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DEPARTMENT OF AGRICULTURE
Farmers Home Administration
7 CFR Part 1910
Receiving and Processing Applications, Securing Credit Reports on Initial Farmer Program and Single Family Housing Loan Applications

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) amends its regulations to change the internal processing of applications. This action is necessary to require credit bureau reports on new and rescheduled loan applications and to screen for previous debts with FmHA, using the Current/Past FmHA Loan History System. The intended effect of this action is to provide each FmHA office with the necessary credit information to make a sound credit decision, thereby reducing the Government's exposure to losses.

EFFECTIVE DATE: December 3, 1990.


SUPPLEMENTARY INFORMATION: This rulemaking action has been reviewed under USDA procedures established in Departmental Regulation 1512-1, which implements Executive Order 12291, and has been determined “non-major” since the annual effect on the economy is less than $100 million and there will be no major increase in cost or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. Furthermore, there will be no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

The Administrator, Farmers Home Administration, USDA, has determined that this action will not have a significant economic impact on a substantial number of small entities because it will affect only those individuals requesting Farmer Home Administration loans.

Discussion of Background:

Currently the ordering of credit bureau reports is at the discretion of the county supervisor. This revision will require credit bureau reports on all initial and rescheduled Farmer Program, and on all initial single Family Housing applications, with certain exceptions. Since Farmers Home Administration is the lender of last resort, it is incumbent on FmHA to have sound credit management policies. What is set forth in this final rule is fundamental to all financial institutions that make loans. Obtaining credit reports is standard operating procedure in the credit industry. Since it is incumbent on the lender to determine the history of both the applicant's willingness and ability to repay any and all debts incurred, a credit report is often an excellent source for this type of information. Another very valuable source of this type of information would be prior loan experience with the lender, which this final rule also seeks to impose. These two changes will enhance the decision making ability of FmHA employees, thus reducing the Government's exposure to losses.

Clarification

For the purpose of clarification for Farmer Programs we have added to § 1910.4(b) an item (22) to read “The Current/Past Debt Inquiry System and Borrower Cross-Reference Inquiry System. The Current/Past Debt Inquiry System must be reviewed for each applicant, and copies of the screens must be attached to the applicant's file.” We do not think this clarification requires republishing for comment, since § 1910.5 Evaluating Applications, (d) Current/Past FmHA Loan History was published for comment. However, this clarification will serve to remove any doubt that this requirement is not aimed at housing only, but is a requirement for all applications.

Discussion of Comments

A proposed rule was published in the Federal Register (54 FR 27387) on June 29, 1989, and invited comments for 60 days ending August 28, 1989. Three comments were received.

Comment 1. The first comment took exception to the requirement of attaching a “screen print” to the application to show that the Current/Past Debt Inquiry System had been checked.

The Agency has determined that this will allow easier monitoring of this requirement and therefore will make no change to § 1910.4(a)[10]. A second comment in the same letter suggests that the word “delinquent” in the first sentence be eliminated. The Agency’s response to this is in screening applicants against the Current/Past Debt Inquiry System we are looking for those borrowers who were in fact delinquent. The Agency again will make no change.

Comment 2. The second letter of comment took exception to the mandatory use of credit reports for all PP borrowers. However, it is the Agency’s position that a credit report on all loan applications is fundamentally sound credit management and supports OMB policy.

Comment 3. The third letter specifically requested a revision to the regulations to give authorization to obtain credit reports on section 504 grants, and Section 504 loan applications for amounts less than $7,500. These loans and grants are generally made to very low income, elderly residents. FmHA field staff usually already know the circumstances and credit history of these applicants. For these cases, FmHA believes that the cost of the credit report would not be justified by the margin of additional credit information available, and therefore, no revision will be made.

Environmental Impact Statement

This rule has been reviewed in accordance with 7 CFR part 1940, Subpart G, “Environmental Program.” FmHA has determined that this action does not constitute a major Federal
action significantly affecting the quality of the human environment and since it is in accordance with the National Environmental Policy Act of 1969, Public Law 91–190, an Environmental Impact Statement is not required.

For reasons set forth in the Final Rule related to Notice, 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983), and FmHA Instruction 1940–J, "Intergovernmental Review of Farmers Home Administration Programs and Activities" (December 23, 1983), this program is related to the following programs that are subject to intergovernmental consultation with state and local officials:

10.405—Farm Labor Housing Loan and Grants
10.410—Low Income Housing Loans [Section 502 Rural Housing Loans]
10.411—Rural Housing Site Loans (Section 523 and 524 Site Loans)
10.414—Resource Conservation and Development Loans
10.415—Rural Rental Housing Loans
10.416—Soil and Water Loans
10.417—Water and Waste Disposal System for Rural Communities
10.419—Waterborne Protection and Flood Prevention Loans
10.420—Rural Self-Help Housing Technical Assistance (Section 523 Technical Assistance)
10.421—Business and Industrial Loans
10.422—Community Facilities Loans
10.424—Rural Rental Assistance Payment (Rental Assistance)

In turn, the following programs to which this program is also related, are not subject to Executive Order 12372:

10.404—Emergency Loans
10.406—Farm Operating Loans
10.407—Farm Ownership Loans
10.421—Indian Tribes and Tribal Corporation Loans

List of Subjects in 7 CFR Part 1910

Applications, Credit, Loan programs—Agriculture, Loan Program—Housing and community development, Moderate income housing, Marital status discrimination, Reporting requirements and Sex discrimination.

Therefore, chapter XVIII, title 7, Code of Federal Regulations is amended as follows:

PART 1910—GENERAL

1. The authority citation for part 1910 continues to read as follows:


Subpart A—Receiving and Processing Applications

2. In § 1910.4, paragraphs (a)(10) and (b)(23) are added to read as follows:

§ 1910.4 Processing applications.

* * * * *

(a) * * *

(10) The Current/Past Debt Inquiry and Borrower Cross-Reference Inquiry Systems. The Current/Past Debt Inquiry System must be reviewed for each applicant and copies of the screens must be attached to the applicant's file.

(b) * * *

(23) The Current/Past Debt Inquiry and Borrower Cross-Reference Inquiry Systems. The Current/Past Debt Inquiry System must be reviewed for each applicant and copies of the screens must be attached to the applicant's file.

3. In § 1910.5, paragraph (d) is added to read as follows:

§ 1910.5 Evaluating applications.

* * * * *

(d) Current/Past FmHA Loan History. Current or previous delinquent FmHA loans, as determined by reviewing the Current/Past Debt Inquiry System or the Borrower Cross-Reference Inquiry System, will be used to help determine the credit history of an applicant.

Subpart B—Credit Reports (Individual)

4. Section 1910.51 is revised to read as follows:

§ 1910.51 Purpose.

This subpart prescribes the policies and procedures of the Farmers Home Administration (FmHA) for individual and joint type credit reports. Credit reports will be ordered to determine the eligibility of applicants requesting Farmers Home Administration (FmHA) loans. A nonrefundable fee will be charged the applicant.

5. Section 1910.53 is added to read as follows:

§ 1910.53 Policy.

The County Supervisor will be responsible for ordering individual credit reports. These will be obtained on initial and rescheduled Farmer Program loans and on all initial Single Family Housing applications, except for those situations outlined in paragraph (c) of this section, to help determine the eligibility of the loan applicant, and when it appears the credit report will not have to be updated before loan closing.

La Verne Ausman,
Administrator, Farmers Home Administration.

[Docket No. 90–25916 Filed 11–1–90; 8:45 am]
BILLING CODE 3410–07–M

Animal and Plant Health Inspection Service

9 CFR Part 114

[Docket No. 90–171]

Viruses, Serums, Toxins, and Analogous Products; Shipment of Products Produced Under an Extended Exemption

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule with request for comments.

SUMMARY: This document amends the regulations regarding veterinary biological products, prepared for intrastate distribution or export, under an extension granted by the Secretary, of the exemption from the requirement that such products be prepared under a USDA license. The current regulations do not allow the preparation or shipment of such products after December 31, 1990, unless the products have been licensed. This interim rule establishes a procedure for manufacturers to obtain authorization for the shipment, intrastate or for export, of finished products until June 30, 1991.

EFFECTIVE DATE: Interim rule effective November 2, 1990. Consideration will be given only to comments received on or before December 31, 1990.

ADDRESSES: To help insure that your comments are considered, send an original and three copies to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 666, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 90–171. Comments received may be inspected at USDA, room 1141, South Building, 14th and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. David A. Espeseth, Deputy Director, Biotechnology, Biologics, and Environmental Protection, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, room 838, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Telephone number (301) 436–6245.

SUPPLEMENTARY INFORMATION:

Background

The Virus-Serum-Toxin Act of 1913 (21 U.S.C. 151–159) (Act), as amended by the Food Security Act of December 23, 1985, makes it unlawful for any person, other than one exempted by statute, to...
ship a veterinary biological product anywhere in or from the United States, unless that product was prepared under and in compliance with regulations prescribed by the Secretary of Agriculture for an establishment licensed by the Secretary. The Act further provides that veterinary biological products, produced solely for intrastate distribution or for export, during the 12 month period ending on the date of passage of the 1985 amendments, would not be in violation of the Act because they were not prepared pursuant to a license until January 1, 1990, provided an exemption from licensure was obtained from the Secretary of Agriculture. The amendment further provided that an extension of this exemption could be granted by the Secretary of Agriculture for a period of up to 12 months in an individual case on a showing of good cause and a good faith effort to comply with the Act and its requirements for USDA licensure with due diligence. On the issuance by the Secretary of a license to such person, firm, or corporation for such product, or at the end of an extension of the exemption granted by the Secretary, the exemption would terminate with respect to such product.

Thus the 1985 amendments to the Virus-Serum-Toxin Act provided for a 4-year grace period during which manufacturers of unlicensed products could continue to produce products solely for intrastate distribution or export, with an additional one year grace period, provided that the manufacturer demonstrated good cause and a good faith effort to comply with the requirements of the Act with due diligence. It was anticipated that, since the one-year extension of the exemption was granted upon a showing by the manufacturer that licensure could be achieved by the end of the extension period, there would be a minimal amount of unlicensed extended product, produced pursuant to the extension to the extension period in inventory and available for shipment, at the end of the year.

On August 23–24, 1990, APHIS held a public meeting (announced in 55 FR 9077, July 17, 1990) in Ames, Iowa. The following four options for dealing with inventory produced during the extension to the exemption period were identified at the public meeting: (1) No shipment of unlicensed product after December 31, 1990; (2) the granting of a conditional license to qualifying products for up to one year; (3) limiting shipment of unlicensed products from distributors only; and (4) continued distribution of the finished product for up to one year after review of progress toward licensure. The comments received at the public meeting indicated support for options one and four.

Data were also presented at the public meeting that showed that exemptions were granted to 57 manufacturers for the continued production and distribution intrastate of 2,199 veterinary biological products. Requests for extensions were received from 14 intrastate manufacturers for 164 products. Extensions were granted to 11 establishments for 137 products. All 11 of these intrastate manufacturers are now licensed establishments. To date, five products granted an extension have been licensed and 33 additional extended products are expected to be licensed by December 31, 1990. Three products granted an extension have been withdrawn. This leaves 96 extended products that will not have attained licensure by December 31, 1990.

The purpose of this rule is to amend § 114.2 of the regulations to establish a procedure for manufacturers to obtain authorization for the shipment of intrastate products produced under an extension before January 1, 1991. Such authorization would allow only shipment intrastate or for export and only until June 30, 1991. Continued preparation of the products would not be authorized. We believe that this rule is reasonable and appropriate in light of the purpose of the statutorily-authorized extension period—to achieve full licensure of the extended products.

Without such authorization, producers and other persons in possession of unlicensed products prepared under an extended exemption would not be allowed to ship such products intrastate or for export after December 31, 1990.

APHIS believes, however, that in some cases the prohibition under the Act and current regulations against the shipment of product prepared pursuant to the extension of the exemption may adversely affect the public and the manufacturers that have made a good faith effort to comply with the Act with due diligence during the extended exemption period and are close to completion of the licensing process but, for extraordinary reasons, have failed to achieve licensure. Accordingly, APHIS will consider applications for authorization for shipment on a product-by-product basis based on the submission of data, on or before December 1, 1990, to the person listed under "FOR FURTHER INFORMATION CONTACT." The data to be submitted must address all of the following criteria:

(1) The progress which has been made in completing the work defined in the protocol of research filed in support of the request for extension of the exemption, including dates on which the efficacy studies were initiated (test animals vaccinated);
(2) What remains to be done to complete licensure; and
(3) Any other information requested by the Administrator that is determined to be relevant to the consideration of an authorization for shipment.

Authorization to ship product will be granted by the Administrator based upon a determination that there is a reasonable expectation that licensure will be completed by June 30, 1991. If APHIS determines that authorization is warranted, the applicant may continue to ship a product produced under an extension of the exemption while completing the requirements for licensure of that product. Applications for authorization for shipment must be received by December 1, 1990, and determinations made by December 31, 1990. Authorization for shipment will be granted only for a product that has been designated, as defined in 9 CFR 101.3(d), prior to January 1, 1991. Authorization will be granted on a limited basis for up to six months, not to exceed shipment beyond June 30, 1991. Products not authorized for shipment pursuant to the procedures explained above, may only be shipped through December 31, 1990, or after a product license has been issued in compliance with the Act and regulations. Products produced after December 31, 1990, may only be shipped if produced under USDA license in compliance with the Act and regulations.

The procedures established herein are reasonable and appropriate in light of the finite duration and the fact that the determinations will be based on a product-by-product analysis of the data submitted by the applicant and will not be a blanket application. It is anticipated that about five manufacturers and about 25 products would qualify for authorization for shipment. Information previously submitted by manufacturers indicate that these products are pure and safe and that there is at least a reasonable expectation of efficacy.

Hardships upon manufacturers and users of each product which are on the verge of meeting all requirements for licensure warrant the action in this interim rule. New § 114.2(d)(6) will be added to the regulations to address this issue.
Emergency Action

The end of the statutorily-authorized extension period is December 31, 1990. APHIS has not been able to formulate its policy with respect to implementation of this phase of the 1985 amendments to the Virus-Serum-Toxin Act without first assessing the progress of licensing extended products. Since prior notice with respect to this interim rule is impractical and contrary to the public interest at this time, James W. Glosser, the Administrator of the Animal and Plant Health Inspection Service has determined that there is good cause under 5 U.S.C. 553 to make the rule effective upon publication. We will consider comments received within 30 days of publication of this interim rule in the Federal Register. After the comment period closes, we will publish another document in the Federal Register, including a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The 1985 amendments to the Virus-Serum-Toxin Act provided for an extension of the 4-year period of exemption during which time manufacturers of exempted, unlicensed veterinary biological products could continue to produce such products solely for intrastate distribution or export while awaiting USDA licensure for the extended products. The statutorily-authorized extension period will end December 31, 1990.

It is anticipated that some five firms and some 25 products will qualify for authorization for shipment. The grant of a six-month authorization to this small number of products is expected to have minimal impact on the remainder of the industry. Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.), the information collection provisions that are included in this rule will be submitted for approval to the Office of Information and Regulatory Affairs, OMB, Attention Desk officer for APHIS, Washington, DC 20503. A duplicate copy of such comments should be submitted to: (1) Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 836, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782 and (2) Clearance Officer, OIRM, USDA, room 404–W, 14th Street and Independence Avenue SW., Washington, DC 20250.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

List of Subjects in 9 CFR Part 114

Animal biologies.

PART 114—PRODUCTION REQUIREMENTS FOR BIOLOGICAL PRODUCTS

1. The authority citation for 9 CFR part 114 will continue to read as follows:


2. In §114.2, a new paragraph (d)(6) will be added to read as follows:

§114.2 Products not prepared under license.

* * * * * *(d) * * *(9)(i) Finished products, prepared under an exemption granted pursuant to §114.2(d)(3) and meeting the requirements of §101.3(d), may be shipped intrastate or exported after December 31, 1990, and until June 30, 1991, if authorized by the Administrator. Applications must be made, on or before December 1, 1990, to the Deputy Director, Veterinary Biologies, Biotechnology, Biologies, and Environmental Protection, APHIS, USDA, room 838, 6505 Belcrest Road, Hyattsville, MD 20782, and must address all of the following criteria:

(A) The progress which has been made in completing the work defined in the protocol of research filed in support of the request for extension of the exemption including dates efficacy studies were initiated (test animals vaccinated);

(B) What remains to be done to complete licensure; and

(C) Any other information requested by the Administrator that is determined to be relevant to the consideration of an authorization for shipment.

(iii) Approval will be granted based upon a determination that there is a reasonable expectation that licensure will be completed by June 30, 1991.

Done in Washington, DC, this 30th day of October 1990.

James W. Glosser,  
Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 90–25980 Filed 11–1–90; 8:45 am]

BILLING CODE 3410–34–M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 107

Small Business Investment Companies; Management and Private Capital Requirements

AGENCY: Small Business Administration.

ACTION: Interim final rule; extension of comment period.

SUMMARY: On October 2, 1990, SBA published in the Federal Register an interim final rule increasing the minimum capital requirement for Small Business Investment Companies (SBICs) and requiring a board (in the case of a corporate licensee) or a portfolio valuation committee (in the case of a partnership licensee) of at least five members, 40% of whom are independent from the licensee (See 55 FR 40356). That publication provided that comments will be accepted until November 1, 1990. The present notice extends the comment period until December 31, 1990, in order to provide more time for public comment.

DATES: Comments on the above-referenced interim final rule must be received by December 31, 1990.

ADDRESSES: Written comments should be addressed to Bernard Kulik, Associate Administrator for Investment, Small Business Administration, 1441 L Street NW., Room 608, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Joseph L. Newell, Director, Office of Investment, Telephone (202) 653–6584.
Federal Aviation Administration

14 CFR Parts 21 and 25

[Docket No. NM-43, Special Conditions No. 25-ANM-35]


DEPARTMENT OF TRANSPORTATION

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are issued for the McDonnell Douglas Model MD-11 airplane. This airplane will have a number of high technology flight and avionic systems such as, cathode ray tube engine and flight information displays, full authority digital engine controls, and inertial reference systems. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for the protection of these systems from the effects of lightning and the susceptibility to external radio frequency (RF) energy sources, nor do they adequately address the longitudinal stability augmentation system and roll control wheel steering provided by the automatic flight system. These special conditions contain safety standards which the Administrator finds necessary to ensure that critical and essential functions of systems in the MD-11 are maintained.

EFFECTIVE DATE: October 12, 1990.


SUPPLEMENTARY INFORMATION:

Background

On October 9, 1995, McDonnell Douglas applied for an amendment to its Type Certificate No. A22WE to include the new Model MD-11. The Model MD-11 is a long range derivative of the currently certified DC-10 that will be able to operate at higher maximum gross weights. It will incorporate three high bypass ratio turbofan engines, such as the Pratt & Whitney PW4000 Series, General Electric CF6-80C2 or Rolls Royce RB211-524, with digital electronically-controlled engine and thrust management systems. The Model MD-11 will incorporate simplified and automated cockpit controls, and electronic cockpit displays to facilitate operation by two flight crewmembers. Also, a fuel tank is being installed in the horizontal tail section.

