proposed amendments revise 405 KAR 8:020 to require the inclusion of information on cultural, historic, and known archaeological resources in the narrative description of each exploration and reclamation operations plan. The proposed amendments revise the permits requirements at 405 KAR 8:030 and 405 KAR 8:040 to specify that Kentucky may require the applicant to identify and evaluate important historic and archaeological resources. In addition, the proposed regulations require that each plan contain a description of measures to be used to prevent adverse impacts to public parks or places listed on the National Register of Historic Places and allows the Cabinet to require the applicant to utilize appropriate mitigation and treatment measures. The proposed amendments also revise the Kentucky Regulations at 405 KAR 24:040 to permit the relocation of cemeteries if authorized by applicable State law or regulations. Also, the amendment contains pursuant to 30 CFR 731.14(g)(17) a Memorandum of Agreement (MOA) between the SHPO and NREPC. The MOA establishes procedures for consulting with the SHPO and for making decisions regarding cultural and historic resources.
III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSMRE is now seeking comment on whether the amendment proposed by Kentucky satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Kentucky program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commentor’s recommendations. Comments received after the time indicated under “DATES” or at locations other than the Lexington Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under “FOR FURTHER INFORMATION CONTACT” by 4:00 p.m. on August 21, 1989. If no one requests an opportunity to comment at a public hearing, the hearing will not be held. Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSMRE officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment, and who wish to do so, will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

Public Meeting

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSMRE representatives to discuss the proposed amendments may request a meeting at the OSMRE, Lexington Field Office listed under “ADDRESSES” by contacting the person listed under “FOR FURTHER INFORMATION CONTACT.” All such meetings will be open to the public and, if possible, notices of meetings will be posted in advance at the locations listed under “ADDRESSES.” A written summary of each meeting will be made a part of the Administrative Record.

VI. Procedural Determinations

1. Compliance With the National Environmental Policy Act

The Secretary had determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. Executive Order 12291 and the Regulatory Flexibility Act

On July 12, 1984, the Office of Management and Budget (OMB) granted OSMRE and exemption from sections 3, 4, 7 and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

3. Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subject in 30 CFR Part 917

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Carl C. Close, Assistant Director, Eastern Field Operations.

[FR Doc. 89-18234 Filed 8-3-89; 8:45 am]
BILLING CODE 4310-05-M

30 CFR Part 925

Missouri Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Proposed rule; reopening and extension of comment period.

SUMMARY: OSMRE is announcing receipt of additional explanatory information pertaining to a previously proposed amendment to the Missouri permanent regulatory program (hereinafter, the “Missouri program”) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). This additional information pertains to coal waste disposal and bonding. The amendment is intended to revise the State program to be consistent with the corresponding Federal standards, and to incorporate the additional flexibility afforded by the revised Federal regulations. This notice sets forth the times and locations that the Missouri program and proposed amendment to that program are available for public inspection, and the reopened comment period during which interested persons may submit written comments on the proposed amendment.

DATES: Written comments must be received on or before 4:00 p.m., c.d.t., August 21, 1989.

ADDRESSES: Written comments should be mailed or hand delivered to Mr. William J. Kovacic at the address listed below.

Copies of the Missouri program, the proposed amendment, and all written comments received in response to this notice will be available for public review at the address listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSMRE’s Kansas City Field Office.

Mr. William J. Kovacic, Director, Kansas City Field Office, Office of Surface Mining Reclamation and Enforcement, 1103 Grand Avenue, Room 502, Kansas City, MO 64106, Telephone: (816) 374-6405

Missouri Department of Natural Resources, Land Reclamation Program, 205 Jefferson Street, P.O. Box 176, Jefferson City, MO 65102, Telephone: (573) 751-8041

FOR FURTHER INFORMATION CONTACT: Mr. William J. Kovacic, Director, Kansas City Field Office (816) 374-6405.

SUPPLEMENTARY INFORMATION:

I. Background on the Missouri Program

On November 21, 1980, the Secretary of Interior conditionally approved the Missouri program. General background information on the Missouri program, including the Secretary’s findings, the disposition of comments, and the conditions of approval of the Missouri program can be found in the November 21, 1980, Federal Register (45 FR 77017). Subsequent actions concerning Missouri’s program and program amendments can be found at 30 CFR 925.12, 925.13, and 925.16.

II. Proposed Amendment

By letter dated January 12, 1989, (Administrative Record No. MO-410) Missouri submitted a proposed

III. Public Comment Procedures

OSMRE is reopening the comment period on the proposed Missouri program amendment to provide the public an opportunity to reconsider the adequacy of the amendment in light of the additional materials submitted. In accordance with the provisions of 30 CFR 732.17(b), OSMRE is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Missouri program.

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "DATES" or at locations other than the Kansas City Field Office will not necessarily be considered in the final rulemaking or included in the administrative record.

List of Subjects in 30 CFR Part 225

Coal mining, Intergovernmental relations, Surface mining, Underground mining.
II. Proposed Amendment

By letter dated July 12, 1989 (Administrative Record No. NM-521), New Mexico submitted a proposed amendment to its program pursuant to SMCRA. New Mexico submitted the proposed amendment in response to an August 14, 1986, letter that OSMRE sent in accordance with 30 CFR 732.17(c).

New Mexico proposes to amend the following sections to the Coal Surface Mining Commission (CSMC) Rules:

CSMC Rule 80-1-1-5
New Mexico proposes to add a new definition for water treatment facilities.

CSMC Rule 80-1-20-41
New Mexico proposes to add a new subsection (f) addressing other treatment facilities (sediment control measures).

CSMC Rule 80-1-20-46
New Mexico proposes to revise the entire section concerning sedimentation ponds (siltation structures).

CSMC Rule 80-1-20-49
New Mexico proposes to revise the entire section concerning permanent and temporary impoundments.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSMRE is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the New Mexico program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "DATES" or at locations other than the Albuquerque Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to testify at the public hearing should contact the person listed under "FOR FURTHER INFORMATION CONTACT" by 4:00 p.m., m.d.t. on August 21, 1989. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to testify at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSMRE officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to testify have been heard. Persons in the audience who have not been scheduled to testify, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to testify and persons present in the audience who wish to testify have been heard.

Public Meeting

If only one person requests an opportunity to testify at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSMRE representatives to discuss the proposed amendment may request a meeting by contacting the person listed under "FOR FURTHER INFORMATION CONTACT." All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under "ADDRESSES." A written summary of each meeting will be made a part of the Administrative Record.

List of Subjects in 30 CFR Part 931
Coal mining, Intergovernmental relations, Surface mining, Underground mining.
 withdrawn. Therefore, the proposed amendment announced in the June 16, 1989, Federal Register is withdrawn, and Part 931 Title 30 of the Code of Federal Regulations is not amended.

List of Subjects in 30 CFR Part 931

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: July 26, 1989.

Raymond L. Lowrie, Assistant Director, Western Field Operations.

BILLS DUE: 8-3-89

30 CFR Part 946

Virginia Regulatory Program; Bonding

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Proposed rule.

SUMMARY: OSMRE is announcing receipt of a proposed amendment to the Virginia permanent regulatory program (hereinafter, the Virginia program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment pertains to changes in Virginia's Coal Surface Mining Reclamation Fund (hereinafter, Pool Bond Fund). The amendment is intended to strengthen the Pool Bond Fund.

This notice sets forth the times and locations that the Virginia program and proposed amendment to the program are available for public inspection, the comment period during which interested parties may submit written comments on the proposed amendment, and the procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments must be received on or before 4:00 pm on September 5, 1989. If requested, a public hearing on the proposed amendment will be held on August 29, 1989; requests to present testimony in the hearing must be received on or before 4:00 pm August 21, 1989.

ADDRESSES: Written comments and requests to testify at the hearing should be mailed or hand delivered to Mr. W. Russell Campbell, Acting Director, Big Stone Gap Field Office at the first address listed below. If a hearing is requested, it will be held at the same address.

Copies of the Virginia program, proposed amendment and all written comments received in response to this notice will be available for review at the locations listed below during normal business hours Monday through Friday, excluding holidays.

Each requestor may receive, free of charge, one single copy of the proposed amendment by contacting the OSMRE Big Stone Gap Field Office.

Office of Surface Mining Reclamation and Enforcement, Big Stone Gap Field Office, P.O. Box 626, Powell Valley Square Shopping Center, Room 220, Route 23, Big Stone Gap, Virginia 24219, Telephone (703) 523-4303.

Office of Surface Mining Reclamation and Enforcement, Administrative Record Office, Room 5318, 1100 L Street NW., Washington, DC 20240, Telephone (202) 343-5462.

Virginia Division of Mines and Minerals Reclamation, P.O. Drawer U, 622 Powell Avenue, Big Stone Gap, Virginia 24219, Telephone (703) 523-2925.

FOR FURTHER INFORMATION CONTACT: Mr. W. Russell Campbell, Acting Director, Big Stone Gap Field Office, Telephone (703) 523-4303.

SUPPLEMENTARY INFORMATION:

I. Background

The Secretary of the Interior approved the Virginia program on December 15, 1981. Information pertinent to the general background and revisions to the proposed permanent program submission, as well as the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval can be found in the December 15, 1981, Federal Register (46 FR 61085–61115). Subsequent actions concerning the conditions of approval and proposed amendments are identified at 30 CFR 946.12, 946.13, 946.15, and 946.16.

II. Discussion of Proposed Amendment

By letter dated July 5, 1989, (Administrative Record No. VA–729) Virginia submitted a proposed amendment to its program pursuant to SMCRA. The intent of the amendment is to strengthen the Pool Bond Fund's assets and reduce the Fund's liabilities. Virginia has already adopted the required changes at section 45.1–270.2 and 270.3 of the Code of Virginia. The effective date of the State legislation was July 1, 1989. OSMRE does not recognize these changes as part of the approved program until the proposed amendment is processed by OSMRE and a decision is rendered approving or disapproving the amendment. The proposed changes are discussed below.

a. Article 5, section 45.1–270.2(A) of The Code of Virginia will require all Fund applicants to demonstrate at least a consecutive three year history of compliance with the Virginia Act, with other comparable State Acts, or with the Federal Surface Mining Control and Reclamation Act (PL 95–87) in order to participate in the Pool Bond program.

b. Article 5, section 45.1–270.2(C) of The Code of Virginia will provide place distance limits on cumulative highwall lengths and backfilling of coal pits for surface mining operations. A cumulative limit of 1,500 linear feet has been set for all exposed highwalls. The width of an unbackfilled coal pit is limited to 500 feet or two mining cuts, whichever is less.

c. Article 5, section 45.1–270.2(D) of The Code of Virginia will provide exceptions outlined in subsection 45.1–270.2(C) above. Applicants with seven year histories of compliance with the requirements of Public Law 95–87 are exempt from the distance limits in subsection 45.1–270.2(C). Any qualified Fund participant with less than a seven year history of compliance may exceed the distance requirements of subsection C only by providing an additional bond for the areas exceeding the distance limits. The additional bond amount must be equal to the ratio of the extended distance to the standard distance prescribed in section 45.1–270.2(C) times an approved cost estimate of reclamation for the permit.

d. Article 5, section 45.1–270.2(A) of The Code of Virginia will require an entrance fee for admission into the Fund of $5,000 whenever the total Fund balance drops below $1,750,000 and will remain at that rate until the Fund balance again exceeds $2,000,000. The amount of entrance fees will return to $1,000 when the Fund balance exceeds $2,000,000. This subsection also requires a Fund renewal fee of $1,000.

III. Public Comments Procedures

In accordance with the provisions of 30 CFR 732.17(b), OSMRE is now seeking comment on whether the amendment proposed by Virginia satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Virginia program.

Written Comments

Written comments should be specific, pertaining only to the issues proposed in this rulemaking. Written comments and explanations in support of the commenter's recommendations. Comments received after the time indicated under "DATES" or at locations other than the Big Stone Gap Field Office will not necessarily be
considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under "FOR FURTHER INFORMATION CONTACT" by close of business on August 21, 1989. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber.

Submission of written statements in advance of the hearing will allow OSMRE officials to prepare adequate responses and appropriate questions. The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment, and who wish to do so, will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

Public Meeting

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public hearing, may be held.

Persons wishing to meet with OSMRE representatives to discuss the proposed amendment may request a meeting at the Big Stone Gap Field Office by contacting the person listed under "FOR FURTHER INFORMATION CONTACT". All such meetings will be open to the public and, if possible, notices of meetings will be posted in advance at the locations listed under "ADDRESSES". A written summary of each public meeting will be made part of the Administrative Record.

List of Subjects in 30 CFR Part 946

Coal mining, Intergovernmental relations, Surface mining, Underground mining.


Carl C. Close,
Assistant Director, Eastern Field Operations.

[FR Doc. 89-18248 Filed 8-3-89; 8:45]

BILLING CODE 4310-05-M

30 CFR Part 946

Virginia Regulatory Program; Revisions, Clarifications, and Corrections

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Proposed rule.

SUMMARY: OSMRE is announcing receipt and requesting public comments on proposed amendments to the Virginia permanent regulatory program (hereinafter, the Virginia program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendments pertain to certification of maps and plans, review of permit applications, and proposed amendments to the Virginia program. The amendment is intended to revise the State program to be consistent with the corresponding Federal standards, and to clarify and correct inconsistencies in Virginia's rules.

This notice sets forth the times and locations where the Virginia program and proposed amendments to the program are available for public inspection, the comment period during which interested parties may submit written comments on the proposed amendment, and the procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments must be received on or before 4:00 pm on September 5, 1989. If requested, a public hearing on the proposed amendment will be held on August 29, 1989; requests to present testimony in the hearing must be received on or before 4:00 pm August 21, 1989.

ADDRESSES: Written comments and requests to testify at the hearing should be mailed or hand delivered to Mr. W. Russell Campbell, Acting Director, Big Stone Gap Field Office at the first address listed below. If a hearing is requested, it will be held at the same address.

Copies of the Virginia program, proposed amendments and all written comments received in response to this notice will be available for review at the locations listed below during normal business hours Monday through Friday, excluding holidays.

Each requestor may receive, free of charge, one single copy of the proposed amendments by contacting the OSMRE Big Stone Gap Field Office:
Office of Surface Mining Reclamation and Enforcement, Big Stone Gap Field Office, P.O. Box 626, Powell Valley Square Shopping Center, Room 220, Route 23, Big Stone Gap, Virginia 24219, Telephone (703) 523-4303
Office of Surface Mining Reclamation and Enforcement, Administrative Record Office, Room 5315, 1100 L Street NW, Washington, DC 20240, Telephone (202) 343-5492
Virginia Division of Mined Land Reclamation, P.O. Drawer U, 622 Powell Avenue, Big Stone Gap, Virginia 24219, Telephone (703) 523-2925.

FOR FURTHER INFORMATION CONTACT:
Mr. W. Russell Campbell, Acting Director, Big Stone Gap Field Office, Telephone (703) 523-4303.

SUPPLEMENTARY INFORMATION:

I. Background

The Secretary of the Interior approved the Virginia program on December 15, 1981. Information pertinent to the general background and revisions to the proposed permanent program submission, as well as the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval can be found in the December 15, 1981, Federal Register (46 FR 61085-61113). Subsequent actions concerning the conditions of approval and proposed amendments are identified at 30 CFR 946.12, 946.13, 946.15, and 946.16.

II. Discussion of Proposed Amendments

By letter dated June 30, 1988, (Administrative Record No. VA-726) Virginia submitted a proposed amendment to its program pursuant to SMCRA. Part of the proposed amendment was submitted in response to an October 28, 1988, letter from OSMRE (Administrative Record No. VA-711) in accordance with 30 CFR Part 732 requiring certain provisions of the State program to be updated for consistency with the Federal regulations promulgated through June 15, 1988. Additionally, Virginia has included as part of the proposed amendment clarifications to existing rules where difficulties have been experienced in their application. A brief description of the proposed changes are outlined below.

Virginia proposes to amend: Section 480-03-19.780.14(c), Operation Plan: Maps and Plans: section 480-03-19.773.15(c)(12), Review of Permit Applications; sections 480-03-19.779.19(b) and 783.19(b), Vegetation Information; sections 480-03-19.779.20(a), (b), (c)(1-3) and 783.20(a), (b), (c)(1-3), Fish and Wildlife Resources Information; Part 480-03-19.870.16 (entirety) and 794.21 (entirety), Fish and Wildlife Information; sections 480-03-19.816.97(b), (e)(4) and 817.97(b), (e)(4), Protection of Fish, Wildlife, and Related Environmental Values; Part 480-03-19.846, Individual Civil Penalties; section 480-03-19.846.2, Definitions; Sections
Persons wishing to comment at the public hearing should contact the person listed under "FOR FURTHER INFORMATION CONTACT" by close of business on August 21, 1989. If no one requests an opportunity to comment at a hearing, a public meeting, rather than public hearing, may be held.

The Panama Canal Commission proposes an increase of approximately 9.8% in the rates of tolls to become effective October 1, 1989. The Commission anticipates that in fiscal year 1990 it will experience a significant deficit created by a trend of traffic growth revenue inadequate to absorb cost increases due to inflation and other factors. The proposed increase is necessary to comply with the requirements that tolls be set to produce revenues sufficient to cover all costs of maintaining and operating the Panama Canal, including capital for plant replacement, expansion, and improvements. The rates of tolls for use of the Panama Canal were last increased on March 12, 1980 by 9.8%. The rates placed in effect at that time have proven adequate to provide, in the aggregate, sufficient revenues to cover all operating and capital costs of the Canal through 1988, but the Commission has recorded minor deficits in the last two fiscal years. While the deficits have been minor, they point to a trend of traffic growth, revenues inadequate to absorb cost increases due to inflation and other factors. Commission projections indicate that this trend will continue and, in fact, worsen despite management efforts to reduce costs and increase productivity to the maximum extent possible. This growing imbalance between inflation and traffic growth undermines the serious loss projected for this year and the clear need for placing a toll rate increase in effect in fiscal year 1990.

In addition to the toll rate increase, certain revisions are recommended to the "Rules of Measurement of Vessels for the Panama Canal." These proposed changes are designed to simplify the Commission's measurement procedures and bring them in line with industry standards. These revisions will have a minimal impact on the amount of tolls collected.

DATES: Proposed effective date: October 1, 1989.

For further information contact: Michael Rhode, Jr., Assistant to the Chairman and Secretary, Panama Canal Commission, 2000 I Street, NW., Suite 550, Washington, DC 20500-4993. Telephone: (202) 393-6441.

SUPPLEMENTARY INFORMATION: Section 1862(b) of the Panama Canal Act of 1979, as amended, 22 U.S.C. 3792(b), requires that Canal tolls be prescribed at rates calculated to produce revenues to cover, as nearly as practicable, all costs of maintaining and operating the Panama Canal and the facilities and appurtenances related thereto, and capital for plant replacement, expansion, and improvements. The rates of tolls for use of the Panama Canal were last increased on March 12, 1980 by 9.8%. The rates placed in effect at that time have proven adequate to provide, in the aggregate, sufficient revenues to cover all operating and capital costs of the Canal through 1988, but the Commission has recorded minor deficits in the last two fiscal years. While the deficits have been minor, they point to a trend of traffic growth, revenues inadequate to absorb cost increases due to inflation and other factors. Commission projections indicate that this trend will continue and, in fact, worsen despite management efforts to reduce costs and increase productivity to the maximum extent possible. This growing imbalance between inflation and traffic growth undermines the serious loss projected for this year and the clear need for placing a toll rate increase in effect in fiscal year 1990.

In addition to the toll rate increase, certain revisions are recommended to the "Rules of Measurement of Vessels for the Panama Canal." These proposed changes are designed to simplify the Commission's measurement procedures and bring them in line with industry standards. These revisions will have a minimal impact on the amount of tolls collected.

The proposed changes would amend 35 CFR Parts 133 and 135 as follows:

(a) Amend § 133.265 to increase the size limitation from thirty to thirty-four inches on manholes serving water ballast spaces.

(b) Amend § 133.34 to eliminate the requirement that fuel carried not exceed 125% of the engine room for obtaining the ballast rate.

(c) Amend § 135.352 to eliminate the requirement to separately measure the...
portion of engine room space dedicated to propulsion power for purposes of calculating the 125% factor above.

Section 1604 of the Panama Canal Act of 1979, as amended, 22 U.S.C. 3794, establishes the procedures that the Panama Canal Commission must follow in proposing a toll rate increase or changes in the rules for measurement of vessels. Those procedures have been supplemented by regulations in 35 CFR Part 70, which in addition, provide interested parties with instructions for participating in the process governing changes in the rates of tolls or rules of measurement.

Pursuant to the statute and regulations, on June 1, 1989, an advance notice of proposed rulemaking was published in the Federal Register (54 FR 23463) recommending changes in the rules of measurement and a 9.6% increase in the rates of Canal tolls, to become effective October 1, 1989. At that time, a written analysis showing the basis and justification for the proposed toll increase was made available to interested parties. The analysis stated that the increase was necessary because, by October 1, 1989, the Canal Commission would experience a significant deficit created by a trend of traffic growth revenue inadequate to absorb cost increases due to inflation and other factors.

Written comments were solicited and received from interested parties, and a public hearing was held in Washington, DC on July 6, 1989. The views presented by the interested parties, as well as other relevant information, were considered by the Supervisory Board of the Commission at its quarterly meeting of July 1989. On July 28, 1989, the Board voted to recommend to the President that the measurement changes and the proposed 9.6% increase be implemented on October 1, 1989. A complete record of the proceedings since initiation of the proposals, including the data, views and arguments submitted by interested parties, will be forwarded to the President with the Commission’s recommendation. In considering the proposal, the President may approve, disapprove or modify the recommendation of the Commission. The final rule, approved and published by the President, will be effective no earlier than thirty days from the date of publication in the Federal Register.

This proposed rulemaking does not constitute a “major rule” as defined in section 1(b) of Executive Order 12291, dated February 17, 1981. Analysis of the proposed toll increase and of the measurement changes indicates that it will not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions, or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign based enterprises in domestic or export markets.

A review of the environmental effect of the proposed increase in the rates of tolls and the proposed measurement rule changes concludes that the proposals are not major Federal actions which will have a significant effect on the quality of the environment; therefore, pursuant to Executive Order 12114, dated January 4, 1979, an environmental analysis is not required. Furthermore, the Regulatory Flexibility Act is inapplicable, since this regulation is one relating to "rates" or “practices relating” thereto (5 U.S.C. 601 (2)).

List of Subjects in 35 CFR Parts 133 and 135

Panama Canal, Vessels.

Accordingly, it is proposed that 35 CFR Parts 133 and 135 be amended to read as follows:

PART 135—RULES FOR MEASUREMENT OF VESSELS

4. The authority citation for Part 135 is revised to read as follows:

Authority: Issued under authority of the President by 22 U.S.C. 3791; E.O. 12215; 45 FR 36043.

§ 135.285 Water ballast spaces, deducted.

(a) Water ballast spaces, other than spaces in the vessel’s double bottom, shall be deducted if they are adapted and used only for water ballast, have for entrance only ordinary circular or oval manholes whose greatest diameter does not exceed thirty-four inches (864 mm), and are not available for the carriage of cargo, stores, or fuel. Spaces that would otherwise qualify as water ballast except that they are also sued for fuel for the vessel’s own use shall be regarded as part of the vessel’s fuel space as defined in § 135.390 of this part.

(b) Tonnage of tanks may be obtained by using liquid capacity times the conversion factor with one-sixth off for frames in case of peak tanks and one-twelfth off in case of wings or deep tanks when they cannot be readily measured.

6. Section 135.352 is revised to read as follows:

§ 135.352 Definition of phrase “space occupied by engine rooms”.

The space occupied by engine rooms is defined as that occupied by the engine room itself and the boiler room, together with the spaces strictly required for the working of the engines and boilers. In addition to those, included are the spaces taken up by the shaft trunks in vessels with screw propellers, the spaces which enclose the funnels, and the casings necessary for the admission of light and air into the engine room to the extent that such spaces are located below the upper deck (as defined in §§ 135.61 through 135.63 of this part) or below a deck with openings. These are usually designated as tonnage openings, which may be so closed as to permit the
carriage of cargo or stores under the deck or a portion thereof. This definition also covers donkey-engine and boiler spaces when the donkey-engine and boiler are situated within the boundary of the main engine room, or of the light and air casing above it and when they are used in connection with the main machinery for propelling the vessel. When the shafts of screw propellers pass through open spaces not enclosed within tunnels, the spaces allowed in lieu of tunnels must be of reasonable dimensions suitable for the vessel in question. When a portion of the space within the boundary of the engine or boiler room is occupied by a tank or tanks for the storage of fresh water, lubricating oil, or fuel, including settling tanks, the space considered to be within the engine room shall be reduced by the space taken up by such tanks. Installations not strictly required for the working of the engines or boilers but that would otherwise qualify as a deduction under §§ 135.271 through 135.286 of this part may be left in and included in the engine room measurement.


Michael Rhode, Jr.,
Assistant to the Chairman and Secretary.

FOR FURTHER INFORMATION CONTACT: Rosalyn D. Hughes, Air Programs Branch, EPA Region IV, at the above address and telephone number (404) 347-2864 or FTS 257-2864.

SUPPLEMENTARY INFORMATION: On December 5, 1974, EPA published regulations for the prevention of significant deterioration of air quality (PSD) under the 1970 version of the Clean Air Act. These regulations established a program for protecting areas with air quality better than the National Ambient Air Quality Standards (NAAQS). The Clean Air Act Amendments of 1977 changed the 1970 Act and EPA’s regulations in many respects, particularly with regard to PSD. In addition to mandating certain changes to EPA’s PSD regulations immediately, the new Clean Air Act, in sections 160-169, contained comprehensive new PSD requirements. These new requirements were to be incorporated by states into their implementation plans.


On June 29, 1988, the State of Alabama submitted to EPA a revision to its EPA-approved PSD regulations which was the subject of a public hearing on March 21, 1988. EPA had commented on the revision and found it to be deficient for the following reasons.

Chapter 16, Rule 16.4.2(w)—EPA cannot allow the deletion of part (2) of the definition of “significant” in rule 16.4.2(w). Such deletion makes the definition inconsistent with the Federal definition contained in 40 CFR 51.166(b)(23)(ii). Part (2) is intended to include other emission rates “subject to regulation under the Clean Air Act” that are “not listed in subparagraph (w)(1),” the deletion of part (2) would exclude these emission rates, making the definition incomplete.

Proposed Action: EPA has concluded that the revision to Alabama’s regulation for prevention of significant deterioration does not meet the requirements of 40 CFR 51.166(b)(23)(ii). Therefore, EPA is proposing disapproval of the Alabama revision.

Under 5 U.S.C. Section 605(b), I certify that this disapproval action will not have a significant economic impact on a substantial number of small entities because it serves merely to make the State’s PSD regulations consistent with existing federal requirements.

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214-2225). On January 6, 1989, the Office of Management and Budget waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of two years.

List of Subjects in 40 CFR Part 52

Air pollution control, Intergovernmental relations.


Lee A. DelHins III,
Acting Regional Administrator.

BILLING CODE 6560-50-M
DEPARTMENT OF COMMERCE

Bureau of the Census

1990 Census; Cutoff Dates for Recognition of Boundary Changes

AGENCY: Bureau of the Census, Commerce.

ACTION: Notice.

SUMMARY: On July 8, 1986, the Bureau of the Census, U.S. Department of Commerce, published in the Federal Register, Vol. 51, No. 130, cutoff dates for recognition of boundary changes received as a result of the 1990 Boundary and Annexation Survey. These dates reflect the timing of the 1990 Census of Population and Housing. In order to increase public awareness of these cutoff dates, the Bureau of the Census wishes to restate, without change, this information. The Bureau of the Census compiles information about the boundaries for American Indian and Alaska Native areas in other programs. It uses the same effective and reporting dates for these boundaries.

FOR FURTHER INFORMATION CONTACT: Robert W. Marx, Chief, Geography Division, Bureau of the Census, (301) 783-5636.

SUPPLEMENTARY INFORMATION: For the tabulation and publication of data from the 1990 Census of Population and Housing, the Bureau of the Census will recognize only those boundaries legally in effect on January 1, 1990 that have been reported officially to the Bureau of the Census no later than March 1, 1990. The Bureau of the Census enumerates respondents on the date of the decennial census as residing within the legal limits of municipalities, county subdivisions, counties, states, and equivalent areas as those limits exist on January 1, 1990.

For the purposes of the Boundary and Annexation Survey, the Bureau of the Census defines "municipalities" and "county subdivisions" to include the areas identified as incorporated places (such as cities and villages) and minor civil divisions (such as townships and magisterial districts). A more complete description appears on pages A1 and A2 of 1980 Census of Population, Volume 1, Chapter A.

The Bureau of the Census will not recognize changes in boundaries that become effective after January 1, 1990 in taking the 1990 Decennial Census; the Bureau of the Census will enumerate the residents of any area that are transferred to another jurisdiction after that date and report them for the 1990 census as residents of the area in which they resided on January 1, 1990. The Bureau of the Census will not recognize in the data tabulations prepared for the 1990 census changes occurring on or before January 1, 1990, but not submitted officially to the Bureau of the Census until after March 1, 1990 except as necessary to conduct decennial census operations.

(B) Sections 70.1, 70.2 and 70.3 of the Cutoff for Recognition of Boundary Changes for the 1990 Census (13 U.S.C. 4; 32 FR 15154); and Department of Commerce Organizational Order 35-2A (40 FR 42765).

Dated: August 1, 1989.

C. L. Kincannon,
Deputy Director, Bureau of the Census.

[FR Doc. 89-18272 Filed 8-3-89; 8:45 am]
BILLING CODE 3510-07-M

Foreign Trade Zones Board

[Docket 13-89]

Foreign-Trade Zone 68—El Paso, TX; Application for Subzone; Farah Apparel Plant

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the City of El Paso, Texas, grantee of FTZ 68, requesting special-purpose subzone status for the apparel processing plant of Farah Incorporated (Farah) located in El Paso, Texas, within the El Paso Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81n), and the regulations of the Board (15 CFR Part 400). It was formally filed on July 21, 1989.

The Farah facility (25 acres) is located at 889 Gateway West within a 43-acre industrial park complex at Interstate 10 and Hawkins Boulevard in the City of El Paso. The plant employs some 200 persons and is used to design and cut mostly domestic fabric, and to receive and distribute foreign wearing apparel. The majority of the pieces cut at the plant are shipped to factories (twin- plants) in Mexico or Costa Rica to be sewn into finished garments. Upon return to the United States, the garments are subject to applicable duties and quotas.

The application indicates that Farah would only use zone procedures for the storage of finished apparel. Farah would make Customs entry for consumption on any foreign textiles or textile products prior to processing that would result in a transformation in the zone. This would preclude the cutting of foreign cloth under zone procedures.

Zone procedures would allow Farah to defer duty payments on foreign finished wearing apparel while the items are stored at the plant. Subzone status will also allow the company to take advantage of an exemption from state/ local inventory tax. The application indicates that zone savings will improve the plant’s international competitiveness.

In accordance with the Board’s regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of: John J. Da Ponte, Jr. (Chairman), Director, Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, DC 20230; Paul Rimmer, Deputy Assistant Regional Commissioner, U.S. Customs Service, Southwest Region, 3500 San Felipe Street, Houston, Texas 77087–3012; and, Lt. Colonel Steven M. Dougan, District Engineer, U.S. Army Engineer District Albuquerque, P.O. Box 1560, Albuquerque, New Mexico 87103–1560.

Comments concerning the proposed subzone are invited in writing from interested parties. They shall be addressed to the Board’s Executive Secretary at the address below and postmarked on or before September 22, 1989.

A copy of the application is available for public inspection at each of the following locations:

Office of the District Director, U.S. Customs Service, P.O. Box 9516, El Paso, TX 79985.
Anhydrous Sodium Metasilicate From France Preliminary Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of Preliminary Results of Antidumping Duty Administrative Review.

SUMMARY: In response to a request by the respondent, the Department of Commerce has conducted an administrative review of the antidumping duty order on anhydrous sodium metasilicate from France. The review covers one exporter of this merchandise to the United States, Rhone Poulenc Chimie de Base ("Rhone Poulenc"), and the period January 1, 1988 through December 31, 1988. There were no known shipments of this merchandise to the United States by Rhone Poulenc during the period.

INTERESTED PARTIES ARE INVITED TO COMMENT ON THESE PRELIMINARY RESULTS.

EFFECTIVE DATE: August 4, 1989.


SUPPLEMENTARY INFORMATION:

Background
On October 26, 1988, the Department of Commerce ("the Department") published in the Federal Register [53 FR 43251] the final results of its last administrative review of the antidumping duty order on anhydrous sodium metasilicate from France [46 FR 1697, January 7, 1981]. The respondent, Rhone Poulenc Chimie de Base, requested in accordance with § 353.53(a) of the Commerce Regulations (1988) that we conduct an administrative review. We published a notice of initiation of the antidumping duty administrative review on March 8, 1989. The Department has now conducted that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review
The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the United States fully converted to the Harmonized Tariff Schedule ("HTS"), as provided for in section 1201 of title 19 of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered, or withdrawn from warehouse, for consumption on or after that date is now classified solely according to the appropriate HTS item number(s).

Imports covered by the review are shipments of anhydrous sodium metasilicate, a crystalline silicate (Na₂SiO₄) which is alkaline and readily soluble in water. Applications include waste paper de-inking, ore-flotation, bleach stabilization, clay processing, medium or heavy duty cleaning, and compounding into other detergent formulations. During the review period such merchandise was classified under item number 421.3400 of the Tariff Schedules of the United States Annotated. This merchandise is currently classified under HTS item numbers 2839.11.00 and 2839.19.00. The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers one exporter of French anhydrous sodium metasilicate, Rhone Poulenc, and the period January 1, 1988 through December 31, 1988. There were no known shipments of this merchandise by Rhone Poulenc to the United States during the period and there are no known unliquidated entries.

Preliminary Results of the Review
Because there were no shipments during this review, we based our margin determination on the last margin found for Rhone Poulenc in this proceeding which was also the margin calculated in the less than fair value investigation, and we preliminarily determine that the following margin exists:

<table>
<thead>
<tr>
<th>Manufacturer/exporter</th>
<th>Time period</th>
<th>Margin (percent)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rhone Poulenc</td>
<td>1/88-12/88</td>
<td>+60</td>
</tr>
</tbody>
</table>

No shipments during the period.

Interested parties may request disclosure within 5 days of the date of publication of this notice, and may request a hearing within 10 days of the date of publication. Any hearing, if requested, will be held 44 days after the date of publication or the first workday thereafter. Prehearing briefs and/or written comments may be submitted not later than 30 days after the date of publication. Rebuttal briefs or rebuttals to written comments, limited to issues raised in those comments, may be filed not later than 37 days after the date of publication.

As provided for by § 353.22(c)(10) of the Commerce Regulations published in the Federal Register on March 28, 1989 (54 FR 12742) to be codified at 19 CFR 353.22(c)(10), the Department shall require a cash deposit of estimated antidumping duties of 60 percent for Rhone Poulenc. For any future entries of this merchandise from a new exporter, not covered in this or prior administrative reviews, whose first shipments occurred after December 31, 1988 and who is unrelated to the reviewed firm, a cash deposit of 60 percent shall be required. These deposit requirements are effective for all shipments of French anhydrous sodium metasilicate entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.22 of the Commerce Regulations.


Eric I. Garfinkel,
Assistant Secretary for Import Administration.

ACTION: Notice of Termination of Antidumping Duty Administrative Review.

SUMMARY: On April 28, 1989, the Department of Commerce initiated an administrative review of the antidumping finding on ferrite cores (of the type used in consumer electronic products) from Japan; Termination of Antidumping Duty Administrative Review.

AGENCY: International Trade Administration/Import Administration, Commerce.

FOR FURTHER INFORMATION CONTACT: [Contact information not provided in the image.]
products) from Japan. The Department is now terminating that review.

Background: On April 28, 1989 the Department of Commerce published a notice of initiation of administrative review of the antidumping finding on ferrite cores (of the type used in consumer electronic products) from Japan (54 FR 16330). That notice stated that we would review Taiyo Yuden Co., Ltd. for the period March 1, 1988 through February 28, 1989.

Taiyo Yuden subsequently withdrew its request for review on June 27, 1989. As a result, the Department is terminating the review.

EFFECTIVE DATE: August 4, 1989.


SUPPLEMENTARY INFORMATION: This notice is in accordance with section 751(a)(1) of the Tariff Act of 1930 (19 U.S.C. 1675(a)(1)) and § 353.22 of the Commerce Department’s regulations published in the Federal Register on March 28, 1989 (54 FR 12742) (to be codified at 19 CFR 353.22).

Dated: July 27, 1989
Eric I. Garfinkel,
Assistant Secretary for Import Administration.

[FR Doc. 89-18188 Filed 8-3-89; 8:45 am]
BILLING CODE 3510-DS-M

[A-588-807]

Industrial Belts and Components and Parts Thereof, Whether Cured or Uncured, from Japan; Antidumping Duty Order of Sales at Less Than Fair Value; Correction

AGENCY: Import Administration/International Trade Administration, Commerce.

ACTION: Notice of antidumping duty order of sales at less than fair value; correction.

On June 14, 1989, the Department of Commerce (the "Department") published in the Federal Register (54 FR 12742) the Antidumping Duty Order on industrial belts and components and parts thereof, whether cured or uncured, from Japan. On page 25315, in the first column, at the end of the first complete paragraph, the following sentence was inadvertently excluded: "This investigation excludes conveyor belts and automotive belts as well as front engine drive belts found on equipment powered by internal combustion engines, including trucks, tractors, buses, and lift trucks."

EFFECTIVE DATE: June 14, 1989.

[FR Doc. 89-18189 Filed 8-3-89; 8:45 am]
BILLING CODE 3510-DS-M

[A-475-802]

Industrial Belts and Components and Parts Thereof, Whether Cured or Uncured, from Italy; Antidumping Duty Order of Sales at Less Than Fair Value; Correction

AGENCY: Import Administration/International Trade Administration, Commerce.

ACTION: Notice of antidumping duty order of sales at less than fair value; correction.

On June 14, 1989, the Department of Commerce (the "Department") published in the Federal Register (54 FR 25313) the Antidumping Duty Order on industrial belts and components and parts thereof, whether cured or uncured, from Italy. On page 25314, in the first column, at the end of the first complete paragraph, the following sentence was inadvertently excluded: "This investigation excludes conveyor belts and automotive belts as well as front engine drive belts found on equipment powered by internal combustion engines, including trucks, tractors, buses, and lift trucks."

EFFECTIVE DATE: June 14, 1989.

[FR Doc. 89-18190 Filed 8-3-89; 8:45 am]
BILLING CODE 3510-DS-M

[A-559-002]

Industrial Belts and Components and Parts Thereof, Whether Cured or Uncured, From the Federal Republic of Germany; Antidumping Duty Order of Sales at Less Than Fair Value; Correction

AGENCY: Import Administration/International Trade Administration, Commerce.

ACTION: Notice of antidumping duty order of sales at less than fair value; correction.

On June 14, 1989, the Department of Commerce (the "Department") published in the Federal Register (54 FR 25315) the Antidumping Duty Order on industrial belts and components and parts thereof, whether cured or uncured, from Singapore.

On page 25315, in the third column, at the end of the second paragraph under the heading Supplemental Information, the following sentence was inadvertently excluded: "This investigation excludes conveyor belts and automotive belts as well as front engine drive belts found on equipment powered by internal combustion engines, including trucks, tractors, buses, and lift trucks."

EFFECTIVE DATE: June 14, 1989.

[FR Doc. 89-18191 Filed 8-3-89; 8:45 am]
BILLING CODE 3510-DS-M

[A-428-802]

Industrial Belts and Components and Parts Thereof, Whether Cured or Uncured, From the Federal Republic of Germany; Antidumping Duty Order of Sales at Less Than Fair Value; Correction

AGENCY: Import Administration/International Trade Administration, Commerce.

ACTION: Notice of antidumping duty order of sales at less than fair value; correction.

On June 14, 1989, the Department of Commerce (the "Department") published in the Federal Register (54 FR 25316) the Antidumping Duty Order on
Hart, Incorporated withdrew its request for review on July 17, 1989. As a result, review for that period (54 FR 22465).

Commerce initiated the administrative review of wool from Argentina for the period January 1, 1988 through December 31, 1988. No other interested party requested a countervailing duty administrative review of wool from Argentina initiated on May 24, 1989, Hart, Incorporated, a wool importer and an interested party.

FOR FURTHER INFORMATION CONTACT:
Sylvia Chadwick or Ilene Hersher, Assistant Secretary for Import Administration, Office of Countervailing Compliance, Department of Commerce, Washington, DC 20230; telephone: (202) 377-1769, or 377-3798.

EFFECTIVE DATE: June 14, 1989.

National Oceanic and Atmospheric Administration
Pacific Fishery Management Council; Public Meeting


The Pacific Fishery Management Council's Anchovy Plan Development Team will hold a public meeting on August 25, 1989, at 10 a.m., at the National Marine Fisheries Service, Southwest Fisheries Center, 8804 La Jolla Shores Drive, La Jolla, CA. The Team will begin developing a plan amendment to the Council's anchovy fishery management plan, which would provide for small reduction fishery under special conditions when it otherwise would be precluded by the plan.

For more information contact Lawrence D. Six, Executive Director, Pacific Fishery Management Council, 2000 SW, First Avenue, Portland, OR 97201; telephone: (503) 326-6352.

Dated: July 31, 1989.

BILLING CODE 3510-22-M

[DOCKET No. 90643-9143]

RIN 0646-AC34

King and Tanner Crab Fisheries in the Bering Sea/Aleutian Islands; Correction

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of approval of a fishery management plan; correction.

SUMMARY: This document corrects an error in the notice of approval of the Fishery Management Plan for the King and Tanner Crab Fisheries in the Bering Sea/Aleutian Islands published July 11, 1989 (54 FR 29060).

EFFECTIVE DATE: June 2, 1989.

FOR FURTHER INFORMATION CONTACT:
Raymond E. Baglin, 907-586-7229.

In rule document 89-10236 beginning on page 29060 in the issue of July 11, 1989, make the following correction:

On page 29061, third column, third complete paragraph beginning with the word "Restricting", line 2, "Council" should read "State".

Dated: July 26, 1989.
James E. Douglas, Jr., Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

BILLING CODE 3510-22-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1989 Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.
ACTION: Additions to Procurement List.

SUMMARY: This action adds to Procurement List 1989 a commodity to be produced and services to be provided by workshops for the blind or other severely handicapped.


ADDRESSES: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557-1145.

SUPPLEMENTARY INFORMATION: On April 4, June 2 and 16, 1989, the Committee for Purchase from the Blind and Other Severely Handicapped published notices (54 FR 14130, 23684 and 25601) of proposed additions to Procurement List 1989, which was published on November 15, 1988 (53 FR 46018).

After consideration of the material presented to it concerning capability of qualified workshops to produce the commodity and provide the services at a fair market price and impact of the addition on the current or most recent contractors, the Committee has determined that the commodity and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46-48c and 41 CFR 51-2.6.

I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

a. The actions will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The actions will not have a serious economic impact on any contractors for the commodity and services listed.

c. The actions will result in authorizing small entities to produce the commodity and provide the services procured by the Government.

Accordingly, the following commodity and services are hereby added to Procurement List 1989:

Commodity
Pole, Folding Cot Insect Bar 7210-00-297-5641

Services
Janitorial/Custodial
Federal Supply Service Depot. 4100 West 76th Street, Chicago, Illinois.

Janitorial/Custodial
Building 891, Logistics Systems Operations Center, Hill Air Force Base, Utah.

Beverly L Milkman, Executive Director.

[FR Doc. 89-18271 Filed 8-3-89; 8:45 am]
BILLING CODE 6920-33-M

COMMODITY FUTURES TRADING COMMISSION

Chicago Mercantile Exchange Proposed Futures Contract

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of the terms and conditions of proposed commodity futures contract.

SUMMARY: The Chicago Mercantile Exchange (“CME”) has applied for designation as a contract market in futures on One-Month LIBOR (London InterBank Offered Rate). The Director of the Division of Economic Analysis ("Division") of the Commission, acting pursuant to the authority delegated by Commission Regulation 140.06, has determined that publication of the proposal for comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

DATE: Comments must be received on or before September 5, 1989.

ADDRESS: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW, Washington, DC 20581.

References should be made to the CME’s proposed One-Month LIBOR futures contract.

FOR FURTHER INFORMATION CONTACT: Stephen Sherrod, Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street, NW, Washington, DC 20581, (202) 254-7227.

SUPPLEMENTARY INFORMATION: Most of the terms and conditions of the proposed contract are comparable to the CME’s Three-Month Eurodollar futures contract. Copies of the terms and conditions of the proposed futures contract will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW, Washington, DC 20581. Copies of the terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 254-6314.

Other materials submitted by the CME in support of the application for contract market designation may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission’s regulations thereunder (17 CFR part 145 (1987)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Acts Compliance Staff of the Office of the Secretariat at the Commission’s headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views or argument on the terms and conditions of the proposed futures contract, or with respect to other materials submitted by the CME in support of the application, should send such comments to Jean A. Webb,
DEPARTMENT OF DEFENSE

Office of the Secretary

Retirement Board of Actuaries

AGENCY: Department of Defense Retirement Board of Actuaries.

ACTION: Notice of meeting.

SUMMARY: A meeting of the Retirement Board has been scheduled to implement the provisions of chapter 74, title 10, United States Code (10 U.S.C. 1461 et seq.). The Board shall review DoD actuarial methods and assumptions to be used in the valuation of the military retirement system. Persons desiring to attend the DoD Retirement Board of Actuaries meeting must notify Ms. Dorothy Hemby at 960-6336 by August 24, 1989. Notice of this meeting is required under the Federal Advisory Committee Act.

DATE: August 29, 1989, 11:00 a.m.-1:00 p.m.

ADDRESS: Room 3E732, the Pentagon.

FOR FURTHER INFORMATION CONTACT: Benjamin Gottlieb, Executive Secretary, DoD Office of the Actuary, 4th Floor, 1600 Wilson Boulevard, Arlington, Virginia 22209-2933, (202) 696-6609.

L.M. Bynum, Alternate OSD Federal Register Liaison Officer, Department of Defense.

July 31, 1989.

[FR Doc. 89-18206 Filed 8-3-89; 8:45 am]

DEPARTMENT OF ENERGY

Award of a Cooperative Agreement; Noncompetitive Financial Assistance; University of Utah Nuclear Engineering Department

AGENCY: Department of Energy (DOE), Nevada Operations Office.

ACTION: Notice of noncompetitive financial assistance.

SUMMARY: DOE announces that pursuant to the DOE Financial Assistance Rule, 10 CFR 600.14(e)(1), it intends to award a noncompetitive financial assistance cooperative agreement for the training of community monitoring station managers by the Nuclear Engineering Department of the University of Utah.

Since 1981, the Nevada Operations Office of the DOE has funded and supervised the Community Monitoring Program to improve public awareness of radiological-related activities at the Nevada Test Site. In 18 communities, special monitoring stations have been set up to monitor and record environmental radioactivity. Local residents, preferably science teachers, operate the stations. DOE provides training annually for these station managers and their alternates by utilizing the expertise of the University of Utah Nuclear Engineering Department. These station managers, in turn, provide the interface with these communities and DOE that enables rapid dissemination of information and feedback of public concerns regarding Nevada Test Site activities.

The Director, Office of Information Resources Management, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following:

(1) Type of review requested, e.g., new, revision, extension, existing or reinstatement;
(2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract.

OMB invites public comment at the time of approval of these requests to OMB. Each notice containing proposed information collection requests should be addressed to Margaret B. Webster, Department of Education, 400 Maryland Avenue, SW., Room 5824, Regional Office Building 3, Washington, DC 20292.

FOR FURTHER INFORMATION CONTACT: Margaret B. Webster (202) 722-3813.

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Office of Information Resources Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before September 5, 1989.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Jim Houser, Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., Room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Margaret B. Webster, Department of Education, 400 Maryland Avenue, SW., Room 5824, Regional Office Building 3, Washington, DC 20202.

Funding Hours: 11:29

Burden Hours: 68,502

Recordkeeping Burden: 0

DEPARTMENT OF ENERGY

Award of a Cooperative Agreement; Noncompetitive Financial Assistance; University of Utah Nuclear Engineering Department

AGENCY: Department of Energy (DOE), Nevada Operations Office.

ACTION: Notice of noncompetitive financial assistance.

SUMMARY: DOE announces that pursuant to the DOE Financial Assistance Rule, 10 CFR 600.14(e)(1), it intends to award a noncompetitive financial assistance cooperative agreement for the training of community monitoring station managers by the Nuclear Engineering Department of the University of Utah.
The University of Utah will operate and maintain the radiation monitoring station in Salt Lake City, by daily assuring the proper operation of the equipment and sending environmental samples to Las Vegas, Nevada, for analysis. They will also attend and participate in community meetings within the State of Utah for the purpose of responding to questions regarding the technical aspects of the community monitoring program.

Eligibility for the award of this cooperative agreement is being limited to the University of Utah because of its radiological and nuclear engineering programs with personnel who are well qualified for this training purpose, its proximity to the Nevada Test Site, and the special concern of the people of Utah regarding the effects of nuclear testing in Nevada on the health and safety of Utah residents. The University of Utah has established a credibility with the community monitoring station managers over the eight years they have participated in the program and are in sufficiently close proximity to be able to participate in community meetings without excessive travel costs. They will also continue operating the community monitoring station in Salt Lake City.

The term of this cooperative agreement is for five years and will commence October 1, 1989, and will end September 30, 1994. The total estimated cost of this award is $1,300,000.

TO FURTHER INFORMATION CONTACT:

Issued in Las Vegas, Nevada, on July 18, 1989.

Nick C. Aquilina, Manager.

[Fed. Reg. 54:149 8-4-89 p. 32108]

BILLING CODE: 6450-01-M

Office of the Secretary


AGENCY: Office of the Secretary, DOE.

ACTION: Notice of meetings to invite public officials and the general public to provide comments on the development of a National Energy Strategy.

SUMMARY: This is the second in a series of public hearings being conducted throughout the country by the Department of Energy soliciting comments from interested parties on a wide range of energy issues and recommended solutions.

DATES AND PROCEDURES: The public hearing is scheduled for August 8, 1989, from 10:00 a.m. to 12:00 Noon and 1:00 p.m. to 5:00 p.m., at the Aaronson Auditorium, Tulsa City-County Library, 400 Civic Center, (located at the corner of Fourth Street and Denver Avenue), Tulsa Oklahoma 74103. Persons wishing to submit testimony to DOE in conjunction with this hearing should forward written comments to Ruth L. Burns, Office of Policy, Planning and Analysis, Department of Energy, Forrestal Building, Room 714-034, 1000 Independence Avenue, SW., Washington, DC 20585. Persons unable to testify may submit their comments for the record. All testimony received will be compiled and made available to the public.

Individuals interested in testifying at this hearing should contact Ruth L. Burns, Office of Policy, Planning and Analysis, Department of Energy at (202) 586-4757 no later than 4:00 p.m., Friday, August 4, 1989. The third hearing in this series has been scheduled for August 23, 1989, in Boise, Idaho. Additional hearings have been scheduled for Seattle, Washington on August 28, 1989, and Louisville, Kentucky on September 8, 1989. As soon as information is available regarding specific locations and times, it will be announced.

FURTHER INFORMATION CONTACT:
For further information, please write or call Ruth L. Burns, Office of Policy, Planning and Analysis, Department of Energy, Forrestal Building, Room 714-034, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-4767.

Linda G. Stuntz, Deputy Under Secretary, Office of Policy, Planning and Analysis, U.S. Department of Energy.

[For Fed. Reg. 54:149 8-4-89 p. 32108]

BILLING CODE: 6450-01-M

Energy Information Administration

Agency Information Collections Under Review by the Office of Management and Budget

AGENCY: Energy Information Administration, DOE.

ACTION: Notice of requests submitted for review by the Office of Management and Budget.

SUMMARY: The Energy Information Administration (EIA) has submitted the energy information collection(s) listed at the end of this notice to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act (Pub. L. 96-511, 44 U.S.C. 3501 et seq.).

The listing does not include information collection requirements contained in new or revised regulations which are to be submitted under section 3504(h) of the Paperwork Reduction Act, or management and procurement assistance requirements collected by the Department of Energy (DOE).

Each entry contains the following information: (1) The sponsor of the collection (the DOE component or Federal Energy Regulatory Commission (FERC)); (2) Collection number(s); (3) Current OMB docket number (if applicable); (4) Collection title; (5) Type of request, e.g., new, revision, or extension; (6) Frequency of collection; (7) Response obligation, i.e., mandatory, voluntary, or required to obtain or retain benefit; (8) Affected public; (9) An estimate of the number of respondents per report period; (10) An estimate of the number of responses annually; (11) An estimate of the average hours per response; (12) The estimated total annual respondent burden; and (13) A brief abstract describing the proposed collection and the respondents.

DATES: Comments must be filed on or before September 5, 1989.

ADDRESS: Address comments to the Department of Energy Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20585. (Comments should also be addressed to the Office of Statistical Standards, at the address below.)


SUPPLEMENTARY INFORMATION: If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the OMB DOE Desk Officer of your intention to do so as soon as possible. The Desk Officer may be telephoned at (202) 395-3084. (Also, please notify the DOE contact listed above.)

The first energy information collection submitted to OMB for review was:
1. Federal Energy Regulatory Commission
2. FERC-590
3. 1902-0147
4. Wellhead Pricing: Pricing Investigations
5. Extension

BILLING CODE: 6450-01-M
Take notice that on July 20, 1989, Fort Howard Corporation [Docket No. Q89-608-002] on Ocean State I, 35 FERC 62,556 (1986). The recertification is requested due to: 1) change in Applicant's name; 2) inclusion of a subsection located at the plant site; 3) decrease in the net electric power production capacity from 125.49 MW to 113 MW (the 31 MW extraction/condensing steam turbine generators, two 25 MW gas/oil-fired combustion turbine generators, and two waste-heat recovery boilers. Thermal energy recovered from the facility will be used for process and space heating and cooling. The maximum electric power production capacity of the facility will be 113 MW. The primary energy source will be coal and natural gas or oil. The original application was filed by Fort Howard Paper Company on March 18, 1986, and certification was granted on June 26, 1986, 35 FERC ¶ 62,556 (1986). The recertification is requested due to: 1) change in Applicant's name; 2) inclusion of a subsection located at the plant site; 3) decrease in the net electric power production capacity from 125.49 MW to 113 MW (the 31 MW extraction/condensing steam turbine generator as proposed in the original application will not be installed). Comment date: Thirty days from publication in the Federal Register in accordance with Standard Paragraph E at the end of this notice.

3. Ocean State Power

Take notice that on Ocean State Power [Docket No. ER89-504-000] on Ocean State I, on July 1, 1989, tendered for filing the following amendments to its rate schedules with the Federal Energy Regulatory Commission: Supplement No. 9 to Rate Schedule FERC No. 1 Supplement No. 6 to Rate Schedule FERC No. 2 Supplement No. 4 to Rate Schedule FERC No. 3 Supplement No. 6 to Rate Schedule FERC No. 4


Take notice that the Bonneville Power Administration (BPA) on July 25, 1989, tendered for filing proposed rate extensions for its wholesale power and transmission rates pursuant to section 7(a)(2) of the Northwest Power Act, 16 U.S.C. 300.21, BPA seeks final confirmation of the proposed rates, effective October 1, 1989. In the alternative, BPA seeks interim approval effective October 1, 1989, pursuant to Commission regulation 300.20. Exceptions to these approval dates are being noted. BPA proposes to extend its 1987 wholesale power and transmission rates through fiscal year (1991) by readopting its 1987 rate schedules, with the exception of a modification to the Cost Recovery Adjustment Clause (CRAC). The Administrator has reviewed BPA's current wholesale power and transmission rate schedules and has determined that current rates will produce sufficient revenue for BPA to meet its statutory requirements.

The proposed 1989 rate schedule contain a Cost Recovery Adjustment Clause which differs from that contained in BPA's 1987 rate schedules. BPA proposes the change as enabiling BPA to better assure cost recovery and realization of the BPA Administrator's financial goals. The modified CRAC will trigger if BPA net revenue (the difference between actual revenues and actual expenses) falls below zero. The amount recovered will equal the amount that the net revenue falls below zero up
to a maximum of $127.0 million in 1990
nine-month adjustment period and
$138.4 million in a 1991 nine-month
adjustment period. Each adjustment
period is based on a 12-month
evaluation period. Net revenue will be
measured in FY 1989 end, if less than
zero, CRAC may be implemented in the
last 9 months of 1990. Similarly, net
revenue will be measured in FY 1990,
and if less than zero, CRAC may be
implemented in the last 9 months of
1991. There will be no downward
adjustment of rates if net revenue is
greater than $0.

BPA requests approval effective
October 1, 1989 through September 30,
1991 for the following proposed
wholesale power rates and their
associated General Rate Schedule
Provisions: PP-89 Priority Firm Power
Rate; IP-89 Industrial Firm Power Rate;
SI-89 Special Industrial Firm Power Rate;
CF-89 Firm Capacity Rate; CE-89
Emergency Capacity Rate; NR-89 New
Resource Firm Power Rate; NF-89
Nonfirm Energy Rate; SS-89 Share-the-
savings Energy Rate; RP-89 Reserve
Power Rate. BPA requests approval of
its proposed SP-89 Short Term Surplus
Firm Power Rate (SP-89) effective
October 1, 1989 through September 30,
1994.

BPA requests approval effective
October 1, 1989 through September 30,
1991 for the following proposed
transmission rate schedules and their
associated general transmission rate
schedule provisions: FPT-89.1 formula
Power Transmission; IR-89 Integration
of Resources; IS-89 Southern Intertie
Transmission; IN-89 Northern Intertie
Transmission; IE-89 Eastern Intertie
Transmission; FT-89 Energy
Transmission; MT-89 Market
Transmission. BPA requests approval of
the TCT-1 Townsend-Garrison
Transmission and UFT-63 Use-of-
Facilities Transmission schedules
effective July 1, 1990 through September
30, 1991. Approval of the FFT-67.3
Formula Power Transmission schedule
to be renamed the FPT-67.3 on October
1, 1989 is requested for a one year
period from October 1, 1990.

Comment date: August 18, 1989, in
accordance with Standard Paragraph E
at the end of this notice.

5. Ocean State Power II
[Docket No. ER89-564-000]

Take notice that on July 21, 1989,
Ocean State Power II (Ocean State II)
tendered for filing with the Federal
Energy Regulatory Commission four
initial rate schedules. The rate schedules
consist of unit power agreements
between Ocean State Power II and
Boston Edison Company, New England
Power Company, Montauk Electric
Company and Newport Electric
Corporation, respectively. The unit
power agreements provide for the sale
of the capacity and corresponding
energy of a combined cycle unit to be
constructed in Burrillville, Rhode Island
and owned by Ocean State II.

Ocean State II has requested a waiver
of notice requirements to permit filing of
the rate schedule more than 120 days
prior to its proposed effective date.
Copies of the filing were served upon
Boston Edison Company, New England
Power Company, Montauk Electric
Company, Newport Electric
Corporation, the Massachusetts
Department of Public Utilities and the
Rhode Island Public Utilities
Commission.

Comment date: August 15, 1989, in
accordance with Standard Paragraph E
at the end of this notice.

6. New England Power Company
[Docket No. ER89-355-000]

Take notice that New England Power
Company (NEP), on July 18, 1989,
tendered for filing a Letter Agreement
between NEP and Boston Edison
Company (BECO) that provides for the
sale by NEP of twenty megawatts of
capacity and related energy from NEP's
purchase from New York State Electric
and Gas Corporation for the period June

NEP requests an effective date of June
1, 1989 and waiver of the Commission's
notice provision pursuant to § 35.11.

Comment date: August 14, 1989, in
accordance with Standard Paragraph E
at the end of this notice.

7. John Nelson
[Docket No. ID-2353-001]

Take notice that on July 21, 1989, John
Nelson (Applicant) tendered for filing an
application under section 305(b) of the
Federal Power Act to hold the following
positions:

Director—Ohio Edison Company
Director—The Lamson & Sessions Co.

Comment date: August 14, 1989, in
accordance with Standard Paragraph E
at the end of this notice.

8. Southern California Edison Company
[Docket No. ER89-454-001]

Take notice that on July 20, 1989,
Southern California Edison Company
(Edison) tendered for filing the
withdrawal of Amendment No. 2 to the
Edison-Azusa Interruptible
Transmission Service Agreement
(Amendment) designated Rate Schedule
FERC No. 190, Docket No. ER89-454,
which was filed with the Commission on
May 23, 1989.

Withdrawal of Amendment No. 2 to the
Edison-Azusa Interruptible
Transmission Service Agreement.

It has come to our attention through
discussions with the FERC staff that
Edison's filing was not necessary.
Copies of this filing were served upon
the Public Utilities Commission of the
State of California and Azusa.

Comment date: August 14, 1989, in
accordance with Standard Paragraph E
at the end of this notice.

9. Green Mountain Power Corporation
[Docket No. ER89-569-000]

Take notice that on July 25, 1989,
Green Mountain Power Corporation
(GMP) tendered for filing a proposed
Electric Service Agreement for
wholesale electric service by GMP to
the Northfield Electric Department,
Town of Northfield, Vermont pursuant
to Green Mountain's FERC Electric
Tariff Power Rate W. GMP has
requested waiver of the 60-day notice
requirement set forth in Section 35.3 of
the Commission's regulations in order to
permit service under the Electric Service
Agreement to commence on September
1, 1989.

Comment date: August 15, 1989, in
accordance with Standard Paragraph E
at the end of this notice.

10. Idaho Power Company
[Docket No. ER89-567-000]

Take notice that on July 24, 1989,
Idaho Power Company (IPC) tendered
for filing, pursuant to Section 205 of the
Federal Power Act, a Transmission
Services Agreement executed on June 6,
1989 between the United States
Department of Energy acting by and
through the BPA and Idaho Power
Company. The term of the Agreement is
from June 6, 1989 to December 31, 2002.

Comment date: August 15, 1989, in
accordance with Standard Paragraph E
at the end of this notice.

11. Public Service Company of
Oklahoma
[Docket No. ER89-568-000]

Take notice that on July 24, 1989,
Public Service Company of Oklahoma
(PSO) tendered for filing an
Interconnection and Interchange
Agreement (the Agreement) between
Mid-Continent Power Company, Inc.
(MCPC) and PSO. PSO proposes that the
Agreement be made effective as of July
21, 1989 and accordingly seeks waiver of
the Commission's notice requirements.
Copies of the filing have been sent to the Oklahoma Corporation Commission and to MCPC.

**Comment date:** August 15, 1989, in accordance with Standard Paragraph E at the end of this notice.

12. Florida Power & Light Company  
[Docket No. ER89-566-000]

Take notice that Florida Power & Light Company (FPL), on July 24, 1989, tendered for filing the following documents: Amendment Number Two to Agreement for Full Requirements Electric Service by Florida Power & Light Company (Company) and Seminole Electric Cooperative, Inc. (Rate Schedule FR-2); Amendment Number Two to Aggregate Billing Partial Requirements Service Agreement between Florida Power and Light Company and Seminole Electric Cooperative, Inc. (Rate Schedule FERC No. 77) and Revised Sheet No. 24 of the Company’s FERC Electric Tariff, Second revised Volume No. 1.

FPL states that under the above Amendments, FPL will terminate service under the Agreement for Full Requirement Electric Service for Brighton distribution delivery point; and initiate service to Brighton distribution delivery point under the Aggregate Billing Partial Requirements Service Agreement effective 12:01 AM on July 29, 1989.

FPL requests that waiver of § 35.3 of the Commission’s Regulations be granted and that the proposed Amendment be made effective immediately.

FPL states that copies of the filing were served upon Seminole Electric Cooperative, Inc.

**Comment date:** August 15, 1989, in accordance with Standard Paragraph E at the end of this notice.

13. Montana Power Company  
[Docket No. ER89-565-000]

Take notice that on July 24, 1989, the Montana Power Company (MPC) tendered for filing pursuant to section 205 of the Federal Power Act an agreement effective May 27, 1989 for the transmission of electrical power for the Bonneville Power Administration.

MPC has requested waiver of the notice provisions of § 35.3 of the Commission’s regulations in order to permit the agreement to become effective on the date indicated above in accordance with its terms.

**Comment date:** August 15, 1989, in accordance with Standard Paragraph E at the end of this notice.

14. Commonwealth Edison Company  
[Docket No. ER89-557-000]

Take notice that July 18, 1989, Commonwealth Edison Company (Edison) tendered for filing a Letter Agreement dated June 14, 1989, between Edison and Madison Gas and Electric Company (MG&E) and a Letter Agreement dated June 19, 1989, between Edison and Wisconsin Public Service Corporation (Wisconsin). The Edison-MG&E Letter Agreement provides for the sale of Short Term Power and General Purpose Energy to each other whenever mutually agreed upon. The Wisconsin-Edison Letter Agreement provides for the sale of Short Term Power and General Purpose Energy by Edison to Wisconsin whenever mutually agreed upon.

Edison requests expedited consideration of the filing and an effective date for each Letter Agreement coincident with the Commission’s order accepting the rate schedules for filing. Accordingly, Edison requests waiver of the Commission’s notice requirements, to the extent necessary.

Copies of this filing were served upon MG&E, Wisconsin, the Illinois Commerce Commission, and the Public Service Commission of Wisconsin.

**Comment date:** August 15, 1989, in accordance with Standard Paragraph E at the end of this notice.

**Standard Paragraph**

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 285 North Capital Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission’s Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestant as parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,  
Secretary.

[FR Doc. 89-18194 Filed 8-3-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ER89-465-000, et al.]


Take notice that the following filings have been made with the Commission:

1. Green Mountain Power Corporation  
[Docket No. ER89-465-000]

July 26, 1989.

Take notice that on July 21, 1989, Green Mountain Power Corporation (Green Mountain) tendered for filing, in response to a deficiency letter from the Commission, information concerning the value adjustment provision in the proposed Electric Service Agreement for wholesale electric service to the Hardwick Electric Department, Town of Hardwick, Vermont, filed by Green mountain on May 25, 1989.

**Comment date:** August 9, 1989, in accordance with Standard Paragraph E at the end of this notice.

2. Sunnyside Cogenersation Associates  
[Docket No. QF86-556-001]


On July 17, 1989, Sunnyside Cogenersation Associates (Applicant) of 2920 North Academy Boulevard, Suite 201, Colorado Springs, Colorado 80903 submitted for filing an application for recertification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission’s regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Carbon County, Utah. The facility will consist of two circulating fluidized bed combustion boilers, two extraction steam turbine generators, and related auxiliary equipment. The net electric power production capacity will be 45 megawatts. The primary energy source will be bituminous coal refuse. Construction of the facility is expected to begin in September 1989.

The original application was filed on March 5, 1986 and certification was granted on April 20, 1987 (39 FERC ¶ 62,091). The recertification is requested due to a change in the use of thermal energy output from the facility. In the original application the thermal energy was proposed to be used by an affiliated entity in a coal drying operation. The Applicant now proposes to sell the thermal output to an unaffiliated entity for greenhouse space heating.

**Comment date:** Thirty days from publication in the Federal Register in
accompany with Standard Paragraph E at the end of this notice.

3. Entergy Services, Inc.
[Docket No. ER89-531-000]
July 26, 1989.
Take notice that on June 30, 1989, Entergy Services, Inc. submitted a letter for filing advising the Commission that effective May 22, 1989, MSU System Services, Inc., a subsidiary of Entergy Corporation (formerly Middle South Utilities, Inc.) changed its corporate name to Entergy Services, Inc. Entergy states that the purpose for changing the corporate name was primarily to be in parallel with the name of the parent company which became Entergy Corporation on May 19, 1989.

Comment date: August 9, 1989, in accordance with Standard Paragraph E at the end of this notice.

4. Pennsylvania Power & Light Company
[Docket No. ER89-452-000]
July 26, 1989.
Take notice that Pennsylvania Power & Light Company (PP&L) on July 10, 1989 tendered for filing, as a supplement to its Rate Schedule FERC No. 84, the Fourth Supplement to the Capacity and Energy Sales Agreement, dated as of June 29, 1988, between PP&L and Jersey Central Power & Light Company (JC).

The Fourth Supplement to the Capacity and Energy Sales Agreement specifies the updated cost of decommissioning the Susquehanna Steam Electric Station determined using the annuity method.

PP&L requests a waiver of the notice requirements of Section 265 of the Federal Power Act and § 35.3 of the Commission's Regulations so that the Fourth Supplement to the Capacity and Energy Sales Agreement can be made effective as of December 1, 1988.

PP&L states that a copy of its filing was served on JC, the Pennsylvania Public Utility Commission, and the New Jersey Board of Public Utilities.

Comment date: August 9, 1989, in accordance with Standard Paragraph E at the end of this notice.

5. Green Mountain Power Corporation
[Docket No. ER88-425-000]
July 26, 1989.
Take notice that on July 3, 1989, Green Mountain Power Corporation (GMP) tendered for filing additional information, at the Commission's request, concerning the rate impact on GMP's wholesale customers of the Agreement for Purchase of Power between GMP and Fitchburg Gas and Electric Company.

Comment date: August 9, 1989, in accordance with Standard Paragraph E at the end of this notice.

6. Arizona Public Service Company
[Docket No. ER89-561-000]
July 26, 1989.
Take notice that on July 13, 1989, Arizona Public Service Company (APS) tendered for filing a notice of cancellation of an agreement for firm power between Arizona Electric Power Cooperative, Inc. (AEPCO) (FPC Rate Schedule No. 57).

APS requests waiver of 18 CFR 35.15 of the Commission's rules to allow cancellation of the Agreement to become effective March 9, 1989.

Comment date: August 9, 1989, in accordance with Standard Paragraph E at the end of this notice.

7. Michigan Power Company
[Docket No. ER88-142-003]
July 26, 1989.
Take notice that on July 21, 1989, Michigan Power Company (Michigan Power) tendered for filing, in compliance with the Commission's order of June 7, 1989 in Docket No. ER88-142-002, proposed changes in its electric resale rate schedules presently on file with the Commission which are applicable to the City of Dowagiac, Michigan and the Village of Paw Paw, Michigan. The proposed change in resale rates will decrease Michigan Power's annual revenues from the City of Dowagiac by $26,199 and from the Village of Paw Paw by $67,543 for the period commencing December 22, 1987 and ending December 31, 1988 and will decrease Michigan Power's annual revenues from the City of Dowagiac by $117,649 and from the Village of Paw Paw by $30,624 for the period commencing January 1, 1989 based on a twelve month test period ended December 31, 1988 from rates in effect prior to December 22, 1987. The purpose of the present rate decrease filing is to reflect in Michigan Power's rates for the sale of power to the City of Dowagiac and the Village of Paw Paw reductions, approved by the Commission in Docket No. ER88-30-000, in the wholesale electric rates paid by Michigan Power to Indiana Michigan Power Company and an allocated portion of a one-time refund paid by I&M to Michigan Power as part of a settlement in Docket No. ER88-30-000.

Michigan Power requests that these rate changes be made effective as of December 22, 1987 and January 1, 1989.

Copies of the filing were served upon the City of Dowagiac, the Village of Paw Paw and the Michigan Public Service Commission.

Comment date: August 9, 1989, in accordance with Standard Paragraph E at the end of this notice.

8. American Electric Power Service Corporation
[Docket No. ER89-548-000]
July 26, 1989.
Take notice that on July 3, 1989, American Electric Power Service Corporation (AEP) submitted for informational purposes, on behalf of Ohio Power Company (OPCO) Supplemental Schedules VII and IX, dated May 1, 1989 to the Agreement, dated as of April 1, 1974 between American Municipal Power-Ohio, Inc. (AMP-Ohio) and OPCO. Also submitted on behalf of Columbus Southern Company (CSP) was Supplemental Schedule I, dated June 1, 1989, to the Interconnection Agreement, dated January 1, 1988 between City of Columbus and CSP.

Comment date: August 9, 1989, in accordance with Standard Paragraph E at the end of this notice.

9. Northeast Utilities Service Company
[Docket No. ER89-855-000]
Take notice that on July 17, 1989, Northeast Utilities Service Company (NUSCO) tendered for filing proposed rate schedules pertaining to:

I. Letter Agreement (Re: Capacity Sales), dated May 17, 1989, between NUSCO, as Agent for CL&P, and Montauk Electric Company (Montauk) and

II. Letter Agreement (Re: Capacity Sales), dated November 4, 1988, between NUSCO, as Agent for CL&P, and Western Massachusetts Electric Company (WMECO), and Commonwealth Electric Company (Commonwealth);

III. Sales Agreement with respect to Millstone 3 and Gas Turbines, dated June 1, 1988, between NUSCO, as Agent for CL&P and WMECO, and Newport Electric Company (Newport) (Agreements).

NUSCO requests that the Commission waive its notice and filing regulations to the extent necessary to permit the Agreements (I) to commence effective June 1, 1988 and to terminate effective August 31, 1988; (II) to commence effective July 1, 1988 and to terminate effective October 31, 1989; and (III) to commence effective June 1, 1988, respectively.

NUSCO states that copies of the rate schedules have been mailed or delivered.
to CL&P and WMECO, and to Commonwealth, Montauk and Newport.
NUSCO further states that the filing is in accordance with Part 35 of the Commission's Regulations.
Comment date: August 14, 1989, in accordance with Standard Paragraph E at the end of this notice.

10. Nevada Power Company
[Docket No. ER89-560-000]
Take notice that on July 20, 1989, Nevada Power Company (Nevada) tendered for filing an agreement entitled Short Term Power Agreement between Overton Power District No. 5 (Overton) and Nevada Power Company hereinafter “the Agreement”. The purpose of the agreement is to establish the terms and conditions for the sale by Nevada to Overton of up to 15 MW per hour of capacity and energy during June, July, August and September, 1989. Nevada requests an effective date of June 1, 1989 and therefore requests waiver of the Commission's notice requirements.
Nevada states that copies of the filing were served upon Overton.
Comment date: August 14, 1989, in accordance with Standard Paragraph E at the end of this notice.

11. Nevada Power Company
[Docket No. ER89-558-000]
Take notice that on July 20, 1989, Nevada Power Company (Nevada) tendered for filing an agreement entitled Short Term Power Agreement between City of Boulder City (Boulder) and Nevada Power Company hereinafter “the Agreement”. The purpose of the Agreement is to establish the terms and conditions for the sale by Nevada to Boulder of up to 10 MW per hour of capacity and energy during June, July, August and September, 1989.
Nevada requests an effective date of June 1, 1989 and therefore requests waiver of the Commission's notice requirements.
Nevada states that copies of the filing were served upon Boulder.
Comment date: August 14, 1989, in accordance with Standard Paragraph E at the end of this notice.

12. Oklahoma Gas and Electric Company
[Docket No. EC89-18-000]
Take notice that on July 20, 1989, Oklahoma Gas and Electric Company (Applicant), an Oklahoma Corporation with its principal office at 321 N. Harvey, P.O. Box 321, Oklahoma City, Oklahoma, 73101, filed an application pursuant to Section 203 of the Federal Power Act and Part 33 of the Commission's Regulations thereunder, for authorization to sell certain electrical substation facilities to Oklahoma Municipal Power Authority. The Company states it is engaged primarily in the generation, transmission, distribution and sales of electric energy in Oklahoma and western Arkansas. The facilities being sold and purchased will be devoted to supplying service to OMPA Participants only.
Comment date: August 16, 1989, in accordance with Standard Paragraph E at the end of this notice.

13. Nevada Power Company
[Docket No. ER89-558-000]
Take notice that on July 20, 1989, Nevada Power Company (Nevada) tendered for filing an agreement entitled Interconnection Agreement between Nevada Power Company and Valley Electric Association (Valley) hereinafter “the Agreement.” The primary purpose of the Agreement is to establish the terms and conditions for the interchange of economy, emergency, and banked energy and for other power transactions that may be possible through the Parties' interconnected systems or through the systems of third Parties.
Nevada states that copies of the filing were served upon Valley.
Comment date: August 14, 1989, in accordance with Standard Paragraph E at the end of this notice.

14. Central Vermont Public Service Corporation
[Docket Nos. ER88-436-002 and ER88-629-002]
Take notice that on July 21, 1989, Central Vermont Public Service Corporation (“the Company”) tendered for filing a report in compliance with a Commission order in the captioned dockets. The report includes cost reports which reflect the provisions of the settlement agreement among the parties which was approved by the Commission in the order. The report also shows monthly billing determinants, revenue receipts dates, and revenues under prior, present and settlement rates, the monthly revenue refund, and the monthly interest computed, together with a summary of such information for the total refund period.
Central Vermont states that this filing has been posted as required by the Commission's regulations and that it has served copies of this filing upon the affected wholesale customers, the New Hampshire Public Utilities Commission, and the Vermont Public Service Board.
Comment date: August 14, 1989, in accordance with Standard Paragraph E at the end of this notice.

15. Pacific Gas and Electric Company
[Docket No. ER89-475-000]
PG&E states that the revised pages reflect the following changes:
(1) Exhibit D2-1: At former lines 2, 7 and 9, to clarify that losses under the separate SMUD EHV Contract (FERC Rate Schedule No. 37) are not changed by the IRS.
(2) Section C.4: At former lines 21 and 22. In addition to a change to Section A.15; and
(3) Section A.15: At former lines 26 (pages A-3) and 1 (page A-4), together with change to Section C.4 these changes should clarify the applicability of Ten-Minute Emergency Power Service to SMUD's purchases of firm power from Third Parties (including SMUD's proposed purchase from Edison).
Comment date: August 11, 1989, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph E
Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 823 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding.
Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.
Lois D. Cashell, Secretary.
[FR Doc. 89-18195 Filed 8-3-89; 8:45 am]
BILLING CODE 6717-01-M
[Docket No. OF89-233-000]

Warner-Lambert Company, Parke-Davis Research Division; Application for Commission Rerecognition of Qualifying Status of a Cogeneration Facility


On July 5, 1989, Warner-Lambert Company, Parke-Davis Research Division (Applicant), of 2800 Plymouth Road, Ann Arbor, Michigan 48105, submitted for filing an application for rerecognition of a facility as a qualifying cogeneration facility pursuant to § 282.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Ann Arbor, Michigan. The facility will consist of a combustion turbine generator and a heat recovery boiler. Thermal energy recovered from the facility will be used for space heating and cooling, hot water production and steam sterilization. The net electric power production capacity will be 2,826 KW. The primary energy source will be natural gas. The completion of the facility is scheduled for July, 1989.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20428, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protest will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protesters parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Secretary.

[BILLING CODE 6717-01-M]

[FR Doc. 89-18197 Filed 8-3-89; 8:45 am]
The proposed effective date of the tariff sheets is August 1, 1989.

Transco states that on April 3, 1989 Transco filed with the Commission a Stipulation and Agreement ("April 3 Settlement") which would have settled various issues and proceedings related to, among other things, the Commission's Order Nos. 436 and 500 and the implementation of such Orders on Transco's system. Included in the April 3 Settlement were proposed revisions to Transco's Rate Schedule GSS, LSS and LGA ("Eastern Storage Rate Schedules") to remove certain restrictions in such rate schedules on the injection of gas purchased by its customers from parties other than Transco. In general terms, these tariff provisions limit the injection of such third-party gas, both on a daily and total quantity basis, to a percentage based upon the amount of each customer's daily firm purchase entitlement from Transco, which has been permanently converted to firm transportation service. Pursuant to the terms of the April 3 Settlement, on April 3, 1989 Transco also filed a request for a temporary waiver of the daily restrictions on the injection of third-party gas under its affected storage rate schedules pending Commission approval of the April 3 Settlement. By letter order issued May 3, 1989, the Commission granted such temporary waiver. Subsequently, however, by order issued July 19, 1989 the Commission rejected the April 3 Settlement, without prejudice to resubmittal in a modified form.

Transco states that subsequent to the issuance of the July 19, 1989 order, Transco, its customers and other parties have been engaged in discussions regarding the terms of a revised settlement proposal to resolve the same issues that were addressed in the April 3 Settlement, including the removal of the limitations on the injection of third-party gas into storage under the Eastern Storage Rate Schedules. Transco anticipates that a revised settlement will be filed in the near future. However, four of the seven months which comprise the 1989 storage injection season have lapsed. Furthermore, due to the restrictions on the injection of third-party gas into such facilities, many of Transco's customers are behing their normal operational schedules for filling their storage balances. As a temporary resolution of this matter, Transco is willing to waive all restrictions on the injection of third-party gas into storage under the Eastern Storage Rate Schedules during the month of August, 1989. Therefore, Transco requests that the Commission promptly take such actions as may be necessary to permit such waiver of tariff restrictions by Transco commencing August 1, 1989.

Transco states that with regard to a related matter, the requested waiver by Transco during August of the restrictions on the injection of third-party gas into storage under the Eastern Storage Rate Schedules would result in Transco having virtually no sales under its CD, G or OG Rate Schedules during such month since Transco's currently effective sales rate is substantially above the spot market prices for gas which its customers can purchase to fill their storage balances in the absence of such storage injection restrictions. However, Transco has obligations to certain of its producers to purchase approximately 250 MMcf per day of "must-take" gas supplies consisting mostly of casinghead gas. Transco states that its ability to grant a limited term waiver of the storage restrictions is dependent on its ability to dispose of such "must take" gas during such period. If the storage tariff waiver requested herein is granted, Transco states that it intends to continue to purchase such "must-take" gas supplies and to the extent necessary under operating conditions, resell such gas supplies under its Rate Schedule IS which was approved by Commission order issued March 24, 1989 in Docket CP89-759-000. However, Transco does not have on file with the Commission currently effective Rate Schedule IS tariff sheets. In that regard, Transco submits in the instant filing certain original tariff sheets to Second Revised Volume No. 1 of Transco's FERC Gas Tariff, which comprise Rate Schedule IS and the form of Service agreement to be used under such Rate Schedule.

Transco states that copies of the instant filing are being mailed to its jurisdictional customers, State Commissions and interested parties. In accordance with the provisions of § 154.16 of the Commission's Regulations, copies of this filing are available for public inspection during regular business hours, in a convenient form and place at Transco's main offices at 2800 Post Oak Boulevard in Houston, Texas.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 625 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before 8/7/89. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room, Lois D. Cashell, Secretary.

The proposed effective date of the tariff sheets is August 1, 1989.

Transco filed with the Commission a Stipulation and Agreement ("April 3 Settlement") which would have settled various issues and proceedings related to, among other things, the Commission's Order Nos. 436 and 500 and the implementation of such Orders on Transco's system. Included in the April 3 Settlement were proposed revisions to Transco's Rate Schedule GSS, LSS and LGA ("Eastern Storage Rate Schedules") to remove certain restrictions in such rate schedules on the injection of gas purchased by its customers from parties other than Transco. In general terms, these tariff provisions limit the injection of such third-party gas, both on a daily and total quantity basis, to a percentage based upon the amount of each customer's daily firm purchase entitlement from Transco, which has been permanently converted to firm transportation service. Pursuant to the terms of the April 3 Settlement, on April 3, 1989 Transco also filed a request for a temporary waiver of the daily restrictions on the injection of third-party gas under its affected storage rate schedules pending Commission approval of the April 3 Settlement. By letter order issued May 3, 1989, the Commission granted such temporary waiver. Subsequently, however, by order issued July 19, 1989 the Commission rejected the April 3 Settlement, without prejudice to resubmittal in a modified form.

Transco states that subsequent to the issuance of the July 19, 1989 order, Transco, its customers and other parties have been engaged in discussions regarding the terms of a revised settlement proposal to resolve the same issues that were addressed in the April 3 Settlement, including the removal of the limitations on the injection of third-party gas into storage under the Eastern Storage Rate Schedules. Transco anticipates that a revised settlement will be filed in the near future. However, four of the seven months which comprise the 1989 storage injection season have lapsed. Furthermore, due to the restrictions on the injection of third-party gas into such facilities, many of Transco's customers are behing their normal operational schedules for filling their storage balances. As a temporary resolution of this matter, Transco is willing to waive all restrictions on the injection of third-party gas into storage under the Eastern Storage Rate Schedules during the month of August, 1989. Therefore, Transco requests that the Commission promptly take such

ENVIRONMENTAL PROTECTION AGENCY

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared July 17, 1989 through July 21, 1989 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 362-5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 7, 1989 (54 FR 15006).

Draft EISs


Summary: EPA does not object to the selection of Alternative D as the preferred alternative.

ERP No. DS-FHW-H40137-NB, Rating LO, Van Dorn Street Connection, NV-2/9th and 10th Street to US-77/West Bypass, Additional Alternatives Analysis, Funding, City of Lincoln, Lancaster County, NB.

Summary: EPA has no objection to the additional alignment addressed in the Supplemental EIS.

ERP No. D-FHW-K40167-CA, Rating EO2, CA-232 Upgrading to Freeway Standards, Mathilda Avenue to I-680, Funding and 404 Permit, Santa Clara County, CA.

Summary: EPA expressed environmental objections because the project would eliminate 23.5 acres of seasonal wetlands and riparian habitat and lacks sufficient information about acreage determination, specific
proposed mitigation and whether other less-damaging, practicable alternatives exist. EPA recommended that the FEIS contain more detailed information on wetland impacts and mitigation and air quality impacts, particularly as they pertain to carbon monoxide and ozone.

EPA No. D-FHW-K49168-CA, Rating EA2, I-5 Widening and Interchange Improvements, I-5 at Genesee Avenue, I-805 at Mira Mesa Boulevard and I-5 at Del Mar Heights Road, Funding, 404 and Bridge Permits, City and County of San Diego County, CA.

Summary: EPA expressed environmental objections because the Build Alternatives would require the placement of fill material in approximately 13-15 acres of wetlands and could not determine whether the proposed project was consistent with section 404 requirements. EPA encourages the development of an alternative that includes high occupancy vehicle and light rail transit features in order to prevent air quality violations or any futher deterioration. EPA recommended the preparation of a supplemental EIS.

FINAL EISs

ERP No. F-COE-H36091-IA, Mississippi River Flood Damage Reduction Facilities, Construction, Coon Rapids Dam to Ohio River, Muscatine and Louisa Counties, IA.

Summary: EPA’s concerns have been addressed as long as the recommendations in the Final Fish and Wildlife Service Coordination Act Report, dated March 26, 1988 are implemented.

ERP No. F-FHW-D40050-MD, MD-32 Relocation and Upgradation of Related Facilities, MD-108 to Pinell School Road, Funding and 404 Permit, Howard County, MD.

SUMMARY: EPA has no objections to the project as described in the supplemental final EIS.

ERP No. F-FHW-D40231-AL, MD, US 50/Salisbury Bypass Construction, US 50 East of Rockawalkin Road to the US 50 and US 13 Bypass Interchange, Funding and 404 Permit, Wicomico County, MD.

SUMMARY: EPA is concerned about the lack of additional information on the elimination of Alternative 5, the potential for contamination of groundwater resources and the increased acreage of wetlands impacted.

ERP No. F-FHW-E40372-AL, Corridor X Highway Construction, Walker/Jefferson County Line to US 31, Funding and Possible 404 Permit, Birmingham Metropolitan Area, Jefferson County, AL.

Summary: EPA had minor concerns over impacts to do with residential noise levels and riparian wetlands.

Dated: August 1, 1989.

William D. Dickerson,
Deputy Director, Office of Federal Activities.

[FR Doc. 89-18205 Filed 8-3-89; 8:45 am]
BILLING CODE 6560-50-M

[ER-FRL-36249]

Environmental Impact Statements; Availability


EIS No. 890206, Draft, AFS, UT, Seven Peaks All Season Ski Resort, Development and Management, Special Use Permit, Provo Peak Basin Area, Uinta National Forest, Utah County, UT. Due: September 18, 1989, Contact: Larry Call (801) 377-5750.


EIS No. 890209, Final, FAF, UT, Los Angeles Metro Rail Rapid Transit Project, Updated Information and Impacts of the New Locally Preferred Alternative, Funding, Los Angeles County, CA. Due: September 9, 1989, Contact: Carmen Clark (415) 974-7317.

EIS No. 890210, Final, BOP, PR, Guaynabo Metropolitan Detention Center, Construction and Operation, Implementation, PR. Due: September 5, 1989, Contact: William Patrick (202) 272-6871.

Dated: August 1, 1989.

William D. Dickerson,
Deputy Director, Office of Federal Activities.

[FR Doc. 89-18204 Filed 8-3-89; 8:45 am]
BILLING CODE 6560-50-M

[ER-FRL-36249]

National Drinking Water Advisory Council; Open Meeting

Under section 10(a)(2) of Public Law 92-423, “The Federal Advisory Committee Act,” notice is hereby given that a meeting of the National Drinking Water Advisory Council established under the Safe Drinking Water Act, as amended (42 U.S.C. 300F et seq.), will be held on August 29, 1989 from 1:00 p.m. until 3:00 p.m. in the EPA Auditorium, U.S. Environmental Protection Agency (EPA) Headquarters, 401 M Street SW., Washington, DC.

Council members will be participating by Conference Call.

The purpose of the meeting is to prepare recommendations for the Administrator of EPA on the final regulatory structure (e.g. maximum contaminant level or treatment technique) for the National Primary Drinking Water Regulation for Lead and Copper and on whether lead service line replacement should be a component of the final regulation.

The meeting will be open to the public. The Council encourages the hearing of outside statements and will allocate the first hour of their conference call for this purpose. Oral statement will be limited to five minutes and it is preferred that only one person present the statement. Any outside parties interested in presenting an oral statement should petition the Council by telephone at (202) 228-8800 before August 28, 1989.

Due to time constraints, oral statements will be reserved on a first come, first served basis. When one hour block is filled, no more time will be available.

The Council encourages written statements that may be sent to them prior to the meeting. Anyone wishing to provide a written statement, must do so before August 21, 1989. These statements should be sent to: Charlene E. Shaw, Designated Federal Official, National Drinking Water Advisory Council, U.S. Environmental Protection Agency, Office of Drinking Water (WH-505A), 401 M Street SW., Washington, DC 20460. Written statements will be recognized at the Council meeting and will become part of the permanent meeting record.

Any member of the public that would like to attend the Council meeting, present an oral statement, or submit a written statement, should contact Ms. Charlene Shaw at the address listed above, or call (202) 382-2285.


Rebecca W. Hauser,
Acting Assistant Administrator for Water.

[FR Doc. 89-18258 Filed 8-3-89; 8:45 am]
BILLING CODE 6560-50-M
National Drinking Water Advisory Council; Open Meeting

Under section 10(a)(2) of Public Law 92-423, "The Federal Advisory Committee Act," notice is hereby given that a meeting of the National Drinking Water Advisory Council established under the Safe Drinking Water Act, as amended (42 U.S.C. 300F et seq.), will be held on August 18, 1989, from 9:00 a.m. until 3:00 p.m. in Room #2, South Conference Center, U.S. Environmental Protection Agency (EPA) Headquarters, 401 M Street SW, Washington, DC. Council members will be participating by Conference Call.

The purpose of the meeting is to prepare recommendations for the Administrator of EPA on the proposed National Primary and Secondary Drinking Water Regulations for 30 synthetic organic chemicals (SOCs) and 8 inorganic chemicals (Phase 2).

The meeting will be open to the public. The Council encourages the hearing of outside statements and will allocate the first hour of their conference call for this purpose. Oral statements will be limited to five minutes and it is preferred that only one person present the statement. Any outside parties interested in presenting an oral statement should petition the Council by telephone at (202) 382-2285 before August 16, 1989. Due to time constraints, oral statements will be reserved on a first-come, first-served basis. When the one hour block is filled, no more time will be available.

The Council encourages written statements that may be sent to them prior to the meeting. Anyone wishing to provide a written statement, must do so before August 11, 1989. These statements should be sent to: Charlene E. Shaw, Designated Federal Official, National Drinking Water Advisory Council, U.S. Environmental Protection Agency, Office of Drinking Water (WFS-550A), 401 M Street SW, Washington, DC 20460. Written statements will be recognized at the Council meeting and will become part of the permanent meeting record.

Any member of the public that would like to attend the Council meeting, present an oral statement, or submit a written statement, should contact Ms. Charlene Shaw at the address listed above, or call (202) 382-2285.


Rebecca W. Hamner,
Acting Assistant Administrator for Water

[FR Doc. 89-18259 Filed 8-3-89; 8:45 am]

TSCA Chemical Testing; Receipt of Test Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the receipt of test data on commercial hexane (CAS Nos. 96-37-7 and 110-54-3) and diethylene glycol butyl ether (DGBE) (CAS No. 112-34-5), submitted pursuant to a final test rule under the Toxic Substances Control Act (TSCA). This notice also announces the receipt of test data on aniline (CAS No. 62-53-3) and methyl tert-butyl ether (MTBE) (CAS No. 1634-04-4), submitted pursuant to a consent order under TSCA. Publication of this notice is in compliance with section 4(d) of TSCA.

FOR FURTHER INFORMATION CONTACT:


SUPPLEMENTAL INFORMATION: Section 4(d) of TSCA requires EPA to publish a notice in the Federal Register reporting the receipt of test data submitted pursuant to test rules promulgated under section 4(a) within 15 days after it is received. Under 40 CFR 790.60, all TSCA section 4 consent orders must contain a statement that results of testing conducted pursuant to these testing consent orders will be announced to the public in accordance with section 4(d).

I. Test Data Submissions

Test data for commercial hexane was submitted by the American Petroleum Institute pursuant to a test rule at 40 CFR 799.2155. It was received by EPA on July 17, 1989. The submission describes a developmental toxicity study in rabbits of commercial hexane using the mouse bone marrow micronucleus assay of aniline. In vivo mammalian bone marrow cytogenetics tests: Micronucleus assay are required by this test rule.

Test data for MTBE was submitted by the Methyl Tertiary Butyl Ether Committee (MTBE Health Effects Testing Task Force) on behalf of: Amoco Corporation, ARCO Chemical Company, Exxon Chemical Company—a division of Exxon Corporation, Sun Refining and Marketing Company and Texaco Chemical Company, pursuant to a consent order at 40 CFR 799.5000. It was received by EPA on July 12, 1989. The submission describes an inhalation developmental toxicity study in rabbits for MTBE. Developmental toxicity testing is required by this consent order.

EPA has initiated its review and evaluation process for these data submissions. At this time, the Agency is unable to provide any determination as to the completeness of these submissions.

II. Public Record

EPA has established a public record for this TSCA section 4(d) receipt of data notice (docket number OPTS-44534). This record includes copies of all studies reported in this notice. The record is available for inspection from 8 a.m. to 4 p.m. Monday through Friday, except legal holidays, in the TSCA Public Docket Office, Rm. NE-G004, 401 M St., SW., Washington, DC 20400.


Dated: July 31, 1989.

Joseph J. Merenda,
Director, Existing Chemical Assessment Division, Office of Toxic Substances.

[FR Doc. 89-18250 Filed 8-3-89; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Information Collection Submitted to the Office of Management and Budget for Review

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of information collection submitted to the Office of Management and Budget (OMB) for review and approval under the Paperwork Reduction Act.

SUMMARY: The submission is summarized as follows:

Type of Review: Extension of expiration date without any change in substance or method of collection.
Title: Application for a Merger or Other Transaction Pursuant to section 8(c) of the Federal Deposit Insurance Act (Phantom or Corporate Reorganization).

Form Number: FDIC 6220/07.
OMB Number: 3064-0015.
Expiration Date of Current OMB Clearance: October 31, 1989.

Frequency of Response: On occasion.
Respondents: Insured nonmember banks who apply for FDIC approval to effect a merger transaction for the principal purpose of corporate reorganization.

Number of Respondents: 200.
Number of Responses per Respondent: 1.
Total Annual Responses: 200.
Average Number of Hours per Response: 20.
Total Annual Burden Hours: 4,000.

FDIC Contact: John Kelper, (202) 898-3810, Assistant Executive Secretary, Room 6096, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20572.

Comments: Comments on this collection of information are welcome and should be submitted on or before October 3, 1989.

ADRESSES: A copy of the submission may be obtained by calling or writing the FDIC contact listed. Comments regarding the submission should be addressed to the OMB reviewer listed. The FDIC contact would also be interested in receiving a copy of the comments.

SUPPLEMENTARY INFORMATION: The FDIC is requesting OMB approval to extend the use of application form FDIC 6220/07 which is used by FDIC-supervised banks who apply for FDIC approval to effect a merger transaction under section 18(c) of the Federal Deposit Insurance Act (12 U.S.C. 1828(c)). This type of transaction involves a phantom bank merger or other merger transaction for the principal purpose of corporate reorganization. The application form requires the applicant to furnish information concerning the terms and conditions of the merger, structure of the transaction, and a statement of condition of recent date for the applicant and the other institution. The information collected on the form is used by the FDIC as a basis for evaluating certain factors as required by section 18(c) of the FDIC Act before approving the application.

Robert E. Feldman,
Deputy Executive Secretary, Federal Deposit Insurance Corporation.

[FR Doc. 89-18227 Filed 8-3-89; 8:45 am]
BILLING CODE 6714-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FERMA-835-DR]

Louisiana: Amendment to a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Louisiana (FERMA-835-DR), dated July 18, 1989, and related determinations.


FOR FURTHER INFORMATION CONTACT:

NOTICE: Notice is hereby given that the incident period for this disaster is closed effective July 21, 1989.

(Catalog of Federal Domestic Assistance No. 82.306, Disaster Assistance.)

Grant C. Peterson,
Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 89-18233 Filed 8-3-89; 8:45 am]
BILLING CODE 6710-02-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Agreement No.: 20472-200272.
Title: South Carolina State Ports Authority Terminal Agreement.

Parties:
South Carolina State Ports Authority (Authority)
Harmony Cruise Lines, Ltd. (HCL)

Synopsis: The Agreement provides for a nonexclusive license to HCL to use the Authority's passenger terminal facility at the south end of Union Pier Terminal for HCL's day excursion cruise service.

By Order of the Federal Maritime Commission.
Dated: July 31, 1989.
Joseph C. Polking,
Secretary.

[FR Doc. 89-18201 Filed 8-3-89; 8:45 am]
BILLING CODE 6730-01-M

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interests persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 212-010236-020.
Title: South Europe/U.S.A. Pool Agreement.

Parties:
Compania Transatlantica Espanola, S.A.
Costa Container Line (A Division of Contship Containerlines Limited)
Evergreen Marine Corporation (Taiwan) Ltd.
Farrell Lines, Inc.
'Italia' di Navigazione, S.p.A.
Jugolinija
Lykes Lines (Lykes Bros. Steamship Co., Inc.)
APMoller-Maersk Line
Nedlloyd Lines (Nedlloyd Linien B.V.)
P & O Containers (TFL) Ltd.
Zim Israel Navigation Company, Ltd.

Synopsis: The proposed modification would extend the existing Pool Period...
By Order of the Federal Maritime Commission.
Dated: July 31, 1989.

Joseph C. Polking.
Secretary.

[FR Doc. 89-18226 Filed 8-3-89; 8:45 am]
BILLING CODE 6730-01-M

——FEDERAL RESERVE SYSTEM——

Northern Trust Corp.; Application To Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board’s Regulation Y (12 CFR 225.23(a)(1)) for the Board’s approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage de novo, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can “reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices.” Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by the Board’s action.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 21, 1989.

A. Federal Reserve Bank of Chicago
   (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:
   1. Northern Trust Corporation, Chicago, Illinois; to engage de novo through Northern Trust Brokerage, Inc., Chicago, Illinois, in combining investment advice with its existing brokerage services activities to institutional and retail customers, pursuant to § 225.25(b)(4) of the Board’s Regulation Y.


   Jennifer J. Johnson,
   Associate Secretary of the Board.
   [FR Doc. 89-18214 Filed 8-3-89; 8:45 am]
   BILLING CODE 6730-01-M

Ocean State Bancshares Corp., et al.; Formations of, Acquisitions by, and Mergers of Bank Holding Companies and Subsidiaries

The companies listed in this notice have applied for the Board’s approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board’s Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than August 28, 1989.

A. Federal Reserve Bank of Boston
   (Robert M. Brady, Vice President) 000 Atlantic Avenue, Boston, Massachusetts 02106:
   1. Ocean State Bancshares Corporation, Middletown, Rhode Island; to become a bank holding company by acquiring 100 percent of the voting shares of Ocean State National Bank, Middletown, Rhode Island.
   2. Federal Reserve Bank of New York
      (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10048:
      1. West Jersey Bancshares, Inc., Fairfield, New Jersey; to become a bank holding company by acquiring 100 percent of the voting shares of West Jersey Community Bank, Fairfield, New Jersey.

C. Federal Reserve Bank of Cleveland
   (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:
   1. Citizens Bancshares, Inc., Salineville, Ohio; to acquire 97 percent of the voting shares of First National Bank of Chester, Chester, West Virginia.

D. Federal Reserve Bank of Atlanta
   (Robert E. Heck, Vice President) 104 Marietta Street NW., Atlanta, Georgia 30303:
   1. First Security Corporation, Norcross, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of First Security National Bank, Norcross, Georgia.

E. Federal Reserve Bank of Chicago
   (David S. Epstein, Vice President) 230 South La Salle Street, Chicago, Illinois 60690:
   1. Overton Bank Shares, Inc., Mondamin, Iowa; to become a bank holding company by acquiring 100 percent of the voting shares of Mondamin Savings Bank, Mondamin, Iowa.

F. Federal Reserve Bank of Kansas City
   (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64106:
   1. Bancook Corporation, Cook, Nebraska; to acquire 67.5 percent of the voting shares of Farmers Bank, Prairie Home, Nebraska.

2. Tulsa National Bancshares, Inc., Tulsa, Oklahoma; to become a bank holding company by acquiring 100 percent of the voting shares to Tulsa National Bank, Tulsa, Oklahoma.


Jennifer J. Johnson,
Associate Secretary of the Board.
[FR Doc. 89-18215 Filed 8-3-89; 8:45 am]
BILLING CODE 6730-01-M

Albert P. Qualls, Jr.; Change in Bank Control Notice; Acquisition of Shares of Banks or Bank Holding Companies

The notification listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board’s Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in action on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).
FEDERAL TRADE COMMISSION

Agreement Containing Consent Order: Societe Nationale Elf Aquitaine et al.


The Federal Trade Commission (the "Commission"), having initiated an investigation of the proposed acquisition of the voting securities of Pennwalt Corporation ("Pennwalt") by Societe Nationale Elf Aquitaine ("SNEA") (SNEA, Atochem S.A., Elf Aquitaine, Inc., Atochem, Inc., Atochem North America, Inc., and Pennwalt collectively the "Proposed Respondents"), and it now appearing that Proposed Respondents are willing to enter into an agreement containing an order to divest certain assets and providing for other relief,

It is hereby agreed by and between Proposed Respondents, by their duly authorized officers and attorneys, and counsel, for the Commission that:

1. Proposed Respondent SNEA is a French corporation with its principal executive offices located at Tour Elf, Paris La Defense, France.

2. Proposed Respondent Pennwalt is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Pennsylvania with its principal executive offices located at Three Parkway, Philadelphia, Pennsylvania 19102, USA.

3. Proposed Respondent Atochem S.A. is a French corporation with its principal executive offices located at 4 cours Michelet, Paris La Defense, France.

4. Proposed Respondent Elf Aquitaine, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware with its principal executive offices located at High Ridge Park, Stamford, Connecticut 06904, USA.

5. Proposed Respondent Atochem North America, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware with its principal executive offices located at 223 Harristown Road, Glen Rock, New Jersey 07452, USA.

6. Proposed Respondent Atochem Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware with its principal executive offices located at 223 Harristown Road, Glen Rock, New Jersey 07452, USA.

7. Proposed Respondents SNEA and Atochem S.A. submit to the jurisdiction of the Commission for the purpose of the entry and enforcement of the Order contained in this Agreement, and to the jurisdiction of the courts of the United States for the purpose of enforcing the Order.


9. Proposed Respondents waive:

a. Any further procedural steps;

b. The requirement that the Commission’s decision contain a statement of findings of fact and conclusions of law;

c. All rights to seek judicial review or otherwise to challenge or contest the validity of the Order entered pursuant to this agreement; and

d. All rights under the Equal Access to Justice Act.

10. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify Proposed Respondents, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

11. This agreement is for settlement purposes only and does not constitute an admission by Proposed Respondents that the law has been violated as alleged in the draft of complaint here attached.

12. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant
to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to Proposed Respondents, (1) issue its complaint corresponding in form and substance with the draft of complaint heretofore attached and its decision containing the following Order to divest certain assets and providing for other relief in disposition of the proceeding, and (2) make information public with respect thereto. When so entered, the Order shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The Order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to Order to Proposed Respondents or to their American counsel's addresses as stated in this Agreement shall constitute service. Proposed Respondents waive any right they may have to any other manner of service. The complaint may be used in construing the terms of the Order, and no agreement, understanding, representation, or interpretation not contained in the Order or the Agreement may be used to vary or contradict the terms of the Order.

13. Proposed Respondents have read the proposed complaint and Order contemplated hereby. They understand that once the Order has been issued, they will be required to file one or more compliance reports showing that they have fully complied with the Order. Proposed Respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the Order after it becomes final.

Order

I.

As used in this Order, the following definitions shall apply:

a. "Acquisition" means SNEA's acquisition of any or all voting securities of Pennwalt.

b. "SNEA" means Société Nationale Elf Aquitaine, a French corporation, its predecessors, any other corporations, partnerships, joint ventures, companies, subsidiaries, divisions, groups and affiliates that Société Nationale Elf Aquitaine controls, directly or indirectly, and their respective directors, officers, employees, agents and representatives, and their respective successors and assigns.

c. "Pennwalt" means Pennwalt Corporation, a Pennsylvania corporation, as it was constituted prior to the acquisition, its predecessors, any other corporations, partnerships, joint ventures, companies, subsidiaries, divisions, groups and affiliates Pennwalt controls, directly or indirectly, and their respective directors, officers, employees, agents and representatives, and their respective successors and assigns.

d. "Atochem" means Atochem S.A., a French corporation, a directly wholly-owned subsidiary of SNEA, its predecessors, any other corporations, partnerships, joint ventures, companies, subsidiaries, divisions, groups and affiliates Atochem S.A. controls, directly or indirectly, and their respective directors, officers, employees, agents and representatives, and their respective successors and assigns.

e. "EAI" means Elf Aquitaine, Inc., a Delaware corporation and a directly wholly-owned subsidiary of SNEA, its predecessors, any other corporations, partnerships, joint ventures, companies, subsidiaries, divisions, groups and affiliates Elf Aquitaine, Inc. controls, directly or indirectly, and their respective directors, officers, employees, agents and representatives, and their respective successors and assigns.

f. "Atochem Inc." means Atochem Inc., a Delaware corporation and an indirectly wholly-owned subsidiary of SNEA, its predecessors, any other corporations, partnerships, joint ventures, companies, subsidiaries, divisions, groups and affiliates Atochem Inc. controls, directly or indirectly, and their respective directors, officers, employees, agents and representatives, and their respective successors and assigns.

g. "ANA" means Atochem North America, Inc., a Delaware corporation and an indirectly wholly-owned subsidiary of SNEA, its predecessors, any other corporations, partnerships, joint ventures, companies, subsidiaries, divisions, groups and affiliates Atochem North America, Inc. controls, directly or indirectly, and their respective directors, officers, employees, agents and representatives, and their respective successors and assigns.


i. "PVDF" means polyvinylidene fluoride homopolymers and copolymers.

j. "VF2" means vinylidene fluoride monomer.

k. "Thorofare Plant" means the manufacturing facility currently owned and operated by Pennwalt located at Thorofare, New Jersey, and all of its assets, title, properties, interests, rights and privileges, of whatever nature, tangible and intangible, including without limitation all buildings, machinery, equipment, customer lists, and other property of whatever description, and including the right to use in the United States on a nonexclusive basis (under a license, lease, contract or similar arrangement) Pennwalt's current technology and know-how employed to produce HCFC-142b and VF2 at such plant and all Pennwalt's commercial grades of PVDF whether or not produced at such plant.

1. "Acquirer" shall have the meaning given to the term in Section II.


II.

It is ordered, That Respondents shall divest, absolutely and in good faith, to an acquirer that receives the prior approval of the Commission (the "Acquirer"), within twelve (12) months after the date this Order becomes final, the Thorofare Plant.

III.

It is further ordered, That:

A. If Respondents have not divested the Thorofare Plant as contemplated by Section II within the twelve-month period provided for in Section II, Respondents shall consent to the appointment of a trustee empowered to divest the Thorofare Plant. In the event that the Commission brings an action pursuant to section 5(j) of the Federal Trade Commission Act, 15 U.S.C. 45(j), or any other statute enforced by the Commission, Respondents shall consent to the appointment of a trustee in such action. The appointment of a trustee shall not preclude the Commission from seeking civil penalties or any other relief available to it for any failure by Respondents to comply with this Order.

B. The trustee shall also be empowered to include in the assets to be divested a commitment from Respondents to provide the Acquirer for a period of at least one (1) year from the date of divestiture with technical assistance required by said Acquirer to operate the Thorofare Plant using the proprietary technology and know-how licensed as part of the divestiture of the Thorofare Plant. If the commitment to provide technical assistance to the Acquirer is included in the assets that the trustee is empowered to divest and if the Commission determines that Respondents have not complied with its commitment, the Commission may extend the period of the commitment in addition to any other remedies available to the Commission.

C. The trustee shall use his or her best efforts to negotiate the most favorable price and terms available in each
contract that is submitted to the Commission, subject to Respondents’ absolute and unconditional obligation to divest at no minimum price. The trustee shall make the divestitures contemplated by Section III only to an Acquirer that receives the prior approval of the Commission, and only in a manner that receives the prior approval of the Commission.

D. If a trustee (the “Trustee”) is appointed by the Commission or a court in order to discharge Respondents’ obligations under Section III of this Order, the following terms and conditions shall apply to the Trustee’s duties and responsibilities:

1. The Trustee shall select the Trustee, subject to the consent of Respondents, which consent shall not be unreasonably withheld. The Trustee shall be a person with experience and expertise in acquisitions and divestitures.

2. The Trustee shall have the power and authority to accomplish the divestiture contemplated by Section III of this Order. The Trustee shall have the right to effect the divestiture for which the Trustee has the duty to divest. The Trustee’s duties and responsibilities shall be appointing by a court, subject also to the prior approval of the court. If, however, at the end of such twelve-month period the Trustee has not received the prior approval of the Commission, the Trustee shall have the power and authority to accomplish the divestiture, which shall be subject to the prior approval of the Commission and, if the Trustee is appointed by a court, of the court, the Respondents and the Trustee’s power and authority to accomplish the divestiture may be extended by the Commissioner, or by the court for a court-appointed Trustee, by the court, of the Respondents and the Trustee’s power and authority to accomplish the divestiture for which the Trustee is responsible.

3. If the Trustee ceases to act or fails to act diligently, one or more substitute Trustees shall be appointed in the same manner as provided in this Section III of the Order. The Trustee shall report in writing to respondents and the Commission every sixty (60) days concerning each Trustee’s efforts to accomplish the divestiture.

IV

It is further ordered, That
A. The Agreement to Hold Separate shall continue in effect until Respondents’ divestiture obligations under Sections II and III of the Order are satisfied, or until such other time as the Agreement to Hold Separate provides, and the Respondents shall comply with all terms of said Agreement.
B. The divestiture required by the Order shall be made only to an Acquirer that receives the prior approval of the Commission, and only in a manner that receives the prior approval of the Commission. The purpose of the divestiture required by this Order is to ensure the continuation of an ongoing viable enterprise and to remedy the lessening of competition charged in the Commission’s complaint.
C. Respondents shall take such action as is necessary to maintain the viability and marketability of the Thorofare Plant, and to prevent the destruction, removal or impairment of any assets subject to possible divestiture pursuant to this Order except in the ordinary course of business and except for ordinary wear and tear.

V

It is further ordered, That within sixty (60) days after the date of this Order becomes final and every sixty (60) days thereafter until Respondents have fully satisfied the divestiture obligation of this Order, Respondents shall submit to the Commission a verified written report setting forth in detail the manner and form in which they intend to comply, are complying or have complied with the Order. Respondents shall include in their compliance reports, among other things that are required from time to time, a full description of all contacts or negotiations with prospective acquirers for the divestiture required by this Order, including the identity of all parties contacted. Respondents also shall include in their compliance reports copies of all written communications to and from such parties, and all internal memoranda, reports, and recommendations concerning the required divestiture.

VI

It is further ordered, That for the purposes of determining or securing compliance with this Order, and subject to any legally recognized privilege, upon written request and on reasonable notice to Respondents made to their principal offices, Respondents shall make available to any duly authorized representatives of the Commission:

A. All books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of Respondents relating to any matters contained in this Order, for inspection and copying in the United States during office hours and in the presence of counsel; and
B. Upon five (5) days’ notice to Respondents, and without restraint or interference from Respondents, for interview in the United States, officers or employees of Respondents, who may have counsel present, regarding such matters.

VII

It is further ordered, That
Respondents shall notify the Commission at least thirty (30) days prior to any proposed change in any Respondent, such as dissolution, assignment or sale resulting in the emergency of a successor, or the creation or dissolution of subsidiaries or any other change that may affect compliance with this Order.
VIII

It is further ordered, That, for a period of ten (10) years from the date this order becomes final, each Respondent shall cease and desist from acquiring, without the prior approval of the Commission, directly or indirectly, through subsidiaries, further relief from, assets used or previously used in (and still suitable for use in), or the whole or any part of the stock or share capital of, or interest in, any company engaged in, the manufacture or sale of PVDF or VF, in the United States. One year from the date this Order becomes final and annually thereafter for nine (9) more years, Respondents shall file with the Commission a verified written report of their compliance with this paragraph.

Agreement To Hold Separate

This Agreement to Hold Separate (the "Agreement") is by and between Société Nationale Elf Aquitaine, a French limited company ("SNEA"), Atochem S.A., a French limited company, Atotech North America, Inc., a Delaware corporation, Elf Aquitaine, Inc. a Delaware corporation, Atotech Inc. a Delaware corporation, Pennwalt Corporation, a Pennsylvania corporation (collectively the "Respondents"), and the Federal Trade Commission (the "Commission"), an independent agency of the United States Government, established under the Federal Trade Commission Act of 1914, 15 U.S.C. 41 et seq. (Respondents and the Commission collectively, the "Parties")

Promises

Whereas, Elf Aquitaine, Inc. ("EAI"), a direct wholly-owned subsidiary of SNEA, and AC Development, Inc. ("AC"), an indirect wholly-owned subsidiary of SNEA, commenced a tender offer on March 23, 1989, as amended, for all outstanding shares of Pennwalt Corporation ("Pennwalt"), with the intent of effecting a merger of AC into Pennwalt, pursuant to which Pennwalt would become a wholly-owned subsidiary of SNEA (the "Acquisition"), all as contemplated by and provided for in that certain Agreement and Plan of Merger dated as of March 20, 1989, among SNEA, EAI, AC and Pennwalt; and

Whereas, the Commission has reason to believe that the Acquisition would violate the statutes enforced by the Commission; and

Whereas, if the Commission accepts the attached Agreement Containing Consent Order (the "Consent Order"), the Commission must place it on the public record for a period of at least sixty (60) days and may subsequently withdraw such acceptance pursuant to the provisions of Section 2.34 of the Commission's Rules; and

Whereas, the Commission is concerned that if an understanding is not reached at the status quo ante and to hold separate the assets and businesses of the Fluorochemicals Division of Pennwalt (the "Division") until the divestiture contemplated by the Consent Order has been made, divestiture resulting from any proceeding challenging the legality of the acquisition might not be possible or might be less than an effective remedy; and

Whereas, the purpose of this Agreement and the Consent Order is to preserve the assets to be divested as a viable business pending divestiture, and to preserve the Commission's ability to require the divestiture of properties described in the Consent Order and to remedy any anticompetitive aspects of the Acquisition; and

Whereas, Respondents' entering into this Agreement shall in no way be construed as an admission by Respondents that the Acquisition is unlawful; and

Whereas, Respondents understand that no act or transaction contemplated by this Agreement shall be deemed immune or exempt from the provisions of the antitrust laws or the Federal Trade Commission Act by reason of anything contained in this Agreement.

Now, Therefore, the Parties agree, upon the understanding that the Commission has determined that the Acquisition would be challenged, and in consideration of the Commission's agreement that, unless the Commission determines to reject the Consent Order, it will not seek further relief from Respondents with respect to the Acquisition, except that the Commission may exercise any and all rights to enforce this Agreement and the Consent Order to which it is annexed and made a part thereof, as follows:

1. Respondents agree to execute and be bound by the attached Consent Order.

2. Respondents agree that, until the first to occur of (i) three business days after the Commission withdraws its acceptance of the Consent Order pursuant to the provisions of § 2.34 of the Commission's Rules; or (ii) if the Commission issues the Consent Order finally, until the date the divestiture required by the Consent Order is accomplished, Respondents shall hold the Division separate and apart on the following terms and conditions:

a. All of the Division's assets and businesses shall be operated independently of Respondents.

b. Except as is necessary to assure compliance with this Agreement and the Consent Order, Respondents shall not exercise direction or control over, or influence directly or indirectly, the Division.

c. Respondents shall not change the composition of the management of the Division, except that they may replace the head of the Division for cause.

d. Respondents shall not cause or permit the wasting or deterioration of the Division assets in any manner that impairs the marketability of such assets and operations or that impairs in any manner the viability of the assets and operations as a going concern until such time as the divestiture to a Commission-approved acquirer, as required by the Consent Order, has been accomplished.

e. Respondents shall maintain separate financial and operating books and records, shall prepare separate financial statements for the Division assets and shall, within thirty (30) days after they become available, provide the Commission's Bureau of Competition with quarterly and annual financial statements for the Division assets, which annual financial statements shall be audited and certified by independent certified public accountants.

f. Except as required by law, and except to the extent that necessary information is exchanged in the course of defending investigations or litigation, or to comply with any of Respondent's obligations under this Agreement or the Consent Order, Respondents shall not receive or have access to, or the use of, any "material confidential information" relating to the Division not in the public domain, except as such information would be available in the normal course of business if the Acquisition had not taken place. Any such information that is obtained pursuant to this subparagraph shall only be used for the purposes set out in this subparagraph. "Material confidential information", as used herein, means competitively sensitive or proprietary information, including but not limited to customer lists, price information, marketing methods, patents, technologies, processes, and sales of individual products and product lines, but shall not include information in the public domain, information which would be available to Respondents in the normal course of business if the Acquisition had not taken place, information independently known to Respondents from sources other than Pennwalt, and information on Division-wide sales and profits. Respondents shall not disclose to any third person or use to obtain any advantage for itself any material...
confidential information which it may be permitted to receive under this Agreement.

g. Nothing herein shall prevent Respondents requiring their prior approval of the following actions concerning the Division: (i) Capital expenditures in excess of $1,500,000; (ii) sale of any capital assets for more than $1,500,000; and (iii) actions reasonably necessary to assure that the Parties comply with their obligations under the Consent Order.

h. Notwithstanding paragraphs a through g above Respondents may engage in joint research and development activities with the Division with respect to chlorofluorocarbons ("CFCs") substitutes.

3. Should the Commission seek in any proceeding to compel Respondents to divest itself of the shares of Pennwalt stock that it may acquire, or to compel Respondents to divest any assets or businesses Respondents may hold, or to seek any other injunctive or equitable relief, Respondents shall not raise any objection based upon the expiration of the applicable Hart-Scott-Rodino Antitrust Improvements Act waiting period or the fact that the Commission has permitted Pennwalt stock to be acquired. Respondents also waive all rights to contest the validity of this Agreement.

4. In the event the Commission has not finally approved and issued the Consent Order within one hundred twenty (120) days of its publication in the Federal Register, Respondents may, at their option, terminate this Agreement to Hold Separate by delivering written notice of termination to the Commission, which termination shall be effective ten (10) days after the Commission's receipt of such notice, and this Agreement shall thereafter be of no further force and effect. If this Agreement is so terminated, the Commission may take such action as it deems appropriate, including but not limited to an action pursuant to section 13(b) of the Federal Trade Commission Act, 15 U.S.C. 53(b).

Termination of this Agreement to Hold Separate shall in no way operate to terminate the Agreement Containing Consent Order that Respondents have entered into in this matter.

5. For the purpose of determining or securing compliance with this Agreement, subject to any legally recognized privilege, and upon written request and on reasonable notice to Respondents made to their principal offices, Respondents shall make available to any duly authorized representatives of the Commission:

a. All books, ledgers, accounts, correspondence, memorandum, and other records and documents in the possession or under the control of Respondents relating to any matters contained in this Agreement, for inspection and copying in the United States during office hours and in the presence of counsel; and

b. Upon five (5) days' notice to Respondents and without restraint or interference from Respondents for interview in the United States, officers or employees of Respondents, who may have counsel present, regarding such matters.

Any information or documents obtained by the Commission from Respondents shall be accorded such confidential treatment as is available under sections 6(f) and 21 of the Federal Trade Commission Act, 15 U.S.C. 46(f) and 57b-6. This Agreement shall not be binding until approved by the Commission.

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission ("Commission") has accepted, subject to final approval from Societe Nationale Elf Aquitaine ("SNEA"); Atochem S.A.; Elf Aquitaine, Inc.; Atochem North America, Inc.; Atochem, Inc. (collectively "Elf"); and the Pennwalt Corporation ("Pennwalt"), an Agreement Containing Consent Order. The Commission is placing the agreement on the public record for sixty (60) days for receipt of comments from interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The Commission's investigation of this matter concerned a proposed acquisition by Elf of Pennwalt. Pennwalt is a specialty chemical manufacturer. SNEA, which is a French corporation, is 54% owned by the French Government and is principally engaged in the petroleum industry. Through its Atochem S.A. and Atochem, Inc. subsidiaries, SNEA also manufactures and sells commodity and specialty chemicals.

The Commission has reason to believe that Elf's acquisition of Pennwalt would substantially lessen competition in two markets: vinylidene fluoride ("VF") and polyvinylidene fluoride ("PVDF"), worldwide, in violation of section 7 of the Clayton Act and section 5 of the Federal Trade Commission Act.

The Agreement Containing Consent Order ("Order") would, if issued by the Commission, settle the complaint that alleges anticompetitive effects in the VF and PVDF markets.

Under the terms of the proposed Order, Elf must divest Pennwalt's Thorofare, New Jersey plant, which produces VF and PVDF, to a Commission approved purchaser. If Elf fails to complete the required divestiture within a twelve-month period, the Commission may authorize a trustee to divest the plant. The Thorofare plant is one of two plants that Pennwalt currently owns which produces VF and PVDF, the other being at Calvert City, Kentucky. Elf produces VF and PVDF in France.

The Order also requires that, until the divestiture required by the Order is approved by the Commission, Elf must hold Pennwalt's Fluorocarbons Division separate and apart from other entities owned by Elf.

For a period of ten (10) years from its effective date, the proposed Order also prohibits Elf from making acquisitions, without prior Commission approval, of assets or businesses that produce or sell VF or PVDF in the United States.

It is anticipated that the proposed Order would resolve the competitive problems alleged in the Complaint. The purpose of this analysis is to invite public comment concerning the Order, in order to aid the Commission in its determination of whether it should make final the Order contained in the agreement.

This analysis is not intended to constitute an official interpretation of the agreement and proposed Order, nor is it intended to modify the terms of the agreement and proposed Order in any way.

Donald S. Clark,
Secretary.

[FR Doc. 89-18300 Filed 8-3-89; 8:45 am]
BILLING CODE 6790-01-M

GENERAL SERVICES ADMINISTRATION

Agency Information Collections Activities Under OMB Review

The GSA hereby gives notice under the Paperwork Reduction Act of 1980 that it is requesting the Office of Management and Budget (OMB) to renew expiring information collection 3000-0010, New Item Application, GSA Form 1171. This information is necessary to determine the merits of new or improved products for possible introduction into the Federal Supply System.
AGENCY: Cataloging and Requisition Management Division (FCR), GSA.

ADDRESS: Send comments to Bruce McConnell, GSA Desk Officer, Room 3235, NECB, Washington, DC, 20503, and to Mary L. Cunningham, GSA Clearance Officer, General Services Administration (CAIR), F Street at 18th NW., Washington, DC 20408.

Annual Reporting Burden: Firms responding, 720; responses, 1 per year; average hours per response, .50; burden hours, 360.

FOR FURTHER INFORMATION CONTACT: Barbara Ellison, 703-357-7510.

Copy of Proposal: A copy of the proposal may be obtained from the Information Collection Management Branch (CAIR), Room 3014, GS Bldg., Washington, DC 20408, or by telephone 202-501-7661.


Emily C. Karam,
Director, Information Management Division (CAIR).

[FR Doc. 89-18210 Filed 8-3-89; 8:45 am]
BILLING CODE 6820-24-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Alcohol, Drug Abuse, and Mental Health Administration

Advisory Committee Meetings in August; Correction

AGENCY: Alcohol, Drug Abuse, and Mental Health Administration, HHS.

ACTION: Correction of meeting notice.

SUMMARY: Public notice was given in the Federal Register on July 7, 1989, Volume 54, No. 129, on page 29721 that the Mental Health AIDS Research Review Committee would meet at the Holiday Inn Crown Plaza, Rockville, MD on August 18. The meeting has been changed to August 24–25, and will meet at the Canterbury Hotel, 1733 N Street, NW., Washington, DC 20036. The status of the meeting has changed to: Open—August 24: 8:30–9:00 a.m.; Closed—August 25: 8:00 a.m.—3:00 p.m.

Dated: July 31, 1989.

Peggy W. Cockrill,
Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 89-18222 Filed 8-3-89; 8:45 am]
BILLING CODE 4160-30-M

Centers for Disease Control

Amendment to Cervical Cancer Prevention and Control Program Announcement and Notice of Availability of Funds for Fiscal Year 1988

A notice announcing the availability of funds for Fiscal Year 1988 for cooperative agreements for the Cervical Cancer Prevention and Control Program was published in the Federal Register on Tuesday, June 17, 1988 (51 FR 21960).

The notice is amended as follows: On page 21960, first column, the heading "Authority," is revised as follows: This cooperative agreement is authorized by section 301(a) (42 U.S.C. 241(a)) and section 318(k)(3) (42 U.S.C. 247(b)) of the Public Health Service Act, as amended.

Dated: July 31, 1989.

Robert L. Foster,
Acting Director, Office of Program Support, Centers for Disease Control.

[FR Doc. 89-18230 Filed 8-3-89; 8:45 am]
BILLING CODE 4100-10-M

Food and Drug Administration

(Docket No. 89E-0290)

Determination of Regulatory Review Period for Purposes of Patent Extension; Cook Bird's Nest Vena Cava Filter

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for the Cook Bird's Nest Vena Cava Filter and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that medical device.

ADDRESS: Written comments and petitions should be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–82, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: I. David Wolfson, Office of Health Affairs (HFA–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–447) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For medical devices, the testing phase begins with a clinical investigation of the device and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the device and continues until permission to market the device is granted. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a medical device will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(a)(3)(B).

FDA recently approved for marketing the medical device known as the Cook Bird's Nest Vena Cava Filter which is intended for percutaneous insertion into the inferior vena cava to filter emboli from blood circulating through the vena cava. Subsequent to approval, the Patent and Trademark Office received a patent term restoration application for U.S. Patent No. 4,864,833 from Cook Incorporated. The Patent and Trademark Office requested FDA's assistance in determining the product's eligibility for patent term restoration, and in a letter dated June 27, 1989, FDA advised the Patent and Trademark Office that the medical device had undergone a regulatory review period and that the medical device represented the first permitted commercial marketing or use. This Federal Register notice now represents FDA's determination of the product's regulatory review period.

FDA has determined that the applicable regulatory review period for the Cook Bird's Nest Vena Cava Filter is 1,583 days. Of this time, 1,560 days occurred during the testing phase of the regulatory review period, while 33 days occurred during the approval phase. These periods of time were derived from the following dates:

Federal Register / Vol. 54, No. 149 / Friday, August 4, 1989 / Notices 32125
1. The date a clinical investigation involving this device was begun: February 1, 1984. The applicant claims that the investigational device exemption for this device was conditionally approved on February 15, 1984, which was the date on which clinical trials on humans involving this device began. However, FDA records indicate that the investigational device exemption was determined substantially complete for clinical studies to have begun on February 1, 1984.

2. The date an application was initially submitted with respect to the device under section 515 of the Federal Food, Drug, and Cosmetic Act: May 9, 1988. FDA has verified the applicant's claim that the premarket approval application (P850049) was submitted on May 9, 1988.

3. The date the application was approved: April 26, 1989. FDA has verified the applicant's claim that the premarket approval application (P850049) was approved on April 26, 1989.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 459 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before October 3, 1989, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before January 31, 1990, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an agency's attention.

Consideration will be given to comments and suggestions received within 60 days of publication. Written Comments and recommendations for the proposed information should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive.
various treatment approaches. The purpose of this conference is to provide a forum to examine the evidence regarding the effectiveness of the various approaches to treatment and to make recommendations that take into account: (1) the specific behavior; (2) the diagnosis of the individual; (3) the possible effects on the individuals, the family, and the community; and (4) the treatment setting.

For several months, a panel has been working to examine the evidence regarding effectiveness and effect of various treatment approaches. The panel will write a draft consensus statement and report concerning the safety and effectiveness of the procedures being evaluated. The statement and report will be circulated widely to the medical profession, the public, the lay media, and medical publications. The panel will present its draft statement and report during the first two days of the conference. The schedule permits time for statements, comments, and discussion from the audience.

The panel's statement and report will respond to the following key questions:

- What are the nature, extent, and consequences of destructive behaviors in persons with developmental disabilities?
- What are the approaches to prevent, treat, and manage these behaviors?
- What is the evidence that these approaches, alone or in combination, eliminate or reduce destructive behaviors?
- What are the risks and benefits associated with the use of these approaches for the individual, family, and community?
- Based on the answers to the above questions, and taking into account (a) the behavior; (b) the diagnosis and functional level of the individual; (c) possible effects on the individual, family, and community; (d) the treatment setting; (e) other factors, what recommendations can be made at present regarding the use of the different approaches?
- What research is needed on approaches for preventing, treating, and managing destructive behaviors in persons with developmental disabilities?
- What are the approaches for the individual, family, and community?
- What are the nature, extent, and consequences of destructive behaviors in persons with developmental disabilities?
- What are the risks and benefits associated with the use of these approaches for the individual, family, and community?
The meeting will be open to the public on August 28 from 9 a.m. to 9:30 a.m. to discuss administrative details. Attendance by the public will be limited to space available.

In accordance with provisions set forth in sections 552(b)(4) and 552(b)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92—463, the meeting will be closed to the public on September 25, from approximately 8 a.m. until adjournment on September 26, for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable applications and the discussions could reveal confidential trade secrets or commercial property such as patentable applications and the discussions could reveal confidential trade secrets or commercial property such as patentable.

This meeting will be open to the public on September 25, from approximately 8 a.m. until adjournment on September 26, for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable.
such as patentable materials, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy. Further information concerning the Council meeting may be obtained from Dr. Steven J. Hausman, Executive Secretary, National Arthritis and Musculoskeletal and Skin Diseases Advisory Council, NIAMS, Westwood Building, Room 403, Bethesda, Maryland 20892, (301) 496-7495.

A summary of the meeting and roster of the members may be obtained from the Committee Management Office, NIAMS, Building 31, Room 4C32, National Institutes of Health, Bethesda, Maryland 20892, (301) 496-0603.

Betty J. Beveridge, Committee Management Officer, NIH.

National Library of Medicine; Meeting of the Literature Selection Technical Review Committee

Pursuant to Pub. L. 92-463, notice is hereby given of a meeting of the Literature Selection Technical Review Committee, National Library of Medicine, on September 14-15, 1989, convening at 9:00 a.m. on September 14 and at 8:30 a.m. on September 15 in the Board Room of the National Library of Medicine, Building 38, 8600 Rockville Pike, Bethesda, Maryland.

The meeting on September 14 will be open to the public from 9:00 a.m. to 12:30 p.m. for the discussion of administrative reports and program developments. Attendance by the public will be limited to space available.

In accordance with provisions set forth in section 552b(c)(9)(B), Title 5, U.S.C., Pub. L. 92-463, the meeting will be closed on September 14 from approximately 12:30 to 5:00 p.m. and on September 15 from 8:30 a.m. to adjournment for the review and discussion of individual journals as potential titles to be indexed by the National Library of Medicine. The presence of individuals associated with these publications could hinder fair and open discussion and evaluation of individual journals by the Committee members.

Mrs. Lois Ann Colaianni, Executive Secretary of the Committee, and Associate Director, Library Operations, National Library of Medicine, 8600 Rockville Pike, Bethesda, Maryland 20894, telephone number: 301-496-6921, will provide a summary of the meeting, rosters of the committee members, and other information pertaining to the meeting.

Dated: July 26, 1989.
Betty J. Beveridge, Committee Management Officer, NIH.

BILLING CODE 4140-01-M

Public Health Service

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Public Health Service (PHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 33). The following are those packages submitted to OMB since the last list was published on Friday, July 28, 1989.

Call Reports Clearance Officer on 202-245-2100 for copies of package.

1. Current Good Manufacturing Practice for Type A Medicated Articles—21 CFR part 226—Recordkeeping Requirements—0910-0154—Businesses marketing Type A Medicated Articles (medicated premixes) must maintain product records in accordance with current good manufacturing practices in order to assure that the premix will be safe and effective when used in the manufacture of a medicated feed. Respondents: Businesses or other for-profit, small businesses or organizations; Number of Respondents: 600; Number of Responses per Respondent: 1; Average Burden per Response: 570 hours; Estimated Annual Burden: 342,000 hours.

2. Health Hazard Evaluation of Shoprite Supermarkets—NEW—The National Institute for Occupational Safety and Health received a request from the United Food and Commercial Workers Union to evaluate the occurrence of cumulative trauma disorders (CTDs) among grocery checkers at the Shoprite Supermarket chain in New Jersey and New York. The management of Shoprite has agreed to have NIOSH conduct this evaluation. Respondents: Individuals or households; Number of Respondents: 1,480; Number of Responses per Respondent: 1.5; Average Burden per Response: 29 hours; Estimated Annual Burden: 647 hours.

3. Hepatitis Requirements to Permit Shipment Before Completion of Hepatitis B Surface Antigen Testing—0910-0166—This testing requirement is intended to minimize the danger of transmitting hepatitis in blood-based therapy and to assure the production of blood and blood components of uniform quality throughout the nation. The affected public are manufacturers and distributors of biological products. Respondents: Businesses or other for-profit, small businesses or organizations; Number of Respondents: 10; Number of
Responses per Respondent: 1; Average Burden per Respondent: 6 hours; Estimated Annual Burden: 60 hours.

4. Menstrual Function and Long-term Disease Risk—NEW—NIEHS is committed to exploring markers of reproductive function that may serve as screening tools in populations exposed to environmental toxins. This study will evaluate the effect of menstrual function on long-term disease risk using a cohort of 1,100 U.S. women who contributed prospective menstrual cycle data over their entire reproductive lives, beginning in 1935. Respondents: Individuals or households; Number of Respondents: 1,100; Number of Responses per Respondent: 1; Average Burden per Response: 572 hours; Estimated Annual Burden: 744 hours.

5. General Notice—Federally Assisted Health Professions and Nurse Teaching Facilities; Federal Right of Recovery and Calculation of Recovery Amount and Interest Charges and Waiver of the Right of Recovery. Federal funds, interest charges and waiver of the right of recovery. Federal Register a current listing of draft Program-Forms—0915-0044—The submission will reinitiate approval for the Department's policy regarding written notification to the Secretary when a health professions or nurse training facility assisted under Title VII or Title VIII of the PHS Act undergoes a change in status or use; recovery of Federal funds, interest charges, and waiver of the right of recovery.

Respondents: Businesses or other nonprofit, non-profit institutions; Number of Respondents: 5; Number of Responses per Respondent: 1; Average Burden per Response: 10 hours; Estimated Annual Burden: 50 hours.

6. Pulmonary Function Testing Course Approval Application—0920-0138—The National Institute for Occupational Safety and Health (NIOSH) maintains a pulmonary function testing course approval program for certifying courses for training technicians in pulmonary functions testing. Course sponsors must apply to NIOSH for course approval. Respondents: State or local government, businesses or other for-profit, Federal agencies or employees, non-profit institutions, small businesses or organizations; Number of Respondents: 71; Number of Responses per Respondent: 1.3; Average Burden per Response: 32 hours; Estimated Annual Burden: 496 hours.

7. Foreign Language Disclosure Labeling—21 CFR 101.15 (c)(2) and (3)—0910-0235—This label/labeling requirement is directed at manufacturers who wish to label their food products in both English and the foreign language.

Respondents: Businesses or other for-profit, small businesses or organizations; Number of Respondents: 150; Number of Responses per Respondent: 2; Average Burden per Response: 1 hour; Estimated Annual Burden: 300 hours.

8. Readership Evaluation of the FDA Drug Bulletin—NEW—Current readership perceptions about the FDA Drug Bulletin will be assessed to focus articles, format and editorial policy. Physicians and pharmacists are surveyed as the major information sources. A postcard survey examines hospital administrator, nurse and dentist perceptions. Data include perceived usefulness, topics desired, duplicative sources and willingness to pay.

Respondents: Businesses or other nonprofit, small businesses or organizations; Number of Respondents: 2,740; Number of Responses per Respondent: 1; Average Burden per Response: 0.44 hours; Estimated Annual Burden: 121 hours.

9. Health Professions Student Loan (HPSL) and Nursing Student Loan (NSL) Program-Forms—0915-0044—The application form provides the Terms of Agreement. The deferment and postponement forms allow the school to suspend loan payments. The school grants partial cancellation of a loan when it receives the completed cancellation of a loan when it receives the completed cancellation form. The Department uses the Annual Operating Report to monitor the financial activities of the school. Respondents: Individuals or households, State or local governments, non-profit institutions.

Application
HRSA-514
1,300
50 hrs.
1
Deferment Form
HRSA-519
10,075
17 hrs.
1
HPSL
Cancellation
HRSA-707
5
.08 hrs.
1
HRSA-708
5
.08 hrs.
1
NSL
Cancellation
HRSA-518
1,100
.08 hrs.
1
HRSA-520
1,100
.25 hrs.
1
Annual Operating Report
HRSA-501
2,000
6.0 hrs.
1

Estimated Annual Burden: 12,747 hours.

10. International Collaborative Study of Oral Health Outcomes: USA Replication—0925-0306—This study is to conduct the U.S. portion of an international collaborative study of oral health, designed to provide critical information on contrasting and comparing the effectiveness and efficacy of various national strategies for enhancing oral health. Clinical and social survey data will be collected from consumers, providers, and administrators involved in oral health delivery systems. Respondents: Individuals or households, State or local governments, Federal agencies or employees, small businesses or organizations.

<table>
<thead>
<tr>
<th>No. of respondents</th>
<th>No. of hours per response</th>
<th>No. of responses per respondent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Individuals/</td>
<td>11,841</td>
<td>.25 hrs.</td>
</tr>
<tr>
<td>households,</td>
<td></td>
<td>1.42</td>
</tr>
<tr>
<td>Administrators</td>
<td>162</td>
<td>.88 hrs.</td>
</tr>
<tr>
<td>Providers</td>
<td>220</td>
<td>.33 hrs.</td>
</tr>
</tbody>
</table>

Estimated Annual Burden: 4,480 hours.

OMB Desk Officer: Shannah Koss-McCallum.

Written comments and recommendations for the proposed information collections should be sent directly to the OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, DC 20503.

Dated: July 31, 1989.

James M. Friedman,
Acting Deputy Assistant Secretary for Health (Planning and Evaluation).

[FR Doc.89-18229 Filed 8-3-89; 8:45 am]
BILLING CODE 4160-17-M

National Toxicology Program Board of Scientific Counselors Meetings;

To earlier inform the public and allow interested parties to comment or obtain information on long-term toxicology and carcinogenesis studies and short-term toxicity studies prior to public peer review, the National Toxicology Program (NTP) again publishes in the Federal Register a current listing of draft Technical Reports projected for evaluation by the Peer Review Panel during their next four meetings from November 1989 through November 1990.

The listing will continue to be updated with announcements in the Federal Register approximately twice a year. The meeting date for 1989 is: November 20–21. Specific dates for the 1990
Table showing chemicals tentatively scheduled for peer review with exposure levels and study scientist details.
## TOXICOLOGY AND CARCINOGENESIS STUDIES, CHEMICALS, PROJECTED FOR PEER REVIEW—Continued

<table>
<thead>
<tr>
<th>Chemical name/cas No.</th>
<th>Use</th>
<th>Study scientist</th>
<th>Route</th>
<th>Species</th>
<th>Exposure levels</th>
</tr>
</thead>
<tbody>
<tr>
<td>2,4-Diaminophenol dihydrochloride, 137-09-7</td>
<td>PHAR</td>
<td>R. Irwin, 919-541-3340</td>
<td>GAV</td>
<td>RM</td>
<td>R: 0, 2, 4, 8, M: 0, 8, 15 mg/kg</td>
</tr>
<tr>
<td>Gamma/Butyrolactone, 96-48-0</td>
<td>PHOT</td>
<td>R. Irwin, 919-541-3340</td>
<td>GAV</td>
<td>RM</td>
<td>R: 0, 125, 25, M: 0, 19, 38 mg/kg</td>
</tr>
<tr>
<td>Methylenglucon, 93-15-2</td>
<td>DYE</td>
<td>W. Eastin, 919-541-7941</td>
<td>SP</td>
<td>RM</td>
<td>0, 1, 3, 10, 30 ppm</td>
</tr>
<tr>
<td>Nitromethane, 75-52-5</td>
<td>PHAR</td>
<td>F. Kari, 919-541-3226</td>
<td>FEED</td>
<td>RM</td>
<td>R&amp;M: Untreated controls &amp; meat application with USP mineral oil, printing ink mineral oil, letter press ink, &amp; offset ink</td>
</tr>
<tr>
<td>Tetrachlorophthalic anhydride, 117-08-8</td>
<td>PHAR</td>
<td>P. Chen, 919-541-7561</td>
<td>GAV</td>
<td>RM</td>
<td>R&amp;M: 0, 0.33, 1.0, 3.3, 10.0, 25.0 mg/kg</td>
</tr>
<tr>
<td>NTP No.</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

### Abbreviations used:
- USE Primary Use Category:
  - DTRG Detergents and Cleansers
  - DYE As or in Dyes, Inks, and Pigments.
  - FLAM Flama Retardants.
  - FOOD Food and Food Additives.
  - FUEL As or in Fuel or Oil Products.
  - FUME Fumigants.
  - GERM Germicides, Disinfectants, Antiseptics.
  - HERB Herbicide(s).
  - INTR Chemical Intermediate or Catalyst.
  - LABC Unspecified Chemical Uses not Fitting in.
  - PEST Pesticides, General or Unclassified.
  - PHAR Pharmaceuticals or Intermediates.
  - PHOT Photography or related purposes.
  - RUBR Rubber Chemical.
  - SOLV Vehicles and Solvents.
  - TEXTILE Manufacture of Textiles.
- ROUTE Route of Administration:
  - FEED Oral in Feed.
  - GAV Oral, Gavage.
  - INHAL Inhalation.
  - SP Skin Paint.
  - WATER Oral with Water.
- SPEC Species:
  - R = Rats.
  - M = Mice.

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**Social Security Administration**

**Agency Forms Submitted to the Office of Management and Budget for Clearance**

Each Friday the Social Security Administration publishes a list of information collection packages that have been submitted to the Office of Management and Budget (OMB) for clearance in compliance with Pub. L. 96–511, The Paperwork Reduction Act. The following clearance packages have been submitted to OMB since the last list was published in the Federal Register on July 14, 1989.

Social Security Administration

**[FR Doc. 89-18262 Filed 8–3–89; 8:45 am]**

**BILLING CODE 4140-01-M**

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**Social Security Administration**

**[Call Reports Clearance Officer on (301) 965–4149 for copies of package]**

1. Report of Continuing Disability Interview—0660–0072—The information collected on the form SSA–454 is used by the Social Security Administration to determine if a disability insurance beneficiary continues to be eligible for those benefits. The respondents are disability insurance beneficiaries who are selected for this review.

   Number of Respondents: 300,000
   Frequency of Response: 1
   Average Burden Per Response: 10 minutes
   Estimated Annual Burden: 667 hours

3. Enumeration Interview Guide—NEW—The information collected on the form SSA–3172 will be used by the Social Security Administration to evaluate the new toll-free 800 service number. The respondents will consist of selected individuals who have recently contacted SSA using this number.

   Number of Respondents: 4,000
   Frequency of Response: 1
   Average Burden Per Response: 10 minutes
   Estimated Annual Burden: 66 hours
Belgium, Canada, the Federal Republic in force with ten other countries—
U.S. social security agreements already signed on March 30, 1988, is similar to agreement with Portugal, which was gives notice that coordinating the United States (U.S.) Agreement on Social Security

Between the United States and Social Security Administration, Reports DC 20503. < Management Branch, New Executive Clearance Officer.

information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, DC 20503.

Number of Respondents: 60 Frequency of Response: 1
Average Burden Per Response: 60 hours
Estimated Annual Burden: 200,000 hours
5. Direct Deposit Mass Change Listing—0690-0297—The information collected on the form SSA-4907 is used by the Social Security Administration to update direct deposit data contained in SSA records. The respondents are financial institutions.

Number of Respondents: 400,000 Frequency of Response: 1
Average Burden Per Response: 30 minutes
Estimated Annual Burden: 200,000 hours

The agreement also helps eliminate situations where workers suffer a loss of benefit rights because they have divided their careers between the two countries. Under the agreement, workers may qualify for partial U.S. or partial Portuguese benefits based on combined (totalized) work credits from both countries.

Persons who wish to obtain copies of the agreement or want more information about its provisions may write to the Social Security Administration, Office of International Policy, Room 1104, West High Rise Building, 6401 Security Boulevard, Baltimore, MD 21235.

Dorcas R. Hardy,
Commissioner of Social Security.

The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) which members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).
Dated: July 31, 1989.

John T. Murphy,
Director, Information Policy and Management Division.

Proposal: Schedule of Buydown Escrow Accounts.
Office: GNMA.

Description of the Need for the Information and Its Proposed Use: The document provides GNMA with a listing of the name, address and account number of each interest escrow account relating to the mortgages comprising the mortgage-backed securities issuance. The information is necessary to protect
Dated: July 31, 1989.
James E. Schoenberger,
General Deputy Assistant Secretary for Housing—Federal Housing Commissioner.
[FR Doc No. 89-18285 Filed 8-3-89; 8:45 am]
BILLING CODE 4210-27-M

DEPARTMENT OF THE INTERIOR
Bureau of Land Management
[AA-610-09-4112-02]
Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's Clearance Office at the phone number listed below. Comments and suggestions on the requirement should be made directly to the Bureau Clearance Officer and to the Office of Management and Budget Paperwork Reduction Project (1004–0134).


Title: 43 CFR Part 3160—Onshore Oil and Gas Operations, Nonform Items. OMB Approval Number: (1004–0134).

Abstract: Federal and Indian (except Osage) oil and gas operators and operating rights owners are required to retain and/or provide data so that proposed operations may be approved or compliance with granted approvals may be monitored.

Bureau Form Numbers: None.
Frequency: Nonrecurring.

Description of Respondents: Operators and operating rights owners of Federal and Indian (except Osage) oil and gas leases.

Estimate Completion Time: ½ hour.
Annual Responses: 191,755.
Annual Burden Hours: 92,760.

Bureau Clearance Officer: (Alternate) Richard Iovaine, 202–653–8853.

Dated: June 2, 1989.
George F. Brown,
Deputy Assistant Director, Energy and Mineral Resources.
[FR Doc No. 89-18287 Filed 8-3-89; 8:45 am]
BILLING CODE 4310-34-M

[CO-070-09-4320–10-2410]
Grand Junction District Grazing Advisory Board; Meeting
AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting of Grand Junction District Advisory Board.

SUMMARY: Notice is hereby given that a meeting of the Grand Junction District Grazing Advisory Board will be held on Thursday, September 14, 1989. The meeting will convene in the conference room at the Bureau of Land Management Office, 50629 Highway 6 and 24, Glenwood Springs, Colorado at 9 a.m.

SUPPLEMENTARY INFORMATION: The agenda for the meeting will include: (1) Introductions; (2) Minutes of the previous meeting; (3) Glenwood Springs Resource Area Rangeland Program Summary Update and Colorado Cattlemen/Colorado Woolgrowers field tour summary; (4) Drought status report; (5) Status of current project work; (6) Range Betterment Fund project proposals; (7) Advisory Board project proposals; (8) Public presentation; and (9) Arrangements for the next meeting.

The meeting is open to the public. Interested persons may make oral statements to the Board between 3 and 3:30 p.m. or file written statements for the Board's consideration. Anyone wishing to make an oral statement must notify the District Manager, Bureau of Land Management, 764 Horizon Drive, Grand Junction, Colorado 81506 by September 12, 1989. Depending on the number of persons wishing to make oral statements, a person time limit may be established by the District Manager.

Minutes of the Board meeting will be maintained in the District Office and be available for public inspection and reproduction (during regular business hours).
hours) after thirty (30) days following the meeting.

Further information on the meeting may be obtained at the above address, or by calling 303 243-6552, or 303 945-2341.

Bruce Conrad,
District Manager, Grand Junction District.

[FR Doc. 89-18234 Filed 8-3-89; 8:45 am]
BILLING CODE 4310-JB-M

[AZ 020-09-4212-12; AZA 20346-W]

Recreational and Public Purposes
Lease NM 19664 was issued May 22, 1972, to the City of Carlsbad, New Mexico. The City of Carlsbad has requested relinquishment of the lease located in Eddy County, New Mexico:
T. 21 S., R. 27 E., NMPM;
Sec. 5, SE1/4 SW1/4, SE1/4 SE1/4;
Sec. 6, N1/4 SE1/4.
The land described above contains 280 acres.

Effective the day of publication of this notice, the above described land shall be open to the operation of the public land laws generally, subject to valid existing rights, and the requirements of applicable law.

Inquiries concerning the land should be addressed to District Manager, Bureau of Land Management, P.O. Box 1397, Roswell, NM 88201.

Bruce Conrad, Associate District Manager.

[FR Doc. 89-18234 Filed 8-3-89; 8:45 am]
BILLING CODE 4310-JB-M
FOR FURTHER INFORMATION CONTACT: Information related to the sale, including the environmental assessment/land report is available for review at the Butte District Office, P.O. Box 3388, 106 North Parkmont, Butte, Montana 59702.

Dated: July 26, 1989.

J. A. Moonhouse, District Manager.

[FR Doc. 89-18180 Filed 8-3-89; 8:45 am]
BILLING CODE 4310-DN-M

(NV-930-09-4212-14; N-50100)

Realty Action; Direct Sale of Public Lands in Elko County Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: The following land has been examined and identified as suitable for disposal by direct sale under Section 203 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750; 43 U.S.C. 1713) at no less than fair market value:

Mount Diablo Meridian
T. 47 N., R. 64 E., sec. 1, Lot 18

The above-described land comprising .62 acres, is being offered as a direct sale to Al Huber, Juanita Huber and Mildred Standfield, joint adjoining landowners. All but .15 acres of the parcel are encumbered by highway rights-of-way held by the Nevada Department of Transportation (NDOT). The proponents requested the sale as a result of the right-of-way width reduction, a small parcel of unencumbered public land was created between the highway right-of-way and the sale proponent’s property.

The sale is consistent with the Bureau’s planning system. The land is not needed for any resource program and is not suitable for management by the Bureau of any other Federal department or agency. Sale of the tract would eliminate from Federal ownership lands that have a high potential for unauthorized use and are difficult and uneconomic to manage. The public lands are being offered by direct sale to assure land use compatibility with adjoining private lands. Topography and configuration of the lands suitable for improvement within the parcel would preclude any development of the parcel by anyone other than the sale proponent who are the adjoining landowners to the east.

The locatable and salable mineral estates have been determined to have no known value. The land is prospectively valuable for geothermal and oil and gas. Therefore, the mineral interest excluding geothermal resources and oil and gas will be conveyed simultaneously with the sale of the parcel. Acceptance of the direct sale offer will constitute an application to purchase the mineral estate having no known mineral value. A nonrefundable fee of $50.00 will be required with the purchase money. Failure to submit the purchase money and the nonrefundable filing fee for the mineral estate within the timeframe specified by the authorized officer will result in cancellation of the sale.

The patent, when issued, will contain


2. Oil and gas, and geothermal resources.

And will be subject to:

Those rights for highway purposes which have been granted to the Nevada Highway Department, its successors or assigns by Permit Nos. CC-023091, Nev-08440, and Nev-042807; under the Act of November 9, 1921, 42 Stat. 212-216, 23 U.S.C. Sec. 18).

Upon publication of the Notice of Realty Action in the Federal Register, the lands will be segregated from all forms of appropriation under the public land laws, including the mining laws but not the mineral leasing laws. This segregation shall terminate upon issuance of patent or other document of conveyance, upon publication in the Federal Register of a termination of segregation or 270 days from publication, whichever occurs first.

The land will not be offered for sale any sooner than 60 days after the publication of this Notice in the Federal Register. For a period of 45 days from the date of publication of this Notice in the Federal Register, interested parties may submit comments to the District Manager, Elko District Office, Bureau of Land Management, P.O. Box 831, Elko, Nevada, 89801. Any adverse comments will be reviewed by the Nevada State Director, who may sustain, vacate or modify this realty action. In the absence of timely filed objections, this realty action will become the final determination of the Department of the Interior.

Dated: July 24, 1989.

Merle Good,
Acting District Manager.

[FR Doc. 89-18180 Filed 8-3-89; 8:45 am]
BILLING CODE 4310-NC-M

[ID-942-09-4730-12]

Filing of Plats of Survey, Idaho

The plat of survey of the following described land was officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 10:00 a.m., July 27, 1989.

The plat representing the dependent survey of portions of the subdivisional lines and meanders of the right bank of the Snake River, and the subdivision of section 15, T. 6 S., R. 11 E., Boise Meridian, Idaho, Group No. 706, was accepted July 26, 1989.

This survey was executed to meet certain administrative needs of this Bureau.

All inquiries about this land should be sent to the Idaho State Office, Bureau of Land Management, 3380Americana Terrace, Boise, Idaho, 83706.


Jerald E. Knight,
Acting Chief, Cadastral Surveyor for Idaho.

[FR Doc. 89-18236 Filed 8-3-89; 8:45 am]
BILLING CODE 4310-OG-M

[ES-940-09-4520-13; ES-041307, Group 8]

Maine; Filing of Plat of Dependent Resurvey and Survey


1. The plat of the dependent resurvey and survey of the boundaries of the land held in trust for the Passamaquoddy Tribe in Township 6, Range 1, North of Bingham’s Kennebec Purchase (N.B.K.P.), Somerset County, Maine, will be officially filed in the Eastern States Office, Alexandria, Virginia at 7:30 a.m., on September 11, 1989.

2. The dependent resurvey and survey was made at the request of the Bureau of Indian Affairs.

3. All inquiries or protest concerning the technical aspects of the dependent resurvey and survey must be sent to the Deputy State Director for Cadastral Survey, Eastern State Office, Bureau of Land Management, 350 South Pickett Street, Alexandria, Virginia 22304, prior to 7:30 a.m., September 11, 1989.
Minerals Management Service
Atlantic Outer Continental Shelf Region

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of Third Atlantic Outer Continental Shelf (OCS) Region Information Transfer Meeting (ITM).

SUMMARY: The Atlantic OCS Region has scheduled its Third ITM. The meeting is designed to improve the accessibility, use, and exchange of data and information gathered by the Environmental Studies Program, other State and Federal Government Agencies, academia, and industry consultants.


ADDRESS: Each day, the meeting will begin at 8 a.m. at the Sheraton International Conference Center, 11610 Sunrise Valley Drive, Reston, Virginia 22091.

FOR FURTHER INFORMATION CONTACT: Judy Wilson, Contracting Officer's Technical Representative, Atlantic OCS Region, (703) 787-1075.

SUPPLEMENTARY INFORMATION: The ITM includes a review of active and recently completed studies in biological sciences, physical oceanography and meteorology; presentations by invited scientists showcasing their research relevant to the Environmental Studies Program objectives; and presentations related to Canadian OCS Environmental Studies. Atlantic OCS resource assessments, hard minerals projects, and geological research by State Geological Surveys. In addition, there will be presentations by State representatives from Virginia, North Carolina, South Carolina, Georgia, and Florida on potential impacts of OCS activities. The State presentations will be followed by a panel discussion on how issues can be resolved more effectively.

Dated: July 31, 1989.
Bruce G. Weetman, Acting Deputy State Director for Cadastral Survey.

[FR Doc. 89-18230 Filed 8-3-89; 8:45 am] BILLING CODE 4310-GJ-M


SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, as amended, the Bureau of Reclamation (Reclamation) has prepared a FSES for the Fryingpan-Arkansas Project, Colorado. The FSES addresses the impacts of water marketing alternatives from Ruedi Reservoir.

ADDRESSES: Single copies of the FSES may be obtained on request to the Regional Director or the Eastern Colorado Projects Office at the addresses below.

Copies of the FSES are available for inspection at the following locations:

Regional Director, Bureau of Reclamation, Great Plains Regional Office, P.O. Box 36000, Billings, MT; Telephone: (406) 657-6558

Eastern Colorado Projects Office, Bureau of Reclamation, 995 Wilson Avenue, P.O. Box 449, Loveland, Colorado; Telephone: (303) 667-4410

Libraries:
Colorado State University Library, Colorado State University, Fort Collins, CO 80521
University of Colorado Libraries, Boulder Campus, Boulder, CO 80302
Basalt Library, Basalt, CO 81621
Pitkin County Library, 120 East Main, Aspen, CO 81611
Glenwood Springs Library, 413 Ninth Street, Glenwood Springs, CO 81601
Mesa County Public Library, P.O. Box 20000, Grand Junction, CO 81502

FOR FURTHER INFORMATION CONTACT: Mr. Robert Schroeder (Regional Environmental Affairs Officer), (406) 657-6558; or Dr. Wayne O. Deason (Manager, Environmental Services Staff, Denver Federal Center), (303) 236-9338.

SUPPLEMENTARY INFORMATION: The proposed alternative is for Reclamation to make available through long-term contracts, 51,500 acre-feet of Ruedi Reservoir water for municipal and industrial use. Ruedi Reservoir is on the Fryingpan River in Pitkin and Eagle Counties, Colorado. All individual water contracts issued under the proposed

National Park Service
Concession Contract Negotiations; Isle Royale Ferry Service, Inc.

AGENCY: National Park Service, Interior.

ACTION: Public notice.

SUMMARY: Public notice is hereby given that the National Park Service proposes to negotiate a concession permit with Isle Royale Ferry Service, Inc. authorizing it to continue to provide boat transportation facilities and services for the public at Isle Royale National Park, Michigan for a period of five (5) years from January 1, 1990, through December 31, 1994.


ADDRESSES: Interested parties should contact the Regional Director, Midwest Region, 1709 Jackson St., Omaha, NE 68102, for information as to the requirements of the proposed permit.

The foregoing concessioner has performed it's obligations to the satisfaction of the Secretary under an existing permit which expired by limitation of time on December 31, 1988, and therefore pursuant to the provisions of section 5 of the Act of October 9, 1965 (79 Stat. 969; 16 U.S.C. 20), is entitled to be given preference in the renewal of the permit and in the negotiation of a new permit as defined in 36 CFR 51.5.

The Secretary will consider and evaluate all proposals received as a result of this notice. Any proposal, including that of the existing concessioner, must be postmarked or delivered on or before the sixtieth (60th) day following publication of this notice to be considered and evaluated.

Don H. Castleberry, Regional Director, Midwest Region.

[FR Doc. 89-16230 Filed 8-3-89; 8:45 am] BILLING CODE 4310-70-M

Bureau of Reclamation
Ruedi Reservoir, Colorado, Round II Water Marketing Program, Fryingpan-Arkansas Project, Colorado; Final Supplemental Environmental Statement

AGENCY: Bureau of Reclamation, Interior.


SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, as amended, the Bureau of Reclamation (Reclamation) has prepared a FSES for the Fryingpan-Arkansas Project, Colorado. The FSES addresses the impacts of water marketing alternatives from Ruedi Reservoir.

ADDRESSES: Single copies of the FSES may be obtained on request to the Regional Director or the Eastern Colorado Projects Office at the addresses below.

Copies of the FSES are available for inspection at the following locations:

Regional Director, Bureau of Reclamation, Great Plains Regional Office, P.O. Box 36000, Billings, MT; Telephone: (406) 657-6558

Eastern Colorado Projects Office, Bureau of Reclamation, 995 Wilson Avenue, P.O. Box 449, Loveland, Colorado; Telephone: (303) 667-4410

Libraries:
Colorado State University Library, Colorado State University, Fort Collins, CO 80521
University of Colorado Libraries, Boulder Campus, Boulder, CO 80302
Basalt Library, Basalt, CO 81621
Pitkin County Library, 120 East Main, Aspen, CO 81611
Glenwood Springs Library, 413 Ninth Street, Glenwood Springs, CO 81601
Mesa County Public Library, P.O. Box 20000, Grand Junction, CO 81502

FOR FURTHER INFORMATION CONTACT: Mr. Robert Schroeder (Regional Environmental Affairs Officer), (406) 657-6558; or Dr. Wayne O. Deason (Manager, Environmental Services Staff, Denver Federal Center), (303) 236-9338.

SUPPLEMENTARY INFORMATION: The proposed alternative is for Reclamation to make available through long-term contracts, 51,500 acre-feet of Ruedi Reservoir water for municipal and industrial use. Ruedi Reservoir is on the Fryingpan River in Pitkin and Eagle Counties, Colorado. All individual water contracts issued under the proposed

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water marketing program will require
site-specific environmental impact
analysis and documentation.

The FSES presents the Preferred
Alternative, the Preferred Alternative
with Conservation Measures, and the
No-Action Alternative. The no-action
alternative presents the baseline against
which the other two alternatives for
water sale are analyzed. It is anticipated
that the Preferred Alternative with
Conservation Measures will be the
action recommended for
implementation. The FSES also presents
comments received on the 1983 Draft
Environmental Statement and the 1988
Addendum and documents
Reclamation’s responses.

Dated: August 1, 1989.

D.W. Webber,
Assistant Commissioner-Engineering and
Research.

FOR FURTHER INFORMATION CONTACT:
Noreta R. McGee,
Secretary
[Illinois]
[FR Doc. 89-18299 Filed 8-3-89; 8:45 am]
BILLING CODE 4310-09-M

INTERSTATE COMMERCE COMMISSION

Intention To Engage in Compensated
Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named
 corporations intend to provide or use
compensated intercorporate hauling
operations as authorized in 49 U.S.C.
10524(b).

1. Parent corporation and address of
principal office: Electrohome Limited,
809 Wellington Street North, Kitchener,
Ontario, Canada N2G 4J6
2. Wholly-owned subsidiaries which will participate in the operations, and
State of incorporation:

<table>
<thead>
<tr>
<th>Name</th>
<th>State of incorporation</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1) Electrohome (U.S.A.) Inc.</td>
<td>New York.</td>
</tr>
<tr>
<td>(2) Electrohome Motor Products Co.</td>
<td>Illinois.</td>
</tr>
<tr>
<td>(3) Trans-S- Elect Transportation Ltd.</td>
<td>Ontario, Canada.</td>
</tr>
</tbody>
</table>

Noreta R. McGee,
Secretary
[FR Doc. 89-18218 Filed 8-3-89; 8:45 am]
BILLING CODE 7025-01-M

[No. MC-C-30168]

Puerto Rico Maritime Shipping
Authority and PRMMI Trucking, Inc.;
Petition for Declaratory Order

AGENCY: Interstate Commerce
Commission.

ACTION: Notice of institution of
proceeding.

SUMMARY: The Commission is granting
the request by Puerto Rico Maritime
Shipping Authority and PRMMI
Trucking, Inc. (petitioners) for institution
of a declaratory order proceeding.
Petitioners seek a determination that
the ICC, not the Federal Maritime
Commission, has primary and exclusive
jurisdiction to interpret tariffs filed with
it and, therefore, that a challenge to an
ICC-filed tariff may only be brought at
the ICC. They also ask the Commission
to determine that the transportation they
provide under ICC Tariff PRMU 205,
between their marine terminals in the
United States and in Puerto Rico, is a
through intermodal service subject to
ICC jurisdiction.

DATES: Persons interested in
participating in this proceeding should
so advise the Commission in writing by
August 21, 1989. A list of interested
parties will then be compiled and
served. Petitioners will have 10 days
after the service date of that list to serve
each party on the list and the
Commission with a copy of its petition
and any additional information. Other
parties will then have 35 days after the
service date of the service list to submit
their comments to the Commission and
to all parties. Parties will have 50 days
after the service date of the service list
to reply.

ADDRESSES: Send written notice of
intention to participate, and an original
and, if possible, 10 copies of comments
referring to No. MC-C-30168 to:
Office of the Secretary, Case Control
Branch, Interstate Commerce
Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT:
Jasneth C. Metz, (202) 275-7974, or
Richard B. Felder, (202) 275-7974. (TDD
for hearing impaired: (202) 275-1721.)

SUPPLEMENTARY INFORMATION:
Additional information is contained in
the Commission’s decision. To obtain a
copy of the full decision, write to, call,
or pick up in person from: Office of the
Secretary, Room 2215, Interstate
Commerce Commission, Washington,
DC 20423. Telephone: (202) 275-7428.

[SUPPLEMENTARY INFORMATION:
Available through TDD Services (202)
275-1721.)


By the Commission, Jane F. Mackall,
Director, Office of Proceedings.
Noreta R. McGee,
Secretary.
[FR Doc. 89-18219 Filed 8-3-89; 8:45 am]
BILLING CODE 7025-01-M

[Docket No. AB-52 (Sub 60X)]

The Atchison, Topeka & Santa Fe
Railway Co.; Abandonment Exemption
In Sedgwick County, KS

AGENCY: Interstate Commerce
Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce
Commission exempts from prior
approval requirements of 49 U.S.C.
10903-10904 the abandonment by The
Atchison, Topeka and Santa Fe Railway
Company of 12.72 miles of rail line in
Sedgwick County, KS, subject to
standard labor protective conditions.

DATES: Provided no formal expression of
intent to file an offer of financial
assistance has been received, this
exemption will be effective on
September 5, 1989. Formal expressions of
intent to file an offer 1 of financial
assistance under 49 CFR 1152.27(c)(2)
must be filed by August 14, 1989,
petition for stay must be filed by August
21, 1989, and petitions for
reconsideration must be filed by August
31, 1989. Requests for a public use
condition must be filed by August 14,
1989.

ADDRESSES: Send pleadings referring to
Docket No. AB-52 (Sub-No. 60X) to:
(1) Office of the Secretary, Case Control
Branch, Interstate Commerce
Commission, Washington, DC 20423
and
(2) Petitioner’s representative: Michael
W. Blaszak, 80 E. Jackson Blvd.,
Chicago, IL 60604.

FOR FURTHER INFORMATION CONTACT:
Joseph H. Dettmar, (202) 275-7245, [TDD
for hearing impaired: (202) 275-1721.]

SUPPLEMENTARY INFORMATION:
Additional information is contained in
the Commission’s decision. To purchase
a copy of the full decision, write to, call, or
pick up in person from: Dynamic
Concepts, Inc., Room 2229, Interstate
Commerce Commission Building,
Washington, DC 20423. Telephone: (202)
289-4357/4359. (Assistance for the
hearing impaired is available through
TDD services 202) 275-1721.)


1 See Exempt, of Rail Abandonment—Offers of
Finan. Assist., 41 C.C.2d 164 (1987), and final rules
published in the Federal Register on December 22,
1987 (52 FR 40440–40446).
By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Andre, Lamboley, and Phillips.

Noreta R. McGee, Secretary.

[FR Doc. 89-18300 Filed 8-3-89; 8:45 am] BILLING CODE 7035-01-M

[Decision No. 2; Finance Docket No. 31505]

Canadian National Railway Co.; Trackage Rights Exemption From Consolidated Rail Corp.

Consolidated Rail Corporation (Conrail) has agreed to grant local and overhead trackage rights to Canadian National Railway Company (CN) over a 22.2-mile line of railroad, known as the Massena Subdivision, between Massena, NY (CN's milepost 0.0 and Conrail's milepost 160.8) and the U.S.-Canadian border (CN's milepost 22.2). The trackage rights will allow CN to conduct bridge operations, to serve all present shippers and their successors, and to interchange with Conrail and the Massena Terminal R.R. Company at Massena, NY. The trackage rights will become effective upon the consummation of the sale of this line of railroad from CN to Conrail, which is being considered by the Commission in Finance Docket No. 31477, Consolidated Rail Corporation—Acquisition Exemption—Canadian National Railway Company. Both CN and Conrail presently operate over the Massena line, and no change in operations by either carrier is contemplated as a result of these transactions.

This notice is filed under 49 CFR 1180.4(b)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Pleadings must be filed with the Commission and served on:

Jonathan M. Broder, Consolidated Rail Corporation, 1138 Six Penn Center Plaza, Philadelphia, PA 19103-2959.


As a condition to the use of this exemption, any employees affected by the trackage rights will be protected pursuant to Norfolk and Western Ry. Co.—Trackage Rights—EN, 354 I.C.C. 605 (1976), as modified in Mendocino Coast Ry., Inc.—Lease and Operate, 360 I.C.C. 653 (1980).


By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee, Secretary.

[FR Doc. 89-18300 Filed 8-3-89; 8:45 am] BILLING CODE 7035-01-M

SUPPLEMENTARY INFORMATION: On July 3, 1989, Rio Grande Industries, Inc. (RGI), Southern Pacific Transportation Company (SPT), The Denver and Rio Grande Western Railroad Company (DRGW), St. Louis Southwestern Railway Company (SSW), and SKCC Acquisition Corporation (SKCC) (collectively referred to as the RGI applicants), and Soo Line Railroad Company (Soo) [RGI applicants and Soo are referred to collectively as applicants], filed a notice of intent indicating they will file an application seeking Commission approval and authorization under 49 U.S.C. 11041-11045 and 11103 for the following transactions:

(1) Acquisition by SKCC of Soo’s line between Kansas City, MO and Chicago, IL, and appurtenant branch lines to Janesville, WI, Albany, IL, and Eldridge, IA. Under the proposal, SSW will operate the line.

(2) Acquisition by SKCC of trackage rights and associated haulage rights over Soo’s lines between Chicago and Milwaukee, WI, and between Sabula Junction, IA and Dubuque, IA (including related terminal, gathering, and distribution services in the Milwaukee and Dubuque terminal areas).

(3) Acquisition by SKCC of: (a) The 50 percent common stock ownership interest of Soo in the Davenport, Rock Island and North Western Railroad (DRJ), and (b) one-half of the 49 percent common stock ownership interest of Soo in the Indiana Harbor Belt Railroad.

(4) Acquisition by the RGI applicants of operating rights over certain properties owned in whole or in part by third parties and over which Soo currently conducts operations under trackage rights and joint facility agreements with such third parties. Those third parties are the Burlington Northern Railroad Company (BN), the Chicago and North Western Transportation Company (CNW), DRI, and Kansas City Southern Railway Company (KCS). Applicants seek Commission authorization and approval for voluntary agreements to be entered with these third parties, or if such party or parties decline to consent to such proposed use, applicants will seek terminal trackage rights pursuant to 49 U.S.C. 11103 with respect to the subject properties or will seek other relief to effect such proposed use.

(5) Acquisition by SKCC of trackage rights through appointment by Soo [with Soo continuing to operate under these same rights] over those lines owned and operated by the Commuter Rail Division of the Regional Transportation Authority (METRA) as to which Soo has trackage rights, including the METRA lines: (a) Between Madison Street, Chicago, and Fox Lake, IL; and (b) between Tower A-5 (Chicago) and Almora, IL.

(6) Acquisition by SKCC of section 11103 terminal trackage rights over a...
short segment of KCS trackage which intersects the Kansas City-Chicago line between Air Line Junction and KCS Junction in the Kansas City terminal area, to create a continuous route between the lines to be acquired by SKCC and DRGW's trackage rights over the lines of the Union Pacific Railroad Company via Osawatomie.

(7) A grant to SKCC to Soo of trackage rights (and associated haulage rights, including the provision of gathering and distribution services) over the lines acquired by SKCC from Soo pursuant to subparagraph (1) above.

(8) Acquisition by SKCC from Soo of certain terminal, gathering, and distribution services and trackage rights in the Chicago terminal district.

(9) Acquisition by Soo from SSW of certain terminal, gathering, and distribution services in the Kansas City terminal district.

Applicants will use the year 1988 for purposes of their impact analyses to be filed in the application. They intend to file their applications on or about September 1, 1989.

The Commission finds that this is a significant transaction, as defined at 49 CFR 1180.2(b). It involves two Class I railroads and a major market extension. Because of the size and nature of the Chicago rail market, and its importance to the North-Central region of the United States, the proposed transaction is found to be of regional and national transportation significance as defined in 49 U.S.C. 11345.

The application must conform to the regulations set forth at 49 CFR part 1180, et seq., and must contain all information required therefor for significant transactions, except as modified by advance waiver.

On July 11, 1989, applicants filed a petition for waiver or clarification of our consolidation procedures. The Commission will address this petition in a separate decision. The Commission is, however, seeking comments now on applicants' proposed procedural schedule, as discussed below.

In its waiver petition, applicants have requested that the Commission adopt an expedited schedule in this proceeding. Applicants' proposed procedural schedule is as follows:

Proposed Procedural Schedule

Day 1. Application filed.


D+20. Discovery conference on application held.

D+45. Initial list of protective conditions and description of anticipated inconsistent applications due.

D+60. Comments and protests due on the application; requested conditions and inconsistent applications due.

D+70. Discovery conference on comments, protests, conditions, and inconsistent applications held; Commission issues list of parties to proceeding.

D+90. Response to comments, protests, conditions and rebuttal in support of primary application due.

D+110. Rebuttal in support of comments, protests, conditions, and inconsistent applications due.

D+125. Oral Argument.

D+140. Reply Briefs due, all parties.

D+150. Oral Argument.


D+180. Target Date for service of decision.

Under that schedule, the Commission would have 15 days to decide whether to accept the primary application. Any initial lists of protective conditions would be filed within 30 days of acceptance of the primary application, and responsive applications, comments, and protests would be due 45 days after such acceptance. Completion of the evidentiary phase would occur 135 days following acceptance. Finally, applicants request that a final decision be issued 30 days after conclusion of the evidentiary phase.

Applicants' proposed schedule contains substantially shorter time periods than those provided in the Commission's rules at 49 CFR 1180.4 (a)–(e). Under these provisions, the Commission has 30 days to accept or reject the primary application. Following acceptance, the rules provide, among other things, the following time periods: (1) Written comments and initial lists of protective conditions must be filed within 30 days of that acceptance; (2) Responsive applications and second lists of requested protective conditions must be filed within 60 days of acceptance; (3) the evidentiary proceeding must be completed within 180 days of acceptance; and (4) a final decision must be issued 90 days after conclusion of the evidentiary phase.

Applicants assert that the 6-month schedule they propose fairly balances their right to obtain timely Commission action on the proposed transactions with the right of third parties to be heard regarding the proposals. However, we invite interested parties to submit written comments on the proposed schedule. Comments must be filed within 15 days of publication of this notice in the Federal Register.

Applicants may reply within 10 days thereafter. Decided: July 31, 1989.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Andre, Lambley, and Phillips.

Noreta R. McGee,
Secretary.

[FR Doc. 89-18220 Filed 8-3-89; 8:45 am]
BILLING CODE 7035-01-M

[Docket No. AB-55 (Sub. 281X)]

CSX Transportation, Inc., Abandonment Exemption of Line in Newport News, VA

Applicant has filed a notice of exemption under 49 CFR Part 1152, subpart F—Exempt Abandonments to abandon its approximately 2 miles of rail line between milepost 0.00, near 19th Street, and the end of Pier No. 14 and Pier No. 15 in Newport News, VA.

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; and (3) no formal complaint has been filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use this exemption, any employee affected by the abandonment shall be protected under Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.
Statement so long as it retains jurisdiction to do so.


on the request before the effective date of this order to permit this Commission to review and act encouraged to file its request as soon as possible in Notice of Exemption.


imposed, where appropriate, in a use/rail banking conditions will be available to the public.

within 15 days after the EA becomes available.

Interested persons may obtain a copy of the EA from SEE by writing to it (Room 3219, Interstate Commerce Commission, Washington, DC 20423).

A copy of any petition filed with the Commission should be sent to another party's representative: Lawrence H. Richmond, CSX Transportation, Inc., 100 North Charles Street, Baltimore, MD 21201.

If the notice of exemption contains false or misleading information, use of the exemption is void ab initio.

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by August 9, 1989.

The identities of the additional parties, which addresses environmental or energy impacts, if any, from this abandonment. The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by August 9, 1989. Interested persons may obtain a copy of the EA from SEE by writing to it (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Acting Chief, SEE at (202) 275-7684. Comments on environmental and energy concerns must be filed within 15 days after the EA becomes available to the public.

Environmental, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision. Decided: July 31, 1989.

Title II was routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption: See Exemption of Out-of-Service Rail Lines, 5 I.C.C.2d 377 (1989). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.


The Commission will accept a late-filed trial use statement so long as it retains jurisdiction to do so.

Decision so long as it retains jurisdiction to do so.

Provision no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on September 3, 1989 (unless stayed pending reconsideration). Petitions to stay that do not involve environmental issues, formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2), and trail use/rail banking statements under 49 CFR 1152.29 must be filed by August 14, 1989. Petitions for reconsideration and requests for public use conditions under 49 CFR 1152.28 must be filed by August 24, 1989, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

The Section of Energy and Environment (SEE) will prepare an Environmental Assessment (EA) for the purpose of extending the protections of section 4 of the Act on December 8, 1988, 53 FR 62662 (1988), and on December 23, 1988, the Forum filed additional written notification pursuant to section 6(a) of the National Cooperative Research Act of 1984. The Department of Justice published notices in the Federal Register October 27, 1981 (at 46 FR 52339 et seq.) and March 23, 1989, the Forum filed additional written notifications pursuant to section 6(a) of the Act. The Department of Justice published notices in the Federal Register pursuant to section 6(b) on January 26, 1989, 54 FR 3870 and on April 26, 1989, 54 FR 17834. The identities of the additional parties to the venture are given below:

McDonnell Douglas Network Systems Company, 2560 North First Street, P.O. Box 49019 M/S F-36, San Jose, CA 95111-6019.

Stratus Computer, Inc., 55 Fairbanks Boulevard, Marlboro, MA 01752.


Ungermann-Bass, Incorporated, 3900 Freedom Circle, Santa Clara, CA 95052.

Applied Computing Devices, Inc., 100 North Campus Drive, Aleph Park, Terre Haute, IN 47802.

France Telecom, Direction Generale—DICT/STP, 36, rue du Commandant Mouchotte, Paris, CEDEX 14 75075, FRANCE.

Gandalf Data Ltd., 130 Colonnade Road S. Nepean, Ontario K2E 7M4, CANADA.

General Datacomm, Inc., 1579 Straits Turnpike, Middlebury, CT 06762-1299.

Netlabs, 11803 San Vicente Boulevard, Suite 348, Los Angeles, CA 90049.

Tandem Computers, Inc., 15050 N. Tantau Avenue, Cupertino, CA 95014.

Telercket, Marketing Department, FFD, S-123 86, FARSTA, SWEDEN.

Bureau of Prisons

Modification to List of Bureau of Prisons Institutions

AGENCY: Bureau of Prisons, Justice.

ACTION: Notice.

SUMMARY: Attorney General Order No. 646–76 (41 FR 14805), which amended, classifies and lists the various Bureau of Prisons institutions. Attorney General Order No. 960–81, Reorganization Regulations, published in the Federal Register October 27, 1981 (at 46 FR 52339 et seq.) delegated to the Director, Bureau of Prisons, in 28 CFR 0.96(e), the authority to establish and designate Bureau of Prisons institutions. In this present document, the Bureau is publishing a consolidated listing of its institutions, and is designating a new Federal Prison Camp at Bryan, Texas. This camp recently became operational. In addition, the Bureau of Prisons is redesignating the Federal Reformatory for Women from a Federal Correctional Institution to a Federal Prison Camp. This change is made in recognition of the mission of that facility. The Bureau of Prisons is also designating new Federal Correctional Institutions in McKean, Pennsylvania; Fairton, New
Jersey, and Sheridan, Oregon. These facilities are scheduled to become operational later this year.

FOR FURTHER INFORMATION CONTACT: Roy Novovic, Office of General Counsel, Bureau of Prisons, 320 First Street NW., Washington, DC 20534 (202-724-3062).

SUPPLEMENTARY INFORMATION: This notice is not a rule within the meaning of the Administrative Procedure Act, 5 U.S.C. 551(4), the Regulatory Flexibility Act, 5 U.S.C. 601(2), or Executive Order No. 12291, sec. 1(a).

By virtue of the authority vested in the Attorney General in 18 U.S.C. 3621, 4001, 4003, 4042, 4081, and 4082 (repealed in part October 12, 1964) and delegated to the Director, Bureau of Prisons by 28 CFR 0.96(r), it is hereby ordered as follows:

The following institutions are established and designated as places of confinement for the detention of persons held under authority of any Act of Congress, and for persons charged with or convicted of offenses against the United States or otherwise placed in the custody of the Attorney General of the United States.

A. The Bureau of Prisons institutions at the following locations are designated as U.S. Penitentiaries:

1. Atlanta, Georgia;
2. Leavenworth, Kansas;
3. Lewisburg, Pennsylvania;
4. Lompoc, California;
5. Marion, Illinois; and

B. The Bureau of Prisons institutions at the following locations are designated as Federal Correctional Institutions:

1. Ashland, Kentucky;
2. Bastrop, Texas;
3. Batner, North Carolina;
4. Danbury, Connecticut;
5. El Reno, Oklahoma;
6. Englewood, Colorado;
7. Fairton, New Jersey;
8. Fort Worth, Texas;
9. La Tuna, Texas;
10. Lexington, Kentucky;
11. Loretto, Pennsylvania;
12. Marianna, Florida;
13. McKean, Pennsylvania;
14. Memphis, Tennessee;
15. Milan, Michigan;
16. Morgantown, West Virginia;
17. Otisville, New York;
19. Petersburg, Virginia;
20. Phoenix, Arizona;
21. Pleasanton, California;
22. Prattville, New York;
23. Safford, Arizona;
24. Sandstone, Minnesota;
25. Seagoville, Texas;
26. Sheridan, Oregon;
27. Talladega, Alabama;
28. Tallahassee, Florida;
29. Terminal Island, California;
30. Texarkana, Texas; and

C. The Bureau of Prisons institutions at the following locations are designated as Federal Prison Camps:

1. Alderson, West Virginia;
2. Allenwood, Pennsylvania;
3. Big Spring, Texas;
4. Broom, California;
5. Bryan, Texas;
6. Dew, Minnesota;
7. Eglin Air Force Base, Florida;
8. Ft. Bliss, El Paso, Texas;
9. Homestead Air Force Base, Homestead, Florida;
10. Lompoc, California;
11. Maxwell Air Force Base/Gunter Air Force Station, Montgomery, Alabama;
12. Nellis Air Force Base, Las Vegas, Nevada;
13. Saufley Field, Pensacola, Florida;
15. Tyndall Air Force Base, Panama City, Florida; and
16. Yakonk, South Dakota.

D. The Bureau of Prisons institutions at the following locations are designated as Metropolitan Correctional Centers:

1. Chicago, Illinois;
2. Miami, Florida;
3. New York, New York; and
4. San Diego, California.

E. The Bureau of Prisons Institution at Springfield, Missouri is designated as the U.S. Medical Center for Federal Prisoners.

F. The Bureau of Prisons Institution at Rochester, Minnesota is designated as the Federal Medical Center.

G. The Bureau of Prisons institution at Oakland, Louisiana is designated as the Federal Detention Center.

H. The Bureau of Prisons Institution at Los Angeles, California is designated as the Metropolitan Detention Center.

Dated: July 31, 1989.

J. Michael Quillan,
Director, Federal Bureau of Prisons.

DEPARTMENT OF LABOR
Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget

Background: The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the reporting and recordkeeping requirements that will affect the public.

List of Recordkeeping/Reporting Requirements Under Review: As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in.

The Agency of the Department issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement.

The OMB and Agency identification numbers, if applicable.

How often the recordkeeping/reporting requirement is needed.

Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements and the average hours per respondent.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

Comments and Questions: Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, telephone (202) 523-6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N-1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OLMS/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, Room 3208, Washington, DC 20503 (Telephone (202) 395-6880).

Any member of the public who wants to comment on a recordkeeping/reporting requirement which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

Extensions
Mine Safety and Health Administration Records of Fire Drills and Programs to Instruct and Train Miners in the Location and Use of Firefighting Equipment 2210-0054
On occasion; quarterly  
Program: 200 respondents; 30 minutes per response; 100 total burden hours  
Fire drills: 2,328 respondents; 20 minutes per response; 40,320 total burden hours  
Underground coal mine operators are required to have a plan approved by MSHA for the instruction of miners in firefighting and evacuation procedures to be followed in event of an emergency. To implement the plan, fire drills are required to be conducted on a quarterly basis, and a record is required to be kept of the fire drills.  
Mine Safety and Health Administration  
Mine Rescue Equipment Test and Inspection Records  
1215–0093  
Monthly  
Businesses or other for profit; small businesses or organizations  
800 respondents; 12½ minutes per response; 24,000 total burden hours  
Breathing apparatus at mine rescue stations are required to be inspected and tested once each month. Records of the results of the inspections and tests are required to be maintained at the mine rescue stations. The information is used to ensure that the breathing apparatus is operable in case of an emergency.  
Employment Standards Administration  
29 CFR Part 510, Records to be Kept by Employers  
1215–0017; WH–1281  
Recordkeeping  
Individuals or households; State or local governments; Farms; Businesses or other for-profit; Federal agencies or employees; Non-profit institutions; Small businesses or organizations  
3,600,000 recordkeepers; 762,194 total hours  
Mine Safety and Health Administration  
Records of Results of Examinations of Self-Rescuers  
1219–0044  
Quarterly  
Businesses or other for profit; small businesses or organizations  
2,328 respondents; 1 hour and 4 minutes per response; 9,871 total burden hours  
Requires underground coal mine operators to keep records of the results of required examinations of self-rescue devices. The information is used to ensure that the devices are in operable and usable condition in case of an emergency.  
Signed at Washington, DC this 31st day of July, 1989.  
Paul E. Larson,  
Departmental Clearance Officer.  
[FR Doc. 89–18267 Filed 8–3–89; 8:45 am]  
BILLING CODE 4510–43–M  
Delegation of Authority and Assignment of Responsibility; Pension and Welfare Benefits Administration  
Effective June 27, 1989, I hereby delegated authority to Ms. Ann L. Combs, Deputy Assistant Secretary for Pension and Welfare Benefits, and have assigned to her responsibility for performing all of the duties and functions previously assigned to the Assistant Secretary for Pension and Welfare Benefits.  
This delegation will remain in effect until a duly appointed Assistant Secretary for Pension and Welfare Benefits takes office.  
Signed at Washington, DC this 31st day of July, 1989.  
Elizabeth Dole,  
Secretary of Labor  
[FR Doc. 89–18266 Filed 8–3–89; 8:45 am]  
BILLING CODE 4510–23–M  
Employment and Training Administration  
Investigations Regarding Certifications of Eligibility to Apply for Worker Adjustment Assistance  
Petitions have been filed with the Secretary of Labor under section 211(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.  
The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.  
The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than August 14, 1989.  
Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than August 14, 1989.  
The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street, NW., Washington, DC 20213.  
Signed at Washington, DC this 24th day of July 1989.  
Marvin M. Fooks,  
Director, Office of Trade Adjustment Assistance.  

APPENDIX

<table>
<thead>
<tr>
<th>Petitioner (union/workers/firm)</th>
<th>Location</th>
<th>Date received</th>
<th>Date of petition</th>
<th>Petition No.</th>
<th>Articles produced</th>
</tr>
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<tbody>
<tr>
<td>Alside Ot. (USWA)</td>
<td>Cuyahoga Falls, OH</td>
<td>7/24/89</td>
<td>7/6/89</td>
<td>23,172</td>
<td>Aluminum &amp; Steel Siding.</td>
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<td>Blickety Construction (Workers)</td>
<td>Odessa, TX</td>
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<td>7/11/89</td>
<td>23,173</td>
<td>Oil &amp; Gas.</td>
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<td>Boyd Exploration Co. (Company)</td>
<td>Casper, WY</td>
<td>7/24/89</td>
<td>7/13/89</td>
<td>23,174</td>
<td>Oil &amp; Gas.</td>
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<tr>
<td>Dover Weaver Corp. (AWW)</td>
<td>Paris, KY</td>
<td>7/24/89</td>
<td>7/6/89</td>
<td>23,175</td>
<td>Lifts for Cars, Trucks, Etc.</td>
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<tr>
<td>Eaton Corp.—Controls (Workers)</td>
<td>Fremont, OH</td>
<td>7/24/89</td>
<td>6/29/89</td>
<td>23,176</td>
<td>Automotive &amp; Appliance Controls.</td>
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<td>Fox Testing Co., Inc. (Workers)</td>
<td>Dodge City, KS</td>
<td>7/24/89</td>
<td>7/6/89</td>
<td>23,177</td>
<td>Drillstem Testing.</td>
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<td>Knox Corder Drilling, Co. (Workers)</td>
<td>Devine, TX</td>
<td>7/10/89</td>
<td>23,180</td>
<td>Oil &amp; Gas.</td>
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<td>Mercury Mfg. Corp. (Workers)</td>
<td>Hancock, MI</td>
<td>7/24/89</td>
<td>7/1/89</td>
<td>23,182</td>
<td>Auto Parts.</td>
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<td>Momentum Mfg. Corp. (Company)</td>
<td>Herkimer, NY</td>
<td>7/24/89</td>
<td>7/7/89</td>
<td>23,183</td>
<td>Circuit Boards.</td>
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<td>Patterson Shede (IBT)</td>
<td>Paterson, NJ</td>
<td>7/24/89</td>
<td>7/8/89</td>
<td>23,184</td>
<td>Lamp Shades.</td>
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</table>
### Employment Standards Administration, Wage and Hour Division

#### Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (40 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1. Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of issue in the Federal Register, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled “General Wage Determinations Issued Under The Davis-Bacon And Related Acts,” shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room 5-3054, Washington, DC 20210.

#### Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled “General Wage Determinations Issued Under The Davis-Bacon And Related Acts” being modified are listed by Volume, State, and page number[s]. Dates of publication in the Federal Register are in parentheses following the decisions being modified.

### APPENDIX—Continued

<table>
<thead>
<tr>
<th>Petition (union/workers/firm)</th>
<th>Location</th>
<th>Date received</th>
<th>Date of petition</th>
<th>Petition No.</th>
<th>Articles produced</th>
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<tr>
<td>Pacen International (Workers)</td>
<td>Houston, TX</td>
<td>7/24/89</td>
<td>7/5/89</td>
<td>23,185</td>
<td>Oil &amp; Gas.</td>
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<td>Peter Stewart, Inc. (Workers)</td>
<td>Pleasantville, NJ</td>
<td>7/24/89</td>
<td>6/24/89</td>
<td>23,186</td>
<td>Steel.</td>
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<td>Petroleum Management, Inc. (PMI) (Workers)</td>
<td>Corpus Christi, TX</td>
<td>7/24/89</td>
<td>8/20/89</td>
<td>23,187</td>
<td>Oil &amp; Gas.</td>
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<td>Petronetics Internacionales, Inc.</td>
<td>McAllen, TX</td>
<td>7/24/89</td>
<td>7/3/89</td>
<td>23,188</td>
<td>Oil &amp; Gas.</td>
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<td>Shell Offshore, Inc. (Workers)</td>
<td>New Orleans, LA</td>
<td>7/24/89</td>
<td>7/5/89</td>
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<td>Oil &amp; Gas.</td>
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<td>Shell Oil Co. (Workers)</td>
<td>Houston, TX</td>
<td>7/24/89</td>
<td>7/5/89</td>
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<td>Oil &amp; Gas.</td>
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<td>Shell Western E&amp;P, (Workers)</td>
<td>Houston, TX</td>
<td>7/24/89</td>
<td>7/5/89</td>
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<td>Oil &amp; Gas.</td>
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<td>Trasco, Inc. (Workers)</td>
<td>South Paris, ME</td>
<td>7/24/89</td>
<td>7/6/89</td>
<td>23,193</td>
<td>Women's Shoes &amp; Boots.</td>
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<td>United Auto Workers, Local 558 (UAW)</td>
<td>Willow Springs, IL</td>
<td>7/24/89</td>
<td>7/12/89</td>
<td>23,194</td>
<td>Sheet Metal Shipments.</td>
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<tr>
<td>Wyckoff Steel, Inc. (USWA)</td>
<td>Plymouth, MI</td>
<td>7/24/89</td>
<td>7/7/89</td>
<td>23,195</td>
<td>Bar &amp; Coil Steel.</td>
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Federal Register / Vol. 54, No. 149 / Friday, August 4, 1989 / Notices
General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783-3338.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC this 28th day of July 1989.

Robert V. Setera,
Acting Director, Division of Wage Determinations.

General Wage Determinations Issued Under the Davis-Bacon and Related Acts

Volume I

Transmittal #30—August 4, 1989

This transmittal contains changes to Volume I, including modifications or superseded decisions to General Wage Determinations as published in the Federal Register on August 4, 1989. The changes are listed by state, decision number(s), and page number(s). The page(s) listed should be removed and the new page(s) attached should be inserted as replacements.

Connecticut:
CT89-1
p. 61, 62-64, 69.

Maryland:
MD89-15
p. 449, 450.

New Jersey:
NJ89-4
p. 657, 660, 664, 666.

New York:
NY89-3
p. 701, 702-708.

Volume II

Transmittal #30—August 4, 1989

This transmittal contains changes to Volume II, including modifications or superseded decisions to General Wage Determinations as published in the Federal Register on August 4, 1989. The changes are listed by state, decision number(s), and page number(s). The page(s) listed should be removed and the new page(s) attached should be inserted as replacements.

Volume III

Transmittal #30—August 4, 1989

This transmittal contains changes to Volume III, including modifications or superseded decisions to General Wage Determinations as published in the Federal Register on August 4, 1989. The changes are listed by state, decision number(s), and page number(s). The page(s) listed should be removed and the new page(s) attached should be inserted as replacements.

Consolidation Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Consolidation Coal Company, Consol Plaza, Pittsburgh, Pennsylvania 15241 has filed a petition to modify the application of 30 CFR 77.213 (draw-off tunnel escapeways) to its Georgetown Preparation Plant (I.D. No. 33-00958) located in Harrison County, Ohio. The petition is filed under section 107(c) of the Federal Mine Safety and Health Act of 1977.

A. summary of the petitioners' statements follows:

1. The petition concerns the requirement that when it is necessary for a tunnel to be closed at one end, an escapeway not less than 30 inches in diameter (or of the equivalent, if the escapeway does not have a circular cross section) is required to be installed which extends from the closed end of the tunnel to a safe location on the surface; and, if the escapeway is inclined more than 30 degrees from the horizontal, it is required to be equipped with a ladder which runs the full length of the inclined portion of the escapeway.

2. The Trenton Channel Dump Feeder consists of a small hopper and feeder beneath a truck bridge which accommodates the bottom-dump trucks. The feeder discharges the raw coal onto a 48-inch belt conveyor directly under the feeder. The enclosed portion of the conveyor is approximately 45 feet in length. The center height of the belt conveyor enclosure is 11 feet, 10 inches. The walkway clearance width in this area on either side of the belt conveyor is 3 feet, 9½ inches.

3. The drive system for the belt conveyor is located external to the conveyor enclosure and would be operated remotely from the Trenton Channel Tripple.

4. The belt conveyor has pull cords provided on both sides within the enclosed portion. In addition, the belt...
conveyor is provided with a belt slippage shutdown switch as well as misalignment run-off switches. The conveyor enclosure slopes towards the opening to allow for sufficient drainage when necessary.

5. As an alternate method, petitioner proposes the following procedures.
   (a) The tunnel would be inspected for fire or smoke prior to entry;
   (b) Methane gas levels would be checked by a flame safety lamp or methane detector;
   (c) A self-contained self-rescue device (SCSR) would be provided and maintained at the feeder area of the tunnel;
   (d) Proper instruction for SCSR use would be provided to all tunnel maintenance personnel;
   (e) A 20-pound capacity fire extinguisher would be placed at the feeder area of the tunnel;
   (f) No one would be permitted inside the tunnel during the time coal is being dumped into the feeder;
   (g) A sign would be placed at the tunnel entrance stating DO NOT ENTER DURING DUMPING OPERATIONS;
   (h) A "jog" switch would be installed to operate the belt during tunnel cleanup;
   (i) The tunnel would be cleaned of all combustible material and the area dusted with rock dust or hydrated lime prior to any welding or burning operations; and
   (j) For the purpose of maintenance or cleanup, two-way communication would be provided within the feeder area of the tunnel to a person on duty outside the tunnel area.

6. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before September 5, 1989. Copies of the petition are available for inspection at that address.

Date: July 26, 1989.
Patricia W. Silvey,
Director, Office of Standards, Regulations and Variances.

[FR Doc. 89-18264 Filed 8-3-89; 8:45 am]
BILLING CODE 4510-43

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

Agency Information Collection Activities Under OMB Review

AGENCY: National Endowment for the Arts.

ACTION: Notice.

SUMMARY: The National Endowment for the Arts (NEA) has sent to the Office of Management and Budget (OMB) the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Comments on this information collection must be submitted by September 5, 1989.

ADDRESSES: Send comments to Mr. Jim Houser, Office of Management and Budget, New Executive Office Building, 725 Jackson Place NW., Room 3002, Washington, DC 20503; (202-395-7318).

In addition, copies of such comments may be sent to Mrs. Anne C. Doyle, National Endowment for the Arts, Administrative Services Division, Room 203, 1100 Pennsylvania Avenue NW., Washington, DC 20506; (202-682-5401).

FOR FURTHER INFORMATION CONTACT: Mrs. Anne C. Doyle, National Endowment for the Arts, Administrative Services Division, Room 203, 1100 Pennsylvania Avenue NW., Washington, DC 20506; (202-682-5401) from whom copies of the documents are available.

SUPPLEMENTARY INFORMATION: The Endowment requests a review of the revision of a currently approved collection of information. This entry is issued by the Endowment and contains the following information: (1) The title of the form; (2) how often the required information must be reported; (3) who will be required or asked to report; (4) what the form will be used for; (5) an estimate of the number of responses; (6) the average burden hours per response; (7) an estimate of the total number of hours needed to prepare the form. This entry is not subject to 44 U.S.C. 3501(h).

Title: Music Fellowships Application Guidelines for FY 1991.

Frequency of Collection: One-time.

Respondents: Individuals or households.
Music Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Music Advisory Panel (Multi-Music Presenters Section) to the National Council on the Arts will be held on August 23-24, 1989, from 9:00 a.m. - 6:00 p.m., August 25, 1989, from 9:00 a.m. - 2:00 p.m. is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the Federal Register of February 13, 1989, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

If you need special accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682-5433.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682-5433.

Dated: July 31, 1989.

Yvonne M. Sabine,
Director, Council and Panel Operations, National Endowment for the Arts.

NRC EXPORT LICENSE APPLICATIONS

<table>
<thead>
<tr>
<th>Name of applicant, date of appl., date received, application No.</th>
<th>Material type</th>
<th>Material in total element</th>
<th>Kilograms total isotope</th>
<th>End use</th>
<th>Country of destination</th>
</tr>
</thead>
<tbody>
<tr>
<td>Nissho Iwai Corp., 6/29/89, 7/10/89, XSNM02467</td>
<td>45.0% Enriched Uranium.</td>
<td>85.56</td>
<td>38.50</td>
<td>Fuel for JMTR Research Reactor.</td>
<td>Japan.</td>
</tr>
</tbody>
</table>

Dated this 28th day of July 1989 at Rockville, Maryland.

For the Nuclear Regulatory Commission.

Marvin R. Peterson,

[FR Doc. 89-10291 Filed 8-3-89; 8:45 am]

BILLING CODE 7537-01-M

NUCLEAR REGULATORY COMMISSION

Applications for Licenses to Export Nuclear Material; Nissho Iwai Corp.

Pursuant to 10 CFR 110.70(b) "Public notice of receipt of an application", please take notice that the Nuclear Regulatory Commission has received the following applications for export licenses. Copies of the applications are on file in the Nuclear Regulatory Commission's Public Document Room located at 2120 L Street NW., Washington, DC.

A request for a hearing or petition for leave to intervene may be filed within 30 days after publication of this notice in the Federal Register. Any request for a hearing or petition for leave to intervene shall be served by the requestor or petitioner upon the applicant, the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555; the Secretary, U.S. Nuclear Regulatory Commission; and the Executive Secretary, U.S. Department of State, Washington, DC 20530.

In its review of applications for licenses to export production or utilization facilities, special nuclear materials or source materials, noticed herein, the Commission does not evaluate the health, safety or environmental effects in the recipient nation of the facility or material to be exported. The information concerning these applications follows.

[FR Doc. 89-10291 Filed 8-3-89; 8:45 am]
95 °F ultimate heat sink temperature on peak calculated peak containment accident pressure for a main steam line break accident, which is the worst case, is 42.42 psig, which is below the containment design pressure of 130 °F. It should also be noted, the new peak containment accident temperature (257 °F) is less than that previously analyzed for Equipment Qualification in the Final Safety Analysis Report (FSAR). The failure of nonsafety-related equipment either does not cause a new or different kind of accident or does not cause an accident not already evaluated. Adequate cooling is provided to safety-related equipment to ensure that they operate as intended. Therefore, no new or different kind of accident is created by increasing the allowable ultimate heat sink temperature to 95 °F or increasing the containment maximum temperature to 130 °F.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response

Operation of Indian Point Unit 3 with a 95 °F ultimate heat sink temperature and a 130 °F maximum allowable containment temperature does not increase the probability of the sudden pressure for a main steam line break accident.

As discussed in section 5.1.2 of WCAP-12313, operation of Indian Point Unit 3 with a Service Water inlet temperature of 95 °F will not increase the probability of the sudden failure of SWS or CCWS cooled equipment, whose sudden failure could cause an accident evaluated in the FSAR, (i.e. loss of reactor coolant flow due to the sudden failure of a RCP, or reactor coolant system failures due to inadequate reactor vessel support cooling).

Section 5.1.3 of WCAP-12313, states that adequate cooling is provided to safety-related equipment to support operability following design basis accidents. In addition, adequate cooling is provided to the emergency core cooling and containment cooling systems to mitigate design basis accidents and maintain plant safety parameters below safety limits.

The Authority has analyzed the effect of a 95 °F ultimate heat sink temperature on peak containment accident pressure in WCAP-12299. In addition to the 95 °F service water inlet temperature, other key assumptions include a containment ambient temperature of 130 °F, a six (6) second Safety Injection (SI) pure time delay (during a main steam line break accident) and zero (0) ppm boron concentration in the Boron Injection Tank. The results of the analysis show that the amendment request involves no significant hazards considerations.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration and Resources Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this Federal Register notice. Written comments may also be delivered to Room P-216, Phillips Building, 7200 N. York Avenue, Bethesda, Maryland from 7:30 a.m. to 4:30 p.m. Copies of written comments received may be examined at the NRC Public Document Room, the Geman Building, 2120 L Street NW., Washington, DC. The filing of requests for hearing and petitions for leave to intervene are discussed below.

By August 31, 1989, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall be set forth with particularity the interest of the petitioner in the proceeding, and show that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be...
made party to the proceeding: (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition shall also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene.

Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards considerations. The final determination will serve to decide when the hearing is held.

If the final determination is that the request for amendment involves no significant hazards considerations, the Commission may issue the amendment and make it effective, notwithstanding any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If the final determination is that the request for amendment involves significant hazards considerations, any hearing held would take place before the issuance of any amendment.

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Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards considerations. The final determination will consider all public and Commission comments. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing on a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-800-525-6000 (in Missouri 1-800-352-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Robert A. Capra: [petitioner's name and telephone number], [date petition was mailed], [plant name], and [publication date and page number of this Federal Register notice]. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20444, and to Mr. Charles M. Pratt, 10 Columbus Circle, New York, New York 10019, attorney for the licensee.

Nonfilings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. That determination will be based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated July 24, 1989, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC and at the Local Public Document Room located at White Plains Public Library, 100 Martine Avenue, White Plains, New York 10601.

Dated at Rockville, Maryland, this 31st day of July 1989.

For The Nuclear Regulatory Commission.

Donald S. Brinkman,
Senior Project Manager, Project Directorate I-1, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 89-18354 Filed 8-3-89; 8:45 am]

BILLING CODE 7990-01-M

POSTAL SERVICE

Expiration of the Temporary Domestic Mail Classification Schedule Provision Regarding Second-Class Mail

AGENCY: Postal Service.

ACTION: Notice of expiration of a temporary change in the Domestic Mail Classification Schedule.

SUMMARY: This gives notice of the expiration of the temporary amendment of the Domestic Mail Classification Schedule, adopted on October 9, 1980, to provide specifically that "Plus" issues of second-class publications, whether or not published on the same day as another regular issue of the publication, are separate publications for purposes of qualifying for entry as second-class mail.


FOR FURTHER INFORMATION CONTACT: Grayson M. Poats, (202) 268-2881.

SUPPLEMENTARY INFORMATION: On June 17, 1988, the United States Postal Service, pursuant to 39 U.S.C. 3623, filed a request with the Postal Rate Commission for a change in the mail classification schedule to make clear its authority to prevent the abuse of second-class mail through the mailing of "Plus" issues of publications. The Commission assigned the case Docket No. MC88-2 and published a notice in the Federal Register on June 23, 1988 (53 FR 24388) describing the request and offering interested parties an opportunity to intervene.

The Postal Service requested a change in §200.0123 of the Domestic Mail Classification Schedule to read as follows:

§200.0123 For purposes of determining second-class eligibility and postage under Classification Schedule 200, an "issue" of a newspaper or other periodical shall be defined to be a separate publication if:

a. It is published at a regular frequency, either on the same day as another regular issue of the same publication, or at such other frequency as prescribed by the Postal Service by regulation, and

b. It is distributed to more than (i) 10 percent nonsubscribers, or (ii) twice as many nonsubscribers as the other issue on that same day, or, if no other issue that day, any

AGENCY: Postal Service.

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SECURITIES AND EXCHANGE COMMISSION

[34-27068; NSCC-89-7]

Self-Regulatory Organization; National Securities Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Automated Confirmation Transaction System


Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78o(b)(1), notice is hereby given that on June 9, 1989, NSCC filed with the Securities Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NSCC. The Commission is publishing this notice to solicit comments on the proposed rule change for interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would amend NSCC’s Rules and Procedures concerning the reporting of locked-in trade data.1

II. Self-Regulatory Organization’s Statement of the Purpose of and Statutory Basis for the Proposed Rule Change

In its filing with the Commission, NSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) The purpose of the proposed rule change is to allow NSCC to accommodate the National Association of Securities Dealers (“NASD’s”) Automated Confirmation Transaction System (“ACT”).2 Act is an automated comparison system which locks in over-the-counter (“OTC”) equities transactions as close as possible to the point of execution. ACT will serve as a conduit for the transfer of trade information to NSCC on behalf of the parties to the transaction. The trades will be reported to NSCC as locked-in trades. By reporting previously negotiated two party OTC transactions to NSCC as locked in trades, ACT will relieve the contra parties of this reporting requirement.

Currently, NSCC receives locked-in trade data from the NASD in connection with: (1) The Small Order Execution System (“SOES”), (2) the Order Confirmation Transaction System (“OCT”), (3) the Intermarket Trading System (“ITS”), and (4) the automated execution systems of Qualified Special Representatives. Trades executed via these four systems result in locked in trades and reported to NSCC on the evening of trade date (“T”). In order to accommodate ACT, NSCC also will accept locked-in trade data from self-regulatory organizations (“SRO”),3 including NASD, on trade date (“T”) and on the day after trade date (“T+1”). NSCC will report ACT transactions received on T+1 on a T+1 Locked-in Contract available on the morning of T+2. The totals for these locked in trades (and all other trades compared by T+1) are carried forward to the

1 The term “locked-in trade” refers to a trade in an automated system. Under the locked-in comparison method, the entity (e.g., the exchange) that operates the system becomes the contra-side to each half of the trade.


3 For definition of the term “SRO”, are section 3(a)(29) of the offset.
Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Inc.


The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder for unlisted securities exchange has filed applications with the Commission. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,
Secretary.

BILLING CODE 8010-01-M

Indianapolis Life Variable Account A


AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for an order under the Investment Company Act of 1940 ("1940 Act").

Applicant: Indianapolis Life Variable Account A.

Relevant 1940 Act Sections: Order requested under section 8(f).

Summary of Application: Applicant requests an order under section 8(f) of the 1940 Act declaring that it has ceased to be an investment company.

Filing Date: The application was filed on May 10, 1989.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m. on August 21, 1989. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and send it to the Secretary of the SEC along with proof of service by affidavit, or for attorneys, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Applicant, 2960 N. Meridian Street, P.O. Box 1230, Indianapolis, Indiana 46206.

FOR FURTHER INFORMATION CONTACT: Joyce M. Pickholz, Staff Attorney, (202) 272–3048 or Clifford E. Kirsch, Acting Assistant Director, (202) 272–2061 (Office of Insurance Products and Legal Compliance, Division of Investment Management).

SUPPLEMENTARY INFORMATION:

Following is a summary of the application; the complete application is available for a fee from either the SEC’s Public Reference Branch in person or the SEC’s commercial copier which may be contacted at (800) 251–3262 (Maryland (301) 253–4200).

Applicant’s Representations

1. The Applicant was organized as a separate account of Indianapolis Life Insurance Company pursuant to the insurance laws of Indiana on September 13, 1984. The Applicant is registered under the 1940 Act as a unit investment trust. On May 14, 1986, the Applicant filed a Registration Statement on Form N-8B-2 under the Securities Act of 1933 and Form N-8B-2 under the Investment Company Act of 1940 for an indefinite amount of Flexible Premium Variable Life Insurance Policies. The Registration Statement on Forms S-6 never became effective. Consequently, there are no Policies outstanding.

2. The Applicant has no assets or liabilities. Because it has no independent existence under state law, it will cease to exist once the deregistration order is issued and the appropriate action is taken by the officers of Indianapolis Life Insurance Company.

3. The Applicant has not within the last 18 months transferred any of its assets to a separate trust, and is not a party to any litigation or administrative proceeding. The Applicant is not now engaged, nor does it propose to engage in any business activities.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan D. Katz,
Secretary.

BILLING CODE 8010-01-M
FOR FURTHER INFORMATION CONTACT:
Dated: July 31, 1989.
Jeffrey N. Shane,
Assistant Secretary for Policy and International Affairs.
[FR Doc. 89–18207 Filed 8–3–89; 8:45 am]
BILLING CODE 4910–62–M

Federal Aviation Administration

Extension of Comment Period on Noise Exposure Maps and Noise Compatibility Program for Colorado Springs, CO

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces an extension of the comment period on the Colorado Springs Municipal Airport noise exposure maps and associated noise compatibility program to August 14, 1989.

FOR FURTHER INFORMATION CONTACT:
Dennis Ossenkop, FAA, Airports Division, ANM–611, 17900 Pacific Hwy S., C–66966, Seattle, WA 98168.
Comments on the noise exposure maps and proposed noise compatibility program should be submitted to the above office.

SUPPLEMENTARY INFORMATION: The noise exposure maps and proposed noise compatibility program are available for examination at the following locations:
Federal Aviation Administration, Independence Avenue SW., Room 615, Washington, DC
Federal Aviation Administration, Airports Division, ANM–600, 17900 Pacific Hwy S., C–68966, Seattle, WA 98168
Colorado Springs Municipal Airport, Colorado Springs.

Cecil C. Warner,
Acting Manager, Airports Division.
[FR Doc. 89–18208 Filed 8–3–89; 8:45 am]
BILLING CODE 4910–13–M

Runway Protection Zone Policy Statement

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of agency policy statement.

SUMMARY: The FAA conducts several airport safety and construction programs under which the agency studies existing and proposed objects and activities, both on and off airports. This notice confirms the policy of the FAA that, to protect the public's investment in the national airport system, the FAA will resist or oppose objects or activities in the vicinity of an airport that conflicts with an airport planning or design standard or recommendation.

FOR FURTHER INFORMATION CONTACT:

SUPPLEMENTARY INFORMATION: Air travel is the major mode of interstate transportation in the United States. As air travel has increased, the frequency of airplane operations and the size of airplanes have likewise increased. At the same time, the public has not seen a corresponding expansion of the airport system. Therefore, handling the increases has challenged the government as well as the aviation industry to maintain a safe and efficient airports-airspace environment.

In meeting this challenge, the FAA conducts several airport safety and construction programs. Under these programs, the FAA studies existing and proposed objects and activities, both on and off airports. These objects and activities are not limited to obstructions to air navigation, as defined in 14 CFR part 77, Objects Affecting Navigable Airspace. The studies also focus on the efficient use of airports and the safety of persons and property on the ground. As the result of a study, the FAA may recommend against the presence of any off-airport object or activity. To protect the public's investment in the national airport system, the FAA will resist or oppose objects or activities in the vicinity of an airport that conflicts with an airport planning or design standard or recommendation.

Issued in Washington, DC on July 31, 1989.

Leonard E. Mudd,
Director, Office of Airport Safety and Standards.
[FR Doc. 89–18209 Filed 8–3–89; 8:45 am]
BILLING CODE 4910–13–M
Evaluation Report on Center High Mounted Stop Lamps; Federal Motor Vehicle Safety Standards; Lamps, Reflective Devices, and Associated Equipment; Request for Comments

Summary: This notice announces the publication by NHTSA of an Evaluation Report concerning Safety Standard No. 108, Lamps, Reflective Devices, and Associated Equipment. This staff report evaluates safety effectiveness, benefits, and cost of center high mounted stop lamps. The report was developed in response to Executive Order 12291, which provides for Government-wide review of existing major Federal regulations. The agency seeks public review and comment on this evaluation. Comments received will be used to complete the review required by Executive Order 12291.

Date: Comments must be received no later than November 2, 1989.

Address: Interested persons may obtain a copy of the report free of charge by sending a self-addressed mailing label to Ms. Glorious Harris (NAD-51), National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC, 20590. All comments should refer to the docket and notice number of this notice and be submitted to: Docket Section, Room 5109, Nassif Building, 400 Seventh Street SW., Washington, DC, 20590. [Docket hours, 8:00 a.m.–4:00 p.m., Monday through Friday.]


Supplementary Information: Standard No. 108 (49 CFR 571.108) regulates the lamps, reflectors and associated equipment for cars, trucks, trailers, buses, multipurpose passenger vehicles and motorcycles. The standard was amended, effective September 1, 1985, to require that new passenger cars be equipped with a center high mounted stop lamp (CHMSL). A CHMSL is a small red stop lamp mounted on the centerline of the rear of the automobile within specified ranges of vertical locations and brightness. The vertical location is specified with the intent of positioning the lamp higher than conventional stop lamps. The lamp is actuated only by braking. Accident reduction, specifically in the group of accidents in which braking by the struck vehicle is a critical factor, is the purpose of the CHMSL.

Pursuant to Executive Order 12291, NHTSA is conducting an evaluation of CHMSL to determine the effectiveness of the CHMSL performance standard in reducing crashes and their associated damages and casualties and to determine the benefits and costs of the standard to consumers. Under the Executive order, agencies are to review existing regulations to determine whether the regulations are achieving the Order’s policy goals, i.e., achieving legislative goals effectively and efficiently and without imposing any unnecessary burdens on those affected. This report is the agency’s second analysis of the effectiveness of CHMSL in preventing rear impact crashes. This report evaluates the effectiveness, benefits and costs of CHMSL based on their on-the-road experience during calendar year 1987, when approximately ¾ of the passenger car fleet in the United States was CHMSL equipped.

The effectiveness analysis is based on police reported accident files from 11 States. Cost estimates are based on detailed engineering analyses of production CHMSL assemblies.

The involvement rate in “CHMSL relevant” rear impacts for model year 1986 and 1987 cars (all CHMSL equipped) is compared to the rate for 1980–85 cars without the lamps. CHMSL relevant collisions are those in which the back of the car is damaged and the stop lamps were actuated prior to impact. “CHMSL effectiveness” is the reduction of CHMSL relevant collisions for CHMSL equipped cars relative to pre-CHMSL cars.

The principal findings and conclusions of this study are the following:

• CHMSL equipped cars were 17 percent less likely to be struck in the rear while braking than the cars without CHMSL (confidence bounds: 13 to 21 percent).
• CHMSL are especially effective in preventing chain collisions involving three or more vehicles.
• When all cars on the road have CHMSL, they will prevent 126,000 police reported accidents, 80,000 nonfatal injuries and $910,000,000 in property damage per year.
• CHMSL add $10.48 (in 1987 dollars) to the lifetime cost of owning and operating a car.

At the effectiveness levels observed in the 1987 data, the CHMSL is a very cost effective safety device.

NHTSA welcomes public review of the evaluation report and invites the public to submit comments.

It is requested but not required that 10 copies of comments be submitted.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose, in the envelope with their comments, a self-addressed stamped postcard. Upon receiving the comments, the docket supervisor will return the postcard by mail.

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: July 28, 1989.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–0770.

Form Number: None.

Type of Review: Extension.

Title: Transfers of Securities Under Certain Agreements.

Description: Section 1058 of the Internal Revenue Code provides tax-free treatment for security lending transactions. A written agreement is necessary to verify the existence of such lending agreement. Lenders of securities are affected.

Respondents: Individuals or households, Businesses or other for-profit, Small businesses or organizations.

Estimated Number of Respondents: 1.
The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

Bureau of Alcohol, Tobacco and Firearms

**OMB Number:** 1512-0221.  
**Form Number:** ATF F 5400.1.  
**Type of Review:** Extension.  
**Title:** Offer in Compromise of Liability Incurred Under the Internal Revenue Code.  
**Description:** ATF F 5400.1 is used by persons who wish to compromise criminal and/or civil penalties for violations of the Internal Revenue Code. If accepted the offer in compromise is a settlement between the Government and the party in violation in lieu of legal proceedings or prosecution. It also identifies the person making the offer, violations, amount of offer and circumstances concerning the violation.  
**Respondents:** Businesses or other for-profit.  
**Estimated Number of Respondents:** 40.  
**Estimated Burden Hours Per Response:** 2 hours.  
**Frequency of Response:** On occasion.  
**Estimated Total Reporting Burden:** 80 hours.  
**OMB Number:** 1512-0247.

**Form Number:** ATF REC 5000/2.  
**Type of Review:** Extension.  
**Title:** Manufacture of Ammunition, Records and Supporting Data of Ammunition Manufactured and Disposed of.  
**Description:** These records are used by ATF in criminal investigations and compliance inspections in fulfilling the Bureau’s mission to enforce the Gun Control Law.  
**Respondents:** Businesses or other for-profit. Small businesses or organizations.  
**Estimated Number of Recordkeepers:** 50.  
**Estimated Burden Hours Per Recordkeeper:** 6 hours, 30 minutes.  
**Frequency of Response:** Other.  
**Estimated Total Recordkeeping/Reporting Burden:** 35 hours.  
**OMB Number:** 1512-0354.  
**Form Number:** ATF REC 5170/3.  
**Type of Review:** Extension.  
**Title:** Retail Liquor Dealers Records of Receipts of Alcoholic Beverages and Commercial Invoices.  
**Description:** Information contained in this collection is used by ATF to verify and account for alcoholic beverage transactions between wholesale and retail dealers to ascertain the taxpaid status supportive of complete tax collections.  
**Respondents:** State or local governments, Businesses or other for-profit, Small businesses or organizations.  
**Estimated Number of Recordkeepers:** 360,412.  
**Estimated Burden Hours Per Response:** 1 hour.  
**Frequency of Response:** On occasion.  
**Estimated Total Reporting Burden:** 390,412 hours.  
**OMB Number:** 1512-0399.  
**Form Number:** ARF F 5400.21.  
**Type of Review:** Extension.  
**Title:** Application Permit for User Limited Special Fireworks (18 U.S.C. Chapter 40, Explosives).  
**Description:** This form is used to verify the eligibility of and grant permission to the holder to buy or transport explosives in interstate commerce on a one-time basis.  
**Respondents:** Individuals or households, Businesses or other for-profit, Small businesses or organizations.  
**Estimated Number of Respondents:** 1,800.  
**Estimated Burden Hours Per Recordkeeper:** 18 minutes.  
**Frequency of Response:** On occasion.  
**Estimated Total Reporting Burden:** 540 hours.  
**OMB Number:** 1512-0488.

**Form Number:** ATF REC 5210/12.  
**Type of Review:** Extension.  
**Title:** Tobacco Products Manufacturers—Notice for Tobacco Products.  
**Description:** ARF requires that tobacco products be identified by statements of information on packages or cases. ATF uses this information to validate the receipts of excise tax revenue and for verification of claims.  
**Respondents:** Businesses or other for-profit.  
**Estimated Number of Recordkeepers:** 120.  
**Estimated Burden Hours Per Recordkeeper:** 1 hour.  
**Frequency of Response:** Other.  
**Estimated Total Recordkeeping/Reporting Burden:** 1 hour.  
**OMB Reviewer:** Milo Sunnderhauf (202) 395-6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.  
**Departmental Reports Management Officer:** Lois K. Holland, Departmental Reports Management Officer.  
**[FR Doc. 89-18240 Filed 8-3-89; 8:45 am]**
disclose the indebtedness of executive officers and principal stockholders to the bank or its correspondent banks. Respondents: Individuals or households, Businesses or other for-profit, Small businesses or organizations.

Estimated Number of Respondents/Recordkeepers: 55,360.
Estimated Burden Hours Per Response/Recordkeeper: 7 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 13,785 hours.


Lois K. Holland,
Departmental Reports Management Officer.

[FR Doc. 89-18224 Filed 8-3-89; 8:45 am] BILING CODE 4810-25-M

Public Information Collection Requirements Submitted to OMB for Review

Date: July 31, 1989.
The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service
OMB Number: 1545-0123.
Form Number: IRS Form 1120.
Type of Review: Revision.
Description: Form 1120 is used by corporations to compute their taxable income and tax liability. Schedule D (Form 1120) is used by corporations to report gains and losses from the sale of capital assets. Schedule PH (Form 1120) is used by personal holding companies to compute their tax liability. The IRS uses these forms to determine whether corporations have correctly computed their tax liability.

| Recordkeeping | 43 hrs., 17 min. |
| Learning about the form | 22 hrs., 43 min. |
| Preparing the form | 42 hrs., 13 min. |
| Copying, assembling, and sending the form to IRS | 4 hrs., 50 min. |

<table>
<thead>
<tr>
<th>1120-A</th>
<th>Schedule D</th>
<th>Schedule PH</th>
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<tr>
<td>6 hrs., 28 min.</td>
<td>15 hrs., 47 min.</td>
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<td>9 hrs., 29 min.</td>
<td>7 hrs., 11 min.</td>
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<tr>
<td>6 hrs., 32 min.</td>
<td>9 hrs., 38 min.</td>
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<td>48 min.</td>
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</table>

Estimated Number of Respondents/Recordkeepers: 286,777.
Estimated Burden Hours Per Response: 32,590,000 hours.

Clearance Officer: Garrick Shear (202) 535-4207, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports Management Officer.

[FR Doc. 89-18224 Filed 8-3-89; 8:45 am] BILING CODE 4810-25-M

Office of the Secretary

[Supplement to Department Circular—Public Debt Series—No. 20-89]

Treasury Notes, Series AC-1991

The Secretary announced on July 28, 1989, that the interest rate on the notes designated Series AC-1991, described in Department Circular—Public Debt Series—No. 20-89 dated July 20, 1989, will be 7% percent. Interest on the notes will be payable at the rate of 7% percent per annum.

Gerald Murphy
Fiscal Assistant Secretary.

[FR Doc. 89-18217 Filed 8-3-89; 8:45 am] BILING CODE 4810-01-M

The General Counsel

Date: July 25, 1989

By virtue of the authority vested in me as Secretary of the Treasury, including authority vested in me by 31 U.S.C. 321(b), it is ordered that:

1. The Department has a General Counsel, who, pursuant to 31 U.S.C. 501(f)(1), is the chief law officer of the Department. The General Counsel is the final legal authority within the Department and, as such, has the authority to participate in and decide any legal matter within the Department. The General Counsel is the head of and supervises the Legal Division, which constitutes the consolidated legal staff of the Department. All attorneys whose duties include providing legal advice to

[Number: 107-04]
officials in any office or bureau of the Department shall be part of the Legal Division under the supervision of the General Counsel.

2. The General Counsel provides legal advice to the Secretary of the Treasury, the Deputy Secretary, the Under Secretaries, the Assistant Secretaries and to all offices and bureaus of the Department on any matter that may arise within the Department. The following are also included in the functions of the General Counsel:

a. Considers the legal problems relating to Department management, government financial operations, the public debt, the revenue and customs laws, international and domestic economic, monetary and financial affairs, and law enforcement activities;

b. Coordinates the Department's position in litigation;

c. Reviews the Department's regulations for legal sufficiency;

d. Operates the Department's ethics program and counsels the Department's officers and employees on conflicts of interest and ethics matters;

e. Coordinates and assists in the preparation of certain legislative reports to the Congress and the Office of Management and Budget, and the Department's annual legislative program;

f. Considers appeals to the Secretary in administrative matters where so designated; and

g. Performs such other tasks as the Secretary may direct.

3. In performing these functions and services, the General Counsel operates principally through and supervises a Deputy General Counsel, the Assistant General Counsel (including the Assistant General Counsel who is the Chief Counsel of the Internal Revenue Service), the Counselor to the General Counsel, the Tax Legislative Counsel, the International Tax Counsel, the Chief Counsel of the Office of the Comptroller of the Currency, and the Counsel to the Inspector General. Each of the officials listed in this paragraph shall be responsible for referring to the General Counsel any matter on which action would appropriately be taken by the General Counsel.

4. The General Counsel is hereby delegated authority to determine the structural and functional organization of the Department and to establish the policies, procedures and standards governing its functioning.

5. The Legal Division shall continue to be a bureau within the Department for purposes of appointment and administration of personnel, the labor management relations program, and the ethics program. The General Counsel, with the concurrence of the Assistant Secretary of the Treasury (Management), may determine that the Legal Division shall operate with other authorities and responsibilities of a bureau.

Nicholas F. Brady,
Secretary of the Treasury.
Internal Revenue Service

Tax Counseling for the Elderly (TCE) Program; Correction to Application Packages

AGENCY: Internal Revenue Service, Treasury.
ACTION: Correction to TCE application packages.
SUMMARY: This document provides notice of a correction to the Application Packages for the 1990 Tax Counseling for the Elderly (TCE) Program. Correction: Representatives of organizations who requested Application Packages for the 1990 Tax Counseling for the Elderly (TCE) Program from the Internal Revenue Service, are hereby notified that the following correction should be made to the packages that they receive from the IRS. Under Program Requirements, Subpart 120(s), Page 3, the text should read: "[*] Non-profit organization. An organization which meets the criteria of an exempt organization under section 501(c)(3) of the Internal Revenue Code (and which is not otherwise prohibited from being a sponsor by these program guidelines)." The deadline for submitting an application package to the IRS for the 1990 Tax Counseling for the Elderly (TCE) Program remains September 1, 1989.

ADDRESSES: Application Packages may be requested by contacting: Program Manager, Tax Counseling for the Elderly Program, Internal Revenue Service, Volunteer and Education Programs Branch (T:T:VE), 1111 Constitution Avenue NW., Room 7215, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Mr. Roy Johnson, Volunteer and Education Programs Branch, (T:T:VE), Room 7215, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224. The non-toll-free telephone number is: (202) 566-4904.

Neil Patton,
Chief, Volunteer and Education Programs Branch.
[FR Doc. 89-18175 Filed 8-3-89; 8:45 am] BILLING CODE 8320-01-M

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the act of October 19, 1965 (79 Stat. 965, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85-5 of June 27, 1985 (50 FR 27533, July 2, 1985), I hereby determine that the objects to be included in the exhibit, "Frederic Edwin Church" (see list 1) imported from abroad for the temporary exhibition without profit within the United States are of cultural significance. These objects are imported pursuant to loan agreements with the foreign lenders. I also determine that the temporary exhibition or display of the listed exhibit objects at the National Gallery of Art in Washington, DC, beginning on or about October 8, 1989, to on or about January 28, 1990, is in the national interest.

Public notice of this determination is ordered to be published in the Federal Register.

R. Wallace Stuart,
Acting General Counsel.
[FR Doc. 89-18227 Filed 8-3-89; 8:45 am] BILLING CODE 8320-01-M

DEPARTMENT OF VETERANS AFFAIRS

Information Collection Under Office of Management and Budget Review

AGENCY: Department of Veterans Affairs.
ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document lists the following information: (1) The agency responsible for sponsoring the information collection; (2) the title of the information collection; (3) the Department form number(s), if applicable; (4) a description of the need and its use; (5) frequency of the information collection, if applicable; (6) who will be required or asked to respond; (7) an estimate of the number of responses; (8) an estimate of the total number of hours needed to complete the information collection; and (9) an indication of whether section 3504(h) of Public Law 96-511 applies.

1 A copy of this list may be obtained by contacting Mr. R. Wallace Stuart of the Office of the General Counsel of VA. The telephone number is (202) 274-7679, and the address is Room 700, U.S. Information Agency, 301 Fourth Street, SW., Washington, DC 20547.

ADDRESS: Copies of the proposed information collection and supporting documents may be obtained from John Turner, Veterans Benefits Administration, (203C), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 (202) 233-2744.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503, (202) 395-7316. Please do not send applications for benefits to the above addresses.

DATES: Comments on the information collection should be directed to the OMB Desk Officer within 30 days of this notice.

By direction of the Secretary.
Frank E. Lolley,
Director, Office of Information Management and Statistics.

Extension

1. Veterans Benefits Administration
2. Income-Net Worth and Employment Statement (In Support of Claim for Total Disability Benefits)
3. VA Form 21-527
4. This form is used to obtain income, net worth and employment information if the information of record is incomplete, obsolete, inaccurate, or insufficiently detailed. This information is used to determine eligibility and benefit rates for veterans' disability pension benefits.
5. 0 on occasion
6. Individuals or households
7. 104,440 responses.
8. one hour
9. Not applicable
1. Veterans Benefits Administration
2. Request for Details of Expenses
3. VA Form 21-8049
4. This form is used to obtain information concerning a claimant's deductible expenses and/or commercial life insurance proceeds received in order to determine entitlement to benefits.
5. On occasion
6. Individuals or households
7. 22,800 responses.
8. 1 4 hour
9. Not applicable

[FR Doc. 89-18228 Filed 8-3-89; 8:45 am] BILLING CODE 8320-01-M
Notice of this meeting is required under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b[e][3].

The following items have been deleted from the list of agenda items scheduled for consideration at the August 2, 1989, Open Meeting and previously listed in the Commission's Notice of July 20, 1989.

General—2—Title: Further Studies on the Availability of Spectrum Advanced Television. Summary: The Commission will consider an interim report describing further studies conducted by the Office of Engineering and Technology on the availability of spectrum for advanced television.


Additional information concerning these items may be obtained from Sarah Lawrence, Office of Public Affairs, telephone number (202) 632-5050.

Notice of this meeting is required under section 522(b)(10) of the "Government in Sunshine Act" (Public Law 94-409).

DATES:
Aug. 7, 1989, 9:00 a.m. to 5:00 p.m.
Aug. 8, 1989, 9:00 a.m. to 5:00 p.m.
Aug. 9, 1989, 9:00 a.m. to 5:00 p.m.
Aug. 10, 1989, 9:00 a.m. to 5:00 p.m.
Aug. 11, 1989, 9:00 a.m. to 5:00 p.m.

LOCATION: Omni Hotel, San Diego, California.

FOR FURTHER INFORMATION CONTACT:
National Council on Disability.

The National Council on Disability is an independent Federal agency comprised of 15 members appointed by the President of the United States and confirmed by the Senate. Established by the 95th Congress in Title IV of the Rehabilitation Act of 1973 (as amended by Public Law No. 96-502), the Council was initially an advisory board within the Department of Education. The Council was transformed into an independent agency by the Rehabilitation Act Amendments of 1984 (Public Law No. 99-221).

The Council is charged with reviewing all laws, programs, and policies of the Federal Government affecting disabled individuals and making such recommendations as it deems necessary to the President, the Congress, the Secretary of the Department of Education, the Commissioner of the Rehabilitation Services Administration, and the Director of the National Institute on Disability and Rehabilitation Research (NIDRR).

The meeting of the Council shall be open to the Public. The proposed agenda includes:
- Report from the Chairperson and Executive Committee
- Update on Education Study

Agenda:
2. Remarks of the Postmaster General.
3. Western Region Overview. (Joseph R. Caraveo, Regional Postmaster General, Western Region)
4. Quarterly Report on Financial Performance. (Comer S. Coppie, Senior Assistant Postmaster General, Finance Group)
6. Report on EEO/Affirmative Action Programs in the San Francisco Division. (Dallas W. Keck, Field Division Manager/Postmaster, San Francisco Division)
7. Tentative Agenda for September 11-12, 1989, meeting in Washington, DC.

David F. Harris, Secretary.

For Further Information Contact:
National Council on Disability.

Records shall be kept of all Council proceedings and shall be available after the meeting for public inspection at the National Council on Disability.

Signed at Washington, DC on July 31, 1989.

Ethel D. Briggs,
Deputy Director.

[FR Doc. 89-18397 Filed 8-2-89; 1:24 pm]
BILLING CODE 6700-05-M

NATIONAL COUNCIL ON THE HANDICAPPED
Quarterly Meeting

AGENCY: National Council on Disability.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Council on Disability. This notice also describes the functions of the Council.

Notice of this meeting is required under section 522(b)(10) of the "Government in Sunshine Act" (Public Law 94-409).

DATES:
Aug. 7-9, 1989, 9:00 a.m. to 5:00 p.m.

LOCATION: Omni Hotel, San Diego, California.

FOR FURTHER INFORMATION CONTACT:
National Council on Disability.

The National Council on Disability is an independent Federal agency comprised of 15 members appointed by the President of the United States and confirmed by the Senate. Established by the 95th Congress in Title IV of the Rehabilitation Act of 1973 (as amended by Public Law No. 96-502), the Council was initially an advisory board within the Department of Education. The Council was transformed into an independent agency by the Rehabilitation Act Amendments of 1984 (Public Law No. 99-221).

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The meeting of the Council shall be open to the Public. The proposed agenda includes:
- Report from the Chairperson and Executive Committee
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7. Tentative Agenda for September 11-12, 1989, meeting in Washington, DC.

David F. Harris, Secretary.
SECURITIES AND EXCHANGE COMMISSION

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 meeting during the week of August 7, 1989.

A closed meeting will be held on Tuesday, August 8, 1989, at 2:30 p.m.

The Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who are responsible for the calendared 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(e)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

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

The subject matter of the closed meeting scheduled for Tuesday, August 8, 1989, at 2:30 p.m., will be:

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

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: Barbara Green at (202) 272-2000.

Dated: August 1, 1989.

Jonathan G. Katz,
Secretary.

[FR Doc. 89–18435 Filed 8–2–89; 3:08 pm]
BILLING CODE 8010–01–17
DEPARTMENT OF DEFENSE
[Defense Acquisition Circular (DAC) 33-10]

Department of Defense, Federal Acquisition Regulation Supplement; Regulatory and Miscellaneous Amendments

Correction
In rule document 89-17183 beginning on page 30738 in the issue of Monday, July 24, 1989, make the following correction:

On page 30738, in the third column, the heading directly above the fifth full paragraph should read
"DAC 88-10, Item VF/

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR
Bureau of Indian Affairs

Receipt of Petition for Federal Acknowledgment of Existence as an Indian Tribe

Correction
In notice document 89-16994 beginning on page 30474 in the issue of Thursday, July 20, 1989, make the following correction:

On the same page, in the 1st column, in the 2nd paragraph, in the 11th line, "July" should read "June".

BILLING CODE 1505-01-D
Part II

Railroad Retirement Board

20 CFR Parts 208, 220, 230, and 260
Determining Disability; Proposed Rule
Railroad Retirement Board,

This is because courts have held that proposed regulations of the Social Security Administration dealing with consultative examinations. See 52 FR 13014–13031. These proposed regulations also provide for trial work periods during which disabled individuals may attempt to work without jeopardizing loss of any disability benefits. Finally, the proposed rules provide a procedure which must be followed and enabling decisions may be terminated. Proposed Part 220 is divided into 15 Subparts, A through O.

Subpart A, General (§§ 220.1 through 220.3), is introductory in nature and sets forth the three types of disability decisions, described above, made by the Board.

Subpart B, General Definition of Terms Used in This Part (§ 220.5), defines certain terms used throughout Part 220.

Subpart C, Disability Under the Railroad Retirement Act for Work in Regular Occupation (§§ 220.10 through 220.21), sets forth the requirements which an employee must meet to receive a disability annuity because of his or her inability to work in his or her regular occupation. Proposed § 220.10 provides that in order to receive this annuity an employee must be unable to engage in his or her regular occupation (defined in § 220.11) because of a permanent physical or mental condition. Proposed § 220.13 describes the process by which the Board evaluates claims for this type of disability annuity. Generally speaking, if an employer does not allow an employee to continue working for medical reasons he or she will be found disabled for his or her occupation.

However, the Board may find the employee disabled or not disabled regardless of the employer’s findings by evaluating his or her impairments against the requirements of his or her job.

Subpart D, Disability Under the Railroad Retirement Act for Any Regular Employment (§§ 220.25 through 220.30), sets forth the requirements which an employee, child, widow(er) must meet in order to receive an annuity because he or she is disabled for any regular employment. Proposed § 220.28 provides that in order to receive such an annuity the claimant must show that he or she is unable to engage in any substantial gainful activity because of a permanent physical or mental condition.

Subpart E, Disability Determination Governed by the Regulations of the Social Security Administration (§§ 220.35 through 220.39), describes when the Board has authority to determine when a person is disabled as that term is defined in the Social Security Act. Such determinations are made by the Board where they may increase an individual’s annuity under the Act or provide for Medicare coverage prior to the age of 65. In addition, in order to pay a disability annuity to a surviving divorced spouse or remarried widow(er) he or she must be found disabled under the Social Security Act (proposed § 220.39). This subpart is divided into five sections describing the determinations described therein. The Board follows Subpart P, Part 404, of Title 20 of the Code of Federal Regulations and not the regulations in this part.

Subpart F, Evidence of Disability (§§ 220.45 through 220.49), describes what type of evidence the Board considers in making disability determinations.

Subpart G, Consultative Examinations (§§ 220.50 through 220.64), describes the process the Board follows for developing medical evidence in a disability claim. The proposed regulations make clear that the Board will request and make every reasonable effort to obtain medical evidence from the claimant’s treating sources. The proposed regulations also describe when the Board will require a claimant to take a medical examination at the Board’s expense in order to assist the Board in making the disability determination.

Subpart H, Evaluation of Disability (§§ 220.100 through 220.105), describes the process which the Board proposes to use in determining whether one is unable to engage in any regular employment because of a disability. In general, the proposed process parallels that as provided for in the Social Security Administration Regulations: Subpart P of Part 404 of Title 20. Under this process if a claimant’s impairments are not severe enough to merit a rating of disability on the medical evidence alone, the Board will look to see if the claimant can do his or her past relevant work. If he or she cannot, then the Board will determine whether the individual can do any other work. Proposed § 220.101 also describes the additional considerations the Board will use when evaluating any mental impairment(s) a claimant may have.

Subpart I, Medical Considerations (§§ 220.110 through 220.115), describes a listing of medical impairments which are found at Appendix I of the proposed regulations. If a claimant has an impairment which, based upon medical findings, is identical or medically equivalent to one listed in Appendix I, he or she is considered to be unable to engage in any regular employment unless he or she is actually working. Proposed § 220.113 describes medical findings as consisting of symptoms.
signs and laboratory findings. Proposed § 220.114 provides that an individual will not be found to be disabled based upon his or her own description of his or her symptoms unless medical signs or laboratory findings show an impairment that could reasonably be expected to produce those symptoms. Proposed § 220.115 describes when the Board will deny an application for a disability annuity or stop paying a disability annuity because the claimant fails to follow prescribed treatment.

Subpart J, Residual Functional Capacity (§§ 220.120 through 220.121), describes how the Board determines what an individual can do despite limitations because of physical or mental impairments. When an individual cannot be found disabled, either occupationally or for any regular employment, based upon medical consideration alone, the residual functional capacity determination is a threshold step in determining what, if any, other type of work the claimant can do. This determination will include a consideration of what the claimant’s treating physicians have stated the claimant can do.

Subpart K, Vocational Considerations (§§ 220.123 through 220.134), applies only to claimants who claim they are disabled for any regular employment. When the Board cannot decide whether such a claimant is disabled based upon medical evidence alone, it then makes a residual functional capacity determination as provided in Subpart J. If based upon this determination it is found that a claimant cannot do work similar to that which he has done in the past, then the Board applies the vocational considerations in this subpart to determine whether an individual can do any other type of work which exists in the national economy. Proposed § 220.129 describes the effect of an individual’s educational background on this type of disability determination. Proposed § 220.130 describes the impact of an individual’s past work experience upon this type of disability determination. Proposed § 220.131 defines work which exists in the national economy and how the Board determines the existence of such work. Proposed § 220.133 describes how in evaluating an individual’s past work it is categorized as unskilled, semiskilled or skilled with or without skills transferable. Proposed § 220.134 describes the listing of medical-vocational guidelines found in Appendix 2 of this proposed part. These rules set forth combinations of residual functional capacity, described in terms of physical exertion (proposed § 220.132), age, education and previous work experience. After each combination there is an indicated decision of disabled or not disabled. Thus, for example, rule § 201.01 provides that an individual who has the residual functional capacity to do sedentary work (proposed § 220.133(a)) who is of advanced age (proposed § 220.129(d)), and whose previous work experience is unskilled (proposed § 220.133(b)) is found disabled. However, if the same individual has transferable skills (proposed § 220.133(e)) he or she would be found not disabled under rule 201.03. These rules only apply if all the findings of fact about the claimant’s vocational factors and the residual functional capacity meet the profile set forth in the rule. If the rule applies, the decision as to whether one is disabled or not is governed by the rule (proposed § 220.134(c)).

Subpart L, Substantial Gainful Activity (§§ 220.140 through 220.145), defines substantial gainful activity. Under proposed § 220.141 substantial gainful activity is work which involves significant physical or mental activity and which an individual does for pay or profit. As noted in proposed Subpart D, an individual must be found unable to do substantial gainful activity in order to receive an annuity based upon his or her inability to engage in any regular employment. Proposed § 220.143 describes how the amount of an individual’s earnings may create a presumption as to whether or not such person is engaging in substantial gainful activity. Proposed § 220.144 describes how the Board evaluates a self-employed individual to determine if he or she is engaging in substantial gainful activity. Proposed § 220.145 describes how the Board takes into consideration impairment-related work expenses, such as wheelchairs, prosthetic devices, braille typewriters, in determining an individual’s earnings when applying proposed § 220.143.

Subpart M, Disability Annuity Earnings Restrictions (§§ 220.160 through 220.164), describes the effect of earnings upon an employee receiving a disability annuity, whether occupational or due to inability to engage in any regular employment. An employee annuity is suspended in any month in which an employee earns $400 or more in employment or self-employment (proposed § 220.161(b)). However, if the employee’s earnings are less than $5000 a year all annuities withheld are paid back at the end of the year. The earnings limitations in this subpart are not to be confused with the earnings tests found in proposed § 220.143 of proposed Subpart L. As noted earlier these tests are used to determine whether an individual is engaged in substantial gainful activity. Suffering a deduction in one’s annuity under this subpart because of earnings of more than $5000 a year does not necessarily mean the employee is engaging in substantial gainful activity. Proposed § 220.162 explains the requirements with regard to earnings that disability annuitants must follow, and proposed § 220.163 explains the penalties for failure to report earnings.

Subpart N, Trial Work Period and Reentitlement Period for Annuitants Disabled for Any Regular Employment (§§ 220.170 through 220.171), describes the trial work period for annuitants who are unable to engage in any regular employment. This is a period of nine months in which the individual may work and the Board will not consider that work as showing that the annuitant’s disability has ended. Proposed § 220.171 describes the reentitlement period which follows the trial work period. During this period an individual may have his or her annuity terminated because he or she engages in substantial gainful activity but should substantial gainful activity cease, he or she may begin to receive the disability annuity again without a new application or a new determination of disability.

Subpart Q, Continuing or Stopping Disability Due to Substantial Gainful Activity or Medical Improvement (§§ 220.175 through 220.184), describes the process under which the Board would determine whether an individual continues to be disabled for purposes of receiving an annuity based upon his or her inability to engage in regular employment. Generally, unless the annuitant has demonstrated his or her ability to engage in substantial gainful activity, for example, by the amount of his or her earnings (proposed Subpart L), in order to terminate an annuity the Board must determine if there has been any medical improvement in the annuitant’s impairment and, if so, whether this medical improvement is related to the annuitant’s ability to work (proposed § 220.178). If the Board finds that there is no medical improvement, then it must determine whether one of the exceptions to the medical improvement rule exists. These exceptions are found in proposed § 220.179. If medical improvement related to ability to work has not occurred and no exception applies, the disability annuity will continue. However, even where medical improvement related to ability to work has occurred or an exception to medical
improvement applies, the Board must also show that the annuitant is currently able to engage in any substantial gainful activity before it can terminate the annuity (proposed § 220.180). Proposed § 220.188 provides that no disability annuity will be terminated without advanced written notice to the annuitant and without an opportunity being provided to the annuitant to show that he or she is still disabled.

The Board will perform continuing disability review at the same intervals as required in regulations of the Social Security Administration. Although not included in this notice, the Board will incorporate provisions identical to those found in 20 CFR 404.1590 (dealing with how often disability reviews are conducted by the Social Security Administration) into this regulation before promulgating it as a final rule.

The Board has determined that this is not a major rule under Executive Order No. 12291; therefore, no regulatory impact analysis is required. The information collection requirements contained in this proposed rule have been approved by the Office of Management and Budget under the Paperwork Reduction Act. The public reporting burden for the collection of information at 20 CFR 220.38(b)(6) (OMB No. 3220-0002), 220.45 (OMB No. 3220-0002, 3220-0030, 3220-0106, 3220-0141), 220.46 (OMB No. 3220-0038), and 220.50 (OMB No. 3220-0124) is estimated to average 28, 28, 22, 10, 30, 24, and 60 minutes per response respectively, including the time for reviewing the completed form. If you wish, send comments regarding the accuracy of our estimates or any other aspects of these information collections, including suggestions for reducing completion time, to the Director of Information Resources Management, Railroad Retirement Board, 844 Rush Street, Chicago, IL 60611 and to the Office of Management and Budget, Paperwork Reduction Project, Washington, DC 20503.

A distribution table is provided to show the disposition of the old Part 208 and portions of Part 230.

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List of Subjects

20 CFR Parts 208 and 220

Disability benefits.

20 CFR Parts 230 and 260

Railroad employees.

For the reasons set out in the preamble, chapter 11 of title 20 of the Code of Federal Regulations is proposed to be amended as follows:

1. Part 220, Determining Disability, is added to read as follows:

**PART 220—DETERMINING DISABILITY**

Subpart A—General

Sec.

220.1 Introduction of part.

220.2 The basis for the Board’s disability decisions.

220.3 Determinations by other organizations and agencies.
Sec. 220.140 General.

Subpart L—Substantial Gainful Activity

220.134 Medical Vocational Guidelines in

220.133 Skill requirements.

220.131 Work which exist in the national economy.

220.130 Work experience as a vocational factor.

220.127 When the only work experience is

220.128 Relationship of ability to do work and residual functional capacity.

220.125 When vocational background is

220.124 General information about work activity.

Subpart J—Residual Functional Capacity

220.143 Evaluation guides for an employed claimant.

220.144 Evaluation guides for a self-employed claimant.

220.145 Impairment-related work expenses.

Subpart M—Disability Annuity Earnings Restrictions

220.160 How work for a railroad employer affects a disability annuity.

220.161 How work affects an employee disability annuity

220.162 Earnings report.

220.163 Employee penalty deductions.

220.164 Employee end-of-year adjustment.

Subpart N—Trial Work Period and Reentitlement Period for Annuitants Disabled for Any Regular Employment

220.170 The trial work period.

220.171 The reentitlement period.

Subpart O—Continuing or Stopping Disability Due to Substantial Gainful Activity or Medical Improvement

220.175 Responsibility to notify the Board of events which affect disability.

220.176 When disability continues or ends.

220.177 Terms and definitions.

220.178 Determining medical improvement and its relationship to the annuitant's ability to do work.

220.179 Early Retirement medical improvement.

220.180 Determining continuation or cessation of disability.

220.181 The month in which the Board will find that the annuitant is no longer disabled.

220.182 Before a disability annuity is stopped.

220.183 Notice that the annuitant is no longer disabled.

220.184 If the annuitant becomes disabled by another impairment(s). Appendix 1—Listing of Impairments

Appendix 2—Medical-Vocational Guidelines.


Subpart A—General

§ 220.1 Introduction of part.

(a) This part explains how disability determinations are made by the Railroad Retirement Board. In some determinations of disability entitlement, as described below, the Board makes the decision of disability under the Railroad Retirement Act based on the regulations set out in this part. However, in certain other determinations of disability entitlement (as also described below) the Board has the authority to decide whether the claimant is disabled as that term is defined in the Social Security Act and the regulations of the Social Security Administration.

(b) In order for a claimant to become entitled to a railroad retirement annuity based on disability for any regular employment as an employee, widow(er), or child, he or she must be disabled as those terms are defined in the Railroad Retirement Act. In order for a claimant to become entitled to a period of disability, to early Medicare coverage based on disability, to benefits under the social security overall minimum, or to a disability annuity as a surviving divorced spouse or remarried widow(er) the claimant must be found disabled as that term is defined in the Social Security Act.

§ 220.2 The basis for the Board's disability decisions.

(a) The Board makes disability decisions for claims of disability under the Railroad Retirement Act. These decisions are based either on the rules contained in the Board's regulations in this part or the rules contained in the regulations of the Social Security Administration, whichever is controlling.

(b) A disability decision is made only if the claimant meets other basic eligibility requirements for the specific disability benefit for which he is applying. For example, a claimant for an occupational disability annuity must first meet the eligibility requirements for that annuity, as explained in Part 216 of this chapter, in order for the Board to make a disability decision.

§ 220.3 Determinations by other organizations and agencies.

Determinations of the Social Security Administration or any other governmental or non-governmental agency about whether or not a claimant is disabled under the laws, regulations or standards administered by that agency shall be considered by the Board but are not binding on the Board.

Subpart B—General Definitions of Terms Used In This Part

§ 220.5 Definitions as used in this part.


"Application" refers only to a form described in Part 217 of this chapter.

"Board" means the Railroad Retirement Board Agency.

"Claimant" means the person for whom an application for an annuity, period of disability or Medicare coverage is filed.

"Eligible" means that a person would meet all the requirements for payment of an annuity but has not yet applied.

"Employee" is defined in Part 203 of this title.

"Entitled" means that a person has applied and has proven his or her right...
to have the annuity, period of disability, or Medicare coverage to begin.

"Medical Source" refers to both a treating source and a source of record.

"Review physician"—a medical doctor employed by or under contract to the Board who upon request reviews medical evidence and provides medical advice.