The certification basis established for the Model MD-11 includes part 25 of the Federal Aviation Regulations (FAR) as amended by Amendments 25-1 through 25-61, with the following exceptions:


The requirement of § 25.858 does not apply to this type design because the original certification basis, which did not include this section, has been determined to be adequate. The type certification basis includes special conditions which are part of the Model DC-10 series certification basis. The TC basis also includes noise and environmental requirements; however, they are not pertinent to these special conditions.

Lightning Protection

The McDonnell Douglas MD-11 airplane will be certificated with a number of high technology avionic systems including cathode ray tube displays of engine and flight instruments and full authority digital electronic engine controls. These electronic systems may be vulnerable to lightning induced transients (indirect effects) that could be generated by a lightning strike to, or in the vicinity of, the airplane. These systems, which may be designed to perform critical as well as essential functions, may be susceptible to disruption to both command/response signals and the operational mode logic as a result of electrical and magnetic interference. To ensure that a level of safety is achieved equivalent to that of existing airplanes, a special condition is issued which requires that systems performing critical and essential functions be designed and installed to preclude component damage and unacceptable interruption of function due to the indirect effects of lightning. In addition, since the possibility of some temporary degradation of essential functions may occur due to the lightning strike event, the effects of interconnected network system failures and the impact of these failures on the flightcrew workload will need to be evaluated.

The following “threat definition” is adopted to be used in demonstrating compliance with the lightning protection special condition. It is based on FAA Advisory Circular (AC) 20-136, Protection of Aircraft Electrical/Electronic Systems Against the Indirect Effects of Lightning, dated 03/05/90.

The lightning current waveforms (Components A, D and H) defined below, along with the voltage waveforms in AC 20-33A, Protection of Aircraft Fuel Systems Against Fuel Vapor Ignition Due to Lightning, dated 04/12/85, will provide a consistent and reasonable standard which is acceptable for use in evaluating the effects of lightning on the airplane. These waveforms depict threats that are external to the airplane. How these threats affect the airplane and its systems depends on the system's installation configuration, materials, shielding, airplane geometry, etc. Therefore, tests (including tests on the completed airplane or an adequate simulation) and/or verified analysis need to be conducted to obtain the resultant internal threat to the installed systems. These systems may then be evaluated with this internal threat to determine their susceptibility to upset and malfunction.

To evaluate the induced effects to these systems, three considerations are required:

1. First Return Stroke: (Severe Strike—Component A, or Restrike—Component D). This external threat needs to be evaluated to obtain the resultant internal threat and to verify that the level of the induced currents and voltages is sufficiently below the equipment “hardness” level;

2. Multiple Stroke Flash: (Component D). A lightning strike is often composed of a number of successive strokes, referred to as a multiple-stroke. Although multiple strokes are not necessarily a significant factor in a damage assessment, they can be the primary factor in a system upset analysis. Multiple strokes can induce a sequence of transients over an extended period of time. While a single event upset of input/output signals may not affect system performance, multiple signal upsets over an extended period of time (2 seconds) may affect the systems under consideration. Repetitive pulse testing and/or analysis needs to be carried out in response to the multiple stroke environment to demonstrate that the system response meets the safety
Objective. This external multiple stroke environment consists of 24 pulses and is described as a single Component A followed by 23 restrikes of ½ magnitude of Component D (peak amplitude of 50,000 amps). The 23 restrikes are distributed over a period of up to 2 seconds according to the following constraints: (1) The minimum time between subsequent strokes is 10ms, and (2) the maximum time between subsequent strokes is 200ms. An analysis or test need to be accomplished to obtain the resultant internal threat environment for the system under evaluation.

3. Multiple Burst. (Component H). In-flight data-gathering projects have shown bursts of multiple, low amplitude, fast rates of rise, short duration pulses accompanying the airplane lightning strike process. While insufficient energy exists in these pulses to cause physical damage, it is possible that transients resulting from this environment may cause upset to some digital processing systems.

The representation of this interference environment is a repetition of short duration, low amplitude, high rate of rise, double exponential pulses which represent the multiple bursts of current pulses observed in these flight data gathering projects. This component is intended for an analytical (or test) assessment of functional upset of the system. Again, it is required that this component be translated into an internal environmental threat in order to be used. This "Multiple Burst" consists of 24 sets of 20 strokes each, distributed over a period of up to 2 seconds. Each set of 20 strokes is made up of repetitive Component H waveforms distributed within a period of one millisecond. The minimum time between individual

<table>
<thead>
<tr>
<th>Severe stroke (Component A)</th>
<th>Restrike (Component D)</th>
<th>Multiple stroke (½ component D)</th>
<th>Multiple burst (Component H)</th>
</tr>
</thead>
<tbody>
<tr>
<td>218,819</td>
<td>105,405</td>
<td>54,703</td>
<td>10,572</td>
</tr>
<tr>
<td>647,265</td>
<td>1,294,530</td>
<td>1,294,530</td>
<td>19,105,100</td>
</tr>
<tr>
<td>200 KA</td>
<td>100 KA</td>
<td>50 KA</td>
<td>10 KA</td>
</tr>
</tbody>
</table>

The RF envelope given in paragraph 2 above is a revision to the envelope used

Protection from Unwanted Effects of Radio Frequency (RF) Energy

Airplane designs which utilize metal skins and mechanical command and control means have traditionally been shown to be immune from the effects of RF energy from ground-based transmitters. With the trend toward increased power levels from these sources, the advent of space and satellite communications, coupled with electronic command and control of the airplane, and the use of composite structural materials, the immunity of systems which perform critical functions to RF energy must be established. The airplane systems, such as the Electronic Instrument System displaying airplane attitude information, the Full Authority Digital Engine Control System, and the Inertial Reference System, performing critical functions must be designed and installed to ensure that their operation and operational capabilities are not adversely affected when the airplane is exposed to high energy RF fields. No universally accepted guidance to define

The maximum energy level in which civilian airplane system installations must be capable of operating safely has been established.

It is not possible to precisely define the RF energy to which the airplane will be exposed in service. There is also uncertainty concerning the effectiveness of airframe shielding for RF energy, and coupling to cockpit installed equipment through the cockpit window apertures is undefined. Based on surveys and analysis of existing RF emitters, an adequate level of protection exists when it is shown that each system which performs critical functions is designed and installed to ensure that those functions are not adversely affected when exposed to one of the following threat definitions:

1. A minimum RF threat internal to the airframe of 100 volts per meter average electric field strength from 10 KHz to 18 GHz.

a. The threat must be applied to the system elements with representative airplane wiring without the benefit of airframe shielding.

b. Demonstration of this level of protection is established through system tests and analysis.

2. An RF threat external to the airframe of the following field strengths for the frequency ranges indicated.

<table>
<thead>
<tr>
<th>Frequency</th>
<th>Peak (V/M)</th>
<th>Average (V/M)</th>
</tr>
</thead>
<tbody>
<tr>
<td>10 KHz-500 KHz</td>
<td>80</td>
<td>80</td>
</tr>
<tr>
<td>500 KHz-2 MHz</td>
<td>80</td>
<td>80</td>
</tr>
<tr>
<td>2 MHz-30 MHz</td>
<td>200</td>
<td>200</td>
</tr>
<tr>
<td>30 MHz-100 MHz</td>
<td>33</td>
<td>33</td>
</tr>
<tr>
<td>100 MHz-200 MHz</td>
<td>33</td>
<td>33</td>
</tr>
<tr>
<td>200 MHz-400 MHz</td>
<td>150</td>
<td>150</td>
</tr>
<tr>
<td>400 MHz-1 GHz</td>
<td>8,300</td>
<td>2,000</td>
</tr>
<tr>
<td>1 GHz-2 GHz</td>
<td>9,000</td>
<td>1,500</td>
</tr>
<tr>
<td>2 GHz-4 GHz</td>
<td>17,000</td>
<td>1,200</td>
</tr>
<tr>
<td>4 GHz-6 GHz</td>
<td>14,500</td>
<td>800</td>
</tr>
<tr>
<td>6 GHz-8 GHz</td>
<td>4,000</td>
<td>666</td>
</tr>
<tr>
<td>8 GHz-12 GHz</td>
<td>9,000</td>
<td>2,000</td>
</tr>
<tr>
<td>12 GHz-20 GHz</td>
<td>4,000</td>
<td>599</td>
</tr>
<tr>
<td>20 GHz-40 GHz</td>
<td>4,000</td>
<td>1,000</td>
</tr>
</tbody>
</table>
in previously issued special conditions in other certification projects. It is based on dated data and SAE AEAR subcommittee recommendations. This revised envelope includes data from Western Europe and the U.S. It will also be adopted by the European Joint Aviation Authorities.

**Automatic Longitudinal and Lateral Control Systems**

The Longitudinal Stability Augmentation System (LSAS), Roll Control Wheel Steering (RCWS), autopilot, and automatic pitch trim are among the functions provided by the Automatic Flight System (AFS). The LSAS exercises full-time longitudinal control of the elevators (autopilot off) and is provided with automatic follow-up pitch trim. The RCWS actuates all lateral control surfaces by applying an input through one inboard aileron. The cable mechanism actuates the additional control surfaces. The RCWS may be full time as a type design option. When the LSAS is active, the system provides a proportional pitch rate command in response to the summed control column inputs of the Captain and First Officer. When the summed control column force is less than 1.4 pounds in either longitudinal direction, the current pitch angle is held. The LSAS control laws actively limit the steady-state pitch angle within the range of −10 to +25 degrees, and the LSAS will not command nor hold airplane nose up beyond an angle of attack corresponding to approximately 1.2Vs or a nose down beyond Vmo/Mmo. However, the pilot can maneuver the airplane past these limits through direct control of the elevator. The maximum elevator deflection commanded by the LSAS is limited to 5 degrees in either direction, but the maximum available elevator deflection through direct control of the hydraulic actuator is 37 degrees trailing edge up and 27 degrees trailing edge down.

The LSAS also incorporates an automatic stabilizer trim function which relieves steady state elevator displacement. The trim schedule and stabilizer rate are varied with airspeed to provide optimum performance over the entire flight regime. Autotrim is activated if the elevator command exceeds the defined threshold for more than 3 seconds. The automatic stabilizer trim function is activated during LSAS operation above 50 feet AGL after lift-off and in all autopilot modes except flare. Automatic stabilizer trim is inhibited upon descent through 50 feet AGL. In turning flight, and when the LSAS and pilot are in opposition.

In turning flight up to a bank angle of 25 degrees, the LSAS attempts to maintain a constant pitch attitude. Attitude hold and pitch angle rate command will hold between 25 and 40 degrees bank angle, requiring pilot force to sustain the higher load factors. The LSAS provides only pitch rate damping above 40 degrees of bank. The pitch rate command and attitude hold gains are reintroduced below 40 degrees of bank. Full LSAS operation is resumed below 25 degrees of bank.

Like the LSAS, the RCWS sums the roll forces on both pilots’ control wheels. With less than 1.4 pounds of roll force on the control wheel, the RCWS holds the current bank angle up to a maximum of 30 degrees, which results in neutral static lateral stability (as perceived by the pilot). Beyond 30 degrees of bank, RCWS will oppose pilot inputs, and the force gradient will increase. Roll control force/deflection beyond that required for RCWS (30 degrees of bank) will cause normal deployment of both inboard and outboard ailerons plus lateral spoilers through the cable system. Since the RCWS has the design feature in which roll control force commands roll rate, a stabilized constant heading will require no sustained lateral control force regardless of sideslip angle. Without the RCWS and with autopilot off, control wheel deflection directly activates aileron servos and spoilers for roll control.

Positive static longitudinal and lateral stability have been required by the Federal Aviation Regulations in the past for the following reasons:

1. Provides additional speed change and sideslip cues to the pilot through control force changes.
2. Provides periods of unattended operation which do not result in any significant deviations in attitude, airspeed, load factor, or heading.
3. Provides predictable pitch and roll response.
4. Provides minimal pilot attention (workload) to attain and maintain trim speed, altitude, and heading.

The operation of the LSAS results in neutral static longitudinal stability (as perceived by the pilot) from approximately 1.2Vs to Vmo/VFe. With the LSAS, static lateral stability as defined by § 25.177(b) that static lateral stability must not be negative over the applicable speed range, the roll rate command nature of the RCWS will not permit the combined lateral-directional test of § 25.177(c) to be evaluated in the traditional sense of rudder and aileron control movements being proportional to the angle of sideslip. The MD-11 with RCWS, however, will be highly stable about the roll axis with respect to external atmospheric disturbances, will be resistant to excessive control inputs, and will have spiral stability.

Though the MD-11 does not lend itself to evaluation of static longitudinal and lateral stability in the manner described in §§ 25.173, 25.175, and 25.177, it still must be shown to fulfill the objectives of those regulations as previously described. This had led to the development of the task oriented test criteria of Special Condition 4. to evaluate the MD-11, with LSAS and RCWS operating, relative to the intent of the aforementioned regulations. As noted previously, the control laws of the LSAS and RCWS will not prevent a traditional speed related longitudinal stability evaluation control proportionality evaluation of lateral-directional stability, respectively. These flight control systems should, however, enhance controllability and be beneficial to short term flight path stability. The task oriented handling qualities rating system of Special Condition 4. will permit an evaluation of the level of stability of the MD-11 throughout the normal flight envelope, including the airplane’s response to various degrees of upset from trimmed flight in unattended operation. Special Condition 4. also includes task oriented handling qualities requirements for flight with the LSAS and RCWS inoperative, both individually and coincidentally, to satisfy the requirements of § 25.672(c) for continued safe flight and landing following a stability augmentation system failure. The task oriented handling qualities rating system will provide an appropriate method of demonstrating compliance with the
intent of the stability requirements of §§ 25.173, 25.175, 25.177, and 25.672(c). The FAA therefore considers the task oriented handling qualities evaluation of Special Condition 4 to provide an equivalent method of demonstrating compliance with the intent of the static longitudinal and lateral stability requirements of part 25 of the FAR.

Special conditions may be issued and amended, as necessary, as a part of the type certification basis if the Administrator finds that the airworthiness standards designated in accordance with § 21.101(b)(2) do not contain adequate or appropriate safety standards because of novel or unusual design features of an airplane.

Special conditions, as appropriate, are issued in accordance with §§ 11.40 after public notice as required by §§ 11.26 and 11.29(b), effective October 14, 1980, and may become part of the type certification basis in accordance with § 21.101. In addition to the applicable airworthiness regulations and special conditions, the Model MD-11 must comply with the noise certification requirements of part 36 and the engine emission requirements of Special Federal Aviation Regulations (SFAR) 27.

Discussion of Comments

Notice of proposed special conditions No. SC-90-2-NM was published in the Federal Register on February 21, 1990 (55 FR 6003), for public comment. The following discussion summarizes the comments received and the FAA response to the comments.

Lightning Protection

One commenter recommends that the lightning protection requirement for systems which perform essential functions be deleted. The commenter considers that most FAA required systems are treated as "essential," and that the lightning protection requirement for essential systems appears to add the requirement for redundancy of systems like TCAS and weather radar in order to ensure recovery from a lightning strike to an antenna.

The FAA does not concur that systems which perform essential functions should be exempt from meeting lightning protection requirements. The justification for including systems which perform essential functions is that loss of function would decrease the level of safety of the airplane. Redundancy of TCAS and weather radar systems has not been required by the FAA. The primary concern has been the prevention of the display of misleading information. Applicants have been required to show that display of misleading information is improbable. This has been done without requiring redundant systems.

One commenter suggests rewording paragraph 2c of the lightning special condition to clarify that some degradation of systems which perform essential functions is allowed after exposure to lightning as long as an unacceptable cockpit crew workload does not occur. The FAA concurs that the intent of paragraph 2c would be clarified by making the suggested change. The paragraph now reads as follows: "Systems which perform essential functions must be protected to ensure that failures due to a lightning strike will not result in unacceptable cockpit crew workload when considering the possible adverse environmental/operational conditions likely to result when a lightning strike may occur."

A comment was made that the definition of "essential functions" goes beyond its equivalent in § 25.1309(b)(2) by adding functions that would "contribute to" a condition that would significantly impact safety. In effect, this could require demonstration of multiple-failure immunity not presently required for essential systems. The commenter suggests that "contribute to" be deleted.

The FAA does not concur that these words should be deleted because a failure by itself may not impact the safety of the airplane, but may be a contributing factor when combinations of failures are considered. Paragraph 25.1309(b) of the FAR requires that "* * "The airplane systems and associated components, considered separately and in relation to other systems, must be designed so that."

Therefore, the language used in the definition is consistent with existing requirements.

Protection From Unwanted Effects of Radio Frequency (RF) Energy

One commenter considers the RF special condition to be inappropriate because it departs from the normal rulemaking process as given in § 21.16 of the regulations which requires "a novel or unusual design feature" for a special condition to be issued. The commenter does not believe that the digital electronic systems in the MD-11 (such as FADEC, EIS and IRS) are new or unique in the industry.

The FAA does not concur that the special condition is inappropriate. Section 21.16 provides for the issuance of special conditions when the airworthiness regulations do not contain adequate or appropriate safety standards because of a novel or unusual design feature. Contrary to the commenter's assertion, "novel or unusual" is with respect to the applicable airworthiness regulations, not to the industry state-of-the-art. Because the regulations must, of necessity, lag industry practices, there will always be occasional instances in which special conditions are needed even though the features are commonplace in the aircraft industry. The FAA does not consider the existing regulations to be adequate for electronic systems which perform critical functions; therefore, the special condition is necessary. A rulemaking project has, however, been initiated to amend part 25 in this regard.

The same commenter considers the RF special condition to be inappropriate at this time because the understanding of the effects of RF fields on airplane systems requires further development.

The FAA does not concur. The FAA considers that the potential threat of high energy RF transmissions to airplane safety to be increasing, and that protection requirements are necessary at the present time to ensure that the effects of these transmissions are minimized. Delaying these requirements until an exhaustive study on the effects of RF fields on airplane systems has been completed would not be in the best interests of airplane safety.

One commenter considers the RF susceptibility requirements specified to be excessive.

The FAA does not concur. The requirement that systems which perform critical functions are not adversely affected by high energy external RF fields is considered necessary so that continued safe flight and landing is not in jeopardy. It is imperative that the reliability of the critical function is not compromised. Determination of adverse effects would be made on a case-by-case basis by the local Aircraft Certification Office.

A comment was made that radio equipment should be exempt from RF protection requirements because radio equipment cannot tolerate field strengths on "tuned" and perhaps, some "out of band" frequencies when considering either test option 1 or 2.

The FAA concurs with this comment. The special condition for RF protection applies only to systems which perform critical functions. Communication and navigation functions are considered essential by the FAA, therefore, systems associated with these functions need not be tested to option 1 or 2 of the special condition.

One commenter expressed a concern that there may be health hazards to test personnel, flightcrews and airline personnel, flightcrews and airline
passengers if exposed to these high energy fields. The FAA concurs that there could be health hazards to personnel if exposure time is of sufficient length (on the order of minutes). Test personnel are aware of this and take proper precautions. In-flight exposure times for flightcrews and passengers are of short duration; therefore, these fields are not considered a hazard.