"Social Security Overall Minimum" refers to the provision of the Railroad Retirement Act which guarantees that the total monthly annuities payable to an employee and his or her family will not be less than the total monthly amount which would be payable under the Social Security Act if the employee's railroad service were credited as employment under the Social Security Act.

"Source of Record" means a hospital, clinic or other source that has provided a claimant with medical treatment or evaluation, as well as a physician or psychologist who has treated or evaluated a claimant but does not have an ongoing relationship with him or her.

"Treating Source" means the claimant's own physician or psychologist who has provided the claimant with medical treatment or evaluation and who has an ongoing treatment relationship with him or her.

Subpart C—Disability Under the Railroad Retirement Act for Work in the Regular Occupation

§ 220.10 Disability for work in the regular occupation.

In order to receive an occupational disability annuity, an eligible employee must be found by the Board to be disabled for work in his or her regular occupation because of a permanent physical or mental impairment.

§ 220.11 Regular occupation, defined.

(a) For the purpose of this Part, an employee's "regular occupation" shall be his or her occupation in the railroad industry in which—

(1) He or she has been engaged in service for hire in more calendar months than the calendar months in which he or she has been engaged in service for hire in any other occupation during the last preceding five calendar years, whether or not consecutive; or

(2) He or she has engaged in service for hire in not less than one-half of all of the months in which he or she has been engaged in service for hire during the last preceding 15 consecutive calendar years.

(b) If an employee last worked as an officer or employee of a railway labor organization and if continuance in such employment is no longer available to

information obtained from his or her employer(s). The Board may also take administrative notice of reliable job

(3) Evaluate the employee's physical and mental impairments to determine what limitations these impairments cause. The Board will consider the effect of all of the employee's medical evidence and the consequences of refusing or failing to provide evidence or to have a medical examination are found in § 220.45 through § 220.48. The regulations explaining when the employee may be requested to report for a consultative examination are found in § 220.50 and § 220.51. The regulations explaining how the Board evaluates conclusions by physicians concerning the employee's disability, how the Board evaluates the employee's symptoms, what medical findings consist of, and the need to follow prescribed treatment are found in § 220.112 through § 220.115.

§ 220.15 Effects of work on occupational disability.

(a) Disability onset when the employee works despite impairment. An employee who has stopped work in his or her regular occupation due to a permanent physical or mental impairment(s) may make an effort to return to work in his or her regular occupation. If the employee is sufficiently forced to stop that work after a short time because of his or her impairment(s), the Board will generally consider that work as an unsuccessful work attempt. In this situation, the Board may determine that the employee became disabled for work in his or her regular occupation before the last date the employee worked in his or her regular occupation. No annuity will be payable, however, until after the last date worked.

(b) Occupational disability annuitant work restrictions. The restrictions which apply to an annuitant who is disabled for work in his or her regular occupation are found in §§ 220.160 through 220.164.

§ 220.16 Responsibility to notify the Board of events which affect disability.

If the annuitant is entitled to a disability annuity because he or she is
disabled for work in his or her regular occupation, the annuitant should promptly tell the Board if—
(a) His or her impairment(s) improves; (b) He or she returns to any type of work; (c) He or she increases the amount of work; or (d) His or her earnings increase.

§ 220.17 Recovery from disability for work in the regular occupation.
(a) General. Disability for work in the regular occupation will end if—
(1) There is medical improvement in the annuitant's impairment(s) to the extent that the annuitant is able to perform the duties of his or her regular occupation; or
(2) The annuitant demonstrates the ability to perform the duties of his or her regular occupation. The Board provides a trial work period before terminating a disability annuity because of the annuitant's return to work.
(b) Definition of the trial work period. The trial work period is a period during which the annuitant may test his or her ability to work and still be considered occupationally disabled. It begins and ends as described in paragraph (c) of this section. During this period, the annuitant may perform "services" (see paragraph (c) of this section) in as many as nine months, but these months do not have to be consecutive. The Board will not consider those services as showing that the annuitant's occupational disability has ended until the annuitant has performed services in at least nine months. However, after the trial work period has ended, the Board will consider the work the annuitant did during the trial work period in determining whether the annuitant's occupational disability has ended at any time after the trial work period.
(c) What the Board means by services in an occupational disability case. When used in this section, "services" means any activity which, even though it may not be substantial gainful activity as defined in § 220.141, is—
(1) Done by a person in employment or self-employment for pay or profit, or is the kind normally done for pay or profit; and
(2) The activity is a return to the same duties of the annuitant's regular occupation or the activity so closely approximates the duties of the regular occupation as to demonstrate the ability to perform those duties.
(d) Limitations on the number of trial work periods. The annuitant may have only one trial work period during each period in which he or she is occupationally disabled.

(e) When the trial work period begins and ends. (1) The trial work period begins with whichever of the following calendar months is the latest—
(i) The month disability begins; (ii) The month after the end of the appropriate waiting period; or (iii) The month the application for disability is filed.
(2) The trial work period ends with the close of whichever of the following calendar months is the earlier—
(i) The ninth month (whether or not the months have been consecutive) in which the annuitant performed services; or
(ii) The month in which new evidence, other than evidence relating to any work the annuitant did during the trial work period, shows that the annuitant is not disabled, even though the annuitant has not worked a full nine months. The Board may find that the annuitant's disability has ended at any time during the trial work period if the medical or other evidence shows that the annuitant is no longer disabled.

§ 220.18 The reentitlement period.
(a) General. The reentitlement period is an additional period after the nine months of trial work during which the annuitant may continue to test his or her ability to work if the annuitant has a disabling impairment.
(b) When the reentitlement period begins and ends. The reentitlement period begins with the first month following completion of nine months of trial work but cannot begin earlier than December 1, 1980. It ends with whichever is earlier—
(1) The month before the first month in which the annuitant's impairment(s) no longer exists or is not medically disabling; or
(2) The last day of the fifteenth month following the end of the annuitant's trial work period.
(c) When the annuitant is not entitled to reentitlement period. The annuitant is not entitled to a reentitlement period if—
(1) The annuitant is not entitled to a trial work period; or
(2) The annuitant's disability ended before the annuitant completed nine months of trial work in that period in which he or she was disabled.

§ 220.19 Payment of the disability annuity during the trial work period and the reentitlement period.
(a) The employee who is entitled to an occupational disability annuity will not be paid an annuity for each month in the trial period or reentitlement period in which he or she—
(1) Works for an employer covered by the Railroad Retirement Act (see §220.169); or
(2) Earns more than $400 (after deduction of impairment related work expenses) in employment or self-employment (see §§ 220.161 and 220.164). See § 220.145 for the definition of impairment related work expenses.
(b) If the employee's occupational disability annuity is stopped because of work during the trial work period or reentitlement period, and the employee discontinues that work before the end of either period, the disability annuity may be started again without a new application and a new determination of disability.

§ 220.20 Notice that an annuitant is no longer disabled.
The regulation explaining the Board's responsibilities is in paragraph (a) of this section. The Board provides the reentitlement period when the disability annuity is stopped because of work during the trial work period or reentitlement period, and the employee discontinues that work before the end of either period, the disability annuity may be started again without a new application and a new determination of disability.
§ 220.21 Initial evaluation of a previous occupational disability.
(a) In some cases, the Board may determine that a claimant is not currently disabled for work in his or her regular occupation but was previously disabled for a specified period of time in the past. This can occur when—
(1) The disability application was filed before the claimant's occupational disability ended, but the Board did not make the initial determination of occupational disability until after the claimant's disability ended; or
(2) The disability application was filed after the claimant's occupational disability ended but no later than the 12th month after the month the disability ended.
(b) When evaluating a claim for a previous occupational disability, the Board follows the steps in § 220.13 to determine whether an occupational disability existed, and follows the steps in §§ 220.16 and 220.17 to determine when the occupational disability ended.

Example 1: The claimant sustained multiple fractures to his left leg in an automobile accident which occurred on June 16, 1982. For a period of 18 months following the accident the claimant underwent 2 surgical procedures which restored the functional use of his leg. After a recovery period following the last surgery, the claimant returned to his regular railroad job on February 1, 1984. The claimant, although fully recovered medically and regularly employed, filed an application on December 3, 1984 for a determination of occupational disability for the period June 16, 1982 through January 31, 1984. The Board reviewed his claim in January 1985 and determined that he was occupationally disabled for the period which began on June...
18, 1982 and continued through January 31, 1984. A disability annuity is payable to the employee only for the period December 1, 1983 through January 31, 1984. An annuity may not begin any earlier than the 1st day of the 12th month before the month in which the application was filed. (See Part 218 of this chapter for the rules on when an annuity may begin).

Example 2: The claimant is occupationally disabled using the same medical facts disclosed above, beginning June 16, 1982 (the date of the automobile accident). The claimant files an application for an occupational disability annuity, dated December 1, 1983. However, as of February 1, 1984, and before the Board makes a disability determination, the claimant returns to his regular railroad job and is no longer considered occupationally disabled. The Board reviews the claimant’s application in May of 1984 and finds him occupationally disabled for the period June 16, 1982 through January 31, 1984. A disability annuity is payable to the employee from December 1, 1983 through January 31, 1984. (See Part 218 of this chapter for the rules on when an annuity may begin).

Subpart D—Disability Under the Railroad Retirement Act for Any Regular Employment

§ 220.25 General.

The definition and discussion of disability for any regular employment are found in §§ 220.26 through 220.184.

§ 220.26 Disability for any regular employment, defined.

An employee, widow(er), or child is disabled for any regular employment if he or she is unable to do any substantial gainful activity because of a medically determinable physical or mental impairment which meets the duration requirement defined in § 220.26. In the case of a widow(er), the permanent physical or mental impairment must have prevented work in any regular employment before the end of a specific period (see § 220.30). In the case of a child, the permanent physical or mental impairment must have prevented work in any regular employment since before age 22. To meet this definition of disability, a claimant must have a severe impairment, which makes him or her unable to do any previous work or other substantial gainful activity which exists in the national economy. To determine whether a claimant is able to do any other work, the Board considers a claimant’s residual functional capacity, age, education and work experience. See § 220.00 for the process by which the Board evaluates disability for any regular employment. This process applies to employees, widow(er)s, or children who apply for annuities based on disability for any regular employment. This process does not apply to surviving divorced spouses or remarried widow(er)s who apply for annuities based on disability.

§ 220.27 What is needed to show an impairment.

A physical or mental impairment must result from anatomical, physiological, or psychological abnormalities which can be shown by medically acceptable clinical and laboratory diagnostic techniques. A physical or mental impairment must be established by medical evidence consisting of signs, symptoms, and laboratory findings, not only by the claimant’s statement of symptoms. (See § 220.113 for further information about what is meant by symptoms, signs, and laboratory findings.) (See also § 220.112 for the effect of a medical opinion about whether or not a claimant is disabled.)

§ 220.28 How long the impairment must last.

Unless the claimant’s impairment is expected to result in death, it must have lasted or must be expected to last for a continuous period of at least 12 months. This is known as the duration requirement.

§ 220.29 Work that is considered substantial gainful activity.

Work is considered to be substantial gainful activity if it—

(a) Involves doing significant and productive physical or mental duties; and

(b) Is done or is intended to be done for pay or profit. (See § 220.141 for a detailed explanation of what is substantial gainful activity.)

§ 220.30 Special period required for eligibility of widow(er)s.

In order to be found disabled for any regular employment, a widow(er) must have a permanent physical or mental impairment which prevented work in any regular employment before the end of a specific period as defined in Part 216 of this chapter.

Subpart E—Disability Determinations Governed by the Regulations of the Social Security Administration

§ 220.35 Introduction.

In addition to its authority to decide whether a claimant is disabled under the Railroad Retirement Act, the Board has authority in certain instances to decide whether a claimant is disabled as that term is defined in the Social Security Act. In making these decisions the Board must apply the regulations of the Social Security Administration in the same manner as does the Secretary of Health and Human Services in making disability decisions under the Social Security Act. Regulations of the Social Security Administration concerning disability are found at Part 404, Subpart P of this title.

§ 220.36 Period of disability.

(a) General. In order to receive an annuity based upon a disability, an employee must be found disabled under the Railroad Retirement Act. If an employee is found disabled under the Railroad Retirement Act, the Board will determine whether he is disabled under the Social Security Act to qualify for a period of disability as defined in that Act.

(b) Period of disability.—[1] Definition and effect. A period of disability is a continuous period of time during which an employee is disabled as that term is defined in § 404.1505 of this title. A period of disability established by the Board—

(i) Preserves the disabled employee’s earnings record as it is when the period begins;

(ii) Protects the insured status required for entitlement to Social Security overall minimum;

(iii) May cause an increase in the rate of an employee, spouse, or survivor annuity; or

(iv) May permit a disabled employee to receive Medicare benefits in addition to an annuity under the Railroad Retirement Act.

(2) Effect on benefits. The establishment of a period of disability for the employee will never cause a denial or reduction in benefits under the Railroad Retirement Act or Social Security Act, but it will always be used to establish Medicare entitlement before age 65.

(3) Who may establish a period of disability. The Railroad Retirement Board or the Social Security Administration may establish a period of disability. However, the decision of one agency is not binding upon the other agency.

(4) When the Board may establish a period of disability. The Board has independent authority to decide whether or not to establish a period of disability for any employee who was awarded an annuity under the Railroad Retirement Act, or who—

(i) Has applied for a disability annuity; and

(ii) Has at least 10 years of railroad service.

(5) When an employee is entitled to a period of disability. An employee is entitled to a period of disability if he or she meets the following requirements:
(i) The employee is disabled under the Social Security Act, as described in § 404.1505 of this title.
(ii) The employee is insured for a period of disability under § 404.130 of this title based on combined railroad and social security earnings.
(iii) The employee files an application as shown in subparagraph (b)(6) of this section.
(iv) At least five consecutive months elapse from the month in which the period of disability begins and before the month in which it would end.
(v) Application for a period of disability.
(a) An application for an employee disability annuity under the Railroad Retirement Act or an employee disability benefit under the Social Security Act is also an application for a period of disability.
(ii) An employee who is receiving an annuity or who was previously denied a period of disability must file a separate application for a period of disability.
(iii) In order to be entitled to a period of disability, an employee must apply while he or she is disabled or not later than 12 months after the month in which the period of disability ends.
(iv) An employee who is unable to apply within the 12 month period after the period of disability ends because his or her physical condition limited his or her activities to the extent that he or she could not complete and sign an application or because he or she was mentally incompetent, may apply no later than 36 months after the period of disability ends.
(v) A period of disability can also be established on the basis of an application filed within three months after the month a disabled employee died.
(2) Entitlement to Medicare based on disability.
(a) In order to receive an annuity based on disability, a child of a deceased employee must be found disabled under the Railroad Retirement Act. However, in addition to this determination, the child must be found disabled under the Social Security Act in order to qualify for Medicare based upon disability.
(b) Although the child of a living employee may not receive an annuity under the Railroad Retirement Act, he or she, if found disabled under the Social Security Act, may qualify for the following:
(1) Inclusion as a disabled child in the employee's annuity rate under the Social Security overall minimum.
(2) Entitlement to Medicare based upon disability.
§ 220.38 When a widow(er)'s disability determination is governed by the regulations of the Social Security Administration.
In order to receive an annuity based upon disability, a widow(er) must be found disabled under the Railroad Retirement Act. However, in addition to this determination, the widow(er) must be found disabled under the Social Security Act in order to qualify for early Medicare based upon disability.
§ 220.39 Disability determination for a surviving divorced spouse or remarried widow(er).
A surviving divorced spouse or a remarried widow(er) must be found disabled under the Social Security Act in order to qualify for both an annuity under the Railroad Retirement Act and early Medicare based upon disability.
Subpart F—Evidence of Disability
§ 220.45 Providing evidence of disability.
(a) General. The claimant for a disability annuity is responsible for providing evidence of the claimed disability and the effect of the disability on the ability to work. The Board will assist the claimant, when necessary, in obtaining the required evidence. At its discretion, the Board will arrange for an examination by a consultant at the expense of the Board as explained in §§ 220.50 and 220.51.
(b) Kind of evidence. The claimant must provide medical evidence showing that he or she has an impairment(s) and how severe it is during the time the claimant claims to be disabled. The Board will consider only impairment(s) the claimant claims to have or about which the Board receives evidence.
Before deciding that the claimant is not disabled, the Board will develop a complete medical history (i.e., evidence from the records of the claimant's medical sources) covering at least the preceding 12 months, unless the claimant says that his or her disability began less than 12 months before he or she filed an application. The Board will make every reasonable effort to help the claimant in getting medical reports from his or her own medical sources when the claimant gives the Board permission to request them. Every reasonable effort means that the Board will make an initial request and, after 20 days, one followup request to the claimant's medical source to obtain the medical evidence necessary to make a determination before the Board evaluates medical evidence obtained from another source on a consultative basis. The medical source will have 10 days from the followup request to reply unless experience indicates that a longer period is advisable in a particular case. In order to expedite processing the Board may order a consultative exam from a non-treating source while awaiting receipt of medical source evidence. If the Board ask the claimant to do so, he or she must contact the medical sources to help us get the medical reports. The Board may also ask the claimant to provide evidence about his or her—
(1) Age;
(2) Education and training;
(3) Work experience;
(4) Daily activities both before and after the date the claimant says that he or she became disabled;
(5) Efforts to work; and
(6) Any other evidence showing how the claimant's impairment(s) affects his or her ability to work. (In §§ 220.125 through 220.134, we discuss in more detail the evidence the Board needs when it considers vocational factors.)
(Approved by the Office of Management and Budget under control numbers 3220-0002, 3220-0030, 3220-0106 and 3220-0141)
§ 220.46 Medical evidence.
(a) Acceptable sources. The Board needs reports about the claimant's impairment(s) from acceptable medical sources. Acceptable medical sources are—
(1) Licensed physicians;
(2) Licensed osteopaths;
(3) Licensed or certified psychologists;
(4) Licensed optometrists for the measurement of visual acuity and visual fields (a report from a physician may be needed to determine other aspects of eye diseases); and
(5) Persons authorized to furnish a copy or summary of the records of a medical facility. Generally, the copy or summary should be certified as accurate by the custodian or by any authorized employee of the Railroad Retirement Board, Social Security Administration.
Veterans Administration, or State agencies.

(b) Medical reports. Medical reports should include—
(1) Medical history;
(2) Clinical findings (such as the results of physical or mental status examinations);
(3) Laboratory findings (such as blood pressure, x-rays);
(4) Diagnosis (statement of disease or injury based on its signs and symptoms);
(5) Treatment prescribed, with response to treatment and prognosis; and
(6) (i) Statements about what the claimant can still do despite his or her impairment(s) based on the medical source’s findings on the factors under paragraphs (b) (1) through (5) of this section (except in disability claims for remarried widow’s and surviving divorced spouses). (See § 220.112);
(ii) Statements about what the claimant can still do (based on the medical source’s findings on the factors under paragraphs (b) (1) through (5) of this section) should describe—
(A) The medical source’s opinion about the claimant’s ability, despite his or her impairment(s), to do work-related activities such as sitting, standing, moving about, lifting, carrying; handling objects, hearing, speaking, and traveling; and
(B) In cases of mental impairment(s), the medical source’s opinion about the claimant’s ability to reason or make occupational, personal, or social adjustments. (See § 220.112.)
(c) Completeness. The medical evidence, including the clinical and laboratory findings, must be complete and detailed enough to allow the Board to make a determination about whether or not the claimant is disabled. It must allow the Board to determine—
(1) The nature and limiting effects of the claimant’s impairment(s) for any period in question;
(2) The probable duration of the claimant’s impairment(s); and
(3) The claimant’s residual functional capacity to do work-related physical and mental activities.
(d) Evidence from physicians. A statement by or the opinion of the claimant’s treating physician will not determine whether the claimant is disabled. However, the medical evidence provided by a treating physician will be considered by the Board in making a disability decision. A treating physician is a doctor to whom the claimant has been going for treatment on a continuing basis. The claimant may have more than one treating physician. The Board may use consulting physicians or other medical consultants for specialized examinations or tests, to obtain more complete evidence, and to resolve any conflicts. A consulting physician is a doctor (often a specialist) to whom the claimant is referred for an examination once or on a limited basis. (See § 220.50 for an explanation of when the Board may request a consultative examination.)

(e) Information from other sources. Information from other sources may also help the Board understand how an impairment affects the claimant’s ability to work. Other sources include—
(1) Public and private social welfare agencies;
(2) Observations by non-medical sources:
(3) Other practitioners (for example, naturapaths, chiropractors, audiologists, etc.); and
(4) Railroad and non-railroad employers.

§ 220.47 Purchase of existing medical evidence.
The Board needs specific medical evidence to determine whether a claimant is disabled. The claimant is responsible for providing that evidence. However, at its discretion, the Board will pay the reasonable cost to obtain medical evidence that it needs and requests from physicians not employed by the Federal government and other non-Federal providers of medical services.

§ 220.48 If the claimant fails to submit medical or other evidence.
The Board may request a claimant to submit medical or other evidence. If the claimant does not submit that evidence, the Board will make a decision on other evidence which is either already available in the claimant’s case or which the Board may develop from other sources, including reports of consultative examinations.

Subpart G—Consultative Examinations
§ 220.50 Consultative examinations at the Board’s expense.
A consultative examination is a physical or mental examination or test purchased for a claimant at the Board’s request and expense. If the claimant’s medical sources cannot provide sufficient medical evidence about the claimant’s impairment(s) in order to enable the Board to determine whether the claimant is disabled, the Board may ask the claimant to have one or more consultative examinations or tests. The decision to purchase a consultative examination will be made on an individual case basis in accordance with the provisions of § 220.53 through § 220.56. Selection of the source for the examination will be consistent with the provisions of § 220.64. (Program Integrity)

(Approved by the Office of Management and Budget under control number 3220-0124)

§ 220.51 Notice of the examination.
If the Board arranges for an examination or test, the claimant will be provided with reasonable notice of the date, time and place of the examination or test and the name of the person who will do it. The Board will also give the examiner any necessary background information about the claimant’s impairment(s).

§ 220.52 Failure to appear at a consultative examination.
(a) General. The Board may find that the claimant is not disabled if he or she does not have good reason for failing or refusing to take part in a consultative examination or test which was arranged by the Board. If the individual is already receiving an annuity and does not have a good reason for failing or refusing to take part in a consultative examination or test which the Board arranged, the Board may determine that the individual’s disability has stopped because of his or her failure or refusal. The claimant for whom an examination or test has been scheduled should notify the Board as soon as possible before the scheduled date of the examination or test if he or she has any reason why he or she cannot go to the examination or test. If the Board finds that the claimant has a good reason for failure to appear, another examination or test will be scheduled.

(b) Examples of good reasons for failure to appear. Some examples of good reasons for not going to a scheduled examination or test include—
(1) Illness on the date of the scheduled examination or test;
(2) Failure to receive notice or timely notice of an examination or test;
(3) Receipt of incorrect or incomplete information about the examination or test;
or
(4) A death or serious illness in the claimant’s immediate family.
(c) Objections by a claimant’s physician. The Board should be notified immediately if the claimant is advised by his or her treating physician not to take an examination or test. In some cases, the Board may be able to secure the information which is needed in another way or the treating physician may agree to another type of examination for the same purpose.
§ 220.53 When the Board will purchase a consultative examination and how it will be used.

(a)(1) General. The decision to purchase a consultative examination for a claimant will be made after full consideration is given to whether the additional information needed (e.g., clinical findings, laboratory tests, diagnosis, and prognosis, etc.) is readily available from the records of the claimant's medical sources. Upon filing an application for a disability annuity a claimant will be required to obtain from his or her medical source(s) information regarding the claimed impairments. The Board will seek clarification from a medical source who has provided a report when that report contains a conflict or ambiguity, or does not contain all necessary information or when the information supplied is not based on objective evidence. The Board will not, however, seek clarification from a medical source when it is clear that the source either cannot or will not provide the necessary findings or cannot reconcile a conflict or ambiguity in the findings provided from the source's records. Therefore, before purchasing a consultative examination, the Board will consider not only existing medical reports, but also the background report containing the claimant's allegations and information about the claimant's vocational background, as well as other pertinent evidence in his or her file.

(b) Situations requiring a consultative examination. A consultative examination may be purchased when the evidence as a whole, both medical and non-medical, is not sufficient to support a decision on the claim. In addition, other situations, such as one or more of the following, will normally require a consultative examination (these situations are not all-inclusive):

(1) The specific additional evidence needed for adjudication has been pinpointed, and high probability exists for obtaining it through purchase.

(2) The additional evidence needed is not contained in the records of the claimant's treating sources.

(3) Evidence that may be needed from the claimant's treating or other medical sources cannot be obtained for reasons beyond his or her control, such as death or noncooperation of the medical source.

(4) Highly technical or specialized medical evidence which is needed is not available from the claimant's treating sources.

(5) A conflict, inconsistency, ambiguity or insufficiency in the medical evidence must be resolved.

(6) There is an indication of a conflict in the claimant's condition that is likely to affect his or her ability to function, but current severity is not documented.

(7) Information provided by any source appears not to be supported by objective evidence.

§ 220.54 When the Board will not purchase a consultative examination.

A consultative examination will not be purchased in the following situations (these situations are inclusive):

(a) In disabled widow(er) benefit claims, when the alleged month of disability is after the end of the 7-year period specified in § 216.38 and there is no possibility of establishing an earlier onset, or when the 7-year period expired in the past and all the medical evidence in the claimant's file establishes that he or she was not disabled on or before the expiration date.

(b) When any issues about the actual performance of substantial gainful activity have not been resolved.

(c) In childhood disability claims, when it is determined that the claimant's alleged childhood disability did not begin before the month of attainment of age 22. In this situation, the claimant could not be entitled to benefits as a disabled child unless found disabled before age 22.

(d) When, on the basis of the claimant's allegations and all available medical reports in his or her case file, it is apparent that he or she does not have an impairment which will have more than a minimal effect on his or her capacity to work.

(e) Childhood disability claims filed concurrently with the employee's claim and entitlement cannot be established for the employee.

(f) Survivor's childhood disability claims where entitlement is precluded based on non-disability factors.

§ 220.55 Purchase of consultative examinations at the reconsideration level.

(a) When a claimant requests a review of the Board's initial determination, the reconsideration level of review, consultative medical examinations will be obtained when needed, but not routinely. A consultative examination will not, if possible, be performed by the same physician or psychologist as used in the initial claim.

(b) Where the evidence tends to substantiate an affirmation of the initial denial but the claimant states that the treating physician or psychologist does not consider him or her to be disabled, the Board will assist the claimant in securing medical reports or records from the treating physician.

§ 220.56 Securing medical evidence at the appeals referee hearing level.

(a) Where there is a conflict in the medical evidence at the hearing level of review before an appeals referee, the referee will try to resolve it by comparing the persuasiveness and value of the conflicting evidence. The referee's reasoning will be explained in the decision rationale. Where such resolution is not possible, the referee will secure additional medical evidence (e.g., clinical findings, laboratory tests, diagnosis, prognosis, etc.) to resolve the conflict. Even in the absence of a conflict, the referee will also secure additional medical evidence when the file does not contain clinical findings, laboratory tests, a diagnosis, or a prognosis necessary for a decision.

(b) Before requesting a consultative examination, the referee will ascertain whether the information is available as a result of a recent examination by any of the claimant's medical sources. If it is, the referee will request the evidence from that medical practitioner. If contact with the medical source is not productive for any reason, or if there is no recent examination by a medical source, the referee will obtain a consultative examination.

§ 220.57 Type of purchased examinations and selection of source.

(a) Additional evidence needed for disability determination. The types of examinations and tests the Board will purchase depends upon the additional evidence needed for the disability determination. The Board will purchase only the specific evidence needed. For example, if special tests (such as X-rays, blood studies, or EKG) will furnish the additional evidence needed for the disability determination, a more comprehensive medical examination will not be authorized.

(b) The physician or psychologist selected to do the examination or test must be qualified. The physician's or psychologist's qualifications must indicate that the physician or psychologist is currently licensed in the State and has the training and experience to perform the type of
§ 220.58 Objections to the designated physician or psychologist.

A claimant or his or her representative may object to his or her being examined by a designated physician or psychologist. If there is a good reason for the objection, the Board will schedule the examination with another physician or psychologist. A good reason may be where the consultative examination physician or psychologist had previously represented an interest adverse to the claimant. For example, the physician or psychologist may have represented the claimant's employer in a worker's compensation case or may have been involved in an insurance claim or legal action adverse to the claimant. Other things the Board will consider are: language barrier, office location of consultative examination physician or psychologist (2nd floor, no elevator, etc.), travel restrictions, and examination by the physician or psychologist in connection with a previous unfavorable determination. If the objection is because a physician or psychologist allegedly "lacks objectivity" (in general, but not in relation to the claimant personally) the Board will review the allegations. To avoid a delay in processing the claimant's claim, the consultative examination in such a case will be changed to another physician or psychologist while a review is being conducted. Any objection to use of the substitute physician or psychologist will be handled in the same manner. However, if the Board or the Social Security Administration had previously conducted such a review and found that the reports of the consultative physician or psychologist in question conform to the Board's guidelines, then the Board will not change the claimant's examination.

§ 220.59 Requesting examination by a specific physician, psychologist or institution—appeals referee hearing level.

In an unusual case, an appeals referee may have reason to request an examination by a particular physician, psychologist or institution. Some examples include the following:

(a) Conflicts in the existing medical evidence require resolution by a recognized authority in a particular specialty;

(b) The impairment requires hospitalization for diagnostic purposes; or

(c) The claimant's treating physician or psychologist is in the best position to submit a meaningful report.

§ 220.60 Diagnostic surgical procedures.

The Board will not order diagnostic surgical procedures such as myelograms and arteriograms for the evaluation of disability under the Board's disability program. In addition, the Board will not order procedures such as cardiac catheterization and surgical biopsy. However, if any of these procedures have been performed as part of a workup by the claimant's treating physician or other medical source, the results may be secured and used to help evaluate an impairment(s)'s severity.

§ 220.61 Informing the examining physician or psychologist of examination scheduling, report content and signature requirements.

Consulting physicians or psychologists will be fully informed at the time the Board contacts them of the following obligations:

(a) General. In scheduling full consultative examinations, sufficient time should be allowed to permit the examining physician to take a case history and perform the examination (including any needed tests).

(b) Report content. The reported results of the claimant's medical history, examination pertinent requested laboratory findings, discussions and conclusions must conform to accepted professional standards and practices in the medical field for a complete and competent examination. The facts in a particular case and the information and findings already reported in the medical and other evidence of record will dictate the extent of detail needed in the consultative examination report for that case. Thus, the detail and format for reporting the results of a purchased examination will vary depending upon the type of examination or testing requested. The reporting of information will differ from one type of examination to another when the requested examination relates to the performance of tests such as ventilatory function tests, treadmill exercise tests, or audiological tests. The medical report must be complete enough to help the Board determine the nature, severity, duration of the impairment and residual functional capacity. Pertinent points in the claimant's medical history, such as a description of the claimant's symptoms, not simply the physician's or psychologist's statements or conclusions. The examining physician's or psychologist's report of the consultative examination will include the objective medical facts.

(c) Elements of a complete examination. A complete examination is one which involves all the elements of a standard examination in the applicable medical specialty. When a complete examination is involved, the report will include the following elements:

(1) The claimant's major or chief complaint(s).

(2) A detailed description, within the area of specialty of the examination, of the history of the claimant's major complaint(s).

(3) A description, and disposition, of pertinent "positive," as well as "negative," detailed findings based on the history, examination and laboratory testing related to the major complaint(s) and any other abnormality reported or found during examination or laboratory testing.

(4) The results of laboratory and other tests (e.g., x-rays) performed according to the requirements stated in the Listing of Impairments (see Appendix 1 of this Part I).

(5) The diagnosis and prognosis for the claimant's impairment(s).

(6) A statement as to what the consultant can still do despite his or her impairment(s) (except in disability claims for remarried widows and widowers, and surviving divorced spouses). This statement must describe the consultant's opinion concerning the claimant's ability, despite his or her impairment(s), to do basic work activities such as sitting, standing, lifting, carrying, handling objects, hearing, speaking, and traveling; and, in cases of mental impairment(s), the consultant's opinion as to the claimant's ability to reason or make occupational, personal, or social adjustments.

(7) When less than a complete examination is required (for example, a specific test or study is needed), not every element is required.

(d) Signature requirements. All consultative examination reports will be personally reviewed and signed by the physician or psychologist who actually performed the examination. This attests to the fact that the physician or psychologist doing the examination is solely responsible for the report contents and for the conclusions and explanations or comments provide with report to the history, examination and evaluation of laboratory test results.
§ 220.62 Reviewing reports of consultative examinations.

(a) The Board will review the report of the consultative examination to determine whether the specific information requested has been furnished. The Board will consider these factors in reviewing the report:

(1) Whether the report provides evidence which serves as an adequate basis for decision making in terms of the impairment it assesses.

(2) Whether the report is internally consistent. Whether all the diagnoses, impairments and complaints described in the history are adequately assessed and reported in the physical findings. Whether the conclusions correlate the findings from the claimant's medical history, physical examination and laboratory tests and explain all abnormalities.

(3) Whether the report is consistent with the other information available to the Board within the specialty of the examination requested. Whether the report fails to mention an important or relevant complaint within the specialty that is noted on other evidence in the file (e.g., blindness in one eye, amputations, flail limbs or claw hands, etc.).

(4) Whether the report is properly signed.

(b) If the report is inadequate or incomplete, the Board will contact the examining consultative physician or psychologist, give an explanation of the Board's evidentiary needs, and ask that the physician or psychologist furnish the missing information or prepare a revised report.

(c) Where the examination discloses new diagnostic information or test results which are significant to the claimant's treatment, the Board will consider referral of the consultative examination report to the claimant's treating physician or psychologist.

(d) The Board will take steps to ensure that consultative examinations are scheduled only with medical sources who have the equipment required to provide an adequate assessment and record of the level of severity of the claimant's alleged impairments.

§ 220.63 Conflict of interest.

All implications of possible conflict of interest between Board medical consultants and their medical practices will be avoided. Board review physicians and psychologists will not perform consultative examinations for the Board's disability programs without prior approval. In addition, they will not acquire or maintain, directly or indirectly, including any member of their families, any financial interest in a medical partnership or similar relationship in which consultative examinations are provided. Sometimes one of the Board's review physicians or psychologists will have prior knowledge of a case (e.g., the claimant was a patient). Where this is so, the physician or psychologist will not participate in the review or determination of the case. This does not preclude the physician or psychologist from submitting medical evidence based prior treatment or examination of the claimant.

§ 220.64 Program Integrity.

The Board will not use in its program any individual or entity who is excluded, suspended, or otherwise barred from participation in the Medicare or Medicaid programs, or any other Federal or Federally-assisted program; who has been convicted, under Federal or State law, in connection with the delivery of health care services, of fraud, theft, embezzlement, breach of fiduciary responsibility or financial abuse; who has been convicted under Federal or State law of unlawful manufacture, distribution, prescription, or dispensing of a controlled substance; whose license to provide health care services is revoked or suspended by any State-licensing authority for reasons bearing on professional competence, professional conduct, or financial integrity; who has surrendered such a license while formal disciplinary proceedings involving professional conduct were pending; or who has had a civil monetary assessment or penalty imposed on such an individual or entity for any activity described in this section or as a result of formal disciplinary proceedings. Also see §§ 220.53 and 220.57(b).

Subpart H—Evaluation of Disability

§ 220.100 Evaluation of disability for any regular employment.

(a) General. The Board uses a set evaluation process, explained in paragraph (b) of this section, to determine whether a claimant is disabled for any regular employment. This evaluation process applies to employees, widow(es), and children who have applied for annuities under the Railroad Retirement Act based on disability for any regular employment. Regular employment means substantial gainful activity as that term is defined in § 220.141.

(b) Steps in evaluating disability. A set order is followed to determine whether disability exists. The duration requirement, as described in § 220.28, must be met for a claimant to be found disabled. The Board reviews any current work activity, the severity of the claimant's impairment(s), the claimant's residual functional capacity, the claimant's age, education, and work experience. If the Board finds that the claimant is disabled or is not disabled at any step in the process, the Board does not review further. (See § 220.105 if the claimant is not currently disabled but was previously disabled for a specified period of time in the past.) The steps are as follows:

(1) Claimant is working. If the claimant is working, and the work is substantial gainful activity, the Board will find that he or she is not disabled regardless of his or her impairments, age, education, or work experience. If the claimant is not performing substantial gainful activity, the Board will follow paragraph (b)(2) of this section.

(2) Impairment(s) not severe. If the claimant does not have an impairment or combination of impairments which significantly limits his or her physical or mental ability to do basic work activities, the Board will find that the claimant is not disabled without consideration of age, education, or work experience. If the claimant has an impairment or combination of impairments which significantly limits his or her ability to do basic work activities, the Board will follow paragraph (b)(3) of this section. (See § 220.102(b) for a definition of basic work activities.)

(3) Impairment(s) meets or equals one in the Listing of Impairments. If the claimant has an impairment or combination of impairments which meets the duration requirement and such impairment is listed or is medically equal to one which is listed in the Listing of Impairments, the Board will find the claimant disabled without considering his or her age, education or work experience. (The Listing of Impairments is contained in Appendix 1 of this part.) If the claimant's impairment or combination of impairments is not listed or is not medically equal to one which is listed in the Listing of Impairments, the Board will follow paragraph (b)(4) of this section. (Medical equivalence is discussed in § 220.111.)

(4) Impairment(s) must prevent past relevant work. If the claimant's impairment or combination of impairments is not listed or is not medically equal to one which is listed in the Listing of Impairments, the Board will then review the claimant's residual functional capacity (see § 220.130) and the physical and mental demands of past relevant work (see § 220.139). If the
Board determines that the claimant is still able to do his or her past relevant work, the Board will find that he or she is not disabled. If the claimant is unable to do his or her past relevant work, the Board will follow paragraph (b)(5) of this section.

(5) Impairment(s) must prevent any other work. (i) If the claimant is unable to do his or her past relevant work because of his or her impairment or combination of impairments, the Board will review the claimant's residual functional capacity and his or her age, education and work experience to determine if the claimant is able to do any other work. If the claimant cannot do other work, the Board will find him or her disabled. If the claimant can do other work, the Board will find the claimant not disabled.

(ii) If the claimant has only a marginal education (see § 220.129) and long work experience (i.e., 35 years or more) in which he or she only did arduous unskilled physical labor, and the claimant can no longer do this kind of work, the Board will use a different rule (see § 220.127) to determine disability.

(c) Once a claimant has been found eligible to receive a disability annuity, the Board follows a somewhat different order of evaluation to determine whether the claimant's eligibility continues as explained in § 220.180.

§ 220.101 Evaluation of mental impairments.

(a) General. The steps outlined in § 220.2 apply to the evaluation of physical and mental impairments. In addition, in evaluating the severity of a mental impairment(s), the Board will follow a special procedure at each administrative level of review. Following this procedure will assist the Board in—

(1) Identifying additional evidence necessary for the determination of impairment severity;

(2) Considering and evaluating aspects of the mental impairment(s) relevant to the claimant's ability to work; and

(3) Organizing and presenting the findings in a clear, concise, and consistent manner.

(b) Use of the procedure to record pertinent findings and rate the degree of functional loss. (1) This procedure requires the Board to record the pertinent signs, symptoms, findings, functional limitations, and effects of treatment contained in the claimant's case record. This will assist the Board in determining if a mental impairment(s) exists. Whether or not a mental impairment(s) exists is decided in the same way the question of a physical impairment is decided, i.e., the evidence must be carefully reviewed and conclusions supported by it. The mental status examination and psychiatric history will ordinarily provide the needed information. (See § 220.27 for further information about what is needed to show an impairment.)

(2) If the Board determines that a mental impairment(s) exists, this procedure then requires the Board to indicate whether certain medical findings which have been found especially relevant to the ability to work are present or absent.

(3) The procedure then requires the Board to rate the degree of functional loss resulting from the impairment(s). Four areas of function considered by the Board as essential to work have been identified, and the degree of functional loss in those areas must be rated on a scale that ranges from no limitation to a level of severity which is incompatible with the ability to perform those work-related functions. For the first two areas (activities of daily living and social functioning), the rating is done based upon the following five point scale: none, slight, moderate, marked, and extreme. For the third area (concentration, persistence, or pace), the following five point scale is used: Never, seldom, often, frequent, and constant.

For the fourth area (deterioration or decompensation in work or work-like settings), the following four point scale is used: never, once or twice, repeated (three or more), and continual. The last two points for each of these scales represent a degree of limitation which is incompatible with the ability to perform the work-related function.

(c) Use of the procedure to evaluate mental impairments. Following the rating of the degree of functional loss resulting from the impairment(s), the Board then determines the severity of the mental impairment(s).

(1) If the four areas considered by the Board as essential to work have been rated to indicate a degree of limitation as "none" or "slight" in the first and second area, "never" or "seldom" in the third area, and "never" in the fourth area, the Board can generally conclude that the impairment(s) is not severe, unless the evidence otherwise indicates that there is significant limitation of the claimant's mental ability to do basic work activities (see § 220.102).

(2) If the claimant's mental impairment(s) is severe, the Board must then determine if it meets or equals a listed mental impairment. This is done by comparing the Board's prior conclusions based on this procedure (i.e., the presence of certain medical findings considered by the Board as especially relevant to a claimant's ability to work and the Board's rating of functional loss resulting from the mental impairment(s) against the criteria of the appropriate listed mental disorder(s).

(3) If the claimant has a severe impairment(s), but the impairment(s) neither meets nor equals the Listings, the Board will then do a residual functional capacity assessment for those claimants (employees, widow(er)s, and children) whose applications are based on disability for any regular employment under the Railroad Retirement Act.

(4) At all adjudicative levels, the Board will, in each case, incorporate the pertinent findings and conclusions based on this procedure in its decision rationale. The Board's rationale must show the significant history, including examination, laboratory findings, and functional limitations that the Board considered in reaching conclusions about the severity of the mental impairment(s).

§ 220.102 Non-severe impairment(s), defined.

(a) Non-severe impairment(s). An impairment or combination of impairments is not severe if it does not significantly limit the claimant's physical or mental ability to do basic work activities.

(b) Basic work activities. Basic work activities means the ability and aptitudes necessary to do most jobs. Examples of these include—

(1) Physical functions such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling;

(2) Capacities for seeing, hearing, and speaking;

(3) Understanding, carrying out, and remembering simple instructions;

(4) Use of judgment;

(5) Responding appropriately to supervision, co-workers and usual work situations; and

(6) Dealing with changes in a routine work setting.

§ 220.103 Two or more unrelated impairments—Initial claims.

(a) Unrelated severe impairments. Two or more unrelated severe impairments cannot be combined to meet the 12-month duration test. If the claimant has a severe impairment(s) and then develops another unrelated severe impairment(s) but neither one is expected to last for 12 months, he or she cannot be found disabled even though the two impairments in combination last for 12 months.

(b) Concurrent Impairments. If the claimant has two or more concurrent impairments which, when considered in
combination, are severe, the Board must also determine whether the combined effect of the impairments can be expected to continue to be severe for 12 months. If one or more of the claimant's impairments improves or is expected to improve within 12 months, so that the combined effect of the claimant's impairments is no longer severe, he or she will be found to not meet the 12-month duration test.

§ 220.104 Multiple impairments.
To determine whether the claimant's physical or mental impairment or impairments are of a sufficient medical severity that such impairment or impairments could be the basis of eligibility under the law, the combined effect of all of the claimant's impairments are considered regardless of whether any such impairment, if considered separately, would be of sufficient severity. If a medically severe combination of impairments is found, it will be considered throughout the disability evaluation process. If a medically severe combination of impairments is not found, the claimant will be determined to be not disabled.

§ 220.105 Initial evaluation of a previous disability.
(a) In some cases, the Board may determine that a claimant is not currently disabled but was previously disabled for a specified period of time in the past. This can occur when—

(1) The disability application was filed before the claimant's disability ended but the Board did not make the initial determination of disability until after the claimant's disability ended; or
(2) The disability application was filed after the claimant's disability ended but no later than the 12th month after the month the disability ended.

(b) When evaluating a claim for a previous disability, the Board follows the steps in § 220.100 to determine whether a disability existed, and follows the steps in § 220.180 to determine when the disability ended.

Example 1: The claimant sustained multiple fractures to his left leg in an automobile accident which occurred on June 16, 1982. For a period of 16 months following the accident the claimant underwent 2 surgical procedures which restored the functional use of his leg. After a recovery period following the last surgery, the claimant returned to work on February 1, 1984. The claimant, although fully recovered medically and regularly employed, filed an application on December 3, 1984 for a determination of disability for the period June 16, 1982 through January 31, 1984. The Board reviewed his claim in January 1985 and determined that he was disabled for the prior period which began on June 16, 1982 and continued through January 31, 1984. A disability annuity is payable to the employee only for the period December 1, 1983 through January 31, 1984.

An annuity may not begin any earlier than the 1st of the 12th month before the month in which the application was filed. (See Part 218 of this chapter for the rules on when an annuity may begin).

Example 2: The claimant is disabled using the same medical facts cited above, beginning June 16, 1982 (the date of the automobile accident). The claimant files an application for a disability annuity, dated December 1, 1983. However, as of February 1, 1984 and before the Board makes a disability determination, the claimant returns to full-time work and is no longer considered disabled. The Board reviews the claimant's application in May of 1984 and finds him disabled for the period June 16, 1982 through January 31, 1984. A disability annuity is payable to the employee from December 1, 1983 through January 31, 1984. (See Part 218 of this chapter for the rules on when an annuity may begin).

Subpart I—Medical Considerations
§ 220.110 Listing of impairments in Appendix I of this part.

(a) Purpose of the Listing of Impairments. The Listing of Impairments describes, for each of the major body systems, impairments which have been considered severe enough to prevent a person from doing any substantial gainful activity. Most of the listed impairments are permanent or expected to result in death, or a specific statement of duration is made. For all others, the evidence must show that the impairment has lasted or is expected to last for a continuous period of at least twelve months.

(b) Adult and Childhood Listings. The Listing of Impairments consists of two parts:

(1) Part A contains medical criteria that apply to claimants age 18 and over. The medical criteria in Part A may also be applied in evaluating impairments in claimants under age 18 if the disease processes have a similar effect on adults and younger persons.

(2) Part B contains additional medical criteria that apply only to the evaluation of impairments of disabled children who are between the ages of 16 and 18. Certain criteria in Part A do not give appropriate consideration to the particular effects of the disease processes in childhood. I.e., when the disease process is generally found only in children or when the disease process differs in its effect on children than on adults. Additional criteria are included in Part B, and the impairment categories are, to the extent possible, numbered to maintain a relationship with their counterparts in Part A. In evaluating disability for a child between 16 and 18, Part B will be used first. If the medical criteria in Part B do not apply, then the medical criteria in Part A will be used.

(c) How to use the Listing of Impairments. Each section of the Listing of Impairments has a general introduction containing definitions of key concepts used in that section. Certain specific medical findings, some of which are required in establishing a diagnosis or in confirming the existence of the impairment for the purpose of this Listing, are also given in the narrative introduction. If the medical findings needed to support a diagnosis are not given in the introduction or elsewhere in the Listing, the diagnosis must still be established on the basis of medically acceptable clinical and laboratory techniques. Following the introduction in each section, the required level of severity of impairments is stated under "Category of Impairments" by one or more sets of medical findings. The medical findings consist of symptoms, signs, and laboratory findings.

(d) Diagnosis of Impairments. The Board will not consider the claimant's impairment to be one listed in Appendix I of this part solely because it has the diagnosis of a listed impairment. It must also have the findings shown in the Listing of that impairment.

§ 220.111 Medical equivalence.

(a) How medical equivalence is determined. The Board will decide that the claimant's impairment(s) is medically equivalent to a listed impairment in Appendix I of this part if the medical findings are at least equal in severity and duration to the listed findings. The Board compares the symptoms, signs, and laboratory findings about the claimant's impairment(s) as shown in the medical evidence in his or her claim, with the medical criteria shown with the listed impairment. If the claimant's impairment is not listed, the Board will consider the listed impairment most like the claimant's impairment to decide whether his or her impairment is medically equal. If the claimant has more than one impairment, and none of them meets or equals a listed impairment, the Board will review the symptoms, signs, and laboratory findings about the claimant's impairments to determine whether the combination of his or her impairments is medically equal to any listed impairment.

(b) Medical equivalence must be based on medical findings. The Board will base its decision about whether the claimant's impairment(s) is medically equal to a listed impairment on medical
evidence only. Any medical findings in the evidence must be supported by medically acceptable clinical and laboratory diagnostic techniques. The Board will also consider the medical opinion given by one or more physicians employed or engaged by the Board or the Social Security Administration to make medical judgments.

§ 220.112 Conclusions by physicians concerning the claimant's disability.

(a) General. Under the statute, the Board is responsible for making the decision about whether a claimant meets the statutory definition of disability. A claimant can only be found disabled if he or she is unable to do any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months. (See §220.26). A claimant's impairment must result from anatomical, physiological, or psychological abnormalities which are demonstrable by medically acceptable clinical and laboratory diagnostic techniques. (See § 220.27). Except in cases of remarried widows, widowers, and surviving divorced spouses, the decision as to whether a claimant is disabled may involve more than medical considerations and the Board may have to consider such factors as age, education, and past work experience. Such vocational factors are not within the expertise of medical sources.

(b) Medical opinions that are conclusive. A medical opinion by a treating source will be conclusive as to the nature of the issue of the nature and severity of a claimant's impairment(s) where the Board finds that (1) it is fully supported by medically acceptable clinical and laboratory diagnostic techniques and (2) it is not inconsistent with the other substantial medical evidence of record. A medical opinion that is not fully supported will not be conclusive.

(c) Medical opinions that are not fully supported. If an opinion by a treating source(s) is not fully supported, the Board will make every reasonable effort (i.e., an initial request and, after 20 days, one followup request) to obtain from the claimant's treating source(s) the relevant evidence that supports the medical opinion(s) before the Board makes a determination as to whether a claimant is disabled.

Example: In a case involving an organic mental disorder caused by trauma to the head a consultative physician upon interview with the claimant found only mild disorientation as to time and place. The claimant's treating physician reports that the claimant as the result of his impairment has severe disorientation as to time and place. The treating physician supplies office notes which follow the course of claimant's illness from date of injury to present. These notes indicate that the claimant's condition is such that he has some "good days" on which he appears to be unimpaired but generally support the treating physician's opinion that claimant is severely impaired. In this case the treating physician's opinion will be given some weight over that of the consultative physician.

(d) Inconsistent medical opinions. Where the Board finds that the opinion of a treating source regarding medical issues is inconsistent with the evidence of record including opinions of other sources that are supported by medically acceptable clinical and laboratory diagnostic techniques, the Board must resolve the inconsistency. If necessary to resolve the inconsistency, the Board will secure additional independent evidence and/or further interpretation or explanation from the treating source(s) and/or the consultative physician or psychiatrist. The Board's determination will be based on all the evidence in the case record, including the opinions of the medical sources. In resolving an inconsistency, the Board will give some extra weight to the treating source's supported opinion(s) which interprets the medical findings about the nature and severity of the impairment(s).

Example: In a case involving arthritis of the shoulder, where the X-rays confirm bone destruction, the examinations indicate minimal swelling and inflammation, but the treating source supplies evidence of greater restriction in the range of motion than found by the consultant, the Board will ask the treating source for further interpretation of the range of motion studies. If the treating source supplies a reasonable explanation, e.g., that the individual's condition is subject to periods of aggravation, the treating source's explanation will be given some extra weight over that of the consultative physician.

(e) Medical opinions that will not be considered conclusive nor given extra weight. The Board will not consider as conclusive nor give extra weight to medical opinions which are not in accord with the statutory or regulatory standards for establishing disability. Thus, opinions that the individual's impairments meet the Listing of Impairments in Appendix 1 of this part, where the medical findings which are the basis for that conclusion would not meet the specific criteria applicable to the particular impairment as set out in the Listing, will not be conclusive nor given extra weight. Likewise, an opinion(s) as to the individual's residual functional capacity which is not in accord with regulatory requirements set forth in §§ 220.120 and 220.121 will not be conclusive nor given extra weight.

Example 1: A medical opinion that an impairment is listed at 2.02, but the medical findings show that the individual's visual acuity in the better eye after best correction is 20/100, would not be considered as conclusive nor given extra weight. This is because the individual's exertional capacity exceeds the criteria set forth in the regulations for light work.

§ 220.113 Symptoms, signs, and laboratory findings.

Medical findings consist of symptoms, signs, and laboratory findings:

(a) Symptoms are the claimant's own description of his or her physical or mental impairment(s). The claimant's statements alone are not enough to establish that there is a physical or mental impairment(s).

(b) Signs are anatomical, physiological, or psychological abnormalities which can be observed, apart from the claimant's own statements (symptoms). Signs must be shown by medically acceptable clinical diagnostic techniques. Psychiatric signs are medically demonstrable phenomena which indicate specific abnormalities of behavior, affect, thought, memory, orientation and contact with reality. They must also be shown by observable facts that can be medically described and evaluated.

(c) Laboratory findings are anatomical, physiological, or psychological phenomena which can be shown by the use of medically acceptable laboratory diagnostic techniques. Some of these diagnostic techniques include chemical tests, electrophysiological studies (electrocardiogram, electromyelography, etc.) X-rays, and psychological tests.

§ 220.114 Evaluation of symptoms, including pain.

The Board considers all of the claimant's symptoms, including pain, and the extent to which signs and laboratory findings confirm these symptoms. The Board will not find the claimant disabled based on his or her symptoms unless medical signs or findings show a medical impairment.
that could be reasonably expected to produce those symptoms.

§ 220.115 Need to follow prescribed treatment.

(a) What treatment the claimant must follow. In order to get a disability annuity, the claimant must follow treatment prescribed by his or her physician if this treatment can restore the claimant's ability to work.

(b) When the claimant does not follow the prescribed treatment. If the claimant does not follow prescribed treatment without a good reason, the Board will find him or her not disabled or, if the claimant is already receiving a disability annuity, the Board will stop paying the annuity.

(c) Acceptable reasons for failure to follow prescribed treatment. The following are examples of a good reason for not following treatment:

(1) The specific medical treatment is contrary to the established teaching and tenets of the claimant's religion.

(2) The prescribed treatment would be catastrophic surgery for one eye, when there is an impairment of the other eye resulting in a severe loss of vision and is not subject to improvement through surgery.

(3) Surgery was previously performed with unsuccessful results and the same surgery is again being recommended for the same impairment.

(4) The treatment because of its magnitude (e.g., open heart surgery), unusual nature (e.g., organ transplant), or other reason is very risky for the claimant.

(5) The treatment involves amputation of an extremity, or a major part of an extremity.

Subpart J—Residual Functional Capacity

§ 220.120 Residual functional capacity, defined.

(a) General. (1) The claimant's impairment(s) may cause physical and mental limitations that affect what the claimant can do in a work setting. Residual functional capacity is what the claimant can do despite his or her limitations. If the claimant has more than one impairment, the Board will consider all of his or her impairments of which the Board is aware. The Board considers the claimant's capacity for various functions as described in the following paragraphs: (b) physical abilities, (c) mental impairments, and (d) other impairments. Residual functional capacity is a medical assessment.

However, it may include descriptions (even the claimant's) of the limitations that go beyond the symptoms that are important to diagnosis and treatment of the claimant's medical impairment(s) and may include observations of the claimant's work limitations in addition to those usually made during formal medical examination.

(2) The descriptions and observations of the limitations, when used, must be considered along with the rest of the claimant's medical records to enable the Board to decide to what extent the claimant's impairment(s) keep him or her from performing particular work activities.

(3) The assessment of the claimant's residual functional capacity for work is not a decision on whether the claimant is disabled, but is used as the basis for determining the particular types of work the claimant may be able to do despite his or her impairment(s). A claimant's vocational background (see §§ 220.125 through 220.134) is considered along with his or her residual functional capacity in arriving at a disability decision.

(4) In deciding whether disability continues or ends, the residual functional capacity assessment may also be used to determine whether any medical improvement the claimant's ability to work as discussed in § 220.180.

(b) Physical abilities. When the Board assesses the claimant's physical abilities, the Board assesses the severity of his or her impairments and determines his or her residual functional capacity for work activity on a regular and continuing basis. The Board considers the claimant's ability to do physical activities such as walking, standing, lifting, carrying, pushing, pulling, reaching, handling, and the evaluation of other physical functions. A limited ability to do these things may reduce the claimant's ability to do work.

(c) Mental impairments. When the Board assesses a claimant's mental impairment(s), the Board considers the factors, such as—

(1) His or her ability to understand, to carry out, and remember instructions;

(2) His or her ability to respond appropriately to supervision, coworkers, and work pressures in a work setting.

(d) Other impairments. Some medically determinable impairments, such as skin impairments, epilepsy, and impairments of vision, hearing, or other senses, postural and manipulative limitations, and environmental restrictions do not limit physical exertion. If the claimant has this type of impairment, in addition to one that affects physical exertion, the Board considers both in deciding his or her residual functional capacity.

§ 220.121 Responsibility for assessing and determining residual functional capacity.

(a) For cases at the initial or reconsideration level, the responsibility for determining residual functional capacity rests with the Bureau of Retirement Claims. This assessment is based on all the evidence the Board has, including any statements regarding what the claimant can still do that have been provided by treating or examining physicians, consultants, or any other person designated by the Board. In any case where there is evidence which indicates the existence of a mental impairment, the Bureau of Retirement Claims will not make a residual functional capacity determination without making every reasonable effort to ensure that a qualified psychiatrist or psychologist has provided a medical review of the case.

The Board will consider vocational factors when the claimant is applying for—

(1) An employee annuity based on disability for any regular employment (See § 220.45(b));

(2) Widow(er) disability annuity; or

(3) Child’s disability annuity based on disability before age 22.

(b) Disability determinations in which vocational factors must be considered along with medical evidence. When the Board cannot decide whether the claimant is disabled on medical evidence alone, the Board must use other evidence.

(1) The Board will use information from the claimant about his or her age, education, and work experience.

(2) The Board will consider the doctors' reports, and hospital records, as well as the claimant's own statements and other evidence to determine a claimant's residual functional capacity and how it affects the work the claimant can do. Sometimes to do this, the Board will need to ask the claimant to have special examinations or tests. (See § 220.50.)

(3) If the Board finds that the claimant can no longer do the work he or she has done in the past, the Board will determine whether the claimant can do other work (jobs) which exist in
§ 220.126 Relationship of ability to do work and residual functional capacity.

(a) If the claimant can do his or her previous work (his or her usual work or other applicable past work), the Board will determine he or she is not disabled.

(b) If the residual functional capacity is not enough for the claimant to do any of his or her previous work, the Board must still decide if the claimant can do any other work. To determine whether the claimant can do other work, the Board will consider the claimant’s residual functional capacity, and has or her age, education, and work experience. Any work (jobs) that the claimant can do must exist in significant numbers in the national economy (either in the region where he or she lives or in several regions of the country).

§ 220.127 When the only work experience is arduous unskilled physical labor.

(a) Arduous work. Arduous work is primarily physical work requiring a high level of strength or endurance. The Board will consider the claimant unable to do lighter work and therefore, disabled if he or she has—

(1) A marginal education (see § 220.129);

(2) Work experience of 35 years or more during which he or she did arduous unskilled physical labor; and

(3) A severe impairment which no longer allows him or her to do arduous unskilled physical labor.

(b) Exceptions. The Board may consider the claimant not disabled if—

(1) The claimant is working or has worked despite his or her impairment(s) (except where work is sporadic or not medically advisable); or

(2) Evidence shows that the claimant has training or past work experience which enables him or her to do substantial gainful activity in another occupation with his or her impairment, either full-time or on reasonably regular part-time basis.

Example: B is a 60-year-old miner with a fourth grade education who has a life-long history of arduous physical labor. B says that he is disabled because of arthritis of the spine, hips, and knees, and other impairments. Medical evidence shows a combination of impairments and establishes that these impairments prevent B from performing his usual work or any other type of arduous physical labor. His vocational background does not show that he has skills or capabilities needed to do lighter work which would be readily transferable to another work setting. Under these circumstances, the Board will find that B is disabled.

§ 220.128 Age as a vocational factor.

(a) General. (1) “Age” refers to how old the claimant is (chronological age) and the extent to which his or her age affects his or her ability to—

(i) Adapt to a new work situation; and

(ii) Do work in competition with others.

(2) In determining disability, the Board does not consider age alone. The Board must also consider the claimant’s residual functional capacity, education, and work experience. If the claimant is unemployed because of his or her age and can still do a significant number of jobs which exist in the national economy, the Board will find that he or she is not disabled. Appendix 2 of this part explains in detail how the Board considers age as a vocational factor. However, the Board does not apply these age categories mechanistically in a borderline situation.

(b) Younger person. If the claimant is under age 50, the Board generally does not consider that his or her age will seriously affect the ability to adapt to a new work situation. In some circumstances, the Board considers age 45 a handicap in adapting to a new work setting (see Rule 201.17 in Appendix 2 of this Part).

(c) Person approaching advanced age. If the claimant is closely approaching advanced age (50-54), the Board considers that the claimant’s age, along with a severe impairment and limited work experience, may seriously affect the claimant’s ability to adjust to a significant number of jobs in the national economy.

(d) Person of advanced age. The Board considers that advanced age (55 or over) is by itself at which age significantly affects the claimant’s ability to do substantial gainful activity.

(1) If the claimant is severely impaired and of advanced age, and he or she cannot do medium work (see § 220.132), the claimant may not be able to work unless he or she has skills that can be used in less demanding jobs which exist in significant numbers in the national economy.

(2) If the claimant is close to retirement age (60-64) and has a severe impairment, the Board will not consider him or her able to adjust to sedentary or light work unless the claimant has skills which are highly marketable.

§ 220.129 Education as a vocational factor.

(a) General. “Education” is primarily used to mean formal schooling or other training which contributes to the claimant’s ability to meet vocational requirements, for example, reasoning ability, communication skills, and arithmetical ability. If the claimant does not have formal schooling, this does not necessarily mean that the claimant is uneducated or lacks these abilities. Past work experience and the kinds of responsibilities the claimant had when he or she was working may show that he or she has intellectual abilities, although the claimant may have little formal education. A claimant’s daily activities, hobbies, or the results of testing may also show that the claimant has significant intellectual ability that can be used to work.

(b) How the Board evaluates the claimant’s education. (1) The importance of the claimant’s educational background may depend upon how much time has passed between the completion of the claimant’s formal education and the beginning of the claimant’s physical impairment(s) and what the claimant has done with his or her education in a work or other setting. Formal education completed many years before the claimant’s impairment(s) began, or unused skills and knowledge that were a part of the claimant’s formal education, may no longer be useful or meaningful in terms of ability to work. Therefore, the numerical grade level that the claimant completed in school may not represent his or her actual educational abilities. These educational abilities may be higher or lower than the numerical grade level that the claimant completed. However, if there is no other evidence to contradict it, the Board uses the claimant’s numerical grade level to determine the claimant’s educational abilities. The term “education” also includes how well the claimant is able to communicate in English since this ability is often acquired or improved by education. In evaluating the claimant’s educational level, the Board uses the following categories:

(1) Illiteracy. Illiteracy means the inability to read or write. The Board will consider the claimant illiterate if he or she cannot read or write a simple message such as instructions or inventory lists even though the claimant can sign his or her name. Generally, the illiterate claimant has had little or no formal schooling.

(2) Marginal education. Marginal education means ability in reasoning, arithmetic, and language skills which are needed to do simple, unskilled types of jobs. Generally, this means a 6th grade or less of education.

(3) Limited education. Limited education means ability in reasoning, arithmetic, and language skills, but not enough to allow a person with these
educational qualifications to do most of the more complex duties needed in semi-skilled or skilled jobs. Generally, a limited education is a 7th grade through 11th grade level of education.

(4) High school education and above. High school and above means abilities in reasoning, arithmetic, and language skills acquired through formal schooling at a 12th grade level or above. The claimant with this level of education is generally considered able to do semi-skilled through skilled work.

(5) Inability to communicate in English. Since the ability to speak, read, and understand English is generally learned or increased at school, the Board may consider this an educational factor. Because English is the dominant language of the country, it may be difficult for the claimant who does not speak and understand English to do a job, regardless of the amount of education he or she may have in another language. The claimant’s ability to speak and understand English will be considered when the Board evaluates what work, if any, he or she can do.

(6) Information about the claimant’s education. The Board will ask the claimant how long he or she attended school and whether he or she can speak, understand, read and write in English, and do at least simple calculations in arithmetic. The Board will also consider information about how much formal or informal education the claimant received from his or her previous work, community projects, hobbies and any other activities which might help him or her to work.

§ 220.130 Work experience as a vocational factor.

(a) General. “Work experience” means skills and abilities the claimant has acquired through work he or she has done, whether the type of work he or she may be expected to do. Work the claimant has already been able to do shows the kind of work that he or she may be expected to do. The Board considers that the claimant’s work experience is relevant and applies when it was done within the last 15 years, lasted long enough for him or her to learn to do it, and was substantial gainful activity. This work experience is called “past relevant work.” The Board does not usually consider that work the claimant did 15 years or more before the time the Board is deciding whether he or she is disabled (or when the disability insured status requirement was last met, if earlier) applies. A gradual change occurs in most jobs so that after 15 years, it is no longer realistic to expect that skills and abilities acquired in a job done then continue to apply. The 15-year guide is intended to insure that remote work experience is not currently applied. If the claimant has no work experience or worked only “off-and-on” or for brief periods of time during the 15-year period, the Board generally considers that these do not apply. If the claimant has acquired skills through his or her past work, the Board considers the claimant to have these work skills unless he or she cannot use them in other skilled or semi-skilled work that he or she can do. If the claimant cannot use his or her skills in other skilled or semi-skilled work, the Board will consider his or her work background the same as unskilled. However, even if the claimant has no work experience, the Board may consider that the claimant is able to do unskilled work because it requires little or no judgment and can be learned in a short period of time.

(b) Information about the claimant’s work. (1) Sometimes the Board will need information about the claimant’s past work to make a disability determination. The Board may request work information from—

(i) The claimant and

(ii) The claimant’s employer or other person who knows about the claimant’s work (member of family or co-worker) with the claimant’s permission.

(2) The Board will ask for the following information about all the jobs the claimant has had in the last 15 years:

(i) The dates the claimant worked.

(ii) All the duties the claimant did.

(iii) Any tools, machinery, and equipment the claimant used.

(iv) The amount of walking, standing, sitting, lifting and carrying the claimant did during the work day, as well as any other physical and mental duties of the job.

(3) If all the claimant’s work in the past 15 years has been arduous and unskilled, and the claimant has very little education, the Board will ask the claimant to tell about all of his or her work from the time he or she first began working. (See § 220.45(b).)

§ 220.131 Work which exists in the national economy.

(a) General. The Board considers that work exists in the national economy when it exists in significant numbers either in the region where the claimant lives or in several other regions of the country. It does not matter whether—

(1) Work exists in the immediate area in which the claimant lives.

(2) A specific job vacancy exists for the claimant; or

(3) The claimant would be hired if the claimant applied for work.

(b) How the Board determines the existence of work. Work exists in the national economy when there is a significant number of jobs (in one or more occupations) having requirements which the claimant is able to meet with his or her physical or mental ability and vocational qualifications. Isolated jobs that exist in very limited numbers in relatively few locations outside the region where the claimant lives are not considered “work which exists in the national economy.” The Board will not deny the claimant a disability annuity on the basis of the existence of these kinds of jobs. The Board will determine that the claimant is disabled if the work he or she can do does not exist in the national economy. If the work the claimant can do does exist in the national economy, the Board will determine that the claimant is not disabled.

(c) Inability to obtain work. The Board will determine that the claimant is not disabled if he or she has the residual functional capacity and vocational abilities to do work which exists in the national economy but the claimant remains unemployed because of—

(1) His or her inability to get work;

(2) Lack of work in his or her local area;

(3) The hiring practices of employers;

(4) Technological changes in the industry in which the claimant has worked;

(5) Cyclical economic conditions;

(6) No job openings for the claimant;

(7) The claimant not actually being hired to do work he or she could otherwise do; or

(8) The claimant not wishing to do a particular type of work.

(d) Administrative notice of job data. The following sources are used when the Board determines that unskilled, sedentary, light and medium jobs exist in the national economy:

(1) Dictionary of Occupational Titles, published by the Department of Labor.

(2) County Business Patterns, published by the Bureau of the Census.

(3) Census Reports, also published by the Bureau of the Census.

(4) Occupational Analyses, prepared for the Social Security Administration by various State employment agencies.


(e) Use of vocational experts and other specialists. If the issue in determining whether the claimant is disabled is whether his or her work skills can be used in other work and the specific occupations in which they can be used, or there is a similarly complex issue, the Board may use the services of
a vocational expert or other specialist. The Board will decide whether to use a vocational expert or other specialist.

§ 220.132 Physical exertion requirements.

To determine the physical exertion requirements of work in the national economy, jobs are classified as "sedentary," "light," "medium," "heavy," and "very heavy." These terms have the meanings as they have in the Dictionary of Occupational Titles, published by the Department of Labor. In making disability determinations the Board uses the following definitions:

(a) Sedentary work. Sedentary work involves lifting no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. Jobs are sedentary if walking and standing are required occasionally and the other sedentary criteria are met.

(b) Light work. Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to 10 pounds. Even though the weight lifted may be very little, a job is in this category when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls. To be considered capable of performing a full or wide range of light work, the claimant must have the ability to do substantially all of these activities. If the claimant can do light work, the Board determines that he or she can also do sedentary work, unless there are additional limiting factors such as loss of fine dexterity or inability to sit for long periods of time.

(c) Medium work. Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. If the claimant can do medium work, the Board determines that he or she can also do sedentary and light work.

(d) Heavy work. Heavy work involves lifting no more than 100 pounds at a time with frequent lifting or carrying of objects weighing up to 50 pounds. If the claimant can do heavy work, the Board determines that he or she can also do medium, light, and sedentary work.

§ 220.133 Skill requirements.

(a) General. To evaluate skills and to help determine the existence in the national economy of work the claimant is able to do, the Board classifies work as unskilled, semi-skilled, and skilled. The Dictionary of Occupational Titles, published by the Department of Labor, uses materials published by the Department of Labor.

(b) Unskilled work. Unskilled work is work which needs little or no judgment to do simple duties that can be learned on the job in a short period of time (30 days). The job may or may not require considerable strength. A job is considered unskilled if the claimant can usually learn to do the job in 30 days, and little job training and judgment are needed. The claimant does not gain work skills by doing unskilled jobs. For example, jobs are considered unskilled if primary work duties are—

1. Handling;
2. Feeding;
3. Offbearing (placing or removing materials from machines which are automatic or operated by others); or

(c) Semi-skilled work. Semi-skilled work is work which needs some skills but does not require doing the more complex work duties. A job may be classified as semi-skilled where coordination and dexterity are necessary, as when hand or feet must be moved quickly to do repetitive tasks. Semi-skilled jobs may require—

1. Alertness and close attention to watching machine processes;
2. Inspecting, testing, or otherwise looking for irregularities;
3. Tending or guarding equipment, property, materials, or persons against loss, damage, or injury; or
4. Other types of activities which are similarly less complex than skilled work but more complex than unskilled work.

(d) Skilled work. Skilled work requires qualifications in which a person uses judgment to determine the machine and manual operations to be performed in order to obtain the proper form, quality, or quantity of material to be produced. Skilled jobs may require—

1. Laying out work;
2. Estimating quality;
3. Determining suitability and needed quantities of materials;
4. Making precise measurements;
5. Reading blueprints or other specifications;
6. Making necessary computations or mechanical adjustments to control or regulate work; or
7. Dealing with people, facts, figures or abstract ideas at a high level of complexity.

(e) Skills that can be used in other work (transferability).—(1) What the Board means by transferable skills. The Board considers the claimant to have skills that can be used in other jobs, when the skilled or semi-skilled work activities the claimant did in past work can be used to meet the requirements of skilled or semi-skilled work activities of other jobs or kinds of work. This depends largely on the similarity of occupationally significant work activities among different jobs.

2. How the Board determines skills that can be transferred to other jobs. Transferability is most probable and meaningful among jobs in which—

(i) The same or a lesser degree of skill is required;
(ii) The same or similar tools and machines are used; and
(iii) The same or similar raw materials, products, processes, or services are involved.

3. Degrees of transferability. There are degrees of transferability of skills ranging from very close similarities to remote and incidental similarities among jobs. A complete similarity of all three factors is not necessary for transferability. However, when skills are so specialized or have been acquired in such an isolated vocational setting (like many jobs in mining, agriculture, or fishing) that they are not readily usable in other industries, jobs, and work settings, they are considered not transferable.

§ 220.134 Medical Vocational Guidelines in Appendix 2 of this part.

(a) The Dictionary of Occupational Titles includes information about jobs (classified by their exertional and skill requirements) that exist in the national economy. Appendix 2 of this part provides rules using this data reflecting major functional and vocational patterns.

(b) The Board applies the rules in Appendix 2 of this part in cases where a claimant is not doing substantial gainful activity and is prevented by a severe impairment(s) from doing vocationally relevant past work.

(c) The rules in Appendix 2 of this part do not cover all possible variations of factors. The Board does not apply these rules if one of the findings of fact about the claimant’s vocational factors and residual functional capacity is not the same as the corresponding criterion of a rule. In these instances, the Board gives full consideration to all relevant facts in accordance with the definitions and discussions under vocational considerations. However, if the findings of fact made about all factors are the
same as the rule, the Board uses that rule to decide whether that claimant is disabled.

Subpart L—Substantial Gainful Activity

§ 220.140 General.

The work that a claimant has done during any period in which the claimant believes he or she is disabled may show that the claimant is able to do work at the substantial gainful activity level. If the claimant is able to engage in substantial gainful activity, the Board will find that the claimant is not disabled for any regular employment under the Railroad Retirement Act. Even if the work the claimant has done was not substantial gainful activity, it may show that the claimant is able to do more work than he or she actually did. The Board will consider all of the medical and vocational evidence in the claimant's file to decide whether or not the claimant has the ability to engage in substantial gainful activity.

§ 220.141 Substantial gainful activity, defined.

Substantial gainful activity is work activity that is both substantial and gainful.

(a) Substantial work activity. Substantial work activity is work activity that involves doing significant physical or mental activities. The claimant's work may be substantial even if it is done on a part-time basis or if the claimant does less, gets paid less, or has less responsibility than when the claimant worked before.

(b) Gainful work activity. Gainful work activity is work activity that the claimant does for pay or profit. Work activity is gainful if it is the kind of work usually done for pay or profit, whether or not a profit is realized.

(c) Some other activities. Generally, the Board does not consider activities like taking care of one's self, household tasks, hobbies, therapy, school attendance, club activities, or social programs to be substantial gainful activity.

§ 220.142 General information about work activity.

(a) The nature of the claimant's work. If the claimant's duties require use of the claimant's experience, skills, supervision and responsibilities, or contribute substantially to the operation of a business, this tends to show that the claimant has the ability to work at the substantial gainful activity level.

(b) How well the claimant performs. The Board considers how well the claimant does his or her work when the Board determines whether or not the claimant is doing substantial gainful activity. If the claimant does his or her work satisfactorily, this may show that the claimant is working at the substantial gainful activity level. If the claimant is unable, because of his or her impairments, to do ordinary or simple tasks satisfactorily without more supervision or assistance than is usually given other people doing similar work, this may show that the claimant is not working at the substantial gainful activity level.

(c) If the claimant is doing work that involves minimal duties that make little or no demands on the claimant and that are of little or no use to the claimant's railroad or non-railroad employer, or to the operation of a business, if the claimant is self-employed, this does not show that the claimant is working at the substantial gainful activity level. If the claimant is doing work that involves minimal duties that make little or no demands on the claimant and that are of little or no use to the claimant's railroad or non-railroad employer, or to the operation of a business, if the claimant is self-employed, this does not show that the claimant is working at the substantial gainful activity level.

(d) Time spent in work. While the time the claimant spends in work is important, the Board will not decide whether or not the claimant is doing substantial gainful activity only on that basis. The Board will still evaluate the work to decide whether or not the claimant is substantial and gainful regardless of whether the claimant spends more time or less time at the job than workers who are not impaired and who are doing similar work as a regular means of their livelihood.

§ 220.143 Evaluation guides for an employed claimant.

(a) General. The Board uses several guides to decide whether the work the claimant has done shows that he or she is able to do substantial gainful activity.

(b) Earnings guidelines. The claimant's earnings may show the claimant has done substantial gainful activity. The amount of the claimant's earnings from work the claimant has done may show that he or she has engaged in substantial gainful activity. Generally, if the claimant worked for substantial earnings, this will show that he or she is able to do substantial gainful activity. On the other hand, the fact that the claimant's earnings are not substantial will not necessarily show that the claimant is not able to do substantial gainful activity. The Board will generally consider work that the claimant is forced to stop after a short time because of his or her impairments as an unsuccessful work attempt and the claimant's earnings from that work will not show that the claimant is able to do substantial gainful activity.

(2) The Board considers only the amounts the claimant earns. The Board does not consider any income not directly related to the claimant's productivity when the Board decides whether the claimant has done substantial gainful activity. If the claimant's earnings are subsidized, the amount of the subsidy is not counted when the Board determines whether or not the claimant's work is substantial gainful activity. Thus, where work is done under special conditions, the Board only considers the part of the claimant's pay which the claimant activity "earns." For example, where a handicapped person does simple tasks under close and continuous supervision, the Board would not determine that the person worked at the substantial gainful activity level only on the basis of the amount of pay. A railroad or non-railroad employer may set a specific amount as a subsidy after figuring the reasonable value of the employee's services. If the claimant's work is subsidized and the claimant's railroad and non-railroad employer does not set the amount of the subsidy or does not adequately explain how the subsidy was figured, the Board will investigate to see how much the claimant's work is worth.

(3) If the claimant is working in a sheltered or special environment. If the claimant is working in a sheltered workshop, the claimant may not be earning the amounts he or she is being paid. The fact that the sheltered workshop or similar facility is operating at a loss or is receiving some charitable contributions or governmental aid does not establish that the claimant is not earning all he or she is being paid. Since persons in military service being treated for a severe impairment usually continue to receive full pay, the Board evaluates work activity in a therapy program or while on limited duty by comparing it with similar work in the civilian work force or on the basis of reasonable worth of the work, rather than on the actual amount of the earnings.

(b) The Board considers only the amounts the claimant earns. The Board does not consider any income not directly related to the claimant's productivity when the Board decides whether the claimant has done substantial gainful activity. If the claimant's earnings are subsidized, the amount of the subsidy is not counted when the Board determines whether or not the claimant's work is substantial gainful activity. Thus, where work is done under special conditions, the Board only considers the part of the claimant's pay which the claimant activity "earns." For example, where a handicapped person does simple tasks under close and continuous supervision, the Board would not determine that the person worked at the substantial gainful activity level only on the basis of the amount of pay. A railroad or non-railroad employer may set a specific amount as a subsidy after figuring the reasonable value of the employee's services. If the claimant's work is subsidized and the claimant's railroad and non-railroad employer does not set the amount of the subsidy or does not adequately explain how the subsidy was figured, the Board will investigate to see how much the claimant's work is worth.

(3) If the claimant is working in a sheltered or special environment. If the claimant is working in a sheltered workshop, the claimant may not be earning the amounts he or she is being paid. The fact that the sheltered workshop or similar facility is operating at a loss or is receiving some charitable contributions or governmental aid does not establish that the claimant is not earning all he or she is being paid. Since persons in military service being treated for a severe impairment usually continue to receive full pay, the Board evaluates work activity in a therapy program or while on limited duty by comparing it with similar work in the civilian work force or on the basis of reasonable worth of the work, rather than on the actual amount of the earnings.
then the guides in paragraphs (b)(2), (3), (4), (5), and (6) of this section.

(2) Earnings that will ordinarily show that the claimant has engaged in substantial gainful activity. The Board will consider that the earnings from the employed claimant's work activities show that the claimant has engaged in substantial gainful activity if—

(i) The claimant's earnings averaged more than $200 a month in calendar years prior to 1976;

(ii) The claimant's earnings averaged more than $230 a month in calendar years prior to 1976;

(iii) The claimant's earnings averaged more than $240 a month in calendar year 1977;

(iv) The claimant's earnings averaged more than $300 a month in calendar year 1978; or

(v) The claimant's earnings averaged more than $300 a month in calendar year 1979; or

(vi) The claimant's earnings averaged more than $300 a month in calendar year after 1979.

(3) Earnings that will ordinarily show that the claimant has not engaged in substantial gainful activity. The Board will generally consider that the earnings from the employed claimant's work will show that the claimant has not engaged in substantial gainful activity if—

(i) The claimant's earnings averaged less than $130 a month in calendar year before 1976;

(ii) The claimant's earnings averaged less than $150 a month in calendar year 1976;

(iii) The claimant's earnings averaged less than $160 a month in calendar year 1977;

(iv) The claimant's earnings averaged less than $170 a month in calendar year 1978;

(v) The claimant's earnings averaged less than $180 a month in calendar year 1979; or

(vi) The claimant's earnings averaged less than $180 a month in calendar years after 1979.

(4) If the claimant works in a sheltered workshop. If the claimant is working in a sheltered workshop or a comparable facility especially set up for severely impaired persons, the claimant's earnings and activities will ordinarily establish that the claimant has not done substantial gainful activity if—

(i) The claimant's average earnings are not greater than $230 a month in calendar years prior to 1976;

(ii) The claimant's average earnings are not greater than $230 a month in calendar year 1976;

(iii) The claimant's average earnings are not greater than $240 a month in calendar year 1977;

(iv) The claimant's average earnings are not greater than $260 a month in calendar year 1978;

(v) The claimant's average earnings are not greater than $260 a month in calendar year after 1979; or

(vi) The claimant's average earnings are not greater than $300 a month in calendar year after 1979.

(5) If there is evidence showing that the claimant may have done substantial gainful activity. If there is evidence showing that the claimant may have done substantial gainful activity, the Board will apply the criteria in paragraph (b)(6) of this section regarding comparability and value of services.

(6) Earnings that are not high or low enough to show whether the claimant engaged in substantial gainful activity. If the claimant's earnings, on the average, are between the amounts shown in paragraphs (b)(2) and (3) of this section, the Board will generally consider other information in addition to the claimant's earnings, such as whether—

(i) The claimant's work is comparable to that of unimpaired persons in the claimant's community who are doing the same or similar occupations as their means of livelihood, taking into account the time, energy, skill, and responsibility involved in the work; or

(ii) The claimant's work, although significantly less than that done by unimpaired persons, is clearly worth the amounts shown in paragraph (b)(2) of this section, according to pay scales in the claimant's community.

§ 220.144 Evaluation guides for a self-employed claimant.

(a) If the claimant is a self-employed claimant. The Board will consider the claimant's activities and their value to the claimant's business to decide whether the claimant has engaged in substantial gainful activity if the claimant is self-employed. The Board will generally consider work that the claimant is forced to stop after a short time because of his or her impairment(s) as an unsuccessful work attempt and the claimant's income from that work will not show that the claimant is able to do substantial gainful activity. The Board will evaluate the claimant's work activity on the value to the business of the claimant's services regardless of whether the claimant receives an immediate income for his or her services. The Board considers that the claimant has engaged in substantial gainful activity if—

(1) The claimant's work activity, in terms of factors such as hours, skills, energy output, efficiency, duties, and responsibilities, is comparable to that of unimpaired persons in the claimant's community who are engaged in or similar businesses as their means of livelihood;

(2) The claimant's work activity, although not comparable to that of unimpaired persons, is clearly worth the amount shown in § 220.143(b)(2) when considered in terms of its value to the business, or when compared to the salary that an owner would pay to an employed person to do the work the claimant is doing;

(3) The claimant renders services that are significant to the operation of the business and receives a substantial income from the business.

(b) What the Board means by significant services. (1) Claimants who are not farm landlords. If the claimant is not a farm landlord and the claimant operates a business entirely by himself or herself, any services that the claimant renders are significant to the business. If the claimant's business involves the services of more than one person, the Board will consider the claimant to be rendering significant services if he or she contributes more than half the total time required for the management of the business or he or she renders management services for more than 45 hours a month regardless of the total management time required by the business.

(2) Claimants who are farm landlords. (i) General. If the claimant is a farm landlord, that is, the claimant rents farm land to another, the Board will consider the claimant to be rendering significant services if the claimant materially participates in the production or the management of the production of the things raised on the rented farm. If the claimant was given social security earnings credits because he or she materially participated in the activities of the farm and he or she continues these same activities, the Board will consider the claimant to be rendering significant services.

(ii) Material participation. (A) The claimant will have established that he or she is materially participating if he or she—

(1) Furnishes a large portion of the machinery, tools, and livestock used in the production of the things raised on the rented farm; or
(2) Furnishes or advances monies or assumes financial responsibility for a substantial part of the expense involved in the production of the things raised on the rented farm.

(B) The claimant will have presented strong evidence that he or she is materially participating if he or she periodically

(ii) Advises or consults with the other person, who under the rental agreement produces the things raised on the rented farm; and

(ii) Inspects the production activities on the land.

(iii) Production. The term "production" refers to the physical work performed and the expenses incurred in producing the things raised on the farm. It includes activities like the actual work of planting, cultivating, and harvesting of crops, and the furnishing of machinery, implements, seed, and livestock.

(iv) Management of the production. The term "management of the production" refers to services performed in making managerial decisions about the production of the crop, such as when to plant, cultivate, dust, spray or harvest. It includes advising and consulting, making inspections, and making decisions on matters, such as rotation of crops, the type of crops to be grown, the type of livestock to be raised, and the type of machinery and implements to be furnished.

(c) What the Board means by substantial income. After the claimant’s normal business expenses are deducted from the claimant’s gross income to determine net income, the Board will deduct the reasonable value of any unpaid help, any soil bank payments that were included as farm income, and impairment-related work expenses described in §220.145 that have not been deducted in determining the claimant’s net earnings from self-employment. The Board will consider the resulting amount of income from the business to be substantial if—

(1) It averages more than the amounts described in §220.143(b)(2); or

(2) It averages less than the amounts described in §220.143(b)(2) but the livelihood which the claimant gets from the business is either comparable to that of unimpaired self-employed persons in the claimant’s community who are in the same or similar businesses as their means of livelihood.

§220.145 Impairment-related work expenses.

(a) General. When the Board figures the claimant’s earnings in deciding if the

(ii) If because of the claimant’s impairment(s) the claimant needs assistance with personal functions (e.g., dressing, administering medications) at home in preparation for going to and assistance in returning from work, the payments the claimant makes for those services may be deducted.

(iii) (A) The Board will deduct payments the claimant makes to a family member for attendant care services only if such person, in order to perform the services, suffers an economic loss by terminating his or her employment or by reducing the number of hours he or she worked.

(B) The Board considers a family member to be anyone who is related to the claimant by blood, marriage or adoption, whether or not that person lives with the claimant.

(iv) If only part of the claimant’s payment to a person is for services that come under the provisions of paragraph (c)(1) of this section, the Board will only deduct that part of the payment which is attributable to those services. For example, an attendant gets the claimant ready for work and helps the claimant in returning from work, which takes about 2 hours a day. The rest of the attendant’s 8 hour day is spent cleaning the claimant’s house and doing the claimant’s laundry, etc. The Board would only deduct one-fourth of the attendant’s daily wages as an impairment-related work expense.

(b) Conditions for deducting impairment-related work expenses. The Board will deduct impairment-related work expenses if—

(1) The claimant is otherwise disabled as defined in §220.25;

(2) The severity of the claimant’s impairment(s) requires the claimant to purchase (or rent) certain items and services in order to work;

(3) The claimant pays the cost of the item or service. No deduction will be allowed to the extent that payment has been or will be made by another source. No deduction will be allowed to the extent that the claimant has been, could be, or will be reimbursed for such cost by any other source (such as through a private insurance plan, Medicare or Medicaid, or other plan or agency). For example, if the claimant purchases crutches for $80 but the claimant was, could be, or will be reimbursed $64 by some agency, then the Board will deduct $16;

(4) The claimant pays for the item or service in a month he or she is working (in accordance with paragraph (d) of this section); and

(5) The claimant’s payment is in cash (including checks or other forms of money). Payment in kind is not deductible.

(c) What expenses may be deducted—

(1) Payments for attendant care services. (i) If because of the claimant’s impairment(s) the claimant needs assistance in travelling to and from work, or while at work the claimant needs assistance with personal functions (e.g., eating, toileting) or with work-related functions (e.g., reading, communicating), the payments the claimant makes for those services may be deducted.

(i) If the claimant’s impairment(s) requires that the claimant utilize medical devices in order to work, the payments the claimant makes for those devices may be deducted. As used in this subparagraph, medical devices include durable medical equipment which can withstand repeated use, is customarily used for medical purposes, and is generally not useful to a person in the absence of an illness or injury. Examples of durable medical equipment are wheelchairs, hemodialysis equipment, canes, crutches, inhalators and pacemakers.

(2) Payments for prosthetic devices. If the claimant’s impairment(s) requires that the claimant utilize prosthetic devices in order to work, the payments the claimant makes for those prosthetic devices may be deducted. Examples of prosthetic devices are artificial replacements of arms, legs and other parts of the body.
order to do his or her job, the payments the claimant makes for that equipment may be deducted. Examples of work-related equipment are one-hand typewriters, vision aids, sensory aids for the blind, telecommunication devices for the deaf and tools specifically designed to accommodate a person's impairment(s).

(ii) Residential modifications. If the claimant's impairment(s) requires that the claimant make modifications to his or her residence, the location of the claimant's place of work will determine if the cost of these modifications will be deducted. If the claimant is employed away from home, only the cost of changes made outside of the claimant's home to permit the claimant to get to his or her means of transportation (e.g., the installation of an exterior ramp for a wheelchair confined person or special exterior railings or pathways for someone who requires crutches) will be deducted. Costs relating to modifications of the inside of the claimant's home will not be deducted. If the claimant works at home, the costs of modifying the inside of the claimant's home in order to create a working space to accommodate the claimant's impairment(s) will be deducted to the extent that the changes pertain specifically to the space in which the claimant works. Examples of such changes are the enlargement of a doorway leading into the workspace or modification of the workspace to accommodate problems in dexterity. However, if the claimant is self-employed at home, any cost deducted as a business expense cannot be deducted as an impairment-related work expense.

(iii) Non-medical appliances and equipment. Expenses for appliances and equipment which the claimant does not ordinarily use for medical purposes are generally not deductible. Examples of these items are portable room heaters, air conditioners, humidifiers, dehumidifiers, and electric air cleaners. However, expenses for such items may be deductible when unusual circumstances clearly establish an impairment-related and medically verified need for such an item because it is for the control of the claimant's disabling impairment(s), thus enabling the claimant to work. To be considered essential, the item must be of such a nature that if it were not available to the claimant there would be an immediate adverse impact on the claimant's ability to function in his or her work activity. In this instance, the expense is deductible whether the item is used at home or in the working place. An example would be the need for an electric air cleaner by a person with severe respiratory disease who cannot function in a non-purified air environment. An item such as an exercycle is not deductible if used for general physical fitness. If an exercycle is prescribed and used as necessary treatment to enable the claimant to work, the Board will deduct payments the claimant makes toward its cost.

(5) Payments for drugs and medical services. (i) If the claimant must use drugs or medical services (including diagnostic procedures) to control his or her impairment(s) the payments the claimant makes for them may be deducted. The drugs or services must be prescribed (or utilized) to reduce or eliminate symptoms of the claimant's impairment(s) or to slow down its progression. The diagnostic procedures must be performed to ascertain how the impairment(s) is progressing or to determine what type of treatment should be provided for the impairment(s).

(ii) Examples of deductible drugs and medical services are anticonvulsant drugs to control epilepsy or anticonvulsant blood level monitoring; antidepressant medication for mental impairments; medication used to allay the side effects of certain treatments; radiation treatment or chemotherapy for cancer patients; corrective surgery for spinal impairments; electroencephalograms and brain scans related to a disabling epileptic impairment; tests to determine the efficacy of medication on a diabetic condition; and immunosuppressive medications that kidney transplant patients regularly take to protect against graft rejection.

(iii) The Board will only deduct the costs of drugs or services that are directly related to the claimant's impairment(s). Examples of non-deductible items are routine annual physical examinations, optician services (unrelated to a disabling visual impairment) and dental examinations.

(6) Payments for similar items and services—(i) General. If the claimant is required to utilize items and services not specified in paragraphs (c)(1) through (5) of this section, but which are directly related to his or her impairment(s) and which the claimant needs to work, their costs are deductible. Examples of such items and services are medical supplies and services not discussed above, the purchase and maintenance of a dog guide which the claimant needs to work, and transportation.

(ii) Medical supplies and services not described above. The Board will deduct payments the claimant makes for expendable medical supplies, such as incontinence pads, catheters, bandages, elastic stockings, face masks, irrigating kits, and disposable sheet sets and bags. The Board will also deduct payments the claimant makes for physical therapy which the claimant requires because of his or her impairment(s) and which the claimant needs in order to work.

(iii) Payments for transportation costs. The Board will deduct transportation costs in these situations:

(A) The claimant's impairment(s) requires that in order to get to work the claimant needs a vehicle that has structural or operational modifications. The modifications must be critical to the claimant's operation or use of the vehicle and directly related to the claimant's impairment(s). The Board will deduct the cost of the modifications, but not the cost of the vehicle. The Board will also deduct a mileage allowance for the trip to and from work. The allowance will be based on data compiled by the Federal Highway Administration relating to vehicle operating costs.

(B) The claimant's impairment(s) requires the claimant to use driver assistance, taxicabs or other hired vehicles in order to work. The Board will deduct amounts paid to the driver and, if the claimant's own vehicle is used, the Board will also deduct a mileage allowance, as provided in paragraph (c)(6)(iii)(A) of this section, for the trip to and from work.

(C) The claimant's impairment(s) prevents the claimant from taking available public transportation to and from work and the claimant must drive his or her (unmodified) vehicle to work. If the Board can verify through the claimant's physician or other sources that the need to drive is caused by the claimant's impairment(s) (and not due to the unavailability of public transportation), the Board will deduct a mileage allowance, as provided in paragraph (c)(6)(iii)(A) of this section, for the trip to and from work.

(7) Payments for installing, maintaining, and repairing deductible items. If the device, equipment, appliance, etc., that the claimant utilizes qualifies as a deductible item as described in paragraphs (c)(2), (3), (4) and (6) of this section, the costs directly related to installing, maintaining and repairing these items are also deductible. (The costs which are associated with modifications to a vehicle are deductible. Except for a mileage allowance, as provided for in paragraph (c)(6)(iii)(A) of this section, the costs which are associated with the vehicle itself are not deductible.)

(d) When expenses may be deducted—(1) Effective date. To be
deductible, an expense must be incurred after November 30, 1980. An expense may be considered incurred after that date if it is paid thereafter even though pursuant to a contract or other arrangement entered into before December 1, 1980.

(2) Payments for services. A payment the claimant makes for services may be deducted if the services are received while the claimant is working and the payment is made in a month the claimant is working. The Board considers the claimant to be working even though he or she must leave work temporarily to receive the services.

(3) Payments for items. A payment the claimant makes toward the cost of a deductible item (regardless of when it is acquired) may be deducted if payment is made in a month the claimant is working. See paragraph (e)(4) of this section when purchases are made in anticipation of work.

(e) How expenses are allocated—(1) Recurring expenses. The claimant may pay for services on a regular periodic basis, or the claimant may purchase an item on credit and pay for it in regular periodic installments or the claimant may rent an item. If so, each payment the claimant makes for the services and each payment the claimant makes toward the purchase or rental (including interest) is deductible in the month it is made.

Example: B starts work in October 1981 at which time she purchases a medical device at a cost of $4,000 plus interest charges of $200. Her monthly payments begin in October. She earns and receives $400 a month. The term of the installment contract is 48 months. No downpayment is made. The monthly allowable deduction for the item would be $115 ($5,520 divided by 48) for each month of work during the 48 months.

(2) Non-recurring expenses. Part or all of the claimant’s expenses may not be recurring. For example, the claimant may make a one-time payment in full for an item or service or make a downpayment. If the claimant is working when he or she makes the payment, the Board will either deduct the entire amount in the month the claimant pays it or allocate the amount over a 12 consecutive monthly period beginning with the month of payment, whichever the claimant selects.

Example: A begins working in October 1981 and earns $250 a month. In the same month, he purchases and pays for a deductible item at a cost of $250. In this situation the Board could allow a $250 deduction for the item on October 1981, reducing A’s earnings below the substantial gainful activity level for that month.

If A’s earnings had been $15 above the substantial gainful activity earnings amount, A probably would select the option of projecting the $250 payment over the 12-month period. October 1981—September 1982, giving A an allowable deduction of $205.42 a month for each month of work during that period. This deduction would reduce A’s earnings below the substantial gainful activity level for 12 months.

(3) Allocating downpayments. If the claimant makes a downpayment, the Board will, if the claimant chooses, make a separate calculation for the downpayment in order to provide for uniform monthly deductions. In these situations the Board will determine the total payment that the claimant will make over a 12 consecutive month period beginning with the month of the downpayment and allocate that amount over the 12 months. Beginning with the 13th month, the regular monthly payment will be deductible. This allocation process will be for a shorter period if the claimant’s regular monthly payments will extend over a period of less than 12 months.

Example 1: C starts working in October 1981, at which time he purchases special equipment at a cost of $4,600, paying $1,200 down. The balance of $3,400, plus interest of $450, is to be repaid in 36 installments of $115 a month beginning November 1981. C earns $600 a month. He chooses to have the downpayment allocated. In this situation the Board would allow a deduction of $205.42 a month for each month of work during the period October 1981 through September 1982. After September 1982, the deduction amount would be the regular monthly payment of $115 for each month of work during the remaining installment period.

Example:

Downpayment in October 1981 .......... $1,200
Monthly payments:

<table>
<thead>
<tr>
<th>Month</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>November</td>
<td>$2,465</td>
</tr>
<tr>
<td>September</td>
<td>$2,465</td>
</tr>
</tbody>
</table>

$2,465 - $2,465 = $205.42

Example 2: While working, B purchases a deductible item in July 1981, paying $1,450 down. However, his first monthly payment of $125 is not due until September 1981. D chooses to have the downpayment allocated. In this situation, the Board would allow a deduction of $225 a month for each month of work during the period January 1981 through June 1982. After June 1982, the deduction amount would be the regular monthly payment of $125 for each month of work.

Example:

Downpayment in July 1981 .......... $1,450
Monthly payments:

<table>
<thead>
<tr>
<th>Month</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>September</td>
<td>$2,700</td>
</tr>
<tr>
<td>October</td>
<td>$2,700</td>
</tr>
<tr>
<td>November</td>
<td>$2,700</td>
</tr>
<tr>
<td>December</td>
<td>$2,700</td>
</tr>
</tbody>
</table>

$2,700 - $2,700 = $225

(4) Payments made in anticipation of work. A payment made toward the cost of a deductible item that the claimant made in any of the 11 months preceding the month he or she started working will be taken into account in determining the claimant’s impairment-related work expenses. When an item is paid for in full during the 11 months preceding the month the claimant started working, the payment will be allocated over the 12 consecutive month period beginning with the month of the payment. However, the only portion of the payment which may be deductible is the portion allocated to the month work begins and the following months. For example, if an item is purchased 3 months before the month work began and is paid for with a one-time payment of $600, the deductible amount would be $450 ($600 divided by 12, multiplied by 9). Installment payments (including a downpayment) that the claimant made for a particular item during the 11 months preceding the month he or she started working will be totalled and considered to have been made in the month of the claimant’s first payment for that item within this 11 month period. The sum of these payments will be allocated over the 12 consecutive month period beginning with the month of the claimant’s first payment (but never earlier than 11 months before the month work began). However, the only portion of the total which may be deductible is the portion allocated to the month work begins and the following months. For example, if an item is purchased three months before the month work began and is paid for in three monthly installments of $200 each, the total payment of $600 will be considered to have been made in the month of the first payment, that is, three months before the month work began. The deductible amount would be $450 ($600 divided by 12, multiplied by 9). The amount, as determined by these formulas, will then be considered to have been paid in the first month of work. The Board will deduct either this entire amount in the first month of work or allocate it over a 12 consecutive month period, beginning with the first month of work, whichever the claimant selects. In the above examples, the claimant would have the choice of having the entire $450 deducted in the first month of work or having $37.50 a month ($450 divided by 12) deducted for each month that he or she works over a 12 consecutive month period, beginning with the first month of work. To be deductible, the payments must be for durable items such as medical devices, prostheses, work-related equipment, residential...
The Board will not deduct impairment-related work expenses unless the amounts are unreasonable. With respect to durable medical equipment, prosthetic devices, medical services, and similar medically-related items and services, the Board will apply the prevailing charges under Medicare (Part B of title XVIII, Health Insurance for the Aged and Disabled) to the extent that this information is readily available. Where the Medicare guidelines are used, the Board will consider the amount that the claimant pays to be reasonable if it is more than the prevailing charge for the same item or service under the Medicare guidelines. If the amount the claimant actually pays is more than the prevailing charge for the same item under the Medicare guidelines, the Board will deduct from the claimant's earnings the amount the claimant paid to the extent he or she establishes that the amount is consistent with the standard or normal charge for the same or similar item or service in his or her community. For items and services that are not listed in the Medicare guidelines, and for items and services that are listed in the Medicare guidelines but for which such guides cannot be used because the information is not readily available, the Board will consider the amount the claimant pays to be reasonable if it does not exceed the standard or normal charge for the same or similar item or service in his or her community. For items and services that are not listed in the Medicare guidelines, and for items and services that are listed in the Medicare guidelines but for which such guides cannot be used because the information is not readily available, the Board will consider the amount the claimant pays to be reasonable if it does not exceed the standard or normal charge for the same or similar item or service in his or her community.

Subpart M—Disability Annuity

§ 220.160 How work for a railroad employer affects a disability annuity.

A disability annuity is not payable and the annuity must be returned for any month in which the disabled annuitant works for an employer as defined in Part 202 of this chapter.

§ 220.161 How work affects an employee disability annuity.

In addition to the condition in § 220.160, the employee's disability annuity is not payable and the employee must return the annuity payment for any month in which the employee earns more than $400 (after deduction of impairment related work expenses) in employment or self-employment of any kind. Any annuity amounts withheld because the annuitant earned over $400 in a month may be paid after the end of the year as described in paragraph (c)(2) of this section. A disability annuity is not payable and the annuity must be returned for any month in which the disabled employee earned over $400.

§ 220.162 Earnings Restrictions

(a) General. Any annuitant receiving an annuity based on disability must report to the Board any work and earnings as described in §§ 220.160 and 220.161. The report may be a written or oral statement by the annuitant, or a person acting for the annuitant made or sent to a representative of the Board. The report should include the name and address of the railroad or non-railroad employer, a description of the work and the amount of gross wages (before deductions) or the net income from self-employment (earnings after deducting business expenses).

(b) Employee reports. In addition to the requirement described in (a), a report of earnings over $400 a month must be made before the employee accepts a disability annuity (the annuity payment is issued and not returned) for the second month after the first month in which earnings are over $400. Along with the report, the employee must return the annuity payment for any month in which he or she earns over $400.

§ 220.163 Employee penalty deductions.

If the employee earns over $400 in a month and does not report it within the time limit shown in § 220.162(b), a penalty is imposed. The penalty deduction for the first failure to report equals the annuity amount for the first month in which the employee earned over $400. The deduction for a second or later failure to report equals the annuity amount for each month in which the employee earned over $400 and failed to report it on time.

§ 220.164 Employee end-of-year adjustment.

(a) General. After the end of a year, the employee whose annuity was withheld for earnings over $400 in a month receives a form on which to report his or her earnings for the year.

(b) Earnings are less than $5,000. If the employee's yearly earnings are less than $5,000, all annuity payments and penalties withheld during the year because of earnings over $4,800 are paid.

(c) Earnings are $5,000 or more. (a) If the employee's yearly earnings are $5,000 or more, the annuity payments are adjusted so that the employee does not have more than one regular deduction for every $400 of earnings over $4,800. The last $200 or more of earnings over $4,800 is treated as if it were $400. If the annuity rate changes during the year, any annuities due the employee are paid first for months in which the annuity rate is higher. Penalty deductions may also apply as described in paragraph (c)(2) of this section.

(2) If the employee's yearly earnings are $5,000 or more and the employee failed to report monthly earnings over
§220.170 The trial work period.

(a) Definition of the trial work period. The trial work period is a period during which the annuitant may test his or her ability to work and still be considered disabled. The trial work period begins and ends as described in paragraph (c) of this section. During this period, the annuitant may perform "services" (see paragraph (b) of this section) in an amount of at least nine months, but these months do not have to be consecutive. The Board will not consider those services as showing that the annuitant's disability has ended until the Board has received evidence to that effect.

(b) What the Board means by services. When used in this section, "services" means any activity, even though it is not substantial gainful activity, which is done by the annuitant in employment or self-employment for pay or profit, or is the kind normally done for pay or profit. If the annuitant is employed, the Board will consider his or her work to be "services" if in any calendar year before 1979. If the annuitant is self-employed, the Board will consider his or her activities "services" if in any calendar year after 1978 the annuitant's net earnings are more than $75 a month, ($50 a month is the figure for earnings in any calendar year before 1979), or the annuitant earns more than $75 a month, ($50 a month is the figure for earnings in any calendar year before 1979). If the annuitant is self-employed, the Board will consider his or her activities "services" if in any calendar year before 1979 the annuitant's net earnings are more than $75 a month, ($50 a month is the figure for earnings in any calendar year before 1979), or the annuitant earns more than $75 a month, ($50 a month is the figure for earnings in any calendar year before 1979).

(c) Limits on the number of trial work periods. The annuitant may have only one trial period during each period in which he or she is disabled for any regular employment as defined in §220.140.

(d) Who is and is not entitled to a trial work period. (1) Generally, the annuitant is entitled to a trial work period if he or she is entitled to an annuity based on disability.

(2) An annuitant is not entitled to a trial work period if he or she did not have to complete a waiting period before qualifying for a disability annuity.

(3) If the disability annuity for an employee, child, or widow(er) who is disabled for any regular employment as defined in §220.140, is less than $400, the disability annuity may be started again within a reasonable period of time absent a substantial gainful activity.

§220.171 The reentitlement period.

(a) General. (1) The reentitlement period is an additional period after the nine months of trial work period during which the annuitant may continue to test his or her ability to work.

(2) The disability annuity of an employee, child, or widow(er) who is disabled for any regular employment will not be paid for any month in the trial work period in which the annuitant earns more than $400 in employment or self-employment (see §§220.160 and 220.164).

(3) If the disability annuity of an employee, child, or widow(er) who is disabled for any regular employment is stopped because of work during the trial work period, and the disability annuitant discontinues that work before the end of the trial work period, the disability annuity may be restarted again without a new application and a new determination of disability.

(b) When the work period begins and ends. (1) The trial work period begins with whichever of the following calendar months is the later:

(i) The month disability begins;

(ii) The month after the end of the appropriate waiting period; or

(iii) The month the application for disability is filed.

(2) The trial work period ends with the close of whichever of the following calendar months is the earlier:

(i) The ninth month (whether or not the months have been consecutive) in which the annuitant performed services;

(ii) The month in which new evidence, other than evidence relating to any work the annuitant did during the trial work period, shows that the annuitant is not disabled, even though he or she has not worked a full nine months. The Board may find that the annuitant's disability has ended at any time during the trial work period if the medical or other evidence shows that the annuitant is no longer disabled.

§220.180 The payment of the disability annuity.

(a) General. (1) The disability annuity of the annuitant is payable in the following months:

(i) Any month, after the third month, in which the annuitant earns more than $400; and

(ii) Any month in which the annuitant earns more than $400 in employment or self-employment (see §§220.160 and 220.164).

(2) The disability annuity of an employee, child, or widow(er) who is disabled for any regular employment will not be paid for any month in the trial work period in which the employee earns more than $400 in employment or self-employment (see §§220.160 and 220.164).

(3) If the disability annuity of an employee, child, or widow(er) who is disabled for any regular employment is stopped because of work during the trial work period, and the disability annuitant discontinues that work before the end of the trial work period, the disability annuity may be restarted again within a reasonable period of time absent a substantial gainful activity.
§ 220.176 When disability continues or stops for any regular employment.

(a) His or her impairment(s) improves;
(b) He or she returns to work;
(c) He or she increases the amount of work; or
(d) His or her earnings increase.

§ 220.177 When disability continues or stops for any regular employment.

There are several terms and definitions which are important to know in order to understand how the Board reviews whether a disability exists for any regular employment.

(a) Medical improvement. Medical improvement is any decrease in the medical severity of an impairment(s) which was present at the time of the most recent favorable medical decision that the annuitant was disabled or continued to be disabled. A determination that there has been a decrease in medical severity must be based on a comparison of prior and current medical evidence showing changes in the symptoms, signs or laboratory findings associated with the impairment(s).

Example 1: The claimant was awarded a disability annuity due to a herniated disc. At the time of the Board's prior decision granting the claimant an annuity he had had a laminectomy. Postoperatively, a myelogram still shows evidence of a persistent deficit in his lumbar spine. He had pain in his back, and pain and a burning sensation in his right foot and leg. The nervous system weakness or neurological changes and a modest decrease in motion in his back and leg. When the Board reviewed the annuitant's claim to determine whether his disability should be continued, his treating physicians reported that he had seen the annuitant regularly every 2 to 3 months for the past 2 years. No further myelograms had been done. At no time in the last 5 years did the right leg continued to be affected, and his standing for more than a short period of time. The annuitant's doctor further reported a moderately decreased range of motion in the annuitant's back and right leg, but again no muscle atrophy or neurological changes were reported. Medical improvement has not occurred because there has been no decrease in the severity of the impairment as shown by changes in symptoms, signs or laboratory findings.

Example 2: The claimant was awarded a disability annuity due to a rheumatoid arthritis. At the time, laboratory findings were positive for rheumatoid arthritis. The claimant's doctor reported persistent swelling and tenderness of the claimant's fingers and wrists, and that he complained of joint pain. Current medical evidence shows that while laboratory tests are still positive for rheumatoid arthritis, the claimant's impairment has responded favorably to therapy so that for the last 6 months his fingers and wrists have not been significantly swollen or painful. Medical improvement has occurred because there has been a decrease in the severity of the claimant's impairment as documented by the current symptoms and signs reported by his physician. Although the annuitant's impairment is subject to temporary remission and exacerbations, the improvement that has occurred has been sustained long enough to permit a finding of medical improvement. The Board would then determine if this medical improvement is related to the annuitant's ability to work.

(b) Medical improvement not related to ability to do work. Medical improvement is not related to the annuitant's ability to work if there has been a decrease in the severity of the impairment(s) as defined in paragraph (a) of this section. If there has been any medical improvement in an impairment(s), but it is not related to the annuitant's ability to do work and none of the exceptions applies, the annuity will be continued.
impairment as shown by his weight loss and the improvement in his edema. This medical improvement is not related to his ability to work, however, because his functional capacity to do basic work activities (i.e., the ability to sit, stand, and walk) has not increased.

(c) Medical improvement that is related to ability to do work. Medical improvement is related to an annuitant’s ability to work if there has been a decrease in the severity (as defined in paragraph (a) of this section) of the impairment(s) present at the time of the most recent favorable medical decision and an increase in the annuitant’s functional capacity to do basic work activities as discussed in paragraph (d) of this section. A determination that medical improvement related to an annuitant’s ability to do work has occurred does not, necessarily, mean that such annuitant’s disability will be found to have ended unless it is also shown that the annuitant is currently able to engage in substantial gainful activity as discussed in paragraph (e) of this section.

Example 1: The annuitant has a back impairment and has had a laminectomy to relieve the nerve root impingement and weakness in his left leg. At the time of the Board’s prior decision, basic work activities were affected because he was able to stand less than 6 hours, and sit no more than ½ hour at a time. The annuitant had a successful fusion operation on his back about 1 year before the Board’s review of his entitlement. At the time of the Board’s review, the weakness in his leg decreased. The annuitant’s functional capacity to perform basic work activities now is unimpaired because he now has no limitation on his ability to sit, walk, or stand. Medical improvement has occurred because there has been a decrease in the severity of his impairment as shown by x-ray and clinical evidence of solid union and his return to full weight-bearing. This medical improvement is related to his ability to walk, stand, and lift, and, that in fact, he could return to full-time work if he so desired.

Medical improvement has occurred because there has been a decrease in the severity of the annuitant’s impairments as shown by x-ray and clinical evidence of solid union and his return to full weight-bearing. This medical improvement is related to his ability to walk, stand, and lift. The same listed impairment is Appendix 1 of this part (see § 220.178(c)(1)). Whether or not the annuitant’s disability is found to have ended will depend on the Board’s determination as to whether he can currently engage in substantial gainful activity.

(d) Functional capacity to do basic work activities. (1) Under the law, disability is defined, in part, as the inability to do any regular employment by reason of a physical or mental impairment(s). “Regular employment” is defined as “substantial gainful activity.” In determining whether the annuitant is disabled under the law, the Board will measure, therefore, how and to what extent the annuitant’s impairment(s) has affected his or her ability to do work. The Board does this by looking at how the annuitant’s functional capacity for doing basic work activities has been affected. Basic work activities means the abilities and aptitudes necessary to do most jobs. Included are exertional abilities such as walking, standing, pushing, pulling, reaching and carrying, and nonexertional abilities and aptitudes such as seeing, hearing, speaking, remembering, using judgment, dealing with changes in a work setting and dealing with both supervisors and fellow workers. The annuitant who has no impairment(s) would be able to do all basic work activities at normal levels; he or she would have an unlimited functional capacity to do basic work activities. Depending on its nature and severity, an impairment(s) will result in some limitation to the functional capacity to do one more of these basic work activities. Diabetes, for example, can result in circulatory problems which could limit the length of time the annuitant could stand or walk and can result in damage to his or her eyes as well, so that the annuitant also has limited vision. What the annuitant can still do, despite his or her impairment(s), is called his or her residual functional capacity. How the residual functional capacity is assessed is discussed in more detail in § 220.120. Unless an impairment is so severe that it is deemed to prevent the annuitant from doing substantial gainful activity (i.e., the impairment(s) meets or equals the severity of a listed impairment in Appendix 1 of this part), it is this residual functional capacity that is used to determine whether the annuitant can still do his or her past work or, in conjunction with his or her age, education and work experience, do any other work.

(2) A decrease in the severity of an impairment as measured by changes (improvement) in symptoms, signs or laboratory findings can, if great enough, result in an increase in the functional capacity to do work activities. Vascular surgery (e.g., femoropopliteal bypass) may sometimes reduce the severity of the circulatory complications of diabetes so that better circulation results and the annuitant can stand or walk for longer periods. When new evidence showing a change in medical findings establishes that both medical improvement has occurred and the annuitant’s functional capacity to perform basic work activities, or residual functional capacity, has increased, the Board will find that medical improvement which is related to the annuitant’s ability to do work has occurred. A residual functional capacity assessment is also used to determine whether an annuitant can engage in substantial gainful activity and, thus, whether he or she continues to be disabled (see paragraph (e) of this section).

(3) Many impairment-related factors must be considered in assessing an annuitant’s functional capacity for basic work activities. Age is one key factor. Medical literature shows that there is a gradual decrease in organ function with age; that major losses and deficits become irreversible over time and that maximum exercise performance diminishes with age. Other changes related to sustained periods of inactivity and the aging process include muscle atrophy, degenerative joint changes, decrease in range of motion, and changes in the cardiac and respiratory systems which limit the exertional range.

(4) Studies has also shown that the longer the annuitant is away from the workplace and is inactive, the more difficult it becomes to return to ongoing gainful employment. In addition, a gradual change occurs in most jobs so that after about 15 years, it is no longer realistic to expect that skills and abilities acquired in these jobs will continue to apply to the current workplace. Thus, if the annuitant is age 50 or over and has been receiving a disability annuity for a considerable period of time, the Board will consider this factor along with his or her age in assessing the residual functional capacity. This will ensure that the
disadvantages resulting from inactivity and the aging process during a longer period of disability will be considered. In some instances where available evidence does not resolve what the annuitant can or cannot do on a sustained basis, the Board may provide special work evaluations or other appropriate testing.

(e) Ability to engage in substantial gainful activity. In most instances, the Board must show that the annuitant is able to engage in substantial gainful activity before stopping his or her annuity. When doing this, the Board will consider all of the annuitant’s current impairments not just that impairment(s) present at the time of the most recent favorable determination. If the Board cannot determine that the annuitant is still disabled based on medical considerations alone (as discussed in §§ 220.120 through 220.135), it will use the new symptoms, signs and laboratory findings to make an objective assessment of functional capacity to do basic work activities (or residual functional capacity) and will consider vocational factors. See §§ 220.120 through 220.134.

(f) Evidence and basis for the Board’s decision. The Board’s decisions under this section will be made on a neutral basis without any initial inference as to the presence or absence of disability being drawn from the fact that the annuitant had previously been determined to be disabled. The Board will consider all of the evidence the annuitant submits. An annuitant must give the Board reports from his or her physician, psychologist, or others who have treated or evaluated him or her, as well as any other evidence that will help the Board determine if he or she is still disabled (see § 220.45). The annuitant must have a good reason for not giving the Board this information or the Board may find that his or her disability has ended (see § 220.178(b)(2)). If the Board asks the annuitant, he or she must contact his or her medical sources to help the Board get the medical reports. The Board will make every reasonable effort to help the annuitant in getting medical reports when he or she gives the Board permission to request them from his or her physician, psychologist, or other medical sources. Every reasonable effort means that the Board will make an initial request and, after 20 days, one followup request to the annuitant medical source to obtain the medical evidence necessary to make a determination before the Board evaluates medical evidence obtained from another source on a consultative basis. The medical source will have 10 days from the followup to reply (unless experience indicates that a longer period is advisable in a particular case). In some instances the Board may order a consultative examination while awaiting receipt of medical source evidence. Before deciding that an annuitant’s disability had ended, the Board will develop a complete medical history covering at least the preceding 12 months (See § 220.45(b)). A consultative examination may be purchased when the Board needs additional evidence to determine whether or not an annuitant’s disability continues. As a result, the Board may ask the annuitant, upon the Board request and reasonable notice, to undergo consultative examinations and tests to help the Board determine if the annuitant is still disabled (see § 220.50). The Board will decide whether or not to purchase a consultative examination in accordance with the standards in §§ 220.53 through 220.54.

(g) Point of comparison. For purposes of determining whether medical improvement has occurred, the Board will compare the current medical severity of that impairment(s), which was present at the time of the most recent favorable medical decision that the annuitant was disabled or continued to be disabled, to the medical severity of that impairment(s) at that time. If medical improvement has occurred, the Board will compare the annuitant’s current functional capacity to do basic work activities (i.e., his or her residual functional capacity) based on this previously existing impairment(s) with the annuitant’s prior residual functional capacity in order to determine whether the medical improvement is related to his or her ability to do work. The most recent favorable medical decision is the latest decision involving a consideration of the medical evidence and the issue of whether the annuitant was disabled or continued to be disabled which became final.

§ 220.178 Determining medical improvement and its relationship to the annuitant’s ability to do work.

(a) General. Paragraphs (a), (b), and (c) of § 220.177 discuss what is meant by medical improvement, medical improvement not related to the ability to work and medical improvement that is related to the ability to work. How the Board will arrive at the decision that medical improvement has occurred and its relationship to the ability to do work is discussed in paragraphs (b) and (c) of this section.

(b) Determining if medical improvement is related to ability to work. If there is a decrease in medical severity as shown by the symptoms, signs and laboratory findings, the Board then must determine if it is related to the annuitant’s ability to do work. In § 220.177(d) the relationship between medical severity and limitation on functional capacity to do basic work activities (or residual functional capacity) and how changes in medical severity can affect the annuitant’s residual functional capacity is explained. In determining whether medical improvement that has occurred is related to the annuitant’s ability to do work, the Board will assess the annuitant’s residual functional capacity (in accordance with § 220.177(d)) based on the current severity of the impairment(s) which was present at that annuitant’s last favorable medical decision. The annuitant’s new residual functional capacity will then be compared to the annuitant’s residual functional capacity at the time of the Board’s most recent favorable medical decision. Unless an increase in the current residual functional capacity is based on changes in the signs, symptoms, or laboratory findings, any medical improvement that has occurred will not be considered to be related to the annuitant’s ability to do work.

(c) Additional factors and considerations. The Board will also apply the following in its determinations of medical improvement and its relationship to the annuitant’s ability to do work:

(1) Previous impairment met or equaled listings. If the Board’s most recent favorable decision was based on the fact that the annuitant’s impairment(s) at the time met or equaled the severity contemplated by the Listing of Impairments in Appendix I of this Part, an assessment of his or her residual functional capacity would not have been made. If medical improvement has occurred and the severity of the prior impairment(s) no longer meets or equals the same listing, the Board will find that the medical improvement was related to the annuitant’s ability to work. Appendix I of this Part describes impairments which, if severe enough, affect the annuitant’s ability to work. If the Listing level of severity is met or equaled, the annuitant is deemed, in the absence of evidence to the contrary, to be unable to engage in substantial gainful activity. If there has been medical improvement to the degree that the requirement of the listing is no longer met or equaled, then the medical improvement is related to the annuitant’s ability to work. The Board must, of course, also establish that the annuitant can currently engage
Future worsenings. Improvement in such impairment(s) that is only temporary, i.e., less than 1 year, will not warrant a finding of medical improvement.

(5) Prior file cannot be located. If the prior file cannot be located, the Board will first determine whether the annuitant is able to now engage in substantial gainful activity based on all of his or her current impairments. In this way, the Board will be able to determine that his or her disability continues at the earliest point without addressing the often lengthy process of reconstructing prior evidence. If the annuitant cannot engage in substantial gainful activity currently, his or her disability will continue unless one of the second group of exceptions applies (see § 220.179(b)).

§ 220.179 Exceptions to medical improvement.

(a) First group of exceptions to medical improvement. The law provides for certain limited situations when the annuitant’s disability can be found to have ended even though medical improvement has not occurred, if he or she can engage in substantial gainful activity. These exceptions to medical improvement are intended to provide a way of finding that the annuitant is no longer disabled in those limited situations where, even though there has been no decrease in severity of the impairment(s), evidence shows that the annuitant should no longer be considered disabled or never should have been considered disabled. If one of these exceptions applies, the Board must also show that, taking all of the annuitant’s current impairment(s) into account, not just those that existed at the time of the Board’s most recent favorable medical decision, the annuitant is now able to engage in substantial gainful activity before his or her disability can be found to have ended. As part of the review process, the annuitant will be asked about any medical or vocational therapy that he or she has received or is receiving. Those answers and the evidence gathered as a result as well as all other evidence, will serve as the basis for the finding that an exception applies.

(1) Substantial evidence shows that the annuitant is the beneficiary of advances in medical or vocational therapy or technology (related to his or her ability to work). Advances in medical or vocational therapy or technology are improvements in treatment or rehabilitative methods which have increased the annuitant’s ability to do basic work activities. The Board will apply this exception when substantial evidence shows that the annuitant has been the beneficiary of services which reflect these advances and they have favorably affected the severity of his or her impairment(s) or ability to do basic work activities. This decision will be based on new medical evidence and a new residual functional capacity assessment. In many instances, an advanced medical therapy or technology will result in a decrease in severity as shown by symptoms, signs and laboratory findings which will meet the definition of medical improvement. This exception will, therefore, see very limited application.

(2) Substantial evidence shows that the annuitant has undergone vocational training (related to his or her ability to work). Vocational training (related to the annuitant’s ability to work) may include, but is not limited to, additional education, training, or work experience that improves his or her ability to meet the vocational requirements of new jobs. This decision will be based on substantial evidence which includes new medical evidence and a new residual functional capacity assessment. If, at the time of the Board’s review the annuitant has not completed vocational therapy which could affect the continuance of his or her disability, the Board will review such annuitant’s claim upon completion of the therapy.

Example 1: The annuitant was found to be disabled because the limitations imposed on him by his impairment(s) allowed him to do work that was at a sedentary level of exertion. The annuitant’s prior work experience was work that required a medium level of exertion with no acquired skills that could be transferred to sedentary work. His age, education, and past work experience at the time did not qualify him for work that was below his medium level of exertion. The annuitant enrolled in and completed a specialized training course which qualifies him for a job in data processing as a computer programmer in the period since he was below this medium level of exertion. On review of his claim, current evidence shows that there is no medical improvement and that he can still do only sedentary work. As the work of a computer programmer is sedentary in nature, he is now able to engage in substantial gainful activity when his new skills are considered.

Example 2: The annuitant was previously entitled to a disability annuity because the medical evidence and assessment of his residual functional capacity showed he could only do light work. His prior work was considered to be of a heavy exertional level with no acquired skills that could be transferred to light work. His age, education, and past work experience did not qualify him for work that was below the heavy level of exertion. The current evidence and residual functional capacity show there has been no medical improvement and that he can still do only light work. Since he was originally
entitled to a disability annuity, his vocational rehabilitation agency enrolled him in and he successfully completed a trade school course so that he is now qualified to do small appliance repair. This work is light in nature, so when his new skills are considered, he is now able to engage in substantial gainful activity even though there has been no change in his residual functional capacity.

(3) Substantial evidence shows that based on new or improved diagnostic or evaluative techniques the annuitant's impairment(s) is not as disabling as it was considered to be at the time of the most recent favorable decision. Changing methodologies and advances in medical and other diagnostic and evaluative techniques have given, and will continue to give, rise to improved methods for measuring and documenting the effects of various impairments on the ability to do work. Where, by such new or improved methods, substantial evidence shows that the annuitant's impairment(s) is not as severe as was determined at the time of the Board's most recent favorable medical decision, such evidence may serve as a basis for finding that the annuitant can engage in substantial gainful activity and is no longer disabled. In order to be used under this exception, however, the new or improved techniques must have become generally available after the date of the Board's most recent favorable medical decision.