One commenter contends that testing the equipment to 100 volts per meter is excessive, and considers that testing to a lower level is adequate. Radiated susceptibility tests used by the commenter require that the equipment exhibit no functional upset when exposed to 10 volts per meter in the 15kHz to 30MHz frequency range, and 5 volts per meter in the 30MHz to 1GHz frequency range. The FAA does not concur that these lower test levels are sufficient for systems that perform critical functions. The FAA has determined that a higher level must be used. This determination is primarily based on military testing requirements; however, engineering judgment also influenced the level that was set.

One commenter suggests omitting the peak field strength from the table defining the external threat because, according to the commenter, encountering these field strengths during critical stages of flight is highly improbable. The FAA does not concur with this suggested change. The FAA considers RF to be an environmental condition with a probability of one. Peak values in this table were calculated by the Electromagnetic Compatibility Analysis Center (ECAC) using a set of conservative assumptions to depict the international electromagnetic environment in which civil aircraft are permitted to operate. The calculations made by ECAC have been validated by in-flight measurements.

Due to the limitations in size of the shield room in which RF testing is performed, a commenter suggests that representative airplane wiring be acceptable rather than the actual wiring harness. The FAA concurs that representative airplane wiring harnesses would be acceptable for laboratory testing for the reason given above. Automatic Longitudinal and Lateral Control Systems

The applicant considers that the requirements of the special condition exceed those of the FAR subparagraphs they are intended to replace by requiring handling qualities evaluations outside the operational envelope. The applicant believes that the intent of the requirement is met by providing deterrence to flight outside the normal envelope. That is, assessment of this envelope protection determines, at least in part, the handling qualities rating for the operational and limit envelopes.

The FAA considers the requirements of this special condition equivalent and not excessive in meeting the intent of the applicable FAR. It is agreed that testing outside the operational envelope will be limited to what has been done traditionally; i.e., compliance testing of § 25.201, Stall demonstrating; § 25.203, Stall characteristics; § 25.251, Vibration and buffeting; § 25.253, High speed characteristics; and § 25.255, Out-of-trim characteristics. Also, in determination of handling quality ratings, consideration will be given to deterrence which inhibits flight outside the normal speed boundary.

The applicant also considers flight in various levels of turbulence to be excessive. The applicant claims that the affected FAR does not require flight in turbulence, let alone at various levels. Traditional practice is to fly in as little turbulence as possible to acquire the most meaningful (i.e., stable) data and to evaluate the effects of turbulence as normally encountered. Recognizing that evaluating operational tasks is not data gathering, it is nonetheless the applicant's intent to confine flight testing in turbulence to within the normal speed range and, to the extent possible, as encountered during other flight test demonstrations, light to moderate turbulence will not be deliberately avoided.

The FAA recognizes that data collection in smooth air is necessary for a majority of the performance and handling qualities tests. However, the FAA insists that turbulence in the moderate range be sought in flight, if not encountered in the course of other flight test demonstrations. This philosophy has been applied in previous programs where evaluation of a specific turbulence level was required. In-flight evaluation of the handling qualities throughout the normal speed boundary during moderate turbulence will be sufficient.

In consideration of the potential size of the test program and practical considerations of exposure to turbulence, the applicant offers the following recommendations regarding compliance:

1. Certification demonstrations must be comprised of a reasonable matrix of all aerodynamic and equipment configurations, and flight conditions.

2. Evaluation of pilot tasks is permitted concurrent with other FAR demonstrations to the extent possible, and

3. At the applicants' option and with FAA concurrence, compliance may be shown by analysis, flight tests, simulation or a combination of the three.

The FAA recognizes the potential of an expanded certification program due to the special condition. Therefore, the FAA considers the applicants' recommendations (1, 2, and 3) reasonable. The special condition has, therefore, been adopted embodying the applicant's recommendations.

The applicant believes that elaboration is required of the process by which the handling qualities rating is determined. It is widely recognized that application of such schemes as the Cooper-Harper rating scale can yield different ratings from pilots of varying experience and personal preferences. Elaboration of the handling qualities rating and a philosophy for arbitrating differences in pilot ratings are required.

The "scheme" for determining handling qualities ratings was selected for its accuracy, simplicity, and ease of application. The FAA pilots involved in the certification of the handling qualities have appropriate experience and will exercise judgment void of personal preferences. Should any differences arise, a consensus among the FAA pilots participating in the certification may be sought. No elaboration of the handling qualities ratings or a philosophy for arbitrating pilot rating differences is necessary.

Conclusion

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

Under standard practice, the effective date of these final special conditions would be 30 days after publication in the Federal Register; however, as the intended type certification date for the MD-11 airplane is October 31, 1990, the FAA finds that good cause exists to make these special conditions effective upon issuance.

List of Subjects in 14 CFR Part 21 and 25

Air transportation, Aircraft, Aviation safety, Safety.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 1344, 1348(c), 1352, 1354(a), 1355, 1421 through 1431, 1502, 1651(b)(2), 42 U.S.C. 1857f-10, 4231 et seq.;
The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for the McDonnell Douglas Model MD-11 series airplane:

1. Lightning Protection.
   a. Each electronic system which performs critical functions must be designed and installed to ensure that the operation and operational capabilities of these systems to perform critical functions are not affected when the airplane is exposed to lightning.
   b. Each essential function of new or modified electronic systems or installations must be protected to ensure that the essential function can be recovered in a timely manner after the airplane has been exposed to lightning.
   c. Systems which perform essential functions must be protected to ensure that failures, due to a lightning strike, will not result in unacceptable cockpit crew workload when considering the possible adverse environmental/operational conditions likely to result when a lightning strike may occur.

2. Protection From Unwanted Effects of Radio Frequency (RF) Energy. Each electronic system which performs critical functions must be designed and installed to ensure that the operation and operational capabilities of these systems perform critical functions are not adversely affected when the airplane is exposed to high energy RF fields.

For the purpose of these special conditions, the following definitions apply:

Critical Functions. Functions whose failure would contribute to or cause a failure condition which could prevent the continued safe flight and landing of the airplane.

Essential Functions. Functions whose failure would contribute to or cause a failure condition which would significantly impact the safety of the airplane or the ability of the flight crew to cope with adverse operating conditions.


In lieu of compliance with §§ 25.173, 25.175, 25.177 (b) and (c), and 25.672(c), the airplane must exhibit handling qualities that will produce ratings not lower than those shown in Table 1 for the associated speed boundaries as defined in Table 2. Evaluation of the handling qualities to meet these requirements must be conducted both with and without the RCWS operating. When the effects of atmospheric disturbances (e.g., turbulence, windshear) are considered, the handling qualities are allowed to vary as shown in Table 1. The handling qualities levels shown in Table 1 are based on an LSAS reliability of no less than $10^{-5}$. A system reliability less than this level will require adjustments to the criteria shown in Table 1.
TABLE 1  Handling Qualities Ratings

<table>
<thead>
<tr>
<th>FLIGHT COND.</th>
<th>TURBULENCE</th>
</tr>
</thead>
<tbody>
<tr>
<td>NONE</td>
<td>LIGHT</td>
</tr>
<tr>
<td>MODERATE</td>
<td>SEVERE</td>
</tr>
</tbody>
</table>

<table>
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<tr>
<th>MODE</th>
<th>SPEED BOUNDARIES</th>
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<tr>
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<td>ON ON</td>
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</tbody>
</table>

N = NORMAL  S = SATISFACTORY
O = OPERATIONAL A = ADEQUATE
L = LIMIT    C = CONTROLLABLE

TABLE 2  Speed Boundaries

<table>
<thead>
<tr>
<th>Flaps Down</th>
<th>V_{MIN}</th>
<th>Stick Shaker</th>
<th>1.3 V_s</th>
<th>V_{FE}/V_{LE}</th>
<th>V_{NO}/M_NO</th>
<th>V_{FC}/M_FC</th>
<th>V_{DF}/M_DF</th>
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</thead>
<tbody>
<tr>
<td>Limit</td>
<td>Normal</td>
<td>Operational</td>
<td></td>
<td>Normal</td>
<td>Operational</td>
<td></td>
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</tr>
</tbody>
</table>

* V_{LOF} for takeoff configuration; 1.3 V_s for all other.
Handling Qualities Rating Definitions

Satisfactory. Full performance criteria are met with routine pilot effort and attention.

Adequate. Adequate for continued safe flight and landing, full or specified performance met, but with heightened pilot effort and attention.

Controllable. Inadequate for continued safe flight and landing, but controllable for return to safe flight condition, a safe flight envelope and/or reconfiguration so that handling qualities are at least adequate.

Compliance with these requirements will be determined by a systematic evaluation of all pilot tasks conducted at the most critical center of gravity and will cover all applicable approved aerodynamic and equipment configurations.

In addition, directional departure from normal unaccelerated flight must be accompanied by adequate control deflections and forces to allow prompt identification of an engine failure. In the absence of adequate control deflections/forces, a suitable indication should be provided which will allow the pilot to rapidly achieve an optimum drag/controllability configuration.


Leroy A. Keith, Manager, Transport Airplane Directorate, Aircraft Certification Service, ANN-100.

[FR Doc. 90-25344 Filed 11-1-90; 8:45 am]

BILLING CODE 4910-15-M

14 CFR Part 39

(Docket No. 89-ASW-66; AMDt. 39-6777)

Airworthiness Directives; Aerospatiale (Societe Nationale Industrielle Aerospatiale) Model AS 350 and AS 355 Series Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) which requires the installation of a protective cover on each main rotor servo control valve on certain Aerospatiale series helicopters. The AD is needed to prevent ice from forming within the servo distribution valve housing during cold weather operations which could result in loss of control of the helicopter.

DATES: Effective date: December 3, 1990. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 3, 1990.

ADDRESSES: The applicable service bulletins may be obtained from Aerospatiale Helicopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053-4005, or may be examined in the Rules Docket in the Office of the Assistant Chief Counsel, FAA, 4400 Grand Avenue, Building 3B, Room 518, Fort Worth, Texas.

FOR FURTHER INFORMATION CONTACT: Mr. Samuel E. Brodie, FAA, Rotorcraft Standards Staff, ASW-110, Fort Worth, Texas 76193-0112, telephone (817) 624-5116.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an AD requiring installation of a protective cover on each main rotor servo control on certain Aerospatiale AS 350 and AS 355 series helicopters was published in the Federal Register on February 16, 1990 (55 FR 5622).

The proposal was prompted by reports of one accident that was attributed to servo control valve icing and nine servo valve malfunctions that were attributed to ice forming within the distributor valve housing during cold weather operations.

Interested persons have been afforded an opportunity to participate in the making of this amendment. One comment was received. The commenter objects to the requirement to install protective covers on all affected helicopters as it “could be a detriment” to operators flying in sandy conditions. The FAA disagrees with this comment. The safety improvement provided by the protective cover outweighs the possible inconvenience of removing the cover for cleaning the servos. Further, the commenter failed to provide any substantiating data for his opinion.

Therefore, other than a minor editorial change to paragraph (a) to add a service bulletin reference, the amendment is adopted as proposed.

The regulations adopted herein will continue to read as follows:

(a) Within the next 300 hours’ time in service, install a protective cover on each main rotor servo control in accordance with the Accomplishment Instructions of Aerospatiale Service Bulletin No. 67.11, dated March 23, 1988, or the applicable service bulletin reference, the amendment is adopted as proposed.

(b) An alternate method of compliance or adjustment of the compliance times, which provides an equivalent level of safety, may be used if approved by the Manager, Rotorcraft Standards Staff, ASW-110, Rotorcraft Directorate, Aircraft Certification Service, Fort Worth, Texas 76193-0110.

Compliance required as indicated, unless otherwise instructed.

To prevent failure or malfunction of the main rotor servo controls due to icing, which could result in loss of control of the helicopter, accomplish the following:

(1) Within the next 300 hours’ time in service, install a protective cover on each main rotor servo control in accordance with the Accomplishment Instructions of Aerospatiale Service Bulletin No. 67.11, dated March 23, 1988, or the applicable service bulletin reference, the amendment is adopted as proposed.

(b) An alternate method of compliance or adjustment of the compliance times, which provides an equivalent level of safety, may be used if approved by the Manager, Rotorcraft Standards Staff, ASW-110, Rotorcraft Directorate, Aircraft Certification Service, Fort Worth, Texas 76193-0110.

The installation procedures shall be done in accordance with Aerospatiale Service Bulletin No. 67.11, dated March 23, 1988, or the applicable service bulletin reference, the amendment is adopted as proposed.

The FAA has determined that this regulation involves 81 aircraft at an estimated total fleet cost of $73,548. The total fleet cost is estimated at $73,548.

Therefore, I certify that this action: (1) Is not a "major rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); (2) does not warrant preparation of a regulatory evaluation as the anticipated impact is minimal; and (4) will not have significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety, and Incorporation by reference.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

§ 39.13 [Amended]

1. The authority citation for part 39 continues to read as follows:


§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new AD:

Aerospatiale (Societe Nationale Industrielle Aerospatiale): Applies to Model AS 350 and AS 355 series helicopters, with Dunlop main rotor servo controls, part numbers (P/N) AC 64112, AC 67080, AC 66442, and AC 67044 installed.(Docket Number 89-ASW-66)

Compliance required as indicated, unless already accomplished.

To prevent failure or malfunction of the main rotor servo controls due to icing, which could result in loss of control of the helicopter, accomplish the following:

(a) Within the next 300 hours’ time in service, install a protective cover on each main rotor servo control in accordance with the Accomplishment Instructions of Aerospatiale Service Bulletin No. 67.11, dated March 23, 1988, or the applicable service bulletin reference, the amendment is adopted as proposed.

(b) An alternate method of compliance or adjustment of the compliance times, which provides an equivalent level of safety, may be used if approved by the Manager, Rotorcraft Standards Staff, ASW-110, Rotorcraft Directorate, Aircraft Certification Service, Fort Worth, Texas 76193-0110.

The installation procedures shall be done in accordance with Aerospatiale Service Bulletin No. 67.11, dated March 23, 1988, or the applicable service bulletin reference, the amendment is adopted as proposed.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Aerospatiale Helicopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053-4005.

Copies may be inspected at the Rules
SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to GE CF6-80A3 engines, which requires inspection of engine aft mount upper and lower beams. This amendment is prompted by one engine aft mount lower beam found in service with a forging lap. This condition, if not corrected, could result in engine aft upper and lower mount beams. The AD is needed to prevent engine aft mount failure and engine separation.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the one comment received, which expressed no objection to the adoption of the proposed rule.

Since issuance of the proposal, GE has revised the service bulletin (SB) referenced in the proposed rule. This revision does not alter the accomplishment instructions of the engine aft mount FPI but includes several cautionary notes for clarification. Accordingly, the SB referenced in the AD has been changed to incorporate the updated revision.

Also, additional information on the economic impact of this AD has been received and the regulatory evaluation has been revised to reflect a reduction of the impact on the U.S. economy.

After review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change previously described. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

There are approximately 92 GE CF6-80A3 engines of the affected design in the worldwide fleet. There are no aircraft of U.S. registry with engines affected by this AD. However, if affected engines are exported to the U.S., it is estimated that it would take approximately 4 workhours per engine to accomplish the required actions, and the average labor cost will be $40 per workhour. Based on these figures, the total cost impact per engine would be $160.00.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (49 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List or Subjects in 14 CFR Part 39


Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:


§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive (AD):

General Electric Company: Applies to General Electric Company (GE) CF6-80A3 turbofan engines installed on, but not limited to, Airbus A310–200 aircraft.

Compliance required at the next engine removal or within 18 months after the effective date of this AD, whichever occurs first, unless already accomplished.

To prevent failure of the engine aft mount, which could result in engine separation, accomplish the following:


(b) Remove from service prior to further flight, engine aft upper and lower mounts with crack indications and replace with serviceable parts.

(c) Aircraft may be ferried in accordance with the provisions of FAR 21.197 and 21.199 to a base where the AD can be accomplished.
This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from General Electric Aircraft Engines, CFB Distribution Clerk, room 132, 111 Merchant Street, Cincinnati, Ohio 45246. Copies may be inspected at the Regional Docket Office, Office of the Assistant Chief Counsel, Federal Aviation Administration, New England Region, 12 New England Executive Park, room 311, Burlington, Massachusetts 01803, or at the Office of the Federal Register, 1100 L Street NW, room 8301, Washington, DC.


[FR Doc. 90-26009 Filed 11-1-90; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 89-ASW-68; Amdt. 39-6776]

Airworthiness Directives; Messerschmitt-Bolkow-Blohm (MBB) Model BO105C and BO105S Series Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts an airworthiness directive (AD) that requires installation of a continuous ignition system on all Messerschmitt-Bolkow-Blohm (MBB) Model BO105C and BO105S series helicopters that operate in snow conditions. This AD is needed to prevent possible engine flameouts and loss of engine power due to ingestion of layers of wet snow.

DATES: Effective date: December 3, 1990. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 3, 1990.

ADDRESSES: The applicable service information may be obtained from MBB Helicopter Corporation, 900 Airport Road, P.O. Box 2349, West Chester, PA 19380, or may be examined in the Regional Docket Office, Office of the Assistant Chief Counsel, FAA, 4400 Blue Mound Road, Room 158, Building 2B, Fort Worth, Texas.


The fluorescent penetrant inspection of engine aft mount beam assemblies shall be done in accordance with the following GE document:

<table>
<thead>
<tr>
<th>Document</th>
<th>Page</th>
<th>Revision</th>
<th>Date</th>
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<tr>
<td>GE SB 71-653</td>
<td>1, 2</td>
<td>June 26, 1990</td>
<td></td>
</tr>
<tr>
<td>GE SB 71-653</td>
<td>3-6</td>
<td>Feb. 6, 1990</td>
<td></td>
</tr>
<tr>
<td>GE SB 71-653</td>
<td>9, 10, and 11</td>
<td>June 26, 1990</td>
<td></td>
</tr>
<tr>
<td>GE SB 71-653</td>
<td>12</td>
<td>Feb. 6, 1990</td>
<td></td>
</tr>
</tbody>
</table>

The FAA has determined that this regulation involves approximately 36 aircraft that will be operating in snow conditions and that compliance will require 4-5 manhours per helicopter at a cost of $40 per hour, for a total cost of $5,760 to $7,200 for the affected fleet. Therefore, I certify that this action: (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal; and (4) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety, Incorporation by reference.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

§ 39.13 [Amended]
2. Section 39.13 is amended by adding the following new AD:

**Messerschmitt-Bolkow-Blohm** (MBB):


Applicability: All MBB Model BO105C and BO105S series helicopters, certified in any category, that operate in snow conditions.

Compliance: Required as indicated, unless already accomplished.

To prevent engine flameout resulting from ingestion of layers of wet snow in engine inlets, accomplish the following:


(b) Incorporate into the applicable Rotorcraft Flight Manual (RFM) the FAA-approved flight manual Revision 2/10, dated October 1, 1989, which includes the following paragraphs 2.6.2.4 and 2.6.2.5.

2.6.2.4 Snow Conditions

Operation in snow is prohibited, except when the Continuous Ignition System (CIS) is installed and switched on. Prior to takeoff, snow and ice must be removed, particularly from the following areas:

—cabin roof
—transmission cowling interior in front of engine air intakes
—transmission compartment interior
—engine inlet deflector shield.

Note: After engine operation in snow make an entry in the logbook. Maintenance action is required in accordance with the Allison Operation and Maintenance Manual.

2.6.2.5 Engine Inlet Deflector Shield

The engine inlet deflector shield must be installed at all times.

The procedures shall be done in accordance with MBB Service Bulletin SB-BO 105-BS-100, which incorporates the following pages: 1, 2, and 8, Rev. 1, dated May 11, 1990; 3-7 and 9, Original, dated June 12, 1989. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from MBB Helicopter Corporation, 900 Airport Road, P.O. Box 2345, West Chester, PA 19380. Copies may be inspected at the Office of the Assistant Chief Counsel, FAA, 4400 Blue Mound Road, Fort Worth, Texas or at the Office of the Federal Register, 1100 L Street NW, Room 8301, Washington, DC.

This amendment (39-6778) becomes effective on December 3, 1990. Issued in Fort Worth, Texas, on October 5, 1990.

James D. Erickson,
Manager, Rotorcraft Directorate Aircraft Certification Service.

[FR Doc. 90-26010 Filed 11-1-90; 8:45 am]

**FOR FURTHER INFORMATION CONTACT:**

**SUPPLEMENTARY INFORMATION:** The FAA has determined that the fracture of an HPT stage one rotating air seal, Part Number (P/N) 797576, was the primary cause of an uncontained JT9D-7R4H1 engine failure. The seal air seal fracture originated at the center knife edge and progressed into the HPT air seal body. It has been determined that crack initiation is due either to a heavy rub condition, or misassembly. It has also been determined that a manufacturing process used for certain air seals may yield material properties with relatively fast crack propagation rates.

Therefore, to prevent HPT stage one rotating air seal fracture, which could result in an uncontained engine failure and possible loss of aircraft, this AD requires that certain HPT stage one rotating air seals must be removed from service. This AD also establishes a repetitive inspection program for other affected air seals until such time as these parts are retired from service.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

Although this action is in the form of a final rule, which involves an emergency and, thus, was not preceded by notice and public procedure, interested persons are invited to submit such written data, views, or arguments as they may desire regarding this AD. Communications should identify the docket number and be submitted in duplicate to the Federal Aviation Administration, New England Region, Office of the Assistant Chief Counsel, Attention: Airworthiness Rules Docket No. 90-ANE-11, 12 New England Executive Park, Burlington, Massachusetts 01803. All communications received by the deadline date indicated above will be considered by the Administrator, and the AD may be changed in light of the comments received.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12812, it is determined that this final rule does not have sufficient federalism implications.
to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Executive Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It had been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11324, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety, and Incorporation by reference.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration (FAA) amends 14 CFR part 39 of the Federal Aviation Regulations (FAR) as follows:

PART 39—[AMENDED]

§ 39.13 [Amended]

1. The authority citation for part 39 continues to read as follows:


2. Section 39.13 is amended by adding the following new airworthiness directive (AD):

Pratt & Whitney: Applies to Pratt & Whitney (PW) JT9D-7R4/-7R4E/-7R4E1/-7R4E2/-7R4E1H/-7R4G2 turbofan engines installed on, but not limited to, Boeing 767, Boeing 747, McDonnell Douglas DC-10, Airbus A300 and Airbus A310 aircraft.

Compliance is required as indicated, unless already accomplished.

To prevent failure of the high pressure turbine (HPT) stage one rotating air seal, which could result in an uncontained engine failure, accomplish the following:

(a) For JT9D-7R4E1 (AI 600 Series)/E1/111 model engines, remove from service HPT stage one rotating air seal, Part Numbers (P/N) 797576, 797576P48, 793707 and 793707P48, within 60 days from the effective date of this AD, in accordance with Service Bulletin (SB) JT9D-R4-72-392, Revision 2, dated March 2, 1990.

(b) For JT9D-7R4G2 model engines, remove from service HPT stage one rotating air seal, P/N's 797576, 797576P48, 793707 and 793707P48, at the next engine shop visit or within 2,350 cycles in service (CIS) from the effective date of this AD, whichever occurs first. In accordance with SB JT9D-R4-72-382, Revision 2, dated March 2, 1990.

(c) For JT9D-7R4D/D1/E/E1 (AI 500 Series) model engines, remove from service HPT stage one rotating air seal, P/N's 797576, 797576P48, and 793707, whose part serial numbers (S/N) are listed in Tables 1–3 inclusive of SB JT9D-R4-72-393, Revision 1, dated December 21, 1989, at the next engine shop visit or within 2,450 CIS from the effective date of this AD, whichever occurs first. In accordance with SB JT9D-R4-72-382, Revision 2, dated March 2, 1990.

(d) For JT9D-7R4D/D1/E/E1 (AI 500 Series) model engines, fluorescent penetrant inspect (FPI) HPT stage one rotating air seal, P/N's 797576, 797576P48, and 793707, whose part S/N's are not listed in Tables 1–3 inclusive of SB JT9D-R4-72-382, Revision 1, dated December 21, 1989, in accordance with the Accomplishment Instructions, part B, of the above noted SB, at the next HPT module exposure or within 2,900 CIS from the effective date of this AD, whichever occurs first. Remove from service parts found cracked and replace with a serviceable air seal. Thereafter, reinspect at each HPT module exposure not to exceed 2,900 cycles and record inspection [CIL], in accordance with the above noted SB.

(e) For JT9D-3A/-7/-7A/-7A(SP)/-7AH/-7F/-7F1/-7J/-20/-20R/-4AD/-7RA/D/-7RA/E/-7RA/E1/-7RA/E2/-7RA/AH1/-7R4G2 turbofan engines installed on, but not limited to, Boeing 767, Boeing 747, McDonnell Douglas DC10-0, Airbus A300 and Airbus A310 aircraft.

Compliance is required as indicated, unless already accomplished.

To prevent failure of the high pressure turbine (HPT) stage one rotating air seal, which could result in an uncontained engine failure, accomplish the following:

(i) For JT9D-3A/-7/-7A/-7A(SP)/-7AH/-7F/-7F1/-7J/-20/-20R/-4AD/-7RA/D/-7RA/E/-7RA/E1/-7RA/E2/-7RA/AH1/-7R4G2 model engines, remove from service HPT stage one rotating air seal, P/N's 797576, 797576P48 and 793707, whose part S/N's are not listed in Tables 1–3 inclusive of PW SB 5873, Revision 1, dated December 21, 1989, at the next engine shop visit or within 2,450 CIS from the effective date of this AD, whichever occurs first.

(j) Upon submission of substantiating data by an owner or operator through an FAA Airworthiness Inspector, an alternate method of compliance with the requirements of this AD or adjustments to the compliance schedule specified in this AD may be approved by the Manager, Engine Certification Office, Engine and Propeller Directorate, Aircraft Certification Service, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803.

The removal and inspection procedures shall be done in accordance with the following PW documents:

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<tr>
<th>Document</th>
<th>Page No.</th>
<th>Revision</th>
<th>Date</th>
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<tr>
<td>SB JT9D-R4-72-392</td>
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<td>SB JT9D-R4-72-393</td>
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<td>SB 5873</td>
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This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Pratt & Whitney, Publications Department, P.O. Box 611, Middletown, Connecticut 06457. Copies may be inspected at the Regional Rules Docket, Office of the Assistant Chief Counsel, Federal Aviation Administration, New England Region, 12 New England Executive Park, room 311, Burlington, Massachusetts 01803, or at the Office of the Federal Register, 1100 L Street NW, room 201, Washington, DC 20437.

This amendment becomes effective November 23, 1990.
The proposed amendment alters the ranking and selection of reclamation procedures for public participation, referred to as the Illinois AMLR plan). Land Reclamation Plan (hereinafter amendment to its Abandoned Mine submitted to OSM a proposed SUMMARY: This action corrects Federal Register Document 90-23598, in the issue of Friday, October 5, 1980. On pages 40622 and 40623 changes the sets of coordinates that read “lat. 43°39'00"N., long. 102°16'00"W.,” and lat. “43°39'00"N., long. 103°50'00"W.” to lat. “43°39'57"N., long. 102°16'25"W.” and “lat. “43°39'03"N., 103°54'55"W.” respectively. Due to an oversight these two sets of coordinates were incorrect in the Federal Register issued on October 5, 1990.

FOURTH FURTHER INFORMATION CONTACT:
Douglas F. Powers, Air Traffic Division, System Management Branch, ACL-530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (312) 604-7568.
Issued in Des Plaines, Illinois, on October 23, 1990.
Teddy W. Burcham, Manager, Air Traffic Division.


SUMMARY: On June 29, 1990, the State of Illinois submitted to OSM a proposed amendment to its Abandoned Mine Land Reclamation Plan (hereinafter referred to as the Illinois AMLR plan). The proposed amendment alters procedures for public participation, for the ranking and selection of reclamation projects, for the placement of liens on reclaimed properties, and for the evaluation and award of bids and contracts. The amendment also updates all phases of the State Reclamation Plan to reflect minor changes which have evolved since the Plan was approved in 1982. The amendment is approved. EFFECTIVE DATE: November 2, 1990.

ADDRESS: Copies of the full text of the amendment are available for review during regular business hours at the following locations:

FOR FURTHER INFORMATION CONTACT: James F. Fulton, Director, Springfield Field Office, (217) 492-4495.

SUPPLEMENTARY INFORMATION:
I. Background
The Secretary of the Interior approved the Illinois AMLR plan effective June 1, 1982. Information pertinent to the general background of the Illinois AMLR plan submission, as well as the Secretary’s findings and the disposition of comments can be found in the June 1, 1982, Federal Register (47 FR 23883 et seq.). A subsequent program amendment approved on June 11, 1984, can be found in the June 11, 1984, Federal Register (49 FR 24021 et seq.). The most recent amendment was approved February 14, 1989, and can be found in the Federal Register of that date (55 FR 3210 et seq.). Information concerning the previously approved plan and amendments may be obtained from the agency offices listed under “ADDRESSES.”

II. Discussion of Proposed Amendment
By letter dated June 29, 1990, Illinois submitted a reclamation plan amendment to OSM (Administrative Record No. IL-300-AML). The proposed amendment consists of a revised narrative to replace several sections of the approved Illinois Plan as provided by 30 CFR 864.13. Specifically the following areas of the plan are being revised:
(1) The State has adopted new regulations describing its Program’s goal and objectives. The proposed amendment deleting the original 5-year estimate of accomplishments and no longer sets quantitative goals by AML type (30 CFR 864.13).
(2) The amendment replaces the weighted-score method of the original plan with a more flexible set of 19 criteria including provisions for deferral of high-ranking projects (30 CFR 864.13(c)(2)).
(3) The proposed amendment abolishes the State Reclamation Coordination Committee and establishes procedures for direct coordination between the Abandoned Mined Lands Reclamation Council and the U.S. Soil Conservation Service (30 CFR 864.13(c)(9)).
(4) The amendment proposes more detailed procedures for acquiring, managing, and disposal of land. The amendment improves public participation and provides for competitive bidding when land is sold (30 CFR 864.13(c)(4) and 879).
(5) The amendment proposes more detailed procedures for obtaining appraisals of private lands and for filing liens against private lands. The proposal defines “a significant increase in value” as at least $8,000 or more than 20 percent of the pre-reclamation value (30 CFR 864.13(c)(5) and 882).
(6) The State had adopted regulations governing rights-of-entry. The proposal seeks to have these regulations included in the Reclamation Plan (30 CFR 864.13(c)(6) and 867).
(7) The proposed amendment abolishes the Citizens Advisory Committee and establishes formal rules for public participation (30 CFR 864.13(d)(1)).
(8) The Illinois Abandoned Mine Lands Reclamation Council has been reorganized (30 CFR 864.13(d)(3)).
(9) The amendment revises the description of the personnel staffing policies to be used to conduct the program (30 CFR 864.13(d)(2)).
(10) The amendment establishes rules for the procurement of services through consultants and contracts (30 CFR 864.13(d)(3)).
(11) The amendment updates the description of accounting policies and procedures by making provisions for compliance with the Uniform Administrative Requirements for Grants and Cooperative Agreements, 43 CFR part 12, and the single Audit Act of 1984 (30 CFR 864.11(d)(4)).
(12) The amendment reduces the estimate of lands and waters in need of reclamation to 9,700 acres from the earlier estimates of more than 20,000 acres. The proposal also describes automated methods of documenting eligible lands and waters (30 CFR 864.13(e)).

III. Public Comments
OSM solicited public comment and provided opportunity for a public
hearing on the proposed amendment. No public comments were received as of September 6, 1990, the close of the public comment period. Since no one requested an opportunity to testify at a public hearing, the scheduled hearing was cancelled.

In accordance with 30 CFR 884.15(a), OSM solicited the views of other Federal agencies having an interest in the amendment. The U.S. Department of Agriculture, Soil Conservation Service responded on July 30, 1990, and had no comments on the proposal. The U.S. Environmental Protection Agency responded on August 30, 1990, and had no comments on the proposal. The U.S. Fish and Wildlife Service responded on September 13, 1990, and concurred with the proposal.

IV. Procedural Matters

1. Federal Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget (OMB). OMB granted an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or disapproval of State/tribe AMLR reclamation plans and amendments. 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.). No burden will be imposed upon entities operating in compliance with the Act.

2. National Environmental Policy Act

Approval of State/tribe AMLR plans and amendments is categorically excluded from compliance with the National Environmental Policy Act by the Department of the Interior's Manual, 516 DM 6, appendix 8, paragraph 8.4B(29).

List of Subjects in 30 CFR Part 913

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

Accordingly 30 CFR part 913 is amended as set forth below.

PART 913—Illinois

1. The authority citation for part 913 continues to read as follows:

   Authority: 30 U.S.C. 1201 et seq.; and Pub. L. 100-34.

2. Section 913.20 is revised to read as follows:

   § 913.20 Approval of Illinois Abandoned Mine Land Reclamation Plan.

   The Illinois Abandoned Mine Land Reclamation Plan submitted on July 20, 1980, is approved effective June 1, 1982. (47 FR 23886-23889, June 1, 1982.)

3. A new § 913.25 is revised to read as follows:

   § 913.25 Approval of Abandoned Mine Land Reclamation Plan amendments.

   § 913.25(a) The Illinois Abandoned Mine Land Reclamation Plan amendment submitted on January 19, 1984, is approved effective June 11, 1984. (49 FR 24019-24021, June 11, 1984.)

   § 913.25(b) The Illinois Abandoned Mine Land Reclamation Plan amendment submitted on September 6, 1989, is approved effective February 14, 1990. (55 FR 5209, February 14, 1990.)

   § 913.25(c) The Illinois Abandoned Mine Land Reclamation Plan amendment submitted on June 29, 1990, is approved effective November 2, 1990. Copies of the approved Illinois Abandoned Mine Land Reclamation Plan and amendments are available at the following locations:


   (2) Illinois Abandoned Mines Land Reclamation Council, 928 South Spring Street, Springfield, Illinois 62704.

   [FR Doc. 90-25672 Filed 11-1-90; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

(COTP Charleston, SC Reg. 90-97)

Safety/Security Zone Regulations; Cooper River, Ordnance Reach and Port Terminal Reach, Charleston, SC

AGENCY: Coast Guard, DOT.

ACTION: Emergency rule.

SUMMARY: The Coast Guard is establishing a combined safety and security zone in the Cooper River in the vicinity of Ordnance Reach and Port Terminal Reach from Buoy 63 to Daymarker 58. The zone extends across the entire width of the Cooper River. The zone is needed to safeguard personnel, vessels, facilities, and the environment against injury destruction or loss from sabotage or other subversive acts, accidents or other causes of a similar nature, and protect boats and onlookers from harm and to prevent interference with ongoing Department of Defense cargo loading operations. Entry into this zone is prohibited unless authorized by the Captain of the Port, Charleston, SC.

EFFECTIVE DATE: This regulation becomes effective at approximately 12 o'clock p.m. Eastern Daylight Time (e.d.t.), October 15, 1990. It terminates at the conclusion of vessel loading operations, at approximately 12 o'clock p.m. e.s.t., December 1, 1990 unless sooner terminated by the Captain of the Port.

FOR FURTHER INFORMATION CONTACT: LT. Steven J. Boyle, (803) 724-7689.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after Federal Register publication. Publishing an NPRM and delaying its effective date would be contrary to the public interest since immediate action is needed to safeguard personnel, vessels, waterfront facilities, and the environment against injury, loss, or destruction.

DRAFTING INFORMATION

The drafters of this regulation are LT. Steven J. Boyle, project officer for the Captain of the Port and LT. Genelle Tanos, project attorney, Seventh Coast Guard District.