(i) How the Board will determine which methods are new or improved techniques and when they become generally available. New or improved diagnostic techniques or evaluations will come to the Board's attention by several methods. In reviewing cases, the Board often becomes aware of new techniques when their results are presented as evidence. Such techniques and evaluations are also discussed and acknowledged in medical literature by medical professional groups and other governmental entities. Through these sources, the Board develops listings of new techniques and when they become generally available.

(ii) How the annuitant will know which methods are new or improved techniques and when they become generally available. The Board will let annuitants know which methods it considers to be new or improved techniques and when they become available. Some of the future changes in the Listing of Impairments in Appendix 1 of this part will be based on new or improved diagnostic or evaluative techniques. Such listings changes will clearly state this fact as they are published as Notices of Proposed Rulemaking and the new or improved techniques will be considered generally available as of the date of the final publication of that particular listing in the Federal Register.

Example: The electrocardiographic exercise test has replaced the Master's 2-step test as a measurement of heart function since the time of the annuitant's last favorable medical decision. Current evidence shows that the annuitant's impairment, which was previously considered on the Master's 2-step test, is not now as disabling as was previously thought. If, taking all his current impairments into account, the annuitant is now able to engage in substantial gainful activity, this exception would be used to find that he is no longer disabled even if medical improvement has not occurred.

(4) Substantial evidence demonstrates that any prior disability decision was in error. The Board will apply the exception to medical improvement based on error if substantial evidence (which may be evidence on the record at the time any prior determination of the entitlement to an annuity based on disability was made, or newly obtained evidence which relates to that determination) demonstrates that a prior determination was in error. A prior determination will be found in error only if:

(i) Substantial evidence shows on its face that the decision in question should not have been made (e.g., the evidence in file such as pulmonary function study values was misread or an adjudicative standard such as a listing in Appendix 1 of this part or a medical/vocational rule in Appendix 2 of this part was misapplied).

Example 1: The annuitant was granted a disability annuity when it was determined that his epilepsy met Listing 11.02. This listing calls for a finding of major motor seizures more frequently than once a month as documented by treatment or history and by a detailed description of a typical seizure pattern. A history of either diurnal episodes or nocturnal episodes with residuals interfering with daily activities is also required. On review, it is found that a history of the frequency of his seizures showed that they occurred only once or twice a year. The prior decision would be found to be in error, and whether the annuitant was still considered to be disabled would be based on whether he could currently engage in substantial gainful activity.

Example 2: The annuitant's prior award of a disability annuity was based on vocational rule 201.14 in Appendix 2 of this part. This rule applies to a person age 50-54 who has at least a high school education, whose previous work was entirely at semiskilled level, and who can do only sedentary work. On review it is found that at the time of the prior determination the annuitant was actually only age 46 and vocational rule 201.21 should have been used. This rule would have called for a denial of his claim and the prior decision is found to have been in error. Continuation of his disability would depend on a finding of his current inability to engage in substantial gainful activity.

(ii) At the time of the prior evaluation, required and material evidence of the severity of the annuitant's impairment(s) was not before the Board. That evidence becomes available upon review, and substantial evidence demonstrates that had such evidence been present at the time of the prior determination, disability would not have been found.

Example: The annuitant was found disabled on the basis of chronic obstructive pulmonary disease. The severity of his impairment was documented primarily by pulmonary function testing results. The evidence showed that he could do only light work. Spirometric tracings of this testing, although required, were not obtained. However, on review, the original report is resubmitted by the consultative examining physician along with the corresponding spirometric tracings. A review of the tracings shows that the test was invalid. Current pulmonary function testing supported by spirometric tracings reveals that the annuitant's impairment does not limit his ability to perform basic work activities in any way. Error is found based on the fact that required material evidence, which was originally missing, now becomes available and shows that it had been available at the time of the prior determination, disability would not have been found.

(iii) Substantial evidence which is new evidence relating to the prior determination (of allowance or continuance) refutes the conclusions that were based upon the prior evidence (e.g., a tumor thought to be malignant was later shown to have actually been benign). Substantial evidence must show that the new evidence (which relates to the prior determination) been considered at the time of the prior decision, the disability would not have been allowed or continued. A substitution of current judgment for that used in the prior favorable decision will not be the basis for applying this exception.

Example: The annuitant was previously found entitled to a disability annuity on the basis of diabetes mellitus which the prior adjudicator believed was equivalent to the level of severity contemplated in the Listing of Impairments. The prior record shows that the annuitant has "brittle" diabetes for which he was taking insulin. The annuitant's urine was 3-4 for sugar, and he alleged occasional hypoglycemic attacks caused by exertion. His doctor felt the diabetes was never really controlled because he was not following his diet or taking his medication regularly. On review, symptoms, signs, and laboratory findings are unchanged. The current adjudicator feels, however, that the annuitant's impairment clearly does not equal the severity contemplated by the listings. Error cannot be found because it would represent a substitution of current judgment.
for that of the prior adjudicator that the annuitant's impairment equaled a listing. The exception for error will not be applied retroactively under the conditions set out above unless the conditions for reopening the prior decision are met.

(5) The annuitant is currently engaging in substantial gainful activity. If the annuitant is currently engaging in substantial gainful activity, before the Board determines whether he or she is no longer disabled because of his or her work activity, the Board will consider whether he or she is entitled to a trial work period as set out in § 220.170. The Board will find that the annuitant's disability has ended in the month in which he or she demonstrated the ability to engage in substantial gainful activity (following completion of a trial work period, where it applies). This exception does not apply in determining whether the annuitant continues to have a disabling impairment(s) for purposes of deciding his or her eligibility for a periodic payment beginning at any future time.

(6) A prior determination was fraudulently obtained. If the Board finds that any prior favorable determination was obtained by fraud, it may find that the annuitant is no longer disabled. In addition, the Board may reopen the claim.

(2) Failure to cooperate with the Board. If there is a question about whether the annuitant continues to be disabled and the Board requests that he or she submit medical or other evidence or go for a physical or mental examination by a certain date, the Board will find that the annuitant's disability has ended if he or she fails (without good cause) to do what is requested. The month in which the annuitant's disability ends will be the first month in which he or she failed to do what was requested.

(3) Inability of the Board to locate the annuitant. If there is a question about whether the annuitant continues to be disabled and the Board is unable to find him or her to resolve the question, the Board will suspend annuity payments.

(4) Failure of the annuitant to follow prescribed treatment which would be expected to improve his or her ability to engage in substantial gainful activity. If treatment has been prescribed for the annuitant which would be expected to restore his or her ability to work, he or she must follow that treatment in order to be paid a disability annuity. If the annuitant is not following that treatment and he or she does not have good cause for failing to follow the treatment, the Board will find that his or her disability has ended. The Board's review may cease and the disability may be continued at any point if the Board determines that there is sufficient evidence to find that the annuitant is still unable to engage in substantial gainful activity. The steps are—

(a) Is the annuitant engaging in substantial gainful activity? If he or she is (and any applicable trial work period has been completed), the Board will find disability to have ended (see § 220.179(a)(5));

(b) If the annuitant is not engaging in substantial gainful activity, does he or she have an impairment or combination of impairments which meets or equals the severity of an impairment listed in Appendix I of this part. If the annuitant's impairment(s) does meet or equal the level of severity of an impairment listed in Appendix I of this part, his or her disability will be found to continue;

(c) If the annuitant's impairment(s) does not meet or equal the level of severity of an impairment listed in Appendix I of this part, has there been medical improvement as defined in § 220.177(a)? If there has been medical improvement as shown by a decrease in medical severity, see step (d). If there has been no decrease in medical severity, then there has been no medical improvement (see step (e));

(d) If there has been medical improvement, the Board must determine whether it is related to the annuitant's ability to do work in accordance with paragraphs (a) through (d) of § 220.177 (i.e., whether or not there has been an increase in the residual functional capacity based on the impairment(s) that was present at the time of the most recent favorable medical determination). If medical improvement is not related to the annuitant's ability to do work, see step (e). If medical improvement is related to the annuitant's ability to do work, see step (f);

(e) If the Board found at step (c) that there has been no medical improvement or if it found at step (d) that the medical improvement is not related to the annuitant's ability to work, the Board considers whether any of the exceptions in § 220.178 apply. If none of them apply, disability will be found to continue. If one of the first group of exceptions to medical improvement applies, see step (f). If an exception from the second group of exceptions to medical improvement applies, disability will be found to have ended. The second group of exceptions to medical improvement may be considered at any point in this process;

(f) If medical improvement is shown to be related to the annuitant's ability to do work or if one of the first group of exceptions to medical improvement applies, the Board will determine whether all of the annuitant's current impairments in combination are severe. This determination will consider all current impairments and the impact of the combination of those impairments on the ability to function. If the residual functional capacity assessment in step (d) above shows significant limitation of ability to do basic work activities, see step (g). When the evidence shows that all current impairments in combination do not significantly limit physical or mental abilities to do basic work activities, these impairments will not be considered severe in nature, and the annuitant will no longer be considered to be disabled;

(g) If the annuitant's impairment(s) is severe, the Board will assess his or her current ability to engage in substantial gainful activity. That is, the Board will assess the annuitant's residual functional capacity based on all of his or her current impairments and consider whether he or she can still do work that was done in the past. If he or she can do such work, disability will be found to have ended; and

(h) If the annuitant is not able to do work he or she has done in the past, the
Board will consider one final step. Given the residual functional capacity assessment and considering the annuitant's age, education and past work experience, can he or she do other work? If the annuitant can do other work, disability will be found to have ended. If he or she cannot do other work, disability will be found to continue.

§ 220.181 The month in which the Board will find that the annuitant is no longer disabled.

If the evidence shows that the annuitant is no longer disabled, the Board will find that his or her disability ended in the earliest of the following months:
(a) The month the Board mails the annuitant a notice saying that the Board finds that he or she is no longer disabled based on evidence showing:
(1) there has been medical improvement in the annuitant's impairments related to the ability to work and the annuitant has the capacity to engage in substantial gainful work under the rules set out in §§ 220.177 and 220.178; or
(2) there has been no medical improvement in the annuitant's impairments related to the ability to work but the annuitant has the capacity to engage in substantial gainful work and one of the exceptions to medical improvement set out in § 220.179(a)(1), (2), (3) or (4) applies.
(b) The month in which the annuitant demonstrated his or her ability to engage in substantial gainful activity (following completion of a trial work period);
(c) The month in which the annuitant actually does substantial gainful activity where such annuitant is not entitled to a trial work period;
(d) The month in which the annuitant returns to full-time work, with no significant medical restrictions and acknowledges that medical improvement has occurred, and the Board expected the annuitant's impairment(s) to improve;
(e) The first month in which the annuitant failed without good cause to do what the Board asked, when the rule set out in paragraph (b)(2) of § 220.179 applies;
(f) The first month in which the question of continuing disability arose and the Board could not locate the annuitant after a suitable investigation (see § 220.179(b)(3));
(g) The first month in which the annuitant failed without good cause to follow prescribed treatment, when the rule set out in paragraph (b)(4) of § 220.179 applies; or
(h) The first month the annuitant was told by his or her physician that he or she could return to work provided there is no substantial conflict between that physician's and the annuitant's statement regarding that annuitant's awareness of his or her capacity for work and the earlier date is supported by the medical evidence.
(i) The month the evidence shows that the annuitant is no longer disabled under the rules set out in §§ 220.177 through 220.180, and he or she was disabled only for a specified period of time in the past as discussed in § 220.21 or § 220.105;

§ 220.182 Before a disability annuity is stopped.

Before the Board stops a disability annuity, it will give the annuitant a chance to explain why it should not do so.

§ 220.183 Notice that the annuitant is not disabled.

(a) General. If the Board determines that the annuitant does not meet the disability requirements of the law, the disability annuity will generally stop. Except in the circumstance described in paragraph (d) of this section, the Board will give the annuitant advance written notice when the Board has determined that he or she is no longer disabled.
(b) What the advance written notice will tell the annuitant. The advance written notice will provide—
(1) A summary of the information the Board has and an explanation of why the Board believes the annuitant is no longer disabled. If it is because of medical reasons, the notice will tell the annuitant what the medical information is in his or her file shows. If it is because of the annuitant's work activity, the notice will tell the annuitant what information the Board has about the work he or she is doing or has done, and why this work shows that he or she is not disabled. If it is because of the annuitant's failure to give the Board information the Board needs or failure to do what the Board asks, the notice will tell the annuitant what information the Board needs and why, or what the annuitant has to do and why;
(2) The date the disability annuity will stop;
(3) An opportunity for the annuitant to submit evidence within a specified period to support continuance of disability before the decision becomes final; and
(4) An explanation of the annuitant's rights to reconsideration and appeal after the decision becomes final.
(c) What the annuitant should do if he or she receives an advance written notice. If the annuitant agrees with the advance written notice, he or she does not need to take any action. If the annuitant desires further information or disagrees with what the Board has told him or her, the annuitant should immediately write or visit a Board office. If the annuitant believes he or she is now disabled, the annuitant should tell the Board why. The annuitant may give the Board any additional or new information, including reports from doctors, hospitals, railroad or non-railroad employers, or others that he or she believes the Board should have. The annuitant should send these as soon as possible to a Board office.

(d) When the Board will not give the annuitant advance written notice. The Board will not give the annuitant advance written notice when the Board determines that he or she is not now disabled if the Board recently told the annuitant that—
(1) The information the Board has shows that he or she is not disabled;
(2) The Board was gathering more information; and
(3) The disability annuity would stop.

§ 220.184 If the annuitant becomes disabled by another impairment(s).

If a new severe impairment(s) begins in or before the month in which the last impairment(s) ends, the Board will find that disability is continuing. The impairment(s) need not be expected to last 12 months or to result in death, but it must be severe enough to keep the annuitant from doing substantial gainful activity, or severe enough so that he or she is still disabled.

Appendix 1—Listing of Impairments

In the Listing of Impairments, the listings under each separate body system in both Part A and Part B will be effective for periods ranging from 4 to 8 years unless extended or revised and promulgated again. Specifically, the body system listings in the Listing of Impairments will be subject to the following termination dates:
Musculoskeletal system (1.00) within 5 years. Consequently, the listings in this body system will no longer be effective on December 6, 1990.
Respiratory system (3.00) within 6 years. Consequently, the listings in this body system will no longer be effective on December 6, 1991.
Cardiovascular system (4.00) within 4 years. Consequently, the listings in this body system will no longer be effective on December 6, 1993.
The listings under the other body systems in Part A and Part B will expire in 8 years. Consequently, the listing in these body systems will no longer be effective on December 6, 1995. The mental disorders listings in Part A will no longer be effective
on August 28, 1990, unless extended by the Secretary or revised and promulgated again.

**Part A**

Criteria applicable to individuals age 18 and over and to children under age 18 where criteria are appropriate.

**Sec.**

1.00 Musculoskeletal System.

1.03 Arthritis of the spine,

1.04 Arthritis of one major joint in each of the upper extremities (due to any cause):

1.05C Disorders of the spine.

2.00 Special Senses and Speech.

3.00 Respiratory System.

4.00 Cardiovascular System.

5.00 Digestive System.

6.00 Genito-Urinary System.

7.00 Hemic and Lymphatic System.

8.00 Skin.

9.00 Endocrine System.

10.00 Multiple Body Systems.

11.00 Neurological.

12.00 Mental Disorders.

13.00 Neoplastic Disease, Malignant.

**1.00 Musculoskeletal System**

**A. Loss of function** may be due to amputation or deformity. Pain may be an important factor in causing functional loss, but it must be associated with relevant abnormality of the character or history of findings. Evaluations of musculoskeletal impairments should be supported where applicable by detailed descriptions of the joints, including ranges of motion, condition of the joint capsule, muscle changes, circulatory deficits, and x-ray abnormalities.

**B. Disorders of the spine**, associated with vertebrogenic disorders as in 1.05C, result in impairment because of distortion of the bony and ligamentous architecture of the spine or implantation of a herniated nucleus pulposus or bulging annulus on a nerve root. Impairment caused by such abnormalities usually improves with time or responds to treatment. Appropriate abnormal physical findings must be shown to persist on repeated examinations despite therapy for a reasonable presumption to be made that severe impairment of a functional nature has occurred for a continuous period of 12 months. This may occur in cases with unsuccessful prior surgical treatment.

Evaluation of the impairment caused by disorders of the spine requires that a clinical diagnosis of the condition to be evaluated first be established on the basis of adequate history, physical examination, and roentgenograms. The specific findings stated in 1.05C represent the level required for that impairment; these findings, by themselves, are not intended to represent the basis for establishing the clinical diagnosis. Furthermore, while neurological examination findings are required, they are not to be interpreted as a basis for evaluating the magnitude of any neurological impairment. Neurological impairments are to be evaluated under 11.00-11.19.

The history must include a detailed description of the nature, location, and radiation of pain; mechanical factors which incite and relieve pain; prescribed treatment, including type, dose, and frequency of analgesic; and typical daily activities. Care must be taken to ascertain that the reported examination findings are consistent with the individual's daily activities. There must be a detailed description of the orthopedic and neurologic examination findings. The findings should include a description of gait, limitation of movement of the spine given quantitatively in degrees from the vertical, position, motor and sensory abnormalities, muscle spasm, and deep tendon reflexes. Observations of the individual during the examination should be reported; e.g., examiner on and off the examining table. Inability to walk on heels or toes, to squat, or to arise from a squatting position, where appropriate, may be considered evidence of significant motor loss. However, a report of atrophy is not acceptable as evidence of significant motor loss without circumferential measurements of both thighs and lower legs (or upper or lower arms) at a stated point above and below the knee or proximities in inches or centimeters. A specific description of atrophy of hand muscles is acceptable without measurements of atrophy but should include measurements of grip strength.

These physical examination findings must be determined on the basis of objective observations during the examination and not simply a report of the individual's allegation, e.g., be stated by x-rays, etc. Alternative testing methods should be used to verify the objectivity of the abnormal findings, e.g., a seated straight-leg raising test; in addition to a supine straight-leg raising test. Since abnormal findings may be intermittent, their continuous presence over a period of time must be established by a record of ongoing treatment. Neurological abnormalities may not completely subside after surgical or nonsurgical treatment, or with the passage of time. Residual neurological abnormalities, which persist after it has been determined clinically or by direct surgical or other observation that the ongoing or persistent impairment is no longer present, cannot be considered to satisfy the required findings in 1.05C.

Where surgical procedures have been performed, documentation should include a copy of the operative note and available pathology reports.

Electrodiagnostic procedures and myelography may be useful in establishing the clinical diagnosis, but do not constitute alternative criteria to the requirements in 1.05C.

**C. After maximum benefit from surgical therapy** has been achieved in situations involving fractures of an upper extremity (see 1.12) or soft tissue injuries of a lower or upper extremity (see 1.13), i.e., there have been no significant changes in physical findings or x-ray findings for any 6-month period after the last definitive surgical procedure, evaluation should be made on the basis of demonstrable residuals.

**D. Major joints** as used herein refer to: hip, knee, ankle, shoulder, elbow, or wrist and hand. (Wrist and hand are considered together as one major joint.)

**B. The measurements of joint motion** are based on the techniques described in the "Joint Motion Method of Measuring and Recording," published by the American Academy of Orthopaedic Surgeons in 1965, or the "Guides to the Evaluation of Permanent Impairment—The Extremities and Back" (Chapter 1); American Medical Association, 1971.

**1.01 Category of Impairments,** Musculoskeletal

**1.02 Active rheumatoid arthritis and other inflammatory arthritis.** With both A and B.

A. History of persistent joint pain, swelling, and tenderness involving multiple major joints (see 1.00D) and with signs of joint inflammation (swelling and tenderness) on current physical examination despite prescribed therapy for at least 3 months, resulting in significant restriction of function of the affected joints, and clinical activity expected to last at least 12 months; and

B. Corroboration of diagnosis at some point in time by either:

1. Positive serologic test for rheumatoid factor; or
2. Antinuclear antibodies; or
3. Elevated sedimentation rate; or
4. Characteristic histologic changes in biopsy of synovial membrane or subcutaneous nodule (obtained independent of Social Security disability evaluation).

**1.03 Arthritis of a major weight-bearing joint (due to any cause):**

A. Gross anatomical deformity of hip or knee (e.g., subluxation, contracture, bony or fibrous ankylosis, instability) supported by X-ray evidence of either significant joint space narrowing or significant bony destruction and markedly limiting ability to walk and stand; or

B. Reconstructive surgery or surgical arthrodesis of a major weight-bearing joint and return to full weight-bearing status did not occur, or is not expected to occur, within 12 months of onset.

**1.04 Arthritis of one major joint in each of the upper extremities (due to any cause):**

With history of persistent joint pain and stiffness, signs of marked limitation of motion or abnormal motion of the affected joints on current physical examination, and X-ray evidence of either significant joint space narrowing or significant bony destruction. With:

A. Abduction and forward flexion (elevation) of both arms at the shoulders, including scapular motion, restricted to less than 50 degrees; or
B. Gross anatomical deformity (e.g., subluxation, contracture, bony or fibrous ankylosis, instability, ulnar deviation) and enlargement or effusion of the affected joints.

**1.05C Disorders of the spine:***

A. Arthritis manifested by ankylosis or fixation of the cervical or dorsolumbar spine at 30° or more of flexion measured from the neutral position, with X-ray evidence of:

1. Calcification of the anterior and lateral ligaments, or
2. Bilateral ankylosis of the sacroiliac joints with abnormal apophyseal articulations; or
B. Osteoporosis, generalized (established by X-ray) manifested by pain and limitation of back motion and paravertebral muscle spasm, with X-ray evidence of:

1. Compression fracture of a vertebral body with loss of at least 50 percent of the estimated height of the vertebral body prior
to the compression fracture, with no intervening direct traumatic episode; or
2. Multiple fractures of vertebrae with no intervening direct traumatic episode; or
3. Other vertebrogenic disorders (e.g., herniated nucleus pulposus, spinal stenosis) with the following persisting for at least 3 months despite prescribed therapy and expected to last 12 months. With both 1 and 2, expected to last 12 months despite prescribed therapy and with the following persisting for at least 3 months despite prescribed therapy and expected to last 12 months. With both 1 and 2:

1. Pain, muscle spasm, and significant limitation of motion in the spine; and
2. Appropriate radiologic distribution of significant subluxation with muscle weakness and sensory and reflex loss.

1.08 Osteomyelitis or septic arthritis (established by X-ray):
A. Located in the pelvis, vertebrae, femur, tibia, or in the tarsus of an upper or lower extremity, with persistent activity or occurrence of at least two episodes of acute activity within a 5-month period prior to adjudication, manifested by local inflammatory and systemic signs and laboratory findings (e.g., heat, redness, swelling, leukocytosis, or increased sedimentation rate) and expected to last at least 12 months despite prescribed therapy; or
B. Multiple localizations and systemic manifestations as in A above.

1.09 Amputation or anatomical deformity of (i.e., loss of major function due to degenerative changes associated with vascular or neurological deficits, traumatic loss of muscle mass or tendons and X-ray evidence of bony ankylosis at an unfavorable angle, joint motor loss with muscle weakness and/or instability):
A. Both hands; or
B. Both feet; or
C. One hand and one foot.

1.10 Amputation of one lower extremity (at or above the tarsal region):
A. Hemipelvectomy or hip disarticulation; or
B. Amputation at or above the tarsal region due to peripheral vascular disease or distal medullae; or
C. Inability to use a prosthesis effectively, without obligatory assistive devices, due to one of the following:
   1. Vascular disease; or
   2. Neurological complications (e.g., loss of position sense); or
   3. Stump too short or stump complications persistent, or are expected to persist, for at least 12 months from onset; or
4. Disorder of control of an upper or lower extremity which markedly limits ability to walk and stand.

1.11 Fracture of the femur, tibia, tarsal loss of pelvis with solid union not evident on X-ray and not clinically solid, when such determination is feasible, and return to full weight-bearing status did not occur or is not expected to occur within 12 months of onset.

1.12 Fractures of an upper extremity with non-union of a fracture of the shaft of the humerus, radius, or ulna under continuing surgical management directed toward restoration of functional use of the extremity and such function was not restored or expected to be restored within 12 months after onset.

1.13 Soft tissue injuries of an upper or lower extremity requiring a series of staged surgical procedures within 12 months after onset for salvage and/or restoration of major function of the extremity, and such major function was not restored or expected to be restored within 12 months after onset.

2.00 Special Senses and Speech
A. Ophthalmology
1. Causes of impairment. Diseases or injury of the eyes may produce loss of central or peripheral vision. Loss of central vision results in inability to distinguish detail and presents an obstacle to performance. Loss of peripheral vision restricts the ability of an individual to move about freely. The extent of impairment of sight should be determined by visual testing.

2. Central visual acuity. A loss of central visual acuity may be caused by impaired distant and/or near vision. However, for an individual to meet the level of severity described in 2.02 and 2.04, only the remaining central visual acuity of the better eye with best correction based on the Snellen test chart measurement may be used. Correction obtained by special visual aids (e.g., contact lenses) will be considered if the individual uses the ability to wear such aids.

3. Field of vision. Impairment of peripheral vision may result if there is contraction of the visual fields. The contraction may be either symmetrical or irregular. The extent of the remaining peripheral visual field will be determined by usual perimetric methods at a distance of 300 mm. under illumination of not less than 7-foot candles. For the phakic eye (the eye with a lens), a 3 mm. white disc target will be used, and for the aphakic eye (the eye without the lens), a 6 mm. white disc target will be used. In neither instance should corrective spectacle lenses be worn during the examination but if they have been used, this fact must be stated.

Measurements obtained on comparable perimetric devices may be used; this does not include the use of tangent screen measurements. Tangent field measurements obtained using the Goldmann perimeter, the object size designation III and the illumination designation 4 should be used for the phakic eye, and the object size designation IV and illumination designation 4 for the aphakic eye.

Field measurements must be accompanied by notated field charts, a description of the type and size of the target and the test distance. Tangent screen visual fields are not acceptable as a measurement of peripheral field loss.

Where the loss is predominantly in the lower visual fields, a system such as the weighted grid scale for tangent fields described by B. Esterman (see Grid for Scoring Visual Fields, II. Perimeter, Archives of Ophthalmology, 78:400, 1968) may be used for determining whether the visual field loss is comparable to that described in Table 2.

4. Muscle function. Paralysis of the third cranial nerve producing ptosis, paralysis of accommodation, and dilation and immobility of the pupil may cause significant visual impairment. Of all the cranial nerves, the eye are paralyzed including the iris and ciliary body (total ophtalmoplegia), the condition is considered a severe impairment provided it is bilateral. A finding of severe impairment

based primarily on impaired muscle function must be supported by a report of an actual measurement of ocular motility.

5. Visual efficiency. Loss of visual efficiency may be caused by disease or injury resulting in a reduction of central visual acuity or visual field. The visual efficiency of one eye is the product of the percentage of central visual efficiency and the percentage of visual field efficiency. (See Tables No. 1 and 2, following 2.09.)

6. Special situations. Aphakia represents a visual handicap in addition to the loss of central visual acuity. The term monocular aphakia would apply to an individual who has had the lens removed from one eye, and who still retains the lens in his other eye, or to an individual who has only one eye which is aphakic. The term binocular aphakia would apply to an individual who has had both lenses removed. In cases of binocular aphakia, the central efficiency of the better eye will be accepted as 75 percent of its value. In cases of monocular aphakia, where the better eye is aphakic, the central visual efficiency will be accepted as 50 percent of the value. (If an individual has binocular aphakia, and the central visual acuity in the poorer eye can be corrected only to 20/200, or less, the central visual efficiency of the better eye will be accepted as 50 percent of its value.)

Ocular symptoms of systemic disease may or may not produce a visual impairment. These manifestations should be evaluated as part of the underlying disease entity by reference to the particular body system involved.

7. Statutory blindness. The term "statutory blindness" refers to the degree of visual impairment which defines the term "blindness" in the Social Security Act. Both 2.02 and 2.03 A and B denote statutory blindness.

B. Otolaryngology

1. Hearing impairment. Hearing ability should be evaluated in terms of the person’s ability to hear and distinguish speech.

Loss of hearing can be established by an audiometer which meets the standards of the American National Standards Institute (ANSI) for air and bone conducted stimuli (i.e., ANSI S 3.9-1969 and ANSI S 3.13-1972, or subsequent comparable revisions) and performing all hearing measurements in an environment which meets the ANSI standard for maximal permissible background sound (ANSI S 3.1-1977).

Speech discrimination should be determined using a standardized measure of speech discrimination ability in quiet at a test presentation level sufficient to ascertain maximum discrimination ability. The speech discrimination measure (test) used, and the level at which testing was done, must be reported.

Hearing tests should be preceded by an otolaryngologic examination and should be performed by or under the supervision of an otolaryngologist or audiologist qualified to perform such tests.

In order to establish an independent medical judgment as to the level of impairment in a claimant alleging deafness.
the following examinations should be reported: Otolaryngologic examination, pure tone air and bone audiometry, speech reception threshold (SRT), and speech discrimination testing. A copy of reports of medical examination and audiologic evaluations must be submitted.

Cases of alleged “deaf mutism” should be documented by a hearing evaluation. Records obtained from a speech and hearing rehabilitation center or a special school for the deaf may be acceptable, but if these reports are not available, or are found to be inadequate, a current hearing evaluation should be submitted as outlined in the preceding paragraph.

2. Vertigo associated with disturbances of labyrinthine-vestibular function, including Meniere’s disease. These disturbances of balance are characterized by an hallucination or contraction of peripheral visual field, and a sensation of dizziness which may be constant or may occur in paroxysmal attacks. Nausea, vomiting, ataxia, and in capacitation are frequently observed, particularly during the acute attack. It is important to differentiate the report of rotary vertigo from that of “dizziness” which is described as lightheadedness, unsteadiness, confusion, or syncope.

Meniere’s disease is characterized by paroxysmal attacks of vertigo, tinnitus, and fluctuating hearing loss. Remissions are unpredictable and irregular, but may be lasting. Hence, the severity of impairment is best determined after prolonged observation and serial reexaminations.

The diagnosis of a vestibular disorder requires a comprehensive neurootolaryngologic examination with a detailed description of the vertiginous episodes, including notation of frequency, severity, and duration of the attacks. Pure tone and speech audiometry with the appropriate special examinations, such as Bekesy audiometry, are necessary. Vestibular functions are assessed by positional and caloric testing, preferably by electronystagmography. When polytograms, contrast radiography, or other special tests have been performed, copies of the reports of these tests should be obtained in addition to reports of skull and temporal bone X-rays.

3. Organic loss of speech. Glossectomy or laryngectomy or cicatrizal laryngeal stenosis due to injury or infection results in loss of voice production by normal means. In evaluating organic loss of speech (see 2.09), ability to produce speech by any means includes the use of mechanical or electronic devices. Impairment of speech due to neurologic disorders should be evaluated under 11.00-11.19.

2.04 Loss of visual efficiency. Visual efficiency of better eye after best correction 20 percent or less. (The percent of remaining visual efficiency = the product of the percent of remaining central visual efficiency and the percent of remaining visual field efficiency.)

2.05 Complete homonymous hemianopsia (with or without macular sparing). Evaluate under 2.04.

2.06 Total bilateral ophthalmoplegia.

2.07 Disturbance of labyrinthine-vestibular function (including Meniere’s disease), characterized by a history of frequent attacks of balance disturbance, tinnitus, and progressive loss of hearing. With both A and B:

A. Disturbed function of vestibular labyrinth demonstrated by caloric or other vestibular tests; and
B. Hearing loss established by audiometry.

2.08 Hearing impairments (hearing not restorable by a hearing aid) manifested by:

A. Average hearing threshold sensitivity for air conduction of 90 decibels or greater and for bone conduction to corresponding maximal levels, in the better ear, determined by the simple average of hearing threshold levels at 500, 1000 and 2000 Hz. (see 2.09B1); or
B. Speech discrimination scores of 40 percent or less in the better ear.

2.09 Organic loss of speech due to any cause with inability to produce by any means speech which can be heard understood and sustained.

Table No. 1—Percentage of Central Visual Efficiency Corresponding to Central Visual Acuity Notations for Distance in the Phakic and Aphakic Eye (Better Eye)

<table>
<thead>
<tr>
<th>Snellen</th>
<th>English</th>
<th>Metric</th>
<th>Phakic 1</th>
<th>Aphakic monocular 2</th>
<th>Aphakic binocular 3</th>
</tr>
</thead>
<tbody>
<tr>
<td>20/16</td>
<td>6/5</td>
<td>100</td>
<td>50</td>
<td>75</td>
<td></td>
</tr>
<tr>
<td>20/20</td>
<td>6/6</td>
<td>100</td>
<td>50</td>
<td>75</td>
<td></td>
</tr>
<tr>
<td>20/25</td>
<td>6/7.5</td>
<td>95</td>
<td>47</td>
<td>71</td>
<td></td>
</tr>
<tr>
<td>20/32</td>
<td>6/10</td>
<td>90</td>
<td>45</td>
<td>67</td>
<td></td>
</tr>
<tr>
<td>20/40</td>
<td>6/12</td>
<td>85</td>
<td>42</td>
<td>64</td>
<td></td>
</tr>
<tr>
<td>20/50</td>
<td>6/15</td>
<td>75</td>
<td>37</td>
<td>56</td>
<td></td>
</tr>
<tr>
<td>20/64</td>
<td>6/20</td>
<td>65</td>
<td>32</td>
<td>49</td>
<td></td>
</tr>
<tr>
<td>20/80</td>
<td>6/24</td>
<td>60</td>
<td>20</td>
<td>45</td>
<td></td>
</tr>
<tr>
<td>20/125</td>
<td>6/38</td>
<td>40</td>
<td>20</td>
<td>30</td>
<td></td>
</tr>
<tr>
<td>20/160</td>
<td>6/48</td>
<td>35</td>
<td>15</td>
<td>25</td>
<td></td>
</tr>
<tr>
<td>20/200</td>
<td>6/60</td>
<td>20</td>
<td>10</td>
<td>20</td>
<td></td>
</tr>
</tbody>
</table>

2.01 Category of Impairments, Special Senses and Speech

2.02 Impairment of central visual acuity. Remaining vision in the better eye after best correction is 20/200 or less.

2.02 Contraction of peripheral visual fields in the better eye.

A. To 10° or less from the point of fixation; or
B. So the widest diameter subtends an angle no greater than 20°; or
C. To 20 percent or less visual field efficiency.

Table No. 2—Chart of Visual Field Showing Extent of Normal Field and Method of Computing Percent of Visual Field Efficiency

1. Diagram of right eye illustrates extent of normal visual field as tested on standard perimeter at 3/30 (3 mm. white disc at a distance of 330 mm.) under 7 foot-candles illumination. The sum of the eight principal meridians of this field total 500°.

2. The percent of visual field efficiency is obtained by adding the number of degrees of the eight principal meridians of the contracted field and dividing by 500. Diagram of left eye illustrates visual field contracted to 30° in the temporal and down and out meridians and to 20° in the remaining six meridians. The percent of visual field

LEFT EYE (O.S.)

RIGHT EYE (O.D.)
efficiency of this field is: $6 \times 20 + 2 \times 30 = 180 - 506 = 0.38$ or 36 percent remaining visual field efficiency, or 64 percent loss.

3.0 Respiratory System

A. Introduction: Impairments caused by the chronic disorder of the respiratory system generally result from irreversible loss of pulmonary function or ventilatory capacity (ventilatory impairment, gas exchange impairment, or a combination of both). The most common symptom attributable to these disorders is dyspnea on exertion. Cough, wheezing, and chest pain may also occur, but need not be present. However, since these symptoms are common to many other diseases, evaluation of pulmonary function requires a history, physical examination, and chest roentgenogram to establish the diagnosis of a chronic respiratory disorder. Pulmonary function testing is required to provide a baseline before the impairment, once the diagnosis is established by appropriate clinical findings. Alteration of ventilatory function may be due primarily to pulmonary disease (emphysema, chronic bronchitis, chronic asthmatic bronchitis) or restrictive disorders (pneumothorax, pleural effusion, kyphoscoliosis), or infiltrative interstitial disorders (diffuse fibrosis). Impairment of gas exchange without significant airway obstruction may be produced by interstitial disorders on exertion. Chronic disease of pulmonary circulation may produce pulmonary vascular hypertension and, eventually, heart failure. Whatever the mechanism, any chronic progressive pulmonary disorder may result in cor pulmonale or heart failure. Chronic infection caused, most frequently by mycobacterial or mycotic organisms, may produce extensive lung destruction resulting in marked loss of pulmonary functional capacity. Some disorders such as bronchiectasis and asthma may be characterized by acute, intermittent illnesses of such frequency and intensity that they produce a marked improvement apart from intermittent functional loss, which may be mild.

Most chronic pulmonary disorders may be adequately evaluated on the basis of history, physical examination, chest roentgenogram, and ventilatory function tests. Direct assessment of gas exchange by exercise arterial blood gas determination or diffusing capacity is required only in specific relatively rare circumstances, depending on the clinical features and specific diagnosis.

B. Mycobacterial and mycotic infections of the lung will be evaluated on the basis of the resulting impairment to pulmonary function. Evidence of infective or active mycobacterial or mycotic infection, such as positive cultures, increasing lesions, or cavitation, is not by itself, a basis for determining that the individual has a severe impairment which is expected to last 12 months. However, if these factors are abnormally persistent, they should not be ignored. For example, in those unusual cases where there is evidence of persistent pulmonary infection caused by mycobacterial or mycotic organisms for a period closely approaching 12 consecutive months, the clinical findings, complications, treatment considerations, and prognosis must be carefully assessed to determine whether, despite the absence of impairment of pulmonary function, the individual has a severe impairment which is expected to last for 12 consecutive months.

C. When a respiratory impairment is episodic in nature, as may occur in complications of bronchiectasis and asthmatic bronchitis, the frequency of severe episodes despite prescribed treatment is the criterion for determining the level of impairment. Documentation for episodic asthma unless the hospital or emergency room records indicating the dates of treatment, clinical findings on presentation, what treatment was given and for what period of time, and clinical response. Severe attacks of episodic asthmatic, as listed in section 5.03B, are defined as prolonged episodes lasting at least several hours, requiring intensive treatment such as inpatient or continuous oxygen or inhaling therapy in a hospital or emergency room.

D. Documentation of ventilatory function tests. The results of ventilatory function studies for evaluation under tables I and II should be documented using forced expiratory volume in one second (FEV1). The reported one second forced expiratory volume (FEV1) should represent the largest of at least three attempts. One satisfactory maximum voluntary ventilation (MVV) is sufficient. The MVV should represent the observed value and should not be calculated from FEV1. These studies should be repeated after administration of a salbutamol bronchodilator unless the prebronchodilator values are 80 percent or more of predicted normal values or the use of bronchodilators is contraindicated. The values in tables I and II assume that the ventilatory function studies were not performed in the presence of wheezing or other evidence of bronchosppasm or, if these were present at the time of the examination, that the studies were repeated after administration of a bronchodilator. Ventilatory function studies performed in the presence of bronchosppasm, without use of bronchodilators, cannot be found to meet the requisite level of severity in tables I and II.

The appropriately labeled spirometric tracing, showing distance per second on the abscissa and the distance per liter on the ordinate, must be incorporated in the file. The manufacturer and model number of the device used to measure and record the ventilatory function should be stated. If the spirometer was generated other than by direct pen linkage to a mechanical displacement-type spirometer, the spirometric tracing must show the calibration of volume units through mechanical means such as would be obtained using a giant syringe. The FEV1 must be recorded at a speed of at least 20 mm. per second. Calculation of the FEV1 from a flaw cannot be found to meet the requisite level of severity in tables I and II.

The MVV should be represented by the tidal excursions measured over a 10- to 15-second interval. Tracings showing only cumulative volume for the MVV are not acceptable. The ventilatory function tables are based on measurement of the height of the individual without shoes. Studies should not be performed during or soon after an acute respiratory illness. A statement should be made as to the individual's ability to understand the directions and cooperate in performing the test.

E. Documentation of chronic impairment of gas exchange—Arterial blood gases and exercise tests. 1. Introduction: Exercise tests with measurement of arterial blood gases at rest and during exercise should be purchased when not available as evidence of record in cases in which there is documentation of chronic pulmonary disease, but the existing evidence, including properly performed ventilatory function tests, is not adequate to evaluate the level of the impairment. Before purchasing arterial blood gas tests, medical history, physical examination, report of chest roentgenogram, ventilatory function tests, electrocardiographic tracing, and hemocrit must be obtained and should be evaluated by a physician competent in pulmonary medicine. Arterial blood gas tests should not be purchased where full development short of such purchase reveals that the impairment may be characterized by acute, intermittent illnesses of such frequency and intensity that they produce a marked improvement apart from intermittent functional loss, which may be mild.

Generally individuals with an FEV1 greater than 2.5 liters or an MVV greater than 100 liters per minute would not be considered for blood gas studies unless diffuse interstitial pulmonary fibrosis was noted on chest X-ray or documented by tissue diagnosis. The exercise test facility should be provided with the clinical reports, report of chest roentgenogram, and spirometry results obtained by the DDS. The testing facility should determine whether exercise testing is clinically contraindicated. If the test is clinically contraindicated, the reason for exclusion from the test should be stated in the report of the exercise test facility.

2. Methodology. Individuals considered for exercise testing for a condition meeting the criteria for an exercise test in tables I and II should determine whether exercise testing is clinically contraindicated. If the test is clinically contraindicated, the reason for exclusion from the test should be stated in the report of the exercise test facility.

The individual should be exercised under steady state conditions, preferably on a treadmill for a period of 6 minutes at a speed and grade providing a workload of approximately 17 ml. O2/kg/min. If a bicycle ergometer is used, an equivalent of 450 kpm/min. or 75 watts, should be used. At the option of the facility, a warm-up period of treadmill walking may be performed to acquaint the applicant with the procedure. If, during the warm-up period, the individual cannot exercise at the designated work load, exercise testing is not possible. If, during the warm-up period, the individual cannot exercise at the designated work load, exercise testing is not possible.

At the option of the facility, a warm-up period of treadmill walking may be performed to acquaint the applicant with the procedure. If, during the warm-up period, the individual cannot exercise at the designated work load, exercise testing is not possible. If, during the warm-up period, the individual cannot exercise at the designated work load, exercise testing is not possible. If, during the warm-up period, the individual cannot exercise at the designated work load, exercise testing is not possible.
exercise, an arterial blood gas sample should be drawn and analyzed for PaO₂, PCO₂, and pH. If the facility has the capability, and at the option of the DDS and the facility, minute ventilation (BTPS) and oxygen consumption per minute (STPD) and CO₂ production (STPD) should be measured during the 5th or 6th minute of exercise. If the individual fails to complete 6 minutes of exercise, the facility should comment on the reason.

The report should contain representative strips of electrocardiograms taken during the exercise, hematoct, resting and exercise arterial blood gas values, speed and grade of the treadmill or bicycle ergometer exercise level in watts or kg/min., and duration of exercise. The altitude of the test site, barometric pressure, and normal range of blood gas values for that facility should also be reported.

3. Evaluation. Three tables are provided in Listing 3.02C1 for evaluation of arterial blood gas determinations at rest and during exercise. The blood gas levels in Listing 3.02C1, Table III–A, are applicable at test sites situated at less than 3,000 feet above sea level. The blood gas levels in Listing 3.02C1, Table III–B, are applicable at test sites situated at 3,000 through 6,000 feet above sea level. The blood gas levels in Listing 3.02C1, Table III–C, are applicable for test sites over 6,000 feet above sea level. Tables III–B and C, take into account the lower blood PaO₂ normally found in individuals tested at the higher altitude. When the barometric pressure is unusually high for the altitude at the time of testing, consideration should be given to those cases in which the PaO₂ falls slightly above the requirements of Table III–A, III–B, or III–C, whichever is appropriate for the altitude at which testing was performed.

3.01 Category of Impairments, Respiratory
3.02 Chronic Pulmonary Insufficiency.

With:

A. Chronic obstructive pulmonary disease (due to any cause). With both FEV₁ and MMV equal to or less than values specified in Table I corresponding to the person's height without shoes.

<table>
<thead>
<tr>
<th>Height without shoes (inches)</th>
<th>FEV, and MMV</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Equal to or less (L, BTPS)</td>
</tr>
<tr>
<td>60 or less</td>
<td>1.0</td>
</tr>
<tr>
<td>61-67</td>
<td>1.1</td>
</tr>
<tr>
<td>68-71</td>
<td>1.2</td>
</tr>
<tr>
<td>72 or more</td>
<td>1.3</td>
</tr>
<tr>
<td>73-74</td>
<td>1.4</td>
</tr>
<tr>
<td>75-77</td>
<td>1.5</td>
</tr>
<tr>
<td>78 or more</td>
<td>1.6</td>
</tr>
</tbody>
</table>

or

B. Chronic restrictive ventilatory disorders. With total vital capacity equal to or less than values specified in Table II corresponding to the person's height without shoes. In severe kyphoscoliosis, the measured span between the fingertips when the upper extremities are abducted 90 degrees should be substituted for height.

<table>
<thead>
<tr>
<th>Height without shoes (inches)</th>
<th>VC equal to or less than (L, BTPS)</th>
</tr>
</thead>
<tbody>
<tr>
<td>60 or less</td>
<td>1.2</td>
</tr>
<tr>
<td>61-67</td>
<td>1.3</td>
</tr>
<tr>
<td>68-71</td>
<td>1.4</td>
</tr>
<tr>
<td>72-74</td>
<td>1.5</td>
</tr>
<tr>
<td>75-77</td>
<td>1.6</td>
</tr>
<tr>
<td>78 or more</td>
<td>1.7</td>
</tr>
</tbody>
</table>

or

C. Chronic impairment of gas exchange (due to any cause). With:

1. Steady-state exercise blood gases demonstrating values of PaO₂ and simultaneously determined PaCO₂ measured at a workload of approximately 17 ml. O₂/kg/min. or less of exercise, equal to or less than the values specified in Table III–A or III–B or III–C.

<table>
<thead>
<tr>
<th>Height without shoes (inches)</th>
<th>Arterial PO₂ (mm. Hg) and Arterial PCO₂ (mm. Hg) equal to or less than (mm. Hg)</th>
</tr>
</thead>
<tbody>
<tr>
<td>30 or below</td>
<td>60</td>
</tr>
<tr>
<td>31</td>
<td>64</td>
</tr>
<tr>
<td>32</td>
<td>63</td>
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<td>33</td>
<td>62</td>
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<td>34</td>
<td>61</td>
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<td>35</td>
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<td>36</td>
<td>59</td>
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<td>37</td>
<td>58</td>
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<tr>
<td>38</td>
<td>57</td>
</tr>
<tr>
<td>39</td>
<td>56</td>
</tr>
<tr>
<td>40 or above</td>
<td>55</td>
</tr>
</tbody>
</table>

or

2. Diffusing capacity for the lungs for carbon monoxide less than 6 ml/mm. Hg/ min. (steady-state methods) or less than 9 ml/mm. Hg/min. (single breath method) or less than 30 percent of predicted normal. (All methods, actual values, and predicted normal values for the methods used should be reported.)

D. Mixed obstructive ventilatory and gas exchange impairment. Evaluate under the criteria in 3.02A, B, and C.

3.03 Asthma. With:

A. Chronic asthmatic bronchitis. Evaluate under the criteria for chronic obstructive ventilatory impairment in 3.02A, or

B. Episodes of severe attacks (see 3.00C), in spite of prescribed treatment, occurring at least once every 2 months or on an average of at least 6 times a year, and prolonged expiration with wheezing or rhonchi on physical examination between attacks.

3.06 Pneumoniosis (demonstrated by roentgenographic evidence). Evaluate under criteria in 3.02.

3.07 Bronchiectasis (demonstrated by radio-opaque material). With:

A. Episodes of acute bronchitis or pneumonia or hemoptysis (more than blood-streaked sputum) occurring at least every 2 months; or

B. Impairment of pulmonary function due to extensive disease should be evaluated under the applicable criteria in 3.02.

3.08 Mycobacterial infection of the lung. Impairment of pulmonary function due to extensive disease should be evaluated under the appropriate criteria in 3.02.

3.09 Mycotic infection of the lung. Impairment of pulmonary function due to extensive disease should be evaluated under the appropriate criteria in 3.02.

3.11 Cor pulmonale, or pulmonay vascular hypertension. Evaluate under the criteria in 4.02D.

4.00 Cardiovascular System

A. Severe cardiac impairment results from one or more of three consequences of heart disease: (1) congestive heart failure; (2) ischemia (with or without necrosis) of heart muscle; (3) conduction disturbances and/or arrhythmias resulting in cardiac syncpne.
With diseases of arteries and veins, severe impairment may result from disorders of the vasculature in the central nervous system, eyes, kidneys, extremities, and other organs. The criteria for evaluating impairment resulting from heart diseases or disorders of the blood vessels are based on symptoms, physical signs and pertinent laboratory findings.

B. Congestive heart failure is considered in the Listing under one category whatever the etiology (i.e., arteriosclerotic, hypertensive, rheumatic, pulmonary, congenital, or other organic heart diseases). Congestive heart failure is not considered to have been established for the purpose of 4.02 unless there is evidence of vascular congestion such as hepatomegaly or peripheral or pulmonary edema which is consistent with clinical diagnosis. Radiologic description of vascular congestion, unless supported by appropriate clinical evidence, should not be construed as pulmonary edema. The findings of vascular congestion should not be present at the time of adjudication (except for 4.02A), but must be casually related to the current episode of marked impairment. The findings other than vascular congestion must be pertinent.

Other congestive, ischemic, or restrictive (obstructive) heart diseases such as caused by cardiomyopathy or aortic stenosis may result in significant impairment due to congestive heart failure, rhythm disturbances, or ventricular outflow obstruction in the absence of left ventricular enlargement as described in 4.02B1. However, the ECG criteria as defined in 4.02B2 should be fulfilled. Findings such as symptoms of dyspnea, fatigue, rhythm disturbances, etc., should be documented and the diagnosis confirmed by echocardiography or at cardiac catheterization.

C. Hypertensive vascular diseases does not result in severe impairment unless it causes severe damage to one or more of four end organs: heart, brain, kidneys, or eyes. (retinae). The presence of such damage must be established by appropriate abnormal physical signs and laboratory findings as specified in 4.02 or 4.04, or for the body system involved.

D. Ischemic heart diseases may result in a marked impairment due to chest pain. Description of the pain must contain the clinical characteristics as discussed under 4.06E. In addition, the clinical impression of chest pain of cardiac origin must be supported by objective evidence as described under 4.06 F.C. or H.

E. Chest pain of cardiac origin is considered to be pain which is precipitated by effort and promptly relieved by sublingual nitroglycerin or rapid-acting nitrates or rest. The character of the pain is classically described as crushing squeezing, burning, or oppressive pain located in the chest. Excluded is sharp, sticking or rhythm heart diseases or diseases on exercise should be described specifically as to usual inciting factors (kind and degree), character, location, radiation, duration, and responses to nitroglycerin or rest.

So-called "angina equivalent" locations manifested by pain in the throat, arms, or hands have the same validity as the chest pain described above. Status anginosus and variant angina of the Prinzmetal type (i.e., rest angina with transitory ST elevation on electrocardiogram) will be considered to have the same validity as classical angina pectoris as described above. Shortness of breath as an isolated finding should not be considered as an anginal equivalent.

Chest pain that appears to be of cardiac origin may be caused by noncoronary conditions. Evidence for the latter should be actively considered in determining whether the chest pain is of cardiac origin. Among the more common conditions which may masquerade as anginas are gastrointestinal tract lesions such as biliary tract disease, esophagitis, hiatal hernia, peptic ulcer, and pancreatitis; and musculoskeletal lesions such as costochondritis and cervical arthritis.

F. Diagnosis. (Radiological description of chest pain of cardie origin, an exercise test should not be purchased where full development short of such a purchase reveals that the impairment meets or equals any Listing or the claim can be adjudicated on some other basis.

1. Methodology. When an exercise test is purchased, it should be a treadmill type using a continuous progressive multistage regimen. The targeted heart rate should be not less than 85 percent of the maximum predicted heart rate unless it becomes hazardous to exercise to the heart. In such cases, it becomes unnecessary because the ECG meets the criteria in 4.04A at a lower heart rate (see also 4.06E.2). Beyond these requirements, it is prudent to accept the methodology of a qualified, competent test facility. In any case, a precise description of the protocol that was followed must be provided.

2. Limitations of exercise testing. Exercise testing should not be purchased for individuals who have the following: unstable progressive angina pectoris; recent onset (approximately 2 months) of angina; congestive heart failure; uncontrolled serious arrhythmias (including uncontrolled atrial fibrillation); second or third-degree heart block; Wolff-Parkinson-White syndrome; uncontrolled marked hypertension; marked aortic stenosis; marked pulmonary hypertension; dissecting or ventricular aneurysms; acute illness limiting neurological or musculoskeletal impairments; or for individuals on medication where performance of stress testing may constitute a significant risk.

The presence of noncoronary or nonischemic factors which may influence the ECG response to exercise include hypokalemia, hyperventilation, vasoconstrictive asthenia, significant anemia, left bundle branch block and other heart disease, particularly valvular.

Digitalis may cause ST segment abnormalities at rest, during, and after exercise. Digitalis-related ST depression, present at rest, may become accentuated and result in false interpretations of the ECG taken during or after exercise test.

4. Evaluation. Where the evidence includes the results of a treadmill exercise test, this evidence is the primary basis for adjudicating claims under 4.04. For purposes of this Social Security disability program, treadmill exercise testing will be evaluated on the basis of the level at which the test becomes positive in accordance with the ECG criteria in 4.04A. However, the significance of findings of a treadmill exercise test must be considered in light of the clinical course of the disease which may have occurred subsequent to performance of the exercise.
heart or vascular disease are met, proposed heart or vascular surgery (coronary artery bypass procedure, valve replacement, major arterial grafts, etc.) does not mitigate against a finding of disability with subsequent assessment postoperatively.

The usual time after surgery for adequate assessment of the results of surgery is considered to be approximately 3 months. Assessment of the magnitude of the impairment following surgery requires adequate descriptions of the pertinent evaluations and tests performed following surgery, such as an interval history and physical examination, with emphasis on those signs and symptoms which might have changed postoperatively, as well as X-rays and electrocardiograms. Where treadmill exercise tests or angiography have been performed following the surgical procedure, the report should be appropriate to be approximately 3.5 ml O2/kg/min.

H. Angiographic evidence.
1. Coronary arteriography. This procedure is not to be purchased by the Social Security Administration. Should the results of such testing be available, the report should be considered as to the quality and kind of data provided and its applicability to the proximal to the first septal perforator; or acute marginal branch; or will be considered as the: proximal coronary artery proximal to the first obtuse marginal branch.

3. Echocardiography. This procedure is not to be purchased by the Social Security Administration. Should the results of such testing be available, the report should be considered as to the quality and kind of data provided and its applicability to the proximal to the first septal perforator; or acute marginal branch; or will be considered as the: proximal coronary artery proximal to the first obtuse marginal branch.

4. Left ventriculography. The report should provide information as to the method used, the number of projections, and whether selective engagement of such coronary vessel was satisfactorily accomplished. It is also important to know whether the injected vessel was entirely and uniformly opacified, thus avoiding the artefactual appearance of narrowing or an obstruction. Coronary artery spasm induced by intracoronary catheterization is not to be considered as evidence of ischemic heart disease.

Estimation of the functional significance of an obstructive lesion may also be aided by description of how well the distal part of the vessel is visualized. Some patients with significant proximal coronary arteriosclerosis have well-developed collateral blood supply to the distal vessels without evidence of myocardial damage or ischemia, even under conditions of severe stress.

2. Left ventriculography. The report should describe the visibility of the myocardium as may be evident from areas of hypokinesia, dyskinesia, or akinesia; and the overall contractility of the myocardium as may be evident from areas of myocardial damage or ischemia, even under conditions of severe stress.

2. Left ventriculography. The report should describe the visibility of the myocardium as may be evident from areas of hypokinesia, dyskinesia, or akinesia; and the overall contractility of the myocardium as measured by the ejection fraction.

3. Left ventricular angiography (see 4.04B7) will be considered as the:
   a. Right coronary artery proximal to the acute marginal branch; or
   b. Left anterior descending coronary artery proximal to the first septal perforator; or
   c. Left circumflex coronary artery proximal to the first obtuse marginal branch.

1. Results of other tests. Information from adequate reports of other tests such as radionuclide imaging or echocardiography should be considered where that information is comparable to the requirements in the listing. An ejection fraction measured by echocardiography is not determinative, but may be given consideration in the context of associated findings.

j. Major surgical procedures. The amount of function restored and the time required to effect improvement after heart or vascular surgery vary with the nature and extent of the disorder, the type of surgery, and other individual factors. If the criteria described for

exercise. Doppler studies are purchased by the Social Security Administration, it is suggested that the requested exercise be on a treadmill or ergometer for 5 minutes. Exercise studies should not be performed on individuals for whom exercise is contraindicated. The methodology of a qualified, competent facility should be acceptable. In any case, a precise description of the protocol that was followed must be provided.

It must be recognized that application of the criteria in Listing 4.13B may be limited in individuals who have severe calcific (Monckeberg's) sclerosis of the peripheral arteries or severe small vessel disease in individuals with diabetes mellitus.

4.01 Category of Impairments. Cardiovascular System.

4.02 Congestive heart failure (manifested by evidence of vascular congestion such as hepatomegaly, peripheral or pulmonary edema). With:
A. Persistent congestive heart failure on clinical examination despite prescribed therapy; or
B. Persistent left ventricular enlargement and hypertrophy documented by both:
1. Extension of the cardiac shadow (left ventricle) to the vertebral column on a left lateral chest roentgenogram; and
2. ECG showing QRS duration less than 0.12 second with S4 plus R4 (or R5) of 35 mm. or greater and ST segment depressed more than 0.5 mm. and low, diphasic or inverted T waves in leads with tall R waves; or
C. Persistent "mitral" type heart involvement documented by left atrial enlargement shown by double shadow on PA chest roentgenogram (or characteristic distortion of barium-filled esophagus) and either:
1. ECG showing QRS duration less than 0.12 second with S4 plus R4 (or R5) of 35 mm. or greater and ST segment depressed more than 0.5 mm. and low, diphasic or inverted T waves in leads with tall R waves; or
2. ECG evidence of right ventricular hypertrophy with R wave of 5.0 mm. or greater in lead V1 and progressive decrease in R/S amplitude from lead V1 to V5 or V6 or
D. Cor pulmonale (non-acute) documented by both:
   1. Right ventricular enlargement (or prominence of the right out-flow tract) on chest roentgenogram or fluoroscopy; and
   2. ECG evidence of right ventricular hypertrophy with R wave of 5.0 mm. or greater in lead V1 and progressive decrease in R/S amplitude from lead V1 to V5 or V6.
discernible in at least two consecutive complexes which are on a level baseline in any lead; or
2. Functional depression occurring during exercise, remaining depressed (from the standing control) to 2.0 mm. or greater for at least 0.06 second after the J junction (the so-called slow upstaging ST segment) and a clearly discernible in at least two consecutive complexes which are on a level baseline in any lead; or
3. Premature ventricular systoles which are monomorphic or bidirectional or are sequentially inscribed (3 or more); or
4. ST segment elevation (from the standing control) to 1.0 mm. or more in any two leads except leads III or Vs or (b) leads II and III and aVF or (c) leads II and III and aVF and Vs or (d) leads II and III and aVF and V6 and V5 or (e) leads II and III and aVF or (c) leads Vs through V4; or
5. Resting ECG findings showing an ischemic or current of injury configuration or current of injury or septal motion with left ventricular ejection fraction of less than 0.50; or
6. Presence of a long (greater than 1 cm.) segment of a proximal coronary artery (see 4.00H) with ST segment depression to 2 mm. or more in any two leads except lead aVL and R wave of greater than 0.04 second (except in leads I, II, aVR, V5 and V6) which are on a level baseline in any lead.

C. Resting ECG findings showing left bundle branch block as evidenced by QRS duration of 0.12 second or more or in leads I, II, or III and R peak duration of 0.06 second or more in leads I, aVL, V5 or V6 unless there is a coronary angiogram of record which is negative (see criteria in 4.00B7).

D. Angiographic evidence (not due to digitalis toxicity) resulting in uncontrolled repeated episodes of cardiac syncope and documented by resting or ambulatory (Holter) electrocardiography.

4.08 Myocarditis, rheumatic or syphilitic heart disease. Evaluate under the criteria in 4.02, 4.04, 4.05, or 11.04.

4.11 Aneurysm of aorta or major branch (demonstrated by roentgenographic evidence). With:
A. Acute or chronic dissection not controlled by medical or surgical treatment; or
B. Congestive heart failure as described under the criteria in 4.02; or
C. Renal failure as described under the criteria in 6.02; or
D. Repeated syncopal episodes.

4.12 Chronic insufficiency of the lower extremity with incompetency or obstruction of the deep venous return, associated with superficial varicosities, extensive brawny edema, stasis dermatitis, and recurrent or persistent ulceration which has not healed following at least 3 months of prescribed medical or surgical therapy.

4.13 Peripheral arterial disease. With:
A. Intermittent claudication with failure to visualize (on arteriogram obtained independent of Social Security disability evaluation) the common femoral or deep femoral artery in one extremity; or
B. Intermittent claudication with marked impairment of peripheral arterial circulation as determined by Doppler studies showing:
   1. Resting ankle/brachial systolic blood pressure ratio of less than 0.50; or
   2. Decrease in systolic blood pressure at ankle or exercise (see 4.00K) to 50 percent or more of preexercise level and requiring 10 minutes or more to return to preexercise level; or
   3. Amputation at or above the tarsal region due to peripheral arterial disease.

5.00 Digestive System

A. Disorders of the digestive system which result in a marked impairment usually do so because of interference with nutrition, multiple recurrent inflammatory lesions, or complications of disease, such as fistulae, abscesses, or recurrent obstruction. Such complications usually respond to treatment. These complications must be shown to persist on repeated examinations despite therapy for a reasonable presumption to be made that a marked impairment will last for a continuous period of at least 12 months.

B. Malnutrition or weight loss from gastrointestinal disorders. When the primary disorder of the digestive tract has been established (e.g., enterocolitis, chronic pancreatitis, postgastrectomy resection, or jejunoileal bypass), the resultant interference with nutrition will be considered under the criteria in 5.08. This will apply whether the weight loss is due to primary or secondary disorders of malabsorption, malnutrition, or obstruction. However, weight loss not due to diseases of the digestive tract, but associated with psychiatric or primary endocrine or other disorders, should be evaluated under the appropriate criteria for the underlying disorder.

C. Surgical diversion of the intestinal tract, including colostomy or ileostomy, are not listed since they do not represent impairments which preclude all work activity. If the individual is able to maintain adequate muscle tone and function of the stoma.

D. Weight loss as described under 5.08.

4.04B7. Stricture, stenosis, or obstruction of the esophagus (demonstrated by X-ray or endoscopy) with weight loss as described under 5.08.

4.04 Peptic ulcer disease (demonstrated by X-ray or endoscopy).

A. Acute ulceration after definitive surgery must be demonstrated on repeated upper gastrointestinal roentgenograms or gastroscopic examinations despite therapy to be considered a severe impairment which will last for at least 12 months. Definitive surgical procedures are those designed to control the ulcer disease process (i.e., vagotomy and pyloroplasty, subtotal gastrectomy, etc.). A perforated ulcer does not constitute definitive surgical therapy for peptic ulcer disease.

5.01 Category of Impairments, Digestive System

A. Recurrent upper gastrointestinal hemorrhage from undetermined cause with anemia manifested by hemocrit of 30 percent or less on repeated examinations.

4.03 Stricture, stenosis, or obstruction of the esophagus (demonstrated by X-ray or endoscopy) with weight loss as described under 5.08.

B. Performance of a shunt operation for esophageal varices. Consider under a disability for 3 years following the last massive hemorrhage; thereafter, evaluate the residual impairment; or

C. Surgical diversion of the intestinal tract, including colostomy or ileostomy, are not listed since they do not represent impairments which preclude all work activity. If the individual is able to maintain adequate muscle tone and function of the stoma.

D. Weight loss as described under 5.08.

5.04 Peptic ulcer disease (demonstrated by X-ray or endoscopy). With:
A. Recurrent ulceration after definitive surgery persistent despite therapy; or
B. Inoperable fistula formation; or
C. Recurrent obstruction demonstrated by X-ray or endoscopy.

5.05 Hepatic encephalopathy. Evaluate under the appropriate criteria for the underlying disorder.

D. Ascites, not attributable to other causes, with weight loss as described under 5.08.

5.06 Cerebral palsy. Consider under a disability for 3 years following the last massive hemorrhage; thereafter, evaluate the residual impairment; or

E. Hepatic encephalopathy. Evaluate under the criteria in listing 12.02; or

F. Confirmation of chronic liver disease by liver biopsy (obtained independent of Social Security disability evaluation). With:

D. Confirmation of chronic liver disease by liver biopsy (obtained independent of Social Security disability evaluation). With:

G. Serum bilirubin of 2.5 mg. per deciliter (100 ml.) or greater persisting on repeated examinations for at least 5 months; or

D. Ascites, not attributable to other causes, recurrent or persisting for at least 5 months, demonstrated by abdominal paracentesis or associated with persistent hypoalbuminemia of 3.0 g.m. per deciliter (100 ml.) or less; or

E. Hepatic encephalopathy. Evaluate under the criteria in listing 12.02; or

F. Confirmation of chronic liver disease by liver biopsy (obtained independent of Social Security disability evaluation). With:

G. Serum bilirubin of 2.5 mg. per deciliter (100 ml.) or greater persisting on repeated examinations for at least 5 months; or

D. Ascites, not attributable to other causes, recurrent or persisting for at least 5 months, demonstrated by abdominal paracentesis or associated with persistent hypoalbuminemia of 3.0 g.m. per deciliter (100 ml.) or less; or

E. Hepatic encephalopathy. Evaluate under the criteria in listing 12.02; or

F. Confirmation of chronic liver disease by liver biopsy (obtained independent of Social Security disability evaluation). With:
Security disability evaluation) and one of the following:
1. Ascites not attributable to other causes.
2. Serum bilirubin of 2.5 mg. per deciliter (100 ml.) or greater on repeated examinations for at least 3 months; or
3. Hepatic cell necrosis or inflammation, persisting for at least 3 months, documented by repeated abnormalities of prothrombin time and enzymes indicative of hepatic dysfunction.

5.05 Chronic ulcerative or granulomatous colitis (demonstrated by endoscopy, barium enema, biopsy, or operative findings). With:
A. Recurrent bloody stools documented on repeated examinations and anemia manifested by hematocrit of 30 percent or less.
B. Persistent or recurrent systemic manifestations, such as arthritis, iritis, fever, or liver dysfunction, not attributable to other causes; or
C. Intermittent obstruction due to intractable abscess, fistula formation, or stenosis; or
D. Recurrence of findings of A, B, or C above after total colectomy; or
E. Weight loss as described under 5.08.

5.07 Regional enteritis (demonstrated by operative findings, barium studies, biopsy, or endoscopy). With:
A. Persistent or recurrent intestinal obstruction evidenced by abdominal pain, distention, nausea, and vomiting and accompanied by stenotic areas of small bowel with proximal intestinal dilatation; or
B. Persistent or recurrent systemic manifestations such as arthritis, iritis, fever, or liver dysfunction, not attributable to other causes; or
C. Intermittent obstruction due to intractable abscess or fistula formation; or
D. Weight loss as described under 5.08.

5.08 Weight loss due to any persisting gastrointestinal disorder. The following weights are to be demonstrated to have persisted for at least 3 months despite prescribed therapy and expected to persist at this level for at least 12 months. With:
A. Weight equal to or less than the values specified in Table I or II; or
B. Weight equal to or less than the values specified in Table III or IV and one of the following abnormal findings on repeated examinations:
1. Serum albumin of 3.0 gm. per deciliter (100 ml.) or less;
2. Hematocrit of 30 percent or less;
3. Serum calcium of 8.0 mg. per deciliter (100 ml.) (4.0 mEq./L) or less; or
4. Uncontrolled diabetes mellitus due to pancreatic dysfunction with repeated hyperglycemia, hypoglycemia, or ketosis; or
5. Fat in stool of 7 gm. or greater per 24-hour stool specimen; or
6. Nitrogen in stool of 3 gm. or greater per 24-hour specimen; or
7. Persistent or recurrent ascites or edema not attributable to other causes. Tables of weight reflecting malnutrition scaled according to height and sex. To be used only in connection with 5.08.

### Table I—Men

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1 Height measured without shoes.

### Table II—Women

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1 Height measured without shoes.

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1 Height measured without shoes.

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1 Height measured without shoes.

### Table IV—Women—Continued

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1 Height measured without shoes.

### 6.00 Genito-Urinary System

A. Determination of the presence of chronic renal disease will be based upon (1) a history, physical examination, and laboratory evidence of renal disease, and (2) indications of its progressive nature or laboratory evidence of deterioration of renal function.

B. Nephrotic Syndrome. The medical evidence establishing the clinical diagnosis must include the description of extent of tissue edema, including prethlbal, peribital, or presacral edema. The presence of ascites, pleural effusion, pericardial effusion, and hydroarthrosis should be described if present. Results of pertinent laboratory tests must be provided. If a renal biopsy has been performed, the evidence should include a copy of the report of microscopic examination of the specimen. Complications such as severe orthostatic hypotension, recurrent infections or venous thromboses should be evaluated on the basis of resultant impairment.

C. Hemodialysis, peritoneal dialysis, and kidney transplantation. When an individual is undergoing periodic dialysis because of chronic renal disease, severity of impairment is reflected by the renal function prior to the institution of dialysis.

The amount of function restored and the time required to effect improvement in an individual treated by renal transplant depend upon various factors, including adequacy of post transplant renal function, incidence and severity of renal infection, occurrence of rejection crisis, the presence of systemic complications (anemia, neuropathy, etc.) and side effects of corticosteroids or immunosuppressive agents. A convalescent period of at least 12 months is required before it can be reasonably determined whether the individual has reached a point of stable medical improvement.

D. Evaluate associated disorders and complications according to the appropriate body system listing.

### 6.02 Impairment of renal function, due to any chronic renal disease expected to last 12 months (e.g., hypertensive vascular disease, chronic nephritis, nephrotic syndrome, polycystic disease, bilateral hydronephrosis, etc.) With:
A. Chronic hemodialysis or peritoneal dialysis necessitated by irreversible renal failure; or
B. Kidney transplant. Consider under a disability for 12 months following surgery; thereafter, evaluate the residual impairment (see 6.00C); or
C. Documented recurrent systemic bacterial infections occurring at least 3 times during the 12 months prior to adjudication.

7.16 Myeloma (confirmed by appropriate serum or urine protein electrophoresis and bone marrow findings). With: A. Radiologic evidence of any involvement with intractable bone pain; or B. Evidence of renal impairment as described in 6.02; or C. Hypercalcemia with serum calcium levels persistently greater than 11 mg. per deciliter (100 ml.) or less or D. Plasma cells (10 or more per cubic millimeter) in the peripheral blood.

7.17 Aplastic anemia or hematologic malignancies (excluding acute leukemia). With: Bone marrow transplantation. Consider under a disability for 12 months following transplantation; thereafter, evaluate the resulting impairment according to the primary characteristics of the residual impairment.

8.00 Skin
A. Skin lesions may result in a marked, long-lasting impairment if they involve extensive body areas or critical areas such as the hands or feet and become resistant to treatment. These lesions must be shown to have persisted for a sufficient period of time despite therapy for a reasonable presumption to be made that a marked impairment will last for a continuous period of at least 12 months. The treatment for some of the skin diseases listed in this section may require the use of high dosage of drugs with possible serious side effects; these side effects should be considered in the overall evaluation of impairment.

B. When skin lesions are associated with systemic disease and where that is the predominant problems, evaluation should occur according to the criteria for the appropriate section. Disseminated (systemic) lupus erythematosus and scleroderma usually involve more than one body system and should be evaluated under 10.04 and 10.05. Neoplastic skin lesions should be evaluated under 13.00ff. When skin lesions (including burns) are associated with contractures or limitation of joint motion, that impairment should be evaluated under 1.00ff.

8.01 Category of Impairments. Skin
8.02 Exfoliative dermatitis, ichthyosis, ichthyosiform erythroderma. With extensive lesions not responding to prescribed treatment.
8.03 Pemphigus, erythema multiforme, bullous pemphigoid, dermatitis herpetiformis. With extensive lesions not responding to prescribed treatment.
8.05 Pustulosis, atopic dermatitis, dyshidrosis. With extensive lesions, including involvement of the hands or feet which impose a marked limitation of function and which are not responding to prescribed treatment.
10.02 *Hansen's disease* (leprosy). As active disease or consider as "under a disability" while hospitalized.

10.03 *Polyarteritis nodosa* (established by biopsy). With signs of generalized arterial involvement.

10.04 *Disseminated lupus erythematosus* (established by a positive LE preparation or biopsy or positive ANA test). With frequent exacerbations demonstrating involvement of renal or cardiac or pulmonary or gastrointestinal or central nervous systems.

10.05 *Scleroderma* or progressive systemic sclerosis (the diffuse or generalized form).

**A.** Advanced limitation of use of hands due to sclerodactyly or limitation in other joints; or

**B.** Significant visceral manifestations of digestive, cardiac, or pulmonary impairment.

10.10 **Obesity.** Weight equal to or greater than the values specified in Table I for males, Table II for females (100 percent above desired level) and one of the following:

**A.** History of pain and limitation of motion in any weight bearing joint or spine (on physical examination) associated with X-ray evidence of arthritis in a weight bearing joint or spine; or

**B.** Hypertension with diastolic blood pressure persistently in excess of 100 mm. Hg measured with appropriate size cuff; or

**C.** History of congestive heart failure manifested by past evidence of vascular congestion such as hepatomegaly, peripheral or pulmonary edema; or

**D.** Chronic venous insufficiency with superficial varicosities in a lower extremity with pain on weight bearing and persistent edema; or

**E.** Respiratory disease with total forced vital capacity equal to or less than 2.0 L or a level of hypoxemia at rest equal to or less than the values specified in Table III-A or III-B or III-C.

**TABLE II—WOMEN**

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<th>Height without shoes (inches)</th>
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<td>74</td>
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<td>75</td>
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**TABLE III—MEN**

<table>
<thead>
<tr>
<th>Height without shoes (inches)</th>
<th>Weight (pounds)</th>
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<tbody>
<tr>
<td>60</td>
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<td>61</td>
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<td>76</td>
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**TABLE III—A**

<table>
<thead>
<tr>
<th>Arterial PCO₂ (mm. Hg) and</th>
<th>Arterial PO₂ equal to or less than(mm. Hg)</th>
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<tbody>
<tr>
<td>30 or below...</td>
<td>66</td>
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<tr>
<td>31</td>
<td>64</td>
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<td>32</td>
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<td>39</td>
<td>56</td>
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<tr>
<td>40 or above...</td>
<td>55</td>
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</tbody>
</table>

**TABLE III—B**

<table>
<thead>
<tr>
<th>Arterial PCO₂ (mm. Hg) and</th>
<th>Arterial PO₂ equal to or less than(mm. Hg)</th>
</tr>
</thead>
<tbody>
<tr>
<td>30 or below...</td>
<td>60</td>
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<tr>
<td>31</td>
<td>59</td>
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<td>38</td>
<td>52</td>
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<td>39</td>
<td>51</td>
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<tr>
<td>40 or above...</td>
<td>50</td>
</tr>
</tbody>
</table>
TABLE III—C

(Applicable at test sites over 6,000 feet above sea level.)

| Arterial PO₂ (mm. Hg) and  
| Arterial PCO₂ (mm. Hg) and |
|-----------------------------|-----------------------------|
| 30 or below                 | 31                          |
| 22                          | 23                          |
| 34                          | 35                          |
| 36                          | 37                          |
| 38                          | 39                          |
| 40 or above                 | 41                          |

11.00 Neurological

A. Convulsive disorders. In convulsive disorders, regardless of etiology, degree of impairment will be determined according to type, frequency, duration, and sequelae of seizures. At least one detailed description of a typical seizure should be obtained. Such description includes the presence or absence of aura, tongue bites, sphincter control, injuries associated with the attack, and postictal phenomena. The reporting physician should indicate whether or not each description of seizures reflects his own observations and the source of ancillary information. Testimony of persons other than the claimant is essential for description of type and frequency of seizures if professional observation is not available.

Documentation of epilepsy should include at least one electroencephalogram (EEG). Under 11.02 and 11.03, the criteria can be applied only if the impairment persists despite the fact that the individual is following prescribed anticonvulsant treatment. Adherence to prescribed anticonvulsiive therapy can ordinarily be determined from objective clinical findings in the report of the physician currently providing treatment for epilepsy.

Determination of blood levels of phenytoin sodium or other anticonvulsant drugs may serve to indicate whether the prescribed medication is being taken. When seizures are occurring at the frequency stated in 11.02 or 11.03, evaluation of the severity of the impairment must include consideration of the serum drug levels. Should serum drug levels appear therapeutically inadequate, consideration should be given as to whether this is caused by individual idiosyncrasy in absorption of metabolites of the drug. Blood drug levels should be evaluated in conjunction with all other evidence to determine the extent of compliance. When the reported blood drug levels are low, therefore, the information obtained from the treating source should include the physician’s statement as to why the levels are low and the results of any relevant diagnostic studies concerning the blood levels. Where adequate seizure control is obtained only with unusually large doses, the possibility of impairment resulting from the side effects of this medication must also be assessed.

Where decreased activity shows that use of alcohol or drugs affects adherence to prescribed therapy or may play a part in the precipitation of seizures, this must also be considered in the overall assessment of impairment level.

B. Brain tumors. The diagnosis of malignant brain tumors must be established, and the persistence of the tumor should be evaluated, subject to the criteria described in 13.003 and C for neoplastic disease.

In histologically malignant tumors, the pathologic diagnosis alone will be the decisive criterion for severity and expected duration [see 11.05A]. For other tumors of the brain, the severity and duration of the impairment will be determined on the basis of symptoms, signs, and pertinent laboratory findings.

C. Persistent disorganization of motor function in the form of paresis or paralysis, tremor or other involuntary movements, ataxia and sensory disturbances (any or all of which may be due to cerebral ischemia, brain stem, spinal cord, or peripheral nerve dysfunction) which occur singly or in various combinations, frequently provides the sole or partial basis for decision in cases of neurological impairment. The assessment of impairment depends on the degree of interference with locomotion and/or interference with the use of fingers, hands, and arms.

D. In conditions which are episodic in character, such as multiple sclerosis or myasthenia gravis, consideration should be given to frequency and duration of exacerbations, length of remissions, and permanent residuals.

11.02 Epilepsy—Major motor seizures, (grand mal or psychomotor), documented by EEG and by detailed description of a typical seizure pattern, including all associated phenomena; occurring more frequently than once a month, in spite of at least 3 months of prescribed treatment. With:

A. Daytime episodes (loss of consciousness and convulsive seizures) or

B. Nocturnal episodes manifesting residuals which interfere significantly with activity during the day.

11.03 Epilepsy—Minor motor seizures (petit mal, psychomotor, or focal), documented by EEG and by detailed description of a typical seizure pattern, including all associated phenomena; occurring more frequently than once weekly in spite of at least 3 months of prescribed treatment. With elaboration of awareness or loss of consciousness and transient postictal manifestations of unconventional behavior or significant interference with activity during the day.

11.04 Control nervous system vascular accident. With one of the following more than 3 months post-vascular accident:

A. Sensory or motor aphasia resulting in ineffective speech or communication; or

B. Significant and persistent disorganization of movement in two extremities, resulting in sustained disturbance of gross and dexterous movements, or gait and station (see 11.00C).

11.05 Brain tumors

A. Malignant gliomas (astrocytoma—grades III and IV, glioblastoma multiforme); medulloblastoma, ependymoblastoma, or primary sarcoma; or

B. Astrocytoma (grades I and II), meningioma, pituitary tumors, oligodendrogliomas, ependymoma, clivus chordoma, and benign tumors. Evaluate under 11.02, 11.03, 11.04 B, or 12.02.

11.06 Parkinson syndrome with the following signs: Significant rigidity, Brady kinesia, or tremor in two extremities, which singly or in combination, result in sustained disturbance of gross and dexterous movements, or gait and station.

11.07 Cerebral palsy. With:

A. IQ of 89 or less; or

B. Abnormal behavior patterns, such as destructiveness or emotional instability; or

C. Significant interference in communication due to speech, hearing, or visual defect.

D. Disorganization of motor function as described in 11.04B.
11.08 Spinal cord or nerve root lesions, due to any cause with disorganization of motor function as described in 11.04B.

11.09 Multiple sclerosis. With:
A. Disorganization of motor function as described in 11.04B; or
B. Visual or mental impairment as described under the criteria in 2.02, 2.03, 2.04, or 12.02; or
C. Significant, reproducible fatigue of motor function with substantial muscle weakness on repetitive activity; demonstrated on physical examination, resulting from neurological dysfunction in areas of the central nervous system known to be pathologically involved by the multiple sclerosis process.

11.10 Amyotrophic lateral sclerosis.
With:
A. Significant bulbar signs; or
B. Disorganization of motor function as described in 11.04B; or
C. Significant motor weakness of muscles of extremities on repetitive activity against resistance while on prescribed treatment.

11.11 Anterior poliomyelitis. With:
A. Persistent difficulty with swallowing or breathing; or
B. Unintelligible speech; or
C. Disorganization of motor function as described in 11.04B.

11.12 Myasthenia gravis. With:
A. Significant difficulty with speaking, swallowing, or breathing while on prescribed treatment.
B. Significant motor weakness of muscles of extremities on repetitive activity against resistance while on prescribed therapy.

11.13 Muscular dystrophy with disorganization of motor function as described in 11.04B.


11.15 Tabes dorsalis.
With:
A. Tabetic crises occurring more frequently than once in 11.04B; or
B. Unsteadily, broad-based or ataxic gait causing significant restriction of mobility substantiated by appropriate posterior column signs.

11.16 Subacute combined cord degeneration (pernicious anemia) with disorganization of motor function as described in 11.04B or 11.15B, not significantly improved by prescribed treatment.

11.17 Degenerative disease not elsewhere specified such as Huntington's chorea, Friedreich's ataxia, and spinocerebellar degeneration.
With:
A. Disorganization of motor function as described in 11.04B or 11.15B; or
B. Chronic brain syndrome. Evaluate under 12.02.

11.18 Cerebral trauma:
Evaluate under the provisions of 11.02, 11.03, 11.04, and 12.02, as applicable.

11.19 Syringomyelia. With:
A. Significant bulbar signs; or
B. Disorganization of motor function as described in 11.04B.

12.00 Mental Disorders

The mental disorders listings in 12.00 of the Listing of Impairments will no longer be effective on August 29, 1990 unless extended by the Secretary or revised and promulgated again.

A. Introduction: The evaluation of disability on the basis of mental disorders requires the documentation of a medically determinable impairment(s) as well as consideration of the degree of limitation such impairment(s) may impose on the individual's ability to work and whether these limitations have lasted or are expected to last for a continuous period of at least 12 months. The listings for mental disorders are arranged in eight diagnostic categories: organic mental disorders (12.03); schizoaffective, paranoid and other psychotic disorders (12.05); affective disorders (12.04); mental retardation and autism (12.05); anxiety related disorders (12.06); somatoform disorders (12.07); personality disorders (12.08); and substance addiction disorders (12.09). Each diagnostic group, except listings 12.05 and 12.09, consists of a set of clinical findings (paragraph A criteria), one or more of which must be met, and which, if met, lead to a test of functional restrictions (paragraph B criteria), two or three of which must also be met. There are additional considerations (paragraph C criteria) in listings 12.08 and 12.09, discussed therein.

The purpose of including the criteria in paragraph A of the listings for mental disorders is to describe the presence of a mental disorder. Specific signs and symptoms under any of the listings 12.02 through 12.09 cannot be considered in isolation from the description of the mental disorder category. Before beginning of each listing category, impairments should be analyzed or reviewed under the mental category(ies) which is supported by the individual's clinical findings.

The purpose of including the criteria in paragraphs B and C of the listings for mental disorders is to describe those functional limitations associated with mental disorders which are incompatible with the ability to work. The restrictions detailed in paragraphs B and C must be the result of the mental disorder which is manifested by the clinical findings outlined in paragraph A. The criteria included in paragraphs B and C of the listings for mental disorders have been chosen because they represent functional areas deemed essential to work. An individual who is severely limited in these areas as the result of an impairment identified in paragraph A is presumed to be unable to work.

The structure of the listing for substance addiction disorders, listing 12.03, is different from that for the other mental disorder listings. Listing 12.03 is structured as a reference listing; that is, it will only serve to indicate which of the other listed mental or physical impairments must be used to evaluate the behavioral or physical changes resulting from regular use of addictive substances.

The listings for mental disorders are so constructed that an individual meeting or equaling the criteria could not reasonably be expected to engage in substantial gainful work activity. Individuals who have an impairment with a level of severity which does not meet the criteria of the listings for mental disorders may or may not have the residual functional capacity (RFC) which would enable them to engage in substantial gainful work activity. The determination of mental RFC is crucial to the evaluation of an individual's capacity to engage in substantial gainful work activity when the criteria of the listings for mental disorders are not met, but the impairment is nevertheless severe.

RFC may be defined as a multidimensional description of the work-related abilities which an individual retains in spite of medical impairments. RFC compliments the criteria in paragraphs B and C of the listings for mental disorders by requiring consideration of an expanded list of work-related capacities which may be impaired by mental disorder which, while severe but does not meet or equal a listed mental disorder. (While RFC may be applicable in most claims, the law specifies that it does not apply to the following special claims categories: disabled title XVI children below age 18, widows, widowers and surviving divorced wives. The impairment(s) of these categories must meet or equal a listed impairment for the individual to be eligible for benefits based on disability.)

B. Need for Medical Evidence: The existence of a medically determinable impairment of the required duration must be established by medical evidence consisting of clinical signs, symptoms and/or laboratory or psychological test findings. These findings may be intermittent or persistent depending on the nature of the disorder. Clinical signs and symptoms are medically demonstrable phenomena which reflect specific abnormalities of behavior, affect, thought, memory, orientation, or contact with reality. These signs are typically assessed by a psychiatrist or psychologist and/or by psychological tests. Symptoms are complaints presented by the individual. Signs and symptoms generally cluster together to constitute recognizable clinical syndromes (mental disorders). Both symptoms and signs which are part of any diagnosed mental disorder must be considered in evaluating severity.

C. Assessment of Severity: For mental disorders, severity is assessed in terms of the functional limitations imposed by the impairment. Functional limitations are assessed using the criteria in paragraph B of the listings for mental disorders (descriptions of restrictions of activities of daily living, social functioning, concentration, persistence, or pace; and ability to tolerate increased mental demands associated with competitive work). Where "marked" is used as a standard for limiting mental demands associated with competitive work, the existence of a severe but does not meet or equal a listed mental disorder. (While RFC may be applicable in most claims, the law specifies that it does not apply to the following special claims categories: disabled title XVI children below age 18, widows, widowers and surviving divorced wives. The impairment(s) of these categories must meet or equal a listed impairment for the individual to be eligible for benefits based on disability.)

D. Determination of RFC: The evaluation of an individual's capacity to engage in substantial gainful work activity when the criteria of the listings for mental disorders are not met, but the impairment is nevertheless severe.

RFC may be defined as a multidimensional description of the work-related abilities which an individual retains in spite of medical impairments. RFC compliments the criteria in paragraphs B and C of the listings for mental disorders by requiring consideration of an expanded list of work-related capacities which may be impaired by mental disorder which, while severe but does not meet or equal a listed mental disorder. (While RFC may be applicable in most claims, the law specifies that it does not apply to the following special claims categories: disabled title XVI children below age 18, widows, widowers and surviving divorced wives. The impairment(s) of these categories must meet or equal a listed impairment for the individual to be eligible for benefits based on disability.)

E. Determine of RFC: The evaluation of an individual's capacity to engage in substantial gainful work activity when the criteria of the listings for mental disorders are not met, but the impairment is nevertheless severe.

RFC may be defined as a multidimensional description of the work-related abilities which an individual retains in spite of medical impairments. RFC compliments the criteria in paragraphs B and C of the listings for mental disorders by requiring consideration of an expanded list of work-related capacities which may be impaired by mental disorder which, while severe but does not meet or equal a listed mental disorder. (While RFC may be applicable in most claims, the law specifies that it does not apply to the following special claims categories: disabled title XVI children below age 18, widows, widowers and surviving divorced wives. The impairment(s) of these categories must meet or equal a listed impairment for the individual to be eligible for benefits based on disability.)

F. School for the Visually Impaired: The evaluation of an individual's capacity to engage in substantial gainful work activity when the criteria of the listings for mental disorders are not met, but the impairment is nevertheless severe.
In cases involving impaired intellectual functioning, a standardized intelligence test, e.g., the WAIS, should be administered and interpreted by a psychologist or psychiatrist qualified by training and experience to perform such an evaluation. In special circumstances, nonverbal measures, such as the Raven Progressive Matrices, the Leiter International scale, or the Arthur adaptation of the Leiter may be substituted. Identical IQ scores obtained from different tests do not always reflect a similar degree of intellectual functioning. For example, it must be noted that on the WAIS, IQs of 69 and below are characteristic of approximately the lowest 2 percent of the general population. In instances where other tests are administered, it would be necessary to convert the IQ to the corresponding percentile rank in the general population in order to determine the actual degree of impairment reflected by those IQ scores.

In cases where more than one IQ is customarily derived from the test administered, i.e., where verbal, performance, and full-scale IQs are provided as on the WAIS, the lowest of these is used in conjunction with listing 12.05.

In cases where the nature of the individual’s intellectual impairment is such that standard intelligence tests, as described above, are precluded, medical reports specifically describing the level of intellectual, social, and physical function...
should be obtained. Actual observations by Social Security Administration or State agency personnel, reports from educational institutions and information furnished by public welfare agencies or other reliable objective sources should be considered as additional evidence.

E. Chronic Mental Impairments: Particular problems are often involved in evaluating mental impairments in individuals who have long histories of repeated hospitalizations or prolonged outpatient care with supportive therapy and medication. Individuals with chronic impairments placed on an individual basis sometimes have their lives structured in such a way as to minimize stress and reduce their signs and symptoms. Such individuals may be more impaired for work than their signs and symptoms would indicate. Moreover, a single examination may not adequately describe these individuals' sustained ability to function. It is, therefore, vital to review all pertinent information relative to the individual's condition, especially at times of increased stress. It is mandatory to attempt to obtain adequate descriptive information from all sources which have treated the individual and for currently or in the time period relevant to the decision.

F. Effects of Structured Settings: Particularly in cases involving chronic mental disorders, overprotective symptomatology may be controlled or attenuated by psychosocial factors such as placement in a hospital, boarding care facility, or other environment that provides similar structure. Highly structured and supportive settings may greatly reduce the extent of damage to an individual. When withered mental demands, overt signs and symptoms of the underlying mental disorder may be minimized. At the same time, however, the individual's ability to function outside of such a structured and/or supportive setting may not have changed. An evaluation of individuals whose symptomatology is controlled or attenuated by psychosocial factors must consider the extent to which the patient is functioning outside of such highly structured settings. (For these reasons the paragraph C criteria were added to Listings 12.03 and 12.06.)

G. Effects of Medication: Attention must be given to the effects of medication on the individual's signs, symptoms and ability to function. While psychotropic medications may control certain primary manifestations of a mental disorder, e.g., hallucinations, such treatment may or may not affect the functional limitations imposed by the mental disorder. In cases where overt symptomatology is attenuated by the psychotropic medications, particularly in disorders not associated with a dysfunction of the brain, history and physical examination or laboratory tests demonstrate the presence of a specific organic factor judged to be etiologically related to the abnormal mental state and loss of previously acquired functional abilities. The required level of severity for these disorders is met when the requirements in A and B of this listing, OR

1. Demonstration of a loss of specific cognitive abilities or affective changes and the medically documented persistence of at least one of the following:
   a. Blunt affect; or
   b. Flat affect; or
   c. Inappropriate affect; or
   d. Change in personality; or
2. Documented current history of two or more of the following:
   a. Failure to complete tasks in a timely manner (in work settings or elsewhere); or
   b. Repeated episodes of deterioration or decompensation in work or work-like settings which cause the individual to withdraw from that situation or to experience exacerbation of signs and symptoms (which may include deterioration of adaptive behaviors); or

C. Medically documented history of one or more of the following:
1. Marked restriction of activities of daily living; or
2. Marked difficulties in maintaining social functioning; or
3. Deficiencies of concentration, persistence or pace resulting in frequent failure to complete tasks in a timely manner (in work settings or elsewhere); or
4. Repeated episodes of deterioration or decompensation in work or work-like settings which cause the individual to withdraw from that situation or to experience exacerbation of signs and symptoms (which may include deterioration of adaptive behaviors); or

AND
B. Resulting in at least two of the following:
1. Marked restriction of activities of daily living; or
2. Marked difficulties in maintaining social functioning; or
3. Deficiencies of concentration, persistence or pace resulting in frequent failure to complete tasks in a timely manner (in work settings or elsewhere); or
4. Repeated episodes of deterioration or decompensation in work or work-like settings which cause the individual to withdraw from that situation or to experience exacerbation of signs and symptoms (which may include deterioration of adaptive behaviors); or

AND
1. Repeated episodes of deterioration or decompensation in situations which cause the individual to withdraw from that situation or to experience exacerbation of signs or symptoms (which may include deterioration of adaptive behaviors); or
2. Documented current history of one or more years of inability to function outside of a highly supportive living situation.

12.04 Affective Disorders: Characterized by a disturbance of mood, accompanied by a full or partial manic or depressive syndrome. Mood refers to a prolonged emotion that colors the whole psychic life; it generally involves either depression or elation. The required level of severity for these disorders is met when the requirements in both A and B are satisfied.
A. Medically documented persistence, either continuous or intermittent, of one of the following:

1. Depressive syndrome characterized by at least four of the following:
   a. Anhedonia or pervasive loss of interest in almost all activities; or
   b. Appetite disturbance with change in weight; or
   c. Sleep disturbance; or
   d. Psychomotor agitation or retardation; or
   e. Decreased energy; or
   f. Feelings of guilt or worthlessness; or
   g. Difficulty concentrating or thinking; or
   h. Thoughts of suicide; or
   i. Hallucinations, delusions or paranoid thinking; or
   j. Marked syndrome characterized by at least three of the following:
      a. Hyperactivity; or
      b. Pressure of speech; or
      c. Flight of ideas; or
      d. Inflated self-esteem; or
      e. Decreased need for sleep; or
      f. Easy distractibility; or
      g. Involvement in activities that have a high probability of painful consequences which are not recognized; or
      h. Hallucinations, delusions or paranoid thinking; or
   k. Bipolar syndrome with a history of episodic periods manifested by the full symptomatic picture of both manic and depressive syndromes (and currently characterized by either or both syndromes);

AND

B. Resulting in at least two of the following:

1. Marked restriction of activities of daily living; or
2. Marked difficulties in maintaining social functioning; or
3. Deficiencies of concentration, persistence or pace resulting in frequent failure to complete tasks in a timely manner (in work settings or elsewhere); or
4. Repeated episodes of deterioration or decompensation in work or work-like settings which cause the individual to withdraw from that situation or to experience exacerbation of signs and symptoms (which may include deterioration of adaptive behaviors).

12.06 Anxiety Related Disorders: In these disorders anxiety is either the predominant disturbance or it is experienced if the individual attempts to master symptoms; for example, confronting the dreaded object or situation in a phobic disorder or resisting the obsessions or compulsions in obsessive compulsive disorders.

The required level of severity for these disorders is met when the requirements in both A and B are satisfied.

A. Medically documented findings of at least one of the following:

1. A history of multiple physical symptoms with deficits in adaptive behavior initially manifested during the developmental period (before age 22). (Note: The scores specified below refer to those obtained on the W AIS, and are used only for reference purposes. Scores obtained on other standardized and individually administered tests are acceptable, but the numerical values obtained must indicate a similar level of intellectual functioning.) Autism is a pervasive developmental disorder characterized by social and significant communication deficits originating in the developmental period.

The required level of severity for this disorder is met when the requirements in A, B, C or D are satisfied.

1. Mental incapacity evidenced by dependence upon others for personal needs (e.g., toileting, eating, dressing, or bathing).

AND

B. Resulting in at least two of the following:

1. Marked restriction of activities of daily living; or
2. Marked difficulties in maintaining social functioning; or
3. Deficiencies of concentration, persistence or pace resulting in frequent failure to complete tasks in a timely manner (in work settings or elsewhere); or
4. Repeated episodes of deterioration or decompensation in work or work-like settings which cause the individual to withdraw from that situation or to experience exacerbation of signs and symptoms (which may include deterioration of adaptive behaviors).

12.07 Somatoform Disorders: Physical symptoms for which there are no demonstrable organic findings or known physiological mechanisms.

The required level of severity for these disorders is met when the requirements in both A and B are satisfied.

A. Medically documented by evidence of one of the following:

1. A history of multiple physical symptoms of several years duration, beginning before age 30, that have caused the individual to take medicine frequently, see a physician often and alter life patterns significantly; or
2. Persistent monogenic disturbance of one of the following:
   a. Vision; or
   b. Speech; or
   c. Hearing; or
   d. Use of a limb; or
   e. Movement and its control (e.g., coordination disturbance, psychogenic seizures, akinesia, dyskinesia; or
   f. Sensation (e.g., diminished or heightened).

2. Unrealistic interpretation of physical signs or sensations associated with the preoccupation or belief that one has a serious disease or injury.

AND

B. Resulting in three of the following:

1. Marked restriction of activities of daily living; or
2. Marked difficulties in maintaining social functioning; or
3. Deficiencies of concentration, persistence or pace resulting in frequent failure to complete tasks in a timely manner (in work settings or elsewhere); or
4. Repeated episodes of deterioration or decompensation in work or work-like settings which cause the individual to withdraw from that situation or to experience exacerbation of signs and symptoms (which may include deterioration of adaptive behaviors).

12.08 Personality Disorders: A personality disorder exists when personality traits are inflexible and maladaptive and cause either significant impairment in social or occupational functioning or subjective distress. Characteristic features are typical of the individual's long-term functioning and are not limited to discrete episodes of illness.

The required level of severity for these disorders is met when the requirements in both A and B are satisfied.

A. Deeply ingrained, maladaptive patterns of behavior associated with one of the following:
   a. Solitude or autistic thinking; or
2. Pathologically inappropriate suspension of acceptability; or
3. Auditory thinking, perception, speech, and behavior; or
4. Persistent disturbances of mood or state of mind;
5. Pathological dependence, passivity, or aggressiveness; or
6. Intense and unstable interpersonal relationships and impulsive and damaging behaviors;
AND
B. Resulting in three of the following:
1. Marked restriction of activities of daily living; or
2. Marked difficulties in maintaining social functioning; or
3. Deficiencies of concentration, persistence or pace resulting in frequent failure to complete tasks in a timely manner (in work settings or elsewhere); or
4. Repeated episodes of deterioration or decompensation in work or work-like settings which cause the individual to withdraw from that situation or to experience exacerbation of signs and symptoms (which may include deterioration of adaptive behaviors).
12.09 Substance Addiction Disorders: Behavioral changes or physical changes associated with the regular use of substances that affect the central nervous system. The required level of severity for these disorders is met when the requirements in any of the following [A through J] are satisfied.
A. Organic mental disorders. Evaluate under 12.02.
B. Depressive syndrome. Evaluate under 12.04.
C. Anxiety disorders. Evaluate under 12.06.
D. Personality disorders. Evaluate under 12.08.
F. Liver damage. Evaluate under 5.05.
G. Gastritis. Evaluate under 5.04.
H. Pancreatitis. Evaluate under 5.03.
I. Seizures. Evaluate under 11.02 or 11.03.
13.00 Neoplastic Diseases, Malignant
A. Introduction: The determination of the level of impairment resulting from malignant tumors is made from a consideration of the site of the lesion, the histogenesis of the tumor, the extent of involvement, the apparent adequacy and response to therapy (surgery, irradiation, hormones, chemotherapy, etc.), and the magnitude of the post-therapeutic residuals.
B. Documentation: The diagnosis of malignant tumors should be established on the basis of symptoms, signs, and laboratory findings. The site of the primary, recurrent, and metastatic lesion must be specified in all cases of malignant diseases. If an operative procedure has been performed, the evidence should include a copy of the operative note and the report of the gross and microscopic examination of the surgical specimen. If these documents are not obtainable, then the summary of hospitalization or a report from the treating physician must include details of the findings at surgery and the results of the pathologist's gross and microscopic examination of the tissues.
C. Evaluation. Usually, when the malignant tumor consists of a local lesion with metastases to the regional lymph nodes which apparently has been completely excised, imminent recurrence or metastases is not anticipated. A number of exceptions are noted in the specific Listings. For adjudicative purposes, "distant metastases" or "metastases beyond the regional lymph nodes" refers to metastasis beyond the lines of the usual radical en bloc resection. Local or regional recurrence after radical surgery or pathological evidence of incomplete excision by radical surgery is to be equated with unresectable lesions (except for carcinoma of the breast, 13.06C) and, for the purposes of our program, may be evaluated as "inoperable."
Local or regional recurrence after incomplete excision or chemotherapy may also be considered. The evaluation of lymphomas, the tissue type and site of involvement are not necessarily indicators of the degree of impairment.
When a malignant tumor has metastasized beyond the regional lymph nodes, the impairment will usually be for the requirements of a specific listing. Exclusions are hormone-dependent tumors, isotope-sensitive metastases, and metastases from seminoma of the testicles which are controlled by definitive therapy.
When the original tumor and any metastases have apparently disappeared and have not been evident for 3 or more years, the impairment does not meet the criteria under this body system.
D. Effects of therapy. Significant posttherapeutic residuals, not specifically included in the category of impairments for malignant neoplastic diseases, if an operative procedure has been performed, the evidence should include a copy of the operative note and the report of the gross and microscopic examination of the surgical specimen. If these documents are not obtainable, then the summary of hospitalization or a report from the treating physician must include details of the findings at surgery and the results of the pathologist's gross and microscopic examination of the tissues.
E. Onset: To establish onset of disability prior to the time a malignancy is first demonstrated to be inoperable or beyond control by other modes of therapy (and prior evidence is nonexistent) requires medical judgment based on medically reported symptoms, the type of the specific malignancy, its location, and extent of involvement when first demonstrated.
13.01 Category of Impairments, Neoplastic Diseases—Malignant
13.02 Head and neck (except salivary glands) —13.07, thyroid gland —13.08, and mandible, maxilla, orbit, or temporal fossa—
A. Inoperable; or
B. Not controlled by prescribed therapy; or
C. Recurrent after radical surgery or irradiation; or
D. With distant metastases; or
E. Epidermoid carcinoma occurring in the pyriform sinus or posterior third of the tongue.
13.03 Sarcoma of skin—
A. Angiosarcoma with metastases to regional lymph nodes—13.04.
B. Mycosis fungoides with metastases to regional lymph nodes, or with visceral involvement.
13.04 Sarcoma of soft parts: Not controlled by prescribed therapy.
13.05 Malignant melanoma—
A. Recurrent after wide excision; or
B. With metastases to adjacent skin (satellite lesions) or elsewhere.
13.06 Lymph nodes—
A. Hodgkin's disease or non-Hodgkin's lymphoma with progressive disease not controlled by prescribed therapy; or
B. Metastatic carcinoma in a lymph node (except for epidermoid carcinoma in a lymph node in the neck) where the primary site is not determined after adequate search; or
C. Epidermoid carcinoma in a lymph node in the neck not responding to prescribed therapy.
13.07 Salivary glands—carcinoma or sarcoma with metastases beyond the regional lymph nodes.
13.08 Thyroid gland—carcinoma with metastases beyond the regional lymph nodes, not controlled by prescribed therapy.
13.09 Breast—
A. Inoperable carcinoma; or
B. Inflammatory carcinoma; or
C. Recurrent carcinoma, except local recurrence controlled by prescribed therapy; or
D. Distant metastases from breast carcinoma (bilateral breast carcinoma, synchronous or metachronous is usually primary in each breast); or
E. Sarcoma with metastases anywhere.
13.10 Skeletal system (exclusive of the jaw)—
A. Malignant primary tumors with evidence of metastases and not controlled by prescribed therapy; or
B. Metastatic carcinoma to bone where the primary site is not determined after adequate search.
13.11 Mandible, maxilla, orbit, or temporal fossa—
A. Sarcoma of any type with metastases; or
B. Carcinoma of the antrum with extension into the orbit or ethmoid or sphenoid sinus, or with regional or distant metastases; or
C. Orbital tumors with intracranial extension; or
D. Tumors of the temporal fossa with perforation of skull and meningeal involvement; or
E. Adenocarcinoma with orbital or intracranial infiltration; or
F. Tumors of Rathke's pouch with infiltration of the base of the skull or into the orbit or ethmoid or sphenoid sinus, or involvement; or

13.12 Brain or spinal cord:
A. Metastatic carcinoma to brain or spinal cord. B. Evaluate other tumors under the criteria described in 11.05 and 11.06. C. Orbital tumors with intracranial involvement; or

13.13C, and squamous cell carcinoma, types (but excluding oat cell carcinoma, mesothelioma, and adenocarcinoma with metastases beyond the regional lymph nodes or metastases to the regional lymph nodes or metastases to regional lymph nodes; or
E. Other histologic types of carcinoma, including undifferentiated and mixed-cell types (but excluding oat cell carcinoma, squamous cell carcinoma, with distant metastases not controlled by prescribed therapy; or
C. Unresectable; or
D. Recurrence after total cystectomy; or

13.19 B. Unresectable infiltration; or
C. Total pelvic exenteration with metastases.

13.20 Pancreas:
A. Carcinoma except islet cell carcinoma; or
B. Islet cell carcinoma which is unresectable and has metastases.
C. Carcinoma of the bile ducts.

13.21 Kidneys, adrenal glands, or ureters—carcinoma:
A. Unresectable; or
B. With hematogenous spread to distant sites; or
C. With metastases to regional lymph nodes.

13.22 Urinary bladder—carcinoma. With:
A. Infiltration beyond the bladder wall; or
B. Metastases to regional lymph nodes; or
C. Unresectable; or
D. Recurrence after total cystectomy; or
E. Evaluate renal impairment after total cystectomy under the criteria in 6.02.

13.23 Prostate gland—carcinoma not controlled by prescribed therapy.

13.24 Testicles:
A. Choriocarcinoma; or
B. Other malignant primary tumors with progressive disease not controlled by prescribed therapy.

13.25 Uterus—carcinoma or sarcoma (corpus or cervix). A. Inoperable and not controlled by prescribed therapy; or
B. Recurrent after total hysterectomy; or
C. Total pelvis extenteration with metastases.

13.26 Cervix—carcinoma, with distant metastases.

Part B
Medical criteria for the evaluation of impairments of children under age 18 (where criteria in Part A do not give appropriate consideration to the particular disease process in childhood).

100.00 Growth Impairment
A. Impairment of growth may be disabling in itself or it may be an indicator of the severity of the impairment due to a specific disease process.

Deteriorations of growth impairment should be based upon the comparison of current height with at least three previous determinations, including height at birth, if available. Height (or length) should be plotted on a standard growth chart, such as derived from the National Center for Health Statistics: NCHS Growth Charts. Height should be measured without shoes. Body weight corresponding to the ages represented by the heights should be furnished. The adult heights of the child's natural parents and the heights and ages of siblings should also be furnished. This will provide a basis upon which to identify those children whose short stature represents a familial characteristic rather than a result of disease. This is particularly true for adjudication under 100.20B.

B. Bone age determinations should include a full descriptive report of roentgenograms specifically obtained to determine bone age and must cite the standardization method used. Where roentgenograms must be obtained currently as a basis for adjudication under 100.03, views of the left hand and wrist should be ordered. In addition, roentgenograms of the knee and ankle should be obtained when cessation of growth is being evaluated in an older child at, or past, puberty.

C. The criteria in this section are applicable until closure of the major epiphyses. The cessation of significant increase in height at that point would prevent the application of these criteria.

100.01 Category of Impairments. Growth

100.02 Growth impairment, considered to be related to an additional specific medically determinable impairment, and one of the following:
A. Fall of greater than 15 percentiles in height which is sustained; or
B. Fall to, or persistence of, height below the third percentile.

100.03 Growth impairment, not identified as being related to an additional, specific medically determinable impairment. With:
A. Fall of greater than 25 percentiles in height which is sustained; and
B. Bone age greater than two standard deviations (2 SD) below the mean for chronological age (see 100.00B).

101.00 Musculoskeletal System
A. Rheumatoid arthritis. Documentation of the diagnosis of juvenile rheumatoid arthritis should be made according to an established protocol, such as that published by the Arthritis Foundation. Bulletin on the Rheumatic Diseases. Vol. 23, 1972-1973 Series, p 712. Inflammatory signs include persistent pain, tenderness, erythema, swelling, and increased local temperature of a joint.
B. The measurements of joint motion are based on the technique for measurements described in the "Joint Method of Measuring and Recording," published by the American

C. Degenerative arthritis may be the end stage of many skeletal diseases and conditions, such as traumatic arthritis, collagen disorders, septic arthritis, congenital dislocation of the hip, aseptic necrosis of the hip, slipped capital femoral epiphyses, skeletal dysplasias, etc.

101.01 Category of Impairments, Musculoskeletal.

101.02 Juvenile rheumatoid arthritis.

With:
A. Persistence or recurrence of joint inflammation despite three months of medical treatment and one of the following:
1. Limitation of motion of two major joints of 50 percent or greater; or
2. Fixed deformity of two major weight-bearing joints of 30 degrees or more; or
3. Radiographic changes of joint narrowing, erosion, or subluxation; or
4. Persistent or recurrent systemic involvement such as iridocyclitis or pericarditis; or
B. Steroid dependence.

101.03 Deficit of musculoskeletal function due to deformity or musculoskeletal disease as specified in Table I (see § 103.00A for exclusion of children under 6 months).

A. Walking is markedly reduced in speed or distance despite orthotic or prothetic devices; or
B. Ambulation is possible only with obligatory bilateral upper limb assistance (e.g., with walker, crutches); or
C. Inability to perform age-related personal self-care activities involving feeding, dressing, and personal hygiene.

101.06 Disorders of the spine.

A. Fracture of vertebra with cord involvement (substantiated by appropriate sensory and motor loss); or
B. Scoliosis (congenital idiopathic or neuromuscular) such as:
1. Major spinal curve measuring 60 degrees or greater; or
2. Spinal fusion of six or more levels.

Consider using the individual’s measured (actual) height or the individual’s measured (actual) height and one of the following:
A. Recent, recurrent intense asthmatic attacks requiring parenteral medication; or
B. Persistent prolonged expiration with wheezing between acute attacks and radiographic findings of peribronchial disease.

103.01 Category of Impairments, Respiratory.

103.02 Bronchial asthma. With evidence of progression of the disease despite therapy and documented by one of the following:
A. Recent, recurrent intense asthmatic attacks requiring parenteral medication; or
B. Persistent prolonged expiration with wheezing between acute attacks and radiographic findings of peribronchial disease.

103.03 Pulmonary manifestations of cystic fibrosis. With:
A. FEV₁ equal to or less than (L, or less than (L.

This section discusses the ventilatory function studies that should not be performed during or soon after an acute episode or exacerbation of a respiratory illness. In the presence of acute bronchospasm, or where the FEV₁ is less than that stated in Table 1, the studies should be repeated after the administration of a nebulized bronchodilator. If a bronchodilator was not used in such instances, the reason should be stated in the report.

A statement should be made as to the child’s ability to understand directions and to cooperate in performance of the test, and should include an evaluation of the child’s effort. When tests cannot be performed or completed, the reason (such as a child’s young age) should be stated in the report.

103.04 Cystic fibrosis. This section discusses only the pulmonary manifestations of cystic fibrosis. Other manifestations, complications, or associated disease must be evaluated under the appropriate section.

The diagnosis of cystic fibrosis will be based upon appropriate history, physical examination, and pertinent laboratory findings. Confirmation based upon elevated concentration of sodium or chloride in the sweat should be included, with indication of the technique used for collection and analysis.

103.06 Pulmonary insufficiency. The reports of spirometric testing for evaluation under Table 1 must be submitted with the report showing distance per second on the abscissa and distance per liter on the ordinate. The unit distance for volume on the tracing should be at least 15 mm. per liter and the paper speed at least 20 mm. per second. The height of the individual without shoes must be recorded.

The ventilatory function studies should not be performed during or soon after an acute episode or exacerbation of a respiratory illness. In the presence of acute bronchospasm, or where the FEV₁ is less than that stated in Table 1, the studies should be repeated after the administration of a nebulized bronchodilator. If a bronchodilator was not used in such instances, the reason should be stated in the report.

A statement should be made as to the child’s ability to understand directions and to cooperate in performance of the test, and should include an evaluation of the child’s effort. When tests cannot be performed or completed, the reason (such as a child’s young age) should be stated in the report.

The diagnosis of cystic fibrosis will be based upon appropriate history, physical examination, and pertinent laboratory findings. Confirmation based upon elevated concentration of sodium or chloride in the sweat should be included, with indication of the technique used for collection and analysis.

103.07 Pulmonary manifestations of cystic fibrosis. With:
A. FEV₁ equal to or less than the values specified in Table 1 (see § 103.00A for requirements of ventilatory function testing); or
B. For children where ventilatory function testing cannot be performed:
1. History of dyspnea on mild exertion or chronic frequent productive cough; and
2. Persistent or recurrent abnormal breath sounds, bilateral rales, or rhonchi; and
3. Radiographic findings of extensive disease with hyperaeration and bilateral peribronchial infiltration.

#### Table 1

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<thead>
<tr>
<th>Height (in centimeters)</th>
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104.00 Cardiovascular System

A. General. Evaluation should be based upon history, physical findings, and appropriate laboratory data. Reported abnormalities should be consistent with the pathologic diagnosis. The actual electrocardiographic tracing, or an adequate marked photopy, must be included. Reports of other pertinent studies necessary to substantiate the diagnosis or describe the severity of the impairment must also be included.

B. Evaluation of cardiovascular impairment in children requires two steps:

1. The delineation of a specific cardiovascular disturbance, either congenital or acquired. This may include arterial or venous disease, rhythm disturbance, or disease involving the valves, septa, myocardium or pericardium; and

2. Documentation of the severity of the impairment, with medically determinable and consistent cardiovascular signs, symptoms, and laboratory data. In cases where impairment characteristics are questionably secondary to the cardiovascular disturbance, additional documentation of the severity of the impairment (e.g., catheterization data, if performed) will be necessary.

C. Chest roentgenogram (6 ft. PA film) will be considered indicative of cardiomegaly if:

1. The cardiothoracic ratio is over 60 percent at age one year or less, or 55 percent at more than one year of age; or

2. The cardiac size is increased over 15 percent from any prior chest roentgenograms; or

3. Specific chamber or vessel enlargement is documented in accordance with established criteria.

D. Tables I, II, and III below are designed for case adjudication and not for diagnostic purposes. The adult criteria may be useful for older children and should be used when applicable.

E. Rheumatic fever, as used in this section assumes diagnosis made according to the revised Jones Criteria.

104.01 Category of Impairments, Cardiovascular

104.02 Chronic congestive failure. With two or more of the following signs:

A. Tachycardia (see Table I).

B. Tachypnea (see Table II).

C. Cardiomegaly on chest roentgenogram (see 104.00C).

D. Hepatomegaly (more than 2 cm. below the right costal margin in the right midclavicular line).

E. Evidence of pulmonary edema, such as rales or orthopnea.

F. Dependent edema.

104.03 Hypertensive cardiovascular disease. With persistently elevated blood pressure for age (see Table III) and one of the following:

A. Impaired renal function as described under the criteria in 105.02; or

B. Cerebrovascular damage as described under the criteria in 111.00; or

C. Congestive heart failure as described under the criteria in 104.02.

104.04 Cyanotic congenital heart disease. With one of the following:

A. Surgery is limited to palliative measures; or

B. Characteristic squatting, hemoptysis, syncope, or hypercyanotic spells; or

C. Chronic hematocrit of 55 percent or greater or arterial O2 saturation of less than 90 percent at rest, or arterial oxygen tension of less than 60 Torr at rest.

104.05 Cardiac arrhythmia, such as persistent or recurrent heart block or A-V dissociation (with or without therapy). And one of the following:

A. Cardiac syncope; or

B. Competitive heart failure as described under the criteria in 104.02; or

C. Exercise intolerance with labored respirations on mild exertion (e.g., in infants, feeding).

104.07 Cardiac syncope with at least one documented syncopeal episode characteristic of specific cardiac disease (e.g., aortic stenosis).

104.08 Recurrent hemoptysis. Associated with either pulmonary hypertension or extensive bronchial collaterals due to documented chronic congestive cardiovascular disease.

104.09 Chronic rheumatic fever or rheumatic heart disease. With:

A. Persistence of rheumatic fever activity for 6 months or more, with significant murmurs (see 104.00C), and other abnormal laboratory findings (such as elevated sedimentation rate or electrocardiographic findings); or

B. Congestive heart failure as described under the criteria in 104.02.

105.00 Digestive System

A. Disorders of the digestive system which result in disability usually do so because of interference with nutrition and growth, multiple recurrent inflammatory lesions, or other complications of the disease. Such lesions or complications usually respond to treatment. To constitute a listed impairment, these must be shown to have persisted or be expected to persist despite prescribed therapy for a continuous period of at least 12 months.

B. Documentation of gastrointestinal impairments should include pertinent operative findings, radiographic studies, endoscopy, and biopsy reports. Where a liver biopsy has been performed in chronic liver disease, documentation should include the report of the biopsy.

C. Growth retardation and malnutrition. When the primary disorder of the digestive tract has been documented, evaluate resultant malnutrition under the criteria described in 105.08. Evaluate resultant growth impairment under the criteria described in 100.03. Intestinal disorders, including surgical diversions and potentially correctable congenital lesions, do not represent a severe impairment if the individual is able to maintain adequate nutrition growth and development.

D. Multiple congenital anomalies. See related criteria, and consider as a combination of two impairments.

105.01 Category of Impairments, Digestive

105.02 Esophageal obstruction, caused by atresia, stricture, or stenosis with malnutrition as described under the criteria in 105.08.

105.03 Chronic liver disease. With one of the following:

A. Inoperable biliary atresia demonstrated by X-ray or surgery; or

B. Intractable ascites not attributable to other causes, with serum albumin of 3.0 gm. / 100 ml. or less; or

C. Esophageal varices (demonstrated by angiography, barium swallow, or endoscopy or by prior performance of a specific shunt or obliteration procedure); or

D. Hepatic coma, documented by findings from hospital records; or

E. Hepatic encephalopathy. Evaluate under the criteria in 112.02; or

F. Chronic active inflammation or necrosis documented by SCOT persistently more than 100 units or serum bilirubin of 2.5 mg. percent or greater.

105.07 Chronic inflammatory bowel disease (such as ulcerative colitis, regional...
enteritis), as documented in 105.00. With one of the following:
A. Intestinal manifestations or complications, such as obstruction, abscesses, or fistula formation which has lasted or is expected to last 12 months; or
B. Malnutrition as described under the criteria in 105.06; or
C. Growth impairment as described under the criteria in 100.03.
105.08 Malnutrition, due to demonstrable gastrointestinal disease causing either a fall of 15 percentiles of weight which persists or the persistence of weight which is less than the third percentile (as standard growth charts). And one of the following:
A. Stool fat excretion per 24 hours:
   1. More than 15 percent in infants less than 6 months.
   2. More than 10 percent in infants 6–18 months.
   3. More than 6 percent in children more than 18 months; or
B. Persistent hematocrit of 30 percent or less despite prescribed therapy; or
C. Serum carotene of 40 mcg./100 ml. or less; or
D. Serum albumin of 3.0 gm./100 ml. or less.
106.00 Genito-Urinary System
A. Determination of the presence of chronic renal disease will be based upon the following factors:
   1. History, physical examination, and laboratory evidence of renal disease.
   2. Indications of its progressive nature or laboratory evidence of deterioration of renal function.
B. Renal transplant. The amount of function restored and the time required to effect improvement depend upon various factors including adequacy of post transplant renal function, incidence of renal infection, occurrence of rejection crisis, presence of systemic complications (anemia, neuropathy, etc.) and side effects of corticosteroid or immuno-suppressive agents. A period of at least 12 months is required for the individual to reach a point of stable medical improvement.
C. Evaluate associated disorders and complications according to the appropriate body system listing.
106.01 Category of Impairments, Genito-Urinary
106.02 Chronic renal disease. With:
A. Persistent elevation of serum creatinine to 3 mg. per deciliter (100 ml.) or greater over at least 3 months; or
B. Reduction of creatinine clearance to 30 ml. per minute (43 liters/24 hours) per 1.73 m² of body surface area over at least 3 months; or
C. Chronic renal dialysis program for irreversible renal failure; or
D. Renal transplant. Consider under a disability for 12 months following surgery; thereafter, evaluate the residual impairment (see 106.005).
106.03 Nephrotic syndrome, with edema not controlled by prescribed therapy. And:
A. Serum albumin less than 2 gm./100 ml.; or
B. Proteinuria more than 2.5 gm./1.73 m² day.
107.00 Hemic and Lymphatic System
A. Sickle cell disease refers to a chronic hemolytic anemia associated with sickle cell hemoglobin, either homozygous or in combination with thalassemia or with another abnormal hemoglobin (such as C or F).
B. Hemorrhage with joint deformity.
107.11 Acute leukemia. Consider under a disability:
A. For 2½ years from the time of initial diagnosis; or
B. For 2½ years from the time of recurrence of active disease.
108.00 [Reserved]
109.00 Endocrine System
A. Cause of disability. Disability is caused by a disturbance in the regulation of the secretion or metabolism of one or more hormones which are not adequately controlled by therapy. Such disturbances or abnormalities usually respond to treatment. To constitute a listed impairment these must be shown to have persisted or be expected to persist despite prescribed therapy for a continuous period of at least 12 months.
B. Growth. Normal growth is usually a sensitive indicator of health as well as of adequate therapy in children. Impairment of growth may be disabling in itself or may be an indicator of a severe disorder involving the endocrine system or other body systems. Where involvement of other organ systems has occurred as a result of a primary endocrine disorder, these impairments should be evaluated according to the criteria under the appropriate sections.
C. Documentation. Description of characteristic history, physical findings, and diagnostic laboratory data must be included. Results of laboratory tests will be considered abnormal if outside the normal range or greater than two standard deviations from the mean of the testing laboratory. Reports in the file should contain the information provided by the testing laboratory as to their normal values for that test.
D. Hyperfunction of the adrenal cortex. Evidence of growth retardation must be documented as described in 100.00. Elevated blood or urinary free cortisol levels are not acceptable in lieu of urinary 17-hydroxycorticosteroids for the diagnosis of adrenal cortical hyperfunction.
E. Adrenal cortical insufficiency. Documentation must include persistent low plasma cortisol or low urinary 17-hydroxycorticosteroids or 17-ketogenic steroids and evidence of unresponsiveness to ACTH stimulation.
109.01 Category of Impairments, Endocrine
109.02 Thyroid Disorders. A. Hyperthyroidism (as documented in 109.02C).
B. Hypothyroidism. With one of the following, despite prescribed therapy:
   1. IQ of 69 or less; or
   2. Growth impairment as described under the criteria in 100.02 A and B; or
   3. Precocious puberty.
109.03 Hyperparathyroidism (as documented in 109.02C). With:
A. Repeated elevated total or ionized serum calcium; or
B. Hemorrhage with joint deformity.
B. Elevated serum parathyroid hormone.

109.04 Hypoparathyroidism or Pseudohypoparathyroidism. With:
A. Severe recurrent tetany or convulsions which are unresponsive to prescribed therapy; or
B. Growth retardation as described under criteria in 109.02 A and B.

109.05 Diabetes insipidus, documented by pathologic hypertonic saline or water deprivation test. And one of the following:
A. Intracranial space-occupying lesion, before or after surgery; or
B. Unresponsiveness to Pitressin; or
C. Growth retardation as described under the criteria in 109.02 A and B; or
D. Unresponsive hypothalamic thirst center, with chronic or recurrent hypernatremia; or
E. Decreased visual fields attributable to a pituitary lesion.

109.06 Hyperfunction of the adrenal cortex (Primary or secondary). With:
A. Elevated urinary 17-hydroxycorticosteroids (or 17-ketogenic steroids) as documented in 109.00 C and D; and
B. Unresponsiveness to low-dose dexamethasone suppression.

109.07 Adrenal cortical insufficiency (as documented in 109.00 C and E) with recurrent, recent episodes of circulatory collapse.

109.08 Juvenile diabetes mellitus (as documented in 109.00 C) requiring parenteral insulin. And one of the following, despite prescribed therapy:
A. Recent, recurrent hospitalizations with acidosis; or
B. Recent, recurrent episodes of hypoglycemia; or
C. Growth retardation as described under the criteria in 109.02 A or B; or
D. Impaired renal function as described under the criteria in 109.00 FF.

109.09 Intracranial hypoglycercorticoid state. With chronic glucocorticoid therapy resulting in one of the following:
A. Osteoporosis; or
B. Growth retardation as described under the criteria in 109.02 A or B; or
C. Diabetes mellitus as described under the criteria in 109.02 C; or
D. Myopathy as described under the criteria in 111.06; or
E. Emotional disorder as described under the criteria in 112.06; or
F. Impaired renal function as described under the criteria in 112.06 FF.

109.10 Pituitary dwarfism (with documented growth hormone deficiency). And growth impairment as described under the criteria in 109.02 B.

109.11 Adrenogenital syndrome. With:
A. Recent, recurrent self-losing episodes during febrile illnesses, with alteration of level of consciousness or coma.
B. Inadequate replacement therapy manifested by accelerated bone age and virilization, or
C. Growth impairment as described under the criteria in 109.02 A or B.

109.12 Hypoglycemia (as documented in 109.00 C). With recent, recurrent hypoglycemic episodes producing convulsion or coma.

109.13 Gonadal Dysgenesis (Turner's Syndrome), chromosomally proven. Evaluate the resulting growth retardation under the criteria for the appropriate body system.