DISCUSSION OF REGULATION

The incident requiring this regulation will occur on October 15, 1990 through December 1, 1990 when military cargo will be loaded at the Army T.C. Dock and the State Ports Authority North Charleston Terminal. The protection of vital United States assets as well as the safety of unwaried boaters and onlookers necessitates the establishment of both a safety and security zone. Coast Guard and other security vessels will patrol and enforce the zone and manage vessel traffic as necessary. Other vessels will not be permitted to enter, transit, or loiter in the safety/security zone without the permission of the Captain of the Port or his on-scene representatives.
Only minor delays to mariners is
forseen.
This regulation is issued pursuant to
33 U.S.C. 1225 and 1231 as set out in the
authority citation for all of 33 CFR part
165.
Federalism
The action has been analyzed in
accordance with the principles and
criteria contained in Executive Order
12291, and it has been determined that
this rulemaking does not have sufficient
federalism implications to warrant the
preparation of a Federalism
Assessment.
List of Subjects in 33 CFR Part 165
Harbors, Marine safety, Navigation
(Water), Security measures, Vessels,
Waterways.
Regulation
In consideration of the foregoing, part
165 of title 33, Code of Federal
Regulations, is amended as follows:
PART 165—[AMENDED]
1. The authority citation for part 165
continues to read as follows:
Authority: 33 U.S.C. 1225 and 1231; 50
U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05-1(g),
6-1, 6-04-6 and 33 CFR 160.5.
2. A new § 165.T0792 is added to read as
follows:
§ 165.T0792 Safety/Security Zone:
Establishment of Temporary Safety and
Security Zone, Cooper River, Ordnance
Reach and Port Terminal Reach, Buoy 63 to
Daymarker 58, Charleston, South Carolina.
(a) Location. The following area is a
safety/security zone: An area
comprising the entire width of the
Cooper River, between buoy 63 and
daymarker 58.
(b) Effective Date. This regulation
becomes effective on October 15, 1990 at
approximately 12 o'clock p.m. e.d.t. It
terminates at the conclusion of vessel
loading operations, approximately 12
o'clock p.m. e.d.t., on December 1, 1990
unless sooner terminated by the Captain of
the Port.
(c) Regulations.
(1) The COTP Charleston will activate
this zone or specific portions thereof by
means of locally promulgated broadcast
notice to mariners. Once implemented, all
vessels and persons are prohibited from
entering unless authorized by the
Captain of the Port Charleston, SC.
(2) The general regulations governing
safety and security zones contained in
33 CFR 165.23 and 165.33 apply.
Robert L. Storch, Jr.
Captain, U.S. Coast Guard, Captain of the
Port, Charleston, South Carolina.
[FR Doc. 90-25875 Filed 11-1-90; 8:45 am]
BILLING CODE 4910-14-M
ENVIRONMENTAL PROTECTION
AGENCY
40 CFR Part 52
[FRL-39854-3]
Approval and Promulgation of
Implementation Plans; State of
Missouri
AGENCY: Environmental Protection
Agency [EPA].
ACTION: Final rule.
SUMMARY: EPA is approving rule 10 CSR
10-5.330 as a revision to the Air
Pollution Control State Implementation
Plan (SIP) of the state of Missouri. This
rule, required by the Clean Air Act,
controls emissions of volatile organic
compounds (VOC) from industrial
surface coating operations in the St.
Louis area. VOCs react in the
atmosphere to form ozone. A reduction
in VOC emissions is necessary for the
St. Louis area to meet the National
Ambient Air Quality Standards for ozone.
EPA's approval will make the rule
requirements federally enforceable.
EPA is also approving amendments to
rule 10 CSR 10-6.020, which defines
termology used in the state's air
pollution control rules.
EFFECTIVE DATE: This action is effective
December 3, 1990.
ADDRESSES: The state submittal and the
EPA's technical support document are
available for public review at the
following locations: Environmental
Protection Agency, Region VII, Air
Branch, 726 Minnesota Avenue, Kansas
City, Kansas 64101; Missouri
Department of Natural Resources, Air
Pollution Control Program, Jefferson
State Office Building, 205 Jefferson
Street, Jefferson City, Missouri 65101;
Environmental Protection Agency,
Public Information Reference Unit, room
2922, 401 M Street, SW, Washington DC
20460.
FOR FURTHER INFORMATION CONTACT:
Larry A. Hacker at (913) 551-7020 (FTS
276-7020).
SUPPLEMENTARY INFORMATION: On
January 11, 1990, the state of Missouri
submitted a revision to its Air Pollution
Control SIP. The state submittal
constituted a revision of the St. Louis
industrial surface coating rule, 10 CSR
10-5.330; the existing rule was rescinded
and a new rule of the same number and
title was adopted. The submittal also
includes amendments to the definitions
rule, 10 CSR 10-6.020. The state's rule
actions were adopted by the Missouri
Air Conservation Commission after
proper notice and public hearing and
became effective on November 26, 1989.
On July 5, 1990, EPA published a
proposal in the Federal Register to
approve the state's rule actions as a SIP
revision (55 FR 27657); no public
comments were received. For a
complete discussion of the state's rule
actions, the reader is directed to the
Federal Register notice referenced above.
EPA Action: In today's notice, EPA
takes final action to approve the state's
January 11, 1990, submittal as a revision
to the Missouri SIP.
Nothing in this action should be
construed as permitting or allowing or
establishing a precedent for any future
request for revision to any SIP. Each
request for revision to the SIP shall be
considered separately in light of specific
technical, economic, and environmental
factors and in relation to relevant
statutory and regulatory requirements.
This action has been classified as a
Table 2 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 Tables
2 and 3 SIP revisions (54 FR 2222) from
the requirements of section 3 of
Executive Order 12291 for a period of
two years.
Under section 307(b)(1) of the Act,
petitions for judicial review of this
action must be filed in the U.S. Court of
Appeals for the appropriate circuit by
January 2, 1991. This action may not be
challenged later in proceedings to
enforce its requirements. (See section
307(b)(2).)
List of Subjects in 40 CFR Part 52
Air pollution control, Hydrocarbons,
Intergovernmental relations, and Ozone.
Note: Incorporation by reference of the
State Implementation Plan for the state of
Missouri was approved by the Director of
the Federal Register on July 1, 1982.
Morris Kay,
Regional Administrator.
40 CFR part 52, subpart AA, is
amended as follows:
Subpart AA—Missouri
1. The authority citation for part 52
continues to read as follows:
Authority: 42 U.S.C. 7401–7462.
2. Section 52.1320 is amended by adding paragraph (c)(72) to read as follows:

§ 52.1320 Identification of Plan.

(c) ... (72) The Missouri Department of Natural Resources submitted new rule 10 CSR 10–5.330, Control of Emissions from Industrial Surface Coating Operations, and amendments to rule 10 CSR 10–6.020, Definitions, on January 11, 1990.

(i) Incorporation by reference.


(B) Rescinded rule 10 CSR 10–5.330, Control of Emissions from Industrial Surface Coating Operations, effective November 26, 1989.

(C) Revisions to rule 10 CSR 10–6.020, Definitions, effective November 26, 1989.

3. Section 52.1323 is amended by adding paragraph (e) to read as follows:

§ 52.1323 Approval Status.

(e) The Administrator approves Rule 10 CSR 10–5.330 as identified under §52.1320, paragraph (c)(72), under the following terms, to which the state of Missouri has agreed: Subsections (5)(B)3 and (7)(B) of the rule contain provisions whereby the director of the Missouri Air Pollution Control Program has discretion to establish compliance determination procedures and equivalent alternative emission limits for individual sources. Any such director discretion determinations under this rule must be submitted to EPA for approval as individual SIP revisions. In the absence of EPA approval, the enforceable requirements of the SIP are the applicable emission limit(s) in subsection (B) and the compliance determination provisions stated in subsection (B), or (B)2.

SUPPLEMENTARY INFORMATION: The 1977 Amendments to the Act added part D. Under part D, the States were required to reevaluate their pollution control plans for all nonattainment areas and to submit the revisions to USEPA by January 1, 1979. The revised plans were to provide for attainment by December 31, 1982, unless the States demonstrated that despite the implementation of all reasonable control measures, they could not attain either the Ozone or carbon monoxide (CO) standard by that date.

Upon the request of the State, USEPA could approve a plan showing that attainment could not be achieved by December 1982, and could extend the attainment date for Ozone or CO up to December 31, 1987. States receiving such extensions were to submit second SIP revisions that provide for attainment by the new USEPA approved attainment date, and comply with all other part D requirements. These second SIP revisions had to be submitted by July 1, 1982 (1982 plans).

On July 27, 1979, the Ohio Environmental Protection Agency (OEPA) submitted its initial SIP revisions (1979 plans) to USEPA (and later amendments) for the Cleveland and Cincinnati urban Ozone nonattainment areas. In these SIP revisions, Ohio demonstrated that it could not assure attainment of the National Ambient Air Quality Standard (NAAQS) for Ozone in the Cleveland and Cincinnati areas by December 31, 1982. USEPA requested, and USEPA approved, an extension of the attainment date until December 31, 1987. USEPA conditionally approved the 1979 plan revisions in separate actions on October 31, 1980 (45 FR 72122) and June 13, 1981 (46 FR 31881).

In late 1981 and early 1982, Ohio reevaluated certain Ozone air quality data and modeling for the Cleveland and Cincinnati areas. Ohio concluded that the areas could achieve the Ozone NAAQS by the end of 1982, and that an extension of the attainment date to 1987 was no longer necessary. Ohio requested that USEPA rescind the attainment date extension.

However, exceedances of the Ozone NAAQS occurred in 1983 and, thus, indicated that the existing SIP did not assure attainment by the end of 1982. On March 29, 1988 (53 FR 10196), USEPA disapproved Ohio’s purported demonstration that its SIP assured attainment of the Ozone NAAQS in the Cleveland and Cincinnati areas by December 31, 1982. In that notice, USEPA also disapproved Ohio’s request for rescission of the original attainment date extension. This disapproval confirmed that Ohio continued to have an obligation to submit a SIP revision which fulfilled all the requirements for areas which obtained an attainment date extension to December 31, 1987, including implementation of an I/M program.

On February 1, 1988, Ohio implemented a vehicle anti-tamper inspection program in Cuyahoga, Lake, and Lorain Counties (Cleveland area) and in Hamilton and Butler Counties (Cincinnati area). On July 11, 1988, the State of Ohio submitted this as the I/M portion of its Ozone SIP. The July 11, 1988, I/M submittal is the subject of today’s rulemaking.1

1 On January 9, 1988, the USEPA published a final rule finding that Ohio’s carbon monoxide (CO) SIP for Cuyahoga County did not meet the requirements of part D of the Clean Air Act, because it lacked an I/M program which included minimum emission reduction requirement for CO. The final rule was scheduled to become effective on March 10, 1989, (the effective date was later postponed to March 15, 1989) at which time Federal funding and construction restrictions were to go into effect. The USEPA withdrew the final rule on March 15, 1989, following passage of State legislation authorizing the establishment of a centralized tailpipe emission Continued
Ohio implemented the AIM program on February 1, 1988. The program is a decentralized, registration enforced, contractor/State operated program which requires an annual visual inspection of emission control components on 1980 and newer vehicles with a weight classification of up to 8500 pounds Gross Vehicle Weight (GVW). The program requires the inspection of the positive crankcase ventilation, evaporative emission control, thermostatic air cleaner, air injection, exhaust gas recirculation, catalytic converter, fuel inlet restrictor, and tailpipe lead deposits (which was subsequently dropped). If the catalytic converter or fuel inlet restrictor has been removed or tampered with, then the catalytic converter must be replaced. A variety of vehicles are exempt from the program including diesel and other non-gasoline fueled vehicles, vehicles over 8500 pounds GVW, and vehicles newly purchased for 1 year after purchase date. No waivers are provided by the program.

USEPA’s Evaluation

USEPA’s March 3, 1989, technical support document (TSD) provides a detailed analysis of the adequacy of Ohio’s Ozone SIP AIM program in relation to the requirements discussed above. USEPA’s review indicates four deficiencies associated with the I/M portion of Ohio’s 1982 Ozone SIP. The submittal did not contain: (1) A public awareness plan; (2) a commitment to perform quarterly audits; (3) a description of surveillance procedures; and, (4) an adequate demonstration that the program is sufficiently designed to achieve minimum hydrocarbon emission reduction requirements in the Cleveland and Cincinnati area, as specified in USEPA policy and guidance documents. The following is a summary of the four I/M deficiencies:

(1) Public Awareness Plan: A public awareness plan is a required element of an I/M program. Ohio has conducted extensive public awareness activities prior to and during start-up of the AIM program. The State continues to conduct public awareness activities related to the AIM program. However, the State has not submitted a public awareness plan as a revision to its SIP.

(2) Quarterly Audits: Quarterly audits of all test stations are required elements of an I/M program to ensure that program rules are being properly carried out. Since inception of the program the State has been conducting covert and overt audits to ensure that the program is being operated according to program rules. However, the State must submit as a revision to the SIP its commitment to conduct quarterly audits.

(3) Surveillance Procedures: Surveillance procedures which the State will follow in conducting covert and overt audits must be developed and submitted as a revision to the SIP. The State has not submitted written surveillance procedures as a revision to the SIP.

(4) Program Effectiveness: The July 11, 1988, submittal included a description of the effectiveness of the I/M program in achieving the minimum hydrocarbon emission reduction requirement, as specified in USEPA policy and guidance documents. The State submitted a MOBILE3 computer modeling analysis which shows that the program as designed meets the minimum hydrocarbon emission reduction requirement for the Cincinnati area, but for the Cleveland area the program falls slightly short of meeting the minimum hydrocarbon emission reduction requirement.

While computer modeling analysis indicates that the design of the program will not achieve the minimum hydrocarbon emission reduction requirements in the Cleveland area, the State has adopted** rules and awarded a contract to implement a CO tailpipe exhaust testing program in Cuyahoga County. The CO tailpipe testing program is scheduled to begin operation in late 1990. The tailpipe testing program will provide additional hydrocarbon emission reduction benefits to cover the hydrocarbon shortfall. USEPA will rulemake on the adequacy of the effectiveness of the Ohio Ozone and CO I/M program in future Federal Register notice(s).

Conditional Approval

On June 18, 1981, USEPA published a Federal Register (46 FR 31861) approving the I/M portion of the Ohio 1979 Ozone/CO SIP on the condition that the State (1) submit an identification of staff and financial resources necessary to carry out and enforce the I/M program; (2) submit an implementation schedule; and (3) submit information on geographic coverage, enforcement procedures, and vehicle categories. Based on the July 11, 1988, submittal, USEPA finds that the State has fulfilled the 1979 Ozone SIP conditional approval items relating to the I/M program requirement.

Rulemaking

USEPA has evaluated the Ohio anti-tampering rule (OAC 3745-28) and finds that, notwithstanding the four deficiencies with the program as a whole enumerated above, the rule itself

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*testing program in Cuyahoga County. Although the tailpipe emission testing program is being implemented to solve the CO non-attainment problem in the Cleveland area, the program will significantly add to hydrocarbon emission reductions.
is approvable. Therefore, USEPA is approving OAC 3745-26 today.  

There remains four deficiencies in the overall Ohio I/M plan for Ozone at this time. Before USEPA will be able to approve the overall Ohio Ozone I/M program for the Cleveland and Cincinnati areas as meeting 1982 Ozone SIP revision requirements, the State must submit a formal revision to its 1982 Ozone SIP the following: (1) a public awareness plan; (2) a commitment to conduct quarterly audits; (3) written surveillance procedures used to conduct audits; and, (4) a MOBILE4 computer modeling analysis which demonstrates that the I/M program, as ultimately implemented, 8 is sufficiently designed to achieve in the Cleveland and Cincinnati areas minimum hydrocarbon emission reduction requirements as specified in USEPA policy and guidance documents respectively. Upon receipt of these submittals, USEPA will take rulemaking action on Ohio’s entire I/M plan for Ozone in future Federal Register notice(s). This final rule addresses only the I/M portion of the State’s Ozone SIP. USEPA took final action on the State’s entire Ozone SIP. USEPA has issued a post-91 SIP call for both Cincinnati and Cleveland. As a result of today’s action, these areas will not have a fully approved Ozone SIP.

USEPA, today, finds that the July 11, 1986, SIP submittal adequately addresses the 1979 Ozone SIP conditional approval items relating to I/M, as cited in the June 18, 1981, Federal Register [46 FR 31831] and is approving this submittal as meeting the June 18, 1981, conditional approval.

Because USEPA considers today’s action noncontroversial and routine, we are approving it today without prior proposal. The action will become effective on January 2, 1991. However, if we receive notice by December 3, 1990, that someone wishes to submit critical comments, then USEPA will publish: (1) A notice that withdraws the action, and (2) a notice that begins a new rulemaking by proposing the action and establishing a comment period. See 47 FR 27073 (June 23, 1982).

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

This action has been classified as a Table 2 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 2 years.

Under 5 U.S.C. section 605(b), the Administrator has certified that SIP approvals do not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

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 January 3, 1991. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Environmental protection, Hydrocarbons, Intergovernmental cooperation, Ozone.

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


Ralph R. Bauer,
Acting Regional Administrator.

Title 40 of the Code of Federal Regulations, chapter I, part 52, is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Ohio—Subpart KK

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

Authority: 42 U.S.C. 7401-7642.

2. Section 52.1870 is amended by adding new paragraph (c)(67) to read as follows:

§ 52.1870 Identification of plan.

(c) * * *


1 Incorporation by reference.

(A) Ohio Administrative Code rules 3745-20-01, 3745-20-02, 3745-20-03, 3745-20-04, 3745-20-05, 3745-20-06, 3745-20-07, 3745-20-08, and 3745-20-09, effective July 17, 1987.

[FR Doc. 90-25977 Filed 11-01-«; 8:45 am]

BILLING CODE 6563-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA 6393]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: This rule lists communities where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), but will be suspended on the effective date shown in this rule because of noncompliance with the revised floodplain management criteria of the NFIP. If FEMA receives documentation that the community has adopted the required revisions prior to the effective suspension date given in this rule, then the community will not be suspended and the suspension will be withdrawn by publication in the Federal Register.

EFFECTIVE DATE: As shown in fourth column.

FOR FURTHER INFORMATION CONTACT: Mr. Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, Federal Center Plaza, 500 C Street, SW., Room 416, Washington, DC 20472, (202) 646-2717.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to
purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local floodplain management measures aimed at saving lives and protecting new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4022), prohibits flood insurance coverage as authorized under the NFIP (42 U.S.C. 4001–4128) unless an appropriate public body shall have adopted adequate floodplain management measures with effective enforcement measures.

On August 25, 1986, FEMA published a final rule in the Federal Register that revised the NFIP floodplain management criteria. The rule became effective on October 1, 1986. As a condition for continued eligibility in the NFIP, the NFIP criteria at 44 CFR 60.7 require communities to revise their floodplain management regulations to make them consistent with any revised NFIP regulation within 6 months of the effective date of that revision or be subject to suspension from participation in the NFIP.

The communities listed in this notice have not amended or adopted floodplain management regulations that incorporate the rule revision. Accordingly, the communities are not compliant with NFIP criteria and will be suspended on the effective date shown in this final rule. However, some of these communities may adopt, and submit the required documentation of, legally enforceable revised floodplain management regulations after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the Federal Register. In the interim, if you wish to determine whether or not a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

The Administrator, Federal Insurance Administration, FEMA, finds that notice and public procedures under 5 U.S.C. 533(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified. Each community receives a 90- and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. For the same reasons, this final rule may take effect within less than 30 days.

Pursuant to the provision of 5 U.S.C. 609(b), the Administrator, Federal Insurance Administration, FEMA, hereby certifies that this rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As stated in section 2 of the Flood Disaster Protection Act of 1973, the establishment of local floodplain management together with the availability of flood insurance decreases the economic impact of future flood losses in both the particular community and the nation as a whole. This rule in and of itself does not have a significant economic impact. Any economic impact results from the community’s decision not to adopt adequate floodplain management measures, thus placing itself in noncompliance with the Federal standards required for community participation.

List of Subjects in 44 CFR Part 64

Flood insurance and floodplains.

1. The authority citation for part 64 continues to read as follows:


2. Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

§ 64.6 List of eligible communities.

<table>
<thead>
<tr>
<th>State and community name</th>
<th>County</th>
<th>Community No.</th>
<th>Effective date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Colorado:</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Alamosa County</td>
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<td>Craig, city of</td>
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<td>Federal Heights, city of</td>
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<td>Gunnison, city of</td>
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<td>Hays, town of</td>
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<td>Las Animas County</td>
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<td>Limon, town of</td>
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<td>Wellington, town of</td>
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<td>Montana: Miles City, city of</td>
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<td>North Dakota: Grand Forks, city of</td>
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<td>West Virginia:</td>
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<td>Paw Paw, town of</td>
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<td>Peters, town of</td>
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<td>Preston County</td>
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<td>Quinwood, town of</td>
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<td>Reddy, town of</td>
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| Unincorporated Areas     |        | 080273        | Nov. 2, 1990. |
| La Plata                 |        | 080099        | Do.           |
| La Plata                 |        | 080130        | Do.           |
| Morgan                   |        | 080119        | Do.           |
| Moffat                   |        | 080240        | Do.           |
| Adams                    |        | 080080        | Do.           |
| Mancos                   |        | 080157        | Do.           |
| Unincorporated Areas     |        | 080105        | Do.           |
| Lincoln                  |        | 080109        | Nov. 16, 1990.|
| Montezuma                |        | 080123        | Do.           |
| El Paso                  |        | 080663        | Do.           |
| Ouray                    |        | 080137        | Do.           |
| Weld                     |        | 080189        | Do.           |
| Laramie                  |        | 080104        | Do.           |
| Custer                   |        | 300014        | Do.           |
| Grand Forks              |        | 385365        | Do.           |
| Morgan                   |        | 540252        | Nov. 16, 1990.|
| Monroe                   |        | 540143        | Do.           |
| Kanawha                  |        | 540082        | Do.           |
| Unincorporated Areas     |        | 540160        | Do.           |
| Greenbrier               |        | 540244        | Do.           |
| Roane                    |        | 540184        | Do.           |
Federal Insurance Administration; Changes in Flood Elevation Determinations

44 CFR Part 65

[Docket No. FEMA-7005]

AGENCY: Federal Emergency Management Agency.

ACTION: Interim rule.

SUMMARY: This rule lists those communities where modification of the base (100-year) flood elevations is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified base (100-year) elevations contained on the map. However, this rule includes the address of the community where the modified base (100-year) flood elevation determinations are available for inspection.

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

DATES: These modified elevations are currently in effect and amend the Flood Insurance Rate Map (FIRM) in effect prior to this determination. From the date of the second publication of notice of these changes in a prominent local newspaper, any person has ninety (90) days in which he can request through the community that the Administrator, reconsider the changes. These modified elevations may be changed during the 90-day period.

ADDRESSES: The modified base (100-year) flood elevation determinations are available for inspection at the office of the Chief Executive Officer of the community, listed in the fourth column of the table. Send comments to that address also.


SUPPLEMENTARY INFORMATION: The numerous changes made in the base (100-year) flood elevations on the FIRM(s) make it administratively infeasible to publish in this notice all of the modified base (100-year) flood elevations contained on the map. However, this rule includes the address of the community where the modified base (100-year) flood elevation determinations are available for inspection.

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


For rating purposes, the revised community number is listed and must be used for all new policies and renewals. These base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program.

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

The changes in the base (100-year) flood elevations listed below are in accordance with 44 CFR 65.4. Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice of technical amendments made to designated special flood hazard areas on the basis of updated information and imposes no new requirements or regulations on participating communities.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains.

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


§ 65.4 (Amended)

2. Section 65.4 is amended by adding in alphabetical sequence new entries to the table.

<table>
<thead>
<tr>
<th>State and county</th>
<th>Location</th>
<th>Date and name of newspaper where notice was published</th>
<th>Chief executive officer of community</th>
<th>Effective date of modification</th>
<th>Community No.</th>
</tr>
</thead>
</table>
Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: Modified base (100-year) flood elevations are finalized for the communities listed below. These modified elevations are the basis for the floodplain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for flood insurance.

EFFECTIVE DATE: The date of issuance of the final rule is November 3, 1990.


SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the final determinations of flood elevation for each community listed. Proposed base flood elevations or modified base flood elevations have been published in the Federal Register for each community listed.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1968 (title XII of the Housing and Urban Development Act of 1968 (Pub. L. 90-446), 42 U.S.C. 4001-4126, and 44 CFR part 67. An opportunity for the community or individuals to appeal the proposed determination to or through the community for a period of ninety (90) days has been provided.

The Agency has developed criteria for floodplain management in flood-prone areas in accordance with 44 CFR part 60. Pursuant to the provisions of 5 USC 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies for reasons set out in the proposed rule that the final flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 44 CFR Part 67

Flood insurance, Floodplains.

CALIFORNIA

<table>
<thead>
<tr>
<th>Source of flooding and location</th>
<th>Depth in feet above ground</th>
<th>Elevation in feet</th>
<th>Modified</th>
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</thead>
<tbody>
<tr>
<td>Fairfield (city), Solano County (FEMA Docket No. 6996)</td>
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<tr>
<td>Urban Creek:</td>
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<tr>
<td>Just downstream from Arroyo Grande Parkway Bridge</td>
<td>58</td>
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<tr>
<td>Just upstream from Arroyo Grande Parkway Bridge</td>
<td>58</td>
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<tr>
<td>Laurel Creek:</td>
<td></td>
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<tr>
<td>Approximately 150 feet downstream from Arroyo Grande Parkway Bridge</td>
<td>58</td>
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<tr>
<td>Just upstream from Arroyo Grande Parkway Bridge</td>
<td>55</td>
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<tr>
<td>Approximately 700 feet upstream from Arroyo Grande Parkway Bridge</td>
<td>55</td>
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<tr>
<td>Approximately 1,650 feet upstream from Arroyo Grande Parkway Bridge</td>
<td>59</td>
<td></td>
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<tr>
<td>Just upstream from Alum Creek Road</td>
<td>64</td>
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<tr>
<td>Approximately 200 feet upstream from Alum Creek Road</td>
<td>64</td>
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<tr>
<td>Just upstream from Gulf Drive</td>
<td>69</td>
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<tr>
<td>Approximately 300 feet upstream from Gulf Drive</td>
<td>69</td>
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<tr>
<td>Approximately 1,950 feet upstream from Gulf Drive</td>
<td>70</td>
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<tr>
<td>Approximately 850 feet downstream from Dickerson hill Road</td>
<td>86</td>
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<tr>
<td>Just upstream from Dickerson hill Road</td>
<td>89</td>
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<tr>
<td>Approximately 300 feet upstream from Dickerson hill Road</td>
<td>89</td>
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<tr>
<td>Approximately 600 feet upstream from Dickerson Hill Road</td>
<td>95</td>
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<tr>
<td>At Putah South Canal</td>
<td>105</td>
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COLORADO

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<thead>
<tr>
<th>Source of flooding and location</th>
<th>Depth in feet above ground</th>
<th>Elevation in feet</th>
<th>Modified</th>
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<tbody>
<tr>
<td>Arapahoe County (unincorporated area) (FEMA Docket No. 6996)</td>
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<tr>
<td>Big Dry Creek:</td>
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<tr>
<td>At confluence with Big Little Joe Creek</td>
<td>690</td>
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<td>North Fork Little Joe Creek:</td>
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LOUISIANA

Cameron Parish (unincorporated areas) (FEMA Docket No. 6992)

Gulf of Mexico:

Approximately 5.3 miles east of the western intersection of State Route 27 and the northern Cameron Parish boundary.

Approximately 2.3 miles northeast along shoreline from intersection of Sabine Pass.

Maps available for inspection at the Cameron Parish Planning Department, 5034 South Prince Street, Littleton, Colorado.

Westminster (city), Adams and Jefferson Counties (FEMA Docket No. 6996)

Middle Branch Hylands Creek:

At the confluence of North Branch Hylands Creek.

Approximately 400 feet upstream of Shincliff Boulevard.

Approximately 50 feet downstream of West 100th Place.

Approximately 50 feet upstream of 6th Green Detention Pond Culvert.

Approximately 50 feet upstream of Lowed Boulevard, at Lowed Detention Pond.

Approximately 450 feet upstream of Lowed Boulevard.

Maps are available for review at the City Engineering Department, 5031 West 76th Avenue, Wisconsin, Colorado.

ST. TANNEANY Parish (unincorporated areas) (FEMA Docket No. 6992)

Lake Pontchartrain:

Hartford Drive extended south approximately 1,500 feet.

At intersection of State Route 434 and Elenore Drive.

Approximately 1 mile south of intersection of Oaklawn Drive and Paquet.

Along shoreline at Green Point.

Maps available for inspection at the Department of Development, Covington, Louisiana.

OKLAHOMA

Hubert (town), Cherokee County (FEMA Docket No. 6992)

Double Springs Creek:

Approximately 850 feet downstream of State Route 51.

Approximately 700 feet downstream of Birch Street.

Maps available for inspection at the City Hall, Hubert, Oklahoma.

Tulsa (city), Tulsa, Osage, and Rogers Counties (FEMA Docket No. 6992)

Little Joe:

Approximately 200 feet downstream of Now Haven Avenue.

Approximately 50 feet downstream of Hudson Avenue.

South Fork Little Joe Creek:

At the confluence with Little Joe Creek.

Approximately 850 feet upstream of Yale Avenue.

Maps are available for review at City Hall, Department of Public Works, 1000 Webster Street, Fairbanks, California.
       Source of flooding and location  
       #Depth in feet above ground.  

South of County Route 20 on west side of White Rock Creek  735
South of County Route 20 on west side of White Rock Creek  736

FEDERAL COMMUNICATIONS COMMISSION
47 CFR Part 73

[MM Docket No. 90-186; RM-7105]

Radio Broadcasting Services; Merced, CA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots FM Channel 231A to Merced, California, as that community's fifth local FM broadcast service, in response to a petition for rule making filed by Eric R. Hilding. See 55 FR 13811, April 12, 1990. Coordinators used for Channel 231A at Merced are 37-10-20 and 120-24-45. (See Supplementary Information, infra.) With this action, the proceeding is terminated.

DATES: Effective December 14, 1990; the window period for filing applications on Channel 231A at Merced, California, will open on December 17, 1990, and close on January 16, 1991.

FOR FURTHER INFORMATION CONTACT: Nancy Jayner, Mass Media Bureau, (202) 634-6530. Questions related to the window application filing process should be addressed to the Audio Services Division, FM Branch, Mass Media Bureau, (202) 632-6394.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order MM Docket No. 90-186, adopted September 28, 1990, and released October 30, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 2309), 1919 M Street NW., Washington, DC 20037. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 657-3800, 2100 M Street NW., suite 140, Washington, DC 20037.

Interested parties should note that the petition for rule making in this proceeding was filed prior to October 2, 1989, and, therefore, applicants for Channel 231A at Merced may avail themselves of the provisions of § 73.213(c) of the Commission's Rules. See 47 CFR 73.213(c).

List of Subjects in 47 CFR Part 73

Radio broadcasting.
47 CFR PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

§ 73.202 [Amended]
2. Section 73.202(b), the Table of FM Allotments under California, is amended by adding Channel 235A at Merced.
Federal Communications Commission.

Kathleen B. Levitz,
Deputy Chief, Policy and Rules Division,
Mass Media Bureau.

[FR Doc. 90-25954 Filed 11-1-90; 8:45 am]
BILLING CODE 6712-01-M

47 CFR Part 73
[MM Docket No. 90-586; RM-7034]

Radio Broadcasting Services; Milien, GA
AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 235C3 for Channel 235A at Milien, Georgia, and modifies the construction permit for Station WMKO(FM) to specify operation on Channel 235C3, at the request of Radio Milien Broadcasting Co., Inc. See, 55 FR 00323, January 4, 1990. Channel 235C3 can be allotted to Milien in compliance with the Commission's minimum distance separation requirements with a site restriction of 12 kilometers (7.5 miles) southeast. The coordinates for this allotment are North Latitude 32-43-36 and West Longitude 61-52-00. With this action, this proceeding is terminated.

EFFECTIVE DATE: December 14, 1990.

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 89-586, adopted October 1, 1990, and released October 30, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., suite 140, Washington, DC 20037.

List of Subjects In 47 CFR Part 73
Radio broadcasting.

47 CFR PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

§ 73.202 [Amended]
2. Section 73.202(b), the Table of FM Allotments under Georgia, is amended by removing Channel 235A and adding Channel 235C3 at Milien.
Federal Communications Commission.

Kathleen B. Levitz,
Deputy Chief, Policy and Rules Division,
Mass Media Bureau.

[FR Doc. 90-25955 Filed 11-1-90; 8:45 am]
BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration

50 CFR Part 646
[Docket No. 900795-0268]

RIN 0648-AC96

Snapper-Grouper Fishery of the South Atlantic

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule.

SUMMARY: NOAA issues this rule to implement Amendment 2 to the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (FMP). This rule prohibits the harvest or possession of jewfish in or from the exclusive economic zone (EEZ) off the South Atlantic states. The intended effect of this rule is to reduce fishing mortality of jewfish so that the species may be protected and the stock rebuilt.

EFFECTIVE DATE: October 30, 1990.

FOR FURTHER INFORMATION CONTACT: Robert A. Sadler, 813-383-3722.

SUPPLEMENTARY INFORMATION: Snapper-grouper species in the EEZ off the South Atlantic states are managed under the FMP prepared by the South Atlantic Fishery Management Council (Council), and its implementing regulations at 50 CFR part 646, under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act). The harvest or possession of jewfish in or from the EEZ off the South Atlantic states is currently banned through October 29, 1990, under an emergency rule (55 FR 18893, May 7, 1990) and an extension of that emergency rule (55 FR 28916, July 16, 1990). Amendment 2 to the FMP continues the ban and contains definitions of overfishing for jewfish and other species in the management unit of the FMP, as required by 50 CFR 602.11(e).

The background and rationale for the ban were contained in the proposed rule (55 FR 31406, August 2, 1990) and are not repeated here. Additional information on jewfish and a discussion of the proposed definitions of overfishing are contained in Amendment 2, the availability of which was announced in the Federal Register on July 17, 1990 (55 FR 29075).

No comments were received on the proposed rule. The Secretary of Commerce (Secretary) has approved Amendment 2, and the proposed rule is adopted as final with no changes.

Classification
The Director, Southeast Region, NMFS, determined that Amendment 2 is necessary for the conservation and management of the snapper-grouper fishery and that it is consistent with the Magnuson Act and other applicable law.

The Assistant Administrator for Fisheries, NOAA (Assistant Administrator) determined that this rule is not a “major rule” requiring the preparation of a regulatory impact analysis under E.O. 12291. This rule is not likely to result in an annual effect on the economy of $100 million or more a major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions; or a significant adverse effect 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.

The Council prepared a regulatory impact review/regulatory flexibility analysis that analyzes the economic impacts of this rule and describes its effects on small business entities. A summary of those impacts and effects was included in the proposed rule and is not repeated here.

The Council prepared an environmental assessment (EA) that discusses the impact on the environment as a result of this rule. Based on the EA, the Assistant Administrator concluded that there will be no significant adverse impact on the human environment as a result of this rule.

The Council determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal zone management programs of Florida, South Carolina, and North Carolina. Georgia does not participate in the coastal zone management program. These determinations were submitted for review by the responsible state agencies under section 307 of the Coastal Zone Management Act. None of the states commented within the
statutory time period; therefore, consistent is implied.

This rule does not contain a collection-of-information requirement for purposes of the Paperwork Reduction Act.

This rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 13132.

The Assistant Administrator, pursuant to the Administrative Procedure Act (5 U.S.C. 553(d)(3)), finds for good cause, namely, to continue, uninterrupted, the required protection of the jewfish resource in the EEZ off the South Atlantic states, that it is not necessary to delay for 30 days the effective date of this rule.

List of Subjects in 50 CFR Part 646

Fisheries, Fishing, Reporting and recordkeeping requirements.


Michael F. Tillman,
Acting Assistant Administrator for Fisheries,
National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR part 646 is amended as follows:

PART 646—SNAPPER-GROUPER FISHERY OF THE SOUTH ATLANTIC

1. The authority citation for part 646 continues to read as follows:

Authority: 16 U.S.C. 1801 et seq.

2. In §646.6, in paragraph (1) the reference to "§646.24(b)(2) and (c)" is revised to read "§646.24(b) and (c)", and paragraph (m) is revised to read as follows:

§646.6 Prohibitions.

(m) Harvest or possess a jewfish in or from the EEZ or fail to release a jewfish taken in the EEZ, as specified in §646.20(c).

3. In §646.20, a new paragraph (c) is added to read as follows:

§646.20 Harvest limitations.

(c) A jewfish may not be harvested or possessed in or from the EEZ. Jewfish taken in the EEZ incidentally by hook-and-line gear must be released immediately by cutting the line without removing the fish from the water.

4. In §646.24, paragraph (b) is revised to read as follows:

§646.24 Area limitations.

(b) The use of fish traps and bottom longlines is prohibited in all of the SMZs specified in paragraph (a) of this section.

[FR Doc. 90-25994 Filed 10-30-90; 3:12 pm]
BILLING CODE 3510-25-M

50 CFR Part 669

[Docket No. 900766-0263]
RIN 0648-AD47

Shallow-Water Reef Fish Fishery of Puerto Rico and the U.S. Virgin Islands

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule.

SUMMARY: NOAA issues this final rule to implement Amendment 1 to the Fishery Management Plan for the Shallow-Water Reef Fish Fishery of Puerto Rico and the U.S. Virgin Islands (FMP). This rule (1) increases the minimum allowable mesh size used in fish traps to 2 inches (5.08 centimeters); (2) prohibits the harvest or possession of Nassau grouper; (3) closes an area of approximately 14 square nautical miles (48 km²) in the Exclusive Economic Zone (EEZ) southwest of St. Thomas, U.S. Virgin Islands, to fishing during the spawning season for red hind; and (4) prohibits the possession of dynamite or similar explosive substances on board vessels in the fishery. The intended effects of this rule are to rebuild the declining reef fish species and to enhance enforcement.

EFFECTIVE DATES: November 29, 1990, except that paragraph §669.24(a)(1) is effective September 14, 1991.


SUPPLEMENTARY INFORMATION: The shallow-water reef fish fishery is managed under the FMP, prepared by the Caribbean Fishery Management Council (Council), and its implementing regulations at 50 CFR part 669, under authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act).

Amendment 1 to the FMP contains (1) additional management measures to rebuild declining reef fish species, (2) authorization for collection of socio-economic information, (3) definitions of overfishing and overfished, and (4) a revised habitat section. A notice of availability summarizing Amendment 1 was published in the Federal Register on June 21, 1990 (55 FR 25346).

The additional management measures and the background and rationale for all the changes in Amendment 1, and an additional change to the regulations proposed by NOAA, were discussed in the proposed rule (55 FR 28787, July 13, 1990) and are not repeated here.

Comments and Responses

Twenty-eight sets of comments were received on Amendment 1 during the public comment period, including a form letter signed by 24 members of a fishing organization and a member of the legislature of the U.S. Virgin Islands. A state fisheries research laboratory provided information on trap mesh size and an additional red hind spawning site.

Comment: All commenters supported the spawning season closing for red hind in the specified area off the U.S. Virgin Islands, and two indicated that similar areas also should be closed off Puerto Rico. A state fisheries scientist provided geographical information on such an area of Puerto Rico, and suggested that this area be closed by Amendment 1.

Response: NOAA agrees that closing spawning aggregation areas may be critical to sustaining the red hind resource. However, incorporating the recently defined spawning site off Puerto Rico into Amendment 1 would only serve to delay implementation of the management measures and cause a lapse in the closure off the U.S. Virgin Islands during the forthcoming spawning season. The Council may consider additional spawning area closures, including the area described off Puerto Rico, and make appropriate changes by regulatory amendment using the regulatory adjustment procedure contained in Amendment 1.