110.00 Multiple Body Systems
A. Catastrophic congenital abnormalities or disease. This section refers only to very serious congenital disorders, diagnosed in the newborn or infant child.

111.00 Multiple Body Systems
B. Immune deficiency diseases. Documented by an immune deficiency disease must be submitted, and may include quantitative immunoglobulins, skin tests for delayed hypersensitivity, lymphocyte stimulative tests, and measurements of cellular immunity mediators.

111.01 Category of Impairments, Multiple Body Systems
111.08 Catastrophic congenital abnormalities or disease. With:
A. A positive diagnosis (such as anencephaly, trisomy 13 or 18, etc.), generally regarded as being incompatible with extraterine life; or
B. A positive diagnosis (such as cri du chat, Tay-Sachs Disease) wherein attainment of the growth and development level of 2 years is not expected to occur.

111.09 Immune deficiency disease. A. Hypogammaglobulinemia or dyggammaglobulinemia. With:
1. Recent, recurrent severe infections; or
2. A complication such as growth retardation, chronic lung disease, collagen disorder, or tumors.
E. Thymic dysplastic syndromes (such as Swiss, diGeorge).

111.00 Neurological
A. Seizure disorder must be substantiated by at least one detailed description of a typical seizure. Report of recent documentation should include an electroencephalogram and neurological examination. Sleep EEG is preferable, especially with temporal lobe seizures.
Frequency of attacks and any associated phenomena should also be substantiated.
Young children may have convulsions in association with febrile illnesses. Proper use of 111.02 and 111.03 requires that a seizure disorder be established. Although this does not exclude consideration of seizures occurring during febrile illnesses, it does require documentation of seizures during nonfebrile periods.
There is an expected delay in control of seizures when treatment is started, particularly when changes in the treatment regimen are necessary. Therefore, a seizure disorder should not be considered to meet the requirements of 111.02 or 111.03 unless it is shown that seizures have persisted more than three months after prescribed therapy began.
B. Minor motor seizures. Clinical petit mal seizures must be documented by characteristic EEG pattern, plus information as to age at onset and frequency of clinical seizures. Myoclonic seizures, whether of the typical infantile or Lennox-gastaut variant after infancy, must also be documented by the characteristic EEG pattern plus information as to age at onset and frequency of seizures.
C. Motor dysfunction. As described in 111.06, motor dysfunction may be due to any neurological disorder. It may be due to static or progressive or any area of the nervous system and producing any type of neurological impairment. This may include weakness, spasticity, lack of coordination, ataxia, tremor, athetosis, or sensory loss. Documentation of motor dysfunction must include neurologic findings and description of type of neurologic abnormality (e.g., spasticity, weakness), as well as a description of the child's functional impairment (i.e., what the child is unable to do because of the abnormality). Where a diagnosis has been made, evidence should be included for substantiation. In addition to the diagnosis (e.g., blood chemistry and muscle biopsy reports), wherever applicable.
D. Impairment of communication. The documentation should include a description of a recent comprehensive evaluation, including all areas of affective and effective communication, performed by a qualified professional.

111.01 Category of Impairment, Neurological
111.02 Major motor seizure disorder. In a child with an established seizure disorder, the occurrence of more than one major motor seizure per month despite at least three months of prescribed treatment, and one of the following:
1. IQ of 60 or less; or
2. Significant interference with communication due to speech, hearing, or visual defect; or
3. Motor impairment disorder; or
4. Where significant adverse effects of medication interfere with major daily activities.

111.03 Minor motor seizure disorder. In a child with an established seizure disorder, the occurrence of more than one minor motor seizure per week, with alteration of awareness or loss of consciousness, despite at least three months of prescribed treatment.

111.05 Brain tumors. A. Malignant gliomas (astrocytoma—Grades III and IV, glioblastoma multiforme), medulloblastoma, ependymoblastoma, primary sarcoma or brain stem gliomas; or
B. Evaluate other brain tumors under the criteria for the resulting neurological impairment.

111.06 Motor dysfunction (due to any neurological disorder). Persistent disorganization or deficit of motor function for age involving two extremities, which (despite prescribed therapy) interferes with age-appropriate major daily activities and results in disruption of the following:
A. Fine and gross movements; or
B. Gait and station.

111.07 Cerebral palsy. With:
A. Motor dysfunction meeting the requirements of 111.06 plus;
B. Less severe motor dysfunction (but more than slight) and one of the following:
1. IQ of 60 or less; or
2. Seizure disorder, with at least one major motor seizure in the year prior to application; or
3. Significant interference with communication due to speech, hearing or visual defect; or
4. Significant emotional disorder.
   111.08 Mental retardation (and related disorders). With one of the following despite prescribed treatment:
   A. Motor dysfunction meeting the requirements of 111.03 or 111.08; or
   B. Less severe motor dysfunction (but more than slight), and:
   1. Urinary or fecal incontinence when inappropriate for age; or
   2. IQ of 69 or less; or
   C. Four extremity involvement; or
   D. Noncompensated hydrocephalus producing interference with mental or motor development evidenced by impairment of motor skills such as crawling, walking, or running.

   111.09 Communication impairment, associated with documented neurological disorder. And one of the following:
   A. Documented speech deficit which significantly affects the clarity and content of the speech; or
   B. Documented comprehension deficit resulting in ineffective verbal communication for age; or
   C. Impairment of hearing as described under the criteria in 102.08.

112.00 Mental and Emotional Disorders
A. Introduction. This section is intended primarily to describe mental and emotional disorders of young children. The criteria describing medically determinable impairments in adults should be used where they clearly apply to be more appropriate. B. Mental retardation. General. As with any other impairment, the necessary evidence consists of symptoms, signs, and laboratory findings which provide medically documented evidence of impairment of acquired abilities.

   112.01 Category of Impairments. Mental and Emotional

   112.02 Chronic brain syndrome. With arrest of developmental progress for at least six months or loss of previously acquired abilities.

   112.03 Psychosis of infancy and childhood. Documented by psychiatric evaluation and supported, if necessary, by the results of appropriate standardized psychological tests and manifested by marked restriction in the performance of daily age-appropriate activities; construction of age-appropriate interests; deficiency of age-appropriate self-care skills; and impaired ability to relate to others; together with persistence of one (or more) of the following:
   A. Significant withdrawal or detachment; or
   B. Impaired sense of reality; or
   C. Hallucinatory behavior patterns; or
   D. Strong need for maladaptive family or peer relationships with evidence of inappropriate behavior and interaction; or
   E. Panic at threat of separation from parent.

   112.04 Functional nonpsychotic disorders. Documented by psychiatric evaluation and supported, if necessary, by the results of appropriate standardized psychological tests and manifested by marked restriction in the performance of daily age-appropriate activities; construction of age-appropriate interests; deficiency of age-appropriate self-care skills; and impaired ability to relate to others; together with persistence of one (or more) of the following:
   A. Psychophysiological disorder (e.g., diarrhea, asthma); or
   B. Anxiety; or
   C. Depression; or
   D. Phobic, obsessive, or compulsive behavior; or
   E. Hypochondriasis; or
   F. Hysteria; or
   G. Asocial or antisocial behavior.

   112.05 Mental retardation.
   A. Achievement of only those developmental milestones generally acquired by children no more than one-half the child's chronological age; or
   B. IQ of 69 or less; or
   C. IQ of 60-69, inclusive, and a physical or other mental impairment imposing additional and significant restriction of function or developmental progression.

113.00 Neoplastic Diseases, Malignant
A. Introduction. Determination of disability in the growing and developing child with a malignant neoplastic disease is based upon the combined effects of:
   1. The pathophysiology, histology, and natural history of the tumor; and
   2. The effects of the currently employed aggressive multimodal therapeutic regimens.

   Combinations of surgery, radiation, and chemotherapy or prolonged therapeutic schedules impart significant additional morbidity to the child during the period of greatest risk from the tumor itself. This period of highest risk and greatest therapeutically-induced morbidity defines the limits of disability for most of childhood neoplastic disease.

   B. Documentation. The diagnosis of neoplasm should be established on the basis of symptoms, signs, and laboratory findings. The site of the primary, recurrent, and metastatic lesion must be specified in all cases of malignant neoplastic diseases. If an operative procedure has been performed, the evidence should include a copy of the operative note and the report of the gross and microscopic examination of the surgical specimen, along with all pertinent laboratory and X-ray reports. The evidence should also include a recent report directed especially at describing whether there is evidence of local or regional recurrence, soft part or skeletal metastases, and significant post therapeutic residuals.

   C. Malignant solid tumors, as listed under 113.03. include the histiocytosis syndromes except for solitary eosinophilic granuloma. Thus, 113.03 should not be used for evaluating brain tumors (see 111.06) or thyroid tumors, which must be evaluated on the basis of whether they are controlled by prescribed therapy.

   D. Duration of disability from malignant neoplastic tumors is listed under 113.02 and 113.03. Following the time periods designated in these sections, a documented diagnosis itself is no longer sufficient to establish a severe impairment. The severity of a remaining impairment must be evaluated on the basis of the medical evidence.

   113.01 Category of Impairments, Neoplastic Diseases—Malignant

   113.02 Lymphoreticular malignant neoplasms.
   A. Hodgkin's disease with progressive disease not controlled by prescribed therapy; or
   B. Non-Hodgkin's lymphoma. Consider under a disability:
      1. For 2½ years from time of initial diagnosis; or
      2. For 2½ years from time of recurrence of active disease.

   113.03 Malignant solid tumors. Consider under a disability:
   A. For 2 years from the time of initial diagnosis; or
   B. For 2 years from the time of recurrence of active disease.
201.00 Maximum sustained work capability limited to sedentary work as a result of severe medically determinable impairment(s).

202.00 Maximum sustained work capability limited to light work as a result of severe medically determinable impairment(s).

203.00 Maximum sustained work capability limited to medium work as a result of severe medically determinable impairment(s).

204.00 Maximum sustained work capability limited to heavy work (or very heavy work) as a result of severely medically determinable impairment(s).

205.00 Introduction. (a) The following rules reflect the major functional and vocational patterns which are encountered in cases which cannot be evaluated on medical considerations alone, where an individual with a severe medically determinable physical or mental impairment(s) is not engaging in substantial gainful activity and the individual's impairment(s) prevents the performance of his or her vocationally relevant past work. They also reflect the analysis of the various vocational factors (i.e., age, education, and work experience) in combination with the individual's residual functional capacity (used to determine his or her maximum sustained work capability for sedentary, light, medium, heavy, or very heavy work) to evaluate the individual's ability to engage in substantial gainful activity in other than his or her vocationally relevant past work. Where the findings of fact made with respect to a particular individual's vocational factors and residual functional capacity coincide with all of the criteria of a particular rule, the rule directs a conclusion as to whether the individual is or is not disabled. However, each of these findings of fact is subject to rebuttal and the individual may present evidence to refute such findings. Where any one of the findings of fact does not coincide with the corresponding criterion of a rule, the rule does not apply in that particular case and, accordingly, does not direct a conclusion of disabled or not disabled. In any instance where a rule does not apply, full consideration must be given to all of the relevant facts in the case in accordance with the definitions and discussions of each factor in the appropriate sections of the regulations.

(b) The existence of jobs in the national economy is reflected in the “Decisions” shown in the rules; i.e., in promulgating the rules, administrative notice has been taken of the numbers of unskilled jobs that exist throughout the national economy at the various functional levels (sedentary, light, medium, heavy, and very heavy) as supported by the “Dictionary of Occupational Titles” and the “Occupational Outlook Handbook,” published by the Department of Labor; the “County Business Patterns” and “Consensus Surveys” published by the Bureau of the Census; and occupational surveys of light and sedentary work for the Social Security Administration by various State employment agencies. Thus, when all factors coincide with the criteria of a rule, the existence of each job is established. However, the existence of such jobs for individuals whose remaining functional capacity or other factors do not coincide with the criteria of a rule must be further considered in view of consideration of jobs or types of work may be either additionally indicated or precluded.

(c) In the application of the rules, the individual’s residual functional capacity (i.e., the maximum degree to which the individual retains the capacity for sustained performance of the physical-mental requirements of jobs), age, education, and work experience must first be determined. (d) The correct disability decision (i.e., on the issue of ability to engage in substantial gainful activity) is found by then locating the individual’s specific vocational profile. If an individual’s specific profile is not listed within this Appendix 2, a conclusion of disabled or not disabled is not directed. Thus, for example, an individual’s ability to engage in substantial gainful work where his or her residual functional capacity falls between the ranges of work indicated in the rules (e.g., the individual who can perform more than light but less than medium work), is decided on the basis of the principles and definitions in the regulations, giving consideration to the rules for specific case situations in this Appendix 2. These rules represent various combinations of exertional capabilities, age, education and work experience and also provide as a very useful guide for evaluation of those cases in which the judgments as to each factor do not coincide with those of any specific rule. Thus, when the necessary judgments have been made as to each factor and it is found that a specific rule applies, the rules still provide guidance for decisionmaking, such as in cases involving combinations of impairments. For example, if strength limitations resulting from an individual’s Impairment(s) considered with the judgments made as to the individual’s age, education and work experience correspond to (or closely approximate) the factors of a particular rule, the adjudicator then has a frame of reference for considering the jobs or types of work precluded by other, nonexertional impairments in terms of numbers of jobs remaining for a particular individual.

(d) Since the rules are predicated on an individual’s having an impairment which manifests itself by limitations in meeting the strength requirements of jobs, they may not be fully applicable where the nature of an individual’s impairment does not result in such limitations, e.g., certain mental, sensory, or skin impairments. In addition, some impairments may result solely in postural and manipulative limitations or environmental restrictions. Environmental restrictions are those restrictions which result in inability to tolerate some physical feature(s) of work settings that occur in certain industries or types of work, e.g., an inability to tolerate dust or fumes.

(1) In the evaluation of disability where the individual has solely a nonexertional type of impairment, determination as to whether disability exists shall be based on the principles in the appropriate sections of the regulations, giving consideration to the rules for specific case situations in this Appendix 2. The rules do not direct factual conclusions of disabled or not disabled for individuals with solely nonexertional types of impairments.

(2) However, where an individual has an impairment or combination of impairments resulting in both strength limitations and nonexertional limitations, the rules in this subpart are considered in determining first whether a finding of disabled may be made based on the strength limitations alone and, if not, the rules reflecting the individual’s maximum residual strength capabilities, age, education, and work experience provide a framework for consideration of how much the individual’s work capability is further diminished in terms of any types of jobs that would be contraindicated by the nonexertional limitations. Also, in these combinations of nonexertional and exertional limitations which cannot be wholly determined under the rules in this Appendix 2, full consideration must be given to all of the relevant facts in the case in accordance with the definitions and discussions of each factor in the appropriate sections of the regulations, which will provide insight into the adjudicative weight to be accorded each factor.

206.00 Maximum sustained work capability limited to sedentary work as a result of severe medically determinable impairment(s). (a) Most sedentary occupations fall within the skilled, semi-skilled, professional, administrative, technical, clerical, and benchwork classifications. Approximately 200 separate unskilled sedentary occupations can be identified, each representing numerous jobs in the national economy. Approximately 85 percent of these jobs are in the machine trades and benchwork occupational categories. These jobs (unskilled sedentary occupations) may be performed after a short demonstration or within 30 days.

(b) These unskilled sedentary occupations are standard within the industries in which they exist. While sedentary work represents a significantly restricted range of work, this range in itself is not so prohibitively restricted as to negate work capability for substantial gainful activity. (c) Vocational adjustment to sedentary work may be expected where the individual has special skills or experience relevant to sedentary work or where age and basic educational competences provide sufficient occupational mobility to adapt to the major...
segment of unskilled sedentary work. Inability to engage in substantial gainful activity would be indicated where an individual who is restricted to sedentary work because of a severe medically determinable impairment lacks special skills or experience relevant to sedentary work, lacks educational qualifications relevant to most sedentary work (e.g., has a limited education or less) and the individual's age, though not necessarily advanced, is a factor which significantly limits vocational adaptability.

(d) The adversity of functional restrictions to sedentary work at advanced age (55 and over) for individuals with no relevant past work or who can no longer perform vocationally relevant past work and have no transferable skills, warrants a finding of disabled in the absence of the rare situation where the individual has recently completed education which provides a basis for direct entry into skilled sedentary work. Advanced age and a history of unskilled work or no work experience would ordinarily offset any vocational advantages that might accrue by reason of any remote past education, whether it is more or less than limited education.

(e) The presence of acquired skills that are readily transferable to a significant range of skilled work within an individual's residual functional capacity would ordinarily warrant a finding of ability to engage in substantial gainful activity regardless of the adversity of age, or whether the individual's formal education is commensurate with his or her demonstrated skill level. The acquisition of work skills demonstrates the ability to perform work at the level of complexity demonstrated by the skill level attained regardless of the individual's formal educational attainments.

(f) In order to find transferability of skills to skilled sedentary work for individuals who are of advanced age (55 and over), there must be very little, if any, vocational adjustment required in terms of tools, work processes, work settings, or the industry.

(g) Individuals approaching advanced age (age 50-54) may be significantly limited in vocational adaptability if they are restricted to sedentary work. When such individuals have no past work experience or can no longer perform vocationally relevant past work and have no transferable skills, a finding of disabled ordinarily obtains. However, recently completed education which provides for direct entry into sedentary work will preclude such a finding. For this age group, even a high school education or more (ordinarily completed in the remote past) would have little impact for effecting a vocational adjustment unless relevant work experience reflects use of such education.

(h) The term "younger individual" is used to denote an individual age 18 through 49. For those within this group who are age 45-49, age is a less positive factor than for those who are age 18-44. Accordingly, for such individuals (1) who are restricted to sedentary work, (2) who are unskilled or have no transferable skills, (3) who have no relevant past work or who can no longer perform vocationally relevant past work, and (4) who are either illiterate or unable to communicate in the English language, a finding of disabled is warranted. On the other hand, age is a more positive factor for those who are under age 45 and is usually not a significant factor in limiting such an individual's ability to make a vocational adjustment, even an adjustment to unskilled sedentary work, and even where the individual is illiterate or unable to communicate in English. However, a finding of disabled is not precluded for those individuals under age 45 who do not meet all of the criteria of a specific rule and who do not have the ability to perform a full range of sedentary work. The following examples are illustrative: Example 1: An individual under age 45 with a high school education can no longer do past work and is restricted to unskilled sedentary jobs because of a severe medically determinable cardiovascular impairment (which does not meet or equal the listings in Appendix 1). A permanent injury of the right hand limits the individual to sedentary jobs which do not require bilateral manual dexterity. None of the rules in Appendix 2 are applicable to this particular set of facts, because this individual cannot perform the full range of work defined as sedentary. Since the inability to perform jobs requiring bilateral manual dexterity significantly compromises the only range of work for which the individual is otherwise qualified (i.e., sedentary), a finding of disabled would be appropriate. Example 2: An illiterate 41 year old individual with mild mental retardation (IQ of 78) is restricted to unskilled sedentary work and cannot perform vocationally relevant past work, which had consisted of unskilled agricultural field work; his or her particular characteristics do not specifically meet any of the rules in Appendix 2, because this individual cannot perform the full range of work defined as sedentary. In the light of the adverse factors which further narrow the range of sedentary work for which this individual is qualified, a finding of disabled is appropriate.

(i) While illiteracy or the inability to communicate in English may significantly limit an individual's vocational scope, the primary work functions in the bulk of unskilled work relate to working with things (rather than with data or people) and in these work functions at the unskilled level, literacy or ability to communicate in English has the least significance. Similarly the lack of relevant work experience and transferable skills is of little significance since the bulk of unskilled jobs require no qualifying work experience. Thus, the functional capability for a full range of sedentary work represents sufficient numbers of jobs to indicate substantial work function scope for those individuals age 18-44 even if they are illiterate or unable to communicate in English.

<table>
<thead>
<tr>
<th>Table No. 1—Residual Functional Capacity: Maximum Sustained Work Capability Limited to Sedentary Work as a Result of Severe Medically Determinable Impairment(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Rule</strong></td>
</tr>
<tr>
<td>201.01</td>
</tr>
<tr>
<td>201.02</td>
</tr>
<tr>
<td>201.03</td>
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<td>201.04</td>
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<tr>
<td>201.14</td>
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<tr>
<td>201.15</td>
</tr>
</tbody>
</table>
**TABLE NO. 1—RESIDENT FUNCTIONAL CAPACITY: MAXIMUM SUSTAINED WORK CAPABILITY LIMITED TO SEDENTARY WORK AS A RESULT OF SEVERE MEDICALLY DETERMINABLE IMPAIRMENT(S)—CONTINUED**

<table>
<thead>
<tr>
<th>Rule</th>
<th>Age</th>
<th>Education</th>
<th>Previous work experience</th>
<th>Decision</th>
</tr>
</thead>
<tbody>
<tr>
<td>201.16</td>
<td>do</td>
<td>High school graduate or more—provides for direct entry into skilled work</td>
<td>Skilled or semiskilled—skills not transferable</td>
<td>Do.</td>
</tr>
<tr>
<td>201.17</td>
<td>Younger individual age 45-49</td>
<td>...do...</td>
<td>do.</td>
<td>Disabled.</td>
</tr>
<tr>
<td>201.18</td>
<td>do</td>
<td>Illiterate or unable to communicate in English</td>
<td>Skilled or semiskilled—skills not transferable</td>
<td>Do.</td>
</tr>
<tr>
<td>201.19</td>
<td>do</td>
<td>Limited or less—at least literate and able to communicate in English</td>
<td>Skilled or semiskilled—skills not transferable</td>
<td>Do.</td>
</tr>
<tr>
<td>201.20</td>
<td>do</td>
<td>High school graduate or more</td>
<td>Skilled or semiskilled—skills not transferable</td>
<td>Do.</td>
</tr>
<tr>
<td>201.21</td>
<td>do</td>
<td>Illiterate or unable to communicate in English</td>
<td>Skilled or semiskilled—skills transferable</td>
<td>Do.</td>
</tr>
<tr>
<td>201.22</td>
<td>do</td>
<td>Limited or less—at least literate and able to communicate in English</td>
<td>Skilled or semiskilled—skills not transferable</td>
<td>Do.</td>
</tr>
<tr>
<td>201.23</td>
<td>Younger individual age 18-44</td>
<td>...do...</td>
<td>Skilled or semiskilled—skills transferable</td>
<td>Do.</td>
</tr>
<tr>
<td>201.24</td>
<td>do</td>
<td>...do...</td>
<td>Do.</td>
<td></td>
</tr>
<tr>
<td>201.25</td>
<td>do</td>
<td>...do...</td>
<td>Do.</td>
<td></td>
</tr>
<tr>
<td>201.26</td>
<td>do</td>
<td>...do...</td>
<td>Do.</td>
<td></td>
</tr>
<tr>
<td>201.27</td>
<td>do</td>
<td>...do...</td>
<td>Do.</td>
<td></td>
</tr>
<tr>
<td>201.28</td>
<td>do</td>
<td>...do...</td>
<td>Do.</td>
<td></td>
</tr>
</tbody>
</table>

* See 201.00(d).
+ See 201.00(g).
- See 201.00(h).
+ See 201.00(i).

201.00 Maximum sustained work capability limited to light work as a result of severe medically determinable impairment(s). (a) The functional capacity to perform a full range of light work includes the functional capacity to perform sedentary as well as light work. Approximately 1.600 separate sedentary and light unskilled occupations can be identified in eight broad occupational categories, each occupation representing numerous jobs in the national economy. These jobs can be performed after a short demonstration or within 30 days, and do not require special skills or experience. (b) The functional capacity to perform a wide or full range of light work represents substantial work capability compatible with making a work adjustment to substantial numbers of unskilled jobs and, thus, generally provides sufficient occupational mobility even for severely impaired individuals who are not of advanced age and have sufficient educational competences for unskilled work. (c) However, for individuals of advanced age who can no longer perform vocationally relevant past work and who have a history of unskilled work experience, or who have only skills that are not readily transferable to a significant range of semi-skilled or skilled work that is within the individual’s functional capacity, or who have no work experience, the limitations in vocational adaptability represented by functional restriction to light work warrant a finding of disabled. Ordinarily, a high school education or more which was completed in the remote past will have little positive impact on effecting a vocational adjustment unless relevant work experience reflects use of such education. (d) Where the same factors in paragraph (c) of this section regarding education and work experience are present, but where age, though not advanced, is a factor which significantly limits vocational adaptability [i.e., closely approaching advanced age (age 60-64)] and an individual’s vocational scope is further significantly limited by illiteracy or inability to communicate in English, a finding of disabled is warranted. (e) The presence of acquired skills that are readily transferable to a significant range of semi-skilled or skilled work within an individual’s residual functional capacity would ordinarily warrant a finding of not disabled regardless of the adversity of age, or whether the individual’s formal education is commensurate with his or her demonstrated skill level. The acquisition of work skills demonstrates the ability to perform work at the level of complexity demonstrated by the skill level attained regardless of the individual’s formal educational attainments. (f) For a finding of transferability of skills to light work for individuals of advanced age who are closely approaching retirement age (age 60-64), there must be very little, if any, vocational adjustment required in terms of tools, work processes, work settings, or the industry. (g) While illiteracy or the inability to communicate in English may significantly limit an individual’s vocational scope, the primary work functions in the bulk of unskilled work relate to working with things (rather than with data or people) and in these work functions at the unskilled level, literacy or ability to communicate in English has the least significance. Similarly, the lack of relevant work experience would have little significance since the bulk of unskilled jobs require no qualifying work experience. The capability for light work, which includes the ability to do sedentary work, represents the capability for substantial numbers of such jobs. This, in turn, represents substantial vocational scope for younger individuals (age 18-49) even if illiterate or unable to communicate in English.

**TABLE NO. 2—RESIDENT FUNCTIONAL CAPACITY: MAXIMUM SUSTAINED WORK CAPABILITY LIMITED TO LIGHT WORK AS A RESULT OF SEVERE MEDICALLY DETERMINABLE IMPAIRMENT(S)**

<table>
<thead>
<tr>
<th>Rule</th>
<th>Age</th>
<th>Education</th>
<th>Previous work experience</th>
<th>Decision</th>
</tr>
</thead>
<tbody>
<tr>
<td>202.01</td>
<td>Advanced age</td>
<td>Limited or less</td>
<td>Unskilled or none</td>
<td>Disabled.</td>
</tr>
<tr>
<td>202.02</td>
<td>do</td>
<td>...do...</td>
<td>Skilled or semiskilled—skills transferable</td>
<td>Do.</td>
</tr>
<tr>
<td>202.03</td>
<td>do</td>
<td>High school graduate or more—does not provide for direct entry into skilled work</td>
<td>Skilled or semiskilled—skills transferable</td>
<td>Do.</td>
</tr>
<tr>
<td>202.04</td>
<td>do</td>
<td>High school graduate or more</td>
<td>Unskilled or none</td>
<td>Disabled.</td>
</tr>
<tr>
<td>202.05</td>
<td>do</td>
<td>High school graduate or more—does not provide for direct entry into skilled work</td>
<td>Skilled or semiskilled—skills transferable</td>
<td>Do.</td>
</tr>
<tr>
<td>202.06</td>
<td>do</td>
<td>High school graduate or more—does not provide for direct entry into skilled work</td>
<td>Skilled or semiskilled—skills transferable</td>
<td>Do.</td>
</tr>
<tr>
<td>202.07</td>
<td>do</td>
<td>...do...</td>
<td>Do.</td>
<td>Disabled.</td>
</tr>
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</table>
### TABLE NO. 2—RESIDENTIAL FUNCTIONAL CAPACITY: MAXIMUM SUSTAINED WORK CAPABILITY LIMITED TO LIGHT WORK AS A RESULT OF SEVERE MEDICALLY DETERMINABLE IMPAIRMENT(S)—Continued

<table>
<thead>
<tr>
<th>Rule</th>
<th>Age</th>
<th>Education</th>
<th>Previous work experience</th>
<th>Decision</th>
</tr>
</thead>
<tbody>
<tr>
<td>202.08</td>
<td>do</td>
<td>High school graduate or more—provides for</td>
<td>Skilled or semiskilled—skills not transferable</td>
<td>Do.</td>
</tr>
<tr>
<td>203.09</td>
<td>Closely approaching advanced age...</td>
<td>illiterate or unable to communicate in English.</td>
<td>Skilled or semiskilled—skills not transferable</td>
<td>Disabled.</td>
</tr>
<tr>
<td>202.10</td>
<td>do</td>
<td>Limited or less—At least literate and able to</td>
<td>Skilled or semiskilled—skills not transferable</td>
<td>Not disabled.</td>
</tr>
<tr>
<td>203.11</td>
<td>do</td>
<td>communicate in English.</td>
<td>Skilled or semiskilled—skills transferable</td>
<td>Do.</td>
</tr>
<tr>
<td>202.12</td>
<td>do</td>
<td>Limited or less</td>
<td>Skilled or semiskilled—skills transferable</td>
<td>Do.</td>
</tr>
<tr>
<td>203.13</td>
<td>do</td>
<td>High school graduate or more</td>
<td>Skilled or semiskilled—skills transferable</td>
<td>Do.</td>
</tr>
<tr>
<td>202.14</td>
<td>do</td>
<td>do</td>
<td>Skilled or semiskilled—skills transferable</td>
<td>Do.</td>
</tr>
<tr>
<td>203.15</td>
<td>do</td>
<td>High school graduate or more</td>
<td>Skilled or semiskilled—skills transferable</td>
<td>Do.</td>
</tr>
<tr>
<td>203.16</td>
<td>do</td>
<td>illiterate or unable to communicate in English.</td>
<td>Skilled or semiskilled—skills transferable</td>
<td>Do.</td>
</tr>
<tr>
<td>202.17</td>
<td>do</td>
<td>Limited or less—At least literate and able to</td>
<td>Skilled or semiskilled—skills transferable</td>
<td>Do.</td>
</tr>
<tr>
<td>202.18</td>
<td>do</td>
<td>communicate in English.</td>
<td>Skilled or semiskilled—skills transferable</td>
<td>Do.</td>
</tr>
<tr>
<td>202.19</td>
<td>do</td>
<td>Limited or less</td>
<td>Skilled or semiskilled—skills transferable</td>
<td>Do.</td>
</tr>
<tr>
<td>203.20</td>
<td>do</td>
<td>High school graduate or more</td>
<td>Skilled or semiskilled—skills transferable</td>
<td>Do.</td>
</tr>
<tr>
<td>202.21</td>
<td>do</td>
<td>do</td>
<td>Skilled or semiskilled—skills transferable</td>
<td>Do.</td>
</tr>
<tr>
<td>203.22</td>
<td>do</td>
<td>High school graduate or more</td>
<td>Skilled or semiskilled—skills transferable</td>
<td>Do.</td>
</tr>
<tr>
<td>202.23</td>
<td>do</td>
<td>do</td>
<td>Skilled or semiskilled—skills transferable</td>
<td>Do.</td>
</tr>
</tbody>
</table>

Note: Select 202.00(a). Select 202.00(c).

203.00 Maximum sustained work capability limited to medium work as a result of severe medically determinable impairments. (a) The functional capacity to perform medium work includes the functional capacity to perform sedentary, light, and medium work. Approximately 2,500 separate sedentary, light, and medium occupations can be identified, each occupation representing numerous jobs in the national economy which do not require skills or previous experience and which can be performed after a short demonstration or within 30 days. (b) The functional capacity to perform medium work represents such substantial work capability at even the unskilled level that a finding of disabled is ordinarily not warranted in cases where a severely impaired individual retains the functional capacity to perform medium work. Even the adversity of advanced age (55 or over) and a work history of unskilled work may be offset by the substantial work capability represented by the functional capacity to perform medium work. However, an individual with a marginal education and long work experience (i.e., 35 years or more) limited to the performance of arduous unskilled labor, who is not working and is no longer able to perform this labor because of severe impairment(s), may still be found disabled even though the individual is able to do medium work.

(c) However, the absence of any relevant work experience becomes a more significant adversity for individuals of advanced age (55 and over). Accordingly, this factor, in combination with a limited education or less, militates against making a vocational adjustment to even this substantial range of work and a finding of disabled is appropriate. Further, for individuals closely approaching retirement age (60-64) with a work history of unskilled work and with marginal education or less, a finding of disabled is appropriate.

### TABLE NO. 3—RESIDENTIAL FUNCTIONAL CAPACITY: MAXIMUM SUSTAINED WORK CAPABILITY LIMITED TO MEDIUM WORK AS A RESULT OF SEVERE MEDICALLY DETERMINABLE IMPAIRMENT(S)

<table>
<thead>
<tr>
<th>Rule</th>
<th>Age</th>
<th>Education</th>
<th>Previous work experience</th>
<th>Decision</th>
</tr>
</thead>
<tbody>
<tr>
<td>203.01</td>
<td>Closely approaching retirement age...</td>
<td>Marginal or none</td>
<td>Unskilled or none</td>
<td>Disabled.</td>
</tr>
<tr>
<td>203.02</td>
<td>do</td>
<td>Limited or less</td>
<td>Unskilled</td>
<td>Do.</td>
</tr>
<tr>
<td>203.03</td>
<td>do</td>
<td>Limited</td>
<td>Skilled or semiskilled—skills not transferable</td>
<td>Do.</td>
</tr>
<tr>
<td>203.04</td>
<td>do</td>
<td>Limited or less</td>
<td>Skilled or semiskilled—skills transferable</td>
<td>Do.</td>
</tr>
<tr>
<td>203.05</td>
<td>do</td>
<td>High school graduate or more</td>
<td>Skilled or semiskilled—skills transferable</td>
<td>Do.</td>
</tr>
<tr>
<td>203.06</td>
<td>do</td>
<td>High school graduate or more—does not</td>
<td>Skilled or semiskilled—skills transferable</td>
<td>Do.</td>
</tr>
<tr>
<td>203.07</td>
<td>do</td>
<td>provide for direct entry into skilled work.</td>
<td>Skilled or semiskilled—skills transferable</td>
<td>Do.</td>
</tr>
<tr>
<td>203.08</td>
<td>do</td>
<td>High school graduate or more—provides for</td>
<td>Skilled or semiskilled—skills transferable</td>
<td>Do.</td>
</tr>
<tr>
<td>203.09</td>
<td>do</td>
<td>direct entry into skilled work.</td>
<td>Skilled or semiskilled—skills transferable</td>
<td>Do.</td>
</tr>
<tr>
<td>203.10</td>
<td>do</td>
<td>Limited or less</td>
<td>Unskilled or none</td>
<td>Disabled.</td>
</tr>
<tr>
<td>203.11</td>
<td>do</td>
<td>High school graduate or more</td>
<td>Unskilled or none</td>
<td>Do.</td>
</tr>
<tr>
<td>203.12</td>
<td>do</td>
<td>High school graduate or more—does not</td>
<td>Unskilled or none</td>
<td>Do.</td>
</tr>
<tr>
<td>203.13</td>
<td>do</td>
<td>provide for direct entry into skilled work.</td>
<td>Unskilled or none</td>
<td>Do.</td>
</tr>
<tr>
<td>203.14</td>
<td>do</td>
<td>High school graduate or more—provides for</td>
<td>Unskilled or none</td>
<td>Do.</td>
</tr>
<tr>
<td>203.15</td>
<td>do</td>
<td>direct entry into skilled work.</td>
<td>Unskilled or none</td>
<td>Do.</td>
</tr>
<tr>
<td>203.16</td>
<td>do</td>
<td>Limited or less</td>
<td>Unskilled or none</td>
<td>Do.</td>
</tr>
<tr>
<td>203.17</td>
<td>do</td>
<td>High school graduate or more—provides for</td>
<td>Unskilled or none</td>
<td>Do.</td>
</tr>
<tr>
<td>203.18</td>
<td>do</td>
<td>direct entry into skilled work.</td>
<td>Unskilled or none</td>
<td>Do.</td>
</tr>
<tr>
<td>203.19</td>
<td>do</td>
<td>High school graduate or more</td>
<td>Skilled or semiskilled—skills not transferable</td>
<td>Do.</td>
</tr>
<tr>
<td>203.20</td>
<td>do</td>
<td>High school graduate or more—does not</td>
<td>Skilled or semiskilled—skills not transferable</td>
<td>Do.</td>
</tr>
<tr>
<td>203.21</td>
<td>do</td>
<td>provide for direct entry into skilled work.</td>
<td>Skilled or semiskilled—skills not transferable</td>
<td>Do.</td>
</tr>
<tr>
<td>203.22</td>
<td>do</td>
<td>Skilled or semiskilled—skills not transferable</td>
<td>Skilled or semiskilled—skills transferable</td>
<td>Do.</td>
</tr>
<tr>
<td>203.23</td>
<td>do</td>
<td>do</td>
<td>Skilled or semiskilled—skills transferable</td>
<td>Do.</td>
</tr>
</tbody>
</table>
### TABLE NO. 3—RESIDUAL FUNCTIONAL CAPACITY: MAXIMUM SUSTAINED WORK CAPABILITY LIMITED TO MEDIUM WORK AS A RESULT OF SEVERE MEDICALLY DETERMINABLE IMPAIRMENT(S)—Continued

<table>
<thead>
<tr>
<th>Rule</th>
<th>Age</th>
<th>Education</th>
<th>Previous work experience</th>
<th>Decision</th>
</tr>
</thead>
<tbody>
<tr>
<td>203.24</td>
<td>...</td>
<td>High school graduate or more—provides for direct entry into skilled work.</td>
<td>Skilled or semiskilled—skills not transferable</td>
<td>Do.</td>
</tr>
<tr>
<td>203.25</td>
<td>Younger individual</td>
<td>Limited or less</td>
<td>Unskilled or none</td>
<td>Do.</td>
</tr>
<tr>
<td>203.26</td>
<td>...</td>
<td>...</td>
<td>Skilled or semiskilled—skills not transferable</td>
<td>Do.</td>
</tr>
<tr>
<td>203.27</td>
<td>...</td>
<td>...</td>
<td>Skilled or semiskilled—skills transferable</td>
<td>Do.</td>
</tr>
<tr>
<td>203.28</td>
<td>...</td>
<td>High school graduate or more</td>
<td>Unskilled or none</td>
<td>Do.</td>
</tr>
<tr>
<td>203.29</td>
<td>...</td>
<td>...</td>
<td>Skilled or semiskilled—skills transferable</td>
<td>Do.</td>
</tr>
<tr>
<td>203.30</td>
<td>...</td>
<td>...</td>
<td>Skilled or semiskilled—skills not transferable</td>
<td>Do.</td>
</tr>
<tr>
<td>203.31</td>
<td>...</td>
<td>High school graduate or more—does not provide for direct entry into skilled work.</td>
<td>Skilled or semiskilled—skills transferable</td>
<td>Do.</td>
</tr>
</tbody>
</table>

### PART 204—MONTHS ANNUITIES NOT PAYABLE BY REASON OF WORK

3. Part 204 is amended as follows:

A. The authority citation for Part 204 is revised to read as follows:

Authority: 45 U.S.C. 231f.

4. Part 204 is amended by removing §§ 204.3 and 204.4.

### PART 260—REQUESTS FOR RECONSIDERATION AND APPEALS WITHIN THE BOARD FROM DECISIONS ISSUED BY THE BUREAU OF RETIREMENT CLAIMS AND THE BUREAU OF COMPENSATION AND CERTIFICATION

4. Part 260 is amended as follows:

A. The authority citation for Part 260 is revised to read as follows:


B. Section 260.1 is amended by revising paragraphs [d][3] introductory text, [d][3][i] and [d][3][iv] as follows:

§ 260.1 Initial decisions by the Bureau of Retirement Claims.

(d) * * *

(3) When an initial decision is made that an annuitant’s entitlement to a disability has ended, written notice of that decision shall be mailed to the annuitant or payee of an annuity at the annuitant’s or payee’s last known address. Such notice shall inform the annuitant or payee of an annuity:

* * * * *

Dated: July 17, 1989.

By authority of the Board.

Beatrice Ezerski,
Secretary to the Board.
Part III

Securities and Exchange Commission

17 CFR Part 230 et al.
Multijurisdictional Disclosure; Proposed Rules
SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 230, 239, 240, 249, 260 and 269


Multijurisdictional Disclosure

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rules.

SUMMARY: The Securities and Exchange Commission (the “Commission”) is proposing for comment proposals, Forms and Schedules intended to facilitate cross-border offerings of securities by specified Canadian issuers. The Rules, Forms and Schedules will provide a foundation for a multijurisdictional disclosure system (the “system”) that can be expanded to encompass a wider class of issuers and be extended to additional jurisdictions.

As currently proposed, the multijurisdictional disclosure system would permit Canadian issuers that, depending on the nature of the offering, meet market value, public float and Canadian reporting history tests to register securities in the United States using disclosure documents prepared according to the requirements of Canadian regulatory authorities. Issuers meeting tests of market value and public float also would be able to use such documents to meet U.S. periodic disclosure requirements. Companies subject to U.S. proxy requirements could use their Canadian documents for certain solicitations. In addition, issuers subject to Section 16 of the Securities Exchange Act could meet the reporting requirements by filing Canadian forms. The multijurisdictional disclosure system further would permit third-party and issuer exchange and cash tender offers for securities issued by a Canadian company to be made in compliance with the provisions of applicable Canadian tender offer regulation where less than 20 percent of the class of securities subject to the offer were held of record by U.S. residents.

Concurrently with the publication of this Release, the Ontario Securities Commission and the Commission des valeurs mobilières du Québec are issuing for comment proposals that would provide for the implementation of the multijurisdictional disclosure system in Canada and would permit U.S. issuers to make public offerings and tender offers in Canada using disclosure documents prepared in accordance with Commission requirements. Such proposals are published as an appendix to this Release.

DATE: Comments should be received on or before October 31, 1989.

ADDRESS: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Comment letters should refer to File No. S7-19-89. All comment letters will be available for public inspection and copying in the Commission’s Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549.

FOR FURTHER INFORMATION CONTACT: Sara Hanks or William B. Haseltine, Office of International Corporate Finance, Division of Corporation Finance at (202) 272-3246; David Sirignano, Office of Tender offers, Division of Corporation Finance at (202) 272-3097; Catherine Dixon, Office of Chief Counsel, Division of Corporation Finance at (202) 272-2573; Robert Bayless, Office of the Chief Accountant, Division of Corporation Finance at (202) 272-2553; Nancy J. Sanow, Elizabeth Jacobs or Mark L. Berman, Office of Trading Practices, Division of Market Regulation at (202) 272-2548, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Commission is proposing for comment new Forms F-7, F-8, F-9, F-10 and F-X under the Securities Act of 1933; new Form 40-F, new Schedules 14D-1F, 14D-9F and 13E-4F and new Form F-X (also proposed under the Securities Act) under the Securities Exchange Act of 1934; and new Form T-5 under the Trust Indenture Act.

The common prospectus would be the same in each jurisdiction, participating jurisdictions agree upon a set of disclosure requirements that facilitate multijurisdictional offerings: the “common prospectus approach.” The common prospectus approach would require that participating jurisdictions agree upon a set of disclosure requirements that would be the same in each jurisdiction, with the result that a prospectus prepared pursuant to the requirements and domestic markets are facing serious competition from a largely unregulated, transnational financial market. Foreign issuers that consider direct access to the U.S. capital markets through registered public offerings frequently are dissuaded by the substantial differences in disclosure standards, particularly with respect to accounting standards. Under the proposals, a foreign issuer registering under the Securities Act of 1933 (the “Securities Act”) brings with it a periodic reporting requirement under the Securities Exchange Act of 1934 (the “Exchange Act”). A foreign issuer deciding whether to register securities also must consider the cost of incurring a continuing reporting obligation.

The Commission’s challenge is to remove unnecessary impediments to transnational capital formation without unduly disadvantaging U.S. issuers in the U.S. markets, while ensuring that those buying securities in the U.S. capital markets are afforded the protections intended by the Securities Act and the Exchange Act. One such impediment is the fact that issuers making securities offerings across national boundaries may have to comply with the disclosure requirements of two or more jurisdictions. Attempting to comply with the requirements of multiple jurisdictions is expensive not only because of the cost of retaining local accountants and lawyers, but also because of the additional time needed, since conditions advantageous to the issuer may prevail in the capital markets only for a limited period. Rather than comply with the requirements of regulators in more than one country, issuers may choose to exclude certain jurisdictions from their offerings, thus excluding investors in that jurisdiction from investment opportunities.

As an initial step towards addressing these issues, the Commission in 1985 issued a Concept Release requesting comment on two alternative methods of facilitating multijurisdictional offerings: the “common prospectus approach” and the “reciprocal prospectus approach.” The common prospectus approach would require that participating jurisdictions agree upon a set of disclosure requirements that would be the same in each jurisdiction, with the result that a prospectus prepared pursuant to the requirements...
of one participating jurisdiction automatically would comply with the requirements of all other participating jurisdictions. The reciprocal prospectus approach, on the other hand, would enable an issuer to prepare a disclosure document according to the requirements of its home jurisdiction, and to have that document accepted for securities offerings in every other participating jurisdiction.

A majority of commenters were of the opinion that although the common prospectus approach might be ideal, the more workable system was represented by the reciprocal prospectus approach. The staff of the Commission thereafter began discussions with the staffs of the Ontario and Quebec securities commissions with a view toward establishing a multijurisdictional disclosure system. The system proposed today is a hybrid between the reciprocal approach and the common prospectus approach.

Development of a multijurisdictional disclosure system between the United States and the Canadian provinces of Ontario and Quebec was a logical first step in meeting the needs of transnational securities transactions. Canada has mature capital markets with a strong regulatory tradition. The United States and Canada have the common goal of investor protection through refined and developed disclosure systems for both the primary and secondary markets. Of particular significance is the extensive cooperation in enforcement matters provided by the 1988 Memorandum of Understanding ("MOU") with British Columbia, Ontario and Quebec. The MOU covers virtually the entire spectrum of cases which could arise under the federal securities laws, and provides a full range of assistance, including use of subpoena power to compel the production of documents in furtherance of administrative investigations.

While each jurisdiction's requirements may differ in detail, they share the common purpose of ensuring that investors are given information adequate to permit them to make an informed investment decision, and an historical reliance on disclosure as the principal protection of investors. Key to any system of disclosure is the application of accounting and auditing standards, and Canada, like the United States, has highly developed accounting and auditing standards.

The system proposed today would permit single-jurisdiction and multijurisdictional disclosure of certain securities offerings and continuous reporting obligations, so that cross-border securities offerings could be made more efficiently and at less expense. The disclosure document for an offering would be prepared in accordance with the requirements of the issuer's home jurisdiction and the regulatory authorities of the home jurisdiction would be responsible for establishing the applicable disclosure standards. Review of the disclosure document would be that customary in the issuer's home jurisdiction. Issuers using the system would, however, continue to be subject to provisions imposing civil or criminal liability for fraud in each jurisdiction where the securities were offered, if the offer was made through a material misrepresentation or omission in the disclosure document or there was fraud or manipulation with the offering. Issuers would be subject to the authority of each such jurisdiction to halt the offering in the public interest and for the protection of investors.

The system would cover registration of offerings by "substantial" Canadian issuers, all of which are eligible to use the Canadian integrated disclosure system, the Prompt Offering Prospectus system. As an initial step, the multijurisdictional disclosure system would be limited to "substantial issuers" that could be assumed to have a large market following and the prices for whose securities reflect all available public information. Multijurisdictional registration also would be made available for certain rights and exchange offers, although more because of concerns for domestic investors' interests than for encouraging cross-border public offers. Foreign issuers making a rights or exchange offer frequently do not extend offers to U.S. holders because these issuers are unwilling to register securities with the Commission, thereby denying U.S. holders the opportunity to realize significant value on their investment. Therefore, it appears in the interest of domestic investors to facilitate the registration of rights and exchange offers to encourage foreign issuers to extend such offers to U.S. investors.

Reliance on home jurisdiction disclosure appears particularly appropriate where U.S. investors do not own a substantial percentage of the foreign securities. In the case of offerings by substantial issuers of securities other than non-convertible investment grade debt and the regulatory authorities of the home jurisdiction would be responsible for establishing the applicable disclosure standards. Review of the disclosure document would be that customary in the issuer's home jurisdiction. Issuers using the system would, however, continue to be subject to provisions imposing civil or criminal liability for fraud in each jurisdiction where the securities were offered, if the offer was made through a material misrepresentation or omission in the disclosure document or there was fraud or manipulation with the offering. Issuers would be subject to the authority of each such jurisdiction to halt the offering in the public interest and for the protection of investors.

The system proposed today would permit single-jurisdiction and multijurisdictional disclosure of certain securities offerings and continuous reporting obligations, so that cross-border securities offerings could be made more efficiently and at less expense. The disclosure document for an offering would be prepared in accordance with the requirements of the issuer's home jurisdiction and the regulatory authorities of the home jurisdiction would be responsible for establishing the applicable disclosure standards. Review of the disclosure document would be that customary in the issuer's home jurisdiction. Issuers using the system would, however, continue to be subject to provisions imposing civil or criminal liability for fraud in each jurisdiction where the securities were offered, if the offer was made through a material misrepresentation or omission in the disclosure document or there was fraud or manipulation with the offering. Issuers would be subject to the authority of each such jurisdiction to halt the offering in the public interest and for the protection of investors.

The multijurisdictional disclosure system also would extend to Williams Act regulations applicable to third-party and issuer exchange and cash tender offers made for the securities of Canadian issuers in compliance with Canadian tender offer regulations, where less than 20 percent of the shares involved were held of record by U.S. residents. In the case of exchange offers, Canadian bidders would be permitted to use Canadian disclosure in the required registration statement if they met a (CN) $75 million market capitalization test and less than 20 percent of the shares subject to the offer were held of record by U.S. residents. U.S. bidders in an exchange offer would continue to register the exchange offer on the standard U.S. forms (e.g., Form S-1 or S-4).

The multijurisdictional disclosure system additionally would permit use of home jurisdiction periodic reporting forms to meet the reporting requirements of the Exchange Act, where (a) such requirements arose solely by reason of offerings registered on the forms proposed today, or (b) the issuer of the securities met tests of market value and reporting history. With respect to all Canadian issuers subject to Section 16

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*Public offerings in the United States are regulated at both the federal and the state level. See section V.

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*The tests for eligibility to use the system are discussed more fully in section IV.C.

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of the Exchange Act.\textsuperscript{10} insider reports filed under Canadian law would suffice for Exchange Act purposes. In addition, Canadian issuers subject to U.S. proxy regulations could rely on Canadian regulations and Canadian documents to meet U.S. requirements in certain limited circumstances.

The multijurisdictional system would not be available with respect to offers and sales of securities issued by investment companies required to register under the Investment Company Act of 1940.\textsuperscript{11}

Concurrently with the publication of today's Release by the Commission, the Ontario Securities Commission ("OSC") and the Commission des valeurs mobilières du Québec ("CVMQ") are publishing for comment proposals that would provide for the implementation of a multijurisdictional disclosure system in Canada and permit U.S. issuers to make public offerings and tender offers in Canada using disclosure documents prepared according to Commission requirements. Such proposals are published as an appendix to this Release.

II. Background

A. Developments in International Securities Markets

In recent years, there has been substantial growth \textsuperscript{12} in both U.S. investors' purchases of foreign securities and offerings by U.S. issuers outside the United States. In 1988, gross transactions by U.S. investors in foreign corporate stocks totalled over $151 billion, representing almost nine times the total of such transactions in 1980.\textsuperscript{13} Gross U.S. transactions in foreign debt securities totalled $445 billion in 1988, reflecting a more than twelve-fold increase since 1980. There are 150 foreign securities traded on U.S. securities exchanges, and 291 quoted in NASDAQ (99 in the National Market System). Many others are traded over-the-counter. In all, the securities of over 2000 foreign issuers are traded in the United States.\textsuperscript{14}

Part of the growth in cross-border securities transactions has consisted of an increase in the number of offerings made simultaneously in two or more countries, one of which may be the country of the issuer. Such offerings typically are made when the size of the offering is such that it cannot be absorbed by the issuer's domestic market (for example, in the case of large issuers from the comparatively small Scandinavian markets, or the recent British and French government privatizations), when the issuer desires to expand the geographic base of its security holders, when the issuer wishes to increase the market for its securities internationally, or when strategic reasons exist (for example, to protect against takeover attempts). The issues raised by transnational capital formation became most apparent in the course of such multinational offerings, and were the impetus for the Concept Release.

The number of multinational offerings including a U.S. public tranche has increased significantly in recent years, due in large part to the increase in privatization offerings.\textsuperscript{15} The first such major offering was by British Petroleum Company PLC in 1977. Since then, major public multinational offerings have increased significantly, especially in connection with privatizations of various foreign industries.\textsuperscript{16} The significance of the privatization offerings lies not only in their increasing frequency and international impact, but also in their enormous size.\textsuperscript{17}

In the past few years non-governmental companies also have made multinational offerings involving a public U.S. tranche.\textsuperscript{18} Although these offerings usually are substantial in size, to date they have not been as large as the industry privatizations.\textsuperscript{19} They can be expected to continue to increase in size and number, especially in view of developments such as the creation of a single market in Europe in 1992.\textsuperscript{20}

With increasing U.S. interest in and holding of foreign securities, the impact of registration obligations and tender offer regulation on the willingness of foreign issuers to extend rights and exchange offers or tender offers to U.S. shareholders has become increasingly significant. Frequently, U.S. investors are denied participation in such offers, or cashed out, because foreign issuers decide not to subject themselves to U.S. registration and continuous reporting requirements. Consequently, while rights offers are very common in Europe\textsuperscript{21} and exchange offerings that involve a public tranche in more than one country are discussed infra section II.C.


\textsuperscript{11} 15 U.S.C. 80b-1-80a-52.

\textsuperscript{12} Eurobond offerings totalled $177.2 billion in 1988, $140.5 billion in 1987, and $187.7 billion in 1986. Source: OECD Financial Statistics Monthly (various issues). The value of international offerings in Canada using disclosure documents prepared according to Commission requirements. Such proposals are published as an appendix to this Release.

\textsuperscript{13} Source: OECD Financial Statistics Monthly (various issues). The value of international offerings in Canada using disclosure documents prepared according to Commission requirements. Such proposals are published as an appendix to this Release.

\textsuperscript{14} This figure represents the 519 issuers that file periodic reports with the Commission under the Exchange Act and the 1469 issuers that have established an English base of their securities in the United Kingdom. The value of international offerings in Canada using disclosure documents prepared according to Commission requirements. Such proposals are published as an appendix to this Release.

\textsuperscript{15} British Telecom PLC in 1977. Since then, major public multinational offerings have increased significantly, especially in connection with privatizations of various foreign industries.

\textsuperscript{16} British Telecommunications PLC conducted a $292 million public offering in the United States in December 1984, simultaneously issuing securities in the United Kingdom, Canada, and Japan. In December 1986, British Gas PLC conducted a multinational offering of nearly 4 million ordinary shares, of which nearly 176 million were offered as American Depositary Shares in the United States. British Airways PLC offered 730 million new shares publicly in the United Kingdom, the United States and Canada simultaneously with private offerings in Switzerland and Japan in February 1987. The latest British privatization involved the sale by British Steel PLC of 2 billion shares in simultaneous public offerings in the United Kingdom, the United States, Canada, Japan, and Europe in December 1988. Also in December 1988, Hong Kong Telecommunications PLC offered 877 million shares simultaneously in Hong Kong, the United States, and an international offering.

\textsuperscript{17} The portions of these offerings allocated to the United States tranche have been larger than those allocated to other countries. The U.S. tranches, however, have often amounted to a relatively small fraction of the domestic offerings in recent British and Hong Kong privatizations: British Telecom, United States tranche equalled 6.87 percent of the domestic offering of 2,997,000,000 shares; British Gas, 4.76 percent of 3,505,366,329 shares; British Airways, 10.32 percent of 852,516,707 shares; British Petroleum, 16.11 percent of 1,200,000,000 shares; British Steel, 11.96 percent of 1,502,000,000 shares; and Hong Kong Telecom, 20.75 percent of 600,000,000 shares. Nevertheless, the United States tranches of these offerings were valued at $278,928,000 in British Telecom, $319,608,007 in British Gas, $120,141,000 in British Airways, $124,669,000 in British Petroleum, $120,000,000 in British Steel, and $105,437,084 in Hong Kong Telecom.

\textsuperscript{18} Philips N.V. in May 1987; Banco Central S.A. and Banco de Santander, S.A. de Credito in July 1987; Racal Telecom PLC in October 1988; and Pacific Dunlop Limited in May 1989.

\textsuperscript{19} The following amounts were involved in the U.S. tranches of the above mentioned offerings: Reuters, $150,260,000; Lloyds Vuitton, $15,469,262; Wellcome, $72,292,000; Philips, $120,000,000; Banco Central, $152,000,000; Banco de Santander, $105,503,000; Racal Telecom, $123,409,307; and Pacific Dunlop, $128,000,000.


\textsuperscript{21} The existence of statutory preemptive rights for shareholders in many countries, primarily in Europe, dictates that this method is the most common whever a foreign company wishes to raise equity capital in those countries. See, e.g., Companies Act 1985, sections 12g3-2(b) under the Exchange Act (17 CFR 240.12g3-2(b)) and 12g3-2(d) (17 CFR 240.12g3-2(d)).
offers are not uncommon in non-U.S. markets, rights and exchange offers by foreign companies into the United States are rare, while cash tender offers are much more frequent.

B. Canadian Issuers in the United States Market

Canadian companies are frequent issuers in the U.S. capital markets. In 1987 and 1988, Canadian issuers made a total of 124 public offerings in the United States, registering approximately $10 billion of securities, of which $8 billion was equity.26 Large Canadian multinational offerings have included, for example, an offering in July 1987 by Gulf Canada Resources Limited. This offering, which was part of a major reorganization of Gulf Canada Corp., involved a Canadian tranche of 7.8 million shares for (CN) $17.53 million, a U.S. non-brokered offering of (US) $111.3 million, and an international tranche of 5.6 million shares for (US) $94.5 million. Canadian companies also have made use of the U.S. shelf registration system. Over $1.7 billion in debt securities have been registered by Canadian issuers for sale under Rule 415 in the last three years.

Of the 516 foreign issuers filing periodic reports with the Commission under the Exchange Act, more than half are Canadian.28 As of June 30, 1989, there were 21 Canadian issuers listed on the New York Stock Exchange, 38 on the American Stock Exchange and 146 quoted in NASDAQ.

C. Accommodations Made to Foreign Issuers; Issues Raised by Multijurisdictional Offerings

1. Disclosure Issues

The Commission traditionally has accommodated various foreign disclosure policies and business practices, recognizing the differences in foreign disclosure and reporting requirements, and making available special forms for use by foreign issuers.27 In 1977, the Commission adopted a new form, Form 20-F, for registration statements and annual reports filed under the Exchange Act.28 This form may be used by non-Canadian foreign private issuers and Canadian issuers that are not listed on a U.S. securities exchange and have not offered their securities publicly in the United States. Although the form requires substantial disclosure by foreign private issuers, it makes several concessions based on a recognition of foreign disclosure practices. The form permits preparation of financial statements in accordance with GAAP in the registrant's home country, with reconciliation to U.S. GAAP attached thereto.29 The form also calls for less detail regarding related-party transactions than is required for domestic registrants,30 and management remuneration may be presented on an aggregate basis.31 Additionally, the time frame for filing annual reports on Form 20-F is designed to accommodate foreign issuers.32 Quarterly reports are not required to be filed by foreign private issuers. Rather, current information that is made public or required to be filed in the home country of a foreign issuer must be provided to the Commission on Form 6-K.33

Until 1982, foreign issuers making a public offering in the United States were required to use the same forms as domestic issuers. The system was revised that year with the adoption of the foreign integrated disclosure system.34 This system parallels the integrated disclosure system for domestic issuers,35 but extends the accommodations made to foreign issuers in Form 20-F to registration statements under the Securities Act. Foreign issuers with fewer than 300 U.S. shareholders are exempt from the reporting requirements of Section 12(g) of the Exchange Act36 pursuant to Rule 12b-32(a) thereunder.37 Additionally, foreign private issuers not listed on an exchange or quoted in NASDAQ or subject to reporting requirements under Section 15(d) of the Exchange Act38 may qualify for the “information supplying-exemption” provided by Rule 12b-32(b). Under this rule, foreign issuers that furnish the Commission with current information required in their home jurisdiction are exempt from the reporting requirements of Section 12(g).

Foreign governmental issuers and foreign private issuers eligible to use Form 20-F are exempt from the proxy and short-swing profit regulations of
Sections 14 49 and 16 of the Exchange Act. 48

Notwithstanding the accommodations made to foreign issuers, U.S. requirements reportedly continue to deter foreign companies from entering the U.S. markets. 44 2 When a multinational offering includes a public U.S. tranche, the disclosure requirements established by the Commission usually dictate the addition of information to selling documents prepared in accordance with another jurisdiction's rules. 42

2. Distribution Issues

Problems of timing also often arise in multijurisdictional offerings as a result of different offering practices and regulatory schemes. 43 This has been a significant issue in recent offerings that included public tranches in the United States and the United Kingdom, 44 because the price is set at different times in relation to the offering in the two jurisdictions. Timing problems also arise from the different regulatory clearance requirements in multijurisdictional offers. While Canadian offerings have not involved the first difficulty, they have involved the second. 45

In light of the different distribution techniques used by U.S. and foreign underwriters, 46 the application of Rules 10b-6, 47 10b-7, 48 and 10b-8 49 under the Exchange Act also affects the process of bringing a multinational offering to market. 50

In an increasing number of contexts, the Commission has crafted relief from these and other applicable Exchange Act provisions in order to accommodate the structure and regulatory pattern of foreign jurisdictions, and to permit non-U.S. distribution participants to continue certain customary activities in foreign markets. 51

4 1 For example, a working party established by the International Organization of Securities Commissions ("IOSCO") identified coordination of prospectus requirements and underlying arrangements as the greatest cause of the most problems in multijurisdictional equity offerings. IOSCO Working Paper No. 1, Progress Report prepared for the Annual Meeting of IOSCO 10-19 November 1989.
5 Although separate prospectuses often are used for the United States and for other parts of the world where the offering is conducted, such prospectuses usually are distinguishable only in the descriptions of the offering procedures, the underwriting syndicates and the offering amounts, rather than in substantive content. Although less disclosure may be required in other countries, the potential liability created by disclosing information in one market but not in another dictates that issuers tend to provide the same disclosure in each market.
7 4 For example, in offerings by British Petroleum PLC, Reuters PLC and British Telecom PLC, the different underwriting procedures necessary under the respective regulatory systems led to timing problems. In the United Kingdom, the price of the issue is set on "Impact Day," followed immediately by publication of the prospectus and commencement of the offering period. After the offering period, allotments are made according to subscriptions received during the offering period ("Allotment Day"). In the United States, the offering period occurs prior to the preliminary prospectus. Thus a choice must be made by the underwriters and the issuer: Either the U.K. offering must proceed without a U.S. underwriting commitment in place, or the U.S. syndicate must commit itself to the deal far in advance of being able to set a public offering price or to be able actually to sell the securities.

9 Canadian underwriting and marketing procedures do not differ significantly from those in the United States. Such problems may be relevant, however, to the foreseen future extension of the principles contained herein to other jurisdictions. See Wolfram, supra n. 43, at 343. See also W. Plapinger and R. Morrissey, "U.S. and U.K. Underwriting Methods: A Comparison", 2 Insights 3 (April 1986) ("Plapinger").
11 Rule 10b-6 is designed to protect the integrity of the securities trading market as an independent pricing mechanism, furthering competition among securities and thereby enhance investor confidence in the marketplace. See Exchange Act Release No. 24403 (Jan. 27, 1986). The rule prohibits distribution participants from bidding for or purchasing, or inducing other persons to bid for or purchase, the securities that are the subject of the distribution (or any security of the same class and series as those securities, or any right to purchase any security) until they have completed their participation in the distribution.
12 Distribution participants include any person who participates in the distribution of securities, including the issuer, underwriters, and selling securityholders. See Rule 10b-6(a)(7)-(10). The rule also applies to "affiliated purchasers" of distribution participants. See Rule 10b-6(c)(6).
13 "Distribution" for the purposes of the Exchange Act means an offering of securities, whether or not registered under the Securities Act, that is distinguished from ordinary trading as the result of the presence of special selling efforts and selling methods. Rule 10b-6(c)(6). A distribution in this context also may include private placements. See Letter regarding Electro Funds Corporation (Nov. 17, 1986) (1987 Decisions) Fed. Sec. L. Rep. (CCH) 578,445, at 77,644. The rule contains certain exceptions to its general prohibition which are designed to facilitate an orderly distribution or limit disruption of the trading market for the securities being distributed.
14 17 CFR 240.10b-6(b). Rule 10b-7 makes it unlawful for any person who stabilizes the price of a security to facilitate an offering to conduct stabilizing activities in violation of the provisions of the rule. Stabilizing is defined as the "placing of any bid, or the effecting of any purchase, for the purpose of pegging, fixing or stabilizing the price of any security ... the effecting of any purchase, for the purpose of preventing or retarding a decline in the open market price of the security, or stabilizing at a price resulting from unlawful activity.
15 17 CFR 240.10b-6(b). Rule 10b-6 applies to the distribution activities offered through rights. The rule makes it unlawful for any person participating in the offering to sell the underlying security or to bid for or purchase the rights being offered in contravention of the provisions of the rule. The rule also intends to prevent fraud and manipulation in rights offerings by controlling the price of sales of the underlying security, as well as the prices and conditions of purchases of rights by any person participating in such offerings.
17 For example, the Commission has crafted relief from Rules 10b-6 and 10b-7 to permit ISE member broker-dealers to engage in "passive market making" on the ISE where ISE member firms participated in a distribution of securities of certain U.K. issuers partially being offered in the U.S., or where such firms were affiliated with U.S. broker dealers participating in a distribution of such securities in the U.S. Under Rule 10b-6, such ISE firms would have had to cease distribution activities in violation of the ISE's rules, e.g., "Letter Regarding Barclays PLC" (April 29, 1988), [Current Slender] Fed. Sec. L. Rep. (CCH) ¶ 78,821, at 73,162; "Letter Regarding Tokio Marine and Fire Insurance Company" (Sept. 30, 1987); 1987-1988 Decisions) Fed. Sec. L. Rep. (CCH) ¶ 78,519, at 77,612. If, however, the IOSCO and its exemptions from Rules 10b-6 and 10b-7 to permit ISE member broker-dealers to engage in "passive market making" on the ISE where ISE member firms participated in a distribution of securities of certain U.K. issuers partially being offered in the U.S., or where such firms were affiliated with U.S. broker dealers participating in a distribution of such securities in the U.S. Under Rule 10b-6, such ISE firms would have had to cease distribution activities during the distribution. See Rule 10b-6(a)(4)(i). See also supra n. 47. In permitting "passive market making" as described in the ISE Letter, U.K. firms could provide depth and liquidity to the U.K. market while minimizing any potential manipulative impact on the U.S. markets. The exemptive relief recognized the highly developed regulatory structure of the ISE and was subject to several conditions and specifically designed to avoid a manipulative impact on the U.S. market.

3. Problems in Timing

The multijurisdictional disclosure system was designed to mitigate the problems posed by multinational offers of securities. The first partner for the United States in this effort because of the sophistication of its markets, and the similarities between U.S. and Canadian securities laws, in terms of both their investor protection mandate and the structure of the regulatory scheme established to effect that mandate.

D. Mutual Recognition and Harmonization

Efficiency of the capital-raising process would be enhanced greatly by permitting an issuer to prepare one disclosure document for use in each jurisdiction in which it chooses to sell securities. There are two primary approaches to achieve this goal: Harmonization of disclosure standards worldwide and mutual recognition of disclosure standards established in other jurisdictions. The multijurisdictional registration system proposed today includes aspects of both of these approaches.

Under a harmonization approach, participating jurisdictions would agree upon a set of disclosure requirements that would be the same in each jurisdiction, with the result that a prospectus prepared pursuant to the requirements of one participating jurisdiction would comply automatically with the requirements of all other participating jurisdictions. In addition to reducing costs, a prime benefit of such a system would be providing comparability of information from issuer to issuer and country to country.**

** The European Community has taken steps toward harmonization of securities disclosure and accounting requirements among its member countries. The basic requirement is the adoption of basic standards of disclosure to be adopted by all member countries. While member states may add additional requirements for domestic issuers, they must recognize and accept the compliance of other member states issuers with their home country requirements. See, for example, Praemise to Council Directive of March 17, 1980 (60/390/EEC) (relating to listing particulars). (Note differences should be explained by coordinating the rules and regulations of the relevant regulators to enforce comparability of information from issuer jurisdiction, with the result that a prospectus prepared pursuant to the requirements of one participating jurisdiction would comply automatically with the requirements of all other participating jurisdictions. In addition to reducing costs, a prime benefit of such a system would be providing comparability of information from issuer to issuer and country to country.**

Mutual recognition, on the other hand, would enable an issuer to prepare a disclosure document according to the requirements of its home jurisdiction, and to have that document accepted for securities offerings in every other participating jurisdiction.** Mutual recognition may sacrifice comparability in order to facilitate the offering process. As proposed, the multijurisdictional disclosure system is a hybrid of the two approaches. While it is based on the concept of mutual recognition, the participants will be those jurisdictions whose disclosure systems, while different in detail, provide investors with information to make an informed investment decision and financial statements of relevance and reliability. The existence of a well-developed, sophisticated and reliable system for administering these requirements is also critical, as the Commission will rely on foreign definitions and application of disclosure standards, and day-to-day enforcement of those standards.

The Commission recognizes that the success of the multijurisdictional approach is contingent upon the ability of the relevant regulators to enforce effectively their securities laws as applied to cross-border securities offerings. As a result, in the Commission’s view, Memoranda of Understanding,** which provide the Commission to the Council and the European Parliament (March 21, 1980). article 49.

** See, e.g., Memorandum of Understanding between the Government of Australia and the Government of New Zealand on Harmonization of Business Law, July 1, 1988. This Memorandum noted the establishment of a program to examine, inter alia, “harmonization of disclosure practices and cross-recognition of prospectuses.”

** Memoranda of Understanding (“MOUs”) are formal understandings between the Commission and foreign governments or foreign securities authorities which provide for the sharing of information in Commission and foreign agency investigations and in which MOUs are not binding agreements under international law, they serve as statements of intent between like-minded regulators to provide mutual assistance and cooperation in a variety of matters. MOUs formalize methods for requesting and providing information in connection with Commission and foreign agency efforts to administer and enforce their respective securities laws, and provide the Commission with direct access to information held or obtained by a counterpart in a foreign country.

For example, on January 7, 1988, the Commission signed a Memorandum of Understanding (the “Canadian MOU”) with the British Columbia Securities Commission, the OSC, and the CVMQ, concerning mutual cooperation in matters relating to the administration and enforcement of U.S. and Canadian securities laws. The Canadian MOU contemplates that the United States and Canadian regulators will provide comprehensive assistance to each other in order to facilitate the administration and enforcement of both laws, regulations and regulatory policies of the United States and Canada concerning securities matters, including specifically disclosure obligations relating to the issuance of securities. Such assistance includes providing access to information in the files of each securities authority and obtaining compulsory testimony and production of documents. The Canadian MOU recognizes that at the time it was signed, a signatory may not have had the authority to provide such assistance, and the signatories undertook to seek to obtain that authority if necessary.

Section 21(a)(2) of the Exchange Act (15 U.S.C. 78u-4(a)(2)), which was added on November 19, 1988, pursuant to the Insider Trading and Securities Fraud Enforcement Act of 1988, Pub. L. No. 100-704, provides the necessary authority for the Commission to implement fully the provisions of the Canadian MOU. This section allows the Commission to provide and receive assistance from foreign securities authorities to determine whether violations of a foreign country’s securities laws have occurred, are occurring, or are about to occur. The Commission can provide this assistance regardless of whether the matter under investigation in the foreign country also would be a violation of U.S. law.

The Provinces of British Columbia and Quebec also have passed legislation providing the necessary authority for their respective securities authorities to implement fully the provisions of the Canadian MOU, and it is the staff’s understanding that the OSC soon will submit similar legislation in Ontario.


Although in Canada the registration process is referred to as the “registration” of securities for sale, the term “registration” often is used in this Release to facilitate discussion. Quebec and Ontario require that both public and non-exempt private offerings of securities to be registered. See 2 “Doing Business”, supra n.55, section 21.01(2). See also 1 “International Securities Regulation: Canada—Commentary” 9-11 (1986 ed.).
A. Canada's Regulatory System

Within the framework of Canada's federal system, securities regulation falls primarily under the legislative authority of that country's ten provinces and two territories.67 Each provincial legislature has enacted its own securities laws and regulations applicable to all nonexempt securities transactions occurring within the borders of the particular province, which typically are administered and enforced by a commission empowered to license brokers and securities dealers and to control full disclosure to the investing public.68 Due in major part to the location of Canada's principal stock exchanges in Toronto and Montreal, the OSC and the CVMQ are very influential in the regulation of securities markets.69

While there is neither a federal securities commission nor a comprehensive federal statute governing the Canadian capital markets, the national Parliament has enacted a body which is administered by the Department of Consumer and Corporate Affairs (the "Department").70 Many of Canada's largest reporting companies are incorporated under the CBCA, and therefore are subject to regulation by the Department.71 Because these companies must comply with securities laws of all provinces in which their securities are distributed or traded, provincial jurisdiction also exists over transactions in such securities.72

B. The Registration Process

Subject to statutory exemptions,63 any distribution of securities 64 in

67 See 2 "Doing Business", supra n.55, at section 21.01(1); 2 Z. Laskin, "Canadian Constitutional Law" 712-14 (8th ed. 1986) ("Laskin").
68 Id. Commissions administer the securities laws in seven provinces (Ontario, Quebec, Alberta, British Columbia, Manitoba, Nova Scotia and Saskatchewan). In the remaining provinces and the Northwest and Yukon territories, commissions have not been established and the securities laws are administered by designated officials.
69 See 2 "Doing Business", supra n.55, section 21.01(1). The Toronto Stock Exchange ("TSE"), which is one of the world's largest in terms of both market capitalization and trading volume, accounts for more than 75 percent of the total value, and close to 50 percent of the total volume, of securities traded in Canada. See Toronto Stock Exchange, 1986 Fact Book 1. As of 1987, the Montreal Exchange ("ME") accounted for approximately 15 percent of the value and almost 14 percent of the volume of the Canadian securities market. Montreal Exchange, Market Information: 1987 Statistics 5 (1988).
70 CBCA sections 1 et seq. See 2 "Doing Business", supra n.55, section 21.01(2)(c). The CBCA contains provisions regulating takeover bids (CBCA sections 194-201 and Reg. sections 58-79) for, and proxy solicitations (CBCA sections 147-154 and Reg. sections 32-41) involving, the securities of all companies incorporated thereunder. As the agency charged with administering the CBCA, the Department requires that all documents filed with provincial securities commissions in respect of CBCA-incorporated companies be filed with it contemporaneously. See, e.g., CBCA sections 193 (prospectus, statement of material facts, registration statement and securities exchange takeover bid circular or similar document relating to the issuer's distribution of securities to the public); 150(2) (form of proxy); 127(1) (insider reports).
71 One of the purposes of the CBCA is to enable companies incorporated thereunder to conduct business throughout Canada, although provincially incorporated companies may conduct interprovincial business. CBCA companies may not engage in the businesses of banks and insurance, transport and longdistance telephone services, or of all of which entities are regulated by other federal or provincial statutes. See CBCA sections 2(3), 4. No does the CBCA apply to non-profit or Special Act corporations covered by the Canadian Corporations Act. CBCA section 3(1).
72 See "Multiple Access Ltd. v. McCutcheon", (1983) 138 D.L.R. (3rd) 1 (S.C.C.) (decision by the Supreme Court of Canada upholding the constitutionality of Ontario's insider trading legislation as applied to a federally incorporated company with headquarters in Toronto and securities listed on the TSX). Canada's Constitution does not include a supremacy clause like that of the U.S. Constitution, but has been construed to embody the "paramountcy" doctrine, a narrower version of the U.S. preemption doctrine, providing that federal law must prevail in the face of a direct conflict with provincial or territorial law. See section 94 of the Constitution Act of 1867; "Doing Business", supra n.55, sections 2.04[3]-2.04(5). As in the United States (section 10 of the CVMQ), CBCA companies are subject to regulation by the OSC, given that most securities offerings include residents of Ontario and Quebec.
73 Securities may be offered, but not sold, during this period. Compare Ontario Securities Act section 71(h) and Quebec Securities Act ("QSA") section 25(1). The exemption may not be invoked with respect to major financings or offerings that would result in an increase of more than 25 percent in the number of outstanding securities of the class subject to the offering. See OSC Policy Statement 6.2 (Dec. 24, 1982) (as amended), reprinted in 3 Cdn. Sec. L. Rep. (CCH) § 471-602; QSA Reg. section 70.2. Any issuer relying upon the exemption must provide the appropriate securities commission with written notice of the proposed offering and substantial information concerning the issuer, which materials may be disseminated to shareholders in the form of a rights circular within 10 days of submission, thereby instituting the offering, if the commission raises no written objection. See id.; QSA sections 55, Uniform Policy No. 2-46 (April 1971) (as amended), reprinted in 3 Cdn. Sec. L. Rep. (CCH) §§ 470-205, 471-402; 5 V. Alboini, "Securities Law and Practice", section 16.01, at 56 (1984 ed. and 1986 Supp.).
74 In Canada, such distributions include initial and repeat private offerings, certain private offerings, exchange offers and secondary trades that materially affect control of the issuer. See OSC sections 5(1)(a), 71(4)-(7); QSA section 5.
by the principal jurisdiction.\textsuperscript{70} Securities commission staff of that jurisdiction generally review other filings and through comment letters of material deficiencies in the offering materials, and permit the issuer to provide additional information and make corrective disclosure.\textsuperscript{71} By contrast with the Commission's review, which focuses exclusively on the adequacy of disclosure, a Canadian provincial commission also evaluates the merits of the transaction. Approval of the offering may be withheld in a province if, in the opinion of the securities regulator in that jurisdiction, the offering will not be conducted with integrity or in the public interest.\textsuperscript{72}

Once the securities are qualified for sale, an offering may commence.\textsuperscript{73} Prospectuses must accompany or precede all written confirmations of sales throughout the offering period.\textsuperscript{74} The Regulation C (17 CFR 230.430), a preliminary prospectus must comply substantially with the requirements of applicable statutes and rules prescribing the form and content of a prospectus. OSA section 53; QSA section 29 and Reg. sections 15-15. At 61 a minimum, the prospectus must contain the financial statements of the issuer (Schedule A, Items 1-25-27 (15 U.S.C. 77aa); Item 13 of Form S-1 and 2, and Item 11 of Form S-3); Regulation S-X (17 CFR 210.1-01 et seq.); OSA Reg. sections 411(1)-(6); 42; QSA Reg. section 13, and the "red herring" statement identifying the document as a preliminary prospectus subject to completion by amendment, and stating that securities may not be sold or offered to buy accepted prior to the effective date in the United States (sections 5(b) and 10(b) of the Securities Act and Rule 430 thereunder), Item 501(c)(6) of Regulation S-K (17 CFR 229.501(c)(6)), and in Canada, of the issuance by the appropriate provincial commission of a receipt for the final prospectus (see OSA Reg. sections 57-59; QSA reg. section 74; National Policy No. 32 (Oct. 21, 1981) (as amended), reprinted in 3 Cdn. Sec. L. Rep. (CCH) \textsuperscript{75} 740-032).

\textsuperscript{76} See 1 Albonico, supra n.63, section 14.4.4. \textsuperscript{77} Compare id. at section 14.4.3 with 2 A. Sommer, "Securities Law Techniques" sections 23.05, 22.06 (2000) (compared with U.S. securities law in the context of a continuous or delayed offering). \textsuperscript{78} See also supra n.68, at 117. \textsuperscript{79} OSA section 52, 60; QSA section 14. \textsuperscript{80} Compare OSA section 70 and QSA section 29 with Sections 2(10) and 5(b) of the Securities Act. Participating underwriters in Canada offer the securities to the public after the later of the first registered public offering, 40 days (90 days for the registration statement, or (c) in any event, in any first offering, prior to the expiration of 40 days after the filing of the final prospectus so long as they commit to file a prospectus within 48 hours of signing an underwriting agreement.\textsuperscript{81} Canadian law imposes liability on registrants for use of a prospectus containing misstatements or omissions of material fact.\textsuperscript{82} Accordingly, the prospectus must be updated throughout the distribution as material events or changes arise or if information originally believed correct is discovered to be inadequate.\textsuperscript{83} If an event leading to the filing of an amendment concerns the issuance of additional securities or affects the value or market price of the securities being distributed, any provincial commission with jurisdiction over the offering must review and approve the amendment.\textsuperscript{84} Although not required by statute or rule, amendments relating to any other matter likewise are reviewed by commission staff.\textsuperscript{85} Final prospectus must provide full, true and plain disclosure of all material facts pertaining to the securities to be offered as prescribed by line-item requirements, comply with all other provisions of the relevant statutes and rules, and contain the issuer's audited financial statements and other prescribed materials.\textsuperscript{86} As in the United States, a final prospectus submitted to the securities commission must describe the issuer's capital structure as well as its property and business, including development of business, acquisitions and operating results; discuss officer and director compensation, indebtedness to the issuer and interests in material transactions; describe the security to be offered; outline use of proceeds and the underwriters' obligations, plan of distribution, and distribution spread; and identify material risks and risk factors.\textsuperscript{87} Along with five years' financial statements, documents to be filed with the final prospectus include the auditor's report; any expert's report or appraisal relied upon in preparing the prospectus; a certified copy of a resolution of the board of directors approving the prospectus and financial statements and authorizing the execution of the prospectus by the chief executive and financial officers and any other directors; and a resolution or other evidence of review by the board's audit committee of the issuer's financial statements.\textsuperscript{77}

Canadian underwriting and marketing procedures do not differ significantly from those used in the United States. Under Canadian law, however, investors have a statutory right to withdraw from purchases of distribution securities if they so notify in writing the dealer from whom they purchased not later than midnight on the second business day after receipt of the latest offerings, and registered offerings by non-reporting companies which, as of the effective date, are listed on a national securities exchange or authorized for inclusion in NASDAQ. See also Rule 15g-2(d) \textsuperscript{17} (17 CFR 240.15g-2(d)). The Commission in Rule 174 (17 CFR 230.174) has made the practice of withdrawing from registered offerings by reporting companies, shelf

\textsuperscript{76} See OSA section 70(2); QSA sections 29-32. The staff understands that this withdrawal right is used rarely.

\textsuperscript{77} See OSC Policy Statement No. 56 (Dec. 24, 1983) (as amended), reprinted in 3 Cdn. Sec. L. Rep. (CCH) \textsuperscript{78} 471-506.

\textsuperscript{78} Compare OSA section 128 and QSA sections 237-241 with sections 11, 11D, and 17(e) of the Securities Act (15 U.S.C. 77ll, 77q(q), and 77p(b) of the Exchange Act.

\textsuperscript{79} See also OSA section 50(1); QSA section 25. A duty to update the prospectus frequently arises under U.S. securities law in the context of a continuous or delayed offering (see Rule 413 of Regulation C (17 CFR 230.413) (new registration statement must be filed if additional securities issued). Provided its financial statements did not lapse prior to the issuance of a receipt for the final prospectus, a Canadian registrant need not amend the prospectus to update the financial statements within the maximum 12-month offering period unless a material event affecting the value or market price of the securities being distributed, any provincial commission with jurisdiction over the offering must review and approve the amendment. Although not required by statute or rule, amendments relating to any other matter likewise are reviewed by commission staff.

\textsuperscript{80} See OSA section 52, 60; QSA section 14.

\textsuperscript{81} Compare OSA section 70 and QSA section 29 with Sections 2(10) and 5(b) of the Securities Act. Participating underwriters in Canada offer the securities to the public after the later of the first registered public offering, 40 days (90 days for the registration statement, or (c) in any event, in any first offering, prior to the expiration of 40 days after the filing of the final prospectus so long as they commit to file a prospectus within 48 hours of signing an underwriting agreement. Canadian law imposes liability on registrants for use of a prospectus containing misstatements or omissions of material fact. Accordingly, the prospectus must be updated throughout the distribution as material events or changes arise or if information originally believed correct is discovered to be inadequate. If an event leading to the filing of an amendment concerns the issuance of additional securities or affects the value or market price of the securities being distributed, any provincial commission with jurisdiction over the offering must review and approve the amendment. Although not required by statute or rule, amendments relating to any other matter likewise are reviewed by commission staff.
Ontario and Quebec have adopted a system for filing a short-form prospectus for eligible senior reporting issuers that is similar to the Commission's Forms S-3 and F-3, which is known as the Prompt Offering Qualification system. As with Forms F-3 or S-3, this short form prospectus contains virtually all information called for in a long-form prospectus, in part by incorporating by reference other filings (including future filings), such as the Annual Information Form that must be filed annually with the proper securities commission. To qualify to use a short form prospectus in a province, a reporting company must have filed periodic reports with that commission for a fixed period, and must incorporate such reports by reference in this prospectus. 

Moreover, the issuer may not be in default of financial obligations or violation of applicable securities statutes and rules at the time the preliminary short-form prospectus is filed, and must have securities listed on a stock exchange and held by nonaffiliated shareholders of an aggregate market value of (CN) $75 million. 

Quebec has adopted a procedure permitting the use of a simplified prospectus, referred to as a "shelf" prospectus, that is subject to abbreviated CVMQ review and thus, like the Commission's Rule 415, 

allows the frequent issuer of securities easier and quicker access to the market" over the maximum one-year period of Form S-3. Reporting issuers with permanent information records that fulfill certain conditions are eligible to use this prospectus. As with a short-form prospectus under the Prompt Offering Qualification system, the shelf prospectus is accompanied by an annual information form, incorporates by reference all mandatory periodic reports, and discloses a limited amount of information relating to the issuer and the securities to be offered. Shortly before the issuer is prepared to commence an offering pursuant to a shelf prospectus, a supplement thereto must be filed with the CVMQ that, with the prospectus, constitutes the final prospectus. Using a shelf prospectus does not make a distribution of securities at least once a year, a new shelf prospectus must be filed at the same time the required annual information form is updated. 

Every issuer that registers an offering of securities in Canada becomes subject to periodic disclosure requirements. 


QSA Reg. section 62.1. These conditions vary according to the type of security to be issued: (a) When common shares are issued, a three-year disclosure requirement must have been met, and the total value of all outstanding common shares met, and the total value of all outstanding common shares must exceed (CN) $150 million (QSA Reg. section 62.1); or (ii) the securities to be issued have a three-year reporting history and all such outstanding securities issued and to be issued must be rated by a recognized evaluation agency (QSA Reg. section 181); or (ii) the securities to be issued are "provisionally classified" by such an agency (QSA Reg. section 162). 

QSA Reg. section 24.1. The supplement must present any information omitted in the prospectus and update a required statement listing documents incorporated by reference. QSA Reg. sections 62.9, 59.1. Compare Rule 415 (after registration of amounts to be issued, the registrant must update the registration statement through an effective post-registration amendment on specified events (see Form 8-K, or through a supplement to the prospectus, to be filed with the Commission and disseminated with the core prospectus to investors during the period they are offered) and QSA Reg. section 62.6. 

QSA Reg. section 24.1. The supplement must present any information omitted in the prospectus and update a required statement listing documents incorporated by reference. QSA Reg. sections 62.9, 59.1. Compare Rule 415 (after registration of amounts to be issued, the registrant must update the registration statement through an effective post-registration amendment on specified events (see Form 8-K, or through a supplement to the prospectus, to be filed with the Commission and disseminated with the core prospectus to investors during the period they are offered)). 


See CBCA section 109. OSA section 113. 

QSA section 69.1. Albino, supra n.63, section 4.12.2.2. Compare General Instruction IA.3 to Form F-3. 

QSA section 69.1. Albino, supra n.63, section 4.12.2.2. Compare General Instruction IA.4 to Form S-3. 


"17 CFR 230.415 (see limited to issuers eligible to use Forms S-3 and F-3). 

Registrants must file audited annual and unaudited quarterly financial statements and reports of any material change or other events, and are subject to proxy solicitation requirements. Registrants under the Prompt Offering Qualification system must file Annual Information Forms similar to annual reports on Form 10-K filed with the Commission. 

C. Accounting: Auditing 

Canada's public accountants (primarily designated as chartered accountants) are licensed to practice by provincial statute. Authoritative accounting and auditing standards, which are uniform across Canada, are developed by a national body, the Canadian Institute of Chartered Accountants ("CICA"). Separate provincial institutes establish rules pertaining to professional conduct and ethics. Although promulgated auditing standards in Canada differ from U.S. standards in some respects, generally accepted accounting practice in Canada routinely encompasses all significant auditing procedures required by U.S. standards. Further, CICA periodically evaluates new auditing standards adopted by the American Institute of Certified Public Accountants ("AICPA"), CICA's U.S. counterpart, to determine whether similar guidelines may be appropriate for Canadian auditors. 

CICA reporting standards comply with the reporting requirements specified by Article 2 of Regulation S-X, but differ from the AICPA's reporting standards. While AICPA standards require U.S. auditors to include an explanatory paragraph in their report if substantial doubts exist about an entity's continued existence or 

See CBCA sections 185, 160; OSA section 77; QSA section 75. Compare Form 10-K and Form 20-F (annual reports including financial statements). 

See CBCA section 1604]; OSA section 76; QSA section 75. Compare Form 10-Q (17 CFR 240.30e-3). 

See OSA section 74; OSA section 73. Material changes mandating the filing in Canada of a material change report are defined as any "change in the business, operations or capital of the issuer that would reasonably be expected to have a significant effect on the market price or value of any securities of the issuer and includes a decision to implement such a change made by the board of directors of the issuer or by senior management of the issuer who believe that confirmation of the decision by the board of directors is probable." OSA section 1(21). Accord QSA section 72. 

Compare Form 8-K. 


See OSA Policy Statement No. 5.5, supra n.78; CVMQ Policy Statement No. Q-1, supra n.68. 

17 CFR 210.2-01 through 210.2-05.
there are other material uncertainties, the Canadian auditor is prohibited from including such a reference in the audit report if the matter is disclosed adequately in a note to the financial statements. However, CICA has published a guideline intended to apply where the report is to be included in a filing with the Commission. The guideline indicates that the auditor should add comments for U.S. readers explaining the conflict in reporting standards and providing a cross-referential to the relevant uncertainty or other consideration disclosed in the financial statements. Compliance with this guidance would be required specifically in filings made pursuant to the multijurisdictional system.

Canadian GAAP are similar to their U.S. counterparts, although there are differences in measurement and disclosure. Some of the most significant differences include the methods of accounting for business combinations (Canadian GAAP require the purchase method of accounting in most situations that call for the pooling-of-interests method in the United States);102 development costs (U.S. GAAP requires expensing of certain costs that may be capitalized under Canadian GAAP);103 foreign currency gains and losses (U.S. GAAP require current recognition in some cases where Canadian GAAP permits deferral and amortization);104 pension accounting (differences in measurement methodology);105 employee stock compensation plans (an expense must be recognized in some circumstances under U.S. GAAP);106 income taxes (Canadian GAAP more closely follow the method that was acceptable in the U.S. prior to the recent adoption of the new balance-sheet approach, and measures deferred taxes based on rates existing when timing differences originate rather than at current tax rates);107 earnings per share (Canadian GAAP do not consider the effect of common stock equivalents);108 extraordinary items (more restrictively defined under U.S. GAAP);109 and consolidation (Canadian GAAP do not require consolidation of nonhomogeneous subsidiaries).110 Also, differences may be significant with respect to particular industries, such as the specialized accounting practices of insurance companies.111 Additionally, U.S. standards typically include more implementation guidance and address some areas that have not been considered formally by Canadian standards.

As is true of the AICPA’s independence rules, the rules on ethics and independence adopted by the provincial institutes differ from the Commission’s rules on auditor independence. The Commission’s rules more extensively address such areas as nonaudit services and financial interests associated with the client.112 Canadian regulatory bodies have not developed independence rules similar to those of the Commission.

D. Exchange and Tender Offer Regulation

In contrast with offers and sales of securities to the public (which are regulated principally at the provincial level), the acquisition of shares in Canadian companies through a takeover bid or exchange offer is regulated at both the federal and the provincial levels. A bidder must comply with the securities acts of each province in which one or more target shareholders resides113 and with the federal114 or provincial corporate statute under which the target company is incorporated. As is true of the registration process, Ontario and Quebec laws apply to most takeovers and exchange offers conducted in Canada due to the concentration of shareholdings in these provinces.

A takeover bid is defined by provincial securities laws as a nonexempt offer115 to acquire shares.

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102 See Canadian Institute of Chartered Accountants Handbook ("CICA") section 1580.
103 See CICA section 3450. Compare SFAS No. 2.
104 See CICA section 3565. Compare SFAS No. 52.
105 See CICA section 3800. Compare SFAS No. 87.
106 See Accounting Principles Board Opinion ("APB") No. 20.
107 See CICA sections 3470, 3471. Compare SFAS No. 96, which superseded APB No. 11.
108 See CICA section 3450. Compare APB No. 15.
109 See CICA section 3460. Compare APB No. 20.

QSA section 126; 2 Albein, supra n.25, section 15.65(b); (b) are consummated by private agreement at not more than a 15 percent premium over market price with five or fewer persons or companies (QSA section 92(1)(c) and Reg. section 166; QSA section 125; see CICA section 104 (offers to purchase made to fewer than 15 shareholders by way of separate agreements)); or (c) involve the securities of a privately held company (QSA section 92(1)(b)).

110 See QSA sections 88-90. QSA sections 110, 111. Under provincial definitions, an offer to acquire voting or equity shares will not constitute a takeover bid unless made to at least one or more target shareholders either situated, or whose last address or principal place of business are in the province.

111 See CICA sections 3 and 194. By contrast with Canadian law, the Williams Act does not define the term "tender offer," thus leaving that task to the courts. See e.g., Field v. Trump, 800 F.2d 938, 943 (2d Cir. 1986), cert. denied, 489 U.S. 1117 (1989).

112 Canadian takeover bid circulars, like a Schedule 14D-1, must include (a) the terms, conditions, withdrawal date, and purpose of the bid, as well as the time and method of payment; (b) plans for post-acquisition disposition of target assets and change of directors and/or management, or of the target's organisation, affairs or capitalization; (c) holdings and recent trading in target securities by the bidder and any of its directors, senior officers and principal shareholders; and (d) agreements or arrangements either regarding target securities (e.g., lock-up agreements), or between the bidder and target officers and directors (e.g., compensation for post-acquisition loss of office). Compare CICA Reg. section 59, OSA Form S-12 and Form S-12 with Schedule 14D-1. In the case of exchange offers in both countries, the bidder in addition must provide prospective disclosure. Compare CICA Reg. section 60, OSA, section 74(1)(k). Compare CICA Form S-1 and QSA Reg. section 187 with Form S-4 (17 CFR 239.10).
document to the target and target shareholders.120 Within 10 days of the commencement of the bid, the Canadian target's board of directors must file and disseminate to shareholders a board of directors' circular that, much like a Schedule 14D-9 under the Exchange Act filed with the Commission, contains the target's response to the offer and other disclosure.121

If the bidders' securities are offered in whole or in part pursuant to an exchange offer, the offering materials also must satisfy standards applicable to prospectus disclosure.122 The requisite prospectus disclosures are incorporated directly in the takeover bid circular.123 The exchange offer is deemed to commence, or "go effective," immediately upon dissemination by mail to shareholders of the circular and any accompanying offering materials,124 which generally is effected contemporaneously with the filing of offering documents with the appropriate commissions.

All cash and exchange offer documents are reviewed by the CVMQ after such documents are filed and transmitted to shareholders.125 Neither the OSC nor the Department has established a formal system for review of tender offer materials, even in the case of an exchange offer mandating prospectus disclosures in the bid circular. In response to complaints from
target counsel or any other person, however, the OSC will undertake scrutiny of tender offer materials.126 Substantive protections analogous to those provided in the United States by the Williams Act and the Commission's rules thereunder are available under the CBCA and provincial takeover statutes. A bid must be made to all holders of the same class of target shares residing in a province with jurisdiction over the bid.127 and must remain open for acceptance by such holders for a minimum period (21 days) that may be extended (by ten days) upon any material change in the information contained in the offering materials or any variation in the terms of the bid.128 If more target shares are deposited than the bidder is willing to purchase under a partial bid, the bidder must accept on a pro rata basis all tenders made throughout the offering period.129 Target shares deposited generally may be withdrawn during the offering period and any extension thereof and, if the shares have not been taken up and paid for, after a 45- or 60-day period (under the provincial statutes and the CBCA, respectively) from the date of the bid.130

118 Discussions with OSC staff.
119 Compare CBCA section 94(1) and QSA section 145 with Rule 14d-10(e)(6).
120 Compare CBCA section 197(b); QSA sections 94(2), 97(5) and QSA sections 147.3, 147.8 (21 calendar-day offering period; ten-day extension after delivery to shareholders of notice of material change or variation in terms of bid) with Rule 14e-3(e) (17 CFR 240.14e-3(e)) (offer period of 30 business days); Rule 14e-3(b) (at least 10 business days must remain in offering period if material change involves an increase of more than two percent or a decrease of less than one percent of the class of securities sought or an increase or decrease in either the consideration being offered or the dealers soliciating the bid) with Rule 240.14e-3(b)(1) (bidder must give notice of extension to target shareholders); and Exchange Act Release No. 23423 [July 17, 1986] (51 FR 25873) (material change requires a five- to ten-day extension of offering period, citing Rule 14d-4(c)-(4) [17 CFR 240.14d-4(c)-(4)]). Partial bids for companies incorporated or organized under the CBCA may not continue beyond 35 days from the date of commencement of the offer. CBCA section 196(1)(b). No extension of the offering period may or need be made under Canadian law where (a) a material change was outside the bidders' control, unless related to the bidder securities to be issued in an exchange offer (OSA sections 97(2), 97(3)); (b) a variation in the terms of the bid consists solely of the waiver of a term or condition in an all-cash offer (OSA section 97(3); QSA § 147.8). 121 Compare CBCA section 196(1)(c); QSA section 94(7) and QSA section 147(2) with Exchange Act Release No. 15 U.S.C. 78m(d)(6).
122 Compare CBCA section 109(b) (if the bid is for all shares, right to withdraw, if shares are not taken up, after 60 days following the date of the bid) and OSA section 94(4) and QSA section 147.5 (right to withdraw tenders during offering period and any ten-day extension thereof, and at any time after 45 days from the date of the bid) with Section 14d(5) of the Exchange Act (15 U.S.C. 78m(d)(5)) and Section 14e(5) of the Williams Act (15 U.S.C. 78n(e)(5)) (right to withdraw tendered securities during offering period and any extension thereof, and at any time after 60 days from the date of the tender offer). There is no right of withdrawal under Canadian law where (a) a change in the terms of the bid is attributable to an increase in the consideration offered and the time for deposit is not extended beyond 10 days (QSA section 147.9(1)); QSA section 147.9(3)); (b) the securities have been taken up by the bidder when it receives a holder's notice of withdrawal (QSA section 94(5)(i)); or (c) a change in the terms of the bid is attributable to the act of a banker or an officer of an issuer of the bidder securities of the bidder, or an officer of any of a company that is itself an insider by virtue of owning, directly or indirectly, more than ten percent of the voting rights attached to the target's voting securities, and an issuer that has purchased, redeemed or otherwise acquired any of its own stock, will be deemed an insider. See OSC section 94(9)(d); QSA section 147.2(4)(c).
125 Compare CBCA section 197(d); QSA sections 145, 146. 126 Discussions with OSC and CVMQ staff; compare with Rule 14e-1(b) and Exchange Act Release No. 23423, supra n.127 (61 FR at 25677). 127 QSA section 93(3)(a); QSA section 142(1).
128 Where a variation in the terms of the bid increases the value of the consideration offered, all shareholders must receive such increase. See OSC section 96(9); QSA section 146; compare Rule 14d-10(e)(2).
129 See Hanson Trust PLC v. MSLCM Corp., 774 F.2d 47 (3d Cir. 1985).
130 See OSC sections 93(4), (7), QSA section 144.
131 Every director and senior officer of the target or of a company that is itself an insider by virtue of stock ownership, any person or company who beneficially owns or controls, directly or indirectly, more than ten percent of the voting rights attached to the target's voting securities, and an issuer that has purchased, redeemed or otherwise acquired any of its own stock, will be deemed an insider. See OSC Reg. section 19(1).
132 See CBCA section 92 (if federally incorporated); OSA section 330 and OSC Policy Statement No. 9.1.IV.B; supra n.122; Discussion with CVMQ staff.
affiliate bids subject to the Williams Act.233 Ontario and Quebec further require that a valuation of the target be performed by an independent appraiser within 120 days of the bid, and filed with the takeover bid circular in which the results of the valuation must be summarized for shareholders.234 Insiders must also make certain disclosures in the takeover bid circular derived from the standard form issuer bid circular. 235 As with any third-party bid, the target’s board of directors must file with the proper securities commission(s) and disseminate to shareholders its response to the bid.

An issuer bid or self-tender is defined as an issuer’s nonexempt offer to acquire or redeem any percentage of its own equity or convertible debt securities and, like third-party tender offers, is within the regulatory jurisdiction of securities authorities of all provinces in which solicited shareholders reside.236 If the target is federally incorporated, the Director charged with administering the CBCA likewise has jurisdiction over the transaction.237 Most of the substantive protections, disclosure requirements and agency review procedures applicable to issuer cash and exchange offers governed by Canadian securities law are virtually identical to those relating to third-party takeover bids.238

IV. The Proposed System

A. Overview/Purpose

The multijurisdictional disclosure system proposed today would permit public offers to be made in the United States on the basis of disclosure documents prepared in accordance with Canadian law. The system would cover multijurisdictional and cross-border offerings by Canadian issuers that met specified size tests, in order to encourage cross-border public offers and facilitate the free flow of capital. The system also would cover specified rights and exchange offers in order to encourage Canadian issuers to extend such offers to U.S. shareholders.

The multijurisdictional disclosure system also would permit tender offers that are primarily Canadian in character to comply with the provisions of the Williams Act by complying with the applicable Canadian tender offer regulations, again to encourage such offers to be made to U.S. investors. Given the extensive Canadian regulatory provisions, the United States does not have an overriding investor protection interest in insisting on compliance with the specific regulatory provisions of Regulations 14D and 14F.

The multijurisdictional disclosure system likewise would extend to continuous reporting, in light of Canada’s continuous reporting requirements providing investor protection comparable to that provided by the similar U.S. requirements, as discussed above, and the likelihood that facilitation of the registration process without extension to the reporting process would render the system of little utility.

Under the multijurisdictional disclosure system as it would operate in Canada, U.S. issuers would be able to make public offerings of securities in all provinces of Canada on the basis of prospectuses prepared in accordance with U.S. law. Such prospectus disclosure would be updated in accordance with U.S. requirements, and U.S. documents would be used to comply with continuous reporting requirements. Although Ontario currently does not have a concept of shelf registration, procedures would be proposed by the OSC staff to accommodate U.S. issuers making shelf offerings. Tender offers that are primarily U.S. in character would be deemed to comply with applicable Canadian regulations if they were conducted in accordance with the provisions of the Williams Act.

In proposing adoption of the system, the Commission and Canadian securities authorities are taking a conservative first step rather than providing for multijurisdictional registration and disclosure in all cases. The first phase of the system will enable the Commission and the Canadian authorities to monitor use of the system and to address potential problems. At a later date, a wider variety of transactions and a greater number of issuers may be added.

To be eligible to participate in the multijurisdictional system, an issuer would be required to have a three-year reporting history with either the OSC or the CVMQ,239 and to be in compliance with the reporting requirements of such authorities at the time of filing. Issuers also would be required, except in the case of rights offerings, to meet tests of minimum market value or public float.

The system further would permit compliance with Canadian law to suffice for compliance with the Williams Act in the case of tender offers made for the securities of Canadian issuers, a limited percentage of which is held by U.S. residents.

233 See CBCA Reg. section 63.
235 See supra n.63, section 19.12.1.
236 As in the United States, an issuer’s bid is exempt from Canada’s takeover regulation if the securities are purchased or redeemed to meet contract sinking fund requirements or to comply with the terms and conditions creating the class of securities or the statute pursuant to which the issuer was organized, incorporated or continued. Compare OSA sections 92(3)(c) and (d) and QSA section 147.217(1) with Rules 13e-4(g)(3) and 13e-4(f)(1)-3. Also exempt from Canadian takeover law are acquisitions by the issuer of (a) employee stock, (b) less than five percent of the issuer’s shares within 12 months; (c) its own shares on a stock exchange in accordance with exchange rules; and (d) stock held by less than 50 shareholders, where the bid originated in a recognized jurisdiction and thus is governed by that jurisdiction’s takeover rules. OSA sections 92(3)(d)-(i); see QSA section 147.217(2) and Regulation 2F-2; 2 Alboini, supra n.63, sections 18.13.12, 16.13.2.
237 See OSA sections 8(3)(j)-(k); QSA section 147.19.
238 See OSA sections 8(3)(j)-(k); QSA section 147.19.
Audits conducted in accordance with generally accepted auditing standards in Canada would be accepted in the United States pursuant to the multijurisdictional system. Auditor independence requirements would not be affected by the multijurisdictional process and accountants therefore must continue to meet the independence requirements of the jurisdiction in which an offer is made. Moreover, Canadian auditors would be required specifically to follow the existing Canadian professional guidelines regarding additional comments for U.S. readers that may be appropriate with respect to contingencies and going-concern considerations.

1. Offerings by Substantial Issuers

The purpose of the "substantial" designation is to single out issuers whose size is such that the market operates efficiently for them. Such issuers generally have a wide market following and the marketplace can be expected to have set a price for their securities based on all publicly available information. As in the case of determining the availability of Form S-3 or Form S-3, the Commission has distinguished between investment grade and other securities in determining whether to rely completely on Canadian disclosure, although a size test would be applied to investment grade debt offerings (which is not the case for offerings on Forms F-3 or S-3). In the context of investment grade debt and preferred stock, a "substantial" issuer is defined as one that has a market value of at least (CN) $180 million, as opposed to the (CN) $960 million required in the case of other securities. The Commission is proposing to rely entirely on Canadian disclosures in the case of investment grade debt and preferred stock. These securities are generally traded on the basis of the yield on such securities and assessments of their creditworthiness. The financial information pertaining to liquidity and capital resources is most relevant to this investment decision, and the differences between U.S. and Canadian GAAP are relevant and reliable, financial statement reconciliation would increase comparability of financial information, which is of greater importance to investment decisions with respect to equity and other non-investment grade securities.

The Commission specifically requests comment as to whether the differences between U.S. and Canadian accounting standards are sufficient to warrant continued reconciliation requirements, or whether Canadian financial statements would provide investors with adequate information for comparative analysis purposes in some or all cases. If reconciliation is not necessary in all cases, should it be required only for specific regulated industries (for example, insurance companies, where specialized industry guidance in both countries may result in very different balance sheets or specific transactions? The Commission also requests comment as to whether domestic issuers would be disadvantaged unduly if Canadian issuers were to be permitted to sell noninvestment grade debt or equity in the United States without reconciliation. Depending on the responses received to these questions, the Commission may reconsider the need to require reconciliation, or modify or eliminate that requirement in Form F-10.

In the case of banks registering securities under the 1933 Act, supplemental disclosure of specified portions of the information prescribed by Securities Act Industry Guide 3, discussed below, also would be required. Review by Commission staff of applicable Canadian law indicated that equivalent disclosure currently is not required in Canada.

2. Rights and Exchange Offers

The multijurisdictional registration process also would be extended to certain rights and exchange offers, primarily because of concerns for domestic investors' interests. Rights and exchange offers made in the United States generally must be registered with the Commission. As noted above, foreign issuers making a rights or exchange offer frequently do not extend offers to U.S. holders because they are unwilling to bear the costs and other burdens of registering securities in the United States. U.S. holders of securities that are the subject of a rights offering are typically "cashed out" and thereby may be denied the opportunity to realize significant value on their investments. In the case of exchange offers, investors are relegated either to selling into the market at less than the full tender offer consideration and incurring transactional costs not imposed in the tender offer or remaining minority shareholders, subject to the risk of being cashed out in a subsequent merger or arrangement subject to Canada corporate law.

144 See CICA Auditing Guideline, "Canada-United States Reporting Conflict with respect to contingencies and going concern considerations" (December 1988).
145 Comprehensive Securities Act Release No. 6331 (August 8, 1981), adopting Form S-3 ("Because these registrants are widely followed, the disclosure set forth in the prospectus may appropriately be limited, without the loss of investor protection, to information concerning the offering and material facts which have not been disclosed previously.").
146 See supra 14-10(a)-1 or 13e-4(g)(1) on a case-by-case basis. Pursuant to delegated authority, the Commission's Division of Corporation Finance has granted exemptive relief to a Canadian bidder that excluded U.S. shareholders of the Canadian target due to a Canadian law prohibiting foreign ownership. "Alberta Energy Co. Ltd. (June 19, 1989)." In addition, the Division has granted exemptive relief to a U.S. company that excluded Canadian shareholders of the U.S. target because U.S. law prohibited foreign ownership of domestic oil and gas leases. "Freeport-McMoRan, Inc. v. Minorco S.A., F.D.R. 2nd 262 (E.D. Pa. 1979)." Exemptive relief was denied in connection with a tender offer by a Canadian corporation for 78 percent of the common stock of a Canadian affiliate of a U.S. company, where the bidder proposed to offer cash only to U.S. target shareholders, and the choice of cash or stock to Canadian target shareholders, but did not argue that Canadian law would cause U.S. ownership of target stock. "Imperial Oil Ltd. (June 19, 1989)."
It therefore would appear to be in the interests of domestic investors to facilitate the registration of such offerings to encourage foreign issuers to include domestic shareholders. Particularly when U.S. holdings are small, Canadian issuers currently find that the costs of extending these offers into the United States outweigh the benefits of such entry. The proposed system should alter the cost-benefit analysis made by Canadian issuers in favor of extending offers to relatively small numbers of securities holders in the United States.

Additionally, imposing a duplicative cost on issuers seems particularly inappropriate where the effect on the United States is incidental to a transaction. For this reason, where less than 20 percent of the class of securities to which the rights or exchange offer related is held of record by U.S. residents, offers could be made in the United States pursuant to the system. The percentage of record holders would be determined as of the end of the issuer's last quarter or, if such quarter ended within 60 days prior to the date of filing, as of the end of the preceding quarter. Comment is requested as to whether the percentage should be determined as of a different date.

Rights offerings to U.S. investors that already own the securities of the issuer are particularly appropriate for multijurisdictional registration. Investors already holding the securities can be expected reasonably to make a further investment based on the same type of information on which they relied when they bought the securities in the secondary market. Consistent with this theory, multijurisdictional registration for rights offers could be made available to a larger class of issuers than those designated “substantial.” For the same reason, however, the rights so registered could not be transferred to investors in the United States who were not already shareholders.

Comment is requested as to whether rights offers should be permitted to be made pursuant to the system in the event more than 20 percent of the subject securities were held of record by U.S. residents. For example, should the limit be 30, 40 or 50 percent or should there be no limit at all?

In the case of exchange offers, it similarly seems appropriate to facilitate registration so that domestic investors are not denied rights of value that are offered to all other holders of the same class of securities. On the other hand, in non-issuer exchange offers, unlike rights offerings, the issuer has not made a prior investment decision with respect to the bidder whose securities are being offered in the exchange. Due to this difference, eligibility standards for exchange offers would be higher than those applicable to rights offerings, and a narrower class of exchange offers could be made through the multijurisdictional system. While issuers of both rights and exchange offers would have to have three-year reporting histories, only in exchange offers would issuers be required to have a public float of (CN) $75 million.158

In the case of exchange offers, a decision to extend offers to U.S. investors depends not only on the application of U.S. disclosure requirements, but also on U.S. tender offer regulation. Foreign issuers conducting tender offers for the shares of Canadian target companies often are deterred from extending both exchange and cash offers to target shareholders residing in the United States by costs attendant to compliance with this country's applicable tender offer regulations,159 and thus exclude U.S. investors from their tender offers. In some cases, although purporting to extend U.S. shareholders from the offer, the bidder in fact may have intended that U.S. holders sell into the market so that the shares could be purchased on the open market by the bidder, as permitted under Canadian law,160 or tendered by Canadians who purchased such shares in the market. Rather than protecting U.S. investors, the application of tender offer rules under the U.S. regulatory scheme to predominantly Canadian tender offers can operate to deny these investors the full benefit of participation in such transactions.

In sum, the multijurisdictional system should reduce disincentives to the inclusion of U.S. shareholders in predominantly Canadian cash or exchange offers where less than 20 percent of the subject class was held of record by U.S. residents. More importantly, because the substantive protections and disclosure obligations established by Canada's tender offer regulations are comparable to those prescribed by the Williams Act and the Commission's rules thereunder, holders of shares in Canadian companies residing in the United States would not be disadvantaged unduly by comparison with U.S. shareholders in domestic companies. To minimize any potential regulatory inequality, the nationality of a bidder in a cash tender offer would not determine availability of the system. Thus U.S. and Canadian bidders for a Canadian target would be governed by the same tender offer regulation.

B. The Mechanics of the Multijurisdictional Disclosure System

An issuer using the multijurisdictional disclosure system would prepare a disclosure document according to the requirements of its home jurisdiction and use that document for securities or cash offerings in the United States. Review of the disclosure document generally would be that customary in Canada, and the Canadian regulatory authorities would be responsible for applying disclosure standards.2

The system would distinguish between the disclosure document required to be given to each investor and the documents to be filed with the Commission. Participating Canadian issuers could provide investors in the United States with the same information delivered to investors in Canada. Information incorporated by reference in the prospectus would not be required to be distributed to investors, but would be filed with the Commission.17 Investors

158 This requirement is derived from the requirements of Canada's Prompt Offering Qualification system. See supra Section III.B.

159 A particular deterrent arises from differences in the minimum offering period. Canadian law requires that tender offers remain open only for 21 calendar days, whereas the Williams Act prescribes a minimum offering period of 20 business days. See supra section III.D. Participation of U.S. shareholders likewise may be sought despite these differences, as well as the requirement that U.S. shareholders in Canadian forms not determine availability of the system. Therefore, the Commission would not be required to comply with U.S. disclosure requirements. However, an antifraud action could be brought alleging that the disclosure was misleading because information had been omitted.


161 Such documents would be part of the prospectus and subject to liability under section 12(2) of the Securities Act for any misleading statement.
would be able to obtain such information from the Commission or, upon request, from the issuer.

All exhibits to the Canadian prospectus, take-over bid circular or other document, including those incorporated by reference, would be required to be filed with the Commission as part of the registration statement or schedule.

All documents already filed with the Commission would not be required to be filed again. Experts' consents filed with the Commission as a part of a registration statement would be required to indicate clearly that the consent to use the experts' statements and consents extends to all the documents being filed with the Commission which attribute a report or opinion to the expert. Thus, all the documents would be subject to Section 11 liability and all other provisions of the U.S. securities laws applicable to a registration statement filed under the Securities Act, as well as (in the case of tender offers) the antifraud provisions of the Exchange Act. Moreover, such documents would be in the Commission's public files, available for public review.

Participating issuers could use a brief "wraparound" form or schedule to register their offerings with, or otherwise provide disclosure to, the Commission. This form or schedule would give the issuer's name and address, and that of its agent for service in the United States, include the prospectus or offering circular, and list the exhibits filed, including documents incorporated by reference, with the Commission. Each form and schedule proposed today contains a requirement that the Commission be advised of any change to the name or address of an agent. All the forms and schedules proposed also expressly require that the issuer add to the prospectus or circular legends warning investors that the investment may have tax consequences in the issuer's jurisdiction, that investors may have to pursue remedies for any securities law violation against persons and assets located in the issuer's jurisdiction, and that any financial statements are prepared in accordance with Canadian accounting standards.

The forms and schedules would be accompanied by a Form F-X, which includes not only a consent to service of process and appointment of a U.S. person as agent for process, but also a consent to service of an administrative subpoena and an undertaking to assist the Commission with administrative investigations.

Where debt securities were registered, issuers would be required to comply with the Trust Indenture Act, and would file as exhibits to the registration statement a copy of the trust indenture and the statement of eligibility on Form T-1. In the event that the registrant intended to use a non-U.S. trustee, it would also have to provide information regarding that trustee or incorporate by reference the application form previously used to obtain a waiver of the U.S. trustee requirement. The procedure for application for waiver is discussed in detail below. If any exchange or tender offer for debt securities were registered on Form F-8, pursuant to section 308(c) of the Trust Indenture Act, offers could not be made until an indenture (including the related statement(s) of eligibility and qualification of the trustee or trustees) had been filed for qualification with the Commission.

Registration statements on the proposed forms must be filed with the Commission on the same day as the filing of a prospectus or other document with the securities authorities of the jurisdiction identified by the registrant on the cover of the form as the principal jurisdiction regulating the offering. Any amendment to the document filed with that jurisdiction similarly must be filed on the same day with the Commission under cover of a post-effective amendment. Because the provincial securities commission must review and approve all prospectuses and related documents prior to effectiveness except those incorporated in exchange offer filings, these registration statements and amendments would be deemed effective on the date the securities could legally be sold in the principal Canadian jurisdiction. With respect to exchange offers, which may commence immediately in Canada upon dissemination of offering documents to target company shareholders, filings on Form F-8 would become effective upon filing with the Commission. Post-effective amendments to proposed forms would be submitted to the Commission in the manner described in section III.E.

The securities legally may be sold in the principal Canadian jurisdiction.

In the case of a debt offering, the trust indenture relating to the securities would be qualified when the registration statement became effective. The registration statement would not be deemed effective, however, in any case where either all the provisions of the Trust Indenture Act had been complied with, or an appropriate exemption had not been obtained from those provisions with which the registrant had not complied.

Registrants on the multijurisdictional forms would be able to make a delayed or continuous offering to the same extent foreign private issuers currently may make such offerings pursuant to Rule 415. However, prospectus updating would be accomplished in compliance with Canadian law. Any updated prospectus would be filed with the Commission as a post-effective amendment and would be declared effective on the date on which the securities legally may be sold in the principal Canadian jurisdiction. A registration statement for a delayed or continuous offering could be filed with the Commission if the documents contained in the registration statement included the documents required in Canada and complied with all Canadian requirements. In the case of offerings made in both Canada and the United States, the registrant would comply with Canadian law regarding prospectus filing.
updating, and no special undertaking would be required in the registration statement. In the United States, there was no contemporaneous offering in Canada, the registrant would be required to enter into an undertaking regarding prospectus updating.

C. Application of the System to Specific Transactions

Discussed in detail below are the procedures whereby Canadian issuers could offer securities or any offerors could make a cash tender offer in the United States under the multijurisdictional disclosure system. Equivalent procedures are being proposed by the OSC and the CVMQ for use by U.S. issuers in Canada.

1. Offers by Substantial Issuers

(a) Offerings of Investment Grade Debt and Preferred Stock (Form F-9)

Multijurisdictional registration would be permitted for offerings by substantial issuers of non-convertible debt securities or non-convertible preferred stock that are investment grade, as defined in the United States. Securities that are not convertible for one year from the date of effectiveness of the registration statement would be treated as non-convertible. Comment is requested as to the treatment of convertible securities. Should the period of non-convertibility be longer (e.g., for two or three years)?

Eligible offerings of investment grade securities would be registered with the Commission on proposed Form F-9. To be eligible to use that form, an issuer would be required to be incorporated or organized under the laws of Canada or any Canadian province or territory, with a total market value for its common stock of at least (CN) $180 million and a public float of (CN) $75 million. The

(CN) $180 million requirement parallels one of the eligibility standards for use of Form S-3, which permits use of a short-form prospectus in the United States by U.S. issuers. The public float requirement is derived from the

Prompt Offering Qualification system, discussed above, and is based on the Canadian definition of affiliates in determining the amount of securities publicly held. These requirements are expressed in terms of Canadian, rather than U.S., currency so that fluctuations in exchange rates would not affect an issuer's eligibility to use the Form.

Comment is requested as to whether the requirements set forth provide adequate indication of an issuer's market following. Should the market value and public float tests be set at different levels, and if so, should they be higher (for example, market value of (CN) $300 million, or float of (CN) $100 or $300 million) or lower (for example, market value of (CN) $75 or $100 million or float of (CN) $25 or $50 million)?

(b) Other Offerings (Form F-10)

Offerings by substantial issuers of securities other than investment grade debt or preferred stock would be registered on proposed Form F-10. In this context, "substantial issuers" would be those with a common stock market value of at least (CN) $300 million (to approximate the Commission's requirement that equity issuers eligible to use the Form F-3 short form prospectus have a market value of voting securities of (U.S.) $300 million), and a public float of (CN) $75 million. As with Form F-9, comment is solicited as to the appropriateness of the tests for eligibility for Form F-10. Should the market value and public float be set at different levels, and if so, should they be higher (for example, market value of (CN) $500 or $700 million, or float of (CN) $100 or $300 million) or lower (for example, market value of (CN) $100 or $200 million or float of (CN) $25 or $50 million)?

As discussed above, Form F-10 would require reconciliation of financial statements to U.S. GAAP as specified in Item 18 of Commission Form 20-F. Item 18 requires the full disclosure of all information required by Regulation S-X and U.S. GAAP, including segment information and supplemental oil and gas data. Comment is solicited as to whether, if reconciliation is to be required, Item 17 reconciliation should suffice.

In the United States, registration statements are subject to certain industry-specific requirements relating to an issuer's business and operations. Foreign issuers generally are held to the same level of disclosure as domestic issuers. Given Canadian comprehensive disclosure requirements and practices, the Commission proposes to require additional industry-specific information only from issuers engaged in banking. Canadian banks using Form F-10 would be required to disclose the information set out under Item III.C., "Risk Elements," and Item IV., "Summary of Loan Loss Experience" of Industry Guide 3 under the Securities Act. Both the reconciliation and the supplemental Guide 3 information are required to be included in both the prospectus delivered to investors and the registration statement.

2. Rights and Exchange Offers

(a) Rights Offers (Form F-7). Form F-7 is proposed for use by Canadian issuers making rights offerings in the United States. To be eligible, the issuer would have to (1) be incorporated in Canada, and (2) have had, for the 36 months immediately preceding the offering, a class of securities listed on The Toronto Stock Exchange or the Montreal Exchange. Form F-7 would not require that registrants meet any test related to market value of shares or public float. Comment is requested as to whether the eligibility tests proposed for use of Form F-7 are appropriate, or whether the (CN) $75 million (or $10 million, $25 million or $50 million) market value requirement imposed by Form F-6 be extended to Form F-7.

Since it is intended that Form F-7 would exclude offerings that are major financings, so that an issuer that did not meet the tests for use of Form F-10 would not be eligible to take advantage of the system by characterizing an offer as a rights offering, an eligible offer could not increase the capital of the class of securities offered by more than 25 percent. The 25 percent test is derived from Canadian requirements, which use the 25 percent threshold to identify
rights offerings subject to additional regulatory requirements. U.S. residents must hold of record less than 20 percent of the class of securities to which the rights offering related. To preclude a public offering being made indirectly by an issuer not eligible to make such an offering, the rights offerings would be transferable by U.S. residents. The underlying securities, however, could be so transferable. Consistent with Canadian regulations, a further condition of Form F-7 is that the exercise period of the rights must not exceed 60 days.

The securities to be registered on Form F-7 would be those issuable upon the exercise of the rights. The rights themselves, whether issued to shareholders by means of warrants or otherwise, generally are not registrable on a "no-sale" theory. If the rights were required to be registered, the issuer would be permitted to register them on Form F-7.

(b) Exchange Offers (Form F-8)—Registration Issues. Proposed Form F-8 would be used to register exchange offers that are primarily Canadian in character, in which all or a portion of the consideration offered is the securities of the bidder, and less than 20 percent of the securities of the target class is held of record by U.S. residents. The aggregate market value of the registrant's common stock must equal or exceed (CN) $75 million. As with rights offerings registered on Form F-7, registrants would be required to have had their securities listed on The Toronto Stock Exchange or the Montreal Exchange for the 36 months immediately preceding the filing of the offering. Comment is requested as to the appropriateness of these tests. Given the application of Canadian tender offer regulation to the exchange offer and the interdependence of tender offer and exchange registration disclosure, should the offer be permitted to be registered using Canadian disclosure, without regard to the market capitalization? Should a public float test be imposed, as in the case of offerings by substantial issuers? If so, should the same requirements as apply to either Form F-4 or F-10 be applied, or should a different public float be required, for example, (CN) $25 million or (CN) $50 million? Should the market value of the registrant's securities be set at a higher level (for example, (CN) $100 million or $200 million) or a lower level (for example, (CN) $25 million or (CN) $50 million)?

The target of the bid would be required to be incorporated or organized under the laws of Canada or any Canadian province or territory. The bidder would be required to offer its securities upon identical terms and conditions to both U.S. and Canadian shareholders of the target, consistent with Canada's all-holders and best-price policies. Adherence to these policies, which as discussed are similar to the Commission's All-Holders, Best Price Rule, would prevent discrimination among holders of the class of securities that is the subject of the offer.

Contemporaneously with the filing with Canadian authorities and mailing to target shareholders of the required documents, a Canadian offeror making an offer pursuant to the system would file these documents, under cover of Form F-8 and accompanied by Form F-X, with the Commission. The offer and takeover bid circular would be distributed by mail in accordance with Canadian law to shareholders in both countries. In the United States an exchange offer cannot commence until a registration statement has become effective, thereby delaying the commencement date of the offer pending acceleration of the effective date.

An exchange offer commences under Canadian law, however, immediately upon the mailing to target shareholders of the takeover bid circular containing the required prospectus disclosure. Since Form F-8 and any amendments thereto would become effective for purposes of the Securities Act at the time the securities legally may be sold in the principal jurisdiction, such filings could become effective immediately.

Exchange offers registered on Form F-8 under the system thus would commence in the United States simultaneously with dissemination to shareholders of the integrated circular. See supra n. 128 and accompanying text. See supra n. 151 and accompanying text. See Proposed Rule 467(a); CBCA section 198; QSA section 128 and Schedule XI.