Comment: Twenty-six commenters objected to the establishment of two inches, in the smallest dimension, as the minimum mesh size for fish traps and believed that this management measure would increase escapement of certain slender-bodied species that have consumer value. One commenter indicated that regulation of gillnets and prohibiting the use of bait in fish traps should be substituted for this management measure. The others contended that only part (one side) of the traps needs to be constructed of 2-inch mesh to allow juvenile fish to escape, thus, reducing economic impacts associated with rewiring the entire trap.

They stated that the life expectancy of purchased replacement mesh for traps destroyed by hurricane Hugo.
thereby, reducing the average size of much of the harvest. NOAA believes that the two-inch mesh size will allow the escapement of juvenile fish that otherwise would be retained in a smaller mesh, thus, contributing to rebuilding of the overfished reef fish species.

Selecting an optimum mesh size for a large complex of species that vary widely in body conformation is exceedingly difficult. The 2-inch mesh size was selected to reduce fishing mortality on juveniles and, at the same time, reverse a trend toward the harvest of less desirable, lower valued species. Scientists knowledgeable about this fishery acknowledge that the larger mesh size may result in the escape of more slender-bodied species but should have little effect on the catch of more robust species. A state fishery scientist submitted information on supporting the increased minimum mesh size and indicating that the bycatch, considered to be of minimal economic value but significant in terms of resource recovery, would decrease once the larger mesh size is implemented. These shifts in harvest composition are needed to effect a general rebuilding of the declining reef fish resources. The harvest of the more valuable species at optimum size will outweigh the short-term economic losses resulting from this measure.

Currently, the use of gillnets is uncommon and is a relatively insignificant source of fishing mortality compared to fish traps, which are the prevalent gear in this fishery. Should data indicate that gillnets are a significant source of fishing mortality, restrictions on their use may be implemented.

The use of bait in fish traps may increase the attraction of reef fish, and thereby, increase fishing mortality by this gear. However, a ban on the use of bait is virtually unenforceable. The proposed measures are effective, enforceable means of reducing the mortality of the declining reef fish resources, one of the objectives of the FMP.

Small fish use fish traps as a shelter and when traps are hauled to the surface rapidly, the fish attempt to escape by swimming in all directions. Only by chance would an individual fish move in the direction of the side of the trap with 2-inch mesh. Also, traps are frequently moved about by currents, especially during storms. The exit of fish from a trap would be impeded if the trap comes to rest on the only side that is constructed of 2-inch mesh. NOAA agrees that the construction of traps with 2-inch mesh is the best resolution of the Council's intent to reduce mortality of juveniles and bycatch of small fishes.

Further, the Council has specified a 1-year period of delayed effectiveness to ease the burden of transition to traps with the 2-inch mesh throughout. This gives the fishermen an additional period to use old traps before replacement is required. Delaying the effectiveness of this measure for a longer period of time would have substantial consequences on resources already in need of protection.

Comment: The form letter suggested that the closure of the Nassau grouper fishery be limited to 5 years and then opened for a 6-month period under an 18-inch size limit. The fishermen and the legislator expressed concern that once a fishery is closed, it will not be reopened regardless of stock conditions.

Response: Nassau grouper resources have been diminished to the extent that it is necessary to close the fishery. To reopen the fishery prematurely could cause further damage to the resource and delay the Council's rebuilding efforts. The resource is not expected to rebuild in a short period of time. To reopen the fishery prematurely could cause further damage to the resource and delay the Council's rebuilding efforts. The resource will be assessed periodically, and the fishery will be reopened when the population reaches a level that will support a controlled harvest. Nassau grouper do not reach maturity until 22 inches in length; therefore, it takes a number of years for this species to attain spawning size. Accordingly, the resource is not expected to rebuild in a short period of time. To reopen the fishery prematurely could cause further damage to the resource and delay the Council's rebuilding efforts. The resource will be assessed periodically, and the fishery will be reopened when the population reaches a level that will support a harvest. At that time, it is likely that the Council will institute a minimum size restriction of 22 inches rather than 18 inches.

Comment: One fisherman indicated that recent residential development and improper sewage disposal have greatly affected the fishery, with far greater negative impacts than those caused by the relatively few fish trappers.

Response: The scientific community and state fishery managers agree that the fishery is showing signs of depletion, in all likelihood, due to overfishing. Although excessive development and waste disposal may have a deleterious effect, it is virtually impossible to quantify these impacts. NOAA believes that the management measures are fair, equitable, and enforceable means of rebuilding the resource and arresting the decline of the fishery.

Approval of Amendment 1

The Secretary of Commerce approved Amendment 1 on September 14, 1990. In accordance with the amendment and to minimize the economic impacts of the increase in minimum allowable mesh size for fish traps, the effectiveness of that measure is delayed for one year.

Changes From the Proposed Rule

In § 669.2, a definition for Powerhead is added to clarify the use of that term.

The language in § 669.7(c) is revised to change the prohibition on the possession or harvest in the EEZ of Nassau grouper during the closed season to prohibition in or from the EEZ year round.

The management measures on Nassau grouper are placed under “Harvest limitations” (§ 669.22) in lieu of under “Closed seasons” (§ 669.21).

The phrase “used or possessed in the EEZ” is added to the minimum mesh size limitation for fish traps (§ 669.24(a)(1)) to clarify the scope of that limitation.

Classification

The Director, Southeast Region, NMFS, determined that Amendment 1 is necessary for the conservation and management of the shallow-water reef fish resource of Puerto Rico and the U.S. Virgin Islands and is consistent with the Magnuson Act and other applicable law.

The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), determined that this rule is not a “major rule” requiring the preparation of regulatory impact analysis under E.O. 12291. This rule is not likely to have an annual effect on the economy of $100 million or more; result in a major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographical regions; or have a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic markets.

The Council prepared a regulatory impact review (RIR) for Amendment 1. A summary of the economic effects was included in the proposed rule.

The Council prepared a Regulatory Flexibility Analysis as part of the RIR that concludes that this rule will have significant impacts on 1500–2000 small business entities. Those impacts were summarized in the proposed rule.

The Council prepared an environmental assessment (EA) that discusses the impact of Amendment 1 on the environment. Based on the EA, the Assistant Administrator concluded that the rule will have no significant adverse impact on the human environment as a result of this rule.

The Council determined that this rule will be implemented in a manner that is consistent, to the maximum extent
practicable, with the approved coastal zone management programs of Puerto Rico and the U.S. Virgin Islands. These determinations were submitted for review by the responsible agencies under section 307 of the Coastal Zone Management Act. Both Puerto Rico and the U.S. Virgin Islands agreed with the determinations.

This rule does not contain a collection-of-information requirement subject to the Paperwork Reduction Act.

This rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 12612.

List of Subjects in 50 CFR Part 669
Fisheries, Fishing.

Michael F. Tillman,
Acting Assistant Administrator for Fisheries,
National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR part 669 is amended as follows:

PART 669—SHALLOW-WATER REEF FISH FISHERY OF PUERTO RICO AND THE U.S. VIRGIN ISLANDS

1. The authority citation for part 669 continues to read as follows:
   Authority: 16 U.S.C. 1801 et seq.

2. In § 669.2, a definition for Powerhead is added in alphabetical order to read as follows:

   § 669.2 Definitions.

   Powerhead means any device with an explosive charge, usually attached to a speargun, spear, pole, or stick, which fires a projectile upon contact.

3. In § 669.7, in paragraph (d), the reference "§ 669.22" is revised to read "§ 669.22(b)"; and paragraphs (c), (e), (f), (g), (j), and (k) are revised to read as follows:

   § 669.7 Prohibitions.
   (c) Harvest or possess Nassau grouper in or from the EEZ, as specified in § 669.22(a).
   (e) Possess a yellowtail snapper smaller than the minimum size limit, as specified in § 669.23(a), or without its head, fins, and tail intact, as specified in § 669.23(b).
   (f) Fail to release a Nassau grouper or undersized yellowtail snapper with a minimum of harm, as specified in § 669.22(a) and 669.23(a).
   (g) Fish in the area during the time specified in § 669.21.
   (j) Fish with explosives or possess on board a fishing vessel any dynamite or similar explosive substance, as specified in § 669.24(b)(1).
   (k) Fish with poisons, drugs, other chemicals, or a powerhead as specified in § 669.24(b)(2) and (3).

4. Section 669.21 is revised to read as follows:

   § 669.21 Closed seasons.
   From December 1 through February 28, each year, fishing is prohibited in the area bounded by rhumb lines connecting the following points in the order listed:

<table>
<thead>
<tr>
<th>Point</th>
<th>Latitude</th>
<th>Longitude</th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>18°13.2'N</td>
<td>65°06.0'W</td>
</tr>
<tr>
<td>B</td>
<td>18°13.2'N</td>
<td>64°59.0'W</td>
</tr>
<tr>
<td>C</td>
<td>18°11.8'N</td>
<td>64°59.0'W</td>
</tr>
<tr>
<td>D</td>
<td>18°10.7'N</td>
<td>65°08.0'W</td>
</tr>
</tbody>
</table>

5. In § 669.22, the existing text is designated as paragraph (b) and a new paragraph (a) is added to read as follows:

   § 669.22 Harvest limitations.
   (a) Nassau grouper may not be harvested or possessed in or from the EEZ year round. A Nassau grouper caught in the EEZ must be released immediately with a minimum of harm.

6. Section 669.23 is revised to read as follows:

   § 669.23 Size limitations.
   (a) The minimum size limit for the harvest or possession of yellowtail snapper in or from the EEZ is 12 inches (30.48 centimeters) total length. An undersized yellowtail snapper caught in the EEZ must be released immediately with a minimum of harm.
   (b) A yellowtail snapper possessed in the EEZ must have its head, fins, and tail intact and a yellowtail snapper taken from the EEZ must have its head, fins, and tail intact through landing.

7. In § 669.24, a heading is added to paragraph (a), and paragraph (b) is revised to read as follows:

   § 669.24 Gear limitations.
   (a) Fish traps—(1) *
   (b) Explosives, poisons, and powerheads—(1) Explosives may not be used to fish for shallow-water reef fish in the EEZ. A vessel in the shallow-water reef fish fishery may not possess any dynamite or similar explosive substances on board.
   (2) Poison, drugs, or other chemicals may not be used to fish for shallow water reef fish in the EEZ.
   (3) A powerhead may not be used to fish for shallow-water reef fish in the EEZ.

8. Effective September 14, 1991, in § 669.24, paragraph (a)(1) is revised to read as follows:

   § 669.24 Gear limitations.
   (a) * * * (1) A fish trap used or possessed in the EEZ must have a minimum mesh size of 2 inches (5.08 centimeters) in the smallest dimension of the mesh opening.

[FR Doc. 90-25995 Filed 10-30-90; 4:06 pm]
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.

NUCLEAR REGULATORY COMMISSION

10 CFR Chapter I

Issuance of Quarterly Report on the Regulatory Agency

AGENCY: Nuclear Regulatory Commission.

ACTION: Issuance of regulatory agenda.

SUMMARY: The Nuclear Regulatory Commission (NRC) has issued the NRC Regulatory Agenda for the third quarter, July through September, of 1990. The agenda is issued to provide the public with information about NRC’s rulemaking activities. The Regulatory Agenda is a quarterly compilation of all rules on which the NRC has recently completed action or has proposed, or is considered action and of all petitions for rulemaking that the NRC has received that are pending disposition.

ADDRESSES: A copy of this report, designated NRC Regulatory Agenda (NUREG-0936) Vol. 9, No. 3, is available for inspection, and copying for a fee, at the Nuclear Regulatory Commission’s Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC.

In addition, the U.S. Government Printing Office (GPO) sells the NRC Regulatory Agenda. To purchase it, a customer may call (202) 275-2171 or write to Superintendent of Documents, U.S. Government Printing Office, Post Office Box 37082, Washington, DC 20013-7082.


Small Business Administration

13 CFR Part 107

Small Business Investment Companies; Portfolio Valuation

AGENCY: Small Business Administration.

ACTION: Proposed rule; extension of comment period.

SUMMARY: On September 27, 1990, SBA published in the Federal Register a proposed rule regarding the valuation of Small Business Investment Company (SBIC) portfolios companies, an independent public accountant must follow in performing an audit on an SBIC (See 55 FR 39421). That publication provided that comments would be received for a period ending October 29, 1990. The present notice extends the comment period pertaining to the proposed rule for an additional 30 days, to November 28, 1990 in order to provide more time for public comments.

DATES: Comments must be received no later than December 24, 1990.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 90-NM-194-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056. The applicable service information may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. Information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1901 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Pliny Brestel, Seattle Aircraft Certification Office, Airframe Branch, ANM-1205; telephone (206) 227-2703. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1901 Lind Avenue SW., Renton, Washington 98055-4056.

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to certain Boeing Model 757 series airplanes, which would require periodic inspections, repair if necessary, and eventual modification of the Number 4 left and right passenger door upper and lower hinge arm leaf springs to ensure proper opening of the door. This proposal is prompted by reports of fractured hanger arm leaf springs. This condition, if not corrected, could result in pieces of the fractured leaf spring jamming the door hinge arm and preventing the door from opening during an emergency evacuation.

DATES: Comments must be received no later than December 24, 1990.

Addresses: Send comments on the proposal to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 90-NM-194-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056. The applicable service information may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. Information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1901 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Pliny Brestel, Seattle Aircraft Certification Office, Airframe Branch, ANM-1205; telephone (206) 227-2703. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1901 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such
written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 90-NM-194-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

Two operators of Boeing Model 757 airplanes have reported instances in which the steel leaf springs on passenger door Number 4 had fractured. Investigation has revealed that the springs failed because of fatigue. A piece of broken leaf spring could jam the door hinge arm. This condition, if not corrected, could result in difficulty when opening the door, or could prevent the door from opening when required during an emergency evacuation.

The FAA has reviewed and approved Boeing Alert Service Bulletin 757-52A0049, dated July 5, 1990, which describes procedures for periodic inspections for cracked and broken upper and lower hinge arm leaf springs of the left and right Number 4 passenger doors, and repair, if necessary. The service bulletin also describes a modification, consisting of replacement of the upper and lower hinge arm steel leaf springs with titanium leaf springs for the left and right Number 4 passenger door; once this modification is accomplished, the periodic inspections are no longer necessary and may be terminated.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would require repetitive inspections of the Number 4 left and right passenger door upper and lower hinge arm leaf springs, and repair, if necessary; and eventual installation of the terminating modification; in accordance with the alert service bulletin previously described.

There are approximately 296 Model 757 series airplanes of the affected design in the worldwide fleet. It is estimated that 163 airplanes of U.S. registry would be affected by this AD. It would take approximately 1 manhour to accomplish the inspection and 12 manhours per airplane to accomplish the required modification actions. The average labor cost would be $40 per manhour. Required parts are estimated at $161 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $111,033.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) Is not a "major rule" under Executive Order 12921; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

A copy of the draft evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39
Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:


§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:


To ensure left and right passenger door Number 4 opening when required for emergency use, accomplish the following:
A. Prior to the accumulation of 2,000 flight cycles, or within the next 100 flight cycles after the effective date of this AD, whichever occurs later, inspect the left and right Number 4 passenger door upper and lower hinge arm leaf springs for cracks and fractures, in accordance with Boeing Alert Service Bulletin 757-52A0049, dated July 5, 1990. Replace cracked or fractured leaf springs prior to further flight, in accordance with Section III of the service bulletin.
B. Repeat the inspection required by paragraph A. of this AD at the following intervals:
1. For airplanes with less than 5,000 flight cycles at the time of the last inspection: accomplish the next inspection within the next 500 flight cycles.
2. For airplanes with 5,000 or more flight cycles at the time of the last inspection: accomplish the next inspection within the next 150 flight cycles.
C. Within the next 18 months after the effective date of this AD, replace the upper and lower hinge arm leaf springs with titanium leaf springs for the left and right Number 4 passenger door, in accordance with Section III., of Boeing Alert Service Bulletin 757-52A0049, dated July 5, 1990. Such replacement constitutes terminating action for the repetitive inspections required by this AD.
D. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.
Note: The request should be submitted directly to the Manager, Seattle ACO, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Seattle ACO.
E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1801 Lind Avenue SW., Renton, Washington.
Airworthiness Directives; British Aerospace Model BAe 146 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to certain British Aerospace Model BAe 146 series airplanes, which would require repetitive detailed visual inspections to detect cracks in the right and left wing outer butt straps at Rib 2 lower skin joint, and repair, if necessary. This proposal is prompted by comments submitted in response to this notice. The post card date will be time stamped and returned to the commenter.

DISCUSSION: The United Kingdom Civil Aviation Authority (CAA), in accordance with the existing provisions of a bilateral airworthiness agreement, has notified the FAA of an unsafe condition which may exist on certain British Aerospace Model BAe 146 series airplanes. There have been reports that, during production, some wing outer butt straps were installed over lower wing skins with chamfered lower skin edges. Fracturing of the joint edge against the inner face of the outer butt strap could result in failure of the butt strap and reduced structural capability of the wings.

The Proposed Amendment

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of the Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a “major rule” under Executive Order 12291, (2) is not a “significant rule” under DOT Regulatory Policies and Procedures (44 FR 11034, February 28, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the provisions of Section 21.29 of the Federal Aviation Regulatations as follows:

PART 39—[AMENDED]  

1. The authority citation for part 39 continues to read as follows:

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

British Aerospace: Applies to Model BAE 146 series airplanes with Serial Numbers E2133, E3134, E3135, E3137, E2139, E3141, E3145, E2146, E3151, and E3155; certificated in any category. Compliance is required as indicated, unless perviously accomplished.

To detect cracks and prevent failure of the butt strap and reduced structural capability of the wings, accomplish the following:

A. Prior to the accumulation of 12,000 landings, or within 30 days after the effective date of this AD, whichever occurs later, perform a detailed visual inspection of the right and left wing outer butt straps at Rib 2 lower wing skin joint, in accordance with British Aerospace Service Bulletin 57-6, dated June 6, 1990. Repeat this inspection thereafter at intervals not to exceed 5,000 landings or 4½ years since last inspection, whichever occur first.

B. If cracks are found as a result of the inspection required by paragraph A. of this AD, prior to further flight, repair, in a manner approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate.

Note: The request should be submitted directly to the Manager, Standardization Branch, ANM-113, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Manager, Standardization Branch, ANM-113.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to approve the accumulation of 5,000 landings or 4½ years since last inspection. The request should be submitted directly to the Manager, Standardization Branch, ANM-113, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Manager, Standardization Branch, ANM-113.

E. All persons affected by this directive are requested to submit a self-addressed, stamped post card on which the following statement is made: “Comments to Docket Number 90-NM-198-AD.” The post card will be date/time stamped and returned to the commenter.