3. Tender Offers Pursuant to the System

Pursuant to amendments to be proposed to the Commission's tender offer rules, third-party or issuer tender offer filings in connection with offers in both jurisdictions for a class of shares of a Canadian issuer, less than 20 percent of which is held of record by U.S. residents, would be permitted to proceed in the United States in compliance with the law of Canada, provided the tender offer is extended to all holders of the class of securities in the United States and that the transaction is covered by and not exempted from substantive provisions of Canadian law regulating the terms and conditions of the offer. In those instances, compliance with Canadian law would suffice for compliance with

(i) Tender Offer Regulation for Exchange Offers. Exchange offers also raise the question of the need for compliance with each jurisdiction's exchange offer regulatory scheme relating to tender offers. When a Canadian bidder is eligible to use Form F-8, the tender offer regulations applicable in Canada would govern under the system, and compliance with such regulations would be sufficient under the Williams Act. U.S. and other non-Canadian offerors not eligible to use Form F-8 similarly could make exchange offers for the securities of Canadian issuers (where less than 20 percent of the holders of record of the subject securities were U.S. residents) pursuant to Canadian tender offer regulations. Such non-Canadian issuers, however, would have to comply with U.S. disclosure requirements, as set forth on any available Commission registration form. The application of tender offer regulation under the proposed system is discussed in Section 3 hereof.

(ii) Proxy Regulation. Any solicitation of U.S. shareholders involved in the offer and sale of securities registered on Form F-8 (for example, if, in connection with a tender offer, the issuer proposed to increase its authorized share capital) would be exempt from Exchange Act proxy information and filing requirements pursuant to a proposed new rule.
the bidder met the specified nationality, size, market value and float tests, there would be no such eligibility standards for bidders making cash tender offers. Under either circumstance, however, the subject issuer must be a Canadian reporting company, less than 20 percent of the subject shares held by U.S. residents of which is held of record by U.S. residents. It should be emphasized that bidders using Schedule 14D-1F would not be relieved of any obligation to file a Schedule 13D that may arise, should their beneficial ownership of the target's equity securities subject to the offer exceed five percent.

Neither an F-8 eligible registrant, an all-cash bidder nor the issuer would be exempt, by virtue of the proposed rule amendments, from the civil liability and antifraud provisions of Sections 10(b), 13(e), 14(e) and 18 and Rules 10b-5, 13e-3(b)(1) and 14e-3 under the Exchange Act noted, in the case of an exchange offer, from the provisions of Sections 11, 22(2) and 17(a) of the Act.

In cases of tender offers ineligible for multijurisdictional treatment in the United States because 20 percent or more of the subject shares were held by U.S. residents, the rules and regulations of the United States generally would apply. In the Commission's view, the requisite use of the jurisdictional means can be established, notwithstanding the absence of an affirmative act of the bidder, where it is reasonably foreseeable that U.S. shareholders of a foreign issuer that have been excluded from an offer, will sell their shares into the market in response to that offer. Further, as a policy matter, the Commission, the Canadian federal government, the OSC and the CVMQ believe that tender offers should be extended to all holders of the class of securities in Canada and the United States, and that efforts to avoid compliance with the other jurisdiction's regulation by attempting to exclude certain shareholders from the offer are consistent neither with the purposes of either country's laws nor with the public interest. The United States and Canada mutually recognize the principle of equal treatment of target shareholders in the tender offer context. Traditional precepts of comity do not call for exclusion of either country's shareholders from a tender offer, but rather for the offer to be made on an equal basis to all shareholders.

D. Exchange Act Provisions Affecting the Activities of Participants in Tender and Exchange Offers

Rule 10b-6 generally prohibits a distribution participant from, directly or indirectly, bidding for or purchasing, or attempting to induce others to purchase, the securities in distribution or any security of the same class or series or any right to purchase such security ("related securities"), until the participant's role in the distribution has terminated. Rule 10b-13 prohibits a...
person who is making a cash tender offer or exchange offer for any equity security from, directly or indirectly, purchasing or making any arrangement to purchase such security (or any other security convertible into or exchangeable for such security) otherwise than pursuant to the tender offer or exchange offer, from the time of announcement of the offer until its expiration, including any extensions thereof. The rule is designed to "protect shareholders in the tender offer from the harmful effects of purchases or arrangements made outside, and on terms or conditions different from, the tender offer, and to protect the integrity of the tender offer process by proscribing side deals that could render the tender offer a sham." 206

Canadian procedures permit participants in transactions contemplated by proposed Form F-8 and Schedules 14D-1F and 13E-4F to engage in certain activities that are prohibited by Rules 10b-6 and 10b-23. For example, Canadian provisions permit, in limited circumstances, purchases by an offeror during an issuer bid, or by an issuer during an issuer bid, otherwise than pursuant to a tender offer conducted by circular bid.207 Such purchases are permitted from the third business day following the date of the bid until its termination. Purchases are conditioned upon limiting the amount of securities acquired to five percent of the outstanding securities as of the date of the bid, disclosing the intention to make such purchases in the third-party or issuer bid circular, and issuing and filing a press release with the relevant exchange or regulatory commission at the close of each day on which securities have been purchased.208

The press release is required to disclose the purchaser, the number of shares purchased, the highest price paid on that day, the average price paid for the securities that were purchased by the purchaser through the facilities of the stock exchange during the bid, and the total number of securities owned by the purchaser as of the close of business of the stock exchange on that day.209

In connection with the proposed multijurisdictional disclosure system, the Commission is considering publication of no-action positions with respect to Rules 10b-6 and 10b-13. The contemplated no-action positions would apply solely to tender and exchange offers on Form F-8 and Schedules 14D-1F and 13E-4F, and would permit securities purchases in Canada that are not made for the purposes of creating actual or apparent trading activity in raising the price of such securities. The no-action positions would permit: (1) With respect to cash tender offers, purchases of the securities which are the subject of the offer and any other security that is a right to purchase such security or is immediately convertible into or exchangeable for such security ("target securities"); and (2) with respect to exchange offers, purchases of target securities and bids for and purchases of the securities offered by the bidder or issuer ("offered securities"), and any security of the same class and series or any right to purchase any such offered securities (collectively, "subject securities").210 The proposed no-action positions would be available to issuers and bidders that: (1) Disclose in the Form F-8 and Schedules 13E-4F and 14D-1F the possibility of, or the intent to make, purchases of subject securities as permitted by applicable Canadian regulations; and (2) submit an undertaking to disclose in the U.S. information regarding purchases of subject securities on the same basis as it is required to be disclosed or otherwise is disclosed pursuant to Canadian statutory and regulatory requirements.211

The Commission believes that the proposed no-action positions with respect to Rules 10b-6 and 10b-13 are consistent with the philosophy underlying the proposed multijurisdictional disclosure system, and represent an appropriate accommodation that recognizes that Canadian procedures applicable to tender and exchange offers afford a large measure of the protections provided by Rules 10b-6 and 10b-13. The contemplated no-action positions would be announced in the release if and when proposed Form F-8 and Schedules 13E-4F and 14D-1F are adopted, announced in a companion release, or incorporated into Form F-8 and Schedules 13E-4F and 14D-1F.

E. Proxy and Insider Reports

Canadian issuers that currently are eligible to use Form 23-F are not subject to U.S. proxy regulation.212 All other Canadian issuers, however, must comply with both Canadian and U.S. proxy regulations when they solicit U.S. residents. In connection with the implementation of the system, the Commission proposes to amend certain of the proxy rules to allow compliance by Canadian issuers with Canadian proxy rules to suffice for U.S. purposes.

The Commission's proxy rules provide that, if an issuer is soliciting proxies for a meeting at which only matters being voted upon include such routine items as the election of directors or/and ratification or approval of accountants, only definitive proxy statements must be filed with the Commission.213 Thus, no filing of preliminary materials is required. If a Canadian issuer falls within the provisions of this rule so that only definitive material is required to be filed, the amendments to Rule 14a-6 proposed today would provide that the proxy material need only be prepared in accordance with Canadian requirements.214 If, however, the matters to be voted on would require the filing of preliminary proxy materials in the United States, then a Canadian issuer subject to U.S. proxy rules would be required to prepare the proxy statement in accordance with U.S. rules.

206 See OSA section 93(3) and Reg. section 106; QSA section 142.

207 All exceptions, exemptions, and no-action positions with respect to Rules 10b-6 and 10b-13 are premised upon the condition that none of the transactions thereby permitted is engaged in for a manipulative purpose. See Rule 10b-6(e)(4); Safford & Co. v. SEC. 446 F.2d 391 (3d Cir. 1977); Bruns v. Nordman. 460 F.Supp. 652, 660 (1980).

208 Canadian regulatory officials and broker-dealers have advised the staff that it would not be a significant burden to provide this additional disclosure.
An additional area affected by the proposed rule changes would be that of shareholder proposals. An amendment to Rule 14a-8 under the Exchange Act would provide that any Canadian issuer subject to U.S. proxy rules that complied with applicable Canadian shareholder proposal rules would be deemed to have complied with the requirements of Rule 14a-8.

Directors, officers and principal stockholders of Canadian and other foreign private issuers eligible to use Form 20-F are not subject to Section 12 of the Exchange Act.\(^\text{121}\) In a situation somewhat analogous to the case of proxy regulation, Canadian persons that are in certain relationships with a Canadian foreign private issuer must comply with both Canadian and U.S. reporting requirements. The Commission today is proposing a new rule,\(^\text{121}\) that would provide that only persons required to report their securities holdings in Canada would be required to report to the Commission, and the reporting obligations with the Commission could be met by furnishing the report filed with the Canadian authorities.

**F. Continuous Disclosure**

Issuers that make a registered offering of securities in the United States, or that acquire a certain number of shareholders of record resident in the United States, are subject to reporting requirements under the Exchange Act. Section 15(d) of the Exchange Act,\(^\text{219}\) as supplemented by Regulation 15D,\(^\text{220}\) requires each issuer that has filed a registration statement that has become effective pursuant to the Securities Act to file periodic reports thereafter.\(^\text{221}\) Section 13(a) of the Exchange Act also requires each issuer that has securities registered under Section 12 of that Act to file periodic reports.\(^\text{222}\) Securities filing the equivalent Canadian documents under cover of Form 40-F. Reconciliation of financial statements would be required, but (as in annual reports on Form 20-F) this reconciliation would be to Item 17 of Form 20-F rather than to Item 18. The Commission will consider comments received in response to its questions concerning the need for reconciliation for offerings on Form F-10 in determining whether to require reconciliation for continuous reporting purposes. The Commission requests comment as to whether there are distinct reasons necessitating reconciliation for Exchange Act reporting purposes.

As is the case with Form F-10 issuers, Canadian issuers that meet the test for eligibility for use of Form F-9 (i.e., that had an aggregate market value for their securities of (CN) $90 million and a public float of (CN) $7.5 million), even if they had not made an offering pursuant to the system (“F-9 issuers”), could comply with Section 12(g) continuous disclosure requirements that arose in connection with nonconvertible investment grade preferred stock\(^\text{229}\) by filing Canadian periodic reporting documents under cover of Form 40-F. Reconciliation of financial statements would not be required.

The exemption from Section 12(g) provided by Rule 12g3-2(b) would continue to exist and would be unaffected by adoption of the multijurisdictional system. A Canadian issuer currently furnishing Canadian disclosure documents to the Commission pursuant to Rule 12g3-2(b) that extended a public offering into the United States registered on the Form F-10 filed in connection with the new system would become subject to the periodic reporting requirements of Section 15(d). It could meet this obligation by filing with the Commission the same documents as it presently furnishes under Rule 12g3-2(b), except that documents would be filed under cover of Form 40-F. Further, Section 16
liability under the Exchange Act now would attach to those filings.282

Section 12(b) registration and reporting obligations would be treated similarly under the system to obligations arising under Section 12(g). Canadian issuers that had a class of securities listed on an exchange would have to file SEC continuous disclosure documents. F-10 issuers, and F-9 issuers of non-convertible investment grade debt or non-convertible investment grade preferred stock, however, would be able to comply with their Section 12(b) reporting obligations by filing the appropriate Canadian forms under cover of proposed Form 40-F. If the class of securities listed was non-convertible investment grade debt or preferred stock, no reconciliation of financial statements would be required, while if other securities were listed, Item 17 reconciliation would be required. Comment is requested as to whether, when non-convertible investment grade or preferred stock is listed, the issuer thereof should be permitted to meet Section 12(b) reporting obligations by filing Canadian documents, whether or not it met any size test.283

The Commission recognizes the potential anomalies of permitting use of the system to meet continuous disclosure requirements under Section 15(d), but only permitting its use to meet similar continuous disclosure requirements under other sections of the Exchange Act by specified, larger issuers. For example, a relatively small Canadian issuer of debt securities trading over-the-counter in the United States would not be subject to reporting requirements. If it listed those securities in the United States, it would become subject to Section 12(b) reporting obligations, and would have to file U.S. documents with the Commission. If later it met the size requirements for Form F-9, it could file Canadian documents with the Commission. Similarly, issuers making exchange offers (but not meeting the tests for eligibility for Form F-9 or F-10) are likely to encounter Section 12(g) continuous reporting requirements immediately upon consummation of the offer.

The Commission therefore requests comment as to whether the system should be extended to permit its use for continuous disclosure purposes by a larger number of issuers. Should the system be extended to encompass all Canadian issuers having a reporting obligation under Section 12(b), to all issuers having a reporting obligation under Section 12(g), or to both, and if not to both groups of issuers, upon what grounds should they be distinguished? Should all issuers to which the system is extended meet the requirements for inclusion in the Prompt Offering Qualification systems? Should issuers be permitted to use Canadian disclosure documents for particular classes of securities, for example, for all investment grade securities or for all investment grade debt securities, in all circumstances? Should Forms S-3 and F-3 be amended to permit the incorporation by reference of information filed on proposed Form 40-F?

Canadian issuers currently filing SEC continuous disclosure forms for change to filing Canadian forms on the same basis as issuers filing registration statements on the proposed forms, i.e., they would have to meet the same size tests and reconcile their financial statements as described above. Canadian issuers that had not made an offering pursuant to the multijurisdictional system, and thus did not have a Form F-X on file with the Commission, would be required to file a Form F-X if they wished to comply with the Commission's periodic reporting requirements by filing Canadian documents under cover of Form 40-F.

C. Use of Foreign Trustees in Trust Indentures

1. Background

The Trust Indenture Act applies generally to the offer and sale of debt securities and participation interests in debt securities if the means of U.S. interstate commerce are used. In such cases, the securities must be issued under an indenture that has been qualified under the Act, unless an exemption is available. The Trust Indenture Act imposes standards of conduct on the indenture trustee, requires the furnishing of reports and notices by the obligor and the trustee, regulates impairments of holders' rights to sue for principal and interest on the indenture securities and establishes eligibility requirements for the indenture trustee.

Section 310(a)(1) of the Trust Indenture Act establishes the eligibility requirements for trustees to serve under a qualified indenture.285 The indenture must require that there at all times shall be one or more trustees serving under the indenture, at least one of whom at all times shall be a corporation organized and doing business under the laws of the United States or of any state or territory or the District of Columbia.286 The trustee also must be authorized under such laws to exercise corporate trust powers, and be subject to supervision or examination by Federal, State, territorial or District of Columbia authority. Absent an exemption,287 a Canadian issuer selling securities in the United States pursuant to the multijurisdictional registration system would be obligated to comply with the requirement to have a U.S. trustee.

The U.S. trustee requirement of Section 310(a)(1) could create an impediment to the efficient use of the multijurisdictional system by Canadian issuers. In practice, trust indentures in Canada invariably provide for all trustees to be Canadian registered trust companies;288 thus, the U.S. trustee requirement would disrupt established Canadian business practices. Under the Trust Indenture Act, the Commission may exercise authority in accordance with Section 304(d) to exempt from one or more provisions of the Trust Indenture Act any security issued or proposed to be issued by a foreign person. Such authority may be exercised upon application by a foreign issuer, and after opportunity for a hearing, if the Commission finds that compliance is not necessary "in the public interest and for the protection of investors." Since Section 304(d) requires that the Commission make a finding after opportunity for a hearing, thus contemplating case-by-case determinations, exemptions under this Section may not be granted pursuant to

283 ld.
284 E.g., Section 304(a)(6) of the Trust Indenture Act (15 U.S.C. 77ddd) (exemption for securities issued or guaranteed by a foreign government or subdivision, agency or instrumentality thereof).
285 The staff has granted numerous no-action letters involving offers and sales of securities otherwise than under a qualified indenture, where the securities were being offered and sold outside the United States in reliance upon Securities Act Release No. 4706 (July 9, 1964) [29 FR 9623]. E.g., Goldman, Sachs & Co. (Oct. 3, 1985). The Commission has expressed its intention to continue this position if Proposed Regulation S is adopted. Securities Act Release No. 6779 (June 10, 1988) [53 FR 22281].
The Commission has proposed the Trust Indenture Reform Act of 1989 ("Bill"), which was introduced this legislative session into both houses of the Congress. This Bill is designed to refine provisions of the Trust Indenture Act to accommodate new developments in the types of debt instruments and distribution techniques. If enacted, the Commission's proposal would conditionally benefit foreign persons to act as sole trustees under qualified indentures. Pending passage of the Bill, the Commission today is proposing the establishment of a process for application for exemption from the relevant provisions of the Trust Indenture Act.

2. Exemptive Relief Under Section 304(d)

The Commission is proposing two alternative methods of applying for waiver of the U.S. trustee requirement in offerings made pursuant to the multijurisdictional system. One method would permit application for waiver to be made on the proposed registration forms themselves. The other would provide for application prior to making any filing pursuant to the multijurisdictional system. Under the prior application system, a waiver, if granted, would be effective for a year. Prior application would be particularly useful in the case where there were already security holders under the indenture proposed to be used and the requirement discussed below to provide notice to such holders would delay an anticipated offering.

Proposed Rules 4d-1 to 4d-6 would implement Section 304(d) of the Trust Indenture Act by establishing a procedure under which Canadian issuers could apply for an exemption from the U.S. trustee requirement of Section 310(a) of the Act. As required under Section 304(d), applications would continue to be decided on a case-by-case basis.

a. Application for Waiver at Time of Offering

The first method of applying under Section 304(d) and Rule 4d-1 for a waiver of U.S. trustee requirements of Section 310(a)(i) would permit application to be made on the form used to register the offering. An issuer applying for a waiver would so indicate on the cover page of the form, and would provide the information regarding the trustee requested by the form (which is the same as the substantive information that would be provided on Form T-5). It also would indicate whether there were any securities already outstanding under the indenture. Under the proposal, an application for an exemption from the requirements of Section 310(a)(i) of the Act could be filed pursuant to Section 304(d) and Rule 4d-1 if three conditions were met. First, the application must relate to securities registered or to be registered on Form F-7, F-8, F-9, or F-10 under the Securities Act. Second, the application must relate to securities that have been issued or will be issued under an indenture that provides for application prior to making any filing pursuant to the multijurisdictional system. If the application is to be made on an exemptive application form, it must so indicate. Any filing under Section 310(a) of the Act is required.

The Commission is proposing two alternative methods of applying for waiver of the U.S. trustee requirement discussed below to provide notice of such application to all holders of record of outstanding securities under such indenture. The proposal requires the notice to advise holders of the filing of the application. Any request by a holder for a hearing must be filed within 20 days of the application date set forth on such notice. A subsequent notice must be sent to such holders if any hearing on the application is to be held by the Commission. Commenters should address whether, as an alternative, notice should be given whether or not there are outstanding securities under the indenture and whether that notice should be required to be by publication in the Federal Register or otherwise, instead of or in addition to the procedure described above.

Proposed Rule 4d-5 gives an applicant the opportunity to waive a hearing and request the Commission to decide the application. The Commission today is proposing to decide the application without a formal hearing, on the basis of the application and other information and documents that the Commission designates as part of the record. However, under the proposal, a hearing may be held upon order of the Commission notwithstanding that the applicant shall have filed a waiver and request whenever, in the judgment of the Commission, such a hearing may be necessary or appropriate in the public interest. The proposal requires the applicant, at the request of the Commission, to furnish such additional information or documents as the Commission may deem necessary to decide the application. If no hearing were held, the Commission would issue an order.

The commission has not, to date, promulgated any rules or forms under Section 304(d). Compare Rule 4c-4 (17 CFR 240.4c-4) (applicants under Section 304(d)): Rule 4d-4 (17 CFR 240.4d-4) (applicants under Section 304(d)): Form T-4 (17 CFR 240.4) (form for applications for exemption pursuant to Section 304(c)(2)); Form T-5 (17 CFR 240.30-1(f)) (applicants under Section 304(d)): Form T-5). It also would indicate whether that notice should be required to be by publication in the Federal Register or otherwise, instead of or in addition to the procedure described above.
granting the exemption on the twentieth day following the filing of the application. If there were no securities already outstanding under the relevant indenture, the Commission could grant the exemption at any time after the filing.

Applications pursuant to Proposed Rule 4d-1 would be considered and decided on a case-by-case basis. In deciding whether to grant applications, the Commission would consider all the relevant facts and circumstances, including comparability of regulation with respect to supervision and examination by governmental authority of the foreign trustee.

One factor to be considered in deciding applications is the extent to which the foreign trustee is subject to supervision or examination substantially equivalent to that applicable to U.S. institutional trustees. Although applications would be decided under the proposal on a case-by-case basis, the Commission's staff has preliminarily reviewed regulation of trust companies under the laws of Canada and Ontario. In order to be licensed under the federal statute to operate as a trust company, a corporation must file an application, satisfy capital and other requirements, and comply with inspection and recordkeeping requirements.247 Similarly, in order to be licensed under the Ontario Trust Company Act, a corporation must file an application, satisfy minimum capital requirements, demonstrate fitness of insiders, and demonstrate that the proposed plan of operations is feasible. The Ontario statute also establishes recordkeeping requirements and accounting rules, and requires the filing of an annual return.248

b. Application for Waiver Prior to Offering. Another method of applying for a waiver of U.S. trustee requirements would permit application to be made in advance. This provision would allow issuers to file applications pursuant to Rule 4d-1 in advance of filing a registration statement on a multijurisdictional form, if the issuer reasonably expected to issue the securities within one year from the date of application. Comment is requested as to whether this provision is appropriate. Specifically, should the period of applicability for the waiver be longer than one year, for example, two or three years?

Applications for waiver prior to an offering would be filed on Form T-5. The applicant would be required to describe, as part of the application, the securities that are the subject of the application and to identify the indenture or indentures under which the securities are issued or to be issued. Form T-5 only would require, however, such information as to identify the type and general character of the securities. Thus, the applicant might provide a non-specific description of the securities, such as "unsecured debentures or notes." Under Rule 4d-1 and Form T-5, as proposed, the application could relate, moreover, to different types or classes of securities issued or to be issued under different indentures, but appropriate description would be required to be given in the Form T-5, such as: "unsecured debentures to be issued under an indenture between the applicant and trustee x;" and "mortgage bonds to be issued under an indenture and deed of trust between the applicant and trustee y."249

As is the case with applications made at the time of offering, waivers would be granted on a case-by-case basis, and the same factors would be taken into account in granting a waiver. Again, as is the case with applications made prior to the offering, the Commission would issue an order granting the exemption on the twentieth day of the application if no hearing were held. If there were no securities already outstanding under the relevant indenture, the Commission could grant the exemption at any time after the filing. Comment is requested as to whether notice of the application should be given in all cases, whether or not there are securities outstanding under the indenture and whether that notice should be required to be published in the Federal Register or otherwise, instead of or in addition to the applicant's mailing of notice to security holders.

V. State Securities Regulation

In addition to complying with the federal securities laws, issuers selling their securities in the United States are subject to the securities laws of the 50 states, the District of Columbia and Puerto Rico. Generally, these laws require state registration of offerings made to persons in the state.

In most jurisdictions, the registration statement filed with the Commission will also satisfy the state filing requirements. The filings are subject to review by each of the states, as to the adequacy of the disclosure and, in many states, for compliance with additional substantive standards. For example, a state may have the authority to deny registration if the offering involves excessive "cheap stock" to promoters, excessive options or warrants, unreasonable underwriters' compensation, or excessive dilution, or if a class of common stock lacks voting rights.

Various exemptions from registration under state law are available; the two most relevant to the multijurisdictional disclosure process are that for rights offerings and that for securities traded in specified marketplaces. The former exemption is usually limited to rights which are either nontransferable or exercisable for only a limited period of time. The marketplace exemptions generally apply to securities traded on the New York and American Stock Exchanges, and in some instances on specified regional exchanges, or designated as National Market System securities and quoted on NASDAQ.

Securities of the same issuer which are senior to securities included in an exempt marketplace are also exempt.

Two factors have operated to produce considerable uniformity among the states. First, the securities laws of most states are modeled after the Uniform Securities Act. Second, the North American Securities Administrators Association ("NASAA")250 proposes uniform guidelines and procedures which are frequently adopted by many of its member states. Notwithstanding these factors, the requirements for offering and selling securities in any state will be governed by that jurisdiction's statute, rules and policies.

In April 1989, NASAA adopted a Statement on Internationalization of the Securities Markets, in which it urged securities regulators to "encourage legitimate capital raising activities across national borders," subject to "minimum rules to ensure investor protection." Consistent with that Statement, NASAA has formed a special task force to work with the Commission and the provinces of Ontario and Quebec to determine what accommodations would be appropriate at the state level to facilitate use of the multijurisdictional disclosure process.

248 Loan and Trust Corporation Act, S.O. 1967, c. 33.
249 Loan and Trust Corporation Act, S.O. 1967, c. 33.
250 NASAA is an association of state and provincial securities regulators in the United States and Canada.
VI. Request for Comments

Any interested person wishing to submit written comments on any aspect of the Forms and Rules proposed today, or the multijurisdictional disclosure system as a whole, is requested to do so.

VII. Cost-Benefit Analysis

To evaluate fully the benefits and costs associated with the proposed multijurisdictional disclosure system, the Commission requests commenters to provide views and data as to the costs and benefits associated with multijurisdictional offerings and tender offers under current law as compared to such costs and benefits under the proposed system. The Commission is not aware of any additional costs that would result from the proposed system, as issuers would be able to avoid expenses associated with the preparation of more than one disclosure document.

VIII. Statutory Basis of Rule Proposals and Form Changes

These revisions are being proposed pursuant to Section 10 of the Securities Act [§ 239.37, 239.38, 239.39, and 239.40 of this chapter), or a post-effective amendment thereto, filed in connection with a contemporaneous offering of securities in the registrant's home jurisdiction shall become effective on the date on which such securities legally may be sold in the jurisdiction identified on such Form as the principal jurisdiction regulating such offering (the "principal jurisdiction").

(b) If there is no contemporaneous offering in the registrant's home jurisdiction, a registration statement that is filed on Form F-9 or F-10, or a post-effective amendment thereto, may designate on the facing page a date and time for such filing to become effective, and such registration statement or post-effective amendment shall become effective in accordance with such designation; provided, however, That such registration statement shall not become effective until seven calendar days or more after it is filed.

(c) Notwithstanding the provisions of paragraphs (a) and (b) of this section, no registration statement relating to the issue of debt securities shall become effective until the provisions of the Trust Indenture Act of 1939 (15 U.S.C. 78aaa et seq.) have been satisfied or an exemption from any provisions of that Act have not been satisfied or a grant pursuant to section 304(d) (15 U.S.C. 78dd(d)) or Rule 4d-5 under that Act (17 CFR 240.4d-5).

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

3. The authority citation for Part 239 continues to read as follows:

Authority: The Securities Act of 1933, 15 U.S.C. 77s, unless otherwise noted.

4. By adding §§ 239.37, 239.38, 239.39, 239.40 and 239.41 to read as follows:

§ 239.37 Form F-7, for registration under the Securities Act of 1933 of securities of certain Canadian issuers offered for cash upon the exercise of rights granted to existing security holders.

(a) Form F-7 may be used for the registration under the Securities Act of 1933 (the "Securities Act") of securities offered for cash upon the exercise of rights granted to existing security holders of the registrant.

(b) Form F-7 is available to any registrant incorporated or organized under the laws of Canada, or any Canadian province or territory, that, for the 36 calendar months immediately preceding the filing of a registration statement on this Form, has had any class of securities listed on the Montreal Exchange or The Toronto Stock Exchange and that currently is in compliance with the obligations arising from such listing. The rights granted to security holders that are residents in the United States shall be granted upon the same terms and conditions as those granted to such holders resident in the registrant's jurisdiction of incorporation or organization, provided, That the securities offered upon exercise of such rights may not be registered concurrently in any Form if such rights are transferable to U.S. residents and further provided, That the exercise period for the rights granted to security holders shall be 90 days or less.

(c) Less than 20 percent of the class of securities with respect to which the rights are granted shall be held of record by U.S. residents. For purposes of this instruction, "held of record" shall be construed in accordance with Rule 12a5-1 under the Securities Exchange Act of 1934 (the "Exchange Act").

Instruction. For purposes of this Form, the term "U.S. resident," as applied to security holders, shall mean any person whose address appears on the records of the issuer of the security or its share transfer agent as being located in the United States. The calculation of record holders shall be as of the end of the issuer's last quarter or, if such quarter ended within 60 days prior to the date of filing, then as of the end of the preceding quarter.

(d) Any transaction in which securities registered on this Form are offered shall not increase the registrant's issued and outstanding capital by more than 25 percent.

(e) This Form shall not be used if the registrant is an investment company, as defined in Section 2(a)(4) of the Investment Company Act of 1940.

(f) A registration statement on this Form should be filed with the Commission simultaneously with the filing of the home jurisdiction document(s) accompanying such Form with the jurisdiction identified on the cover of the Form as the principal jurisdiction regulating the offering ("principal jurisdiction"). Pre-effective amendments to this Form should be filed simultaneously with the filing of additional or changed documents in the principal jurisdiction. In accordance with Rule 467, this registration statement shall be deemed effective for purposes of the Securities Act on the date on which the securities covered herein legally may be sold in the principal jurisdiction.

(1) Any amendment to such home jurisdiction document(s) after the effective date of this registration statement shall be filed with the Commission as a post-effective
amendment to this Form simultaneously with the filing of such document(s) with the principal jurisdiction. Such post-effective amendment shall be deemed effective for purposes of the Securities Act at such time as the amendment to the home jurisdiction document(s) legally may be used under the applicable law of such jurisdiction, in accordance with Rule 467.

(2) Any amendment to a registration statement on this Form shall be filed under cover of an appropriate facing sheet, shall be numbered consecutively in the order in which filed, and shall indicate on the facing sheet the applicable registration form on which the amendment is prepared and the file number of the registration statement.

(3) If an amendment to the home jurisdiction document(s) is filed after effectiveness of the registration statement that increases the number of securities that may be sold thereunder, in lieu of filing a post-effective amendment hereto, a new registration statement shall be filed on this Form. As provided in Rule 467, the prospectus included in the new registration statement shall be deemed to include a prospectus covering unsold securities registered previously. If this is the case, the following legend shall appear at the bottom of the facing page of the registration statement: "This combined prospectus relates to registration statement(s) 33—[insert file numbers of previous registration statements]."

§ 239.38 Form F-9, for registration under the Securities Act of 1933 of securities of certain Canadian issuers to be issued in exchange offers.

(a) Form F-8 may be used for registration under the Securities Act of 1933 ("Securities Act") of securities to be issued in an exchange offer. Securities may be registered on this Form whether they constitute the sole consideration for such exchange offer, or are offered in conjunction with cash.

(b) Form F-8 is available to any registrant incorporated or organized under the laws of Canada, or any Canadian province or territory, that, for the 36 calendar months immediately preceding the filing of the registration statement on this Form, has had any class of securities listed on the Montreal Exchange or The Toronto Stock Exchange and that currently is in compliance with the obligations arising from such listing, if the aggregate market value of the common stock (including non-voting common stock) of such registrant held by non-affiliates is (CN) $75 million or more, provided. That for the purposes of this instruction, the term "affiliate" shall mean any person holding 10 percent or more of the common stock (including non-voting common stock) of the registrant.

Instructions.

The market value of the registrant's outstanding common stock shall be the average of the bid and asked prices of such stock, in the principal market for such stock as of a date within 30 days prior to the date of filing.

(c) The issuer of the securities to be exchanged (the "subject securities") for securities of the registrant shall be incorporated or organized under the laws of Canada or any Canadian province or territory, and less than 20 percent of the class of subject securities shall be held of record by U.S. residents. For purposes of this instruction, "held of record" shall be construed in accordance with Rule 12g5-1 under the Securities Exchange Act of 1934 (the "Exchange Act").

Instruction.

For the purpose of this Form, the term "U.S. resident," as applied to security holders, shall mean any person whose address records the address records of the subject issuer or its share transfer agent as being located in the United States. The calculation of record holders shall be as of the end of the issuer's last quarter or, if such quarter ended within 60 days prior to the date of filing, then as of the end of the preceding quarter.

(d) The securities to be registered on Form F-8 shall be offered to U.S. residents upon the same terms and conditions as they are required to be offered to residents of Canada.

(e) This Form shall not be used if the registrant is an investment company, as defined in section 3 of the Investment Company Act of 1940.

(f) A registration statement on this Form should be filed with the Commission simultaneously with the filing of the home jurisdiction document(s) accompanying such Form with the jurisdiction identified on the cover of the Form as the principal jurisdiction regulating the offering ("principal jurisdiction"). Pre-effective amendments to this Form should be filed simultaneously with the filing of additional or changed documents in the principal jurisdiction. In accordance with Rule 467, this registration statement shall be deemed effective for purposes of the Securities Act on the date on which the securities covered herein legally may be sold in the principal jurisdiction.

(1) Any amendment to such home jurisdiction document(s) after the effective date of this registration statement shall be filed with the Commission as a post-effective amendment to this Form simultaneously with the filing of such document(s) with the principal jurisdiction. Such post-effective amendment shall be deemed effective for purposes of the Securities Act at such time as the amendment to the home jurisdiction document(s) legally may be used under the applicable law of such jurisdiction, in accordance with Rule 467.

(2) Any amendment to a registration statement on this Form shall be filed under cover of an appropriate facing sheet, shall be numbered consecutively in the order in which filed, and shall indicate on the facing sheet the applicable registration form on which the amendment is prepared and the file number of the registration statement.

(3) If, however, an amendment to the home jurisdiction document(s) is filed after effectiveness of the registration statement that increases the number of securities that may be sold thereunder, in lieu of filing a post-effective amendment hereto, a new registration statement shall be filed on this Form. As provided in Rule 429, the prospectus included in the new registration statement shall be deemed to include a prospectus covering unsold securities registered previously. If this is the case, the following legend shall appear at the bottom of the facing page of the registration statement: "This combined prospectus relates to registration statement(s) 33—[insert file numbers of previous registration statements]."
requirements of any securities commission or equivalent regulatory authority in Canada for a period of at least 36 calendar months immediately preceding the filing of the registration statement on this Form, and that is currently in compliance with such obligations, if (1) the aggregate market value of the common stock (including non-voting common stock) of such registrant is (CN) $160 million or more, and (2) the aggregate market value of such common stock held by non-affiliates is (CN) $75 million or more, provided. That for the purposes of this Instruction, the term "affiliate" shall mean any person holding 10 percent or more of the common stock (including non-voting common stock) of the registrant.

Instruction. The market value of the registrant’s outstanding voting stock shall be computed by use of the price at which the stock was last sold, or the average of the bid and asked prices of such stock, in the principal market for such stock as of a date within 30 days prior to the date of filing. That for file purposes of this Instruction, the term "affiliate" shall mean any person holding 10 percent or more of the common stock (including non-voting common stock) of the registrant.

Section 5.16 - Amendment to Registration Statement

(a) This Form F-10 may be used for filing of a registration statement: (1) Any amendment to such home jurisdiction document(s) accompanying such Form with the jurisdiction identified on the cover of the Form as the principal jurisdiction regulating the offering ("principal jurisdiction") shall be deemed effective for purposes of the Securities Act on the date on which the securities covered herein legally may be sold in the principal jurisdiction. If, however, an amendment to the home jurisdiction document(s) accompanying such Form with the jurisdiction identified on the cover of the Form as the principal jurisdiction regulating the offering ("principal jurisdiction") shall be deemed effective for purposes of the Securities Act on the date on which the securities covered herein legally may be sold in the principal jurisdiction. If, however, an amendment to the home jurisdiction document(s) accompanying such Form with the jurisdiction identified on the cover of the Form as the principal jurisdiction regulating the offering ("principal jurisdiction") shall be deemed effective for purposes of the Securities Act on the date on which the securities covered herein legally may be sold in the principal jurisdiction.

(b) Any amendment to a registration statement on this Form shall be filed under cover of an appropriate facing sheet. shall be numbered consecutively in the order in which filed, and shall indicate on the facing sheet the applicable registration form on which the amendment is prepared and the file number of the registration statement.

(c) If, however, an amendment to the home jurisdiction document(s) is filed after effectiveness of the registration statement that increases the number of securities that may be sold thereunder, in lieu of filing a post-effective amendment hereto, a new registration statement shall be filed on this Form. As provided in Rule 429, the prospectus included in the new registration statement shall be deemed to include a prospectus covering unsold securities registered previously. If this is the case, the following legend shall appear at the bottom of the facing page of the registration statement: "This combined prospectus relates to registration statement[s] 33-[insert file numbers of previous registration statements]."

(d) A registration statement on this Form should be filed simultaneously with the filing of the home jurisdiction document(s) accompanying such Form with the jurisdiction identified on the cover of the Form as the principal jurisdiction regulating the offering ("principal jurisdiction"). Pre-effective amendments to this Form should be filed simultaneously with the filing of additional or changed documents in the principal jurisdiction. In accordance with Rule 467, this registration statement shall be deemed effective for purposes of the Securities Act on the date on which the securities covered herein legally may be sold in the principal jurisdiction. That for file purposes of this Instruction, the term "affiliate" shall mean any person holding 10 percent or more of the common stock (including non-voting common stock) of the registrant.

Instruction. The market value of the registrant’s outstanding voting stock shall be computed by use of the price at which the stock was last sold, or the average of the bid and asked prices of such stock, in the principal market for such stock as of a date within 30 days prior to the date of filing. That for file purposes of this Instruction, the term "affiliate" shall mean any person holding 10 percent or more of the common stock (including non-voting common stock) of the registrant.

Section 5.16 - Amendment to Registration Statement

(a) This Form F-10 may be used for filing of a registration statement: (1) Any amendment to such home jurisdiction document(s) accompanying such Form with the jurisdiction identified on the cover of the Form as the principal jurisdiction regulating the offering ("principal jurisdiction") shall be deemed effective for purposes of the Securities Act on the date on which the securities covered herein legally may be sold in the principal jurisdiction. If, however, an amendment to the home jurisdiction document(s) accompanying such Form with the jurisdiction identified on the cover of the Form as the principal jurisdiction regulating the offering ("principal jurisdiction") shall be deemed effective for purposes of the Securities Act on the date on which the securities covered herein legally may be sold in the principal jurisdiction. If, however, an amendment to the home jurisdiction document(s) accompanying such Form with the jurisdiction identified on the cover of the Form as the principal jurisdiction regulating the offering ("principal jurisdiction") shall be deemed effective for purposes of the Securities Act on the date on which the securities covered herein legally may be sold in the principal jurisdiction.

(b) Any amendment to a registration statement on this Form shall be filed under cover of an appropriate facing sheet. shall be numbered consecutively in the order in which filed, and shall indicate on the facing sheet the applicable registration form on which the amendment is prepared and the file number of the registration statement.

(c) If, however, an amendment to the home jurisdiction document(s) is filed after effectiveness of the registration statement that increases the number of securities that may be sold thereunder, in lieu of filing a post-effective amendment hereto, a new registration statement shall be filed on this Form. As provided in Rule 429, the prospectus included in the new registration statement shall be deemed to include a prospectus covering unsold securities registered previously. If this is the case, the following legend shall appear at the bottom of the facing page of the registration statement: "This combined prospectus relates to registration statement[s] 33-[insert file numbers of previous registration statements]."
§ 239.41 Form F-X, for appointment of agent for service of process by foreign issuers registering securities on Forms F-7, F-8, F-9 or F-10 (§§ 239.37, 239.38, 239.39 or 239.40 of this chapter), or registering securities or filing periodic reports on Form 40-F (§ 249.240f of this chapter), or by any person filing tender offer documents on Schedule 13E-4F, 14D-1F or 14D-9F (§§ 240.13e-102, 240.14D-102 or 240.14D-103 of this chapter).

Form F-X shall be filed with the Commission:

(a) By any issuer registering securities on Forms F-7, F-8, F-9 or F-10 under the Securities Act of 1933;

(b) By any issuer registering securities or filing periodic reports on Form 40-F under the Securities Exchange Act of 1934 if it has not previously filed a Form F-X in connection with the class of securities registered or in relation to which a report is filed on Form 40-F; and

(c) By any issuer or other person filing tender offer documents on Schedules 13E-4F, 14D-1F or 14D-9F.

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

5. The authority citation for Part 240 continues to read as follows:


6. By adding paragraph (c) to § 240.3a12-3 to read as follows:

§ 240.3a12-3 Exemptions from Sections 14(a), 14(b), 14(c), 14(f) and 16 of securities of certain foreign issuers.

(c) An issuer otherwise subject to the provisions of sections 14(a), 14(b), 14(c), or 14(f) of the Act that is soliciting proxies in order to vote upon a matter being considered in order that an exchange offer to be registered on Form F-8 (§ 239.38 of this chapter) may be made, will not be subject to such provisions with regard to such solicitation.

7. By revising paragraphs (a) and (b) to § 240.12g-3 to read as follows:

§ 240.12g-3 Registration of securities of successor issuers.

(a) Where in connection with a succession by merger, consolidation, exchange of securities or acquisition of assets, equity securities of an issuer, not previously registered pursuant to section 12 of the Act, are issued to the holders of any class of equity securities of another issuer which is registered pursuant to section 12 of the Act, the class of securities so issued shall be deemed to be registered under section 12 of the Act unless upon consummation of the succession such class is exempt from such registration other than by Rule 12g3-2 (§ 240.12g3-2 of this chapter) or all securities of such class are held of record by less than 300 persons (or the securities issued in connection with the succession were registered on Form F-8 (§ 239.38 of this chapter) and following the succession the successor would not be required to register such class of securities under section 12 but for this section).

(b) Where in connection with a succession by merger, consolidation, exchange of securities or acquisition of assets, equity securities of an issuer, which are not registered pursuant to section 12 of the Act, are issued to the holders of equity securities of another issuer which is required to file a registration statement pursuant to section 12 but has not yet done so, the duty to file such statement shall be deemed to have been assumed by the issuer of the class of securities so issued and such issuer shall file such registration statement pursuant to section 12 of the Act with respect to such class within the period of time the predecessor issuer would have been required to file such a statement unless upon consummation of the succession such class is exempt from such registration other than by Rule 12g3-2 (or all securities of such class are held of record by less than 300 persons or the securities issued in connection with the succession were registered on Form F-8 and following the succession the successor would not be required to register such class of securities under section 12 but for this section).

8. By revising paragraph (d)(2) of § 240.12g3-2 to read as follows:

§ 240.12g3-2 Exemption for American Depositary receipts and certain foreign securities.

(d) * * *

(2) Securities of a foreign private issuer issued in a transaction (other than a transaction registered on Form F-8) to acquire by merger, consolidation, exchange of securities or acquisition of assets, another issuer that has had securities registered under section 12 of the Act or a reporting obligation (suspended or active) under section 15(d) of the Act.

9. By adding § 240.13a-3 to read as follows:

§ 240.13a-3 Reporting by Form 40-F registrant.

A registrant that is eligible to use Form 40-F and files reports thereon shall not be subject to the requirements of Regulation 13A (§§ 240.13a-1 through 240.13a-17).

10. By adding paragraph (h) to § 240.13e-4(h) to read as follows:

§ 240.13e-4 Tender offers by issuers.

* * * * *

(h) The requirements of section 13(e)(1) of the Act and Rule 13e-4 and Schedule 13E-4 thereunder shall be deemed satisfied with respect to any issuer tender offer, including any exchange offer, where the issuer is incorporated or organized under the laws of Canada or any Canadian province or territory, and is not an investment company as defined in section 3 of the Investment Company Act of 1940, if less than 20 percent of the class of securities that is the subject of the tender offer is held of record by U.S. residents and the tender offer is subject to (and not entitled to an exemption from), and the issuer complies with, the laws, regulations and policies of Canada and/or any of its provinces or territories governing the conduct of the offer, provided That:

(1) Where the consideration for an issuer tender offer subject to this paragraph consists solely of cash, the entire disclosure document or documents required to be furnished to holders of the class of securities to be acquired shall be filed with the Commission on Schedule 13E-4F (17 CFR 240.13e-102) and disseminated to shareholders residing in the United States in accordance with such Canadian laws, regulations and policies; or

(2) Where the consideration for an issuer tender offer subject to this paragraph includes securities to be issued pursuant to the offer, any registration statement and/or prospectus relating thereto shall be filed with the Commission along with the Schedule 13E-4F referred to in paragraph (h)(1) of this section, and shall be disseminated, together with the home jurisdiction document(s) accompanying such Schedule, to shareholders of the issuer residing in the United States in accordance with such Canadian laws, regulations and policies.

11. By adding § 240.13e-102 to read as follows:

* * * * *
§ 240.13e-102 Tender offer statement pursuant to section 13(e)(1) of the Securities Exchange Act of 1934 and § 240.13e-4 thereunder.

Schedule 13E-4F
U.S. Securities and Exchange Commission, Washington, DC 20549

OMB Approval
OMB Number: 3235-040P
Expiration: Approval Pending

Estimated average burden hours per response—2.0

Issuer Tender Offer Statement Pursuant to Section 13(e)(1) of the Securities Exchange Act of 1934 Amendment No. 0.

(Exact name of issuer as specified in its charter)

(Translation of Issuer's Name into English)

(Jurisdiction of Issuer's Incorporation or Organization)

(Name of Person(s) Filing Statement)

(Title of Class of Securities)

(CUSIP Number of Class of Securities) (if applicable)

(Name, address, including zip code, and telephone number, including area code, of person authorized to receive notices and communications on behalf of the person(s) filing statement)

(Date tender offer first published, sent or given to security holders)

Calculation of Filing Fee

Transaction Value

Amount of Filing Fee

General Instructions

1. Eligibility Requirements for Use of Schedule 13E-4F

A. Schedule 13E-4F may be used by any issuer incorporated or organized under the laws of Canada or any province or territory thereof or any person making a tender offer for the issuer's own securities, which less than 20 percent of the class of such issuer's securities that is the subject of the tender offer is held of record by U.S. residents.

In particular, the term "U.S. resident," as applied to security holders, shall mean any person whose address appears on the records of the subject issuer or its share transfer agent as being located in the United States. The calculation of record holders shall be as of the end of the issuer's last quarter, or if such quarter ended within 30 days prior to the date the tender offer is first published, sent or given to security holders, then as of the end of the preceding quarter.

B. Any issuer using this Schedule must extend the tender offer to holders of the class of securities subject to the offer residing in the United States upon the same terms and conditions as such securities are required to be offered to security holders residing in Canada, and must comply with the requirements of any Canadian federal, provincial and/or territorial law, regulation or policy relating to the terms and conditions of the offer.

C. This Schedule shall not be used if the issuer is an investment company as defined in section 3 of the Investment Company Act of 1940.

II. Filing Instructions and Fees

A. Eight copies of this Schedule and any amendment thereto (see Part I, Item 1(b)), including all exhibits and any other paper or document filed as part of the Schedule, shall be filed with the Commission at its principal office. Each copy shall be bound, stapled or otherwise compiled in one or more parts, without stiff covers. The binding shall be made on the side in such manner as to leave the reading matter legible. Three additional copies of the Schedule and any amendment thereto, similarly bound, also shall be filed. No exhibits are required to accompany such additional copies.

B. The original and at least one copy of this Schedule and any amendments thereto shall be signed manually by the persons specified herein. Handwritten copies shall be conforming.

C. At the time this Schedule is filed with the Commission, the issuer shall pay to the Commission, by a U.S. postal money order, certified check, bank cashier's check or bank money order, a fee of a one-fiftieth of one percent of the aggregate of the cash or of the value of the securities or other non-cash consideration offered by the issuer to shareholders residing in the United States.

(1) Where the issuer is offering securities or other non-cash consideration for some or all of the securities to be acquired, whether or not in combination with a cash payment for the same securities, the value of the considered cash or non-cash consideration shall be calculated upon the basis of either the market value of the securities to be acquired by the issuer as established by paragraph 3 of this section.

(2) If there is no market for the securities to be acquired, the book value of such securities computed as of the latest practicable date prior to the date of filing the Schedule shall be used, unless the issuer is in bankruptcy or receivership or has an accumulated capital deficit, in which case one-third of the principal amount, par value or stated value of such securities shall be used.

(3) When the fee is based upon the market value of the securities, such market value shall be calculated upon the basis of either the average of the high and low prices reported on the consolidated reporting system (for exchange-traded securities and last sale reported over-the-counter securities) or the average of the bid and asked price (for other over-the-counter securities) as of a specified date within 5 business days prior to the date of filing the Schedule.

D. If at any time after the initial payment of the fee the aggregate consideration offered is increased, an additional filing fee based upon such increase shall be paid with the required amended filing.

E. Subject to the requirements of item 1, if any part of this Schedule, or any exhibit or other paper or document filed as part of the schedule, is in a foreign language, it shall be accompanied by a summary, version or translation in the English language.

F. The manually signed original of the Schedule or any amendment thereto shall be numbered sequentially (in addition to any internal numbering which otherwise may be present) by handwritten, typed, printed or other legible form of notation from the first page of the document through the last page of that document and any exhibits or attachments thereto. Further, the total number of pages contained in a numbered original shall be set forth on the first page of the document.

G. Any change to the name or address of a registrant's agent for service shall be communicated promptly in writing to the Commission, referencing the file number of the registration.

III. Compliance with the Exchange Act

A. Pursuant to Rule 13e-4(h) under the Securities Exchange Act of 1934 (the "Exchange Act"), the issuer shall be deemed to have complied with the requirements of section 13(e)(1) of the Exchange Act and Rule 13e-4 and Schedule 13E-4 thereunder in connection with a tender offer for securities that may be made pursuant to this Schedule, provided that, if no substantive requirements of any Canadian federal, provincial and/or territorial law, regulation or policy relating to the terms and conditions of the tender offer apply, or if an exemption from such requirements is applicable, the issuer shall comply with the provisions of section 13(e)(1) and Rule 13e-4 and Schedule 13E-4 thereunder.

B. Any tender offer made pursuant to this Schedule is not exempt from the anti-fraud provisions of section 10(b) of the Exchange Act and Rule 10b-5 thereunder, section 13e-1 of the Exchange Act and Rule 13e-4(d)(1) thereunder, and section 14(e) of the Exchange Act and Rule 14e-3 thereunder, and shall be deemed "filed" for purposes of section 16 of the Exchange Act.

C. The issuer's attention is directed to Rule 13e-8 under the Exchange Act, in the case of an issuer exchange offering and Rule 13e-13 under the Exchange Act, in the case of an issuer cash tender offer or issuer exchange offer. [See Note following Part III, 1, for an explanation of the no-action positions taken under Rules 13e-8 and 13e-13.]

Part I—Information Required To Be Sent to Shareholders

Item 1. Home Jurisdiction Documents

(a) This Schedule shall be accompanied by the entire disclosure document or documents required to be delivered to holders of securities to be acquired by the issuer in the proposed transaction pursuant to the laws, regulations or policies of the Canadian jurisdiction in which the issuer is incorporated or organized and any other Canadian federal, provincial and/or territorial law, regulation or policy relating to the terms and conditions of the offer. The Schedule need not include any documents incorporated by reference into such disclosure document(s) and are not distributed to offerees pursuant to any such law, regulation or policy. If any part of the document or documents to be sent to shareholders is in a...
language other than English, it shall be accompanied by a translation in English.
(b) Any amendment made by the issuer to a home jurisdiction document or document shall be filed with the Commission under cover of this Schedule, which must indicate on the cover page the number of the amendment.
(c) In an exchange offer where securities of the issuer have been or are to be offered or cancelled in the transaction: (i) such securities shall be registered under the laws of the issuer's jurisdiction on the outside front cover page of the home jurisdiction prospectus shall be included in the registration statement. The following legend shall appear on the front cover page of the home jurisdiction document(s) in bold-face roman type and at least as high as a ten-point modern type and at least two-points lead:

"This tender offer is made by a foreign issuer for its own securities, and while the offer is subject to disclosure requirements of the country in which the issuer is incorporated or organized, prospective investors should be aware that these requirements are different from those of the United States generally accepted accounting principles and thus may not be comparable to financial statements of United States companies. The enforcement by investors of civil liabilities under the federal securities laws may be affected adversely by the fact that the issuer is located in a foreign country, and that some or all of the officers and directors are residents of a foreign country.

"Prospective investors should be aware that the issuer or its affiliates, directly or indirectly, may bid or offer to make purchases of the securities of the issuer subject to the offer, or of the related securities, during the period of the issuer tender offer, as permitted by applicable Canadian federal and/or provincial or territorial laws, regulations or policies.

"Part IV—Information Not Required To Be Sent to Shareholders

The exhibits specified below shall be filed as part of the Schedule, but are not required to be sent to shareholders unless so required pursuant to the laws, regulations or policies of Canada and/or any of its provinces or territories. Exhibits shall be lettered or numbered appropriately for convenient reference.

1. File any reports or information that, in accordance with the requirements of the home jurisdiction(s), must be made publicly available by the issuer in connection with the transaction, but need not be disseminated to shareholders.

2. File copies of any documents incorporated by reference into the home jurisdiction document(s).

3. If any name is signed to the Schedule pursuant to power of attorney, manually signed copies of any such power of attorney shall be filed. If the name of any officer signing on behalf of the issuer is signed pursuant to a power of attorney, certified copies of a resolution of the issuer's board of directors authorizing such signature shall also be filed.

Part III—Undertaking and Consent to Service of Process

1. Undertaking

This issuer undertakes to make available, in person or by telephone, representatives to respond to inquiries made by the Commission staff, and to furnish promptly, when requested to do so by the Commission staff, information relating to this Schedule or to transactions in said securities.

The issuer also undertakes to disclose in the United States, on the same basis as it is required to make such disclosure pursuant to applicable Canadian federal and/or provincial or territorial laws, regulations or policies, or otherwise discloses, information regarding purchases of the issuer's securities during the issuer tender offer.

Note: No-action position taken under Rule 10b-13 in the case of an issuer cash tender offer:

The staff of the Division of Market Regulation has taken a no-action position under Rule 10b-13 under the Exchange Act to allow certain purchases by the issuer of the issuer's securities in Canada, as permitted by Canadian federal and/or provincial or territorial laws, regulations or policies, during the period of an issuer tender offer filed on Schedule 13E-4F. With respect to an issuer cash tender offer filed on Schedule 13E-4F, the staff will not recommend that the Commission take enforcement action under Rule 10b-13 for purchases by the issuer in Canada, as permitted by Canadian federal and/or provincial or territorial laws, regulations or policies, of the security that is the subject of the offer (or any security which is immediately convertible into or exchangeable for such security), subject to the conditions that: (i) The issuer discloses on Schedule 13E-4F the possibility of, or the intent to make, such purchases; and (ii) the issuer submits an undertaking to disclose in the United States information regarding such purchases on the same basis as it is required to be disclosed in Canada pursuant to Canadian federal and/or provincial or territorial laws, regulations or policies, or otherwise is disclosed.

Note: No-action position taken under Rules 10b-6 and 10b-13 in the case of an issuer exchange offer:

The staff of the Division of Market Regulation has taken no-action positions under Rules 10b-6 and 10b-13 under the Exchange Act to allow certain purchases by the issuer of the issuer's securities in Canada, as permitted by Canadian federal and/or provincial or territorial laws, regulations or policies, during the period of an issuer exchange offer filed on Schedule 13E-4F. With respect to an issuer exchange offer filed on Schedule 13E-4F, the staff will not recommend that the Commission take enforcement action under Rules 10b-6 and 10b-13 for bids and purchases by the issuer in Canada, as permitted by Canadian federal and/or provincial or territorial laws, regulations or policies, of the security being distributed (or any security of the same class and series, or any right to purchase such security), or of the security that is the subject of the offer (or any security which is immediately convertible into or exchangeable for such security), subject to the conditions that: (i) Such purchases are not made for the purpose of creating actual, or apparent, active trading in or raising the price of such securities; (ii) the issuer discloses on Schedule 13E-4F the possibility of, or the intent to make, such purchases; and (iii) the issuer submits an undertaking to disclose in the United States information regarding such purchases on the same basis as it is required to be disclosed in Canada pursuant to Canadian federal and/or provincial or territorial laws, regulations or policies, or otherwise is disclosed.

2. Consent to Service of Process

The issuer shall, at the time of filing this Schedule, furnish to the Commission, on Form F-X, a written irrevocable consent and power of attorney which designates an agent upon whom may be served any process, pleadings, subpoenas, or other papers in any court of the United States, where the investigation, proceeding or cause of action arises out of or relates to or concerns any issuer tender offer made or purported to be made using this Schedule, or any purchases or sales of any security in connection therewith, and stipulates and agrees that any such civil suit or action or administrative proceeding may be commenced by the service or process upon, and that service of an administrative subpoena shall be effected by service upon, said agent for service or process, and that the service as aforesaid shall be taken and held in all courts and administrative tribunals to be as valid and binding as if due personal service thereof had been made.

Part IV

A. Signatures

The Schedule shall be signed by each person on whose behalf the Schedule is filed or its authorized representative. If the Schedule is signed on behalf of a person by his authorized representative (other than an executive officer or general partner of the company), evidence of the representative's authority shall be filed with the Schedule.

B. The name of each person who signs the Schedule shall be typed or printed beneath his signature.

C. By signing this Schedule, the person(s) filing the Schedule consents without power of revocation that any administrative subpoena may be served, or any administrative proceeding, civil suit or civil action where the cause of action arises out of or relates to or concerns any offer or offer to be made in connection with the filing on Schedule 13E-4F or any purchases or sales of any security in connection therewith, may be commenced against it in any administrative tribunal or in any appropriate court in any
I. Eligibility Requirements for Use of Schedule 14D-1F

A. Schedule 14D-1F may be used by any person making a tender offer (the “bidder”) for securities of any issuer incorporated or organized under the laws of Canada, or any Canadian province or territory, where less than 20 percent of the class of such issuer’s securities that is the subject of the tender offer is held by U.S. residents. Instruction. For the purpose of this Schedule, the term “U.S. resident,” as applied to security holders, shall mean any person whose address appears on the records of the subject issuer or its share transfer agent as being located in the United States.

B. Any bidder using this Schedule must extend the tender offer to U.S. residents of the subject issuer upon the same terms and conditions as they are required to be offered to security holders residing in Canada, and must comply with the requirements of any Canadian federal, provincial and/or territorial law, regulation or policy relating to the terms and conditions of the offer.

C. This Schedule shall not be used if the subject company is an investment company as defined in Section 3 of the Investment Company Act of 1940.

D. This Schedule shall not be used to comply with the reporting requirements of Section 13(d) of the Securities Exchange Act of 1934 (the “Exchange Act”). Issuers using this Schedule are reminded of their obligation to file or update a Schedule 13D where required by section 13(d)(1) of the Exchange Act and the Commission’s rules and regulations thereunder.

II. Filing Instructions and Fee

A. Eight copies of this Schedule and any amendment thereto (see Part I, Item 1(b)), including all exhibits and any other paper or document filed as part of the Schedule, shall be filed with the Commission at its principal office. Each copy shall be bound, stapled or otherwise compiled in one or more parts, without stub covers. The binding shall be made on the side or stitching margin in such manner as to leave the reading matter legible. Three additional copies of the Schedule and any amendment thereto, similarly bound, also shall be filed. No exhibits are required to accompany such additional copies.

B. The original and at least one copy of this Schedule and any amendments thereto shall be signed manually by the person signing the Schedule. Persons signing the Schedule shall print their names and addresses on the Schedule, the term “U.S. resident,” as applied to security holders, shall mean any person whose address appears on the records of the subject issuer or its share transfer agent as being located in the United States.

C. At the time this Schedule is filed with the Commission, the bidder shall pay to the Commission a fee of $10.00.

D. This fee is calculated and state how it was determined. See General Instruction II.C.—for rules governing the calculation of the filing fee.
Commission, by a U.S. postal money order, certified check, bank cashier's check or bank money order, a fee of one-fiftieth of one percent of the aggregate of the cash or of the value of the securities or other non-cash consideration offered by the bidder to shareholders of the subject company residing in the United States.

(1) Where the bidder is offering securities or other non-cash consideration, the market value of all of the securities to be acquired, whether or not in combination with a cash payment for the same securities, the value of the consideration shall be based on the market value of the securities to be received by the bidder as established by paragraph 3 of this section.

(2) If there is no market for the securities to be acquired by the bidder, the book value of such securities computed as of the latest practicable date prior to the date of filing the Schedule shall be used, unless the issuer of such securities is in bankruptcy or receivership or has an accumulated capital deficiency of one-third of the principal amount, par value or stated value of such securities shall be used.

(3) When the fee is based upon the market value of the securities, such market value shall be calculated upon the basis of either the average of the high and low prices reported in the consolidated reporting system (for exchange traded securities and last sale reported for over-the-counter securities) or the average of the bid and asked price (for exchange traded securities and last sale price for over-the-counter securities) as of a specified date within five business days prior to the date of filing the Schedule.

D. If at any time after the initial payment of the fee for the aggregate consideration offered is increased, an additional filing fee based upon such increase shall be paid with the required amended filing.

E. Subject to the requirements of Item 1, if any part of this Schedule, or any exhibit or other paper or document filed as part of the Schedule, is in a language other than English, it shall be accompanied by a summary, written in English, of the material in the foreign language.

F. The manually signed original of the Schedule or any amendment thereto shall be also accompanied by a translation in English.

G. Any change to the name or address of a registrant's agent for service shall be communicated promptly in writing to the Commission, referencing the file number of the registrant.

III. Compliance with the Exchange Act

A. Pursuant to Rule 14d-3(b) under the Exchange Act, the bidder shall be deemed to comply with the requirements of sections 14(d)(1) through 14(d)(7) of the Exchange Act, Regulation 14D of the Exchange Act and Schedule 14D-1 under Regulation 14D of the Exchange Act, in connection with a tender offer for securities that may be made pursuant to this Schedule: provided that, if no substantive requirement of any Canadian federal, provincial or territorial law, regulation or policy relating to the terms and conditions of the tender offer applies, or if an exemption from any such requirement is applicable, the bidder shall comply with the provisions of sections 14(d)(1) through 14(d)(7), Regulation 14D and Schedule 14D-1 under Regulation 14D-1 of Exchange Act and Rule 14e-1 of Regulation 14E, and any other applicable U.S. statute or rule.

B. Any tender offer made pursuant to this Schedule is not exempt from the antifraud provisions of section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and section 14(e) of the Exchange Act and Rule 14e-3 thereunder, and shall be deemed "filed" for purposes of document or document Exchange Act.

C. The bidder's attention is directed to Rule 10b-6 under the Exchange Act in the case of an exchange offer, and to Rule 10b-13 under the Exchange Act for any exchange or cash tender offer. [See Note following Part III. A, for an explanation of the no-action positions taken under Rules 10b-6 and 10b-13.]

PART I—INFORMATION REQUIRED TO BE SENT TO SHAREHOLDERS

Item 1. Home Jurisdiction Documents

(a) This Schedule shall be accompanied by the entire disclosure document or documents required to be delivered to holders of securities to be acquired in the proposed transaction by the bidder pursuant to the laws, regulations or policies of Canada and/or any of its provinces or territories governing the conduct of an exchange offer. It shall not include any documents incorporated by reference into such disclosure document(s) and not distributed to offerors pursuant to any such law, regulation or policy. If any part of the document or documents to be sent to shareholders is in a foreign language, it shall be accompanied by a translation in English.

(b) Any amendment made by the bidder to a home jurisdiction document or documents shall be filed with the Commission under cover of this Schedule, which must indicate on the cover page the number of the amendment.

(c) In an exchange offer where securities of the bidder have never before been offered or cancelled in the transaction, such securities shall be considered on forms promulgated by the Commission under the Securities Act of 1933 including, where available, the Commission's Form F-6 providing for inclusion in that registration statement of the home jurisdiction prospectus.

Item 2. Informational Legends

The following legends shall appear on the outside front cover page of the home-jurisdiction document(s) in bold-face roman type at least as high as ten-point modern type and at least two points loaded:

"Prospective investors should be aware that the bidder or its affiliates, directly or indirectly, may bid for or make purchases of the issuer's securities subject to the offer, or of the issuer's related securities, during the period of the tender offer, as permitted by applicable Canadian laws or provincial laws or regulations.

In the case of an exchange offer:

"Prospective investors should be aware that the bidder or its affiliates, directly or indirectly, may bid for or make purchases of the issuer's securities subject to the offer, or of the issuer's related securities, during the period of the tender offer, as permitted by applicable Canadian laws or provincial laws or regulations.

PART II—INFORMATION NOT REQUIRED TO BE SENT TO SHAREHOLDERS

The exhibits specified below shall be filed as part of the Schedule, but are not required to be sent to shareholders unless so required pursuant to the laws, regulations or policies of Canada and/or any of its provinces or territories.

(1) Any report or information that, in accordance with the requirements of the home jurisdiction(s), must be made publicly available by the bidder in connection with the transaction but need not be disseminated to shareholders.

(2) Any document incorporated by reference into the home jurisdiction document(s).

(3) If any name is signed to this Schedule pursuant to power of attorney, manually signed copies of any such power of attorney shall be filed. If the name of any officer or director signing in behalf of the bidder is signed pursuant to a power of attorney, certified copies of the bidder's board of directors authorizing such signature also shall be filed.

PART III—UNDERTAKING AND CONSENT TO SERVICE OF PROCESS

1. Undertaking

a. The bidder undertakes to make available, in person or by telephone, representatives to respond to inquiries made by the Commission staff, and to furnish promptly, when requested to do so by the Commission staff, information relating to this Schedule or to transactions in said securities.

b. The bidder undertakes to disclose in the United States, on the same basis as the bidder is required to make such disclosure pursuant to applicable Canadian federal and/or provincial or territorial laws, regulations or policies, or otherwise discloses, information...
regarding purchases of the issuer's securities during the tender offer.

In the case of an exchange offer:

The bidder undertakes to disclose in the United States information regarding such purchases on the same basis as it is required to make such disclosure pursuant to any applicable Canadian federal and/or provincial or territorial law, regulation or policy, otherwise makes disclosure, information regarding purchases of the issuer's or bidder's securities during the tender offer.

Note: No-action position taken under Rule 10b-13 in the case of a third party or affiliate case.

The staff of the Division of Market Regulation has taken no-action position under Rule 10b-13 under the Exchange Act to allow certain purchases by the bidder of the issuer's securities in Canada, as permitted by Canadian federal and/or provincial or territorial laws, regulations or policies, during the period of a tender offer filed on Schedule 14D-1F. With respect to a cash tender offer filed on Schedule 14D-1F, the staff will not recommend that the Commission take enforcement action under Rule 10b-13 for purchases by the bidder in Canada, as permitted by Canadian federal and/or provincial or territorial laws, regulations or policies, of the security that is the subject of the offer (or any security which is immediately convertible into or exchangeable for such security), subject to the conditions that: (i) the bidder discloses on Schedule 14D-1F the possibility of, or the intent to make, such purchases; and (ii) the bidder submits an undertaking to disclose in the United States information regarding such purchases on the same basis as it is required to be disclosed in Canada pursuant to Canadian federal and/or provincial or territorial laws, regulations or policies, of the security being distributed.

No-action positions taken under Rules 10b-6 and 10b-13 in the case of a third party or affiliate exchange offer:

The staff of the Division of Market Regulation has taken no-action positions under Rules 10b-6 and 10b-13 under the Exchange Act to allow certain purchases by the bidder of the issuer's or bidder's securities in Canada, as permitted by Canadian federal and/or provincial or territorial laws, regulations or policies, during the period of an exchange offer filed on Schedule 14D-1F. With respect to an exchange offer filed on Schedule 14D-1F, the staff will not recommend that the Commission take enforcement action under Rules 10b-6 and 10b-13 for bids and purchases by the bidder in Canada, as permitted by Canadian federal and/or provincial or territorial laws, regulations or policies, of the security being distributed (or any security of the same class and series, or any right to purchase any such security), or of the security that is the subject of the offer (or any security which is immediately convertible into or exchangeable for such security), subject to the conditions that:

(i) Such purchases are not made for the purpose of creating actual, or apparent, active trading or raising the price of such securities;

(ii) the bidder discloses on Schedule 14D-1F the possibility of, or the intent to make, such purchases; and

(iii) the bidder submits an undertaking to disclose in

2. Consent to Service of Process

The bidder shall, at the time of filing this Schedule, furnish to the Commission, on Form F-X, a written irrevocable consent and power of attorney which designates an agent upon whom may be served any process, pleadings, subpoenas, or other papers in (1) Any investigation or administrative proceeding conducted by the Commission; and

(ii) Any civil suit or action brought against the bidder or to which the bidder has been joined as defendant or respondent, in any appropriate court in any place subject to the jurisdiction of any state or of the United States, where the investigation, proceeding or cause of action arises out of or relates to or concerns any tender offer made or purported to be made using this Schedule, or any purchases or sales of any security in connection therewith, and stipulates and agrees that any such civil suit or action or administrative proceeding may be commenced by the service of process upon, and that service of an administrative subpoena shall be effected by service upon, said agent for service of process, and that the service as aforesaid shall be taken and held in all courts and administrative tribunals to be as valid and binding as if due personal service thereof had been made.

PART IV

A. Signatures

The Schedule shall be signed by each person on whose behalf the Schedule is filed or its authorized representative. If the Schedule is signed on behalf of a person by his authorized representative (other than an executive officer or general partner of the bidder), evidence of the representative's authority shall be filed with the Schedule.

B. The name and any title of each person who signs the Schedule shall be typed or printed beneath his signature. If the Schedule is signed on behalf of a person by his authorized representative (other than an executive officer or general partner of the bidder), evidence of the representative's authority shall be filed with the Schedule.

C. By signing this Schedule, the bidder consents without power of revocation that any administrative subpoena may be served, or any administrative proceeding, civil suit or civil action where the cause of action arises out of or relates to or concerns any offering made or purported to be made in connection with the filing on Schedule 14D-1F or any purchases or sales of any security in connection therewith, may be commenced against it in any administrative tribunal or in any appropriate court in any place subject to the jurisdiction of any state or of the United States by service of said subpoena or process upon the registrant's designated agent.

After due inquiry and to the best of my knowledge and belief, I certify that the information set forth in this statement is true, complete and correct.

Signatures

(Name and Title)

(Date)

18. By adding § 240.14d-103 to read as follows:

§ 240.14d-103 Schedule 14D-9F.

Schedule 14D-9F (Amendment No. ________)

U.S. Securities and Exchange Commission,

Washington, DC 20549

OMB APPROVAL

OMB Number: 3235-040N

Expires: Approval Pending

Estimated average burden hours per response—2.0

Recommendation of the Subject Issuer's Board of Directors, Directors or Officer

(Name of Subject Company [Issuer])

(Translation of Issuer's Name into English)

(Jurisdiction of Issuer's Incorporation or Organization)

(Name of Person(s) Filing Statement)

(Title of Class of Securities)

(CUSIP Number of Class of Securities (if applicable))

(Name, address, including zip code, and telephone number, including area code, of person authorized to receive notices and communications on behalf of the person(s) filing statement)

General Instructions

I. Eligibility Requirements for Use of Schedule 14D-6F

A. Schedule 14D-6F is used by any issuer incorporated or organized under the Laws of Canada or any Canadian province or territory (the "subject company"), or by any director or officer of such issuer, wherever such issuer is the subject of a tender offer for a class of its securities filed on Schedule 14D-1F.

B. Any person(s) using this Schedule must comply with the requirements of any Canadian federal, provincial and/or territorial law, regulation or policy relating to a recommendation by the subject issuer's board of directors, or any director or officer thereof, with respect to the offer.

C. This Schedule shall not be used if the subject company is an investment company as defined in Section 3 of the Investment Company Act of 1940.

II. Filing Instructions

A. Eight copies of this Schedule and any amendment thereto (see Part I, Item 1(b)), including all exhibits and any other paper or document filed as part of the Schedule, shall be filed with the Commission at its principal office. Each copy shall be bound, stapled or otherwise compiled in one or more parts, without stiff covers. The binding shall be made on the side or stitching margin in such manner as to leave the reading matter legible. Three additional copies of the Schedule and any amendment thereto, similarly bound, also shall be filed. No exhibits are required to accompany such additional copies.

B. The original and at least one copy of this Schedule and any amendments thereto shall be signed manually by the persons specified herein. Unsigned copies shall be conformed.
C. Subject to the requirements of Item 1, if any part of this Schedule, or any exhibit or other paper or document filed as part of the Schedule, is in a language other than English, it shall be accompanied by a summary, version or translation in the English language.

D. The manually signed original of the Schedule or any amendment thereto shall be numbered sequentially (in addition to any internal numbering which otherwise may be made) by hand or by typewriter, typewritten, typed, printed or other legible form of notation from the first page of the document through the last page of that document and any exhibits or attachments thereto. Further, the total number of pages contained in a numbered original shall be set forth on the first page of the document.

E. Any change to the name or address of a registrant's agent for service shall be communicated promptly in writing to the Commission, referencing the file number of the registrant.

III. Compliance with the Exchange Act

A. Pursuant to Rule 14e-2(c) under the Securities Exchange Act of 1934 (the "Exchange Act"), this schedule shall be filed by an issuer, a class of the securities of which is subject to a tender offer filed on Schedule 14D-1F, and may be filed by any director or officer of such issuer.

B. Any recommendation with respect to a tender offer for a class of securities of the subject company made pursuant to this Schedule is not exempt from the antifraud provisions of section 10(b) of the Exchange Act and Rule 10b-5 thereunder and section 14(e) of the Exchange Act and Rule 14e-3 thereunder, and shall be deemed "filed" with the Commission for purposes of section 18 of the Exchange Act.

PART I—INFORMATION REQUIRED TO BE SENT TO SHAREHOLDERS

Item 1. Home Jurisdiction Documents

(a) This Schedule shall be accompanied by the entire disclosure document or documents required to be delivered to holders of securities to be acquired in the proposed transaction pursuant to the laws, regulations or policies of Canada and/or any of its provinces or territories governing the conduct of the offer. It shall not include any documents incorporated by reference into such disclosure document(s) and not distributed to offerees pursuant to any such law, regulation or policy. If any part of the document or documents to be sent to shareholders is in a language other than English, it shall be accompanied by a translation in English.

(b) Any amendment made to a home jurisdiction document or documents filed with the Commission under cover of this Schedule, which must indicate on the cover page the number of the amendment.

Item 2. Informational Legends

The following legends shall appear on the outside front cover page of the home jurisdiction document(s) in bold-face roman type at least as high as ten-point modern type and at least two points heavier:

"This tender offer is made for the securities of a foreign issuer and while the offer is subject to disclosure requirements of the country in which subject issuer is incorporated or organized, prospective investors should be aware that these requirements are different from those of the United States. Financial statements included herein, if any, have not been prepared in accordance with United States generally accepted accounting principles and thus may not be comparable to financial statements of United States companies.

"The enforcement by investors of civil liabilities under the federal securities laws may be affected adversely by the fact that the issuer is located in a foreign country, and that some or all of its officers and directors are residents of a foreign country."

PART II—INFORMATION NOT REQUIRED TO BE SENT TO SHAREHOLDERS

The exhibits specified below shall be filed as part of the Schedule, but are not required to be sent to shareholders unless so required pursuant to the laws, regulations or policies of Canada and/or any of its provinces or territories. Exhibits shall be appropriately lettered or numbered for convenience.

(1) File any reports or information that, in accordance with the requirements of the home jurisdictions(s), must be made publically available by the person(s) filing this Schedule in connection with the transaction, but need not be disseminated to shareholders.

(2) File copies of any documents incorporated by reference into the home jurisdiction document(s).

(3) If any name is signed to the Schedule pursuant to power of attorney, manually signed copies of any such power of attorney shall be filed. If the name of any officer signing on behalf of the issuer is signed pursuant to a power of attorney, certified copies of a resolution of the issuer's board of directors authorizing such signature also shall be filed.

PART III—UNDERTAKING AND CONSENT TO SERVICE OF PROCESS

1. Undertaking

The person(s) filing this Schedule undertakes to make available, in person or by telephone, representatives to respond to inquiries made by the Commission staff, and to furnish promptly, when requested to do so by the Commission staff, information relating to this Schedule or to transactions in said securities.

2. Consent to Service of Process

The person(s) so filing shall, at the time of filing this Schedule, furnish to the Commission, on Form F-X, a written irrevocable consent and power of attorney which designates an agent upon whom may be served any process, pleadings, subpoenas, or other papers in

(1) any investigation or administrative proceeding conducted by the Commission; and

(2) any civil suit or action brought against such person(s) or to which such person(s) has or has been joined as defendant or respondent, in any appropriate court in any place subject to the jurisdiction of any state or of the United States.

where the investigation, proceeding or cause of action arises out of or relates to or concerns any tender offer made or purported to be made for the securities of the subject issuer or any purchase or sale of any security in connection therewith, and stipulates and agrees that any such civil suit or action or administrative proceeding may be commenced by the service of process upon, and that service of an administrative subpoena shall be effected by service upon, said agent for service of process, and that the service as aforesaid shall be taken and held in all courts and administrative tribunals to be as valid and binding as if due personal service thereof had been made.

PART IV

A. Signatures

The Schedule shall be signed by each person on whose behalf the Schedule is filed or its authorized representative. If the Schedule is signed on behalf of a person by his authorized representative (other than an executive officer or general partner of the subject company), evidence of the representative's authority shall be filed with the Schedule.

B. The name and any title of each person who signs the Schedule shall be type or printed beneath his signature.

C. By signing this Schedule, the subject company consents without power of revocation that any administrative subpoena may be served, or any administrative proceeding, civil suit or civil action where the cause of action arises out of or relates to or concerns any offering made or purported to be made in connection with filing on this Schedule 14D-9F or any purchases or sales of any security in connection therewith, may be commenced against it in any administrative or in any appropriate court in any place subject to the jurisdiction of any state or of the United States by service of said subpoena or process upon the registrant's designated agent.

After due inquiry and to the best of my knowledge and belief, I certify that the information set forth in this statement is true, complete and correct.

(Signature)

(Name and Title)

(Date)

17. By adding paragraph (c) to § 240.14e-2 to read as follows:

§ 240.14e-2 Position of a subject company with respect to a tender offer.

(c) Any issuer, a class of the securities of which is the subject of a tender offer filed with the Commission on Schedule 14D-1F and conducted in reliance upon and in conformity with Rule 14d-1(b) under the Act, and any director or officer of such issuer where so required by the laws, regulations and policies of Canada and/or any of its provinces or territories, in lieu of the statements called for by paragraph (a) of this section and Rule 14d-9 under the Act, shall file with the Commission on Schedule 14D-9P the entire disclosure
22. By adding §§ 249.240f and 249.250 to read as follows:


§ 249.240f Form 40-F, for registration of securities of certain Canadian issuers pursuant to section 12 (b) or (g) and for reports pursuant to section 15(d) and Rule 15d-4 (§ 249.15d-4 of this chapter).

(a) Form 40-F may be used to file reports with the Commission pursuant to section 15(d) of the Securities Exchange Act of 1934 (the "Exchange Act") and Rule 15d-4 (17 CFR 240.15d-4) thereunder by registrants that are subject to the reporting requirements of that section solely by reason of having filed a registration statement on Form F-7, F-8, F-9 or F-10 under the Securities Act of 1933.

(b) Form 40-F also may be used to register securities with the Commission pursuant to section 22 (b) or (g) of the Exchange Act, and to file reports with the Commission pursuant to section 13(a) of the Exchange Act and Rule 13a-3 (17 CFR 240.13a-3) thereunder.

Registrants eligible to use this form for such purposes shall have been incorporated or organized under the laws of Canada, or any Canadian province or territory, been subject to the periodic reporting requirements of any securities commission or equivalent regulatory authority in Canada for a period of at least 36 calendar months immediately preceding the filing of this form and be currently in compliance with such obligations. The market value of the common stock (including non-voting common stock) of such registrant shall be

(1) (CN) $180 million or more if a report or registration statement filed on this Form relates to debt or preferred stock that is investment grade; or

(2) (CN) $380 million or more in the case of all other reporting requirements. The aggregate market value of such common stock held by non-affiliates shall be (CN) $75 million or more, provided, That for the purposes of this instruction, the term "affiliate" shall mean any person holding 10 percent or more of the common stock (including non-voting common stock) of the registrant.

Instructions

1. A security is "investment grade" if at the time of filing this form, at least one nationally recognized statistical rating organization (as that term is used in Rule 15c3-1(f)(2)(vi)(F) of the Exchange Act (§ 240.15c3-1(f)(2)(vi)(F) of this chapter)) has rated the security in one of its generic rating categories that signifies investment grade; typically, the four highest rating categories (within which there may be subcategories or gradations indicating relative standing) signify investment grade.

2. The market value of the registrant's outstanding voting stock shall be computed by use of the price at which the stock was last sold, or the average of the bid and asked prices of such stock, in the principal market for such stock as of a date within 30 days prior to the date of filing.

(c) A report on this Form shall be filed at the same time the information included herein is filed with the securities commission or equivalent regulatory authority of the jurisdiction of incorporation of the registrant.

(d) Registrants not previously having filed a Form F-X (§ 249.250) in relation to the class of securities registered on this Form or with regard to which this report is filed shall file a Form F-X with the Commission together with their first filing on this form.

(e) Any change to the name or address of a registrant's agent for service shall be communicated promptly in writing to the Commission, referencing the file number of the registrant.

§ 249.250 Form F-X, for appointment of agent for service of process by foreign issuers registering securities on Forms F-7, F-8, F-9 or F-10 (§§ 239.37, 239.38, 239.39 or 239.40 of this chapter), or registering securities or filing periodic reports on Form 40-F (§ 249.240f of this chapter), or by any person filing tender offer documents on Schedule 13E-4F, 14D-1F or 14D-9F (§§ 249.13e-102, 240.14d-102 or 240.14d-103 of this chapter).

Form F-X shall be filed with the Commission:

(a) By any issuer registering securities on Forms F-7, F-8, F-9 or F-10 under the Securities Act of 1933;

(b) By any issuer registering securities or filing periodic reports on Form 40-F under the Securities Exchange Act of 1934 if it has not previously filed a Form F-X in connection with the class of securities registered or in relation to which a report is filed on Form 40-F; and

(c) By any issuer or other person filing tender offer documents on Schedules 13E-4F, 14D-1F or 14D-9F.

23. By revising the introductory text of §§ 249.103 and 249.104; adding new paragraph (c) to General Instruction 1 to Form 3 in § 249.103; and redesignating the existing paragraph under General Instruction 1 as (a) and adding a new paragraph (b) to Form 4 in § 249.104 to read as follows:

PART 249—FORMS PRESCRIBED UNDER THE SECURITIES EXCHANGE ACT OF 1934

21. The authority citation for Part 249 continues to read as follows:

§ 249.103 Form 3, initial statement of beneficial ownership of securities.

This form shall be filed pursuant to Rule 16a-1(a) (17 CFR 240.16a-1(a)) or Rule 16a-12 (17 CFR 240.16a-12) * * *.

Form 3

General Instructions

1. When Statements Are To Be Filed.
   * * * * *

2. Pursuant to Rule 16a-12, reporting persons of Canadian foreign private issuers may file the equivalent Canadian form under the cover of this Form. Canadian reporting persons should complete Items 1 through 7 of Form 3. Table I and II of Form 3 may be left blank, replaced by the required Canadian forms, which should be attached to this Form.

§ 249.104 Form 4, statement of changes in beneficial ownership of securities.

This form shall be filed pursuant to Rule 16a-1(a) (17 CFR 240.16a-1(a)) or Rule 16a-12 (17 CFR 240.16a-12) * * * * *

Form 4

General Instructions

1. When Statements Are To Be Filed.
   * * * * *

2. Pursuant to Rule 16a-12, reporting persons of Canadian foreign private issuers may file the equivalent Canadian form under the cover of this Form. Canadian reporting persons should complete Items 1 through 8 of Form 4. Tables I and II of Form 4 may be left blank, replaced by the required Canadian forms, which should be attached to this Form.

PART 260—GENERAL RULES AND REGULATIONS, TRUST INDENTURE

ACT OF 1939

24. The authority citation for Part 260 continues to read as follows:


25. By adding § 260.4d-1 to read as follows:

§ 260.4d-1 Application for exemption from Section 310(a)(1) of the Trust Indenture Act.

An application for an exemption from the requirements of section 310(a)(1) of the Act may be filed pursuant to section 304(e)(1) of the Act and this section.

provided the application relates to:

(a) Securities registered or to be registered on Forms F–7, F–8, F–9, or F–10 (§§ 239.37, 239.38, 239.39 or § 239.40 of this chapter);

(b) Securities that have been issued or that the applicant reasonably expects to issue within one year from the date of application; and

(c) Securities that have been or will be issued under an indenture:
   (1) That has been qualified under the Act, and
   (2) That requires there to be at all times one or more trustees thereunder, at least one of whom is a corporation or other person that is:
      (i) Organized and doing business under the laws of Canada or any province thereof (referred to as the institutional trustee), and
      (ii) Is authorized under such laws to exercise corporate trust powers, and
      (iii) Is subject to supervision or examination by governmental authority.

26. By adding § 260.4d-2 to read as follows:

§ 260.4d-2 Application for appointment of a foreign trustee.

(a) Form T–5 shall be used for applications for exemption pursuant to Rule 4d–1 (§ 260.4d–1 of this chapter), except as provided in paragraph (b) of this section.

(b) Application may be made pursuant to Rule 4d–1 by filing a registration statement under the Securities Act on Form F–7, F–8, F–9 or F–10 (§§ 239.37, 239.38, 239.39 or § 239.40 of this chapter), indicating on the facing page of the registration statement that such application is being made, and responding to the applicable item of Part II of such form.

27. By adding § 260.4d–3 to read as follows:

§ 260.4d–3 General requirements as to form and content of applications.

Rule 4d–3 (§ 260.4d–3) and Rules 7a–15 through 7a–37 (§§ 260.7a–15 through 7a–37) shall be applicable to applications on Form T–5.

28. By adding § 260.4d–4 to read as follows:

§ 260.4d–4 Notice of application under Rule 4d–1.

If an applicant under Rule 4d–1 (§ 260.4d–1) files an application relating to securities issued or issuable under an indenture under which any other securities are outstanding, the applicant shall at the time of such filing send, by first class mail or other equally prompt means, notice of such application to all holders of record of outstanding securities under such indenture. A copy of such notice also shall be filed with the Commission as part of the application. The notice shall advise holders of the filing of the application and the date of such filing, and shall further advise that any interested person may, by written request filed with the Commission within 20 days of the application date set forth on such notice, request that a hearing be held on such matter. Such request shall also indicate the nature of such person’s interest and the reason for such request. A subsequent notice shall be sent to such holders if any hearing on the application is to be held by the Commission. Such subsequent notice shall set forth the time, place and nature of the hearing, the legal authority and jurisdiction under which the hearing is to be held, and the matters of fact and law asserted to.

29. By adding § 260.4d–5 to read as follows:

§ 260.4d–5 Waiver of hearing; Designation of record.

(a) An applicant under § 260.4d–1 may, if it so desires, waive a hearing and request the Commission to decide the application without a formal hearing on the basis of the application and such other information and documents as the Commission shall designate as part of the record. However, a hearing may be called upon order of the Commission notwithstanding that the applicant shall have filed such a waiver and request whenever, in the judgement of the Commission, such a hearing is necessary or appropriate in the public interest.

(b) The applicant shall, at the request of the Commission, furnish such additional information or documents as the Commission may deem necessary to decide the application. The Commission may make a part of the record any pertinent information or documents filed with the Commission by the applicant or by any other person. The Commission shall, in its order deciding the application, designate and describe the information and documents comprising the record on which the decision is based.

30. By adding § 260.4d–6 to read as follows:

§ 260.4d–6 Consent of trustee to service of process.

The applicant shall, at the time of filing an application pursuant to § 260.4d–1, furnish to the Commission in a form prescribed by or acceptable to it, a written irrevocable consent of the trustee and power of attorney, which designates an agent upon whom may be served any process, pleadings, or other papers in any civil suit or action brought against the trustee or to which the trustee has been joined as defendant or respondent, in any appropriate court in any place subject to the jurisdiction of any state or of the United States, where
the cause of action arises out of any offering made or purported to be made in connection with the securities that are the subject of the application pursuant to § 260.4d-1, or any purchase or sale of any security in connection therewith, and stipulates and agrees that any such civil suit or action may be commenced by the service of process upon valid agent for service for process, and that the service as aforesaid shall be taken and held in all courts to be as valid and binding as if due personal service thereof had been made.

PART 269—FORMS PRESCRIBED UNDER THE TRUST INDENTURE ACT OF 1939

31. By adding § 269.8 to read as follows:

§ 269.8 Form T-5, application for exemption pursuant to Rule 4d-1.

Form T-5 shall be used for applications for exemption filed pursuant to Rule 4d-1 under the Trust Indenture Act of 1939 (the “Act”) (17 CFR 260.4d-1), except those filed pursuant to subparagraph (b) of Rule 4d-2 (17 CFR 260.4d-2).

By the Commission.

Dated: July 24, 1989.

Jonathan G. Katz,
Secretary.


Form F-7

Registration Statement shall become effective on such date as the Commission, acting pursuant to said section 8(a), may determine.

Registration Statement shall thereafter be deemed effective for purposes of the Securities Act of 1933 on the date on which the Registrant shall file a further Registration Statement on such date or dates as may be necessary to delay its effective date until the Registrant shall file a further Registration Statement on such date or dates as may be necessary to delay its effective date.

The Registrant hereby amends this Registration Statement on such date or dates as may be necessary to delay its effective date until the Registrant shall file a further Registration Statement on such date or dates as may be necessary to delay its effective date.

If, as a result of stock splits, stock dividends or similar transactions, the number of securities purported to be registered on this registration statement changes, the provisions of Rule 416 shall apply to this registration.

For the purpose of this Form, the registrant is an investment company, as defined in section 3 of the Investment Company Act of 1940.

F. A registration statement on this Form shall not be used if the registrant is an investment company, as defined in section 3 of the Investment Company Act of 1940.

The Registrant hereby amends this Registration Statement on such date or dates as may be necessary to delay its effective date until the Registrant shall file a further Registration Statement on such date or dates as may be necessary to delay its effective date.

For purposes of this Form, the term “U.S. resident,” as applied to security holders, shall mean any person whose address appears on the records of the issuer of the security or its share transfer agent as being located in the United States. The calculation of record holders shall be as of the end of the issuer’s last quarter or if such quarter ended within 60 days prior to the date of filing, then as of at end of the preceding quarter.

General Instructions

1. Eligibility Requirements for Use of Form F-7

A. Form F-7 may be used for the registration under the Securities Act of 1933 (the “Securities Act”) of securities offered for cash upon the exercise of rights granted to existing security holders of the registrant.

B. Form F-7 is available to any registrant incorporated or organized under the Laws of Canada, or any Canadian province or territory, that, for the 36 calendar months immediately preceding the filing of a registration statement on this Form, has had any class of securities listed on the Montreal Exchange, the Toronto Stock Exchange or any Canadian provincial securities exchange and that currently is in compliance with the obligations arising from such listing. The rights granted to security holders that are resident in the United States shall be granted upon the same terms and conditions as those granted to such holders resident in the registrant’s jurisdiction of incorporation or organization, provided, that the securities offered upon exercise of such rights may not be registered on this Form if such rights are transferable to U.S. resident and further provided, that the exercise period for the rights granted to security holders shall be 90 days or less.

C. Less than 20 percent of the class of securities with respect to which the rights are granted shall be held of record by U.S. residents. For purposes of this instruction, “held of record” shall be construed in accordance with Rule 12g7-1 under the Securities Exchange Act of 1934 (the “Exchange Act”).

Instruction. For purposes of this Form, the term “U.S. resident,” as applied to security holders, shall mean any person whose address appears on the records of the issuer of the security or its share transfer agent as being located in the United States. The calculation of record holders shall be as of the end of the issuer’s last quarter or if such quarter ended within 60 days prior to the date of filing, then as of at end of the preceding quarter.

D. Any transaction in which securities registered on this Form are offered shall not increase the registrant’s issued and outstanding capital by more than 25 percent.

E. This Form shall not be used if the registrant is an investment company, as defined in section 3 of the Investment Company Act of 1940.

F. A registration statement on this Form should be filed with the Commission simultaneously with the filing of the home jurisdiction document(s) accompanying such Form with the jurisdiction identified on the cover of the Form as the principal jurisdiction regulating the offering (“principal jurisdiction”). Pre-effective amendments to this Form should be filed simultaneously with the filing of additional or changed documents in the principal jurisdiction. In accordance with Rule 407, this registration statement shall be deemed effective for purposes of the Securities Act on the date on which the securities covered herein legally may be sold in the principal jurisdiction.

Any amendment to such home jurisdiction document(s) after the effective date of this
II. Application of General Rules and Regulations

registration statement shall be filed with the Commission as a post-effective amendment to this Form simultaneously with the filing of such document(s) with the principal jurisdiction. Such post-effective amendment shall be deemed effective for purposes of the Securities Act at such time as the amendment to the home jurisdiction document(s) legally may be made under the applicable law of such jurisdiction. In accordance with Rule 467.

Any amendment to a registration statement on this Form shall be filed under cover of an appropriate facing sheet, shall be numbered consecutively in the order in which filed, and shall indicate on the facing sheet the applicable registration form on which the amendment is prepared and the file number of the registration statement.

This combined prospectus relates to such additional securities as the registrant may determine to register from time to time and includes all amendments thereto, including exhibits and other material information, if any, as may be necessary to make the required registration statement, or any post-effective amendment thereto, or any exhibit or other paper or document filed as part of the registration statement or a post-effective amendment, in a foreign language, as well as any summaries, and all related material information as may be necessary to make the required registration statement, or any post-effective amendment thereto, or any exhibit or other paper or document filed as part of the registration statement or a post-effective amendment, in a foreign language, as well as any summaries, all of which shall be accompanied by a summary, translation or version in the English language.

F. The manually signed original of the registration statement(s) or any post-effective amendments thereto shall be numbered sequentially (in addition to any internal numbering which otherwise may be present) by handwritten, typed, printed or other legible form of notation from the first page of the document through the last page of that document and any exhibits or attachments thereto.

III. Compliance with Exchange Act, Trust Indenture Act and Auditor Independence and Reporting Requirements

Pursuant to Rule 15d-4 under the Exchange Act, reporting obligations under section 15(d) of the Exchange Act arising solely from an offering of securities registered on this Form may be met by filing with the Commission, under cover of Form 40-F, documents that are filed with the securities commission or equivalent regulatory authority of the registrant's jurisdiction of incorporation. Registrants' attention is directed, however, towards other provisions of the Exchange Act that may be applicable, and specifically to the provisions of sections 12(b) and 12(g) of the Exchange Act and Rules 10b-6, 10b-7 and 10b-8 under the Exchange Act.

B. Pursuant to Rule 4d-2(b) under the Trust Indenture Act of 1939 (the "Trust Indenture Act"), a registrant registering debt securities on this Form may apply for exemption from the U.S. trustee provisions of section 310(a) of that Act by so indicating on the facing page of this Form and including the information specified by Item (6) of Part II thereof.

Pursuant to Rule 4d-5 under the Trust Indenture Act, the application will be deemed to be accepted unless, within seven days after such filing, the Commission orders a hearing thereon. Registrants' attention is directed to other provisions of the Trust Indenture Act that may be applicable.

C. The Commission's rules on auditor independence as codified in Section 506 of the Codification of Financial Reporting Policies apply to all financial statements that are included in this registration statement.

D. Independent accountants reporting on financial statements included in the registration statement should consider Canadian auditing guidelines pertaining to the Canada-U.S. reporting conflict with respect to contingencies and going concern considerations. If additional comments for U.S. readers are appropriate under those guidelines but are not included in the prospectus itself, those comments should be included with the legends required by Item 2 of Part I herein. In addition, the accountant's consent specifically should refer to any additional comments provided for U.S. readers.

Item 1. Home Jurisdiction Document

The prospectus shall consist of the entire disclosure document or documents required to be delivered to holders of the securities with respect to which rights are distributed pursuant to the laws of the jurisdiction in which the registrant is incorporated or organized or, where applicable, pursuant to the rules of any stock exchange upon which the issuer has any class of securities listed or has applied for such listing. It need not include any documents incorporated by reference into such disclosure documents and not distributed to security holders pursuant to the laws of such jurisdiction. If any part of the document or documents to be sent to shareholders is in a foreign language, it shall be accompanied by a translation in English.

Item 2. Informational Legends

The following legends, to the extent applicable, shall appear on the outside front cover page of the prospectus in bold-face roman type at least as high as a modern type and at least two points leaded:

"This offering is made by a foreign issuer, and while the issuer is subject to disclosure requirements in its own country, prospective investors should be aware that these requirements are different from those of the United States. Financial statements included herein, if any, have not been prepared in accordance with United States generally accepted accounting principles and thus may not be comparable to financial statements of United States companies."

"Prospective investors should be aware that the acquisition of the securities described herein may have tax consequences both in the United States and in the country of the registrant. Such consequences for investors who are resident in, or citizens of, the United States may not be described fully herein."

bank money order, a fee of one-fiftieth of one per centum of the maximum aggregate price at which the securities registered on this form are proposed to be offered in the United States, but in no case shall such fee be less than $100.

The registration fee is to be calculated at the price at which the rights may be exercised if known at the time of filing the registration statement, or, if not known, at the market value of securities of the same class included in the registration statement. If the fee is to be calculated upon the basis of the price at which the rights may be exercised and they are exercisable over a period of time at progressively higher prices, the fee shall be calculated on the basis of the highest price at which they are exercisable.

Instruction. The market value of the registrant's outstanding common stock shall be the average of the bid and asked price of such stock, in the principal market for such stock as of a date within 30 days prior to the date of filing.

E. Subject to the requirements of Item 1 of Part I, if any part of the registration statement or post-effective amendment thereto, or any exhibit or other paper or document filed as part of the registration statement or a post-effective amendment, is in a foreign language, it shall be accompanied by a summary, translation or version in the English language.

F. The manually signed original of the registration statement(s) or any post-effective amendments thereto shall be numbered sequentially (in addition to any internal numbering which otherwise may be present) by handwritten, typed, printed or other legible form of notation from the first page of the document through the last page of that document and any exhibits or attachments thereto.

G. Any change to the name or address of a registrant's agent for service shall be communicated promptly to the Commission, referencing the file number of the registrant.

This offering is made by a foreign issuer, and while the issuer is subject to disclosure requirements in its own country, prospective investors should be aware that these requirements are different from those of the United States. Financial statements included herein, if any, have not been prepared in accordance with United States generally accepted accounting principles and thus may not be comparable to financial statements of United States companies.

"This offering is made by a foreign issuer, and while the issuer is subject to disclosure requirements in its own country, prospective investors should be aware that these requirements are different from those of the United States. Financial statements included herein, if any, have not been prepared in accordance with United States generally accepted accounting principles and thus may not be comparable to financial statements of United States companies."

"Prospective investors should be aware that the acquisition of the securities described herein may have tax consequences both in the United States and in the country of the registrant. Such consequences for investors who are resident in, or citizens of, the United States may not be described fully herein."
The enforcement by investors of civil liabilities under federal securities laws may be affected adversely by the fact that the registrant is located in a foreign country, that some or all of its officers and directors are residents of a foreign country, that some or all of the underwriters or experts named in the registration statement are residents of a foreign country and that all or a substantial portion of the assets of the registrant and said persons are located outside the United States.

Item 3. List of Documents Filed with Commission

There shall be attached to the prospectus a list of all documents filed with the Commission as part of the registration statement.

Part II—Information Not Required to be Sent to Shareholders

The exhibits specified below shall be filed as part of the registration statement. Exhibits shall be appropriately lettered or numbered for convenient reference.

(1) File any reports or information that in accordance with the requirements of the jurisdiction of the registrant must be made publicly available in connection with the transaction.

(2) File copies of any documents incorporated by reference into, or filed with any other regulatory authority concurrently with, the prospectus.

(3) If any accountant, engineer or appraiser, or any person whose profession gives authority to a statement made by him, is named having prepared or certified any part of the offering document, or is named as having prepared or certified a report or valuation for use in connection with the offering document, the written consent of such person shall be filed.

If any such person is named as having prepared or certified any other report or valuation (other than a public official concerned therewith, and that all or a substantial portion of the assets of the registrant and said persons are located outside the United States.

(4) If any name is signed to the registration statement or report pursuant to a power of attorney, manually signed copies of such power of attorney shall be filed. If the name of any officer signing on behalf of the registrant is signed pursuant to a power of attorney, certified copies of a resolution of the registrant's board of directors authorizing such signature also shall be filed.

(5) File a copy of any indenture relating to the registered securities. If such indenture is to be qualified under Trust Indenture Act, it should include or be accompanied by (1) a cross-reference sheet to the location in the indenture of information included pursuant to sections 310-318 of the Trust Indenture Act and (2) a table of contents. If any such indenture is to be qualified under the Trust Indenture Act, also file the statement of eligibility of the trustee on Form T-1 and, if applicable, for individual trustee(s) on Form T-2.

(6) If debt securities are to be registered and an exemption from the U.S. trustee provisions of section 310(a) of the Trust Indenture Act is sought pursuant to General Instruction III.B. or has been sought with respect to the securities to be registered, the registrant shall file as an exhibit the information specified in Items 4, 5, 6, 7, 8, 9 (if applicable), and 10 of Form T-3, or shall file as an exhibit copies or incorporate by reference any Form T-3 filed with the Commission not more than one year prior to the date of filing of this registration statement.

Part III— Undertakings and Consent to Service of Process

1. Undertakings

Registrant undertakes to make available, in person or by telephone, representatives to respond to inquiries made by the Commission staff, and to furnish promptly, when requested to do so by the Commission staff, information relating to the securities registered pursuant to Form F-7 or to transactions in said securities.

2. Consent to Service of Process

The registrant shall, at the time of filing Form F-7, furnish to the Commission, on Form F-X, a written irrevocable consent and power of attorney which designates an agent upon whom may be served any process, pleadings, subpoenas, or other papers in any investigation or administrative proceeding conducted by the Commission; and

(2) Any civil suit or action brought against the registrant or to which the registrant has been joined as defendant or respondent, in any appropriate court in any place subject to the jurisdiction of any state or of the United States, where the investigation, proceeding or cause of action arises out of or relates to or concerns any offering made or purported to be made in connection with the securities registered pursuant to Form F-7 or any purchases or sales of any security in connection therewith, and stipulates and agrees that any such civil suit or action or administrative proceeding may be commenced by the service of process upon, and that service of an administrative subpoena shall be effected by service upon, said agent for service of process, and that the service as aforesaid shall be taken and held in all courts and administrative tribunals to be as valid and binding as if due personal service thereof had been made.

Signatures

Pursuant to the requirements of the Securities Act, the registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form F-7 and has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of , State (Province or Territory) on .

Register—

By (Signature and Title) Pursuant to the requirements of the Securities Act, this registration statement has been signed by the following persons in the capacities and on the dates indicated.

(Signature) ————

(Date) ————

Instructions

A. The registration statement shall be signed by the registrant, its principal executive officer or officers, its principal financial officer, its comptroller or principal accounting officer, at least a majority of the board of directors or persons performing similar functions and its authorized representative in the United States. Where the registrant is a limited partnership, the registration statement shall be signed by a majority of the board of directors of any corporate general partner signing the registration statement.

B. The name of each person who signs the registration statement shall be typed or printed beneath his signature. Any person who occupies more than one of the specified positions shall indicate such capacity in which the registration statement is signed.

C. By signing this form, the registrant consents without power of revocation that any administrative subpoena may be served, or any administrative proceeding, civil suit or civil action where the cause of action arises out of or relates to or concerns any offering made or purported to be made in connection with the securities registered pursuant to Form F-7 or any purchases or sales of any security in connection therewith, may be commenced against it in any administrative tribunal in any appropriate court in any place subject to the jurisdiction of any state or of the United States by service of said subpoena or process upon the registrant's designated agent.

Form F-8—Registration Statement Under the Securities Act of 1933

U.S. Securities and Exchange Commission, Washington, DC 20549

OMB Approval.

OMB Number: 3235-0401
Expires: Approval Pending

Estimated average burden hours per response: 2.0

(Exact name of Registrant as specified in its charter)

(Translation of Registrant's name into English)

(Please and other jurisdiction of incorporation or organization)
On such date as the Commission, acting under the Securities Act of 1933 ("Securities Act") of the United States, may determine, the subject issuer or its share transfer agent as whose address appears on the records of the subject issuer or its share transfer agent as being located in the United States. The calculation of record holders shall be as of the end of the issuer's last quarter ended within 60 days prior to the date of filing, then as of the preceding quarter.

D. The securities to be registered on Form F-8 shall be offered to U.S. residents upon the same terms and conditions as they are offered to residents of Canada.

E. This Form shall not be used if the registrant is an investment company, as defined in section 3 of the Investment Company Act of 1940.

F. A registration statement on this Form shall be filed with the Commission simultaneously with the filing of the home jurisdiction document(s) accompanying such Form with the jurisdiction identified on the cover of the Form as the principal jurisdiction regulating the offering ("principal jurisdiction"). Pre-effective amendments to this Form should be filed simultaneously with the filing of additional or changed documents in the principal jurisdiction. In accordance with Rule 467, this registration statement shall be deemed effective for purposes of the Securities Act on the date on which the securities covered herein legally may be sold in the principal jurisdiction.

Any amendment to such home jurisdiction document(s) after the effective date of this registration statement shall be filed with the Commission as a post-effective amendment thereto. Such post-effective amendment shall be deemed effective for purposes of the Securities Act at such time as the amendment to the home jurisdiction document(s) legally may be used under the applicable law of such jurisdiction, in accordance with Rule 407.

Any amendment to a registration statement on this Form shall be filed under cover of an appropriate prospectus that shall be numbered consecutively in the order in which filed, and shall indicate on the facing sheet the applicable registration form on which the amendment is prepared and the file number of the registration statement.

If, however, an amendment to the home jurisdiction document(s) is filed after effectiveness of the registration statement that increases the number of securities that may be sold thereunder, in lieu of filing a post-effective amendment thereto, a new registration statement shall be filed on this Form. As provided in Rule 429, the prospectus included in the new registration statement shall be deemed to include a prospectus covering unsold securities registered previously. If this is the case, the following legend shall appear at the bottom of the facing page of the registration statement: "This combined prospectus relates to registration statement(s) 33-Insert file numbers of previous registration statements."

II. Application of General Rules and Regulations

A. The only Securities Act rules and regulations that apply to filings on this Form are those rules and regulations specifically referred to in the Form and Rule 406, which provides that in addition to the information expressly required to be included in the registration statement, there shall be added such further material information, if any, as may be necessary to make the required statements, in light of the circumstances under which they are made, not misleading. A registration statement or amendment thereto shall be deemed to be filed on the proper form unless objection to the form is made by the Commission prior to the effective date.

B. Three copies of the complete registration statement and any post-effective amendments thereto, including exhibits and all other papers and documents filed as a part of the registration statement or post-effective amendment, shall be filed with the Commission at its principal office. Each copy
shall be bound, stapled or otherwise compiled in one or more parts, without stiff covers. The binding shall be made on the side or by a narrow margin in such a manner as to leave the reading matter legible. Three additional copies of the registration statement and any post-effective amendments thereto, similarly bound, shall also be filed. No exhibits are required to accompany such additional copies.

C. At least one copy of every registration statement and any post-effective amendment thereto shall be signed manually by the persons specified herein. Unsigned copies shall be conformed.

D. At the time of filing this registration statement, the applicant shall pay to the Commission, under cover of Form 40-F, a fee of one hundred dollars for each offer, the book value of such securities computed as of the latest practicable date prior to the date of filing the registration statement shall be used unless the issuer of such securities is in bankruptcy of receivership or has an accumulated capital deficit, in which case one-third of the principal amount, par value or stated value of such securities shall be used.

(3) If any cash may be received by the registrant or cancelled in the exchange offer, the amount thereof shall be added to the value of the securities to be received by the registrant in the exchange as computed in accordance with paragraph (1) or (2) of this section.

(4) The market value of the registrant's outstanding common stock shall be the average of the bid and asked prices of such stock, in the principal market for such stock as of a date within 30 days prior to the date of filing.

E. Subject to the requirements of Item 1 of Part I, if any part of the registration statement or a post-effective amendment thereto, or any exhibit or other paper or document filed as part of the registration statement or post-effective amendment, is in a foreign language, it shall be accompanied by a summary, version or translation in the English language.

F. The manually signed original of the registration statement or any post-effective amendment thereto shall be numbered sequentially (in addition to any internal numbering which otherwise may be present) by handwritten, typed, printed or other legible form of notation from the first page of the document through the last page of that document and any exhibits or attachments thereto. Further, the total number of pages contained in a numbered original shall be set forth on the last page of the document.

G. Any change to the name or address of a registrant's agent for service shall be communicated promptly in writing to the Commission, referencing the file number of the registrant.

III. Compliance with Exchange Act, Trust Indenture Act and Auditor Independence and Reporting Requirements

A. Pursuant to Rule 3a12-3(c) under the Exchange Act, the issuer registering securities on Form F-8 is required to obtain the vote of its security holders to approve an action, which will enable the issuer to make the exchange offer (such as approving an increase in authorized securities), the U.S. proxy regulations will not apply to such action.

B. Pursuant to Rule 13e-4(b) under the Exchange Act, the provisions of Rule 13e-4 are not applicable, and pursuant to Rule 14d-1(b) under the Exchange Act, the provisions of Sections 14(d)(1) through 14(d)(7) of the Exchange Act, Regulation 14D under the Exchange Act and Schedule 14D-1 thereunder, and Rule 14e-1 under Regulation 14E, are not applicable to a transaction involving offerings of securities that may be registered on this Form: Provided, that if no substantive requirements of any Canadian federal, provincial and/or territorial law, regulation or policy relating to the terms and conditions of the offering apply, or if an exemption from such requirements is applicable, the registrant shall comply with such provisions of the Exchange Act. Such transaction is not exempt from the antifraud provisions of Sections 10(b), 13(a)(1) and 14(e) of the Exchange Act or Rules 10b-5, 13e-4(b)(1) or 14e-6 thereunder, if the transaction otherwise is subject to those sections.

C. Pursuant to Rule 15d-4 under the Exchange Act, reporting obligations under section 15(d) of the Exchange Act arising solely from an offering of securities registered on this Form may be met by filing with the Commission, under cover of Form 40-F, documents that are filed with the securities commission or equivalent regulatory authority in the registrant's jurisdiction of incorporation. Registrants' attention is directed, however, to the provisions of the Exchange Act that may be applicable, and specifically to the provisions of sections 12(b) and 12(g) of the Exchange Act and rules 10b-6, 10b-7 and 10b-13 under the Exchange Act. (See Note Following Part III, 1. For an explanation of the no-action positions taken under Rules 10b-6 and 10b-13.)

D. Pursuant to Rule 4d-2(b) under the Trust Indenture Act of 1939 (the "Trust Indenture Act"), a registrant selling debt securities on this Form may apply for exemption from the U.S. trustee provisions of section 310(a) of that act by so indicating on the facing page of this Form and including the information specified by Item (7) of Part II thereof.

Pursuant to Rule 4d-5 under the Trust Indenture Act, the application will be deemed to be granted unless, within seven days after such filing, the Commission orders a hearing thereon. Registrants' attention is directed to other provisions of the Trust Indenture Act that may be applicable.

E. The Commission's rules on auditor independence as codified in section 101 of the Codification of Financial Reporting Policies apply to all financial statements which are included in this registration statement.

F. Independent accountants reporting on financial statements included in the registration statement should consider Canadian auditing guidelines pertaining to the Canada-U.S. reporting conflict with respect to contingencies and going concern considerations. If additional comments for U.S. readers are appropriate under those guidelines but are not included in the prospectus itself, those comments should be included with the financial statements in Item 2 of Part I herein. In addition, the accountant's consent specifically should refer to any additional comments provided for U.S. readers.

Part I—Information Required to be Sent to Shareholders

Item 1. Home Jurisdiction Document

The prospectus shall consist of the entire disclosure document or documents required to be delivered to holders of securities to be acquired in the proposed transaction by the registrant pursuant to the laws of the jurisdiction in which the registrant is incorporated or organized and/or, where applicable, pursuant to the rules of any stock exchange upon which the registrant has any class of securities listed, or has applied for such listing. It need not include any documents incorporated by reference into such disclosure document and not distributed to offerees pursuant to the laws of jurisdiction. If any part of the document or documents to be sent to shareholders is in a foreign language, it shall be accompanied by a translation in English.

Item 2. Informational Legends

The following legends, to the extent applicable, shall appear on the outside front cover page of the prospectus in bold-face roman type at least as high as ten-point modern type and at least two points loaded:

"This offering is made by a foreign issuer, and while the issuer is subject to disclosure requirements in its own country, prospective investors should be aware that those requirements are different from those of the United States. The financial statements have not been prepared in accordance with United States generally accepted accounting principles and, thus, may not be comparable to financial statements of United States companies.

"Prospective investors should be aware that the acquisition of the securities described herein may have tax consequences both in the United States and in the country of the registrant. Such consequences for investors who are resident in, or citizens of,
the United States may not be described fully herein.

"The enforcement by investors of civil liabilities under the federal securities laws may be affected adversely by the fact that the registrant is located in a foreign country, that some or all of its officers and directors are residents of a foreign country, that some or all of the underwriters or experts named in the registration statement are residents of a foreign country and that all or a substantial portion of the assets of the registrant and all or some persons are located outside the United States.

"Prospective investors should be aware that, during the period of the exchange offer, the registrant or its affiliates, directly or indirectly, may bid for or make purchases of the securities to be distributed, certain related securities of the registrant, the securities to be exchanged or certain related securities of the issuer, as permitted by applicable Canadian laws or provincial laws or regulations."

Item 3. List of Documents Filed with Commission

There shall be attached to the prospectus a list of all documents filed with the Commission as part of the registration statement.

Part II—Information Not Required to be Sent to Shareholders

The exhibits specified below shall be filed as part of the registration statement. Exhibits shall be appropriately lettered or numbered for convenient reference.

(1) File any reports or information that, in accordance with the requirements of the jurisdiction of the subject issuer, must be made publicly available by the registrant in connection with the transaction.

(2) File a copy of the acquisition agreement.

(3) File copies of any documents incorporated by reference into, or filed with any other regulatory authority concurrently with, the prospectus.

(4) If any accountant, engineer or appraiser, or any person whose profession gives authority to a statement made by him, is named as having prepared or certified any part of the offering document or named as having prepared or certified a report or valuation for use in connection with the offering document, the written consent of such person shall be filed.

If any such person is named as having prepared or certified any other report or valuation (other than a public official document or statement) which is used in connection with the registration statement, but is not named as having prepared or certified such report or valuation for use in connection with the registration statement, the written consent of such person also shall be filed unless the Commission dispenses with such filing as impracticable or as involving undue hardship in accordance with Rule 437.

Any other consent required by Rules 436 or 438 also shall be filed. Every amendment relating to a certified financial statement shall include the consent of the certifying accountant to the use of his certificate in connection with the amended financial statements in the registration statement or prospectus and to being named as having certified such financial statements.

Note: The consents required by this item shall specify whether such consent regarding use of the report or valuation in the registration statement filed in the United States.

(5) If any name is signed to the registration statement or report that the signature is that of power of attorney, manually signed copies of such power of attorney shall be filed. If the name of any officer signing on behalf of the registrant is signed pursuant to a power of attorney, certified copies of a resolution of the registrant's board of directors authorizing such signature shall also be filed.

(6) File a copy of any indenture relating to the registered securities. If such indenture is to be qualified under the Trust Indenture Act, it should include or be accompanied by (1) a cross-reference sheet to the location in the indenture of sections 310-310(a) of the Trust Indenture Act, and (2) a cross-reference table of contents. If any such indenture is to be qualified under the Trust Indenture Act, also file the statement of eligibility of the trustee on Form T-4 and, if applicable, for individual trustee(s) on Form T-5.

(7) If debt securities are to be registered and an exemption from the U.S. trustee provisions of section 310(a) of the Trust Indenture Act is sought pursuant to General Instruction H.I.C. or has been sought with respect to the securities to be registered, the registrant shall file as an exhibit the information specified in Items 4, 5, 6, 7, 8, 9 (if applicable), and 10 of Form T-5, or shall file as an exhibit or incorporate by reference any Form T-5 filed with the Commission not more than one year prior to the date of this filing.

Part III— Undertaking and Consent to Service of Process

1. Undertakings

a. Registrant undertakes to make available, in person or by telephone, representatives to respond to inquiries made by the Commission, and to furnish promptly, when requested to do so by the Commission, information relating to the securities registered pursuant to Form F-8 or to transactions in said securities.

b. Registrant further undertakes to disclose in the United States, on the same basis as it is required to make such disclosure pursuant to any applicable Canadian federal and/or provincial or territorial law, regulation or policy, information regarding purchase of the registrant's securities or of the issuer's securities during the exchange offer.

Note: No-action positions taken under the Securities Act this registration statement has met all of the requirements for filing on Form F-8 and has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of----------------and the State (Province or Territory) of

Registrant—

By (Signature and Title)----------------------------

Pursuant to the requirements of the Securities Act, the registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form F-8 and has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of----------------and the State (Province or Territory) of

Signature—

(Name and Title)------------------------—--------
D. By signing this form, the registrant consents without power of revocation that any administrative subpoena may be served, or any administrative proceeding, civil suit or civil action where the cause of action arises out of or relates to or concerns any offering made or purported to be made, in connection with the securities registered pursuant to Form F-8 or any purchases or sales of any security in connection therewith, may be commenced against it in any administrative tribunal or in any appropriate court in any place subject to the jurisdiction of any state or of the United States by service of said subpoena or process upon the registrant's designated agent.

Form F-9—Registration Statement Under the Securities Act of 1933

U.S. Securities and Exchange Commission,
Washington, DC 20549

OMB Approval
OMB Number: #3235-0401
Expires: Approval Pending
Estimated average burden hours per response—2.0

(Exact name of Registrant as specified in its charter)

(Translation of Registrant's name into English)

(Province or other jurisdiction of incorporation or organization)

CALCULATION OF REGISTRATION FEE*

<table>
<thead>
<tr>
<th>Title of each class of securities to be registered</th>
<th>Amount to be registered</th>
<th>Proposed maximum offering price per unit</th>
<th>Proposed maximum aggregate offering price</th>
<th>Amount of registration fee</th>
</tr>
</thead>
</table>

*See general instruction II.D for rules as to calculation of the registration fee.

If, as a result of stock splits, stock dividends or similar transactions, the number of securities purported to be registered on this registration statement changes, the provisions of Rule 416 shall apply to this transaction.

The Registrant hereby amends this Registration Statement on such date or dates as may be necessary to delay its effective date until the Registrant shall file a further amendment which specifically states that this Registration Statement shall thereafter become effective in accordance with section 8(a) of the Securities Act of 1933 or until the Registration Statement shall become effective on such date as the Commission, acting pursuant to said section 8(a), may determine.

General Instructions

1. Eligibility Requirements for Use of Form F-9

A. This Form F-9 may be used for the registration under the Securities Act of 1933 (the “Securities Act”) of investment-grade non-convertible debt or preferred securities.

Instructions

1. Securities shall be “investment grade” if, at the time of effectiveness of the registration statement, at least one nationally recognized statistical rating organization (as that term is used in relation to Rule 15c3-1(c)(2)(vi)(F) under the Securities Exchange Act of 1934 (the “Exchange Act”) § 240.15c3-1(c)(2)(vi)(F) of this chapter) has rated the security in one of its generic rating categories that signifies investment grade; typically, the four highest rating categories (within which there may be subcategories or gradations indicating relative standing) signify investment grade.

2. Securities shall be “non-convertible” if they may not be converted for a period of at least one year from the date of effectiveness of the registration statement.

B. Form F-9 is available to any registrant incorporated or organized under the laws of Canada, or any Canadian province or territory, that has been subject to the periodic reporting requirements of any securities commission or equivalent regulatory authority in Canada for a period of at least 36 calendar months immediately preceding the filing of the registration statement on this Form, and that is currently in compliance with such obligations, if (1) the aggregate market value of the common stock (including non-voting shares) of such registrant was, as of the end of the registrant's previous fiscal year, (CN) $180 million or more; and (2) the aggregate market value of such common stock held by non-affiliates is (CN) $75 million or more, provided, that for the purposes of this Instruction, the term "affiliate" shall mean any person holding 10 percent or more of the common stock (including non-voting common stock) of the registrant.

C. This Form shall not be used if the registrant is an investment company, as defined in Section 3 of the Investment Company Act of 1940.

D. A registration statement on this Form should be filed with the Commission simultaneously with the filing of the home jurisdiction document(s) accompanying such Form with the jurisdiction identified on the cover of the Form as the principal jurisdiction regulating the offering (“principal jurisdiction”). Pre-effective amendments to this Form should be filed simultaneously with the filing of additional or changed documents in the principal jurisdiction. In accordance
with Rule 467, this registration statement shall be deemed effective for purposes of the Securities Act on the date on which the securities covered herein legally may be sold in the principal jurisdiction.

Any amendment to such home jurisdiction document(s) after the effective date of this registration statement shall be filed with the Commission as a post-effective amendment to this Form simultaneously with the filing of such document(s) with the principal jurisdiction. See infra Part III.1.b. Such post-effective amendment shall be deemed effective for purposes of the Securities Act at such time as the amendment to the home jurisdiction document(s) legally may be used under the applicable law of such jurisdiction, in accordance with Rule 467.

Any amendment to a registration statement on this Form shall be filed under cover of an appropriate facing sheet, shall be numbered consecutively in the order in which filed, and shall indicate on the facing sheet the applicable form on which the amendment is prepared and the file number of the registration statement.

If, however, an amendment to the home jurisdiction document is filed after effectiveness of the registration statement that increases the number of securities that may be sold thereunder, in lieu of filing a post-effective amendment hereto, a new registration statement shall be filed on this Form. As provided in Rule 429, the prospectus included in the new registration statement shall be deemed to include a prospectus covering unsold securities registered previously. If this is the case, the following legend shall appear at the bottom of the facing page of the registration statement:

“This combined prospectus relates to registration statement(s) 33-....[insert file numbers of previous registration statements].”

If the registration statement or any post-effective amendment hereto relates to an offering that is not a contemporaneous offering, it shall be deemed effective in accordance with Rule 467(b).

II. Application of General Rules and Regulations

A. The only Securities Act rules and regulations that apply to filings on this Form are those rules and regulations specifically referred to in the Form and Rule 406, which provides that in addition to the information expressly required to be included in the registration statement, there shall be added such further material information, if any, as may be necessary to make the required statements, in light of the circumstances under which they are made, not misleading.

A registration statement or amendment thereto shall be deemed to be filed on the proper form unless objection to the form is made by the Commission prior to the effective date.

B. Three copies of the complete registration statement and any amendments thereto, including exhibits and all other papers and documents filed as a part of the registration statement or any amendments thereto, shall be filed with the Commission at its principal office. Each copy shall be bound, stapled or otherwise compiled in one or more parts, without stiff covers. The binding shall be made on the side or stitching margin in such manner as to leave the reading matter legible.

Three additional copies of the registration statement and any post-effective amendments thereto, similarly bound, also shall be filed. No other exhibits are required to accompany such additional copies.

C. At least one copy of every registration statement and any post-effective amendment thereto shall be signed manually by the persons specified herein. Unsigned copies shall be conformable.

D. At the time of filing this registration statement, the applicant shall pay to the Commission, by a United States postal money order, certified check, bank cashier’s check or bank money order, a fee of one fiftieth of one per centum of the maximum aggregate price at which the securities are proposed to be offered in the United States, but in no case shall such fee be less than $100.

E. Subject to the requirements of Item 1 of Part I, if any part of the registration statement or a post-effective amendment thereto, or any exhibit or other paper or document filed as part of the registration statement, is in a foreign language, it shall be accompanied by a summary, version or translation in the English language.

F. The manually signed original of the registration statement or any amendment thereto shall be numbered sequentially (in addition to any internal numbering which otherwise may be present) by handwritten, typewritten, printed or other legible form of notation from the first page of the document through the last page of that document and any exhibits or attachments thereto. Further, the total number of pages contained in a numbered original shall be set forth on the first page of the document.

G. Any change to the name or address of a registrant’s agent for service shall be communicated promptly in writing to the Commission, referencing the file number of the registration statement.

III. Compliance with Exchange Act, Trust Indenture Act and Auditor Independence and Reporting Requirements

A. Pursuant to Rule 15d-4 under the Exchange Act, reporting obligations under section 15(d) of the Exchange Act arising solely from an offering of securities registered on this form may be met by filing with the Commission, under cover of Form 40-F, documents that are filed with the securities commission or equivalent regulatory authority in the registrant’s jurisdiction of incorporation. Registrant’s attention is directed, however, towards other provisions of the Exchange Act that may be applicable, and specifically to the provisions of sections 12(b) and 12(g) of the Exchange Act and Rules 10b-6 and 10b-7 under the Exchange Act.

B. Pursuant to Rule 42d-2(b) under the Trust Indenture Act of 1939 (the “Trust Indenture Act”) a registrant registering debt securities on this Form may apply for exemption from the U.S. trustee provisions of section 310(a) of that Act by so indicating on the facing page of this Form and including the information specified by Item (6) of Part II hereto.

Pursuant to Rule 4d-5 under the Trust Indenture Act, the application will be deemed to be granted unless, within seven days after such filing, the Commission orders a hearing thereon. Registrant’s attention is directed towards other provisions of the Trust Indenture Act that may be applicable.

C. The Commission’s rules on auditor independence as codified in Section 602 of the Codification of Financial Reporting Policies apply to all financial statements that are included in this registration statement.

D. Independent accountants reporting on financial statements included in the registration statement shall consider Canadian auditing guidelines pertaining to the Canada-U.S. reporting conflict with respect to contingencies and going concern considerations. If additional comments for U.S. readers are appropriate under these guidelines but are not included in the prospectus itself, those comments should be included with the legends required by Item 2 of Part I hereto. In addition, the accountant’s consent specifically should refer to any additional comments provided for U.S. readers.

Part I—Information Required To Be Sent to Shareholders

Item 1. Home Jurisdiction Document

The prospectus shall consist of the entire disclosure document or documents required to be delivered by the registrant in connection with the transaction pursuant to the laws of the jurisdiction in which the registrant is incorporated or organized or, where applicable, pursuant to the rules of any stock exchange upon which the issuer has any class of securities listed, or has applied for such listing. It need not include any documents incorporated by reference into such disclosure documents and not distributed to offerees pursuant to the laws of such jurisdiction. If any part of the document or documents to be sent to shareholders is in a foreign language, it shall be accomplished by a translation in English.

Item 2. Informational Legends

The following legends, to the extent applicable, shall appear on the outside front cover page of the prospectus:

"Prospective investors should be aware..."
"The enforcement by investors of civil liabilities under the federal securities laws may be affected adversely by the fact that the registrant is located in a foreign country, that some or all of its officers and directors are residents of a foreign country, that some or all of the underwriters or experts named in the registration statement are residents of a foreign country, that all or a substantial portion of the assets of the registrant and said persons are located outside the United States."

Item 3. List of Documents Filed with Commission

There shall be attached to the prospectus a list of all documents filed with the Commission as part of the registration statement.

Part II—Information Not Required To Be Sent to Shareholders

The exhibits specified below shall be filed as part of the registration statement. Exhibits shall be appropriately lettered or numbered for convenient reference.

(1) File any reports or information that in accordance with the requirements of the jurisdiction of the registrant must be made publicly available in connection with the transaction.

(2) File copies of any documents incorporated by reference into, or filed with any other regulatory authority concurrently with, the prospectus.

(3) If any accountant, engineer or appraiser, or any person whose profession gives authority to a statement made by him, is named as having prepared or certified any part of the offering document, or is named as having prepared or certified a report or valuation for use in connection with the offering document, the written consent of such person shall be filed.

If any such person is named as having prepared or certified any other report or valuation (other than a public official document or statement) which is used in connection with the registration statement, but who is not among the persons whose signatures are required by this item to be filed as an exhibit, said person shall sign the statement of eligibility of the trustee on Form T-5 or any purchases or sales of any security in connection with the securities to be registered, or in any administrative proceeding, civil suit or action or any administrative proceeding may be commenced by the service of process upon, and that service of an administrative subpoena shall be effectuated by service upon, such agent for service of process, and that the service as aforesaid shall be taken and held in all courts and administrative tribunals to be as valid and binding as if due personal service thereof had been made.

Signatures

Pursuant to the requirements of the Securities Act, the registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form F-9 and has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized.

(1) Any investigation or administrative proceeding conducted by the Commission; and

(2) Any civil suit or action brought against the registrant or to which the registrant has been joined as defendant or respondent, in any appropriate court in any place subject to the jurisdiction of any state or of the United States, where the investigation, proceeding or cause of action arises out of or relates to or concerns any offering made or purported to be made in connection with the securities registered pursuant to Form F-9 or any purchases or sales of any security in connection therewith, and stipulates and agrees that any such civil suit or action or administrative proceeding may be commenced by the service of process upon, and that service of an administrative subpoena shall be effectuated by service upon, such agent for service of process, and that the service as aforesaid shall be taken and held in all courts and administrative tribunals to be as valid and binding as if due personal service thereof had been made.

Notes:

The required documents are to be filed not later than the dates indicated.

A. The registration statement shall be signed by the registrant, its principal executive officer or officers, its principal financial officer, its controller or principal accounting officer, at least a majority of the board of directors or similar functions and its authorized representative in the United States. Where the registrant is a limited partnership, the registration statement shall be signed by a majority of the board of directors or similar functions and its authorized representative in the United States. Where the registrant is organized as a trust, the registration statement shall be signed by the trustee(s) on Form F-9 or any purchases or sales of any security in connection with the securities to be registered, or in any administrative proceeding, civil suit or action or any administrative proceeding may be commenced by the service of process upon, and that service of an administrative subpoena shall be effectuated by service upon, such agent for service of process, and that the service as aforesaid shall be taken and held in all courts and administrative tribunals to be as valid and binding as if due personal service thereof had been made.

B. The name of each person who signs the registration statement shall be typed or printed beneath his signature. Any person who occupies more than one of the specified positions shall indicate each capacity in which he signs the registration statement.

C. By signing this form, the registrant consents without power of Revocation that any administrative subpoena may be served, or any administrative proceeding, civil suit or civil action where the cause of action arises out of or relates to or concerns any offering made or purported to be made in connection with the securities registered pursuant to Form F-9 or any purchases or sales of any security in connection therewith, may be commenced against it in any administrative tribunal or in any administrative proceeding, in any place subject to the jurisdiction of any state or of the United States, by service of a subpoena or process upon the registrant’s designated agent.
Estimated average burden hours per response—2.0

(Exact name of Registrant as specified in its charter)

[Primary Standard Industrial Classification Code Number (if applicable)]

(L.R.S. Employer Identification Number (if applicable))

(Address and telephone number of Registrant’s principal executive offices)

(Name, address, including zip code, and telephone number, including area code, of agent for service)

(Approximate date of commencement of proposed sale of the securities to the public)

(Principal jurisdiction regulating this offering)

It is proposed that this filing will become effective (check appropriate box)

CALCULATION OF REGISTRATION FEE*

<table>
<thead>
<tr>
<th>Title of each class of securities to be registered</th>
<th>Amount to be registered</th>
<th>Proposed maximum offering price per unit</th>
<th>Proposed maximum aggregate offering price</th>
<th>Amount of registration fee</th>
</tr>
</thead>
</table>

*See general instruction II.D for rules as to calculation of the registration fee.

If, as a result of stock splits, stock dividends or similar transactions, the number of securities purporting to be registered on this registration statement changes, the provisions of Rule 416 shall apply to this transaction.

The Registrant hereby amend(s) this Registration Statement on such date or dates as may be necessary to delay its effective date until the Registrant shall file a further amendment which specifically states that this Registration Statement shall thereafter become effective in accordance with section 8(a) of the Securities Act of 1933 or the Registration Statement shall become effective on such date as the Commission, acting pursuant to said section 8(a), may determine.

General Instructions

I. Eligibility Requirements for Use of Form F-10

A. This Form F-10 may be used for the registration of securities under the Securities Act of 1933 (the "Securities Act").

B. Form F-10 is available to any registrant incorporated or organized under the laws of Canada, or any Canadian province or territory, that has been subject to the periodic reporting requirements of any securities commission or equivalent regulatory authority in Canada for a period of at least 36 calendar months immediately preceding the filing of the registration statement on this Form, and that is currently in compliance with such obligations. If (1) the aggregate market value of the common stock (including nonvoting common stock) of such registrant is (CN) $300 million or more; and (2) the aggregate market value of such common stock held by non-affiliates was, as of the end of the registrant’s most recent fiscal year, (CN) $75 million or more, provided, “That for the purposes of this Instruction, the term “affiliate” shall mean any person holding 10 percent or more of the common stock (including non-voting common stock) of the registrant.

Instruction: The market value of the registrant’s outstanding voting stock shall be computed by use of the price at which the stock was last sold, or the average of the bid and asked prices of such stock, in the principal market for such stock as of a date within 30 days prior to the date of filing.

C. This Form shall not be used if the registrant is an investment company, as defined in Section 3(c) of the Investment Company Act of 1940.

D. A registration statement on this Form shall be filed with the Commission simultaneously with the filing of the home jurisdiction document(s) accompanying such Form with the jurisdiction identified on the cover of the Form as the principal jurisdiction regulating the offering ("principal jurisdiction"). Pre-effective amendments to this Form should be filed simultaneously with the filing of additional or changed documents in the principal jurisdiction. In accordance with Rule 407, this registration statement shall be deemed effective for purposes of the Securities Act on the date on which the securities covered herein legally may be sold in the principal jurisdiction.

Any amendment to such home jurisdiction document(s) after the effective date of the registration statement shall be filed with the Commission as a post-effective amendment to this Form simultaneously with the filing of such document(s) with the principal jurisdiction. Such post-effective amendment shall be deemed effective for purposes of the Securities Act at such time as the amendment to the home jurisdiction document(s) legally may be used under the applicable law of such jurisdiction, in accordance with Rule 407.

Any amendment to a registration statement on this Form shall be filed under cover of an appropriate facing sheet, shall be numbered consecutively in the order in which it is filed, and shall indicate on the facing sheet the applicable registration form on which the amendment is prepared and the file number of the registration statement.

If, however, an amendment to the home jurisdiction document(s) is filed after effectiveness of the registration statement that increases the number of securities that may be sold thereunder, in lieu of filing a post-effective amendment thereto, a new registration statement shall be filed on this Form. As provided in Rule 438, the prospectus included in the new registration statement shall be deemed to include a prospectus covering unsold securities registered previously. If this is the case, the following legend shall appear at the bottom of the facing page of the registration statement: "This combined prospectus relates to registration statement[s] 33-[insert file numbers of previous registration statement(s)]."

If the registration statement or any post-effective amendment thereto relates to an offering that is not a contemporaneous offering, it shall become effective in accordance with Rule 467(b).

II. Application of General Rules and Regulations

A. The only Securities Act rules and regulations that apply to filings on this Form are those rules and regulations specifically referred to in the Form and Rule 407, which provides that in addition to the information expressly required to be included in the registration statement, there shall be added such further material information, if any, as may be necessary to make the required statements, in light of the circumstances under which they are made, not misleading.

A registration statement or amendment thereto shall be deemed to be filed on the proper form unless objection to the form is made by the Commission prior to the effective date.

B. Three copies of the complete registration statement and any amendments thereto, including exhibits and all other papers and documents filed as a part of the registration statement or any post-effective amendment thereto, shall be filed with the Commission at its principal office. Each copy shall be bound, stapled or otherwise compiled in one or more parts, without stiff covers. The binding shall be made on the side or stitching margin in such manner as to leave the reading matter legible. Three additional copies of the registration statement and any post-effective

[ ] pursuant to Rule 467(a) on the date on which the securities legally may be offered and sold in the registrant’s principal jurisdiction

[ ] pursuant to Rule 467(b) on (date) at (time) that is not more than 7 days after filing

Check if appropriate:

[ ] This filing constitutes an application for exemption under section 304(d) of the Trust Indenture Act of 1939 from Section 310 of that Act.

[ ] There are existing security holders under the indenture to which such application relates.
amendments thereto, similarly bound, also shall be filed. No other exhibits are required to be filed in any such additional copies.

C. At least one copy of every registration statement and any amendment thereto shall be signed manually by the persons specified herein. Unsigned copies shall be conformed.

D. At the time of filing this registration statement, the applicant shall pay to the Commission, by a United States postal money order, certified check, bank cashier’s checks or bank drafts, a fee of one five-hundredth of one per centum of the maximum aggregate price at which the securities are proposed to be offered in the United States, but in no case shall such fee be less than $50.

E. Subject to the requirements of Item 1 of Part I, if any part of the registration statement or a post-effective amendment thereto, or any exhibit or other paper or document filed as part of the registration statement or post-effective amendment, is in a foreign language, it shall be accompanied by a summary, version or translation in the English language. The text of the original of the registration statement or any post-effective amendment thereto shall be numbered sequentially (including any internal numbering which otherwise may be present) by handwritten, typed, printed or other legible form of notation from the first page of the document through the last page of that document and any exhibits or attachments thereto. Further, the total number of pages contained in a numbered original shall be set forth on the first page of the document.

F. Any change to the name or address of a registrant’s agent for service shall be communicated promptly in writing to the Commission, referencing the file number of the registrant.

III. Compliance with Exchange Act, Trust Indenture Act and Auditor Independence and Reporting Requirements

A. Pursuant to Rule 15d-4 under the Exchange Act, reporting obligations under section 15(d) of the Exchange Act arising solely from an offering of securities registered on this Form may be satisfied by filing with the Commission, under cover of Form 40-F, documents that are filed with the securities commission or equivalent regulatory authority to the jurisdiction document should be supplemented to the extent necessary to satisfy the requirements of Item 18 of Form 20-F under the Exchange Act.

B. Pursuant to Rule 4d-2(b) under the Trust Indenture Act of 1939 (the “Trust Indenture Act”), a registrant registering debt securities on this Form may apply for exemption from the U.S. trustee provisions of section 312(b) and 312(g) of the Exchange and Rules 12b-1 and 12b-7 under the Trust Indenture Act.

C. The Commission’s rules on auditor independence as codified in section 606 of the Codification of Financial Reporting Policies apply to all financial statements that are included in this registration statement.

D. Independent accountants reporting on financial statements included in the registration statement should consider Canadian auditing guidelines pertaining to the Canada-U.S. reporting conflict with respect to contingencies and going concern considerations. If additional comments for U.S. readers are appropriate under those guidelines but are not included in the prospectus itself, those comments should be included with the legends required by Item 2 of Part I herein. In addition, the accountant’s consent specifically should refer to any additional comments provided for U.S. readers.

Part I—Information Required To Be Sent to Shareholders

Item 1. Home Jurisdiction Document

The prospectus shall include the entire disclosure document or documents required to be delivered by the registrant in connection with the transaction pursuant to the laws of the jurisdiction in which the registrant is incorporated or organized where applicable, pursuant to the rules of any stock exchange upon which the issuer has any class of securities listed, or has applied for such listing. It need not include any documents incorporated by reference into such disclosure documents and not distributed to offerees pursuant to the laws of such jurisdiction. If any part of the document or documents to be sent to shareholders is in a foreign language, it shall be accompanied by a translation in English.

Item 2. Additional Information

The following information shall also be provided to offerees as part of the prospectus:

(a) Financial Statements.

Financial statements included in the home jurisdiction document shall be supplemented to the extent necessary to satisfy the requirements of Item 18 of Form 20-F under the Exchange Act.

(b) Description of Business.


Item 3. Informational Legends

The following legends, to the extent applicable, shall appear on the outside front cover page of the prospectus in bold-face roman type at least as high as ten-point modern type and at least two points leaded:

“This offering is made by a foreign issuer, and while the issuer is subject to disclosure requirements in its own country, prospective investors should be aware that these requirements are different from those of the United States. Financial statements included herein, if any, have not been prepared in accordance with the accounting principles generally accepted accounting principles and thus may not be comparable to financial statements of United States companies.

“Prospective investors should be aware that the acquisition of the securities described herein may have tax consequences both in the United States and in the country of the registrant. Such consequences for investors who are resident in, or citizens of, the United States may not be described fully herein.

“Prospective investors of civil liabilities under the federal securities laws may be affected adversely by the fact that the registrant is located in a foreign country, that some or all of its officers and directors are residents of a foreign country, that some or all of the underwriters or experts named in the registration statement are residents of a foreign country and that all or a substantial portion of the assets of the registrant and said persons are located outside the United States.”

Item 4. List of Documents Filed with Commission

There shall be attached to the prospectus a list of all documents filed with the Commission as part of the registration statement.

Part II—Information Not Required To Be Sent to Shareholders

The exhibits specified below shall be filed as part of the registration statement. Exhibits shall be appropriately lettered or numbered for convenient reference.

(1) File any reports or information that in accordance with the requirements of the jurisdiction of the registrant must be made publicly available in connection with the transaction.

(2) File copies of any documents incorporated by reference into, or filed with any other regulatory authority concurrently with, the prospectus.

(3) If any accountant, engineer or appraiser, or any person whose profession gives authority to a statement made by him, is named as having prepared or certified any part of the offering document, or is named as having prepared or certified a report or valuation for use in connection with the offering document, the written consent of such person shall be filed.

If any such person is named as having prepared or certified any other report or valuation (other than an official document or statement) which is used in connection with the registration statement, but is not named as having prepared or certified such report or valuation for use in connection with the registration statement, the written consent of such person also shall be filed unless the Commission dispenses with such filing as impracticable or as involving undue hardship in accordance with Rule 437.

Any other consent required by Rules 439 or 438 also shall be filed. Every amendment relating to a certified financial statement shall include the consent of the certifying accountant to the use of his certificate in connection with the amended financial statements in the registration statement or prospectus and to being named as having certified such financial statements.

Note: The consents required by this item shall specifically indicate consent regarding use of the report or valuation in the
registration statement filed in the United States.

(4) If any name is signed to the registration statement or report pursuant to power of attorney, manually signed copies of such power of attorney shall be filed. If the name of any officer signing on behalf of the registrant is signed pursuant to a power of attorney, certified copies of a resolution of the corporation's board of directors authorizing such signature also shall be filed.

(5) File a copy of any indenture relating to the registered securities. If such indenture is to be qualified under the Trust Indenture Act, it should include or be accompanied by (1) a cross-reference sheet to the location in the indenture of information included pursuant to sections 310-318(a) of the Trust Indenture Act and (2) a table of contents made by the such indenture is to be qualified under the Trust Indenture Act, also file the statement of eligibility of the trustee on Form T-1 and, if applicable, for individual trustee(s) on Form T-5.

(6) If debt securities are to be registered and an exemption from the U.S. trustee provisions of Section 310(b) of the Trust Indenture Act is sought pursuant to General Instruction ULB, or has been sought with respect to the securities to be registered, the registrant shall file as an exhibit the information specified in Items 4, 5, 6, 7, 8, 9 (if applicable), and 10 of Form T-5, or shall file as an exhibit or incorporate by reference any Form T-5 filed with the Commission not more than one year prior to the date of this filing.

Part III—Undertakings and Consent to Service of Process

1. Undertakings

a. Registrant undertakes to make available, in person or by telephone, representatives to respond to inquiries made by the Commission staff, and to furnish promptly, when requested to do so by the Commission staff, information relating to the securities registered pursuant to Form F-10 or to transactions in said securities.

b. If the offering registered on this Form is not being made simultaneously in Canada, and will continue for a period in excess of 30 days from the date of initial effectiveness of this registration statement, the registrant undertakes to file as a post-effective amendment to this registration statement, during any period in which offers or sales are being made, any amendment to the home jurisdiction document(s) accompanying this Form that would be required by Canadian law had the offering been made contemporaneously in Canada.

2. Consent to Service of Process

The registrant shall, at the time of filing Form F-10, furnish to the Commission, on Form F-X, a written irrevocable consent and power of attorney which designates an agent upon whom may be served any process, pleadings, subpoenas, or other papers in

(1) Any investigation or administrative proceeding conducted by the Commission; and

(2) Any civil suit or action brought against the registrant or to which the registrant has been joined as defendant or respondent, in any appropriate court in any place subject to the jurisdiction of any state or of the United States.

where the investigation, proceeding or cause of action arises out of or relates to or concerns any offering made or purported to be made in connection with the securities registered pursuant to Form F-10 or any purchases or sales of any security in connection therewith, and stipulates and agrees that such civil suit or action or administrative proceeding may be commenced by the service of process upon, and that service of an administrative subpoena shall be effectuated by service upon, said agent for service of process, and that the service as aforesaid shall be taken and held in all courts and administrative tribunals to be as valid and binding as if due personal service thereof had been made.

Signatures

Pursuant to the requirements of the Securities Act, the registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form F-10 and has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized. in the City of __________, __________.

Registrant

By [Signature and Title]

Pursuant to the requirements of the Securities Act, this registration statement has been signed by the following persons in the capacities and on the dates indicated.

[Signature]

[Name and Title] (Date)

Instructions

A. The registration statement shall be signed by the registrant, its principal executive officer or officers, its principal financial officer, its controller or principal accounting officer, at least a majority of the board of directors or persons performing similar functions and its authorized representative in the United States. Where the registrant is a limited partnership, the registration statement shall be signed by a majority of the board of directors of any corporate general partner signing the registration statement.

B. The name of each person who signs the registration statement shall be typed or printed beneath his signature. Any person who occupies more than one of the specified positions shall indicate each capacity in which the registration statement is signed.

C. By signing this form, the registrant consents without power of revocation that any administrative subpoena may be served, or any administrative proceeding, civil suit or civil action where the cause of action arises out of or relates to or concerns any offering made or purported to be made in connection with the securities registered pursuant to Form F-10 or any purchases or sales of any security in connection therewith, may be commenced against it in any administrative tribunal or in any appropriate court in any place subject to the jurisdiction of any state or of the United States by service of said subpoena or process upon the registrant's designated agent.
$390 million or more in the case of all other reporting requirements. The aggregate market value of such common stock held by non-affiliates shall be (CN) $75 million or more, provided. That for the purposes of this Instruction, the term "affiliate" shall mean any person holding 10 percent or more of the common stock (including non-voting common stock) of the registrant.

Instructions

1. A security is "investment grade" if at the time of filing this form, at least one nationally recognized statistical rating organization (as that term is defined Rule 15a-3—1(b)(2)(vi)(F) under the Exchange Act (§ 240.15a-3—1(b)(2)(vi)(F) of this chapter)) has rated the security in one of its generic rating categories that signifies investment grade; typically, the four highest rating categories (within which there may be subcategories or gradations indicating relative standing) signify investment grade.

2. The market value of the registrant's outstanding voting stock shall be computed by use of the price at which the stock was last sold, or the average of the bid and asked prices of such stock, in the principal market for such stock, at a date within 30 days prior to the date of filing.

3. A report on this Form shall be filed at the same time the information included herein is filed with the securities commission or equivalent regulatory authority of the jurisdiction of incorporation of the registrant.

4. Registrants not previously having filed a report on Form 20-F and having filed Form F-X are required to file a Form F-X with the Commission on this Form all information specified in the Instruction to this paragraph, as of the date on which this report is filed, that the registrant (i) makes or is required to make public pursuant to the law of the jurisdiction of its domicile or in which it is incorporated or organized, (ii) files or is required to file with a stock exchange on which its securities are traded and which was made public by such exchange, or (iii) distributes or is required to distribute to its security holders.

5. Any change to the name or address of a registrant shall be communicated promptly in writing to the Commission, referencing the file number of the registrant.

B. Information To Be Filed on this Form

(1) Registrants shall file with the Commission on the Commission on this Form all information specified in the Instruction to this paragraph that the registrant (i) makes or is required to make public pursuant to the law of the jurisdiction of its domicile or in which it is incorporated or organized, (ii) files or is required to file with a stock exchange on which its securities are traded and which was made public by such exchange, or (iii) distributes or is required to distribute to its security holders.

Instruction: The information required to be filed under paragraph (1) of this section is information material to an investment decision such as: the financial condition or results of operations; changes in business; acquisitions or dispositions of assets; issuance, redemption or acquisitions of securities; changes in management or control; the granting of options or the payment of other compensation to directors or officers; and transactions with directors, officers or principal security holders.

(2) Registrants reporting on this Form pursuant to the provisions of section 13(a) or 15(d) of the Exchange Act shall, when filing with the Commission any annual report required by any Canadian federal and/or provincial or territorial securities commission or equivalent agency, additionally furnish financial statements in the form required by Item 37 of Schedule 13E-4F under the Exchange Act (§ 240.13E-4F of this chapter) unless this Form is filed with respect to non-convertible investment grade debt or preferred stock in which case no such financial statements are required. Required is filed with respect to a reporting obligation under section 16(d) that arose solely as a result of a filing made on Form F-7, F-8, F-9 or F-10, in which case no such financial statements are required.

Signatures

Pursuant to the requirements of the Exchange Act, the registrant certifies that it meets all of the requirements for filing on Form 20-F and has duly caused this report to be signed on its behalf by the undersigned, thereto duly authorized.

Registrant

By [Signature and Title]*

Date

Form F-X—Appointment of Agent for Service of Process

I. Form F-X shall be filed with the Commission: (a) By any issuer registering securities on Forms F-2, F-7, F-8, F-9 or F-10, or Registering or Filing Periodic Reports on Form 40-F, or by any Person Filing Tender Offer Documents on Schedules 13E-4F, 14D-1F or 14D-9F U.S. Securities and Exchange Commission, Washington, D.C. 20549

OMB APPROVAL

OMB Number: 3235-040K

Expires: Approval Pending

Form-------on (Date)_________ 

Estimated average burden hours per response—2.0

General Instructions

I. Form F-X shall be filed with the Commission: (a) By any issuer registering securities on Forms F-2, F-7, F-8, F-9 or F-10 under the Securities Act of 1933; (b) By any issuer registering securities or filing periodic reports on Form 40-F under the Securities Exchange Act of 1934 if it has not previously filed a Form F-X in connection with the class of securities registered or in relation to which a report is filed on Form 40-F; and (c) by any issuer or other person filing tender offer documents on Schedules 13E-4F, 14D-1F or 14D-9F under the Securities Exchange Act of 1934.

II. Form F-X shall be filed in duplicate original.

1. Name of issuer or person:

2. This is [select one]

[ ] an original filing for the above issuer or person

[ ] an amended filing for the above issuer or person

3. The issuer or person is incorporated or organized under the laws of [Name of the jurisdiction under whose laws the issuer or person is incorporated or organized] and has its principal place of business at [Address in full in the United States] as the agent of the issuer or person upon whom may be served any process, pleadings, subpoenas, or other papers in

(1) any investigation or administrative proceeding conducted by the Commission; and

(2) any civil suit or action brought against the issuer or person or to which the issuer or person has been joined as defendant or respondent, in any appropriate court in any place subject to the jurisdiction of any state or of the United States, where the investigation, proceeding or cause of action arises out of or relates to or concerns (a) any offering made or purported to be made in connection with the securities registered by the issuer on Form [Name of Form on (Date)] or any purchases or sales of any security in connection therewith; or (b) any tender offer for the securities of a Canadian issuer with respect to which filings are made with the Commission on Schedules 13E-4F, 14D-1F or 14D-9F. The issuer or person stipulates and agrees that any such civil suit or action or administrative proceeding may be commenced by the service of process upon, and that service of an administrative subpoena shall be effected by service upon, such agent for service of process, and that the service as aforesaid shall be taken and held in good courts and administrative tribunals to be as valid and binding as if due personal service thereof had been made.

5. The issuer or person stipulates and agrees, for as long as any of the securities described above are outstanding, to appoint a successor agent for service of process and file an amended Form F-X if the issuer or person discharges the Agent or the Agent is unwilling or unable to continue to accept service on behalf of the issuer. The issuer or person or to which the issuer or person or to which the Commission promptly in writing of any change to the Agent's name or address. The issuer or person certifies that it has duly caused this power of attorney, consent, stipulation and agreement to be signed on its behalf by the undersigned, thereunto duly authorized, in the city of [Province or State of] this day of 19 A.D.

Issuer or Person:

By [Signature and Title]

This statement has been signed by the following persons in the capacities and on the dates indicated.

[Signature] [Title] [Date]

Instructions

1. The power of attorney, consent, stipulation and agreement shall be signed by any person filing this Form, and, if such person is an issuer, by the Issuer, its principal executive officer or officers, at least a majority of the board of directors or persons performing similar functions, and its
authorized Agent in the United States. Where the issuer or person is a limited partnership, the power of attorney, consent, stipulation and agreement shall be signed by a majority of the board of directors of any corporate general partner signing the power of attorney, consent, stipulation and agreement.

2. The name of each person who signed Form P-K shall be typed or printed beneath his signature. Any person who occupies more than one of the specified positions shall indicate each capacity in which he signs Form P-K. Each copy shall be manually signed by the persons specified in Instruction 1. Where any name is signed pursuant to a board resolution, a certified copy of the resolution shall be filed with each copy of this Form. If any name is signed pursuant to a power of attorney, a manually signed copy of each power of attorney shall be filed with each copy of the Form.

NOTE: The persons executing this power of attorney, consent, stipulation and agreement should appear before a person authorized to administer acknowledgements in the jurisdiction in which it is executed and acknowledge that they executed it on behalf of the issuer or person as its free and voluntary act. The acknowledgement should be in the form prescribed by the law of the jurisdiction in which it is executed. The form of acknowledgement suggested below should be used only if consistent with the requirements of the law of such jurisdiction.

The failure of any acknowledgement to meet applicable requirements shall not affect the validity or effect of the foregoing power of attorney, consent, stipulation and agreement.

Province (or State) of County of

1. (Name) a (Official position of person administering acknowledgement) in and for (said County in) the Province (or State) aforesaid, certify that the foregoing named persons personally appeared before me this day, stated that they are the same persons named in this instrument, that they serve in the capacity stated in this instrument, that they are authorized to execute this instrument for the issuer or person, and that they signed and sealed this instrument for and on behalf of the issuer or person as its free and voluntary act, for the uses and purposes set forth.

Given under my hand and seal this day of __________ 19_____ A.D. (Seal)

Signature of official:

Official position:

My Commission (or Office) expires:

(Date)

Application for Exemption Pursuant to Rule 4d-1 Under the Trust Indenture Act of 1939

U.S. Securities and Exchange Commission,
Washington, DC 20549

Form T-5

OMB APPROVAL

OMB Number: 3235-0400

Expires: Approval Pending

Estimated average burden hours per response = 2.0

(Name of applicant)

(Jurisdiction of incorporation)

(Address and telephone number of Applicant's principal executive offices)

(Name, address and telephone number of agent for service)

(Exact name of trustee as specified in its charter)

(Jurisdiction of incorporation)

(Station and telephone number of principal executive offices)

(Name, address and telephone number of agent for service)

General Instructions

1. Rule as to use of Form T-5. Form T-5 shall be used for applications for exemption filed pursuant to Rule 4d-1 under the Trust Indenture Act of 1939 (the "Act") [17 CFR 280.4d-1], except those filed pursuant to subparagraph (b) of Rule 4d-2 [17 CFR 280.4d-2].

2. General Rules and Regulations. The General Rules and Regulations under the Act contain provisions governing applications on this Form. Attention is particularly directed to Rules 4d-1 through 4d-6 under section 304(d) of the Act [17 CFR 280.4d-1 through 280.4d-6].

3. Incorporation by Reference. Attention is directed to Rules 7a-26 through 7a-32 [17 CFR 280.7a-26 through 280.7a-32], inclusive, regarding incorporation by reference. In addition to matters which may be incorporated by reference pursuant to Rules 7a-26 [17 CFR 280.7a-26] and 7a-29 [17 CFR 280.7a-29], the applicant may incorporate by reference, by answer to any item of the form, any item or items of a registration statement, or application for qualification of an indenture, filed with the Commission.

4. Change of Agent's Name or Address. The applicant should promptly inform the Commission in writing of any change to the name or address of the applicant's agent for service.

Item 1: Specify which of Forms F-7, F-8, F-9 or F-10 the applicant is eligible to use.

Item 2: State whether the applicant expects to issue the securities that are the subject of this application within one year from the date of the application, and the basis for such expectation.

Instruction. If the securities that are the subject of this application are outstanding, a statement to that effect shall be made.

Item 3: Describe the securities that are the subject of the application and identify the indenture under which issued or to be issued.

Instructions

1. There shall be given such information as will indicate the type and general character of the securities. The applicant may provide a non-specific description of the securities, such as "unsecured debentures or notes."

2. The application may relate to different types or classes of securities issued or to be issued under different indentures, but appropriate description should be given, such as: "unsecured debentures to be issued under an indenture between the applicant and trustee x." and "mortgage bonds to be issued under an indenture and deed of trust between the applicant and trustee y."

3. To the extent known at the time of application, indicate whether the issue matures serially, a brief indication of the serial maturities, such as "maturings serially from 1990 to 1995" if the payment of principal or interest is contingent, an appropriate indication of such contingency; a brief indication of the priority of issue and, if convertible or callable, a statement to that effect. If the securities are or will be secured by the mortgage or pledge of property, to the extent known, identify the property and indicate its general location.

Item 4: Give the maximum aggregate principal amount of the securities proposed to be issued under the indenture or indentures to which reference is made in response to Item 3. Give the maximum aggregate principal amount of the securities that are the subject of the application.

Instruction. If the securities that are the subject of the application have been or will be issued under more than one indenture, appropriate details shall be given.

Item 5: Indicate whether this application relates to securities issued or issuable under an indenture under which any other securities are outstanding. If any securities are outstanding under the indenture, appropriate details shall be given as to compliance with Rule 4d-4 [17 CFR 280.4d-4].

Item 6: File the following information as to each trustee who proposes to serve as trustee with respect to the securities specified in the application:

(a) The name of the trustee and the address of its principal executive offices.

(b) The form and date of organization.

(c) The name and address of each examining or supervising authority to which it is subject.

(d) Whether it is authorized to exercise corporate trust powers.

(e) The amount of the combined capital and surplus of the trustee as of the end of its most recent fiscal year.

Item 7: Give a brief description of the nature and extent of supervision and examination of the trustee by regulatory authorities in the jurisdiction in which the trustee is organized and doing business.

Item 8: If the applicant does not desire an opportunity for a hearing it may include in the application the waiver and request provided for in Rule 4d-5 [17 CFR 280.4d-5].

Item 9: Listing of Exhibits. List below all exhibits filed as a part of this application.

Signature

The applicant, __________, organized and existing under the laws of __________, has duly caused this application to be signed on its behalf by the undersigned, thereunto duly authorized, all in the City of __________ and State (Province or Territory) of __________, on the __________ day of __________ 19______.

(Applicant)

[Name and Title] By:

Instruction as to Signature. The name of each person signing the application shall be typed or printed beneath the signature.
Subject to rules permitting incorporation of exhibits by reference, the following exhibits are to be filed as part of the application. Such exhibits shall be appropriately lettered or numbered for convenient reference. Exhibits incorporated by reference may be referred to by the designation given in the previous filing. Where the exhibits are incorporated by reference, the reference shall be made in the list of exhibits called for under Item 8.

1. A copy of the articles of association of the trustee is now in effect.
2. A copy of the certificate of authority of the trustee to commence business, if not contained in the articles of association.
3. A copy of the authorization of the trustee to exercise corporate trust powers, if such authorization is not contained in the documents specified in paragraph (1) or (2) above.
4. A copy of the existing bylaws of the trustee, or instructions corresponding thereto.
5. A copy of each indenture to which reference is made in Item 3, if available at the time of application.
6. A copy of the latest report of condition, if available at the time of application.
7. The consent of the trustee and power of attorney required by Rule 4d-6 [17 CFR 250.4d-6].

Appendix B—Multijurisdictional Disclosure System; Canada

The Ontario Securities Commission (the "OSC") and the Commission des valeurs mobilières du Québec (the "CVMQ") (collectively, the "Commissions") are publishing for comment an outline of a multijurisdictional disclosure system that would permit single-jurisdiction disclosure of securities offerings in Canada using disclosure documents prepared according to requirements of U.S. regulatory authorities. Simultaneously with the publication of this release, the Securities and Exchange Commission (the "SEC") is publishing for comment a multijurisdictional disclosure system. The Commissions and SEC are inviting comments on two alternative methods of dealing with multijurisdictional offerings: the "common prospectus approach" and the "reciprocal prospectus approach". A majority of commenters favoured the reciprocal approach. The OSC and the CVMQ in consultation with the SEC are preparing Rules and Schedules that would permit Canadian issuers that, depending on the offering, meet market value, public float and U.S. reporting history tests to distribute securities in Canada using disclosure documents prepared according to requirements of U.S. regulatory authorities. Simultaneously with the publication of this release, the Commissions and SEC are publishing for comment proposed Rules, Forms and Schedules that would permit Canadian issuers that, depending on the offering, meet market value, public float and Canadian reporting history tests to register securities in the U.S. using disclosure documents prepared according to the requirements of Canadian regulatory authorities. Canadian issuers meeting tests of market value and public float would be able to use U.S. periodic disclosure requirements. In addition, Canadian issuers would be able to use Canadian documents to meet proxy requirements for certain solicitations and to meet insider reporting requirements.

The multijurisdictional disclosure system further would permit third party and issuer share exchange and cash take-over bids/ tender offers to be made in compliance with the provisions of applicable take-over bid regulations in the target's home jurisdiction where less than 20 percent of the class of securities subject to the offer were held of record by residents of the other jurisdiction, whether Canada or the U.S.

Date for Submission of Comments: October 31, 1989

Reference:

Pamela Hughes, Deputy Director, Legal, Corporate Finance Branch, Ontario Securities Commission, (118) 563-3003. Rosetta Gagliardi, Direction de l'information, Commission des valeurs mobilières du Québec, (514) 873-5320.

I. Introduction

A. Summary

Developments in the international securities markets and an increase in the number of securities offerings made across national boundaries have emphasized the problems caused to issuers by compliance with the securities laws of multiple jurisdictions. Attempting to comply with the disclosure provisions of the securities regulators in multiple countries adds expense and additional time. The additional time may substantially increase cost, since conditions advantageous to the issuer may prevail in the capital markets only for a limited period. Rather than comply with the requirements of regulators in more than one country, issuers may choose to exclude certain jurisdictions from their offerings, thus excluding investors in that jurisdiction from investment opportunities.

In 1985, the Securities and Exchange Commission ("SEC") issued Securities Act Release No. 8568 "Facilitation of Multinational Securities Offerings" requesting comments on two alternative methods of dealing with multijurisdictional offerings: the "common prospectus approach" and the "reciprocal prospectus approach". A majority of commenters favoured the reciprocal approach. The SEC and the CVMQ in consultation with the SEC are preparing Rules and Schedules that would permit Canadian issuers that, depending on the offering, meet market value, public float and Canadian reporting history tests to register securities in the U.S. using disclosure documents prepared according to the requirements of U.S. regulatory authorities. Canadian issuers would be able to use Canadian documents to meet proxy requirements for certain solicitations and to meet insider reporting requirements.

The multijurisdictional disclosure system further would permit third party and issuer share exchange and cash take-over bids/tender offers to be made in compliance with the provisions of applicable take-over bid regulations in the target's home jurisdiction where less than 20 percent of the class of securities subject to the offer were held.
funds in Canada or investment companies required to register under the U.S. Investment Company Act of 1940.

Canadian companies are frequent issuers in the U.S. capital markets. In 1987 and 1988, Canadian issuers made a total of 124 public offerings in the United States for an aggregate total of $10,084,287,000 of which $6,095,023,000 was equity. Canadian companies also have made use of the U.S. shelf registration system. Over $1,761,622,000 of debt securities have been registered by Canadian issuers for sale under SEC Rule 415 companies also have made use of the U.S. shelf registration system. Over $1,761,622,000 of debt securities have been registered by Canadian issuers for sale under SEC Rule 415 in the last three years. As of June 30, 1989, there were 21 Canadian issuers listed on the New York Stock Exchange, 36 on the American Stock Exchange and 146 on the National Association of Securities Dealers’ Automated Quotation system (“NASDAQ”).

C. Mutual Recognition and Harmonization

Efficiency of the capital-raising process would be enhanced greatly by permitting an issuer to prepare one disclosure document for use in each jurisdiction in which it chooses to sell securities. There are two primary approaches to achieve this goal:

- harmonization of disclosure standards and mutual recognition of disclosure standards established in other jurisdictions.

Under a harmonization approach, participating jurisdictions would agree upon a set of disclosure requirements that would be applicable in each jurisdiction, with the result that a disclosure document prepared pursuant to the requirements of one participating jurisdiction would comply automatically with the requirements of all other participating jurisdictions. In addition to reducing costs, a prime benefit of such a system would be to provide comparability of information from issuer to issuer and country to country.

Mutual recognition, on the other hand, would enable an issuer to prepare a disclosure document according to the requirements of its home jurisdiction, and to have that document accepted for securities offerings in every other participating jurisdiction. Mutual recognition does not necessarily ensure comparability from issuer to issuer and country to country.

As proposed, the multijurisdictional disclosure system is a hybrid of the two approaches. While it is based on the concept of mutual recognition, the participants will be those jurisdictions whose disclosure systems, while different in detail, in substance provide investors with information to make an informed investment decision and financial statements of relevance and reliability. The existence of a well-developed, sophisticated and well-regulated system for administering these requirements is also critical, as the Commission will rely primarily on foreign disclosure requirements, application of disclosure standards and day-to-day enforcement of those standards.

II. The Proposed System

A. Overview and Purpose

In proposing adoption of the system, the Commissions are taking a first step rather than providing for multijurisdictional registration and disclosure in all cases. Limiting the system to a relatively limited number of transactions and issuers will enable the regulators to monitor use of the system and to address potential problems. In a variety of transactions, a greater number of issuers and other jurisdictions may be added.

The system as presently proposed would extend to debt and equity offerings by an "substantially" identical to specified rights and exchange offers. All issuers making such offers in Ontario or Quebec pursuant to the system would be required to have three-year reporting histories with the SEC and to be in compliance with the reporting requirements of the SEC at the time of filing. Issuers would also be required, except in the case of rights offerings, to meet tests of minimum market value or public float. The system also would permit compliance with the Exchange Act to suffice for compliance with the Ontario Act. Canadian issuers for sale under SEC Rule 415 in the last three years. As of June 30, 1989, there were 21 Canadian issuers listed on the New York Stock Exchange, 36 on the American Stock Exchange and 146 on the National Association of Securities Dealers’ Automated Quotation system (“NASDAQ”).

The purpose of the “substantial” designation is to single out issuers whose size is such that the market operates efficiently in respect of their securities. Such issuers generally have a wide market following and the marketplace is in a position to set a price on their securities based on all available information. The Commissions have distinguished between investment grade debt and preferred shares, and other securities in determining the availability of total reliance on U.S. disclosure. A “substantial” issuer is defined as one that has a market value of at least U.S. $150 million in the context of investment grade debt and preferred shares, and U.S. $300 million in the context of other securities.

The Commissions are proposing to rely completely on U.S. disclosures in the case of investment grade debt and preferred shares. Investment grade debt and preferred shares would be defined as in Paragraph C.1 and the schedule to O.S.C. Policy Statement 5.6 and under Quebec Act 40 or 50 percent or should there be no limit at all? Rights offerings to Ontario and Quebec issuers who already own the securities of the issuer are particularly appropriate for multijurisdictional registration. Investors reasonably could be expected to proceed to make a further investment based on the same type of information that they relied upon when they bought the securities in the secondary market. Consistent with this theory, multijurisdictional registration for rights offerings could be made available to a larger class of issuers than those designated "substantial". Comment is requested as to whether rights offers should be permitted to be made pursuant to the system in the event that more than 20 percent of the subject securities were held of record by Canadian residents. For example, should the limit be 30, 40 or 50 percent or should there be no limit at all? In the case of exchange offers, it similarly seems appropriate to facilitate distribution of securities in Ontario and Quebec so that domestic investors are not denied rights of value that are offered to all other holders of the same class of securities. On the other hand, in non-issue exchange offers, unlike
The multi-jurisdictional registration system is proposed to extend to exchange offers with high shareholder interests in the targeted class. U.S. participants making exchange offers ("bidders") would be required to have a public float of (U.S.) $75 million and have a three-year reporting history with the SEC.

In the case of exchange offers, a decision to extend offers to Ontario and Quebec investors depends not on the application of Ontario and Quebec disclosure requirements, but rather on the Canadian corporation being held of record by Canadian shareholders. The take-over bid regulation must be extended to Ontario and Quebec residents, then, pursuant to proposed rules, the U.S. tender offer must be extended to Ontario and Quebec shareholders on the same terms as made to the U.S. target shareholders residing in Ontario and Quebec.

Rather than protecting Ontario and Quebec investors, the application of Ontario and Quebec disclosure requirements for U.S. issuers conducting tender offers for the shares of U.S. target companies may be deterred from extending both exchange and cash offers to target corporations held of record in Ontario and Quebec by costs attendant to compliance with Ontario's and Quebec's applicable take-over bid rules and thus exclude Ontario, Quebec and other Canadian investors from their tender offers.

The proposed system would work as follows: when (1) Ontario and/or Quebec constitute the primary jurisdiction for a bid; and (2) less than 20% of the securities of the target corporation are held of record by U.S. residents, then, pursuant to proposed requirements of the SEC under the system, the bid must be extended to all U.S. shareholders on the same terms as made to Ontario and/or Quebec shareholders. The bid must be made in compliance with Ontario and/or Quebec law.

Security, when (1) the U.S. constitutes the primary jurisdiction for the tender offer; and (2) less than 20% of the securities of the target corporation are held of record by Canadian residents, then, pursuant to proposed requirements of the SEC under the system, the U.S. tender offer must be extended to Ontario and/or Quebec shareholders on the same terms as made to U.S. shareholders. The tender offer must be made in conformity with the Exchange Act.

The multi-jurisdictional system would reduce disincentives to the inclusion of Canadian shareholders in predominantly U.S. cash or exchange offers where less than 20 percent of the subject class was held of record by Canadian residents. The U.S. tender offer regulations are generally comparable in most respects to those prescribed by the Ontario Act and the Quebec Act, the regulation made thereunder and the Commissions' policy statements, holders of shares in U.S. companies residing in Ontario or Quebec will not be unduly disadvantaged by comparison with Ontario or Quebec shareholders in domestic companies. To minimize any potential securities law, nationality of a bidder in a U.S. tender offer would not determine availability of the system. Thus, Canadian and U.S. bidders for a U.S. target would be governed by the same tender offer regulations. As with rights offerings, multi-jurisdictional registration would be available where the receiving country's investors do not own more than 20% of the shares of the targeted class. U.S. participants making exchange offers ("bidders") would be required to have a public float of (U.S.) $75 million and have a three-year reporting history with the SEC.

The aim of the multi-jurisdictional disclosure system is to ensure that the information incorporated by reference into the prospectus must also be filed with the Commissions contemporaneously with the filing with the SEC. Thus, the proposed rules are subject to section 70 and section 126 liability under the Ontario Act and all other provisions of the securities laws applicable to a prospectus filed under the Ontario and Quebec Acts. Moreover, the prospectus would be in the public files, available for public review.

The issuer would be required to add to the prospectus legends warning investors that the investment may have tax consequences in the issuer's jurisdiction, that investors may have to pursue remedies for any securities law violation against persons and assets located in the issuer's jurisdiction, and that any financial statements are prepared in accordance with U.S. accounting standards. The issuer would also be required to add a description of purchasers' statutory rights of rescission and damages and issuer's and underwriters' certificates prepared in accordance with Ontario and Quebec requirements.

The prospectus would be accompanied by a consent to service of process and appointment of an Ontario and a Quebec person as agent for process.

Where debt securities are to be distributed by a U.S. issuer, issuers would be required to comply with the trust indenture provisions of the Business Corporations Act, 1992 ("OBCA"). The Commission intends to issue a blanket ruling pursuant to ss. 40(4) of the OBICA to permit U.S. issuers of debt pursuant to the system to use solely a U.S. trustee.

Prospectuses on the proposed forms must be filed with the Commissions on the same day as the filing of the registration statement with the SEC. Any post-effective amendment similarly must be filed on the same day with the Commissions as an amendment.

A prospectus prepared in connection with a contemporaneous offering in the issuer's home jurisdiction and the receiving jurisdiction would be issued a final receipt on the date the securities legally could be sold in both home jurisdictions. The receiving jurisdiction would be issued a final receipt in Ontario or declared effective in the U.S. seven days after the date of filing of the prospectus in the receiving jurisdiction. A Canadian issuer making an offering solely in the U.S. would file the registration statement filed with the SEC contemporaneously with the Commissions pursuant to the issuer's continuous disclosure obligations. The Commissions specifically request comment as to whether the procedures outlined are likely to result in Canada issuers that would otherwise have offered securities in Canada choosing to offer only in the United States. Registrants making a delayed or continuous debt or equity offering in the U.S. pursuant to Rule 415 (the shelf registration system) would be able to make a contemporaneous offering in Canada pursuant to the multi-jurisdictional system.

Whenever a U.S. issuer is subject to a requirement pursuant to Item 512(4) of
Regulation S-K to file a post-effective amendment, the amendment would be filed under subsection 56(1) of the Ontario Act and section 25 of the Quebec Act. The amendment would become effective simultaneously in the U.S., Ontario and Quebec. A prospectus supplement or amendment describing the attributes of specific securities to be taken from the "shelf" and distributed would not constitute an amendment "for the purpose of distribution" in addition to the securities previously disclosed in the prospectus" for the purposes of subsection 56(2) of the Ontario Act and pursuant to sections 62.6 and 62.9 of the Regulations under the Quebec Act.

The requirement that an amendment to the prospectus be filed does not apply to a Form S-3 where the required updating is included in periodic reports that are incorporated by reference into the shelf prospectus.

A prospectus supplement or "sticker" reflecting material changes, not comprising fundamental changes under Item 812(e) of Regulation S-K, such as changes in interest rates, redemption prices or maturities where a shelf prospectus relates to a series of debt offerings or the selection of the final method of distribution or of any one or more of the underwriters named would be filed with the Commissions on the same day as filed with the SEC.

All shelf prospectuses filed pursuant to the multijurisdictional disclosure system must be accompanied by an undertaking of the issuer to the Commissions to file with the Commissions an amendment or supplement whenever required by the rules of the SEC. In addition, when a shelf prospectus contains no set plan of distribution or generally states that securities may be sold pursuant to one of several distribution methods and does not include an underwriters' certificate, an amendment to the prospectus must be filed, disclosing the material aspects of the plan of distribution including a certificate of the underwriters, prior to the distribution of securities under that prospectus.

C. Application of the System to Specific Transactions by Canadian Issuers

The following is a detailed discussion of how Canadian issuers could offer securities or any offers could make a cash tender offer in the United States under the multijurisdictional disclosure system. These procedures are equivalent to those proposed by the OSC and the CVMQ for use by U.S. issuers in Canada.

1. Offerings by Substantial Issuers—(a) Offerings of Investment Grade Debt and Preferred Stock (SEC Form F-4).

Multijurisdictional registration would be permitted for offerings by substantial issuers of non-convertible debt securities or non-convertible preferred stock that are investment grade, as defined in the United States. Securities that are not convertible for one year from the date of effectiveness of the registration statement would be treated as non-convertible. Comment is requested as to the treatment of convertible securities.

Should the period of non-convertibility be longer (e.g., two or three years)?

Offerings of such investment grade securities would be registered with the SEC on proposed Form F-4. Form F-9 would be a cover page setting out registration details, including certain legends and a wraparound the Canadian prospectus. To be eligible to use that form, an issuer would be required to be incorporated anywhere in Canada, with a public float of $180 million and a public float of (CDN.) $75 million. "Public float" is the monetary value of all outstanding equity securities owned by the SEC and would be determined according to Canadian practice. Non-voting common stock would be included in the calculation of public float.

The (CDN.) $180 million requirement parallels that for the existing Form S-3, which permits use of a short-form prospectus in the United States by U.S. issuers. The public float requirement is derived from the Canadian test for eligibility for the prompt offering qualification system and is based on the Canadian definition of affiliates in determining the amount of securities publicly held. These requirements are expressed in terms of Canadian rather than U.S. currency so that fluctuations in exchange rates would not affect an issuer's eligibility to use the Form. The date as of which the issuer must meet the market value and float tests would be a date within the 30 day period prior to the filing of the registration statement. Form F-9 would not require reconciliation of financial statements from Canadian GAAP to U.S. GAAP. Comment is requested as to whether the requirements set forth provide adequate indication of an issuer's market following. Should the market value and public float tests be set at different levels, and if so, should they be expressed in terms of Canadian rather than U.S. currency so that fluctuations in exchange rates would not affect an issuer's eligibility to use the Form? (b) Offerings of Investment Grade Debt or Preferred Stock (SEC Form F-10).

Offerings by substantial issuers of securities other than investment grade debt or preferred stock would be registered on proposed Form F-10. In this context, "substantial issuers" would be those with a market value of (CDN.) $360 million (to approximate the SEC's $300 million), or public float of (CDN.) $100 or $75 million. Eligibility would be determined as of a date within the 30 day period prior to the filing of the registration statement. As with Form F-9, comment is requested as to the appropriateness of the tests for eligibility for Form F-10.

Form F-10 would require reconciliation of financial statements to U.S. GAAP. The reconciliation required would be substantially the same as specified in Item 16 of SEC Form F-3. Item 16 requires the full disclosure of all information required by Regulation S-X and U.S. GAAP, including segment information and supplemental oil and gas data. Comment is solicited as to whether, if reconciliation is to be required, it should be sufficient. Should reconciliation of shareholders' equity and net income, as a whole and on a per share basis, suffice? Comment is solicited as to whether, if reconciliation is to be required, Item 17 reconciliation should suffice. Should reconciliation of shareholders' equity and net income, as a whole and on a per share basis, suffice? Should reconciliation of shareholders' equity and net income, as a whole and on a per share basis, suffice?

Items 17 and 18 of Form F-4 each permit the use of financial statements which are in accordance with accounting principles other than those of the United States if the items include a discussion of the material variations in net income as presented and net income under United States accounting principles and as to balance sheet line items and earnings per share. Item 16 calls for a greater amount of detail than does Item 17. Comment is solicited as to whether the information required by the generally accepted accounting principles of the United States while Item 17 contains no such provision. Item 17 disclosure may be used for annual reports and registration under the Exchange Act, while Item 18 disclosure generally is required in Forms F-1, F-2 and F-3 in connection with the public offering of securities in the United States.

In the United States, registration statements are subject to certain industry specific requirements relating to an issuer's business and operations. Foreign issuers generally are held to the same level of disclosure as U.S. domestic issuers. Canadian disclosure requirements and practices, the SEC proposes to require only additional industry-specific information from issuers engaged in banking. Canadian banks using Form F-10 would be required to disclose information substantially equivalent to the information set out under Item III.C, "Risk Elements," and item IV., "Summary of Loss Experience" of Industry Guide 3 under the Securities Act of 1933. Comment is solicited as to whether this requirement is appropriate. Disclosure would be more extensive than the information proposed in Item 3(1)(j) of the Annual Information Form forming part of the Annual Information Form and Management Discussion and Analysis requirements released for comment in the OSC Bulletin of June 9, 1989 and in the CVMQ Bulletin of June 23, 1989. Both the reconciliation and the Canadian industry Guide 3 information are required to be included in both the prospectus delivered to investors and the registration statement.

2. Rights Offers & Securities Exchange Takeover Bids (Exchange Act Item 14, Rights Offers (SEC Form F-7)). Form F-7 is proposed for use by Canadian issuers making rights offerings in the United States. To be eligible, the issuer would have to (1) be incorporated in Canada, and (2) have had for the 36 months immediately preceding the offering, a class of securities listed on the Toronto Stock Exchange or the Montreal Exchange. Form F-7 would not require that registrants meet any test of market value of shares or public float. Comment is solicited as to whether the eligibility tests proposed for use of Form F-7 are appropriate or whether the $75 million market value requirement imposed by Form F-6 should be extended to Form F-7.

Either a rights offering circular filed in Ontario pursuant to paragraph 71(1)(h)(i) of the Ontario Act or in Quebec pursuant to section 32(1) of the Quebec Act or a rights offering prospectus filed under Form F-2. It is intended that Form F-7 would exclude offerings that are major financings.
an eligible offer, if completely subscribed, could not increase the capital of the class of securities offered by more than 25 percent in number (or, in the case of debt, the principal amount). The 25 percent test is derived from OSC Policy Statement 6.2 which uses a 25 percent threshold to identify rights offerings subject to prospectus filing requirements.

U.S. residents must hold of record less than 20 percent of the subject shares. Where a bid is made pursuant to the system by an eligible offer, if completely subscribed, would suffice for compliance with the Exchange Act. Where an eligible offer is made for the 36 months immediately preceding the offering. Comment is requested as to whether these eligibility tests are appropriate.

The bidder must offer its securities upon identical terms and conditions to both U.S. and Canadian shareholders of the target. Adherence to this requirement would prevent discrimination among holders of the class of securities that is the subject of the offer. The OSC would be entitled to require a qualified Canadian reporting issuer planning to commence a non-exempt exchange offer to file its take-over bid circular with the OSC. Concomitantly with the filing of the take-over bid circular with the OSC and the CVMQ, a Canadian offeror making an offer pursuant to the system would file the circular, accompanied by Forms F-8 and F-X, with the SEC. The circular would be distributed by mail to shareholders in both countries. As in Ontario and Quebec an exchange offer is deemed to commence upon mailing, it also would commence upon mailing in the United States.

(ii) Tender Offer Regulation. Exchange offers also raise the question of the need for compliance with each jurisdiction's regulatory scheme relating to take-over bids/tender offers. The multipronged traditional system would provide that, when a Canadian bidder is eligible to use the system for an exchange offer, the take-over bid rules of its home jurisdiction would govern, and compliance with the home jurisdiction rules would be sufficient under the Exchange Act. U.S. and other non-Canadian offerors not eligible to use Form F-8 similarly could make exchange offers for the securities of Canadian issuers (where, less than 20 percent of the holders of record of the subject securities were U.S. residents) pursuant to Canadian tender offer regulations. Such non-Canadian issuers, however, would comply with U.S. registration disclosure requirements.

(iii) Proxy Regulation. Any solicitation of U.S. shareholders involved in the offer and sale of securities registered on Form F-8 would be exempt from Exchange Act proxy information and filing requirements pursuant to the proposed amendment to Rule 3a12-3(c).

3. Tender Offers Pursuant to the System. Pursuant to amendments to be proposed to the SEC's tender offer rules, third-party or issuer tender offer filings in connection with offers in both jurisdictions for a class of shares of a Canadian issuer, less than 20 percent of which is held of record by U.S. residents, would be permitted to proceed in the United States in compliance with the laws of Ontario and/or Quebec, provided the tender offer is extended to all holders of the class of securities in the United States, and that the transaction is covered by substantive provisions of the Exchange Act relating to the terms and conditions of the offer. In these instances, compliance with Canadian law would suffice for compliance with the Exchange Act. Where a bid is made pursuant to the system by a Canadian reporting issuer, for example a stock exchange bid exempt under the Ontario Act and the Quebec Act, was extended to U.S. shareholders, the Exchange Act and the rules thereunder would govern the conduct of the offer in the United States even if the bid otherwise would qualify for inclusion in the multijurisdictional system. The schedules would require that the bidder comply with the laws, regulations and policies of any Canadian federal and/or provincial or territorial regulatory agency applicable to the particular offer. If the offeror failed to comply with Canadian law, it would be in violation of both Canadian and U.S. law.

The take-over bid circular filed with the OSC and the CVMQ would be filed simultaneously with the SEC, together with the appropriate Form F-8 or other Securities Act registration form for exchange offers, Schedule 14D-9F for third-party and affiliate tender offers, Schedule 14D-9F for the target's response and Schedule 13E-4F for issuer tender offers), and disseminated to all U.S., Ontario and Quebec shareholders. Where an exchange offer was being made pursuant to the system by an offeror not eligible to use Form F-8, U.S. shareholders would receive SEC-mandated disclosure in addition to the information required to be disseminated under Canadian law.

As discussed, only Canadian companies reporting to Canadian securities regulatory authorities would be eligible to register on Form F-8 securities issued in connection with an exchange offer. The bidder in an all-cash offer need merely identify, reporting status and size requirements that would be imposed on participating exchange offerors. The target must be a Canadian reporting company, less than 20 percent of the subject securities of which is held by U.S. residents.

The process for conducting an all-cash tender offer under the proposed system, whether the offer is made by a third party, the issuer itself or its affiliate, is virtually identical to that outlined for the preceding offers. When filing its take-over bid circular or issuer bid circular with home jurisdiction authorities in Canada, a bidder would file that document or documents, and any amendments thereto, with the OSC under cover of proposed wraparound forms Schedule 14D-1F (third party or affiliate or insider bids) or Schedule 13E-4F (issuer bids) together with an executed Form F-X. Home country filings, including any amendments, would be disseminated to shareholders in Canada and the United States pursuant to applicable Canadian law, with U.S. shareholders also receiving the appropriate Schedule.

In response to unsolicited third-party and insider bids, the target issuer would file with the SEC the document or documents prescribed by Canadian law, including any amendments thereto, coupled with Schedule 14D-9F and Form F-X. Again, this Schedule and the underlying Canadian documents, and any amendments, would be sent, in the manner prescribed by Canadian law, to U.S. shareholders and, without the Schedule, to Canadian shareholders.

In cases of tender offers ineligible for multijurisdictional treatment in the United States because 20 percent or more of the subject shares is held by U.S. residents, the Exchange Act and the Quebec Act, was extended to U.S. shareholders, the Exchange Act and the rules thereunder would govern the conduct of the offer in the United States even if the bid otherwise would qualify for inclusion in the multijurisdictional system. The schedules would require that the bidder comply with the laws, regulations and policies of any Canadian federal and/or provincial or territorial regulatory agency applicable to the particular offer. If the offeror failed to comply with Canadian law, it would be in violation of both Canadian and U.S. law.
until the participant's role in the distribution has terminated.

SEC Rule 10b-6 prohibits a person who is making a cash tender offer or exchange offer for any equity security from, directly or indirectly, purchasing or making any arrangement to purchase such security (or any derivative thereof immediately convertible into or exchangeable for such security) otherwise than pursuant to the tender offer or exchange offer, from the time of announcement of the offer until its expiration, including extensions thereof. The rule is designed to "protect shareholders in the tender offer from the harmful effects of purchases or arrangements made outside, and on terms or on condition (sub-section 3(3)) of the Act and Regulation 169 and with the relevant exchange or regulatory authorities.

The no-action release is required to disclose the purchaser, price paid on that day, the average price paid for the securities that were purchased by the purchaser through the facilities of the stock exchange during the bid, and the total number of securities owned by the purchaser as of the close of business on that date.

In connection with the proposed multi-jurisdictional disclosure system, the SEC is considering publication of no-action positions with respect to Rules 10b-6 and 10b-13. The contemplated no-action positions would apply solely to tender and exchange offers on Form F-8 and Schedules 14D-1F and 13E-4F, and would permit securities purchases that are permitted in Canada and that are not made for the purposes of creating actual or apparent trading activity in or of raising the price of such securities. The no-action positions would apply to (1) With respect to cash tender offers, purchases of the securities which are the subject of the offer and any other security that is a right to purchase such security or is immediately convertible into or exchangeable for such security ("target securities"); and (2) With respect to exchange offers, the purchases of target securities and bids for and purchases of the securities offered by the bidder or issuer ("offered securities"); and any security of the same class and series or any right to purchase any such offered securities (collectively, "subject securities"). The proposed no-action positions would be available to issuers and bidders that (1) Disclose in the Form F-8 and Schedules 13E-4F and 14D-1F the possibility of, or the intent to make, purchases of subject securities outside the offer as permitted by applicable Canadian regulations; and (2) submit an undertaking to disclose in the U.S. information regarding purchases of subject securities on the same basis as it is required to be disclosed or otherwise is disclosed pursuant to Canadian statutory and regulatory requirements.

4. Proxy and Insider Reports

Canadian issuers that currently are eligible to use Form 20-F are not subject to U.S. proxy regulation. All other Canadian issuers, however, must comply with both Canadian and U.S. proxy regulations if they solicit proxies. In connection with the implementation of the system, the SEC proposes to amend certain of the proxy rules to allow compliance by Canadian issuers with Canadian proxy rules to suffice for U.S. purposes.

The SEC's proxy rules provide that, if an issuer is soliciting proxies for an annual meeting at which the only matters being voted upon include such routine items as the election of directors or ratification of the appointment of accountants, only definitive proxy statements must be filed with the SEC. Thus, no filing of preliminary materials is required. If a Canadian issuer falls within the provisions of the rule, only definitive material is required to be filed, the amendments to SEC Rule 14a-6 would provide that the proxy material need only be prepared in accordance with Canadian requirements. However, since it is not available for annual reports by issuers that have a reporting obligation under sections 2(b) or 15(d), most Canadian issuers currently file annual reports on Form 10-K, quarterly reports on Form 10-Q and current reports on Form 8-K. Any section 15(d) obligation resulting from use of the proposed forms for any of the transactions covered by the proposed forms could be met by filing with the SEC under cover of proposed Form 40-F, the periodic disclosure documents required in Canada. These would include Annual Information Forms, Annual Reports, Annual Management Discussion and Analysis, annual and interim financial statements and material change reports. Documents would be filed with the SEC at the same time as they were filed with the OSC and the CVMQ. No requirement of financial statements would be required. All Canadian disclosure documents filed with the SEC would be subject to antifraud liability.

Canadian issuers that incur registration or reporting obligations under section 12(g) generally would be required to fulfill those obligations by filing regular SEC continuous disclosure forms. The proposed system would, however, permit issuers that met the tests for eligibility for use of Form F-10 (i.e., that had an aggregate market value for their securities of $360 million and a public float of $75 million), regardless of whether they had made offerings pursuant to the system ("F-10 issuers"), to comply with section 12(g) continuous disclosure requirements by filing the equivalent Canadian documents under cover of Form 40-F. Reconciliation of financial statements would be required, but in annual reports on Form 20-F this reconciliation would be to Form 17 of Form 10-K.
non-convertible investment grade preferred stock, however, would be able to comply non-convertible investment grade debt or preferred shares, no reconciliation of financial statements would be required, while if equity securities were listed, item 17 reconciliation would be required.

G. State Securities Regulation

In addition to complying with the federal securities laws, issuers selling their securities in the United States are subject to the securities laws of the 50 states, the District of Columbia and Puerto Rico. Generally, these laws require state registration of offerings made to persons in the state.

In most jurisdictions, the registration statement filed with the SEC will also satisfy the state filing requirements. The filings are subject to review by each of the states, as to the adequacy of the disclosure and, in many states, for compliance with additional substantive standards. For example, a state may have the authority to deny registration if the offering involves excessive "cheap stock" to promoters, excessive options or warrants, unreasonable underwriters' compensation, or excessive dilution, or if a class of common stock lacks voting rights.

Various exemptions from registration under state law are available; the two most relevant to the multijurisdictional disclosure process are that for rights offerings and that for public offerings of securities by exchange listed issuers that met the test for eligibility for use of Form F-9 (i.e., that had an aggregate market value for the securities of $180 million and a public float of $75 million), even if they had not made an offering pursuant to the system ("F-9 issuers").

Section 12(b) registration and reporting obligations would be treated similarly under the system to obligations arising under section 12(g). Canadian issuers that have a class of securities listed on an exchange would have to file SEC continuous disclosure documents. F-10 issuers and F-9 issuers of non-convertible investment grade debt or non-convertible investment grade preferred stock, however, would be able to comply with their section 12(b) reporting obligations by filing the appropriate Canadian forms. If the class of securities listed were investment grade debt or preferred shares, no reconciliation of financial statements would be required, while if equity securities were listed, item 17 reconciliation would be required.

H. Request for Comments

Any interested person wishing to submit written comments on any aspect of the multijurisdictional disclosure system is requested to do so. Canadian issuers, underwriters, counsel and auditors are also encouraged to submit written comments on the SEC companion release to the SEC.

IV. Cost-Benefit Analysis

To evaluate fully the benefits and costs associated with the proposed multijurisdictional registration system, the Commissions request issuers, underwriters and their counsel and auditors to provide views and data as to the costs and benefits associated with multijurisdictional offerings under current law as compared to such costs and benefits under the proposed system.
Part IV

Department of Health and Human Services

Office of Child Support Enforcement

45 CFR Part 232, 301 Through 304, 306 and 307
Standards for Program Operations; Final Rule
DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Child Support Enforcement

45 CFR Parts 232, 301, 302, 303, 304, 306, and 307

RIN 0970-AA18

Standards for Program Operations

AGENCY: Office of Child Support Enforcement (OCSE)/FSA/HHS.

ACTION: Final rule.

SUMMARY: This final regulation implements the requirements of sections 121 and 122 of the Family Support Act of 1988 (Pub. L. 100-485) by revising current regulations to specify standards for processing child support enforcement cases and timeframes for distributing child support collections under title IV-D of the Social Security Act (the Act).

Based on the analysis of Federal program audit and program review results, input from State IV-D agencies, early discussions with experts in child support enforcement case processing and program operations and recommendations of the advisory committee mandated by section 121, we developed standards set forth in this regulation which should ensure appropriate and expeditious processing of IV-D cases. States must meet the standards for case processing contained in this final rule as one facet of the determination of whether they are in substantial compliance with the requirements of Title IV-D of the Act. We believe the standards are realistic and focused in areas where increased effectiveness and efficiency are necessary for an enhanced IV-D program.

Statutory Authority

This regulation is published under the authority of sections 452 (a)(1) and (a)(2), (b), and (f) and 1102 of the Act. Sections 452(a) (1) and (2) require the Secretary to establish such standards for State programs for locating absent parents, establishing paternity, and obtaining child support as he determines to be necessary to assure that such programs will be effective, and to establish minimal organizational and staffing requirements for State units engaged in carrying out such programs. Section 452(h) of the Act, added by section 121 of Public Law 100-485, requires the Secretary to establish time limits governing the period or periods within which a State must accept and respond to requests for assistance in establishing and enforcing support orders, including requests to locate absent parents, establish paternity, and initiate proceedings to establish and collect child support awards. Section 452(i) of the Act, added by section 122 of Public Law 100-485, requires the Secretary to establish time limits governing the period or periods within which a State must distribute amounts collected as child support. Section 454(c)(3) of the Act requires States to comply with such regulations and standards as the Secretary of HHS determines to be necessary for the establishment of an effective IV-D program. Section 458(d) of the Act, as amended by section 127 of Public Law 100-485, requires States to exclude for purposes of computing incentives, the amounts expended by the State in carrying out a special project assisted under section 455(e) of the Act. Section 1102 of the Act requires the Secretary to publish regulations that may be necessary for the efficient administration of the functions for which he is responsible under the Act.

Regulatory Provisions

This regulation prescribes standards for program operations which the IV-D agency must meet, including minimal organizational and staffing requirements, and requirements governing: maintenance of case records; location of absent parents; establishment of support obligations; establishment of paternity; service of process; enforcement of support obligations; conditions under which cases may be closed; distribution of support payments; and incentive payments. In addition, this regulation makes technical changes and adds new sections for clarity and consistency with the above-mentioned changes to parts 302 and 303. States are required to meet these standards by October 1, 1990.
procedures for reviewing child, support awards are effective when the costs are incurred.

_Treatment of Child Support Collections Made in the Child Support Enforcement Program as Income and Resources in the Title IV-A Program—Section 323.20_.

Section 323.20(d) requires that the Aid to Families with Dependent Children (IV-A) agency, on behalf of the IV-D agency, must pay to the family the sum disregarded under § 302.51(b)(1) within 20 calendar days of the date of initial receipt in the State of the first $50 of support collected in a month, within 20 calendar days of the end of the month in which the support is collected.

_Collection and Distribution of Support Payments by the IV-D Agency—Section 302.32_.

Section 302.32 is revised to reduce the time within which IV-D agencies must report collections to the AFDC agency of the amount of the collection which represents payment on the required support obligation for the month, as determined in § 302.51(a), within 10 working days of the end of the month in which the support is received by the agency responsible for final distribution.

Section 302.32(f)—Timeframes for Distribution of Amounts Collected

1. _Section 302.32(f)(1)—Timeframes for distribution of amounts collected in interstate IV-D cases_. Paragraph § 302.32(f)(1) requires that in interstate IV-D cases, amounts collected by the responding State on behalf of the initiating State must be forwarded to the initiating State within 15 calendar days of the initial point of receipt in the responding State, in accordance with § 303.7(c)(4)(iv).

2. _Section 302.32(f)(2)—Timeframes for distribution of collections_. Paragraph (f)(2)(i) requires that, if the IV-D agency sends payments to the AFDC family under § 302.51(b)(1), payments must be sent to the family within 15 calendar days of the date of initial receipt in the State of the first $50 of support collected in a month, or, if less than $50 is collected in a month, within 15 calendar days of the end of the month in which the support was collected.

3. _Section 302.32(f)(3)—Timeframes for distribution of amounts collected on behalf of non-AFDC individuals_. To ensure timely distribution of amounts collected on behalf of individuals receiving services under § 302.33, section 302.32(f)(3) sets forth timeframes within which States must distribute collections on behalf of non-AFDC families.

4. _Section 302.32(f)(4)—Timeframes for distribution of amounts collected which represent payment on the current support obligation_. Under § 302.32(f)(4), amounts collected which represent payment on the current support obligation must be paid to the family within 15 calendar days of the date of initial receipt in the State.

5. _Section 302.32(f)(5)—Timeframes for prompt return of amounts_. Under § 302.32(f)(5), if the IV-D agency sends payments to the AFDC family under § 302.51(b)(1), payments must be sent to the State within 25 calendar days of the date of receipt in the IV-D agency, unless State law requires a post-offset appeal process and an appeal is filed timely, in which case the IV-D agency must send any payment to the family within 15 calendar days of the date the appeal is resolved; or as provided in § 303.72(h)(5) of this chapter.

Since timeframes for distribution of all IV-D collections, regardless of the collection mechanism, (e.g., Federal or State income tax refund offset, wage withholding, etc.) are governed by § 302.32(f), reference to timeliness of distribution in other regulations is unnecessary. Accordingly, § 302.51 is amended by deleting in paragraph (a) the last sentence that reads “In any case in which collections are received by an entity other than the agency responsible for final distribution under this section, the entity must transmit the collections within 10 days of receipt” and by deleting in paragraphs (b)(3) and (4) the sentence that reads “This payment shall be made in the month following the month in which the amount of the collection was used to redetermine eligibility for an assistance payment under the State’s title IV-A plan”. Similarly, § 303.100(e)(2) is amended to delete reference to distributing “promptly” amounts collected through wage or income withholding. Finally, we are deleting from regulations governing distribution of State tax refund offset collections the words “Within a reasonable time period in accordance with State law” in § 303.102(g)(1).

_Establishment of Cases and Maintenance of Case Records—Section 303.2_.

1. _Application Process_. Section 303.2(a)(1) requires that the IV-D agency must make applications for child support services readily accessible to the public.

Section 303.2(a)(2) requires that when an individual requests an application or IV-D services, the IV-D agency must provide applications on the day an individual makes a request in person, or send an application to the individual.
within no more than 5 working days of a written or telephone request for services. In addition, information describing available services, the individual’s rights and responsibilities and the State’s fees, cost recovery and distribution policies must accompany all applications for services and must be provided to AFDC, Medicaid and title IV-E foster care applicants or recipients within no more than 5 working days of referral to the IV-D agency.

Paragraph (a)(3) requires that the IV-D agency must accept an application as filed on the day it and the application fee are received. An application is a written document provided by the State which indicates that the individual is applying for child support enforcement services under the State’s title IV-D program and is signed by the individual applying for IV-D services.

2. Opening cases. Section 303.2(b) requires that, for all cases referred to the IV-D agency or applying for IV-D services under § 302.33, the IV-D agency must, within no more than 20 calendar days of receipt of referral of a case or filing an application for services, open a case by establishing a case record, and based on an assessment of the case to determine necessary action: solicit necessary and relevant information from the custodial parent and other relevant sources and initiate verification of information, if appropriate; and, if there is inadequate location information to proceed with a case, request additional information or refer the case for further location attempts as specified in § 303.3.

Location of Absent Parents—Section 303.3
1. Definition. Section 303.3(a) defines “location” as information concerning the physical whereabouts of the absent parent or the absent parent’s employer(s), other sources of income, or assets, as appropriate, which is sufficient and necessary to take the next appropriate action in a case.

2. Location sources. Section 303.3(b)(1) requires the IV-D agency to use appropriate Federal, interstate and local location sources and to use appropriate State agencies and departments as authorized by State law.

Paragraph (b)(2) requires that States establish working relationships with all appropriate agencies in order to utilize locate resources effectively.

3. Actions required within 75 calendar days. Paragraph (b)(3) requires that the IV-D agency, within no more than 75 calendar days of determining that location is necessary, access all appropriate location sources, including the Federal PLS, and ensure that location information is sufficient to take the next appropriate action on a case.

Paragraph (b)(4) requires that the IV-D agency refer appropriate cases to the IV-D agency of any other State, in accordance with the requirements of § 303.7 of this part. To correspond with this requirement, § 303.7(b)(2) requires that the initiating State refer any interstate case to the responding State’s central registry for action within 20 calendar days of determining the absent parent or putative father is in another State. The IV-D agency of the other State must follow the procedures in paragraphs (b) (1) through (5) for such cases, as necessary, except that the responding State is not required to access the Federal PLS under paragraph (b)(3).

4. Continued location attempts. Paragraph (b)(5) requires that the IV-D agency periodically repeat location attempts in cases in which previous attempts to locate absent parents or sources of income and/or assets have failed, but adequate identifying and other information exists to meet requirements for submittal for location. Attempts must be repeated quarterly, or immediately upon receipt of new information which may aid in location, whichever occurs sooner. Quarterly attempts may be limited to automated sources but must include accessing State employment security files. Repeated attempts because of new information must meet the requirements in paragraph (b)(3).

Paragraph (b)(6) requires that at least annually, States must submit to the Federal PLS cases in which location is needed and previous attempts to locate have failed and which meet the requirements for submittal to the Federal PLS.

Paragraph (c) requires that the State must establish guidelines defining diligent efforts to serve process. These guidelines must include periodically repeating service of process attempts in cases in which previous attempts to serve process have failed, but adequate identifying and other information exists to attempt service of process.

Establishment of Support Obligations—Section 303.4

Section 303.4(d) requires that the IV-D agency, within 90 calendar days of locating the absent parent or of establishing paternity, to establish an order for support, or complete service of process necessary to establish a support order (or document unsuccessful attempts to serve process, in accordance with the State’s guidelines defining diligent efforts under § 303.3(c)). To correspond with the requirement in paragraph (d), § 303.101(b)(2) states that actions to establish or enforce support obligations in IV-D cases must be completed from the time of successful service of process to the time of disposition with the required timeframes.

Section 303.4(e) requires that in situations where a support order is dismissed without prejudice, the IV-D agency must, at the time of the dismissal, examine the reasons for dismissal and determine when it would be appropriate to seek an order in the future, and seek a support order at that time.

Establishment of Paternity—Section 303.5

1. Paternity establishment process timeframe. Section 303.5(a)(1) requires that the IV-D agency, within no more than 90 calendar days of locating the alleged father, file for paternity establishment or complete service of process to establish paternity (or document unsuccessful attempts to serve process in accordance with the State’s guidelines defining diligent efforts under § 303.3(c)), whichever occurs later in accordance with the State’s procedures for paternity establishment. Under paragraph (a)(2), paternity must be established or the alleged father excluded as a result of genetic tests and/or legal process within one year of the later of: (i) Successful service of process; or, (ii) the child reaching 6 months of age.

Paragraph (a)(3) requires that, in any case where an alleged father is excluded but more than one alleged father has been identified, the IV-D agency must meet the requirements set forth in paragraphs (a) (1) and (2) for each alleged father identified.

2. Use of laboratories which perform genetic testing at competitive rates. Paragraph (c) requires that the IV-D agency identify and use through competitive procurement laboratories which perform, at reasonable cost, legally and medically acceptable genetic tests which tend to identify the father or exclude the alleged father. The IV-D agency must make available a list of such laboratories to appropriate courts and law enforcement officials, and to the public upon request.

To correspond with these changes, § 304.2(b)(2) is revised by changing the reference to blood tests to genetic tests and the reference to § 303.5(b) to § 303.5(c).
Enforcement of Support Obligations—Section 303.8

This final regulation revises §303.6 by deleting the enforcement techniques listed in paragraphs (a) through (f) and adding monitoring and enforcement requirements in new paragraphs (a) through (c).

1. Monitoring compliance with orders and identifying delinquencies. Section §303.6(a) requires that the IV-D agency maintain and use an effective system for monitoring compliance with the support obligation. This monitoring includes monitoring of all provisions of support orders, including health insurance for the child(ren).

Additionally, paragraph (b) requires that the IV-D agency maintain and use an effective system for identifying those cases in which there is a failure to comply with the support obligation on the date the parent fails to make payments in an amount equal to the support payable for one month or earlier in accordance with State law.

2. Enforcement actions. Paragraph (c)(1) requires that the State initiate wage withholding in accordance with the requirements of §303.100. Paragraph (c)(2) requires that the State take any appropriate enforcement action (except income withholding, and Federal and State income tax refund offset) unless service of process is necessary, within more than 30 calendar days of identifying a delinquency or other support-related non-compliance with the order, or location of the absent parent, whichever occurs later. If service of process is necessary prior to taking an enforcement action, the IV-D agency must complete such service (or serve process in accordance with the State’s guidelines defining diligent efforts under §303.2(c)) and take the enforcement action, if process is served, within no more than 60 calendar days of identifying a delinquency or other support-related non-compliance with the order, or location of the absent parent, whichever occurs later.

This requirement includes taking appropriate enforcement action within the above timeframes upon notification of non-compliance with an order requiring health insurance coverage. In accordance with current medical support requirements, States must attempt to enforce a requirement in a support order that an absent parent obtain health insurance in cases of non-compliance with such an order.

With regard to Federal and State income tax refund offset, paragraph (c)(3) requires that States submit all cases which meet the certification requirements for State tax refund offset once a year. In accordance with §303.102(a), States may develop under §302.70(b), and for Federal tax refund offset in accordance with §303.72.

Paragraph (c)(4) requires that if cases in which enforcement attempts have been unsuccessful, the State must, at the time an enforcement order is issued, examine the reason the enforcement attempt failed and determine when it would be appropriate to take an enforcement action in the future. The State cannot as yet be taken.

Because of the changes discussed above, we deleted the list of enforcement techniques in former §303.8(a) through (f). There is no reason to list some enforcement actions or to try to list all techniques since States are required to take whatever enforcement action is warranted in a particular case.

Procedures for Case Assessment and Prioritization—Section 303.10

Section 303.10(a) requires that, if a State adopts a case assessment and prioritization system, the IV-D agency must continue to meet the timeframes and case processing standards contained in part 303.

Section 303.10(b)(5) requires that a State, in implementing a case assessment and prioritization system, to prioritize cases after reviewing all intake information for accuracy and completeness and, if review indicates that additional information is needed, prioritize only after attempting to verify or secure the information. A cross reference to §303.2 is added to §303.10(b)(5) to ensure that cases are prioritized only after the requirements for establishment of cases and maintenance of case records in §303.2 are met.

Finally, we are phasing out the case processing requirements in part 303 to the requirement for periodic review of low priority cases contained in §303.10(b)(6). Paragraph (b)(6) is amended to require that periodic review of low priority cases must be in accordance with the standards set forth in part 303, such as quarterly location attempts and diligent efforts to effect service of process.

Case Closure Criteria—Section 303.11

Section 303.11 establishes criteria States must use to determine whether child support cases may be closed. If a case does not meet at least one of the following criteria, it must be kept open and worked. However, because current regulations at §303.10 allow States to establish procedures for case prioritization, States may distinguish between those cases with current success potential and those which do not now, but may in the future, have potential for success. This latter group could include the cases which do not meet the criteria for closure but in which the next required case processing step cannot as yet be taken. Requirements for periodic review in §303.10 governing case prioritization systems, and elsewhere in part 303, would apply in these cases.

Section 303.11 is entitled “Case closure criteria.” Paragraph (a) requires States to establish a system for case closure. Paragraph (b) establishes the criteria for case closure eligibility.

Paragraph (b)(1) allows closure of a case where the child has reached the age of majority, there is no longer a current support order, and either no arrearages are owed or arrearages are under $500 or unenforceable under State law.

Paragraph (b)(2) allows case closure where the child has not reached the age of majority, arrearages are less than $500 or unenforceable under State law, and there is no longer a current support order.

Paragraph (b)(3) allows a State to close a case upon the death of the absent parent, or putative father, if no further action, including a levy against the estate, can be taken.

Paragraph (b)(4) states that the IV-D agency may close cases in which, either the child is at least 16 years old and the action is barred by a statute of limitations which meets the requirements of §302.70(a)(5), or a genetic test or court or administrative process has excluded the putative father and no other putative father can be identified. In addition, paragraph (b)(4) specifies that, in accordance with §303.5(b), the IV-D agency need not attempt to establish paternity in any case involving incest or forcible rape, or in any case where legal proceedings for adoption are pending. If, in the opinion of the IV-D agency, it would not be in the best interests of the child to establish paternity.

Paragraph (b)(5) allows case closure where the IV-D agency has been unable to locate an absent parent despite having made repeated location efforts using multiple sources, including those listed under §303.3, over a three-year period.

Paragraph (b)(6) allows case closure if the absent parent cannot pay support for the duration of the child’s minority because the parent has been institutionalized in a psychiatric facility, incarcerated with no chance for parole, or has a medically-verified total and permanent disability with no
evidence of support potential. The State must also determine that no income or assets are available to the absent parent which could be levied or attached for support.

Paragraph (b)(7) allows a case to be closed when the absent parent is a citizen of, and lives in, a foreign country, does not work for the United States government or a company which has its headquarters or offices in the U.S. and has no reachable domestic income or assets; and the State has been unable to establish reciprocity with the country.

Paragraph (b)(8) allows a case to be closed if the resident parent, legal guardian, attorney, or agent of a child only requested the State parent locator service (PLS) to submit a request to the Federal PLS under the provisions of § 302.35(c)(3) and the location services have been completed.

Paragraph (b)(9) allows case closure in a non-AFDC case or in a former AFDC, Medicaid or foster care (title IV-E) case when custodial parents request that the case be closed and there are no arrearages assigned to the State.

Paragraph (b)(10) allows the IV-D agency to close a case when it has been notified by the IV-A or IV-E agency, in accordance with § 302.31(c), that there has been no finding of good cause for the recipient's failure to cooperate in obtaining support and the IV-A or IV-E agency has determined that paternity establishment or support establishment and enforcement may not proceed without risk or harm to the child or caretaker relative.

Paragraph (b)(11) allows case closure in non-AFDC cases if the IV-D agency is unable to contact the custodial parent over at least a 30-calendar day period despite attempts to contact the parent by both phone and letter, including at least one registered letter.

Paragraph (b)(12) allows case closure due to non-cooperation of the custodial parent when the State documents both the circumstances of the non-cooperation and that an action by the custodial parent is essential for the next step in providing support enforcement services.

Paragraph (c) requires the State, 60 calendar days prior to any case closure because of criteria in paragraphs (b)(1) through (7) and (11) and (12), to notify the custodial parent in writing of the State's intent to close the case. The case must be left open if the custodial parent supplies information in response to the notice which could lead to the establishment of paternity or a support order or enforcement of an order or re-establishes contact with the agency in the case of paragraph (b)(11). If a case is closed, the custodial parent may request at a later date that the case be reopened if there is a change in circumstances which could lead to the establishment of paternity or a support order, or enforcement of an order.

Paragraph (d) requires the IV-D agency to retain all records for cases closed pursuant to this section for a minimum of three years, in accordance with 45 CFR part 74, subpart D.

Minimal Organizational and Staffing Requirements—Section 303.20

Section 303.20(c). Minimal organizational and staffing requirements, requires that there must be an organizational structure and sufficient resources at the State or local level to meet the performance and time standards contained in Part 303 and to provide for the administration or supervision of support enforcement functions listed in paragraphs (c)(1) through (6).

Paragraph (e)(7) is revised to state that the activities to enforce collection of support must include wage withholding and other available enforcement techniques.

To further ensure effective child support programs, a new paragraph (g) is added which states that, if it is determined as a result of an audit under Part 305 that a State is not in substantial compliance with title IV-D of the Act, the Secretary will evaluate whether inadequate resources was a major contributing factor and, if necessary, may set resource standards for the State.

Incentive Payments to States and Political Subdivisions—Section 303.52 and Proposed Section 304.12

Because regulations for incentive payments, for the most part, govern a financial aspect of the program and do not therefore properly belong in Part 303, which establishes program standards, § 303.52(a), (b) and (c) are transferred to 45 CFR Part 304, Federal Financial Participation. Accordingly, current 45 CFR § 303.52(d) is being redesignated as § 303.52(j). Furthermore, the section title, Incentive payments to States and political subdivisions, is changed to Pass-through of incentives to political subdivisions, since this is the only requirement remaining in this section.

To implement the provisions of sections 103(e) and 127 of Pub. L. 100-485, regulations governing incentive payments are amended in two ways. First, to implement section 127, which amends section 450(d) of the Act to exclude the costs of interstate grants when computing incentive payments, paragraph (b)(4)(v) is revised to state that, effective January 1, 1990, in calculating the amount of incentive payments, amounts expended by the State in carrying out a special project under section 455(e) of the Act shall not be included in the State's total IV-D administrative costs. In addition, to implement section 103(e) of Pub. L. 100-485, a new paragraph (vi) is added which states that the costs of demonstration projects for evaluating model procedures for reviewing child support awards under section 103(e) of Pub. L. 100-485 shall not be included in a State's total IV-D administrative costs for purposes of computing incentives.

Medical Support Enforcement—Part 306

Previously, Part 306 was divided into two Subparts. Subpart A contained requirements governing optional cooperative agreements and Subpart B contained required IV-D medical support activities. The requirements under current Subpart B (§ 306.50), Securing medical support information, and § 306.51, Securing medical support obligations) are moved to Part 303, redesignated as §§ 303.30 and 303.31, respectively. The regulations under current Subpart A remain as Part 306 without the heading of Subpart A.

For consistency with the redesignations within Part 306, all references in program regulations to regulations in current Part 306 are changed to reflect the transfer of the contents of Subpart B to Part 303 and the redesignation of Subpart A of Part 306 as Part 306.

Response to Comments

We received comments on the notice of proposed rulemaking from over 150 commenters representing national organizations, State and local IV-D agencies, child advocacy groups, and private citizens. Comments and our responses are as follows.

Effective Date of Requirements and Corresponding Audit Standards

1. Comment: We received many comments on the proposed effective date of these requirements. The preponderance of commenters indicated that they could not meet the timeframes without Statewide and comprehensive automated information management systems. These commenters urged that the effective date for timeframes be tied to such a level of automation. Some
suggested that the timeframes not be effective until October 1, 1995, when States are required by the Family Support Act of 1988 to have operational automated child support enforcement systems in place, or even until one or two years after that date. One State with an automated support enforcement system requested, for example, that timeframes be phased in as part of a State's responsibilities to have automated systems in place by 1995, arguing that in their own situation, modification of State law and regulations as well as change to current system processing methods would be necessary. Others asked that implementation be delayed until two or three years after publication of the final rules, as opposed to the October 1, 1990 date set forth in the proposed rule.

Some commenters suggested a phased-in timeframe between October of 1990 and October of 1995. One suggestion was that new IV-D cases be subject to the timeframes in 1991 and existing IV-D cases become subject to the timeframes in 1996. Others suggested that more liberal requirements be effective in 1992 (suggesting double the proposed timeframes for each action) and the proposed timeframes be effective in 1993. Still others suggested implementing timeframes one at a time or letting State IV-D agencies set their own timeframes.

A number of commenters asked that States not be subject to a determination of substantial compliance with the program standards as a result of an audit until there has been a period of evaluation of State performance with respect to the proposed standards. One commenter requested 100 percent Federal funding of the cost of implementation for a period of time prior to the effective date of the requirements and evaluation of the results achieved before such date. Some State agencies asked for technical assistance in meeting the timeframes established.

Response: The Congress, in requiring the Secretary to publish, within 10 months of the effective date of the Family Support Act of 1988, final regulations requiring States to provide IV-D services, including prompt distribution of collections to families, did not intend that the effective date of those regulations be inordinately delayed. Several commenters noted that many of the requirements set forth in the proposed rule reflected good management and were achievable in a well-run child support operation today. Therefore, while we are sympathetic to the demands placed upon States by the new requirements, we believe that the approach must be consistent with Congressional intent with respect to implementation of the timeframes and with the pressing need for performance improvement is to retain the October 1, 1990, effective date. We have, however, extended or revised many of the proposed timeframes to take into consideration the concerns of commenters and believe the revised timeframes to be indicative of alternative timeframes suggested by many States. We intend to consider concerns about how to assess compliance in developing audit requirements for these standards (see response to next comment).

2. Comment: Commenters requested that we change the current audit standard of 75 percent compliance with program requirements to begin with a lower percentage and increase the percentage of cases which must be processed in accordance with the timeframes between 1991 and 1995. One example given was 50 percent compliance in FY1991, increasing by 5 percent a year until 75 percent compliance would be required in FY1996. Alternatively, 40 percent compliance initially was suggested with an increase of 10 percent a year until a 75 percent compliance rate was reached in a later year. Other commenters, by the same token, requested a more stringent compliance standard (for services other than paternity establishment), suggesting between 90 and 98 percent rather than 75 percent, depending on the services needed in the case.

Response: Given the impact of these regulations, we are convinced by the commenters that the best way to ensure that States work all cases and provide all necessary services in accordance with the new program standards and timeframes would be to assess State compliance over a period of time. We are in the process of revising the audit regulations to address the new program standards and intend to publish a proposed audit regulation as soon as possible after publication of this regulation. Final revised audit regulations are scheduled to be published before the October 1, 1990, effective date for program standards. Specific suggestions for assessing State compliance with the new requirements will be considered in revising the audit regulations.

3. Comment: We solicited comments on what steps we should take to reflect improvements in case processing over time. Options presented in the preamble to the proposed rule were: (1) Wait to decide whether and how to change timeframes; (2) write into the final regulation a date by which the regulations must be reviewed and updated; and (3) write into the regulations shorter timeframes for years after 1990. We received preferences for each of the three options by those who responded. The majority of those who commented indicated that we should wait until after the standards are effective and State compliance has been evaluated before making any decisions with respect to revisions. States and localities wondered how we could plan to change standards before we have any experience with their impact. Some commenters preferred the regulations to include a date by which standards will be reviewed and revised. Suggestions for the timing of reviews ranged from 18 months to 4 years. It was suggested that revised standards be submitted to the Congress and that IV-D agencies and the courts have an opportunity to comment on the proposed standards.

Response: As a result of these comments, we have decided to wait until there is some base of experience with full implementation of the timeframes before we determine how or whether to revise them. However, we plan to look at operational experience with the timeframes and institute any necessary changes or other action within no more than 4 years of the effective date of October 1, 1990.

4. Comment: Several States stressed the need for clear and precise program standards which are not subject to interpretation by the auditors. They indicated that regulations are sometimes interpreted differently by auditors and any discretion on their part should be removed. They requested that changes to the audit regulations and audit guides to evaluate State compliance with the program standards be issued at the same time as the final regulations. A number of commenters were concerned about the need for, and how to, document compliance with each of the standards. They requested that documentation to prove compliance with case processing requirements be explicitly stated in regulations. States were concerned that documentation of each timeframe would be time consuming and take time which could otherwise be spent working cases. Commenters were concerned about documentation as the only way to prove action had been taken on a case.

Response: We have revised the proposed regulations to attempt to remove any ambiguity which might be subject to varying interpretation. In addition, as discussed previously, we are currently revising audit regulations to address the requirements of this regulation. Those regulations will be
published for comment as soon as possible after publication of these regulations in final form. With respect to concerns about documentation, States have always been, and will continue to be, responsible for proof, for purposes of an audit, that they are meeting program requirements or have met them with respect to a particular case. Necessary documentation is not specified in regulations because to do so would be overly prescriptive and it would be impossible to specify every type of documentation which would indicate compliance with each regulatory requirement. Elimination of an auditor's professional judgment is neither possible nor desirable, but a variety of internal quality controls ensures national consistency in the conduct of the audit function. Finally, we believe that the revisions to the proposed rule to eliminate unnecessary interim timeframes are responsive to States' concerns that documentation will be too time-consuming.

**Overall Alternative Approaches**

1. **Comment:** We received a number of alternatives to our approach to ensuring prompt response to requests for IV-D services. One State suggested that we recommend, rather than require, specific timeframes for case processing, and establish audit requirements based on end results, such as those in place for expedited processes for establishing and enforcing support orders. Specifically, the State recommended that actions taken to open cases, initiate absent parent or putative father locations, and where location of the parent is known, file petitions for maternity and/or support be required to be completed in 60 percent of the cases within three months, 70 percent within six months, and 75 percent within one year. Another alternative was to establish standards similar to the paternity establishment standard established by the Family Support Act, under which a State's performance is evaluated based on the percentage of actions taken out of the total actions needed to be taken, with a specific improvement in performance required each year. Finally, a commenter suggested that we mandate timeframes for major functions of the IV-D program, not each step of the process.

**Response:** We believe that changes made to the proposed rule to eliminate certain specific timeframes are consistent with the broader approach recommended by some States. We disagree with the suggestion that we implement expedited processes-type timeframes for processing cases. We received a number of comments requesting that individual timeframes be imposed to control specific actions taken by different entities administering one or more facets of a State's overall IV-D program. Given the extent of comments about how many different entities are involved in the IV-D process, lack of adequate case management processes in many IV-D programs and delays in providing services, we believe that setting specific timeframes for each step of the process will ensure States provide necessary services on a timely basis. Finally, a standard based on the percentage of actions taken out of the total actions needed to be taken is not a measure of prompt response to requests for services.

2. **Comment:** A number of commenters suggested that we convert proposed timeframes so that all timeframes of over 9 days are calendar day timeframes and all timeframes of 9 or fewer days are work days.

**Response:** While we believe that looking back at case records and determining work days for audit purposes will necessitate additional effort, a State could be seriously disadvantaged in trying to meet calendar day timeframes of less than 10 days because of intervening weekends. Therefore, we have changed proposed timeframes by clarifying that those between 1 and 10 days are working days and timeframes of 11 days and above are calendar days. Furthermore, we have converted proposed timeframes of between 11 and 30 workdays to an approximate equivalent number of calendar days, for example, 15 workdays becomes 20 calendar days and 30 workdays becomes 40 calendar days.

3. **Comment:** We received many comments on each of the timeframes requiring IV-D agencies to, within 2 working days of completing one action, initiate the next necessary action or service. For example, when there is adequate location information to proceed with the case, the State must initiate an appropriate service within 2 working days of determination of the next appropriate action or service. Commenters were concerned that the requirement was too vague; they wanted us to define "initiate," "appropriate," and "determination." They were also concerned that 2 working days is not adequate to prepare all the documents necessary to take an action, for example, request service of process or prepare a petition for paternity establishment. They requested the timeframe be extended to anywhere from 5 to 45 working days. Commenters were unsure about whether the requirement was to start to take an action or to finish it. They indicated that the 2-day timeframes are unrealistic and don't account for illness, vacation, training or loss of staff. A number of commenters suggested that we eliminate these interim timeframes and include the actions required under an overall timeframe.

**Response:** In response to these comments we have removed the proposed requirements to initiate the next appropriate action or service under proposed §§ 303.2(c)(3) and 303.3(b)(6). Our intent is that cases move forward to the next step in case processing just as soon as an action is completed. However, we believe that since each timeframe begins with the accomplishment of the previous task, i.e., the timeframe for support order establishment begins with location of the absent parent or paternity establishment, there is no need for these work-initiation timeframes. Commenters convinced us that they are too burdensome to document, too vague to ensure consistent application or interpretation with respect to compliance, and truly unnecessary given the encompassing structure of other timeframes.

4. **Comment:** A number of commenters indicated that, if these timeframes are effective before 1995 when States must have operational automated systems, modifications to current automated systems will be necessary and Federal funding should be available for those modifications.

**Response:** Federal funding under the IV-D program is available for modifications to automated systems necessary to ensure compliance with these requirements.

**Suggestions Beyond the Scope of These Regulations**

1. **Comment:** Commenters requested that the incentive funding structure be changed to remove the cap on incentives paid on non-AFDC collections because it acts as a disincentive to providing services in non-AFDC cases. Commenters also were concerned that Congress not adopt a minimum cost to collections ratio for States to qualify for incentive payments. They argue that necessary changes to comply with new requirements will be costly and States should not be penalized by the fact that cost to collection ratios slip.

**Response:** The incentive funding structure is specified in the statute and changes to it are, therefore, beyond the scope of this regulation. States which implement effective case management procedures and aggressively use
available enforcement techniques can and do operate a cost effective IV-D program.

2. Comment: A number of States also requested that the $50 disregard and pass-through provision of the statute be repealed and alternatively AFDC grants be increased across the board. Commenters argued that the $50 pass-through provision is cumbersome to administer, discriminates against children whose absent parents cannot be made to pay support, and doesn't result in greater cooperation from the custodial parent or compliance by the absent parent, as intended by the Congress.

Response: As the commenters recognized, any change in the $50 disregard and pass-through provisions would require a change in the statute governing the IV-A and IV-D programs.

3. Comment: Some commenters requested specific changes to the regulations governing the IV-A program. Specifically, they asked that IV-A agencies be required to determine AFDC eligibility within 2 rather than 47 days and to notify the IV-D agency within 2 days of application for AFDC, as opposed to the current requirement of notice within 2 days of determination of eligibility. Similarly, commenters requested a 2-day timeframe for notice by the IV-A agency to the IV-D agency of AFDC ineligibility or termination.

Another commenter requested that standards be established for referral and processing of cases within the IV-A system and that applicants for AFDC be required to provide minimal information elements as a prerequisite to AFDC eligibility.

Response: The requested changes to AFDC program regulations are beyond the scope of these regulations, which is to establish standards for prompt response to requests for services under the IV-D program, including prompt distribution of collections to families. However, the Family Support Administration is committed to considering ways to strengthen those IV-A program requirements governing AFDC applicant and recipient cooperation so as to improve the quality and timeliness of information transfer between the IV-A and IV-D programs.

Support Payment to the IV-D Agency—Section 302.32

Title of Section

1. Comment: One commenter suggested that since § 302.32 now contains requirements for distribution of collections, the title of the section should be changed to reflect this additional content.

Response: We agree and have changed the title to "Collection and Distribution of Support Payments by the IV-D Agency."

Section 302.32(b)—Informing the IV-A Agency of Collections

1. Comment: We received a number of comments on the proposed requirement that IV-D agencies report the amount of any support collection to the IV-A agency within 10 working days of the collection. Commenters indicated that daily notice serves no practical purpose and would unnecessarily complicate the recordkeeping process because nothing can be done to redetermine AFDC eligibility until all collections for a month have been received. Alternatives suggested included keeping the current requirement that IV-D agencies report the amount of the collection "as soon as possible but not later than 30 days after the end of a month," or requiring notice to the IV-A agency within 10 days of the end of the month or 10 calendar days from the date of initial receipt in the State. The alternative suggested by the most commenters was 10 working days from the end of the month of collection.

Response: In retrospect and in light of the comments received, we agree that requiring notice to the IV-A agency within 10 calendar days of initial receipt in the State is the more stringent. We have revised § 302.32(b) as suggested by many commenters, to require the IV-D agency to inform the IV-A agency of the amount of the collection which represents payment on the required support obligation for the month within 10 working days of the end of the month in which support is received by the IV-D agency responsible for final distribution of the collection.

2. Comment: One commenter asked if notice to the IV-A agency included notice of collection of past-due support or just notice of current support collected.

Response: Under § 302.32(b), the 10-working day reporting requirement applies only to the amount of collection which represents payment on the required support obligation for the month.

3. Comment: A number of commenters asked whether direct, on-line access by IV-A agencies to IV-D collection data meets the requirements for notice to the IV-A agency required under § 302.32(b).

Response: Direct, on-line access to IV-D collection data meets the requirement for notice under § 302.32(b).

4. Comment: One commenter asked why the proposal for reporting collections to the IV-A agency was inconsistent with the requirement for AFDC recipients to report collections within the first and fifth of each month.

Response: We believe the commenter is referring to the requirement at 45 CFR 233.36 for AFDC recipients to report earned income monthly to the IV-A agency. There is no Federal requirement to report income within 1 to 5 days of the end of the month. Because the timeframe for the IV-A agency to report collections to the IV-A agency is now linked to a full calendar month, it is consistent with the requirement for AFDC recipients to report earned income.

Section 302.32(f)—Timeframes for Distribution of Collections

General Comments

1. Comment: A few commenters questioned use of the term "distribution," and whether it was being confused with disbursement. They defined distribution as a process to identify the elements of a payment and to allocate the payment among those elements, i.e., $50 pass-through, current AFDC reimbursement, current support payment to family, past AFDC reimbursement, arrears payment to family. They view disbursement as the sending of the payment itself and suggested that we either establish timeframes for disbursement of payments to families or establish one timeframe for the entire distribution process.

Response: While we agree with the commenter's characterization of disbursement versus distribution, because Congress referred, in the Family Support Act, to "distribution" of collections to families, "distribution" is generally used in these regulations. We have, however, in response to comments addressed later, revised the proposed requirements to establish timeframes for sending (disbursing) collections to families. We are not establishing one timeframe for the entire distribution process in AFDC cases because, while distribution to families of amounts in excess of the $50 pass-through payment depends on whether or not the family continues to be eligible for AFDC, the $50 pass-through payment itself does not, and may be sent to the family without waiting for eligibility redetermination.

2. Comment: We received a number of comments on the start date of timeframes for distribution of collections. One commenter wanted us to clarify "initial receipt in the State."

Response: We clarified the meaning of initial receipt in the State in response to comments on the final regulation on the...
§50 pass-through in AFDC cases published June 9, 1988 (53 FR 21643).

"Initial receipt in the State" for distribution purposes means when a collection is received by the first entity or agency of the State, whether or not the agency or entity is under cooperative or other agreement with the IV-D agency. This includes a clerk of the court, an employment security agency in cases of unemployment compensation withholding, or a bank handling collection responsibilities under contract with a government agency.

3. Comment: One commenter wanted the distribution timeframes to start with the date a payment is identified because, when payments are received without identifying information, it takes time to determine for whom the payment is intended.

Response: We believe that unidentified payments can be identified within the required timeframes for distribution. For example, we received comments from a State which indicated that even if a payment lacked identifying information, the State could determine to whom it was owed within the timeframe. In any event, if a payment is made without information which links it to a specific IV-D case and the State documents that it is unable to determine to whom the payment is owed, the State would not be penalized for failing to meet the timeframe for distribution in that case.

4. Comment: A number of States, especially those which do not have cooperative agreements with the courts which receive and/or distribute collections, requested that we start the timeframe for distribution of collections from the date of receipt in the IV-D agency. They argue that they have no control over the courts and cannot make them meet the timeframes. Some States which have State-supervised, county-administered IV-D programs indicated that they could not meet the 15 working day timeframes for distribution because of the structure of their programs. Some of those States, as well as States in which the courts collect support, urged us to retain the requirement that collections must be forwarded within 10 days of receipt by any agency not responsible for final distribution of the collection. They argued that the 10-day requirement is the only leverage they have to ensure collections are forwarded timely. Another commenter urged that we require any entity other than the agency responsible for final distribution to transmit the collection within 5 working days of receipt. Still another suggested 3 working days was sufficient.

Response: Congress expressed its concern about the delays in forwarding collections to families who are in need of them by requiring the Secretary to publish timeframes for prompt distribution of collections. They indicated the urgency of establishing timeframes by requiring publication of final regulations within 10 months of enactment of the Family Support Act. State IV-D agencies are responsible for sending collections to families in IV-D cases, regardless of whether or not they have cooperative agreements with the courts that collect support obligations. State-supervised, county-administered IV-D programs are no less responsible for timely distribution of collections to families than State-run IV-D programs. Families should not suffer delays in receiving the support they need because of the structure of IV-D programs.

Federal funding of States' IV-A and IV-D programs depends on compliance with Federal IV-D requirements, regardless of whether or not there are cooperative agreements between courts and IV-D agencies or whether the program is State-supervised and county administered. The designated single State IV-D agency is responsible for ensuring that all program requirements are carried out within the State; to this end, it can certainly apportion appropriate segments of the overall timeframe for distribution among the entities involved in program administration.

In keeping with our response to comments requesting that we not impose excessively detailed timeframes for each step of the process and because States need flexibility commensurate with their responsibility for ensuring compliance with title IV-D requirements, we have not added the 10-day timeframe within which each entity other than the agency responsible for final distribution must forward the collection.

5. Comment: Some commenters asked that we require States to establish a grievance process to resolve disputes with respect to timely and accurate distribution of collections. Several commenters requested that the process be extended to resolve disputes over adequate provision of all services to ensure that the program standards requirements are followed by States. They suggested that States be required to establish toll-free numbers for custodial parents to call for information or to discuss how collections were distributed. In addition, they requested that States be required to pay custodial parents any interest earned on collections.

Response: There is nothing to preclude a State from setting up such a system to resolve disputes. However, there is no evidence that such a system is warranted in all States. Furthermore, State compliance with program requirements, such as these performance standards, is measured by program audits and other less formal reviews conducted by Federal staff. We believe that most States are distributing collections accurately and that grievance procedures are unnecessary. Finally, States are permitted to pay interest earned on non-AFDC collections paid to families to those families.

Section 302.32(f)(1)—Interstate Collections

Comment: Commenters requested that the timeframe for forwarding interstate collections, like other distribution timeframes, be reduced from 10 working to 10 calendar days. Alternatively, several State and local agency commenters requested that the timeframe for forwarding collections in interstate cases be changed to 15 working days to avoid any distinction between distribution timeframes for interstate and intrastate cases.

Response: We agree that there should be consistent interstate and intrastate distribution timeframes and have changed the proposed 10 working day timeframe for the responding State IV-D agency to forward collections to interstate cases be changed to 15 calendar days from the date of initial receipt in the responding State. This is consistent with the requirement in §302.32(f)(3)(i) to send collections to non-AFDC families within 15 calendar days of the date of initial receipt in the State. However, reducing the timeframe to 10 calendar days would be unduly restrictive at this time.

Section 302.32(f)(2)—AFDC Collections

a. $50 Pass Through Payments to Families

1. Comment: Almost every comment we received from a State or local IV-D agency objected to the proposal that payments to the AFDC family under §302.31(b)(1) be made within 15 working days of the date of initial receipt in the State. Commenters strongly urged that IV-D agencies not be required to pay multiple pass-through payments until $50 is collected in cases in which payments are made weekly. Commenters suggested the timeframe for sending the $50 pass-through to families be tied to the end of the month of collection or the date at least $50 is
collected. In addition, commenters indicated that, if finalized, the proposal would require daily distribution of collections received in a month, at least one State to be confusing to AFDC recipients and difficult to administer. Response: It was never our intention that States make multiple incremental payments of less than $50 to the AFDC family until the $50 limit on the pass-through of child support is reached. Recognizing that support may be paid weekly or bi-weekly, we have revised § 302.32(f)(2)(i) to make clear that one payment per month of up to $50 be passed through to AFDC families under § 302.51(b)(1) within 15 calendar days of the date of initial receipt in the State of the first $50 of support collected in a month, or, if less than $50 is collected in a month, within 15 calendar days of the end of the month in which the support is collected. The only instance where multiple pass-through payments are required would be when timely payments were not received by the agency responsible for final distribution until a later month in accordance with § 302.31 of this part.

2. Comment: Almost every commenter suggested alternative timeframes for passing through the first $50 of support collected. Commenters suggested included 5, 7, 10, 15, 21, 25, 30, 60, 90 working days, or 15, 17, 21, 60 calendar days after the end of the month of collection. Others suggested keeping the current requirement at § 302.51(b) (3) and (5) for distribution by the end of the month following the month in which the amount of the collection is used to re-determine AFDC eligibility. Another alternative was to pay the $50 pass-through to the family within 15 working days after the total monthly obligation is collected or a minimum of $50 is collected, or when the next AFDC benefit check is mailed. A State IV-D agency argued that tying payment to the family to the next benefit check was unacceptable because the next month’s check is produced at the end of the previous month (the month of collection) to allow mailing on the last working day of the previous month.

Many State and local agencies based their argument for longer timeframes on the need for enhanced automation or the need to assure that checks cleared before paying the family. One commenter argued that the date of receipt should be changed to the date the check clear because out-of-State checks take 25 days to clear and in-State checks take 3 working days, or 15 working days if resubmitted, to clear. In response to anticipated State comments that checks have to clear before payments may go to the family, other commenters referenced Federal banking requirements which require in-State checks to be cleared within 4 working days and out-of-State checks to be cleared within 7 working days. These commenters argued that States, not custodial parents, should run the risk of checks not clearing because that is the purpose of the IV-D program. Commenters requesting stricter timeframes suggested the proposed timeframe was much too long and 2 working days should be sufficient for any automated system. Other commenters argued that 15 calendar days from the end of the month of collection was adequate in automated States but 30 to 45 working days was more reasonable in States which are not fully automated. Some other commenters argued that, while 15 days for the first or last payment to be made to the family is understandable given the need to redirect payments in new or recently terminated AFDC cases, 2 to 3 working days should be adequate to pay collections to the family in regularly paying cases.

Finally, a number of commenters urged that the timeframe for payment of the $50 pass-through to AFDC families be required in regulations governing IV-A agencies because the IV-A agency frequently is responsible for making the $50 pass-through payment for the IV-D agency. Response: Given the many comments we received on this provision of the proposed regulations, we have carefully reconsidered our proposed requirement. We agree with advocates who argue that Federal law requirements prohibit financial institutions from holding checks for extended periods to ensure clearance. In response to comments, we are revising regulations governing the IV-A program at § 323.20(d) to require the IV-A agency to pay to the family the sum disregarded under § 302.51(b)(1) within 20 calendar days of the date of initial receipt in the State of the first $50 of support collected in a month, or, if less than $50 is collected in a month, within 20 calendar days of the end of the month in which the support is collected. Some State IV-A agencies enter into agreements under which the IV-D agency sends the $50 payment to AFDC families. In those States, the IV-D agency must send the pass-through payment to the family within the 15-calendar day requirement in § 302.32(f)(2)(i) because there is no need to transfer the collection from the IV-D to the IV-A agency. In the majority of States in which the IV-A agency sends the pass-through payment to the family, § 302.32(f)(2)(i) requires that the IV-D agency forward the collection to the IV-A agency within 15 calendar days of the date of initial receipt in the State of the first $50 of support collected in a month, or, if less than $50 is collected in a month, within 15 calendar days of the end of the month in which the support was collected.

We believe that these timeframes are adequate for any State, whether fully automated or not, to distribute the $50 pass-through payment to AFDC families. b. AFDC collections in excess of the first $50—1. Comment: We received comments on our proposal to require the IV-D agency to distribute collections in excess of the $50 pass-through payment under § 302.32(f)(1) to the IV-A agency with 15 working days of notice of AFDC eligibility redetermination. Commenters argued that there was no need to regulate prompt distribution of amounts to be retained by the State and Federal governments, either in AFDC or title IV-E foster care cases. We have revised § 302.32(f)(2)(i) and (iii), because it would be administratively complex and costly and would serve no practical benefit to do so. They argued that the Congress, in Pub. L. 100-485, only instructed the Secretary to regulate prompt distribution of collections due to families, not to be retained by States. Response: Section 122 of Pub. L. 100-485 requires the Secretary to establish time limits for distributing child support collections, and the Conference Report (H. Rep. 100-998) on page 99 requires time limits within which child support payments must be distributed to the families to whom they are owed.

Because we agree the intent of Congress was expedient distribution of collections owed to families, rather than those collections assigned to, and retained by, the State in AFDC cases, we have revised § 302.32(f)(2)(i) to require distribution only of collections in excess of the $50 pass-through which are paid to families in AFDC cases. We have made similar revisions with respect to collections in title IV-E foster care cases to ensure timely payment to the agency responsible for the child’s needs of any collections to be used to serve the child’s best interests.

2. Comment: A number of commenters expressed concern about delays of up to five months in forwarding payments to families after AFDC eligibility terminates. They stressed that such delays are untenable because the former AFDC family must rely on the support collection as a substitute, or partial substitute, for the amount the family previously received under the AFDC program. Alternatives to the proposed 15-working day timeframe ranged from 10 calendar days of notice of eligibility
redetermination to 20 days from the end of the month of collection. Other commenters requested that the support collection be paid to the family no later than the date the family would have received the next AFDC check. Other commenters pointed out that IV-A agencies are not required to notify IV-D agencies of a family's continued AFDC eligibility; they are only required to notify the IV-D agency of the effective date of the family's ineligibility.

Response: In response to comments, and because we are imposing timeframes only for distribution of amounts paid to families, we have revised § 302.32(f)(2)(ii) to require that, with the exception of Federal and State income tax refund offset collections which are dealt with separately, collections for the month following the month in which the family receives its last assistance payment and any collections paid to the family under § 302.51(b)(3) and (5) must be sent to the family within 15 calendar days of initial receipt in the State of a collection for the first month of ineligibility. We are not requiring States to send payments to the family by the date that the family would have received their next AFDC benefit check had benefits not been terminated, because that date may occur too soon to allow the IV-D agency adequate time to meet the timeframe. However, we strongly urge States to attempt to forward collections to the family as close to that date as possible.

c. Non-AFDC collections—1. Comment: We received many comments on the timeframe for distribution of collections in non-AFDC cases. Suggested alternatives ranged from 5 calendar days to 35 days from initial receipt in the State. Commenters also suggested a separate timeframe of 2 working days for non-AFDC cases in which no AFDC arrearages are owed, as well as 10 days initially, to be shortened when States are automated and upon reassessment of the timeframe in 2 years. A number of commenters indicated that 15 working days was sufficient if mailing the payment to the last known address of the custodial parent meets the requirement. Some commenters wanted a longer timeframe to account for unusual circumstances which may preclude timely distribution while others urged that we not establish a standard based on time necessary to distribute support in difficult cases.

Response: In response to concerns for prompt payment of collections to families in non-AFDC cases, we revised the proposed 15-working day timeframe to require IV-D agencies to send current support payments to non-AFDC families within 15 calendar days from the date of initial receipt in the State. We do not believe a standard should be set based on the time it takes to distribute collections in difficult cases which are the exception and not the rule. Mailing the payment to the last known address of the custodial parent would meet the requirement. If such payments are returned, however, States should attempt to promptly determine a new address for the custodial parent. We did not establish separate 2-day timeframes for distribution in non-AFDC cases in which there are no AFDC arrearages because we do not want to make distribution, complicated by its very nature, unduly so by requiring a myriad of different timeframes for each type of case.

2. Comment: We also received a number of comments on proposed § 302.32(f)(3)(ii) which would allow States to determine whether to pay arrearage collections to the family first or reimburse itself for unreimbursed past assistance paid to the family. Commenters were divided between wanting us to require payment to the family first or to require that State's retain amounts to reimburse unreimbursed past assistance first. Those in favor of paying the family first argued the family should receive arrearage payments to help them remain self-sufficient. One commenter urged that at least those arrearages which accrue after the family leaves the AFDC rolls should be paid to the family before the State retains its share of what it is owed. Those in favor of reimbursing the government for unreimbursed assistance paid to the family first argued that paying the family first violated § 457(b)(4) of the Act and § 302.51(f).

Response: Section 457(b) sets forth the distribution scheme for AFDC cases; section 457(c) governs services to former AFDC recipients and requires State IV-D agencies to continue to provide IV-D services to former AFDC cases subject to the same conditions and on the same basis as in the case of non-AFDC cases receiving services under § 454(e) of the Act. Since section 454(e) is silent regarding the distribution of amounts collected in non AFDC cases, our longstanding policy has been to allow States flexibility regarding distribution of amounts collected in excess of current support in non-AFDC cases, our longstanding policy has been to allow States flexibility regarding distribution of amounts collected in excess of current support in non-AFDC cases when there are both arrearages owed to the State and arrearages owed in the family. While § 302.51(f) requires States to attempt to collect any unpaid support after the family leaves the AFDC rolls, we believe a family should be set IV-D cases to reimburse the State and Federal government for unreimbursed assistance paid to the family, we agree that paying arrearages to a non-AFDC family before reimbursing unreimbursed assistance may impact negatively on the family's ability to remain self-sufficient. We are in the process of clarifying distribution requirements in a separate rulemaking effort and will address this issue in more detail in that document. Since this final rule is establishing timeframes for distribution rather than distribution requirements themselves, we retained State flexibility in the final rule under paragraph (f)(3)(ii) but changed the proposed requirement to require IV-D agencies which send amounts to the non-AFDC family to satisfy past-due support to do so within the 15 calendar days for consistency with paragraph (f)(3)(i).

d. Federal and State income tax refund offset collections—1. Comment: Most States requested a longer period of time within which to distribute collections made through offset of Federal and State income tax refunds. Suggested alternatives ranged from distribution within 15 days of receipt by the agency responsible for final distribution to distribution within 180 days of receipt. Most commenters, however, suggested collections be distributed within approximately 30 to 45 calendar days of receipt or within 15 days of expiration of any post-offset appeal or review process required by State law. States requested that the timeframe commence with receipt by the IV-D agency to avoid including receipt by the State Revenue Agency which is responsible for the State income tax refund offset process.

Response: We are convinced by commenters that additional time is needed to distribute these collections of their volume. Therefore, we require in § 302.32(f)(2)(iv) that IV-D agencies send to the AFDC family or IV-E agency, as appropriate, within 30 calendar days of receipt or within 15 days of expiration of any post-offset appeal or review process required by State law. States requested that the timeframe commence with receipt by the IV-D agency to avoid including receipt by the State Revenue Agency which is responsible for the State income tax refund offset process.
process and an appeal is filed, the IV-D agency must send the payment to the family within 15 calendar days of the date the appeal is resolved. Second, in accordance with § 303.72(b)(3), if the Secretary of the Treasury, through OCSE, notifies the State that an offset is being made to satisfy non-AFDC past-due support from a refund based on a joint return, the State may delay distribution until notified that the unobligated spouse's proper share of the refund has been paid or for a period not to exceed six months from notification of offset, whichever is earlier. We want to stress, however, that States may not routinely hold tax offset collections in non-AFDC cases for up to 6 months. The IV-D agency must receive a notice that a joint refund is involved before distribution may be delayed in such cases.

4. Comment: A number of commenters asked that we clarify that § 303.2(b)(3)(i) requires the State, as well as Federal, income tax refund offset collections to be distributed in non-AFDC cases within the specified timeframe.

Response: We inadvertently omitted reference in § 303.2(b)(3)(iii) to State tax refund offset distribution in non-AFDC cases. Distribution of such amounts is required within the same timeframe as distribution for Federal income tax refund offset collections in non-AFDC cases.

3. Comment: A commenter indicated that offset collections can be distributed only after both the collections and the tape specifying from whom the collections were made are received.

Response: The 30-calendar day timeframe should allow adequate time to receive both the collections and the magnetic tape to distribute the collections.

Establishment of Cases/Maintenance of Case Records—Section 303.2

Application Process—Section 303.2(a)

1. Comment: Commenters requested that IV-A agencies be required to refer AFDC cases immediately or within two working days to the IV-D agency because families applying for AFDC are in immediate need of child support payments.

Response: Section 235.70 requires referral of AFDC cases to the IV-D agency within 2 days of eligibility determination and allows referral earlier at State discretion. Some States refer cases immediately upon application for AFDC or have co-located IV-A and IV-D offices. Therefore, IV-D services are provided prior to AFDC eligibility being determined and within the timeframe allowed for the eligibility determination process. Because some families are subsequently determined to be ineligible for AFDC and may not want to apply for IV-D services, we do not believe immediate referral should be mandatory at this time.

An earlier response noted the Family Support Administration's commitment to strengthen interaction between the IV-A and IV-D programs.

2. Comment: We received many comments on the requirement to provide applications on the day an individual requests an application for services. Commenters asked that we allow a State between 2 and 10 working days to respond to a request for an application to allow for unpredictable personnel events and requests received late in the day. We were asked to require that applications be mailed to individuals within 2 to 5 working days of a telephone or written request. Some commenters requested that States be required, if applications are filed in the wrong office, to refer them to the correct office immediately and to inform custodial parents that written applications are necessary.

Response: We revised the requirement in § 303.2(a)(2) to require IV-D agencies to provide an application to an individual who requests an application or services in person on the day of the request and to send applications to individuals within no more than 5 working days of a written or telephone request. We did not require IV-D agencies to forward applications to the correct IV-D office because an application may be filed at any IV-D office.

Although written applications are necessary, we did not add a requirement that States inform custodial parents of that fact because we believe it is obvious. States may include such a statement in information publicizing the availability of services under the IV-D program.

3. Comment: Commenters requested that States be required to explain the rights and responsibilities and distribution policies of the IV-D program to AFDC as well as non-AFDC families because AFDC recipients have a right to, and need to know, this information.

Response: We agree that States should explain the IV-D program and its procedures, as well as the rights and responsibilities of those who receive IV-D services, to any individual receiving IV-D services. Therefore, we have revised § 303.2(a)(2) to require the IV-D agency to provide that information to AFDC, Medicaid, and title IV-E foster care applicants or recipients within no more than 5 working days of referral to the IV-D agency.

4. Comment: A number of commenters requested that IV-D agencies be required to accept application as filed on the day it is filed and the application fee is paid.

Response: We have revised § 303.2(a)(3) to require the IV-D agency to accept as filed an application signed by the individual applying for IV-D services on the day it is filed and the application fee is received. An application should be accepted as filed if it is completed to the best of the individual's ability, signed, and submitted to the IV-D agency.

5. Comment: Commenters asked that we not require IV-D agencies to accept applications until relevant information is provided which is necessary to determine whether IV-D services are available to the individual. They argued that States must be able to require certain minimal data to determine if a case should be opened, e.g., the name and address of the custodial parent, age of the children, and residence of the custodial parent. States argued that services are only available if there is a minor child or the custodial parent is a resident of the State. With respect to providing services to non-minor children, a commenter urged that States only be required to provide services in cases in which application is received when the child is a minor. Finally, commenters requested that the IV-D agency not be required to accept applications until an intake interview is conducted.

Response: Accepting applications should not involve any action by the IV-D agency other than recording the date of filing on the application. There are no conditions for receipt of IV-D services other than the requirement to file a written application requesting child support enforcement services under the IV-D program. Anyone may apply for IV-D services who needs help with securing child support; availability of services is not limited to minors or to those who are residents of the State. While States argue that they should not be required to provide IV-D services in cases in which the child is no longer a minor, to limit availability of services to minor children would encourage absent parents to avoid their support obligations until the child reaches the age of majority. States may not work cases in anticipation of being able to close those cases once the child reaches the age of majority.
6. Comment: A commenter requested that we define more specifically what an application for IV-D services is and asked if an endorsed check, a petition for establishment of paternity or support establishment or enforcement, or application by operation of State law meet the regulatory requirements.

Response: In order to comply with Federal requirements of filing an application, the application must be in writing, be signed by the individual, and clearly state that the individual is applying for child support enforcement services under the State’s IV-D program. We revised the definition in paragraph (a)(3) slightly to specifically refer to child support enforcement services under the State’s IV-D program.

We received comments from a number of commenters that we should not impose timeframes for each specific action required but establish timeframes governing broader necessary actions. Therefore, we have deleted the separate 2-day timeframe for opening a case and revised §303.2(b) to require the IV-D agency to open a case by establishing a case record within the 15-working day timeframe (which has been converted to 20 calendar days) for taking specific actions to solicit action and refer a case for further location attempts, if necessary.

2. Comment: We were asked to clarify that a case record may be automated, on paper, or a combination thereof.

Response: We moved from proposed §303.2(b) to §303.2(c) the requirement that a case record must be supplemented with all information and documents pertaining to the case, as well as all relevant facts, dates, actions taken, contacts made and results in a case. Records of contacts, communications, and other actions in a case may be maintained in a physical or electronic record. Case records, therefore, may be automated, on paper, or a combination thereof.

3. Comment: We received comments which indicated that if necessary forms for case processing are not complete when received by the IV-D agency, the IV-D agency should be allowed to return the forms to the IV-A agency or non-AFDC applicant for completion before opening a case.

Response: We are convinced by States’ arguments that we should not impose timeframes beyond the scope of this regulation addressing prompt referral by other agencies because these issues are beyond the scope of this regulation which governs IV-D agency activities.

5. Comment: A number of commenters requested that we extend to 30 days the proposed 15-working day timeframe for soliciting additional information to allow rescheduling of interviews and to allow group interviews. Others asked that States be required to develop a plan of services within the proposed 15-day timeframe.

Response: While we agree that requiring agreements to ensure that IV-D agencies receive referrals is an indirect, inappropriate method of ensuring prompt referral, we are not addressing prompt referral by other agencies because these issues are beyond the scope of this regulation which governs IV-D agency activities.
receipt of referral of a case or filing of an application for services, to open a case by establishing a case record and, based on an assessment of the case to determine necessary action, to: (1) Solicit necessary and relevant information from the custodial parent and other relevant sources and initiate verification of information, if necessary; and (2) if there is inadequate location information to proceed with the case, refer the case for further location attempts, as specified in § 303.2.

Location of Absent Parents—Section 303.3

Section 303.3(a)—Definition

1. Comment: With respect to the proposed definition of location, the majority of the commenters requested clarification of the word “confirmed.” Some commenters requested that we not require confirmation of a location if there is every indication that the information is current. Commenters generally agreed that finding an address should not be considered locating the absent parent unless the agency can take necessary action or effect service of process on the individual based on the address. Finally, commenters requested clarification regarding the inclusion of the absent parent’s employer, assets and/or income in the definition of location.

Response: As stated in the preamble to the proposed rule, the advisory committee stressed that the location function can only be considered complete or successful when the address received is sufficient and necessary to take the next appropriate action in a case. The definition of location is important because many of the actions in the regulation begin with location. While a sufficient address is a prerequisite to effective service of process, to define location as successful service of process would require service of process within the location function, which is not necessarily appropriate in every case. States should determine whether an address is sufficient to proceed with necessary action, which could include service of process. Verification of an address would not be necessary in a situation where the State knows the address is sufficient to take the next appropriate action. At such time as it is determined that service of process cannot be effected because the information is not sufficient to take the next appropriate action, the case would be referred for additional location attempts.

With respect to the request for clarification of why employer and asset information is included in the definition of location, we want to clarify that States must locate the absent parent, the absent parent’s employer, income and assets, depending on what information is necessary to proceed with appropriate action on a case. Section 303.3(a) is revised to remove the word “confirmed” and define location as information concerning the physical whereabouts of the absent parent, the absent parent’s employer, sources of income or assets, as appropriate, which is sufficient and necessary to take the next appropriate action in the case.

Section 303.3(b)(1)—Location Sources

1. Comment: We received several comments regarding the list of appropriate State agencies and departments States must use to locate absent parents in proposed paragraph (b)(3). The commenters were concerned about the existing requirement to use departments which maintain records of criminal records. The commenters stated that some States would require legislative changes to access these records. Some commenters suggested that we eliminate the list in this section and require States to develop guidelines determining sources to be used in the State so that States will have the flexibility to use sources allowable under State law and the ability to add new sources to the list which can be accessed in one State but not another (e.g., utility account information, financial institution records, etc.).

Response: The proposed regulation only added wages and employment records to the existing list of State sources; access to criminal records was included in existing regulations. We did not delete specific reference to locate sources and require States to issue guidelines to determine appropriate location sources because we want to ensure States access all appropriate sources. However, because we combined all location sources, the State sources listed in proposed (b)(3), as well as the Federal Parent Locator Service (PLS) and interstate location networks, are included under paragraph (b)(1). States should access any appropriate location source, whether in or out-of-State, including the Federal PLS. However, because some States may not have access to certain sources because of restrictions in State law, paragraph (b)(1) requires States to use State location sources such as those listed as permitted under State law.

2. Comment: In response to our request regarding whether States should be required or encouraged to use private automated data sources such as credit reporting agencies and the Postal Service contractor’s recent mover data base, those who responded-favored requiring the use of credit reporting agencies but pointed out that some States may need legislative changes to access this source. Commenters were opposed to requiring use of the Postal Service contractor’s recent mover data base unless it could be accessed via the Federal PLS. The majority of the commenters urged a demonstration project to assess the cost-effectiveness of this source.

Response: In response to comments, we are not requiring use of these private data sources at this time. However, States should assess the availability of these sources and use them, if available and appropriate. Federal financial participation is available for the cost of using these sources. OCSE will further explore both sources in the next step of assessing and enhancing the Federal PLS.

Sections 303.3(b)(2)—Timeframe for Location

1. Comment: The majority of the commenters requested that proposed paragraph (b)(4) require that “appropriate location sources” include the Federal PLS. These commenters were opposed to the exclusion of the Federal PLS from a timeframe, as proposed, and requested that regulations require that States submit requests to the Federal PLS simultaneously with submittal to State and local sources. In addition, several commenters stated that regulations should require a timeframe within which the Federal PLS must respond.

Response: Since State and local sources often provide more recent and accurate location information, requests to the Federal PLS may not be appropriate in many cases. However, we agree that cases should be transmitted to the Federal PLS in a timely manner if and when a State determines that the Federal PLS is an appropriate source. Accordingly, we have deleted proposed paragraph (b)(5) and revised proposed paragraph (b)(4), which is redesignated as paragraph (b)(3), to require referral to the Federal PLS within the timeframe for accessing appropriate location sources. Cases may be submitted to the Federal PLS and other location sources simultaneously, or to the Federal PLS after accessing State and local sources is unsuccessful, whichever is appropriate given the case information. However, all appropriate sources must be used within the required timeframe.

We did not include a timeframe within which the Federal PLS will respond to requests for location because
Federal regulations for the IV-D program apply to States, not the Federal government. However, depending on the sources checked, the Federal PLS responds in one, two or three weeks from request for location from a State or local PLS.

2. Comment: The majority of the commenters requested clarification of the term "access" in proposed paragraph (b)(3). These commenters requested that regulations require that States query sources within the timeframe, rather than require receipt of information from sources within the timeframe, because State agencies often have no control over the time it takes to get a response from sources. One commenter suggested that, rather than require the return of information within a stringent timeframe, States should be encouraged to work with sources to improve turn-around time and be required only to query sources within a timeframe and follow-up within a certain period of time if the IV-D agency has not received a response from the source.

Commenters were also concerned about the 30-working day timeframe. Several commenters requested that we retain the current 60-calendar day timeframe because a 30-working day timeframe would force States to send simultaneous location requests to sources which may have a fast response time but may not have information pertaining to the case. Several commenters stated that 30 working days is not long enough to receive and evaluate responses from non-automated sources. Suggested alternate timeframes were 30, 40 and 45 calendar days.

Response: We believe it is crucial for States to determine which sources are most likely to provide information concerning the absent parent’s or alleged father’s whereabouts and to access these sources simultaneously, rather than one at a time. With regard to response time, we recognize that States do not have direct control over the response time of some sources. However, many sources respond in a timely manner. As stated in the preamble to the proposed rule, the 60-day timeframe was reduced to 30 working days based on the fact that the 60-day timeframe was set in 1978, prior to automated access. However, as pointed out by commenters, all States do not yet have automated capabilities. While only requiring States to access (i.e., query or request location information), as opposed to receiving responses from location sources would not ensure continuing responsibility for case processing, we realize that even the most diligent efforts may not result in accessing and evaluating location information within a 30-working day timeframe. The majority of the commenters believed that 60 calendar days would be adequate to request and receive responses from sources.

However, because some States do not yet have automated access to location sources, Federal PLS access is included in the timeframe, and States must ensure that the location information is sufficient, we have revised the proposed paragraph (b)(4) (redesignated as paragraph (b)(3)) to extend 30 working days to 75 calendar days. Within this timeframe, States must access all appropriate locations sources, including the Federal PLS, and ensure the sufficiency of the information received.

3. Comment: One commenter requested clarification of the location requirements with regard to situations in which a State receives information which indicates that an absent parent may be in one of several States.

Response: With regard to these situations, a State may request several States to attempt to locate an absent parent or putative father. However, because the case is not yet an interstate case, the requesting State must take this action within its own timeframe (i.e., the requesting State must request and receive location information from any other States within the 75-day timeframe). Since the States providing location information are not subject to the timeframe, access should be limited to automated sources to ensure a quick response to the request.

4. Comment: A number of commenters were concerned that, if, as proposed, States are required to initiate the next appropriate action within 2 working days of locating an absent parent, they would have insufficient time to complete the necessary forms in interstate cases.

Response: Because we deleted the 2-day timeframe for initiation of the next appropriate action in proposed paragraph (b)(6), we revised § 303.7(b)(2), which requires initiating states to "promptly" refer any interstate IV-D case to the responding State’s interstate central registry for action, to require referral within 20 calendar days of determining that the absent parent or putative father is in another State. Under this requirement, the initiating State would prepare the appropriate standard interstate form(s) and forward the case to the responding State’s central registry. For example, if the initiating State determined that the absent parent or putative father is in another State and the next appropriate step is establishment of an order, the initiating State would prepare the necessary forms and forward the case to the responding State within 20 calendar days from determining that the absent parent is in another State. Upon receipt of the case in the responding State’s central registry, the requirements in § 303.7(a) apply. Once the case is forwarded for necessary action by the central registry within the 10-working day requirement, the timeframes for taking such necessary action in this case establishment of a support order, must be met by the responding State. We also corrected references in proposed paragraph (b)(7) (redesignated as paragraph (b)(4)) because of other changes to § 303.3.

Section 303.3(b)(5)—Repeated Location Attempts

1. Comment: We received a number of comments on the requirement in proposed paragraph (b)(8) that States must repeat location attempts quarterly in appropriate cases in which previous attempts to locate absent parents, or sources of income and/or assets have failed but adequate information exists to meet requirements for submittal for location, in conjunction with quarterly updates of State employment security files. The majority of the commenters requested that this requirement only apply if the State receives new information on a case since the last request for location. Several commenters requested that regulations clarify that this requirement only applies to automated sources and to cases where there is a known Social Security number. One commenter requested clarification regarding the statement that it must be "in conjunction with quarterly updates of State employment security files." Finally, several commenters requested that resubmittal only be required semiannually because not all sources are updated quarterly.

Response: It is essential that cases be resubmitted for location even if the State IV-D agency does not receive new information on the case. Often, the agency would not be aware of the fact that an absent parent has gotten a job or a driver’s license. However, we agree that subsequent attempts will not be helpful unless there is sufficient identifying information on the absent parent. We required in the proposed rule that the State repeat location attempts quarterly "in conjunction with quarterly updates to State employment files" to ensure that States re-check this invaluable source after it is updated. Moreover, limiting cases to those with social security numbers (SSNs) is inappropriate because social security
numbers are obtainable through the Federal PLS. For the reasons mentioned above, we have revised proposed paragraph (b)(8) (which is redesignated as paragraph (b)(6)) in several ways. We revised the requirement so that States must repeat location attempts in cases in which previous attempts to locate have failed but adequate identifying and other information exists to meet requirements for submittal for location, either quarterly or upon receipt of new information which would aid in location, whichever occurs sooner. Quarterly attempts may be limited to automated location sources but must include accessing State employment security files. Repeated attempts upon receipt of new information which may aid in location must meet the requirements at §303.3(b)(9), i.e., the State must access all appropriate sources within the 75-calendar day timeframe.

2. Comment: In response to our request for comments on requiring annual submittal of unlocated cases to the Federal PLS, the majority of the commenters requested that, rather than require annual submittal to the Federal PLS, regulations should require that the FPLS retain cases and check them periodically without the need for resubmittal.

Response: The Federal PLS were to check cases periodically as suggested without resubmittal, there would be no way to keep the data up-to-date. For example, the Federal PLS would have no way of knowing if information provided to the State was successful in locating the absent parent or if the absent parent had been located using other location sources. The list of cases, would, therefore, continue to grow from year to year.

Since, however, the Federal PLS is such a valuable location source, we believe mandatory annual submittal to the Federal PLS of unlocated cases in which adequate information exists to access the Federal PLS is warranted. Therefore, we have added a requirement at paragraph (b)(6).

Section 303.3(b)(7)—Referral for Location When Location Becomes Unknown

1. Comment: The majority of the commenters stated that 5 working days is too short a period of time to refer for location services when location becomes unknown. In addition, several commenters requested clarification of this requirement because it could be interpreted that a State would have to locate the absent parent’s assets or income if unknown even if the case is in payment status.

Response: Because we have eliminated all interim timeframes and because the timeframe for the location requirement starts upon determining that location is necessary, we have deleted this section.

Establishment of Support Obligations—Section 303.4

1. Comment: The majority of the commenters were opposed to the 30-working day timeframe to establish a support order or file a petition for establishment of a support order with the court or administrative authority responsible for establishment of obligations. Most stated that 60 calendar days would be more reasonable to allow the State sufficient time to request that the absent parent come in for an interview, attempt settlement, prepare a complete petition and refer the case to the attorney if settlement is not reached. Many commenters pointed out that the 30-day timeframe would force States to file cases without attempting consent.

In addition, many commenters requested clarification of the proposed standard and timeframe as it relates to service of process and expedited processes timeframes. Some States indicated their procedures require that legal actions must be filed prior to any negotiations or settlement discussions being taken in the State. Alternatively, some States attempt to obtain consent orders prior to filing a case. Commenters stated that because of differing State procedures, the proposed requirement to establish an order or file a petition for establishment of a support order with the court or administrative authority within 30 days of locating an absent parent should be revised and/or clarified. Some commenters suggested a separate timeframe for consent processes, to encompass the period of time prior to when a case must be filed in the State. Other commenters suggested that the timeframe for filing a case be shortened and that another timeframe be added for the establishment of an order and/or initiation of establishment of an order. Most commenters indicated that filing a case does not bring the absent parent under the jurisdiction of the expedited process system. Rather, it is service of process that must be accomplished to ensure that the absent parent is under the jurisdiction of the State’s expedited process system.

With regard to service of process, the majority of the commenters were opposed to the requirements in proposed §303.9. With regard to proposed §303.3(b), commenters stated that 2 working days is not adequate time to prepare documents for service and to refer documents to the process server. With regard to the requirement that service of process must be completed within 10 working days of the request, commenters were most concerned with the fact that even service of process by certified mail takes longer than 10 days. In addition, the majority of commenters were concerned with the assumption in the preamble to the proposed rule that the percentage of cases where process could not be served would be accounted for in the 25% margin for error in a 75% audit criteria. Commenters pointed out that due diligence efforts, absent parents successfully avoid service in a sufficiently large percentage of cases to warrant this fact to be taken into consideration in developing a standard. Commenters requested that regulations state that States attempt service within a timeframe and document attempts to show what efforts were taken if an absent parent is not successfully served. Many commenters requested that the 10-day timeframe be extended to allow for due process requirements which may require service by personal service if necessary. Suggested timeframes included 15, 20, 30 and 45 calendar days. Finally, commenters requested that service of process timeframes be outside of the overall timeframes for action. Rather, these commenters believed that service of process timeframes should be in addition to overall timeframes, and that expedited processes requirements should be revised accordingly.

Response: As required in §303.101, States must have and use expedited processes to establish and enforce support obligations. Those expedited processes and the timeframes in §303.101 only apply to cases once they are under administrative or judicial jurisdiction. As stated in the preamble to the proposed rule, the proposed case processing timeframes for establishment of support obligations were intended to encompass all necessary actions up to the point where the expedited processes timeframes begin (i.e., the date a case is filed or the date of successful service of process, depending on which date the State chooses for purposes of computing expedited processes timeframes.) However, as a result of comments, we realize that many States must file a document with the court or administrative process before any action can be taken to establish a support obligation and that cases are not under administrative or judicial jurisdiction until the absent parent has been served with notice. To respond to the commenters’ concerns, we believe it
is necessary to revise both § 303.4 and 303.101.

Section 303.101(b)(2) is revised by replacing reference to the time of filing as the starting point for the expedited processing timeframe so that, under expedited processes, actions to establish and enforce support obligations must be completed from the date of successful service of process to the date of dismissal within the required timeframes. In conjunction with this revision, § 303.4(d) is revised to encompass the period of time from location of the absent parent or establishment of paternity through establishment of an order, successful service of process, or documented attempts to serve process in accordance with State guidelines defining diligent efforts to affect service of process. To ensure States make diligent efforts to serve process, we added a requirement at § 303.4(c) to require that the State develop guidelines defining diligent efforts for service of process and that the guidelines must include periodically repeating service of process attempts in cases in which previous attempts to serve process have failed, but adequate identifying and other information exists to attempt service of process. Therefore, within the timeframe to be discussed below, States must serve process or document attempts to serve process. In situations where process could not be served because the absent parent is no longer at the address, the State must document this as the reason and the case must be resubmitted for location.

Because State procedures differ with respect to the order in which actions are taken to establish an order for support, rather than attempt to establish sequential timeframes for each step a State must take, we have extended the timeframe sufficiently to allow a State to attempt to establish an order by consent, or file an action and serve the absent parent in accordance with its procedures. As indicated above, the majority of the commenters stated that 90 calendar days would be adequate for a State to attempt to establish an order by consent or to file the case and serve the absent parent in a timely manner. In response to commenters’ concerns, we have revised the proposed timeframe to take into consideration the more difficult paternity establishment case and to allow for differences in State procedures with regard to paternity establishment. Rather than outline step-by-step standards and timeframes for when in the process a State must file a petition with the court for paternity establishment, attempt to establish paternity by consent and serve the alleged father, we have revised the regulations to ensure that all actions necessary to initiate and complete legal proceedings to establish paternity are accomplished in a timely manner.

calendar days of location or of establishment of paternity. Therefore, given the 20-day timeframe for case opening, the 75-day timeframe for location and the 90-day timeframe discussed above, support orders must be established or cases must enter the expedited processes system within 165 calendar days of applicability for referral. We want to point out that this approach allows establishing an order by consent at any time in case processing, whether before or after a case is filed with the court or administrative authority. With respect to interstate cases, the timeframes in § 303.4 apply upon receipt of the application by the State responsible for the establishment of support obligations.

2. Comment: Many commenters requested that regulations allow States to determine whether cases should be pursued. Examples included: the absent parent is resistant, incarcerated or institutionalized, the absent parent is SSI; the absent parent is incarcerated or institutionalized, or the absent parent’s income level is below the minimum set by State law.

Response: While some discretion is necessary, States must have standards for pursuing cases. Those situations mentioned in the comments as set forth above would be accounted for by applying the State’s guidelines for setting support awards.

3. Comment: The majority of the commenters requested that regulations specify when and how often States must review dismissals without prejudice as well as what documentation is necessary.

Response: In this situation, we believe States are in a better position to determine when to refile a previously dismissed case or when to seek a support order on a case-by-case basis. However, we have clarified that States must, at the time of dismissal, determine when it would be appropriate to pursue an order in the future. Notations in the case record are sufficient documentation. If a case is dismissed because of unemployment or insufficient income, the State should return the case to the “locate” function for quarterly and annual checks on changes in income and assets.

Establishment of Paternity—Section 303.5

1. Comment: In response to our request for comments regarding whether there should be separate timeframes and requirements for uncontested paternity cases, commenters stated that this would not be practical because often it is difficult to differentiate between contested and uncontested paternity cases. Commenters pointed out that uncontested cases could become contested and vice versa at various points in case processing. Most commenters believed that separate timeframes would only complicate the process or increase court actions to establish paternity if the deadline for establishment by consent was missed.

Response: While we have not required separate timeframes for uncontested cases, we strongly urge States to attempt to establish paternity by voluntary acknowledgement immediately upon location of the alleged father.

2. Comment: Many commenters were concerned with the statement in the preamble that cases which are difficult or impossible to complete within one year would easily be accounted for within the 25 percent margin allowed as part of the 75 percent substantial compliance audit standard. Commenters requested that regulations allow States to exercise prosecutorial discretion or, at the very least, list categories of cases which should be excluded from the timeframe. Commenters also described unavoidable delays which cause proceedings to extend beyond the one-year timeframe despite diligent efforts on behalf of the IV-D agency (e.g., extensive pre-trial discovery, interlocutory appeals and post-judgment appeals, etc.). Finally, commenters questioned our legal authority to establish an outside limit for completion of paternity establishment since the Congress allowed States to exclude paternity establishment from their expedited processes.

Response: We believe that Congress allowed States to exclude paternity establishment from their expedited processes to ensure that jurisdictions that wanted to have judges hear paternity cases were able to do so. We also believe that setting standards for paternity establishment is well within the Secretary’s rulemaking authority.

In response to commenters’ concerns, however, we have revised the proposed timeframe to take into consideration the more difficult paternity establishment case and to allow for differences in State procedures with regard to paternity establishment. Rather than outline step-by-step standards and timeframes for when in the process a State must file a petition with the court for paternity establishment, attempt to establish paternity by consent and serve the alleged father, we have revised the regulations to ensure that all actions necessary to initiate and complete legal proceedings to establish paternity are accomplished in a timely manner.
Section 303.5(a)(1) is revised to require, for paragraph (1), that, within 90 calendar days of locating the alleged father, the IV-D agency must file a petition for paternity establishment or complete service of process necessary to establish paternity (or document unsuccessful attempts to serve process in accordance with the State's guidelines) determine diligent efforts under § 303.5(c), whichever occurs later, in accordance with State procedures for paternity establishment. Paragraph (a)(2) requires that paternity must be established (or the alleged father excluded by genetic tests and/or legal process) within one year of the later of: (i) Successful service of process; or (ii) the child reaching 6 months of age. Under this requirement, States may establish paternity by acknowledgment or consent and, according to State procedures, a support obligation, at any time during the processing of the case. This expanded timeframe allows States 3 months to serve process or file a petition for paternity establishment and one year to establish paternity from successful service, unless the child is under 6 months old and therefore too young for bloodtesting when process is served, in which case the State has one year from the child's 6-month birthday to establish paternity.

We believe the extension of the paternity establishment timeframe addresses commenters' concerns about those contested cases which cannot be completed within one year of locating the putative father. One year from successful service of process or the child being 6 months old is a reasonable amount of time to allow for completion of the great preponderance of paternity cases.

3. Comment: The majority of commenters requested that regulations take into consideration the fact that despite the alleged father being located prior to or immediately after the birth of the child, blood cannot be drawn from infants for certain tests until a child is at least six months old.

Response: In response to comments, we have revised paragraph (a) to state that the one-year timeframe for paternity establishment begins with successful service of process or of the child being six months old, whichever occurs later. This will allow States to serve process on the putative father as soon as possible after the child is born when the putative father is more likely to be responsive because the timeframe for paternity establishment will not begin until the child is old enough for a blood test. However, in the future we intend to reexamine the use of DNA testing which does not require the child to be six months old.

4. Comment: The majority of the commenters were opposed to the proposed requirement that alleged fathers may only be excluded as a result of genetic tests. Commenters pointed out that in many States genetic tests alone are not sufficient to establish or refute paternity. In addition, evidence or lack of evidence may exclude the alleged father without the need for or despite genetic tests.

Response: We recognize that a putative father may be excluded as a result of either genetic tests or court action and we have revised paragraph (a)(1) (designated as paragraph (a)(2)) to state that within the timeframe, the State must establish paternity or exclude the alleged father as a result of genetic tests and/or legal process.

5. Comment: Several commenters requested clarification of the term “genetic tests.”

Response: We replaced “blood tests” with “genetic tests” to more accurately reflect the advancements in, and increased refinement of, testing methods to determine paternity. We want to point out, however, that “genetic” tests include any blood or tissue testing processes used to confirm or exclude parentage.

6. Comment: The majority of commenters were opposed to the required timeframe in proposed paragraph (a)(2) that, in any case in which an alleged father is excluded but more than one alleged father is identified, the IV-D agency must meet the requirements for each alleged father identified. Commenters were concerned because of evidentiary problems with cases involving more than one alleged father. Some States indicated that they are prohibited by State law from bringing action against a second alleged father when the custodial parent has filed a paternity establishment action naming another man. In addition, commenters believed that States should be required to pursue the most “likely” alleged father in order to protect the custodial parent's credibility as a witness.

Response: We have retained the requirement in proposed paragraph (a)(2), which has been redesignated as paragraph (a)(3), because all children are entitled to have their paternity established. It is imperative that States establish procedures which permit paternity establishment even if the custodial parent names more than one possible alleged father. Blood tests prior to filing the action, or petitions alleging intercourse with each possible father and naming two or more defendants may minimize the evidentiary programs identified. We also want to clarify that when there is more than one alleged father named, if one alleged father is excluded, the timeframe for paternity establishment would apply for the next alleged father once he is located and served.

7. Comment: We received several comments with regard to the requirement in proposed paragraph (c) that IV-D agencies must identify and use through competitive procurement laboratories which perform, at reasonable cost, tests which tend to identify the father or exclude the alleged father. Commenters requested clarification regarding whether States may contract with more than one laboratory for different tests. In addition, commenters requested that regulations allow States to take into consideration accessibility and timeliness of results in choosing a lab.

Response: As stated in the preamble to the proposed rule, we want to avoid situations where States use laboratories at exorbitant cost when there may be a laboratory available which performs comparable testing at more reasonable cost. Within those parameters, States may evaluate services provided by laboratories, and choose one or more laboratories which provide necessary services at reasonable cost. Accessibility and timeliness may be considered in determining choice of laboratory but not to the degree that costs become exorbitant in comparison to other laboratories.

Enforcement of Support Obligations—Section 303.6

1. Comment: The majority of the commenters were opposed to the requirement that States must identify on the date the parent fails to make payments in an amount equal to the support payable for one month, or an earlier date in accordance with State law, those cases in which there is a failure to comply with the support obligation. Commenters believe that this requirement is too stringent because it entails daily monitoring.

Response: Effective and timely monitoring of compliance is essential in order to trigger income withholding in accordance with statutory requirements and to ensure timely use of other enforcement techniques as appropriate. Because section 466(b)(3) of the Act requires that an absent parent become subject to withholding and that advance notice be sent to the absent parent on the date on which the parent fails to make payments in an amount equal to the support payable for one month,
States must identify delinquencies immediately in all cases. Therefore, we have not revised this requirement.

2. Comment: We specifically requested comments on whether the requirement for sending notice to a delinquent absent parent should be amended from "the State must take steps ... send notice on the day" to "send the advance notice on the day the delinquency reaches one month's support." The majority of commentators were opposed to tightening this requirement. In fact, many commenters suggested that the requirement be revised to require that States send the notice within a longer timeframe. Suggestions included 3 days, 5 days and 1 week.

Response: As previously stated, section 466(b)(3) of the Act requires that advance notice of the withholding be sent to the absent parent on the date on which the parent failed to make payments in an amount equal to the support payable for one month. Therefore, we cannot extend this timeframe. However, providing notice on the date the absent parent is delinquent may be impossible in all cases. Therefore, we are retaining the current requirement to take steps to send the notice on that date.

3. Comment: In response to our request for comments, the majority of the commenters believed that regulations should not require that States process uncontested wage withholding cases more quickly than contested cases.

Response: Current requirements at § 303.100(d)(2) require notice to the employer to be sent immediately if the absent parent fails to contact the State within the period specified in the advance notice. Because we are establishing specific timeframes for taking actions in IV-D cases, we replaced "immediately" with "within 5 working days" in § 303.100(d)(2).

4. Comment: In response to our request for comment regarding whether wage withholding notices to employers should inform the employer when enrollment in employment-based medical insurance has been required by the support order, whether the IV-D agency should request the employer to alert the IV-D agency if the absent parent has not enrolled the child(ren), and whether the IV-D agency should request the employer to enroll the child(ren) if the absent parent has not, the majority of commenters indicated that none of the above suggestions are appropriate or within the scope of State laws. Commenters also pointed out that requiring those actions could potentially harm working relationships with employers at precisely the time when cooperation is necessary for effective wage withholding procedures.

Response: Because of possible conflicts with State law, we have not added these requirements. We want to clarify, however, that the requirement in § 303.6 to take appropriate enforcement action includes situations where there is noncompliance with an order requiring health insurance coverage. In accordance with § 303.31(b)(7) (formerly § 306.51(b)(7)), if health insurance is available to the absent parent at reasonable cost and has not been obtained at the time the order is entered, the State must send steps to enforce the health insurance coverage required by the support order.

5. Comment: Commenters stated that the requirement that States must initiate any other enforcement techniques as appropriate within 30 working days of identifying a delinquency would not allow sufficient time to verify an address for service of process, gather enough information to refer the case to an attorney, prepare the case for trial and prepare interrogatories. In addition, commenters requested clarification of "initiate" for purposes of meeting the timeframe when the State uses administrative procedures, such as debt collection agencies and telephone collection techniques. These commenters were concerned that this requirement implies that States must file a petition for enforcement because there would not be sufficient time to allow for calling the absent parent in or using other techniques not included in the mandatory techniques specified in § 302.70(a).

Response: Because States must have and use expedited processes for the enforcement of child support obligations, we believe it is necessary to revise § 303.6 for consistency with the changes to the expedited processes timeframe starting date discussed previously. It is essential that cases enter expedited processes as soon as the State obtains necessary jurisdiction over the absent parent to allow enforcement of the support obligation. However, we believe it is also necessary to account for situations in which States attempt to enforce obligations by consent or using other administrative enforcement techniques before filing a petition for enforcement of a support obligation. Section 303.6(c)(2) is revised to require that the State take any appropriate enforcement action (except income withholding and Federal and State income tax refund offset) unless service of process is necessary, within no later than 30 calendar days of identifying a delinquency or other support-related noncompliance with the order or location of the absent parent, whichever occurs later. When service of process is necessary prior to taking an enforcement action, service must be completed (or unsuccessful attempts to serve process must be documented in accordance with the State's guidelines under § 303.3(c) and enforcement action taken, if process is served, within no later than 60 calendar days of identifying a delinquency or other support related noncompliance with the order or location of the absent parent, whichever occurs later. Therefore, within this timeframe, States may enforce support obligations by consent, use of administrative procedures such as debt collection, telephone contact, demand letters, or publication of names, for example, and/or file a petition to enforce by legal action. Accomplishing enforcement by consent would be allowable at any time. The date of successful service of process would then be the date when expedited timeframes commence. We want to point out that States are not required to use a specific enforcement technique if that technique is determined to be inappropriate in accordance with the guidelines allowed in § 302.70(b).

6. Comment: With regard to the requirement that States must submit once a year, all cases which meet the certification requirements for State and/or Federal income tax refund offset, commenters were most concerned about complying with this requirement before States are fully automated. Commenters pointed out that often collections from prior years would not be all received or applied before it would be time to certify again. In addition, commenters were concerned that requiring certification does not give the custodial parent an opportunity to object to the action. Finally, commenters also requested that we clarify which State, in an interstate case, is required to submit past-due support for Federal income tax refund offset.

Response: In response to State concerns that amounts offset from prior years may not be received or applied by the date States are required to submit amounts for Federal income tax refund offset, past-due support submitted for offset must meet the certification requirements for Federal income tax refund offset, under which the State must verify the amount of past-due support. If the State cannot assure that the past-due support is the correct amount owed, submittal is not required. However, given the timeframe for transmission of offset collection information from OCSE to the States and the schedule for submission of the
next round of certifications from the States to CCSE; such situations should be the exact opposite of the rule. With respect to custodial parents' right to refuse to have past-due support submitted for offset, we reiterate our longstanding position that, when an individual receives IV-D services, they may not dictate which services they receive. Tax refund offset has proven to be a very successful enforcement technique and its use is essential to ensure children receive the support they deserve.

With respect to the question about which State in an interstate, non-AFDC case may submit past-due support for Federal income tax refund offset, in accordance with §303.72(a)(4), the State in which an application for IV-D services has been filed pursuant to §302.33, (i.e., the initiating State), must submit the past-due support for offset. This is consistent with the requirement that past-due support owed in AFDC cases must be submitted by the State in which there is an assignment of support rights to the State under §302.31, in interstate cases, generally the initiating State). It is necessary to specify which State must submit past-due support owed in non-AFDC cases for Federal tax refund offset to avoid both States submitting the same arrearages. The initiating State is in the best position to pay the custodial parent any amount offset quickly and to handle any necessary adjustments to the amount of offset based on an amended tax return.

7. Comment: The majority of the commenters requested clarification regarding the requirement in proposed paragraph (c)(4) that in cases where previous enforcement attempts have been unsuccessful, the State must initiate appropriate enforcement techniques as appropriate. Response: As stated in the preamble to the proposed rule, this requirement was added to ensure that States keep abreast of case circumstances so that when the potential for resumed enforcement efforts occurs, States would initiate appropriate enforcement techniques.

3. Comment: Several commenters asked if a support order or arrearages which accrued under that order are accrued when a IV-D case is closed. Response: Case closure does not affect the support order or arrearages which have accrued under the order; it only means that services under the IV-D program will no longer be provided. Although the IV-D agency closes a case, the support order remains in effect and arrearages continue to accrue for the life of the order. In accordance with the requirements of section 466(a)(9) of the Act and §303.106, these arrearages are judgments by operation of law and are subject to enforcement.

4. Comment: Several commenters felt that additional time should be allowed for IV-D agencies to establish a case closure system, review existing cases to determine if closure is appropriate, and close cases which meet one or more of the criteria, since case closure was not previously addressed in regulations. Response: We believe that States can comply with this requirement by October 1, 1990, since States are not required to close all cases which meet the criteria.

5. Comment: One State asked that, for audit purposes, any open case meeting at least one of the closure criteria be considered closed and not affect the State's performance with regard to substantial compliance. In a related comment on the audit, the State questioned whether the IV-D agency must properly close all cases which meet closure criteria, or that all cases closed must meet the criteria. Response: The establishment of case closure criteria is designed to limit cases the State may close to those in which there is no reasonable expectation of establishing paternity, obtaining a support order, or collecting child or spousal support, either now or in the future. Any case which meets the criteria for case closure, as demonstrated by the State during the course of the audit, would be considered unworkable and would not count against the State for purposes of the audit. For purposes of auditing case closure requirements, the auditors will review cases which have been closed to determine if the IV-D agency properly applied the criteria for closure.

6. Comment: Commenters also suggested that the regulations establish a special category of "inactive cases" in order to minimize the administrative costs associated with the closing and subsequent reopening of certain cases. Response: Since States are not required to close all cases meeting case closure criteria and will not be subject
to audit penalties for those in which no action is currently possible, a "de facto" inactive file can be created since the State is not penalized for its failure to work these cases.

7. Comment: One commenter recommended that the regulations require States to submit their proposed criteria to OCSE for approval prior to implementation.

Response: States are responsible for meeting requirements in Federal regulations. While States may work with OCSE Regional Offices in developing case closure systems, we see no necessity for requiring prior approval of case closure systems.

b. No Current Order—§ 303.11(b)(1) and (2)—1. Comment: We received many comments which were critical of proposed paragraphs (b)(1) and (2) establishing a $500 ceiling of arrearages below which the IV-D agency could close a case when there was no longer a current support order for cases involving both minor children and children who had reached the age of majority. A number of commenters argued that continued enforcement in arrear-age-only cases for arrearages of $150 or more was in most instances fruitless and not cost-effective. Several of these commenters recommended an increase in the level below which States could close all cases. Other commenters suggested that a separate $500 limit be applied to arrearages owed to non-minor children. In addition, we also received comments which recommended that closure be allowed in non-AFDC arrearage-only cases involving non-minor children where the arrearages accrued when the child was a minor and before application for IV-D services was made.

Response: Title IV-D of the Act does not limit application for, or availability of, IV-D services to minor children. Therefore, we cannot permit States to close non-AFDC arrearage-only cases involving non-minor children where the arrearages accrued when the child was a minor and before application for IV-D services was made. However, in response to comments, we raised the limit on arrearages to $500 in paragraphs (b)(1) and (2). Therefore, paragraph (b)(1) now allows case closure if a child has reached the age of majority, there is no current support order and arrearages are under $500 or unenforceable under State law. Paragraph (b)(2) now allows case closure if a child has not reached the age of majority, there is no longer a current support order and arrearages are under $500 or unenforceable under State law.

2. Comment: Other commenters maintained that, by not allowing closure of arrearage-only cases for non-minors when arrearages are above a certain level, we were mandating a service in these cases when regulations at § 303.1 give the State an option of whether or not to provide services in cases in which there are no minor children.

Response: Section 466(e) of the Act and § 303.1 provide States the option of whether or not to collect overdue support using the mandatory practices in § 302.70 (wage withholding, State income tax offset, etc.) for children who are not minors. These provisions do not allow States to choose not to provide any services in cases in which there are no minor children. As discussed above, the State may not refuse to enforce past-due court or administratively ordered support owed to emancipated children in non-AFDC IV-D cases, unless there is no current support order and arrearages are under $500 or unenforceable under State law, as discussed above.

3. Comment: One commenter suggested that arrearages under paragraphs (b)(1) and (2) be expanded to include outstanding medical bills for which the absent parent is responsible.

Response: IV-D agencies are required to collect medical support only if a specific dollar amount for medical support is designated in the order. Past-due cash amounts for medical support would be part of the arrearages accruing under a support order.

4. Comment: One State recommended that we include the death of the child for whom support was owed as an additional criterion for closing.

Response: The death of a child would constitute grounds for the termination of an order for current support. The IV-D agency would then either close the case under § 303.11(b)(1) or (2) if no arrearages were owed, or the arrears were below the established ceiling, or continue enforcement until such arrearages accrued above the established ceiling. If the arrearages accrued pursuant to an order when the child was alive, the absent parent's obligation under that order for past-due support does not necessarily end with the death of the child.

5. Comment: We also received a suggestion that we include reconciliation of the custodial and absent parent with no arrearages owed the State as grounds for case closure.

Response: As stated in the preamble of the proposed rules, reconciliation is a valid reason for closure under paragraph (b)(2).

6. Comment: Another commenter asked that the regulation address cases in which the fact that there is no current order is a temporary condition (i.e., absent parent has no current income) where circumstances may change in the future.

Response: These cases may not be closed under paragraphs (b)(1) or (2), but should be addressed as part of a State's case prioritization system and reviewed periodically for a change in status. If the absent parent attempts to have the order vacated under these circumstances by the court or administrative authority which issued the order, the IV-D agency should argue that the order remains in effect and current payments be held in abeyance or tolled during the period the absent parent is unable to pay.

c. Death of Absent Parent and No Resources Available—§ 303.11(b)(5)—1. Comment: Several commenters proposed that cases should be closed if there were no arrearages owed by the deceased parent which had been assigned to the State.

Response: We believe that this approach would not ensure that appropriate services are available to the many non-AFDC cases in the IV-D system where there is no assignment to the State. As we noted in the preamble to the proposed rules, delinquent absent parents may have assets which he or she has protected from collection procedures, and the parent's death may release these assets for collection by the IV-D agency.

2. Comment: One commenter indicated that the law in their State provides that probate can be filed within three years, and the IV-D agency would have to wait that length of time to ascertain that assets were or were not available. Another commenter pointed out that it is difficult in these circumstances for the State to prove a negative proposition (i.e., that assets are not available).

Response: We agree with these comments and have changed the final rule to allow closure if the State has made documented attempts and failed to identify any assets which could be levied. However, if the IV-D agency has identified assets through its search, or the custodial parent has presented information regarding assets which can be verified, the State must keep the case open if it is possible that the assets can be reached for collection.

d. Unable To Establish Paternity—§ 303.11(b)(4)—1. Comment: We received many comments on this issue. Several commenters objected to proposed paragraph (4)(iii) which allows closure if a court or administrative process has excluded the putative father and no other putative father can be identified. Some commenters pointed out that if a genetic test excludes the
putative father it would be foolhardy and a waste of public resources to try such cases in court or before an administrative hearing.

Response: We agree with this position and have inserted the phrase "A genetic test or" at the beginning of paragraph (4)(iii).

2. Comment: Another commenter requested that this criterion for closure include test results which do not exclude the putative father but indicate a "low probability" of paternity, since some courts will not determine paternity unless there is more compelling evidence to support the claim.

Response: While such cases are problematic, we do not believe that it is appropriate to use such a subjective standard for closure. These cases should be pursued unless a genetic test or a court or administrative process excludes the putative father and no other putative father can be identified.

3. Comment: Several other commenters pointed out that paragraph (4)(iii), which allows closure when it is in the best interest of the child, only references §303.3(b) which involves paternity cases involving incest, forcible rape, or where legal adoption proceedings are pending. These commenters pointed out that this definition was inconsistent with the provisions of §232.42 which defined good cause for AFDC cases as physical or emotional harm to the child, custodial parent or caretaker relative.

Response: Cases which may be closed as a result of a good cause finding under the AFDC program are addressed in §303.11(b)(10). Section 303.5 includes, for IV-D purposes, a separate definition with respect to paternity establishment cases.

6. Unable To Locate For Three Years—§303.11(b)(6)—Comment: We specifically requested comments on this provision which would allow a case to be closed when the absent parent's location is unknown, and the State has made regular attempts over a three-year period, all of which have been unsuccessful. Several commenters asked that no time limit be placed in this criterion for closure, and were concerned that the custodial parent would never be able to prove a change in circumstance to reopen a case. Other commenters recommended that the three-year requirement did not allow enough time for location attempts. Another commenter requested that this criterion be deleted and that the regulation mandate that these cases be maintained in a suspense file with annual locate submissions. We received a parallel number of comments that the three-year requirement was too long.

and that the IV-D agency would be able to determine if location was futile after one to two years of regular locate attempts. Other commenters supported the three-year requirement if quarterly locate attempts are made.

Response: We have retained the three-year requirement because we believe that the information available must meet the requirements for submittal for location, quarterly locate attempts, including those listed under §303.3, over a three-year period are sufficient. Again, States may choose to keep cases open and continue location attempts for more than 3 years.

f. Absent Parent Institutionalized or Incarcerated—§303.11(b)(6)—Comment: Several commenters maintained that the criterion for closure should include parents who, although not institutionalized or incarcerated, are unable to pay currently or in the foreseeable future because of total and permanent disability. In addition, many commenters felt that the five-year limit for institutionalization and the 12-year limit for incarceration without parole were excessive, maintaining that many cases which were unworkable with extremely low chances for any future collections would be kept open with a resulting negative impact on the best use of the State's resources. Some felt that the time limits were irrelevant, and that the only test should be that the absent parent cannot pay for the duration of the child's minority.

Response: In response to these comments, we are dropping the five- and 12-year time limits and have added a category where the absent parent has a medically verified permanent and total disability with no evidence of support potential. The revised language now reads: The absent parent cannot pay for the duration of the child's minority.

We believe these cases can still be worked where reciprocity between a State and a foreign jurisdiction has been established.

6. Locate Only Cases—§303.11(b)(6)—1. Comment: One commenter suggested that cases in which a locate only application has been made be closed only when location services have been "successfully" completed.

Response: There is no guarantee that location attempts will be successful.

Suggested New Criteria

1. Unable To Locate Custodial Parent—§303.11(b)(11)—1. Comment: We received the greatest number of comments from States who pointed out that they cannot work many cases where the custodial parent who applied for non-AFDC services can no longer be located despite repeated attempts to contact the client by the IV-D agency.

Response: We believe that this is a reasonable criterion for closure, but we are also concerned that such a criterion take into account periodic absences of custodial parents who may be unavailable due to vacations, business travel or family emergencies. Consequently, we are adding a new paragraph (b)(11) which would allow closure in non-AFDC cases if the IV-D agency is unable to contact the custodial parent over a 30 calendar day period despite attempts to contact the parent by both phone and letter, including at
least one registered letter. The 60-day notice of case closure required by paragraph (c) will also allow those parents who want continuing services to avoid closure by contacting the IV-D agency.

j. Failure To Cooperate by the Non-AFDC Custodial Parent (new) 303.11(b)(12)—1. Comment: We received many comments by States and other organizations who requested that non-cooperation by the custodial parent (failure to attend hearings, refusal to sign forms, etc.) in non-AFDC cases be addressed.

Response: In response to these comments, we are establishing a new paragraph (b)(12) which allows closure for non-cooperation in non-AFDC cases, but only when the case file documents the circumstances of the non-cooperation and that an action by the custodial parent is essential for the next step in providing services. We would also point out that the custodial parent may avoid closure by responding with the necessary cooperation during the 60-day notice period required under paragraph (c).

k. Custodial Parent Moves out of State—Comment: A number of States requested that case closure be allowed when the custodial parent moves to another State.

Response: This is not an appropriate justification for closing a case. There is no residency requirement for provision of IV-D services in either the Federal statutes or regulations. More specifically, section 454(e) of the Act and § 302.33 require that States must provide child support collection or paternity determination services to any individual not otherwise eligible for such services to whom an application filed by that individual. A IV-D agency may close a case in which the custodial parent moves from the State only if the case meets one of the criteria enumerated in paragraph (b) of this section, or when the State is aware that the custodial parent has applied for services in another State.

1. 60-Day Notice of Closing To Custodial Parent—§ 303.11(c)—Comment: We received a number of comments on this provision. Some commenters felt that such a provision would mean that custodial parents would be entitled to a hearing during the 60-day period to contest the closure. Other commenters wondered why such a 60-day notice was given unless the custodial parent had a chance to contest. Other commenters felt the 60-day period was too long when compared to the case processing timeframes the State must meet.

Response: We have retained the 60-day notice requirement, but added that the custodial parent may, during that time, request that the case be kept open upon the presentation of new information which constitutes changed circumstances or when contact with the custodial parent has been reestablished in certain non-AFDC cases. We believe that hearings would not be justified in these cases because the criteria clearly limits the circumstances qualifying for closure, and the custodial parent's opportunity to provide new information will ensure that all cases with potential will be worked. Conversely, there is no absolute right to IV-D services where basic information is lacking.

m. Retention of Records for Three Years—1. Comment: One State asked if, instead of destroying case files after one year it could archive such records, and an organization suggested that files be retained indefinitely on microfiche and not destroyed.

Response: As stated earlier, none of the case closure criteria requires the States to take any action if a State decides, under its own criteria, to work or archive cases. The requirement for retaining all records for cases closed for a period of three years is a Federal provision at 45 CFR Part 74, Subpart D. This is a minimum requirement and States may choose to retain records for a longer period, as discussed above. States may want to consider maintaining some type of minimal case record file beyond the 3-year requirement when the IV-D agency closes an active AFDC case.

Minimal Organizational and Staffing Requirements—Section 303.30

a. Organizational Structure and Sufficient Resources—§ 303.20(c)

1. Comment: Several commenters felt that this requirement was a critical provision which could be used by State and local jurisdictions to allocate resources and review priorities in a manner which could be most beneficial to the child support enforcement program. Other commenters, while supportive of the overall intention of this provision, felt that OCSE should either establish standards for staffing and resources just as it did for State performance standards, or provide specific guidance on how States and localities should allocate resources.

Response: We believe that States and localities should establish specific resource or staffing standards. As we emphasized in the preamble to the proposed regulations, this requirement has never been quantified as a national standard. Therefore, while we believe that it is highly beneficial for IV-D programs to establish such standards, OCSE is not establishing universal standards in this regulation because there are factors which are unique to each State or locality. OCSE will, however, continue to provide technical assistance and disseminate relevant information pertaining to resource or staffing standards.

2. Comment: Several commenters recommended that OCSE commission a new study which would take into consideration the increased staffing requirements which States would need to meet in complying with the timeframes established in the standards for program operations.

Response: OCSE believes that a study of this type is not relevant to the issues at hand. Any study would, by necessity, be focused on a national base which would not be relevant to specific State and local circumstances and organizational differences. Moreover, simply focusing on staffing requirements ignores the need, attested to by program reviews and program audits, to carefully reassess organizational structures, work process flows, policies and procedures, priorities and other facets of program management that go well beyond just the number of employees assigned to a task.

3. Comment: Several States felt that this requirement signaled a shift in Federal priorities by emphasizing procedural and organizational standards to the detriment of results-oriented policies previously established through incentive payments and emphasis on cost/benefit ratios. Some commenters suggested that OCSE revise its incentive formulas to take into account that performance as measured by increased collections is no longer a priority. One locality complained that the Federal requirement would force the doubling of staff providing IV-D services.

Response: The requirements of this section are designed, in part, to correct problems in State and local operations identified by both the previously cited GAO report and OCSE program reviews and audits. One of the conclusions which can be drawn from these reports is that many States and localities were not effective in either establishing paternity or establishing and enforcing support orders.

The requirements at issue do not signal a shift in priority; from its inception in 1975, the focus of the Child Support Enforcement program has been to establish paternity and to collect support. When States are not in substantial compliance with standards for program operations, it is incumbent
upon the Federal government to stimulate effective and prompt remedial action. To do otherwise is to ignore both the pressing need for vigorous child support enforcement and allow a perpetuation of the operational deficiencies found in examinations of State and local program performance.

Executive Order 12291

Comment: We received several comments with regard to the statement in the preamble that this rule does not constitute a "major" rule. Commenters believed that it is a major rule because it is likely to result in a major increase in costs for State government agencies.

Many commenters were opposed to the statement that States should reallocate existing resources to concentrate efforts on child support enforcement because a transfer of funds would cripple the losing program and be in conflict with employees' union contracts.

Comment: We request that we submit the regulation for review under Executive Order 12291.

Response: Given the fact that we have extended the timeframes for action in the final rule, we do not believe that implementation of this regulation would require a sufficient increase in staff to necessitate the transfer of resources from other programs to IV-D programs unless a State or local jurisdiction, on its own initiative, decided to proceed in this manner. Moreover, the financing structure of the IV-D program itself makes it a very profitable enterprise for State and local government, with great potential to expand upon the direct payoff to government and the cost avoidance value of the program even if an infusion of resources is required to enhance operational performance. We believe that the revised standards and timeframes are within the grasp of any well-managed IV-D agency. However, recognizing that substantial resources will be needed to implement these new standards, we have prepared a Regulatory Impact Analysis (see section below).

Economic Impact

The Child Support Enforcement program was established under title IV-D of the Act by the Social Services Amendments of 1974, for the purposes of enforcing the support obligations owed by absent parents to their children, locating absent parents, establishing paternity and obtaining child support.

The IV-D program collected some $4.7 billion in FY 1986—over $1.5 billion on behalf of children receiving AFDC and the remainder on behalf of children not receiving AFDC. State and local expenditures amounted to $1.2 billion. Collections for AFDC families, after a $50 disregard, are used to offset the costs of assistance payments made to such families. The intent of this final regulation is to improve the efficiency and effectiveness of IV-D programs. Because this final rule strengthens and clarifies existing program operations regulations, it is expected that State performance will improve and cases will be worked more effectively. It is expected that any increase in administrative costs will be more than offset by an increase in collections. The principal impact of the regulation will be on State operations. State expenditures may increase initially; however, we believe that the increase will be more than offset by the increase in collections and by the avoidance of future assistance costs that would otherwise be incurred and therefore, a net savings to State governments will result.

Executive Order 12291

In accordance with Executive Order 12291, we are required to prepare a Regulatory Impact Analysis for any "major" rule. A major rule is one that is likely to result in:

1. An annual effect on the economy of $100 million or more;
2. A major increase in costs or prices for consumers, investors, and jobholders, which in the aggregate or cumulatively, have a significant impact on the economy;
3. Significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic markets; and
4. Significant reduction in employment or investment levels.

This rule meets none of these criteria with the possible exception of an annual effect on the economy of $100 million or more. Although the fiscal effects of this rule cannot be predicted with precision, and depend on individual State implementation decisions, it is possible that administrative costs will rise by $100 million or more within the five-year period that we use for analyzing impacts, and likely that AFDC collections will rise by several hundred million dollars annually. Therefore, although the net effect of the rule on both States and society will be positive, we have prepared the following analysis which, together with the remainder of this preamble, meets the requirements of E.O. 12291.

The rule establishes performance standards for processing child support cases. Most of these standards contribute directly or indirectly to increasing the speed or likelihood of payment of child support. Most of them do not inherently require additional resources to administer, either because they affect the timing rather than the amount of work, or because the deadlines involved require changes rather than increases in resource use (e.g., change internal State procedures for accessing records to provide more timely response). And some can reduce administrative costs, depending on how implemented.

Nonetheless, these standards will increase the number of cases successfully resulting in payment of support obligations, and therefore will necessarily entail additional costs for the work performed on cases which would not otherwise have been successfully handled. In particular, we do not expect that a State with large numbers of cases per caseworker will be able to comply with these rules without an increase in caseworker staff.

The real challenge this rule presents most States is the need to review and in many cases radically change existing bureaucratic processes. For example, a State which relies on sequential, totally manual, multi-agency transfer and review procedures for tracking payments and issuing checks will have difficulty meeting the 15-day deadline for payments to families even if it adds substantial clerical resources to each stage of the process. Substantial changes in handling distribution of collections, service of process, access of data bases used for location of absent parents, and other cross-agency functions and procedures may be needed in many States.

As discussed in detail elsewhere in this preamble, we considered numerous alternatives and made substantial changes in these standards form those originally proposed. In reaching decisions on the final standards we sought to maximize State flexibility wherever possible. For example, we decided to replace a number of more detailed location standards with an "umbrella" standard requiring accessing all appropriate location sources within 75 calendar days. In devising each standard we considered all comments and other information on feasibility and in every case imposed a standard which was clearly implementable at reasonable cost in a well-managed program. Any reasonable standards would necessarily require most States to review and revise procedures.

Of course, nothing in this rule dictates the precise methods by which States achieve these standards. To the contrary, we are well aware that each State has unique administrative structures and implementation procedures now, and expect that future solutions will be almost equally diverse.
We have sought to provide maximum flexibility for each State to devise whatever changes it finds most cost-effective.

A final issue concerns timing. As discussed elsewhere in this preamble, we believe Congress did not intend the effective date of this regulation to be inordinately delayed. However, while the effective date of these requirements is October 1, 1990, we extended or revised many of the proposed timeframes to take into consideration the concerns and alternative timeframes suggested by many States. Regardless, States have known for many years that reforms were needed, have known for almost a year that changes would have to be made under the Family Support Act requirements, and have more than a year to initiate actions to meet the specific requirements of this final rule. While the requirements are effective on October 1, 1990, in reality, States have time after that date to fine-tune State processes and avoid paying fiscal penalties. A State would not pay a penalty for failing to substantially comply with the new requirements until, at the earliest, the beginning of FY 1993. If however, the State took corrective action in accordance with Federal requirements within a year of notification of non-compliance, the State would pay no penalty at all.

We suggested in the preamble to the NPRM, purely as an example, that transfers of staff from other functions and agencies was one approach that some States might consider to expedite augmenting child support functions (other options include recruitment of new staff, use of contract assistance to clear up backlogs, etc.). To the extent that long lead times are needed (e.g., to plan and implement ADP systems) States can also consider systems which can be implemented more rapidly and leave more ambitious systems for future years. In this regard, this Department commits itself to reviewing required ADP plans with the greatest possible speed, taking into account the deadlines these standards impose.

The case closure criteria contained in § 303.9 should result in improved performance of State IV-D agencies because they will ensure that available resources are focused on IV-D cases in which there is a potential for paternity establishment and support order establishment and enforcement. They will allow States to close unworkable cases and improve the management of their caseloads. Increased efforts focused on workable cases should result in increased collections, greater avoidance of governmental assistance costs and commensurate savings to the State and Federal governments.

In summary, whatever the unavoidable effect of this rule on administrative processes, an effect which each State has maximum flexibility to determine, it has a net beneficial impact on State budgets. Like the overall program, which returns States in excess of $380 million annually (through reductions in AFDC payments, Federal matching of administrative costs, and Federal incentive matching) in excess of administrative costs, the increase of child support payments made is likely to return through AFDC collections alone more than double the amount spent on processing cases. States will retain most of this increment. Therefore, the net effects of this rule will not only be financially beneficial to States, but will simultaneously improve the operation of child support enforcement from every perspective, including especially that of beneficiaries of increased and more timely child support payments.

Regulatory Flexibility Analysis

The Secretary certifies, under 5 U.S.C. 605(b), as enacted by the Regulatory Flexibility Act (Pub. L. 96-354), that this regulation will not result in a significant impact on a substantial number of small entities. The primary impact is on State governments and individuals, which are not considered small entities under the Act.

Lists of Subjects

45 CFR Part 232

Aid to families with dependent children, Child support, Grant programs—social programs.

45 CFR Parts 301, 303 and 304

Child support, Grant programs—social programs, Penalties, Reporting and recordkeeping requirements, Unemployment compensation.

45 CFR Part 302

Child support, Grant programs—social programs, Reporting and recordkeeping requirements, Unemployment compensation.

45 CFR Part 306

Child support, Grant programs—social programs, Medicaid, Reporting and recordkeeping requirements.

45 CFR Part 307

Child support, Grant programs—social programs, Computer technology, Reporting and recordkeeping requirements.
§ 302.32 Collection and distribution of support payments by the IV-D agency.

(b) The IV-D agency must inform the State's IV-A agency of the amount of the collection which represents payment on the required support obligation for the month as determined in § 302.31(a) within 10 working days of the end of the month in which the support is received by the IV-D agency responsible for final distribution.

(i) Timeframes for distribution of support payments. (1) In interstate IV-D cases, amounts collected by the responding State on behalf of the initiating State must be forwarded to the initiating State within 15 calendar days of the initial receipt in the State, in accordance with § 303.7(c)(7)(iv).

(ii) Except as specified under paragraph (f)(3)(iii) of this section, if the amount collected is more than the amount required to be distributed in paragraph (f)(3)(i) of this section, the State may at its discretion either send such amounts to the family to satisfy past-due support within 15 calendar days of the date of initial receipt in the State.

(ii) Except as specified under paragraph (f)(3)(iii) of this section, if the amount collected is more than the amount required to be distributed in paragraph (f)(3)(i) of this section, the State may at its discretion either send such amounts to the family to satisfy past-due support within 15 calendar days of the date of initial receipt in the State or retain such amounts as have been assigned to satisfy assistance paid to the family which has not been reimbursed.

(iii) Collections due the family under § 302.51(b)(5) as a result of Federal or State income tax refund offset must be sent to the family within 30 calendar days of the date of receipt in the IV-D agency, except:

(A) If State law requires a post-offset appeal process and an appeal is timely filed, in which case the IV-D agency must send any payment to the family within 15 calendar days of the date the appeal is resolved; or

(B) As provided in § 303.72(b)(5) of this chapter.

§ 302.51 [Amended]

3. Section 302.51 is amended by changing all references to “§ 303.52” to “§ 304.12”; by removing the last sentence “in any case in which collections are received by an entity other than the agency responsible for final distribution under this section, the entity must transmit the collection within 10 days of receipt,” in paragraph (a); and by removing the sentence “This payment shall be made in the month following the month in which the amount of the collection was used to redetermine eligibility for an assistance payment under the State’s title IV-A plan,” in paragraphs (b)(3) and (5).
establishing a case record and, based on an assessment of the case to determine necessary action:

(1) Solicit necessary and relevant information from the custodial parent and other relevant sources and initiate verification of information, if appropriate; and

(2) If there is inadequate location information to proceed with the case, request additional information or refer the case for further location attempts, as specified in § 303.3.

(b) For all cases referred to the IV-D agency or applying for services under § 302.33 of this chapter, the IV-D agency must attempt to locate all absent parents or sources of income and/or assets when location is necessary to take necessary action. Under this standard, the IV-D agency must:

(1) Use appropriate location sources such as the Federal PLS; interstate location networks; local officials and employees administering public assistance, general assistance, medical assistance, food stamps and social services (whether such individuals are employed by the State or a political subdivision); relatives and friends of the absent parent; current or past employers; the local telephone company; the U.S. Postal Service; financial references; unions; fraternal organizations; and police, parole, and probation records if appropriate; and State agencies and departments, as authorized by State law, including those departments which maintain records of public assistance, wages and employment, unemployment insurance, income taxation, driver’s licenses, vehicle registration, and criminal records;

(2) Establish working relationships with all appropriate agencies in order to utilize locate resources effectively;

(3) Within no more than 75 calendar days of determining that location is necessary, access all appropriate location sources, including transmitting appropriate cases to the Federal PLS, and ensure that location information is sufficient to take the next appropriate action in a case;

(4) Refer appropriate cases to the IV-D agency of any other State, in accordance with the requirements of § 303.7 of this Part. The IV-D agency of such other State shall follow the procedures in paragraphs (b)(1) through (5) of this section for such cases, as necessary, except that the responding State is not required to access the Federal PLS under paragraph (b)(3) of this section;

(5) Repeat location attempts in cases in which previous attempts to locate absent parents or sources of income and/or assets have failed, but adequate identifying and other information exists to meet requirements for submittal for location, either quarterly or immediately upon receipt of new information which may aid in location, whichever occurs sooner. Quarterly attempts may be limited to automated sources but must include accessing State employment security files. Repeated attempts because of new information which may aid in location must meet the requirements of paragraph (b)(3) of this section; and

(c) The State must establish guidelines defining diligent efforts to serve process. These guidelines must include periodically repeating service of process attempts in cases in which previous attempts to serve process have failed, but adequate identifying and other information exists to attempt service of process.

The introductory text of § 303.4 is republished and the section is amended by adding new paragraphs (d) and (e) to read as follows:

§ 303.4 Establishment of support obligations.

For all cases referred to the IV-D agency or applying for services under § 302.33 of this chapter, the IV-D agency must:

(a) Monitoring compliance with the support obligation;

(b) Service of process necessary to commence proceedings to establish a support order (or document unsuccessful attempts to serve process, in accordance with the State’s guidelines defining diligent efforts under § 303.3(c));

(c) The IV-D agency must identify and use through competitive procurement laboratories which perform, at reasonable cost, legally and medically acceptable genetic tests which tend to identify the father or exclude the alleged father. The IV-D agency must make available a list of such laboratories to appropriate courts and law enforcement officials, and to the public upon request.

(d) Within 90 calendar days of locating an absent parent or of establishing paternity, establish an order for support, or complete service of process necessary to commence proceedings to establish a support order (or document unsuccessful attempts to serve process, in accordance with the State’s guidelines defining diligent efforts under § 303.3(c));

(e) If the court or administrative authority dismisses a petition for a support order without prejudice, the IV-D agency must, at the time of dismissal, examine the reasons for dismissal and determine when it would be appropriate to seek an order in the future, and seek a support order at that time.
(b) Identifying on the date the parent fails to make payments in an amount equal to the support payable for one month, or on an earlier date in accordance with State law, those cases in which there is a failure to comply with the support obligation; and

(c) Enforcing the obligation by:

(1) Initiating income withholding, in accordance with § 303.100; or

(2) Taking any appropriate enforcement action (except income withholding and Federal and State income tax refund offset) unless service of process is necessary, within no more than 30 calendar days of identifying a delinquency or other support-related non-compliance with the order or the location of the absent parent, whichever occurs later. If service of process is necessary prior to taking an enforcement action, service must be completed (or unsuccessful attempts to serve process must be documented in accordance with the State's guidelines defining diligent efforts under § 303.3(c)), and enforcement action taken if process is served, within no later than 60 calendar days of identifying a delinquency or other support-related non-compliance with the order, or the location of the absent parent, whichever occurs later;

(3) Submitting once a year all cases which meet the certification requirements under § 303.102 of this part and State guidelines developed under § 302.70(b) of this title for State income tax refund offset, and which meet the certification requirements under § 303.72 of this part for Federal income tax refund offset; and

(4) In cases in which enforcement attempts have been unsuccessful, at the time an attempt to enforce fails, examining the reason the enforcement attempt failed and determining when it would be appropriate to take an enforcement action in the future, and taking an enforcement action in accordance with the requirements of this section at that time.

§ 303.7 [Amended]

1. A new § 303.7 is amended by adding the word “working” between the words “10” and “days” in paragraphs (a)(2), (b)(5), and (c)(5), (6) and (9); replacing the word “promptly” with the words “within 20 calendar days of determining that the absent parent is in another State” in paragraph (b)(2); adding the word “calendar” between the words “30” and “days” in paragraph (b)(4); and replacing the word “60” with the words “90” and “days” in paragraph (b)(6). h. The introductory text of § 303.10(b) is repealed and § 303.10 is amended by revising paragraphs (a), (b)(5) and (b)(6) to read as follows:

§ 303.10 Procedures for case assessment and prioritization.

(a) The IV-D agency may implement a case assessment and prioritization system Statewide or in a particular political subdivision of the State to manage its caseload. If a IV-D agency implements a case assessment and prioritization system, the IV-D agency must continue to meet the timeframes and case processing standards contained in this Part.

(b) In implementing a case assessment and prioritization system, the IV-D agency must:

(5) Prioritize cases after reviewing all intake information for accuracy and completeness and, if review indicates that additional information is needed, prioritize only after attempting to verify or secure the information in accordance with § 303.2.

(6) Establish a mechanism for the periodic review of low priority cases in accordance with the standards set forth in part 303, and for notifying the custodial parent in those cases that new information may result in a higher priority for the case.

l. A new § 303.11 entitled “Case closure criteria” is added to read as follows:

§ 303.11 Case closure criteria.

(a) The IV-D agency shall establish a system for case closure.

(b) In order to be eligible for closure, the case must meet at least one of the following criteria:

(1) In the case of a child who has reached the age of majority, there is no longer a current support order and arrearages are under $500 or unenforceable under State law;

(2) In the case of a child who has not reached the age of majority, there is no longer a current support order and arrearages are under $500 or unenforceable under State law;

(3) The absent parent or putative father is deceased and no further action, including a levy against the estate, can be taken;

(4) Paternity cannot be established because:

(i) The child is at least 18 years old and action to establish paternity is barred by a statute of limitations which meets the requirements of § 302.70(a)(5) of this chapter;

(ii) A genetic test or a court or administrative process has excluded the putative father and no other putative father can be identified; or

(iii) In accordance with § 303.5(b) of this part, the IV-D agency has determined that it would not be in the best interests of the child to establish paternity in a case involving incest or forcible rape, or in any case where legal proceedings for adoption are pending;

(5) The absent parent's location is unknown, and the State has made regular attempts using multiple sources to locate the absent parent over a three-year period, all of which have been unsuccessful;

(6) The absent parent cannot pay support for the duration of the child's minority because the parent has been institutionalized in a psychiatric facility, is incarcerated with no chance for parole, or has a medically-verified total and permanent disability with no evidence of support potential. The State must also determine that no income or assets are available to the absent parent which could be levied or attached for support;

(7) The absent parent is a citizen of, and lives in, a foreign country, does not work for the Federal government or a company with headquarters or offices in the United States, and has no reachable domestic income or assets; and the State has been unable to establish reciprocity with the country;

(8) The IV-D agency has provided location-only services as requested under § 302.35(c)(3) of this chapter;

(9) The non-AFDC custodial parent requests closure of a case and there is no assignment to the State of arrearages which accrued under a support order;

(10) There has been a finding of good cause as set forth at §§ 302.31(c) and 303.40 through 303.49 of this chapter and the State or local IV-A or IV-E agency has determined that support enforcement may not proceed without risk or harm to the child or caretaker relative;

(11) In a non-AFDC case, the IV-D agency is unable to contact the custodial parent within a 30 calendar day period despite attempts by both phone and at least one registered letter; or

(12) In a non-AFDC case, the IV-D agency documents the circumstances of the custodial parent's noncooperation and an action by the custodial parent is essential for the next step in providing IV-D services.

(c) In cases meeting the criteria in paragraphs (b)(1) through (11) and (12) of this section, the State must notify the custodial parent in writing 60 calendar days prior to closure of the case of the State's intent to close the case. The case must be kept open if the
custodial parent supplies information in response to the notice which could lead to the establishment of paternity or a support order or enforcement of an order or, in the instance of paragraph (b)(11) of this section, if contact is reestablished with the custodial parent. If the case is closed, the custodial parent may request at a later date that the case be reopened if there is a change in circumstances which could lead to the establishment of paternity or a support order or enforcement of an order.

(d) The IV-D agency must retain all records for cases closed pursuant to this section for a minimum of three years, in accordance with 45 CFR Part 74, Subpart D.

(j) Section 303.20 is amended by revising the introductory language in paragraph (c) and paragraph (c)(7) and adding new paragraph (g) to read as follows:

§ 303.20 Minimum organizational and staffing requirements.

(c) There is an organizational structure and sufficient resources at the State and local level to meet the performance and time standards contained in this part and to provide for the administration or supervision of the following support enforcement functions:

(7) Enforcement. Activities to enforce collection of support, including income withholding and other available enforcement techniques.

(g) If it is determined as a result of an audit conducted under Part 305 of this chapter that a State is not in substantial compliance with the requirements of title IV-D of the Act, the Secretary will evaluate whether inadequate resources was a major contributing factor and, if necessary, may set resource standards for the State.

§§ 303.30 and 303.31 [Redesignated from §§ 306.50 and 306.51 respectively]  

(k) Section 306.50 is redesignated as a new § 303.30 and § 306.51 is redesignated as a new § 303.31.

(l) In § 303.52, the definition of “Political subdivision” is moved from paragraph (a) to § 301.1 and § 303.52 is revised to read as follows:

§ 303.52 Pass-through of incentives to political subdivisions.

The State must calculate and promptly pay incentives to political subdivisions as follows:

(a)(1) The State IV-D agency must develop a standard methodology for passing through an appropriate share of its incentive payment to those political subdivisions of the State that participate in the costs of the program, taking into account the efficiency and effectiveness of the activities carried out under the State plan by those political subdivisions. In order to reward efficiency and effectiveness, the methodology also may provide for payment of incentives to other political subdivisions of the State that administer the program.

(b)(1) To ensure that the standard methodology developed by the State reflects local participation, the State IV-D agency must submit a draft methodology to participating political subdivisions for review and comment or use the rulemaking process available under State law to receive local input.

§ 303.72 [Amended]

m. Section 303.72(g)(8) is amended by changing the reference to “§ 303.52” to “§ 304.12”.

§ 303.73 [Amended]

n. Section 303.73(a)(1) is amended by changing the reference to “§ 303.7(a)(3)” to “§ 303.7”.

§ 303.100 [Amended]

o. Section 303.100 is amended by replacing the word “immediately” with the words “within 5 working days” in paragraph (b)(2) and by removing the word “promptly” after the word “distributed” in paragraph (e)(2).

§ 303.101 [Amended]

p. Section 303.101(b)(2) is amended by replacing the words “from the time of filing” with “from the time of successful service of process”.

§ 303.102 [Amended]

q. Section 303.102(g)(1) is amended by removing the words “Within a reasonable time period in accordance with State law,” and capitalizing the word “a” before the word “State”.

PART 304—[AMENDED]

1. The authority citation in Part 304, continues to read as follows:

Authority: 42 U.S.C. 651 through 655, 657, 1302, 1396(a)(25), 1396b(c)(2), 1396b(o), 1396b(r), and 1396l(k).

2. Part 304 is amended as follows:

(a) A new § 304.12 is added to read as follows:

§ 304.12 Incentive payments.

(a) Definitions. For the purposes of this section: “AFDC collections” means support collections satisfying an assigned support obligation under § 233.11 of this title or section 471(a)(17) of the Act, including collections treated in accordance with paragraph (b)(4)(ii) of this section.

“Non-AFDC Collections” means support collections, on behalf of individuals receiving services under this title, satisfying a support obligation which has not been assigned under § 233.11 of this title or section 471(a)(17) of the Act, including collections treated in accordance with paragraphs (b)(4)(iii), (b)(4)(iv) and (b)(4)(v) of this section.

(b) Incentive payments to States.

(1) A portion of a State’s incentive payment shall be computed as a percentage of the State’s AFDC collections, and a portion of the incentive payment shall be computed as a percentage of its non-AFDC collections. The percentages are determined separately for AFDC and non-AFDC portions of the incentive. The percentages are based on the ratio of the State’s AFDC collections to the State’s total administrative costs and the State’s non-AFDC collections to the State’s total administrative costs in accordance with the following schedule:

<table>
<thead>
<tr>
<th>Ratio of collections to total IV-D administrative costs</th>
<th>Percent of collection paid as an incentive</th>
</tr>
</thead>
<tbody>
<tr>
<td>Less than 1.4</td>
<td>6.0</td>
</tr>
<tr>
<td>At least 1.4</td>
<td>6.5</td>
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<td>At least 1.5</td>
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<td>7.5</td>
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<tr>
<td>At least 2.6</td>
<td>9.5</td>
</tr>
<tr>
<td>At least 2.8</td>
<td>10.0</td>
</tr>
</tbody>
</table>

(2) The ratios of the State’s AFDC and non-AFDC collections to total IV-D administrative costs will be truncated at one decimal place.

(3) The portion of the incentive payment paid to a State for a fiscal year in recognition of its non-AFDC collections is limited to the percentage of the portion of the incentive payment paid for that fiscal year in recognition of its AFDC collections, as follows:

(i) 100 percent in fiscal years 1986 and 1987;

(ii) 105 percent in fiscal year 1988;
(iii) 110 percent in fiscal year 1989; and
(iv) 115 percent in fiscal year 1990 and thereafter.
(4) In calculating the amount of incentive payments, the following conditions apply:
(a) Only those AFDC and non-AFDC collections distributed and expenditures claimed by the State in the fiscal year shall be used to determine the incentive payment payable for that fiscal year;
(b) Support collected by one State on behalf of individuals receiving IV-D services in another State shall be treated as having been collected in full by each State;
(c) Fees paid by individuals, recovered costs, and program income such as interest earned on collections shall be deducted from total IV-D administrative costs;
(d) At the option of the State, laboratory costs incurred in determining paternity may be excluded from total IV-D administrative costs; and
(e) Effective January 1, 1990, amounts expended by the State in carrying out a special project under section 455(e) of the Act shall not be included in the State's total IV-D administrative costs.

302.51(b)(1) of this chapter. Other adjustments.

The functions that the IV-D agency may perform under the cooperative agreement are set forth in § 306.10. The administrative requirements are set forth at § 306.11.

§ 306.10 Functions to be performed under a cooperative agreement.

The functions that the IV-D agency may perform under a cooperative agreement with the Medicaid agency are limited to one or any combination of the following activities. The agency may:
(a) Receive referrals from the Medicaid agency.
(b) Locate the absent parent, using the State Parent Locator Service and the Federal Parent Locator Service, as needed.
(c) Establish paternity if necessary.
(d) Determine whether the parent has a health insurance policy or plan that covers the child.
(e) Obtain sufficient information about the health insurance policy or plan to present the filing of a claim with the insurer.
(f) File a claim with the insurer; or transmit the necessary information to the Medicaid agency, or to the appropriate State agency or fiscal agent for the filing of the claim; or require the absent parent to file a claim.
(g) Secure health insurance coverage through court or administrative order.
(h) Take direct action against the absent parent to recover amounts necessary to reimburse medical assistance payments when the absent parent does not have health insurance and the amounts collected will not reduce the absent parent's ability to pay child support.
(i) Receive medical support collections.
(j) Distribute the collections as required by 42 CFR 433.154 including calculation and payment of the incentives provided for by 42 CFR 433.153.
(k) Perform other functions as may be specified by instructions issued by the Office of Child Support Enforcement.

§ 306.11 Administrative requirements of cooperative agreements.

(a) Organizational structure. The cooperative agreement must:
(1) Describe the organizational structure of the unit or units within the IV-D agency that are responsible for medical support enforcement activities.
(2) List the medical support enforcement functions that are to be performed outside of the IV-D agency with the name of the organization responsible for performance.
(3) Provide that the IV-D agency shall have responsibility for securing compliance with the requirements of the cooperative agreement by individuals or agencies outside the IV-D agency performing medical support enforcement functions.

(b) Maintenance of records. The cooperative agreement must specify that the IV-D agency will establish and maintain case records of medical support enforcement activities in accordance with the provisions of § 302.15 of this chapter.

(c) Safeguarding information. The cooperative agreement must provide that the use or disclosure of information concerning applicants for, or recipients of, medical support enforcement services is subject to the limitations in § 303.21 of this chapter.

(d) Fiscal policies and accountability. (1) The cooperative agreement must provide that the IV-D agency will maintain an accounting system and supporting fiscal records adequate to assure that claims for reimbursement from the Medicaid agency are in accordance with applicable Federal requirements in 45 CFR Part 74.

(2) The cooperative agreements must provide for the establishment of a method for properly allocating those costs that cannot be directly charged to the medical support enforcement effort.

§ 306.20 Prior approval of cooperative agreements.

(a) Prior to implementation, the IV-D agency must submit two copies of any cooperative agreement entered into under this part to the Regional Representative for approval.

(b) The Regional Representative will review the cooperative agreement for conformity with the requirements of this part and 42 CFR 433.152.

(c) The Regional Representative will promptly notify the State of approval or disapproval. The State may consider the agreement approved if notification is not received within 60 days after the agreement is received by the Regional Representative.

§ 306.21 Subsidiary cooperative agreements with courts and law enforcement officials.

The IV-D agency will enter into subsidiary written cooperative agreements with appropriate courts and law enforcement officials to the extent necessary to perform those functions specified in the cooperative agreement between the IV-D agency and the Medicaid agency. These agreements must be made in accordance with the requirements of § 302.34 (Cooperative agreements).

§ 306.22 Purchase of service agreements.

The IV-D agency will enter into written purchase of service agreements to the extent necessary to fulfill the requirements of its cooperative agreement with the Medicaid agency.

§ 306.30 Source of funds.

The cooperative agreement must specify that the IV-D agency will receive full reimbursement from the Medicaid agency for all medical support enforcement activities performed under the agreement. (See § 306.11(d) for requirements on fiscal policies and accountability.)
Part V

Department of the Interior

Minerals Management Service

30 CFR Part 250
Oil and Gas and Sulphur Operations in the Outer Continental Shelf; Information To Be Made Available to the Public; Notice of Proposed Rulemaking
Oil and Gas and Sulphur Operations in the Outer Continental Shelf; Information to be Made Available to the Public

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Minerals Management Service’s (MMS) regulations governing oil, gas, and sulphur operations in the Outer Continental Shelf (OCS) include provisions for making data and information available to the public. The MMS believes that the rules need clarification to ensure that items of data and information submitted on Forms MMS-1866, Request for Reservoir Maximum Efficient Rate; MMS-1867, Request for Well Maximum Production Rate; MMS-1868, Well Potential Test Report; MMS-1869, Quarterly Oil Well Test Report; and MMS-1870, Semiannual Gas Well Test Report that are made available for public inspection are clearly identified in the regulations. This notice proposes to amend 30 CFR 250.18 to clarify which data and information submitted in association with the regulation of drilling and production operations in the OCS will be available to the public.

DATE: Comments must be postmarked or hand delivered by October 3, 1989.

ADDRESS: Comments should be mailed or hand delivered to the Department of the Interior; Minerals Management Service; Mail Stop 646; 381 Elden Street; Herndon, Virginia 22070; Attention: Gerald D. Rhodes.

FOR FURTHER INFORMATION CONTACT: John V. Mirabella; Offshore Rules and Operations Division; Branch of Rules, Orders, and Standards; Telephone: (703) 787-1600 or FTS 393-1600.

SUPPLEMENTARY INFORMATION: The rules at 30 CFR Part 250 governing offshore oil and gas and sulphur operations, which were published in the Federal Register on April 1, 1988, included provisions in § 250.18 governing the release of data and information to the public. The proposed rule would allow release of data and information submitted on production Forms MMS-1866 and MMS-1868 and the specific timetables for the release of that data and information to the public. The proposed rule would also provide that all data and information submitted on Forms MMS-1866 and MMS-1868 would be protected from disclosure.

The Department of the Interior (DOI) has determined that this rule proposes to codify existing practices and will not have any effect on the economy and is not a major rule. The DOI has determined that this rule will not have a significant economic effect on small entities since offshore activities are complex undertakings generally engaged in by enterprises that are not considered small entities. The DOI certifies that the rule does not represent a Government action capable of interference with constitutionally protected property rights. Thus, a Taking Implication Assessment has not been prepared pursuant to Executive Order 12630, Government Action and Interference with Constitutionally Protected Property Rights.

This proposed rule does not affect any information collection which requires approval by the Office of Management and Budget under 44 U.S.C. 3501 et seq.

Author: This document was prepared by John V. Mirabella, Offshore Rules and Operations Division, MMS.

List of Subjects in 30 CFR Part 250

Continental shelf, Environmental impact statements, Environmental protection, Government contracts, Incorporation by reference, Investigations, Mineral royalties, Oil and gas development and production, Oil and gas exploration, Oil and gas reserves, Penalties, Pipelines, Public lands-mineral resources, Public lands-right-of-way, Reporting and recordkeeping requirements, Sulphur development and production, Sulphur exploration, Surety bonds.
For the reasons set forth above, 30 CFR Part 250 is proposed to be amended as follows:

PART 250—[AMENDED]

1. The authority citation for Part 250 continues to read as follows:


2. Section 250.18 is proposed to be amended by republishing the introductory text of (d) and by adding new paragraphs (d)(4), (d)(5), (d)(6), (d)(7), and (d)(8) as follows:

§ 250.18 Data and information to be made available to the public.

(d) Data and information identified below shall not be available for public inspection without the consent of the lessee for the same periods as those provided in paragraph (b) of this section:

(d)(4) On Form MMS-1866, Request for Reservoir Maximum Efficient Rate:
(i) Item 1, Cut offs \( f \) Upper Lower, \( k \) Upper lower—md,
(ii) Item 2, G/O Interface,
(iii) Item 3, W/O Interface,
(iv) Item 4, Area @ G/O,
(v) Item 5, Area used to determine Rock Volume,
(vi) Item 6, \( V_o \), Oil Zone Rock Volume,
(vii) Item 7, \( V_g \), Gas Zone Rock Volume,
(viii) Item 8, \( H_o \), \( h_o \),
(ix) Item 9, \( H_g \), \( h_g \),
(x) Item 10, \( \Phi \),
(xi) Item 11, \( S_w \),
(xii) Item 12, \( S_g \),
(xiii) Item 13, \( S_o \),
(xiv) Item 14, Boi, Bgl,
(xv) Item 15, N, G,
(xvi) Item 16, Ri,
(xvii) Item 17, RiN, RiG,
(xviii) Item 18, Op/N, Gp/G,
(xix) Item 19, Average Well Depth,
(xx) Item 20, Kh,
(xxi) Item 21, Kv,
(xxii) Item 22, \( \text{"API} @ 60^\circ \text{F} \),
(xxiii) Item 23, SG,
(xxiv) Item 24, RaI,
(xxv) Item 25, \( \mu_{w1} \),
(xxvi) Item 26, \( \mu_{w2} \),
(xxvii) Item 27, Tavg,
(xxviii) Item 28, Pi,
(xxix) Item 29, Pws,
(XXX) Item 30, Pb,
(XXXI) Item 31, Datum Depth,
(XXXII) Item 32, GOR,
(XXXIII) Item 33, WOR.

(5) On Form MMS-1867, Request for Maximum Production Rate, all items of data and information are available for public inspection.

(6) On Form MMS-1868, Well Potential Test Report (this form does not use item numbers):
(i) Type well,
(ii) Perforation interval,
(iii) Choke size (for pretest),
(iv) Number of hours tested (for production test),
(v) Choke size (for production test),
(vi) Production during test period:
(A) Oil,
(B) Gas,
(C) Water,
(D) GOR,
(E) Water cut,
(F) Flowing tubing pressure.

(vii) Calculated 24-hr. rate:
(A) Oil,
(B) Gas,
(C) Water,
(D) Oil gravity,
(E) Specific gravity of gas.

(viii) Static bottom hole pressure,
(ix) Cumulative production during entire testing period:
(A) Oil,
(B) Gas,
(C) Water.

(7) On Form MMS-1869, Quarterly Oil Well Test Report, all items of data and information are available for public inspection.

(8) On Form MMS-1870, Semiannual Gas Well Test Report, all items of data and information are available for public inspection.

Barry A. Williamson,
Director, Minerals Management Service.

For the reasons set forth above, 30 CFR Part 250 is proposed to be amended as follows:

Dated: June 14, 1989.

Federal Register / Vol. 54, No. 149 / Friday, August 4, 1989 / Proposed Rules
Environment Protection Agency

Hazardous Waste Management Systems; Identification and Listing of Hazardous Waste; Reportable Quantity Adjustment; Proposed Rule

40 CFR Parts 261 and 302
ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 261 and 302
[FRL-3545-3; EPA/OSW-FR-89-012]
RIN 2050-AC78

Hazardous Waste Management Systems; Identification and Listing of Hazardous Waste; Reportable Quantity Adjustment

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection agency (EPA) is today proposing to modify the scope of the EPA Hazardous Waste No. F019 contained in the list of hazardous substances from non-specific sources. See Subpart D of Part 261. The Agency is proposing to amend the F019 listing to exclude wastewater treatment sludges from the zincium phosphating step when such phosphating is an exclusive process in the aluminum can washing process because the Agency believes that such sludges do not pose a substantial hazard to human health or the environment and should not be regulated as a listed hazardous waste. The Agency also is proposing to remove these zincium phosphating sludges from the list of hazardous substances under § 302.4. This modification to the F019 listing would not affect any other wastewater treatment sludges from the chemical conversion coating of aluminum. EPA does not solicit any comments regarding any other aspect of the F019 listing and will not respond to any such comments that are received.

DATES: EPA will accept comments on this proposed rule until September 5, 1989.

Any person may request a public hearing on this proposed amendment by filing a written request with EPA, to be received no later than August 21, 1989.

ADDRESSES: Comments on the CRCA portions of the proposed rule should be sent in triplicate to: EPA CRRA Docket Clerk (OS-332), U.S. Environmental Protection Agency, 401 M Street SW., Room SE-2427, Washington, DC 20460. All comments must be marked "Docket Number [F-89-F19P-FFFFF]."

Comments on the CERCLA portions of the proposed rule should be sent in triplicate to: Emergency Response Division, Docket Clerk, ATTN.: Docket No. RQ, Room LG-100, U.S. EPA, 401 M Street SW., Washington, DC 20460. Comments of materials relevant to this proposed rulemaking are located at U.S. EPA, 401 M Street SW., Washington, DC 20460. The CRCA portions are located in the Room SE 2427; the public must make an appointment in order to review them by calling (202) 475-6327. The CERCLA portions are contained in Room LG-100; for an appointment call (202) 382-3046. Both dockets are available for inspection from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding holidays. The public may copy 100 pages from the docket at no charge; additional copies are $.15 per page.

Requests for a public hearing should be addressed to Mr. Devereaux Barnes, Director, Characterization and Assessment Division (OS-300), Office of Solid Waste, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT:
The RCRA/CERCLA Hotline at (800) 424-9346 or, in the Washington, DC area, (202) 382-3000. For technical information on the CRCA portions of the proposal, contact Ms. Denise A. Wright, Listing Section, Office of Solid Waste (OS-353) at (202) 245-3519. For technical information on the CERCLA portion of the proposal, contact Ms. Ivette Vega, Response Standards and Criteria Branch, Emergency Response Division (OS-210) at (202) 475-7369. Both are available at U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION:
The contents of today's preamble are listed in the following outline:

I. Background
II. Reasons and Basis for Today's Proposed Rule
III. Relationship to Other Regulatory Authorities
IV. State Authority
A. Applicability of Rules in Authorized States
B. Effect on State Authorities
V. Effective Date
VI. Regulatory Impact
VII. Regulatory Flexibility Act
VIII. Paperwork Reduction Act

I. Background

On May 19, 1989, EPA published an interim final rule listing "wastewater treatment sludges from electroplating operations" as EPA Hazardous Waste No. F006. See 40 CFR 261.31 (45 FR 33112). The hazardous constituents for which this waste was listed are cadmium, chromium, nickel, and complexed cyanides. In response to comments on this regulation, the listing was modified on November 12, 1989 (45 FR 74884) to read as follows: "wastewater treatment sludges from electroplating operations except from the following processes: (1) Sulfuric acid anodizing of aluminum; (2) tin plating on carbon steel; (3) zinc plating (segmented basis) on carbon steel; (4) aluminum or zinc-aluminum plating on carbon steel; (5) cleaning/striping associated with tin, zinc, and aluminum plating on carbon steel; and (6) chemical etching and milling of aluminum."

Additionally, in response to other comments, EPA separated the "wastewater treatment sludge from the chemical conversion coating of aluminum" from the F006 listing and listed them as F019. Commenters had argued that these sludges should not be listed as F006 because they did not contain all four of the constituents for which F006 was listed. That is, they contended that these wastes do not typically contain cadmium and nickel. The Agency agreed that these wastes do not typically contain cadmium and nickel but maintained that, since the wastes contain hexavalent chromium and complexed cyanides, they should nevertheless be regulation. The Agency therefore listed them as hazardous waste, F019, and only listed hexavalent chromium and complexed cyanides as constituents of concern in Appendix VII of part 261.

On December 2, 1986 (51 FR 43350), the Agency issued an interpretive rule stating that it had re-evaluated its previous interpretations of the scope of application of F006 and had determined that those interpretations were overly broad. As a result, the Agency stated that the following processes were not included in the F006 listing: chemical conversion coating, electroless plating, and printed circuit board manufacturing. The Agency further clarified that the F006 listing includes wastewater treatment sludges from: (1) Common and precious metals electroplating, except tin, zinc (segmented basis), aluminum and zinc plating on carbon steel; (2) anodizing, except sulfuric acid anodizing of aluminum; (3) chemical etching and milling, except when performed on aluminum; and (4) cleaning and stripping, except when associated with tin, zinc, and aluminum plating on carbon steel. (The Agency also indicated that hexavalent chromium rather than total chromium would be listed as a constituent of concern in Appendix VII of part 261.

Wastewater treatment sludges from printed circuit board manufacturing operations that include processes which are within the scope of the F006 listing (e.g., chemical etching) continue to be regulated as F006. "Zinc plating (segmented basis)" refers to non-cyanidic zinc plating processes (i.e., where no cyanides are used). Where both cyanidic and non-cyanidic plating baths are used, the sludges from non-cyanidic are excluded provided they are segregated from sludges resulting from cyanidic plating processes.
carbon steel. While this interpretation removed chemical conversion coating from the scope of F006, it did not affect the F019 listing. That is, wastewater treatment sludges from chemical conversion coating of aluminum continued to be regulated as F019.

II. Reasons and Basis for Today's Proposed Rule

In the Listing Background document for electroplating wastes, the Agency agreed with commenters that the hazardous constituents used in the chemical conversion coating of aluminum were different from those used in electroplating (i.e., F006), but still contained complexed cyanides and chromium. In describing the hazards associated with these wastes, the Agency noted that sodium chromate or potassium dichromate is used in common oxide-conversion coating solutions, potassium dichromate is used in phosphate-conversion coatings solution, and sodium dichromate is used in chromate-conversion coating solutions. Additionally, the Agency indicated that cyanides are known to be used in the coloring of anodized aluminum. Thus, EPA believed that chemical conversion coating processes on aluminum typically resulted in hazardous sludges.

The Agency has since learned that one of the chemical conversion coating operations—zirconium phosphating performed during the washing of aluminum cans—is not expected to result in a hazardous wastewater treatment sludge. This process uses only one hazardous constituent (hydrofluoric acid) which is chemically changed into a non-hazardous salt as described below. Additionally, no hazardous constituents are formed during the process. EPA is therefore proposing today to amend the F019 listing to exclude the wastewater treatment sludges from the zirconium phosphating step of the aluminum can washing process.

In the aluminum can making process, cans are rinsed with water in a multi-step can washing process. After forming, the cans are cleaned in a dilute sulfuric acid/hydrofluoric acid solution containing surfactants. This operation is performed to remove excess lubricants and aluminum fines. The acid treatment exposes the aluminum metal which then reacts with air to form an aluminum oxide, Al₂O₃, film. The can is next rinsed with water to remove any excess acid. This step causes the Al₂O₃ to become hydroxylated to form a continuous layer of Al₂O₃—Al(OH)₃. This layer is formed as a result of the reaction Al₂O₃ + H₂O → 2AlO(OH). The aluminum hydroxide AlO(OH) will further react with water, if unhindered, to form a porous colloidal aluminum hydroxide, Al(OH)₃, through the reaction AlO(OH) + H₂O → Al(OH)₃. Light reflecting reflecting through this Al(OH)₃ film causes discoloration of the can. This porous colloidal aluminum hydroxide does not provide as good a base for organic finishes as compared to the former Al₂O₃—Al(OH)₃ layer. Thus, a zirconium phosphate solution is used to prevent the conversion of the desirable AlO(OH) to Al(OH)₃. The zirconium phosphating step allows an ion exchange between the monovalent hydrogen on the hydroxide group with tetravalent zirconium resulting in an inert and nonporous aluminum oxide—zirconium species on the can surface.

Based on the process chemistry, the Agency believes that, although the sludge currently meets the F019 listing description, this sludge should not have been included in the F019 listing because it is non-hazardous. In particular, in reviewing the solutions that are used in the zirconium phosphating process, no hazardous constituents (listed in Appendix VIII of 40 CFR 261) are contained or used in this conversion coating step, except for hydrofluoric acid. The zirconium phosphate solution typically used includes fluorozirconic acid (as a source of zirconium), nitric and hydrofluoric acids, and phosphoric acid. The hydrofluoric acid, which is present in the can washing wastewater in low concentrations that are readily treated, is chemically converted in the wastewater treatment process into calcium fluoride or calcium aluminum fluoride, which is non-hazardous. Thus, the slightly alkaline sludge would not be expected to contain any hazardous constituents, nor exhibit any of the characteristics of hazardous waste. The Agency has also evaluated analytical data on these wastewater treatment sludges. These data, which are available in the RCRA docket supporting this proposed rule, do not indicate the presence of significant concentrations of Appendix III constituents. Additionally, the data shows that these sludges do not exhibit any hazardous waste characteristics. The Agency is, therefore, proposing to modify the F019 listing to exclude the wastewater treatment sludges from the zirconium phosphating step of the aluminum can washing process.

The proposed exclusion applies only to sludges from processes that exclusively use zirconium phosphating solutions that do not contain hexavalent chromium and cannot produce complexed cyanides. Further, these processes are not associated with electroplating or conversion coating steps where hazardous constituents are used. For example, if a can maker employs a chromating step, separately or in conjunction with such zirconium phosphating, the wastewater treatment sludges would meet the F019 listing and would not be excluded under this rulemaking.

Other wastewater treatment sludges from conversion coating processes falling within the scope of the F019 listing may not in fact contain or produce hazardous constituents. At this time, the Agency is not excluding these sludges from the scope of the F019 listing, is not soliciting comments regarding these sludges or processes, and will not respond to any such comments received. Prior to proposing today's action the Agency has received data from industry on this zirconium phosphating process and the composition of the wastewater treatment sludge on which to base this proposed exclusion. Because such data are not currently in the Agency's possession for other processes that may not use hazardous constituents, the Agency will not at this time consider excluding them from the scope of the F019 listing.

III. Relationship to Other Regulatory Authorities

All hazardous wastes listed pursuant to 40 CFR 261.31 through 261.35, as well as any solid waste that meets one or more of the characteristics of a RCRA hazardous waste (as defined in 40 CFR 261.21 through 261.24), are hazardous substances as defined at section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980. The CERCLA hazardous substances are listed at 40 CFR 302.4 along with their reportable quantities (RQs). CERCLA section 103(a) requires that persons in charge of vessels or facilities from which a hazardous substance has been released in a quantity that is equal to or greater than its RQ shall immediately notify the National Response Center of the release. In addition, section 904 of the Superfund Amendments and Reauthorization Act of 1986 (SARA) requires the owner or operator of a facility to report the release of a hazardous substance or an extremely hazardous substance to the appropriate state emergency response commission (SERC) and to the local emergency planning committee (LEPC) when the amount released equals or exceeds the RQ for the substance, or one pound when no RQ has been set.

When this rulemaking becomes effective, the description of hazardous
waste stream F019 in Table 302.4 will change to exclude wastewater treatment sludges from the zirconium phosphating step of the aluminum can washing process. These zirconium phosphating sludges will no longer be listed hazardous substances under CERCLA Section 101(14) and 102(a). Reporting of releases of sludge from the zirconium phosphating of aluminum cans process will no longer be required under either Section 103 of CERCLA or Section 304 of SARA. Although the Agency has no reason to believe that releases of zirconium phosphating sludges will contain hazardous constituents subject to reporting under Section 103 of CERCLA or Section 304 of SARA, the Agency reminds the regulated community that reporting of releases of such sludges is required if a RQ or more of a hazardous substance (which is contained as a constituent of the sludge) is released to the environment. Reporting also is required when the wastewater treatment sludge meets one or more of the characteristics of unlisted hazardous wastes for ignitability, corrosivity, reactivity, or EP Toxicity and 100 pounds or more is released to the environment (50 FR 13456, April 4, 1985).

The existing 10-pound RQ of waste stream F019 will not be affected by this rule, except for the exclusion of sludges from processes that use only zirconium phosphating. Releases of wastewater treatment sludges from the chemical conversion coating of aluminum (other than from exclusive zirconium phosphating) remain subject to the reporting requirements of Section 103 of CERCLA and Section 304 of SARA when a RQ or more is released to the environment. EPA is not soliciting comments on the existing applicable RQ for F019, and will not respond to any such comments received.

IV. State Authority

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 inspection authority under section 3007 and enforcement authority under sections 3005, 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 EPA administering the Federal program in that State. The Federal requirements no longer applied in the authorized State, and EPA could not issue permits for any facilities in the State which the State was authorized to permit. When new, more stringent Federal requirements were promulgated, the State was obligated to enact equivalent authority within specified time frames. New Federal requirements did not take effect in an authorized State until the State adopted the requirements as State law.

In contrast, under section 3006(g) of RCRA, 42 U.S.C. 9928(g), new requirements and prohibitions imposed by the Hazardous and Solid Waste Amendments of 1984 (HSWA) take effect in authorized States at the same time that they take effect in nonauthorized States. The rulemaking proposed today, however, would not be imposed pursuant to HSWA.

B. Effect on State Authorizations

Today’s proposed rule will not be effective in authorized States since the regulations are not being imposed pursuant to HSWA. Thus, the regulation will be applicable only in those States that do not have interim or final authorization. In authorized States, the regulations will not be applicable until the State revises its program to adopt equivalent regulations under State law.

40 CFR 271.21(e)(2) requires that States that have final authorization must modify their programs to include equivalent regulations within a year of promulgation of these regulations if only regulatory changes are necessary, or within two years of promulgation if statutory changes are necessary. These deadlines can be extended in exceptional cases (40 CFR 271.21(e)(3)). Once EPA approves the modification, the State requirements become Subtitle C RCRA requirements.

It should be noted that authorized States are only required to modify their programs when EPA promulgates Federal regulations that are more stringent or broader in scope than the existing Federal regulations. For those Federal program changes that are less stringent or reduce the scope of the Federal program, States are not required to modify their programs. This is a result of section 3009 of RCRA, which allows States to impose regulations in addition to those in the Federal program. The regulations proposed today at § 261.31 are considered to be less stringent or to reduce the scope of the existing Federal regulations. Therefore, authorized States will not be required to modify their programs to adopt regulations equivalent or substantially equivalent to the provisions listed above.

V. Effective Date

This rule will be effective immediately upon promulgation. The Hazardous and Solid Waste Amendments of 1984 amended section 3010 of RCRA to allow rules to become effective in less than six months when the rule would not need the six month period to come into compliance. This is the case here since this rule will reduce, rather than increase, the existing requirements for persons generating hazardous wastes. In light of the unnecessary hardship and expense which would be imposed on the regulated community by an effective date six months after promulgation and the fact that such a deadline is not necessary to achieve the purpose of section 3010, this rule will be effective immediately upon promulgation. Once effective, this modification to the listing will be applied retroactively to the above described previously generated zirconium wastes, because these particular wastes should not have been included within the scope of the 1980 listing. Thus, where this rule applies, EPA will not consider such wastes, whenever they were generated, to be F019. EPA’s decision does not effect authorized State regulation of such waste if a State is more stringent or broader in scope.

VI. Regulatory Impact

Under Executive Order 12291, EPA must judge whether a regulation is “major” and therefore subject to the requirement of a Regulatory Impact Analysis. This proposed rule reduces the regulatory requirements applicable to the regulated community. It is not major because it would not result in an effect on the economy of $100 million or more, nor would it result in a major increase in costs or prices to individual industries, consumers, Federal, State or local government agencies, or geographic regions. Finally, there would be no adverse impact on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets. Accordingly, this proposed amendment is not a major regulation, and no Regulatory Impact Analysis has been conducted.

This proposed amendment was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291.
VII. Regulatory Flexibility Act
Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601-612, whenever an agency is required to publish a general notice of rulemaking, for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). The Administrator may certify, however, that the rule will not have a significant economic impact on a substantial number of small entities.

This proposed amendment will not have a significant economic impact on small entities since it reduces regulatory requirements. Accordingly, I certify that this proposed rule will not have a significant economic impact on a substantial number of small entities. This regulation, therefore, does not require a regulatory flexibility analysis.

VIII. Paperwork Reduction Act
This proposed rule does not contain any information collection requirements subject to OMB review under the Paperwork Reduction Act of 1990, 44 U.S.C. 3501 et seq.

List of Subjects
40 CFR Part 261
Hazardous wastes, Recycling.
Endangered and Threatened Wildlife and Plants; Emergency Determination of Endangered Status for the Mojave Population of the Desert Tortoise; Emergency Rule
DEPARTMENT OF THE INTERIOR
Fish and Wildlife Service
50 CFR Part 17
RIN 1018-AB35
Endangered and Threatened Wildlife and Plants; Emergency Determination of Endangered Status for the Mojave Population of the Desert Tortoise

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Emergency rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) exercises its emergency authority to determine the Mojave population of the desert tortoise (Gopherus agassizii) to be an endangered species pursuant to the Endangered Species Act of 1973, as amended (Act). An emergency situation, in the form of a recently documented outbreak of a virulent desert tortoise upper respiratory disease syndrome (Respiratory Disease Syndrome), has been identified and has caused significant declines to certain tortoise subpopulations and threatens to become pandemic in subpopulations already stressed as a result of habitat degradation, predation, and other factors. Because of the need to make Federal funding, protection, and other measures immediately available to combat the Respiratory Disease Syndrome, the Service finds that good cause exists to make this emergency rule effective upon publication. The emergency rule will implement Federal protection for 240 days.

The status of the Beaver Dam Slope desert tortoises, which were listed as threatened with critical habitat in 1986, will not change. The Service does not expect additional benefits would accrue to this subpopulation by changing its listing to endangered at this time. A proposed rule to list the Mojave population of the desert tortoise will be published shortly to provide for public comment, and hearings (if requested). The Service will accept comments on the status of the species at any time.

EFFECTIVE DATES: This emergency rule is effective on August 4, 1989 and expires on April 2, 1990.

ADDRESSES: The complete file for this rule is available for inspection during normal business hours at the U.S. Fish and Wildlife Service, Regional Office, Division of Endangered Species and Habitat Conservation, 1002 NE Holladay Street, Portland, Oregon 97232-4181.

FOR FURTHER INFORMATION CONTACT: Mr. Robert P. Smith—Assistant Regional Director for Fish and Wildlife Enhancement, at the above address (telephone (503) 231-6131 or FTS 429-6131).

SUPPLEMENTARY INFORMATION:

Background
The desert tortoise is one of three species in the genus Gopherus found in the United States. The Berlandier's tortoise (G. berlandieri) is found in southeastern Mexico and southern Texas. The gopher tortoise (G. polyphemus) is found in the hot, humid portions of southeastern United States. G. agassizii is relatively large, with adults measuring up to 15 inches in shell length and inhabits the Mojave, Colorado, and Sonoran deserts in the southwestern United States and adjacent Mexico.

Recent studies based on shell shape and variations in genetic composition indicate that the species has two distinct populations, one of which is divided into two subpopulations (Spang et al. 1986). A summary of this information is as follows:

1. The two populations are the Mojave and the Sonoran. These are separated in the U.S. and Mexico by the Colorado River, with the former populations being found to the west and north of the river and the latter being found to the east and south. The Mojave population is further divided into two subpopulations.

2. The Mojave subpopulation includes parts of the west Mojave, east Mojave, and Colorado Deserts in California and extreme southern Nevada. Tortoises occur in creosote bush, alkali sink, and tree yucca habitats in valleys, on alluvial fans, and in low rolling hills at elevations generally ranging from 2,000 to 4,000 feet above sea level. Study plot data from eight sites indicate that populations have declined at rates of 10 percent or more per year for the last six to eight years. Vandalism, collections, river predation, and disease are a few of the many causes for population declines. Habitat is deteriorating and being lost from urban, energy, and mineral development, vehicle-oriented recreation, grazing, and other uses.

The eastern Mojave subpopulation includes tortoises in eastern California, southern Nevada, and the Beaver Dam Slope and the Virgin River Basin of southwestern Utah and extreme northwestern Arizona (north of the Grand Canyon). For the purposes of this rule, the status of Beaver Dam slope tortoises will remain unchanged. Eastern Mojave tortoises occur in creosote bush-burro bush or creosote bush-tree yucca vegetation types. Downward trends in this subpopulation and its habitat are believed to be a result of urban development, long-term livestock grazing, mining, large-scale water development, off-road vehicle use, collecting, and many other human-related uses.

The Sonoran population is found in Arizona, south and east of the Colorado River, and in Mexico. Tortoises in this area are found on steep, rocky slopes of mountain ranges, primarily in Arizona upland vegetation dominated by palo verde and saguaro cactus. The distribution of the present population and habitat is disjunct. Some habitat has been lost to expansion of urban areas. Grazing, mining, and fire have adversely affected some areas of tortoise habitat.

The Beaver Dam Slope population of desert tortoises in Utah was listed as threatened with critical habitat on August 20, 1980 (45 FR 55654). The Service received a petition on September 14, 1984, from the Environmental Defense Fund, Natural Resources Defense Council, and Defenders of Wildlife to list the desert tortoise in Arizona, California, and Nevada as endangered under the Endangered Species Act. The Service determined in September 1985 that the proposed listing of the tortoise within the three petitioned States was warranted but precluded by other listing actions of higher priority under authority of section 4(b)(3)(iii) of the Act. Annual findings of warranted but precluded have been made in each subsequent year since 1985 under authority of section 4(b)(3)(C) of the Act.

For the purpose of this rule, the Mojave population of the desert tortoise includes all desert tortoises north and west of the Colorado River, including desert tortoises in the Colorado and Mojave Deserts of California, southern Nevada, southwestern Utah, and northwestern Arizona, other than the Beaver Dam Slope population of desert tortoises, which is already listed as a threatened species under the Act.

Data collected on the Mojave population in recent months indicate that many local tortoise populations throughout the range of the species have declined precipitously. The rapid spread of Respiratory Disease Syndrome, rarely seen before in wild tortoises, has been identified as a significant contributing factor in the current high level of tortoise losses.

On May 31, 1989, the same three environmental organizations that petitioned the Service in 1984 petitioned the Service to list the desert tortoise as an endangered species throughout its United States range under the expedited
emergency provisions of the Act. This petition was received on June 2, 1989. In response to this petition, the Service conducted an extensive review of existing information on the Respiratory Disease Syndrome, other reported diseases in Arizona, and tortoise status. As a result of this and other information, the Service determines the Mojave population of the desert tortoise to be an endangered species. The Service will not take emergency action to reclassify the Beaver Dam Slope population in Utah to endangered because it is already protected by the Act. The Service does not concur with the requested action under the petition to emergency list the Sonoran population of desert tortoises. The rationale leading to this decision is as follows:

1. Historically, desert tortoises in the Sonoran population occur in numerous small groups, more or less patchy or disjunct, inhabiting steep-sided canyons. The very patchiness of the distribution in the Sonoran population leads the Service to believe that the Respiratory Disease Syndrome affecting other subpopulations will not likely reach the epidemic proportions that it has in locations like the Desert Tortoise Natural Area in California. Although a few instances of a respiratory disease have been documented in the Sonoran population and are of concern to the Service, it appears that respiratory disease is: (a) Usually present in tortoise populations to varying degrees, (b) has not shown any evidence of becoming pandemic, (c) has not been shown to be Respiratory Disease Syndrome, and (d) is currently being addressed by the Service and the Arizona Game and Fish Department, who will continue to gather and evaluate data. A report on the results of these studies will be available after two field seasons.

**Summary of Factors Affecting the Species**

After a thorough review and consideration of all information available, the Service has determined that the Mojave population of the desert tortoise should be classified as endangered. A species may be determined to be endangered or threatened due to one or more of the five factors described in section 4(a)(1). These factors and their application to the Mojave population of desert tortoise are as follows:

**A. The Present or Threatened Destruction, Modification, or Capture of its Habitat or Range**

As indicated above, habitat is deteriorating and has been lost due to an accelerating rate of urban, energy, and mineral development, military activities, vehicle-oriented recreational activities, grazing, and land exchanges. Changes in perennial vegetation, essentially the reduction in cover of small and large shrubs and perennial grasses, are believed to be the result of cattle and sheep grazing pressures. These changes have created openings and barren areas in desert landscape and have deteriorated the quality of habitat for the tortoise. Losses of plant cover may contribute to the excessive raven predation on small tortoises being recorded. Changes in annual vegetation have also affected food supplies for tortoises. Weedy plant species that have been introduced for grazing can germinate, flower, and fruit before the native plants. Native plant species are essential to meet the nutritional needs of the tortoise and are their favored forage. The exotic, weedy species are outcompeting many native plant species (Berry 1988). Additional potential adverse impacts to the tortoise from cattle and sheep grazing include: damage to shrubs used for tortoise shelter, crushing of burrows and nests, and trampling of young tortoises. Cattle grazing has contributed to declines in many tortoise populations. The degree and nature of impacts from cattle grazing is dependent upon habitat, grazing history, seasons of use, stocking rates, and density of the tortoise population (Sievers et al. 1988).

The following discussions are summarized from Alden Sievers and the California Desert Tortoise Workgroup’s 1988 Recommendations for Management of the Desert Tortoise in the California Desert, submitted to the Bureau of Land Management (BLM), Riverside, California, and to the California Department of Fish and Game, Long Beach, California (Sievers et al. 1989):

Vehicle free-play in tortoise habitat results in cumulative adverse impact to tortoise habitat. Impacts vary from minor habitat alteration and vehicle route proliferation to total denudation of extensive areas created by intensive vehicle play, parking, and camping. Concentrated vehicle play areas may eliminate all but the most hardy shrubs. Other impacts include soil compaction and erosion. Tortoises suffer from loss of forage, loss of vegetative cover, and loss of burrow sites and then become subject to increased mortality from crushing, collection, and vandalism. Competitive off-highway vehicle racing events adversely impact tortoise habitat. They usually involve several hundred race participants and thousands of spectators. The camping and race start and finish areas receive intensive vehicle use and become devoid of vegetation. Tortoises are eliminated from these areas entirely due to the loss of food, cover, and burrow sites. Affected areas become enlarged with continued use.

Vehicle route proliferation has occurred in many areas and can result in a significant cumulative loss of habitat. Human access increases the incidence of tortoise mortality from collection, gunshot, and crushing by vehicles. Soil compaction results in loss of vegetation and increases in erosion. Large surface disturbances (e.g., power plants, mining, agricultural developments, military activities, and urbanization) cause longterm, permanent loss of habitat. Both large and small developmental activities often induce further surface disturbing activities with resulting habitat loss and tortoise population reduction. Increased human activity results in increased vehicle kills, vandalism, and collecting of tortoises.

Land exchanges may result in habitat loss and increased fragmentation of populations. Even where tortoise habitat is exchanged by the Bureau of Land Management for other tortoise habitat, there is an increased likelihood of development, resulting in loss of habitat, on the new private holdings.

**B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes**

Desert tortoises have long been a popular pet in the Southwest. It is not currently known to what extent collecting has impacted wild populations. It is estimated that 100,000 desert tortoises exist in captivity. Many tortoises held in captivity, however, are known to exhibit signs of contagious Respiratory Disease Syndrome. The release of diseased captive tortoises is considered by the BLM to be the source of introduction of the currently identified Respiratory Disease Syndrome found in wild populations. The release of captive tortoises to the wild population following listing as Endangered could be considered to constitute harm to the wild population.

**C. Disease of Predation**

Predation of young tortoises by ravens is a growing threat to the species. Common raven populations in the southwestern deserts have increased significantly since the early 1940’s, presumably in response to expanding human use of the desert. Sewage ponds, landfills, power lines, roads, and other uses have increased available foraging, roosting, and nesting opportunities for ravens. In recent years, raven predation...
on juvenile desert tortoises has increased to a point where recruitment of young tortoises into the adult population has been significantly reduced or eliminated in certain localities. Ravens are highly adaptable as to their feeding patterns and concentrate on easily available seasonal food sources such as juvenile tortoises, including live, healthy animals. In the Desert Tortoise Natural Area, a protected area of 21,320 acres in the western Mojave Desert, even though tortoise eggs are still being laid and hatched, as shown by the presence of very small tortoises, raven predation appears to have prevented the recruitment of the young into the adult population (BLM 1989).

The BLM's 1989 Environmental Assessment (BLM 1989) for the Selected Control of the Common Raven to Reduce Desert Tortoise Predation in the Mojave Desert, California, further summarizes the annual trend (percent annual change) and the change (percent) of raven numbers in the last 20 years for the following deserts:

In the Mojave Desert, raven populations have increased 15-fold between 1968 and 1988, at a rate of nearly 15 percent per year. A new threat to certain desert tortoise populations has recently been identified. A fatal disease, currently referred to as Desert Tortoise Respiratory Disease Syndrome, is spreading and appears to target the mature, reproductively active segment of the population.

The disease has been known for some time in captive tortoises throughout the world (Shipes et al. 1980), although the exact cause, or etiological agent, has not been clearly identified. The disease is probably the result of multiple factors working in concert. It is known that the disease may be readily transmitted from an infected tortoise to a non-infected tortoise (Rosskopf 1988). A virus (herpes-like) has been observed by electron microscopic studies in other species of turtles with respiratory tract infections (Jacobson et al. 1986). A paramyxovirus is also considered as a primary pathogen capable of initiating the disease (Jacobson, personal communication, in Rosskopf 1988). Infected animals may not necessarily exhibit obvious signs of the disease.

Once the disease is initiated, bacteria may invade and become the primary pathological agent. Pasteurella pseudotuberculosis, recently isolated from a series of sick tortoises collected for disease study from the Desert Tortoise Natural Area in California. Species of Pasteurella Bacteria are commonly associated with disease syndromes initiated or enhanced by other predisposing factors, including poor nutrition, stress, and immune system compromise.

The disease appears to spread via contact between infected and non-infected animals (Rosskopf 1988). Adult female tortoises may contact many females in a single breeding season and, thus, the occurrence of the disease in the adult breeding population would reinforce the conclusion that direct nose contact during courtship activities could spread the pathogen to susceptible tortoises. Once the disease is contracted, there appears to be little chance of full recovery and the affected individual eventually becomes debilitated and dies. Even individuals given extensive treatment in captivity usually succumb to the disease eventually. Furthermore, if an individual recovers from the disease, relapse may occur under stress conditions (Rosskopf 1988).

Although the transmittance of an infectious agent from one tortoise to another occurs by contact, the actual infection of the newly inoculated individual may be associated with other factors that increase its susceptibility. Some of the original information published about this disease suggested a nutritional and/or stress-related cause with a secondary bacterial infection of debilitated animals (Fowler 1977). The combination of an infectious agent along with lowered resistance is typical of these types of disease syndromes in many other animals.

Based on current knowledge of the incidence, morbidity, and the mortality rates, the disease appears to have escalating in surveyed populations in the western Mojave Desert. The disease was first recognized in 1968 as a major problem in wild populations in the spring of 1988 (Fauna West Wildlife Consultants 1989). Signs of the disease were observed in up to 46 percent of adult tortoises examined during surveys of the Desert Tortoise Natural Area in the western Mojave Desert in southern California during the spring of 1988. In one portion of this range, the infection rate went from 9 percent in a 1988 survey to 52 percent of all tortoises in a 1989 survey. A loss of about 20 percent of the marked tortoise population with disease signs occurred in one year in this plot.

While not all populations surveyed have such high mortality rates, these figures demonstrate the potential impact the disease can have on any given area. Infection rates in multiple grid areas in the southern California study area range from 7 to 50 percent. The disease symptoms have also been observed in individual tortoises from a variety of populations (Berry 1989) including the Fremont Valley (50 percent infection rate), Saguaro National Monument in Arizona (2 of 12 radio tagged infected, and died), and Beaver Dam Slope, Utah-Arizona (10 to 20 percent infection rate with high mortality in radio tagged animals). Interviews of personnel at veterinary hospitals in the Las Vegas, Nevada area by Service personnel have revealed that most cases of Respiratory Disease Syndrome are found in captive tortoises, but that wild tortoises have been brought in with symptoms of respiratory disease. The potential exists for the Respiratory Disease Syndrome to reach epidemic proportions throughout the Mojave population. There appear to be no natural barriers that would prevent transfer of infectious agents from California subpopulations to Nevada, Utah, and Arizona subpopulations in the Mojave desert. In addition to the identified respiratory disease in the Beaver Dam Slope population, an apparent nutritional disease causing osteoporosis of the bones has been identified (Jarchow 1988).

D. The Inadequacy of Existing Regulatory Mechanisms

All four involved States have laws that provide varying levels of protection for the desert tortoise.

State of Nevada laws concerning fish, game, and watercraft, as amended in 1987, afford limited protection in the desert tortoise. Nevada Revised Statutes (NRS), Section 501.110.1(d) sets forth that reptiles must be classified as either protected or unprotected. NRS Section 501.110.2 states that protected wildlife may be further classified as either sensitive, threatened, or endangered. The Nevada Administrative Code (NAC), Section 503.080.1(a) classifies the desert tortoise as protected and rare outside the urban areas of Clark County (Las Vegas). NRS Section 503.597, states that it is unlawful, unless with written consent of the Nevada Department of Wildlife, to transport a desert tortoise from one portion to another portion of the State or across State lines.

The California Fish and Game Commission adopted a regulation change on June 22, 1989, to amend the California Code of Regulations, Section 670.5(b)(4) of Title 14, to add the desert tortoise as a State threatened species. Under the Fish and Game Code, Article 3, Section 2080 prohibits the import or export of endangered or threatened species. This section also indicates that no person shall take, possess, purchase, or sell within the State, any listed species, or any part or product thereof, except as otherwise provided in State
law or regulation. Violations of these provisions relating to endangered species may result in both fines (up to $25,000) and/or imprisonment (up to one year).

The California Fish and Game Code, Article 4, Section 2990 requires that each State agency shall consult with the California Department of Fish and Game to ensure that any action authorized, funded, or carried out by that State lead agency is not likely to jeopardize the continued existence of any State listed species.

In Arizona, the collecting season has been closed on the desert tortoise since 1983 under Arizona Game and Fish Commission Order 43: Reptiles. Under Arizona Administrative Code, Title 12, Chapter 4, Article 310.3, the desert tortoise is considered "prohibited wildlife" and may not be imported, exported, possessed, transported, propagated, purchased, bartered, sold, leased, or offered for sale except as expressly authorized by State law.

In Utah, the status of the desert tortoise is considered by the State to be endangered (Utah Division of Wildlife Resources 1987). The desert tortoise is also considered a "prohibited reptile" under Utah Rule. Collection, Importation, Transportation and Subsequent Possession of Zoological Animals (R608-3). In Utah, the desert tortoise is prohibited from collection, importation, transportation, possession, sale, transfer, or release.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

Vandalism, including shooting and crushing of tortoises under vehicles, has been documented by the Bureau of Land Management (Bureau) and is considered a factor in reducing the number of tortoises in their natural habitat. Bureau studies on 11 permanent study plots showed 14.3 percent of the carcasses with evidence of gunshot. The highest incidence of gunshot is found in the western Mojave Desert. At one plot, the highest frequency of carcasses with evidence of gunshot was 28.9 percent (Sievers et al. 1988).

Status of Feral Tortoises and Tortoises Currently Held in Captivity

Feral desert tortoises, which have been released inside the native habitat of the desert tortoise, are classified endangered species in the area north and west of the Colorado River and are protected under the Act. Tortoises found released outside of the known Mojave population range will be considered as captive animals.

Under section 9(b)(1) of the Act, prohibitions applicable to the Mojave population will not apply to tortoises that were held in captivity or in a controlled environment on the date of the publication of this notice, provided, that such holding and any subsequent holding or use of the tortoise was not in the course of a commercial activity.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with States, and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing.

Such increased recognition and an active recovery program would provide a means to ensure survival for the desert tortoise. Available funding would be used on research to determine the causes of and possible treatments for the disease currently infecting tortoise populations and to determine whether the disease can be passed on to hatchlings by infected females. Available funding would also be used for, but would not necessarily be limited to, the identification of and isolation of healthy populations, carrying out raven control to reduce loss of immature tortoises, and public education to discourage further releases of diseased captive tortoises.

The protection required of Federal agencies and the applicable prohibitions are discussed, in part, below:

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

Over 63 percent of occupied desert tortoise habitat is managed by the BLM. Other Federal Managers of tortoise habitat include the Department of Defense, National Park Service, Fish and Wildlife Service, and lands managed by Indian tribes. All current and proposed actions and plans for management of the habitat will require considerations for the protection of the tortoise, as required by the Act. Such activities may include, but may not be limited to, grazing, off-highway-vehicle use, mining, construction of developments and rights-of-way, and activities in tortoise habitat that kill tortoises and fragment their habitat.

The Act and its implementing regulations found at 50 CFR 17.21 set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take, import or export, ship in interstate commerce in the course of a commercial activity, or sell or offer for sale any desert tortoise in interstate or foreign commerce. It is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been illegally taken. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife under certain circumstances. Regulations governing such permits are codified at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities. In some instances, permits may be issued during a specified period of time to relieve undue economic hardship that would be suffered if such relief were not available.

All Gopherus tortoises, including the desert tortoise, were listed on July 1, 1975, as Appendix II species under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). The only exception within the genus is G. flavomarginatus, which was listed as an Appendix I species.

Emergency Determination

Under section 4(b)(7) of the Act and 50 CFR 424.20, the Secretary may
determine a species to be endangered or threatened by an emergency rule that shall cease 240 days following publication in the Federal Register. The reasons for taking this action with respect to the desert tortoise are discussed below. If at any time after this rule has been issued, the Secretary determines that substantial evidence does not exist to warrant such a rule, it shall be withdrawn.

As noted above, an emergency posing a significant risk to the well-being of the desert tortoise exists as a result of the outbreak and rampant spread of a contagious disease that is often, and may always be, fatal and for which no known cure currently exists. Even before the recent outbreak of a virulent respiratory disease, the desert tortoise was in serious peril for the many reasons already noted.

In 1985, when the Service found that the listing of the remaining populations of the desert tortoise as endangered was warranted, disease was not known to be a major factor affecting the species' survival. Today, however, a highly contagious and often fatal Respiratory Disease Syndrome is known to exist in tortoise populations in California, Utah, Arizona, and Nevada. Tortoises in some of these areas have experienced extraordinary population collapses within the very recent past and infection rates of surviving animals often exceed 50 percent. The outbreak of this disease syndrome, particularly when viewed against the background of the many other serious factors detrimentally affecting wild tortoise populations, poses a significant risk to the immediate well-being and survival of the species.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined by the National Environmental Policy Act of 1969, need not be prepared in connection with listing species under the Endangered Species Act of 1973, as amended.

References Cited


Author

The primary author of this emergency rule is Miss Jackie Campbell, Division of Endangered Species and Habitat Conservation, Regional Office, U.S. Fish and Wildlife Service, 1002 NE Holladay Street, Portland, Oregon 97232-4181, (503) 231-6131 or FTS 429-6131.

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Regulations Promulgation

PART 17—[AMENDED]

Accordingly, until April 2, 1990, Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, is amended as set forth below:

1. The authority citation for Part 17 continues to read as follows:


2. Amend § 17.11 by revising the entry of the "Reptiles," desert * * * under REPTILES to read as follows:

§ 17.11 Endangered and Threatened Wildlife.

(b) * * *
<table>
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<tr>
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<th>Common name</th>
<th>Scientific name</th>
<th>Historic range</th>
<th>Vertebrate population where endangered or threatened</th>
<th>Status</th>
<th>When listed</th>
<th>Critical habitat</th>
<th>Special rules</th>
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Susan Recce Lamson,
Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 89-18459 Filed 8-3-89; 9:07 am]
BILLING CODE 4310-55-M
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This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 523-6641. The text of laws is not published in the Federal Register but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone 202-275-3030).

Last List: August 3, 1989

H.R. 310 / Pub. L. 101-68

To remove a restriction from a parcel of land in Roanoke Virginia, in order for that land to be conveyed to the state of Virginia for use as a veterans nursing home. (August 1, 1989; 103 Stat. 175; 2 pages) Price: $1.00

The GUIDE to record retention requirements is a useful reference tool, compiled from agency regulations, designed to assist anyone with Federal record-keeping obligations.

The various abstracts in the GUIDE tell the user (1) what records must be kept, (2) who must keep them, and (3) how long they must be kept.

The GUIDE is formatted and numbered to parallel the CODE OF FEDERAL REGULATIONS (CFR) for uniformity of citation and easy reference to the source document.

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