14 CFR Part 39

[Docket No. 90-NM-198-AD]


AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to British Aerospace Model BAE/DH/HS/BH 125 series airplanes equipped with certain APC warming ovens, which would require an inspection to detect damaged wiring or thermostats, and replacement, if necessary; and the installation of an additional thermostat and a new switch to provide additional overheat protection. This proposal is prompted by reports of uncontrolled warming oven temperatures due to inadequate overheat protection. This condition, if not corrected, could result in overheating of the warming oven and a resultant fire.

DATES: Comments must be received no later than December 24, 1990.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-113, FAA, Northwest Mountain Region, 1601 Lind Avenue SW., Renton, Washington 98055-4056. The applicable service information may be obtained from British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041-0414. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. William Schroeder, Standardization Branch, ANM-113; telephone (206) 227-2148. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: “Comments to Docket Number 90-NM-198-AD.” The post card will be date/time stamped and returned to the commenter.

Discussion

The United Kingdom Civil Aviation Authority (CAA), in accordance with existing provisions of a bilateral airworthiness agreement, has notified the FAA of an unsafe condition which may exist on certain British Aerospace Model BAE/DH/HS/BH 125 series airplanes, equipped with Aircraft Products Company (APC) warming ovens having part numbers 255B-LH-28/115, 255B-RH-28/115, and 255-362. There have been reports of uncontrolled warming oven temperatures due to inadequate overheat protection. This condition, if not corrected, could result in the warming oven overheating and a subsequent fire.

British Aerospace has issued Service Bulletin 25-54-9758A&B, Revision 1, dated August 14, 1989, which describes procedures for an inspection to detect damage to the wiring and thermostats, and replacement, if necessary; and the installation of an additional thermostat and a new switch to provide additional overheat protection. The British Aerospace service bulletin references APC Service Bulletins 255D-25-002, Revision A, dated June 22, 1989, and 255-25-003, dated May 26, 1989, for additional instructions. The United Kingdom CAA has classified the British Aerospace service bulletin as mandatory.

This airplane model is manufactured in the United Kingdom and type certificated in the United States under...
the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on other airplanes of the same type design registered in the United States, an AD is proposed which would require an inspection to detect damage wiring and thermostats, and replacement, if necessary; installation of an additional thermostat; and replacement of a switch in the warming oven, in accordance with the service bulletins previously described.

It is estimated that 420 airplanes of U.S. registry would be affected by this AD, that it would take approximately 5 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. The estimated cost for required parts is $150 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $147,000.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is continued in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air Transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Federal Register / Vol. 55, No. 213 / Friday, November 2, 1990 / Proposed Rules 46221

Authority: 49 U.S.C. 1384(a), 1421 and 1423; 49 U.S.C. 106(g) [Final Rule, 54 FR 150, January 12, 1989]; and 14 CFR 11.80

§ 39-13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

British Aerospace: Applies to all Model BAe/ DHI/HJS/BH-125 series airplanes, equipped with Aircraft Products Company (APC) warming ovens having part numbers 2263-B-11-15, 25GB-RM-115, or 255-362, certified in any category. Compliance is required as indicated, unless previously accomplished.

To prevent a warming oven fire and to provide additional overheating protection, accomplish the following:
A. Within 60 days after the effective date of this AD, accomplish the following:
B. Within 60 days after the effective date of this AD, accomplish the following:

A. Inspect the wiring insulation inside the warming oven in accordance with British Aerospace Service Bulletin 25-54-978/4A&B, Revision 1, dated August 14, 1989. If the oven wiring or thermostat wiring is damaged, prior to further flight, replace the wiring and/or thermostat, as appropriate, in accordance with the service bulletin.

B. Modify the warming oven by installing an additional thermostat and a new switch, in accordance with British Aerospace Service Bulletin 25-54-978/4A&B, Revision 1, dated August 14, 1989.


B. An alternative means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate.

Note: The request should be submitted directly to the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.198 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to British Aerospace, PLC, P.O. Box 17414, Dulles International Airport, Washington, DC 20044-0114. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW, Renton, Washington.
environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 90-ASO-20." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Assistant Chief Counsel for Southern Region, room 652, 3400 Norman Berry Drive, East Point, Georgia 30344, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM’s

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, System Management Branch (ASO-530), Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM’s should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to §71.181 of part 71 of the Federal Aviation Regulations (14 CFR part 71) to revoke the Aurora, NC, transition area. The transition area was designed for protection of IFR aeronautical operations at the Lee Creek Airport. An NDB was planned which would have supported an instrument approach procedure. The NDB was never commissioned. In the absence of existing or planned IFR aeronautical operations, no requirement exists for the transition area. Section 71.181 of part 71 of the Federal Aviation Regulations was published in FAA Handbook 7400.6F dated January 2, 1990.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) Is not a “major rule” under Executive Order 12291; (2) is not a “significant rule” under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

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

Authority: 49 U.S.C. 1346(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 108(g) (Revised Public Law 97-449, January 12, 1983); 14 CFR 11.69.

2. Section 71.181 is amended as follows:

Aurora, NC [Removed]

Issued in East Point, Georgia, on October 23, 1990.

Don Cass,
Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 90-26016 Filed 11-1-90; 8:45 am]
BILLING CODE 4910-13-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 408

BPO-078-P

RIN 0938-AD97

Medicare Program; Grace Period and Termination of Nonpayment of Supplementary Medical Insurance (Part B) Premiums for Insured and Uninsured Persons

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed rule.

SUMMARY: This rule proposes to change the termination date for Supplementary Medical Insurance (Part B) enrollees who fail to pay their Medicare Part B premiums. Presently, there is a 90 day grace period for the enrollee during which he or she may pay all overdue premiums and continue Part B coverage uninterrupted. The grace period begins at different times depending on whether the individual is or is not eligible for monthly social security, railroad retirement or civil services retirement benefits. This rule would establish a more uniform timeframe for determining the 90 day grace period.

DATES: To ensure consideration, comments should be received at the appropriate address, as provided below, no later than 5 p.m. on January 2, 1991.

ADDRESSES: Mail comments to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: BPO-078-P, P.O. Box 26676, Baltimore, Maryland 21207.

If you prefer you may deliver your comments to one of the following addresses:


Please mail a copy of comments on information collection requirements to: Office of Management and Budget, Office of Information and Regulatory Affairs, Attn: Allison Heron, room 3206, New Executive Office Building, Washington, DC 20503.

Due to staffing and resource limitations, we cannot accept facsimile (FAX) copies of comments.

In commenting, please refer to file code BPO-078-P. Comments received timely will be available for public inspection as they are received, generally beginning approximately three weeks after publication of a document, in room 309-G of the Department's offices at 200 Independence Ave., SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: 202-245-7890).

FOR FURTHER INFORMATION CONTACT: Paul Boerschel (301) 966-5691.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1831 of the Social Security Act [the Act] established the Supplementary Medical Insurance (SMI) Program for the Aged and Disabled as a voluntary
Medicare Part B, pays for physicians' insurance benefits. SMI, also known as an insurance program to provide medical payments matched by funds appropriated by the Federal Government. Under section 1840 of the Act, Medicare Part B enrollees pay their premiums either by having the premium deducted from their monthly social security, railroad retirement, or civil service retirement check or by a direct payment to HCFA as prescribed in regulations. If an enrollee receives monthly benefits, he or she does not have the option of paying by direct remittance to avoid deductions. If an enrollee's monthly benefits are insufficient to cover the amount of the premium, the enrollee is billed for the difference by the Social Security Administration, acting as an agent for HCFA. Premiums for other enrollees are paid by direct remittance to HCFA or its agents. Our regulations at 42 CFR 408.6 describe the several methods and priorities for premium payment.

Section 1838(b) of the Act requires us to establish in regulations when an individual's coverage ends because of nonpayment of premiums. It also provides a grace period for payment of overdue premiums without loss of coverage. The regulations covering this provision are located in 42 CFR 408.8.

This document proposes changes concerning enrollees who pay their premiums directly to HCFA. These enrollees may be divided into four groups:

1. Enrollees who meet the eligibility requirements to receive monthly social security cash benefits but their cash benefits are suspended;
2. Enrollees whose monthly benefit is less than the premium;
3. Enrollees who do not have sufficient qualifying employment to receive monthly cash benefits; and
4. Enrollees who are eligible for monthly benefits but who chose to file for Medicare coverage only.

II. Premium Payment Procedures

All individuals who are required to make full premium payments, i.e., those who do not have the total premium automatically deducted from their monthly cash benefits, are billed by HCFA either on a monthly or quarterly basis. The billing statement indicates the date the payment is due and notifies individuals that those who fail to pay their premiums will be terminated from the Part B program for nonpayment of premiums. Section 1838(b) of the Act and our regulations at 42 CFR 408.8 provide for a grace period not to exceed 90 days (if good cause is established, the grace period may be extended up to 190 days). As long as the enrollee pays all overdue premiums before the end of the grace period, Part B coverage continues uninterrupted. During the grace period, HCFA sends out additional notices advising enrollees who have not paid their premiums as scheduled that they will be terminated if payment is not submitted by the end of the grace period.

Section 1840(c) of the Act provides that if an individual's monthly cash benefit is less than the monthly premium, then the enrollee may pay the difference to retain Part B coverage. Our regulations at 42 CFR 408.63(a) provide that the Social Security Administration (SSA) notifies enrollees at the beginning of SMI entitlement and at the beginning of each succeeding calendar year concerning the amount of benefits payable and total Part B premiums due for the year. SSA bills the enrollee for the difference between benefits payable and premiums due. Section 408.63(b) provides that these enrollees be notified that they will be terminated for nonpayment of premiums on April 30 of overdue premiums owed on that date equal or exceed the amount due for 3 months of premiums for the prior year. Our regulations at 42 CFR 408.63(a)(1) and (2) specify the ending date of the grace period for enrollees who are not receiving monthly benefits depending on whether premium payments are made monthly or quarterly. Although expressed differently, the length of the grace period is the same, i.e. enrollees are allowed to be delinquent for up to 3 month in premiums. For all initial premium payments (monthly or quarterly) and subsequent monthly payments, the grace period ends on the last day of the third month after the billing month. For subsequent quarterly payments, the grace period ends with the last day of each 3-month period for which the enrollee is billed.

For enrollees with suspended monthly cash benefits, under 42 CFR 408.6(a)(3) the grace period ends on the last day of the fourth month after the end of the enrollee's taxable year. Since most individuals' taxable year is the calendar year, termination usually occurs on April 30.

Under 42 CFR 408.6(a)(4) the grace period for those enrollees whose monthly cash benefit is less than their monthly premium payment ends on April 30 of the year following the calendar year for which the premiums are due.

Because adjustments to premium payment may occur after the close of a beneficiary's taxable year, our regulations at 42 CFR 408.47 discuss various situations involving overdue premiums and give examples of termination dates.

Under existing regulations at § 408.63, an enrollee whose monthly benefits are less than the monthly premiums receives a notice from SSA at the beginning of entitlement and the beginning of each succeeding calendar year. The notice contains the following information: The amount of benefits payable; the premiums due for the same period of time; and the difference between the two. SSA bills the difference to the enrollee. SSA also notifies the enrollee of any arrearages for the prior calendar year and informs the enrollee that if the arrearages for the prior year as of April 30 are equal to or greater than 3 months of premiums and remain unpaid, the enrollee will be terminated from the program effective that date.

III. Provisions of the Proposed Regulations

We no longer believe that we should use receipt or nonreceipt of monthly cash benefits to provide different termination dates for Part B enrollees who are delinquent in the payment of premiums. The termination date for enrollees receiving monthly cash benefits initially was established based on our assumption that arrearages owed by an enrollee with suspended monthly cash benefits would be collected by SSA for HCFA from the first monthly benefit check once the enrollee stops working. The monthly premium amounts initially were only several dollars. It was our belief that, for most enrollees with suspended monthly cash benefits, the suspension was a temporary situation and they would start receiving full benefits within the first or second year after becoming eligible to receive cash benefits. For the enrollees whose monthly benefits are less than their premium payments, the amount of the differences is small; therefore, we granted them the same grace period as individuals whose cash benefits were suspended. At the same time, we did not believe arrearages should be allowed to accrue for enrollees who were not receiving monthly benefits since we could not offset the amount against other Federal benefits.

Currently, our regulations at § 408.63(a)(3) provide that the grace period for enrollees with suspended monthly benefits ends on the last day of the fourth month following the end of the individual's taxable year. This
affords some individuals an opportunity to utilize up to 16 months (e.g., January
1989-April 1990) of Part B medical
insurance protection without paying any
premiums, resulting in delayed income
to the Medicare trust fund. In case the
individual should die without receiving
retirement benefits, collection of the
premiums from the estate or other
Federal benefits is not assured.

We propose to revise our regulations at § 408.47(a) to use consistent
termology concerning when the grace
date period ends and to eliminate the
possibility of a long period (up to 16
months) of coverage without payment
for those insured enrollees whose
monthly benefits have been suspended.
Under our proposed change, the grace
period for Part B enrollees who make
Part B premium payments directly to
HCFA, whether on a monthly or
quarterly basis, would end on the last
day of the third month following the
billing month with one exception. There
would be no change in the grace period
for those enrollees specified in § 408.63
whose monthly benefits are less than
the monthly premiums because their
termination is already tied to the
equivalent of a 3-month delinquency.

Our regulations at § 408.47 specify
procedures for billing and payment of
overdue premiums for certain enrollees
who have overdue premiums for a
closed taxable year. This includes
enrollees whose social security benefits
are suspended or a request for SMI
enrollment was adjudicated with
coverage retroactive to the enrollee’s
previous taxable year. Our proposal to
eliminate waiting until the end of an
enrollee’s taxable year to determine the
start of the 90-day grace period for
Medicare Part B enrollees would make
this section obsolete. Therefore, we
propose to remove and reserve § 408.47.
Also, we propose to make a conforming
change to § 408.50(b)(2) by deleting all
reference to use of the closed taxable
taxable year as a determining factor in
establishing the grace period.

Finally, we propose several technical
amendments to correct cross-references
in §§ 408.1 and 408.10 caused by error or
revision of cited references.

IV. Regulatory Impact Statement
A. Executive Order 12291

Executive order 12291 (E.O 12291)
requires us to prepare and publish a
regulatory impact analysis for any
proposed rule that meets one of the E.O.
criteria for a "major rule"; that is, that
would be likely to result in—

• An annual effect on the economy of
  $100 million or more;
  • A major increase in costs or prices
    for consumers, individual industries,
    Federal, State, or local government
    agencies, or geographic regions; or
  • Significant adverse effects on
    competition, employment, investment,
    productivity, innovation, or on the
    ability of United States-based
    enterprises to compete with foreign-
    based enterprises in domestic or export
    markets.

The purpose of this proposed rule is to
establish consistent timeframes for
determining when the grace period
begins for Medicare beneficiaries
enrolled in Part B who make full
premium payments to HCFA, regardless
of how they pay their Part B premium.
This proposed rule may affect the
entitlement status of approximately
344,000 individuals who are being billed
for premiums. If these individuals fail to
take action regarding their overdue
premiums within the proposed 90 day
close date period, they will lose their
entitlement to Part B coverage at that
time, rather than, perhaps, months later.
For those who lose their Part B
titlement, the economic consequences
may be significant, depending on their
need for health care services and
availability of other insurance.

However, we are unable to determine
how many individuals would fail to
meet the payment deadline, and how
severe the effect of failing to pay timely
would be on those individuals. Savings
to the Medicare program that we may
achieve as a result of this proposed rule
are expected to be insignificant.

Since we do not believe this rule
would meet any of the criteria for a
"major rule" specified in E.O. 12291, we
have not prepared a regulatory impact
analysis.

B. Regulatory Flexibility Act

We generally prepare a regulatory
flexibility analysis that is consistent
with the Regulatory Flexibility Act
(RFA) (5 U.S.C. 601 through 612) unless
the Secretary certifies that a proposed
rule would not have a significant
economic impact on a substantial
number of small rural hospitals.

V. Paperwork Reduction Act of 1980

Section 408.50(b)(2) of this proposed
rule contains information collection
requirements that are subject to review
by the Office of Management and
Budget (OMB) under the authority of the
Paperwork Reduction Act of 1980 (44
U.S.C. 3501 et seq.). A notice will be
published in the Federal Register when
approval is obtained. Other
organizations and individuals desiring
to submit comments on the information
collection requirement should follow the
directions in the ADDRESS section of
this preamble.

VI. Response to Comments

Because of the large number of
comments we receive on proposed
regulations, we cannot acknowledge or
respond to them individually. However,
in preparing the final rule we will
consider all comments and respond to
them in the preamble of that rule.

List of Subjects in 42 CFR Part 408
Administrative practice and
procedure, Health insurance, Medicare, Premiums.
§ 408.3 Grace period and termination date.

(a) Grace period. (1) For all initial premium payments (monthly or quarterly), and subsequent monthly or quarterly payments, the grace period ends with the last day of the third month after the billing month.

§ 408.47 [Removed and reserved]

4. Section 408.47 is removed and reserved.

5. In § 408.50, paragraph (b)(2) is revised and paragraph (c) is removed, to read as follows:

§ 408.50 When premiums are considered paid.

(b) Payment within the grace period.

(a) Annual earnings report or other report submitted during the grace period shows a benefit is due. (i) Before the end of the grace period, the enrollee submits a report clearly showing that monthly cash benefits, previously withheld, are payable; and (ii) Those benefits are sufficient to permit deduction of the full amount of the overdue premiums.

Technical Amendments

§ 408.1 [Amended]

6. In § 408.1(b), the reference to "45 CFR part 430" is revised to read "45 CFR part 30".

§ 408.10 [Amended]

7. In § 408.10(b)(2)(ii), the reference to "§ 408.8(a)(3)" is revised to read "§ 408.8(a)".

(Catalog of Federal Domestic Assistance Program No. 13.774, Medicare-Supplementary Medical Insurance Program)

Dated: June 28, 1990.

Gail R. Wilensky,
Administrator, Health Care Financing Administration.

Approved: September 17, 1990.

Louis W. Sullivan,
Secretary.

[Federal Register Vol. 55, No. 213 / Friday, November 2, 1990 / Proposed Rules]

FEDERAL EMERGENCY MANAGEMENT AGENCY

Federal Insurance Administration; Proposed Flood Elevation Determinations

44 CFR Part 67

[Docket No. FEMA-7004]

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed modified base (100-year) flood elevations listed below for selected locations in the nation. These base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program.

DATES: The period for comment will be ninety (90) days following the second publication of the proposed rule in a newspaper of local circulation in each community.

ADDRESSES: See table below.

FOR FURTHER INFORMATION CONTACT:


SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the proposed determinations of modified base (100-year) flood elevations for selected locations in the nation, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 960, which added section 1393 to


These elevations, together with the floodplain management measures required by § 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed modified elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

Pursuant to the provisions of 5 U.S.C. 609(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that the proposed modified flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. A flood elevation determination under section 1363 forms the basis for new local ordinances, which, if adopted by a local community, will govern future construction within the floodplain area. The local community voluntarily adopts floodplain ordinances in accord with these elevations. Even if ordinances are adopted in compliance with Federal standards, the elevations prescribe how high to build in the floodplain and do not proscribe development. Thus, this action only forms the basis for future local actions. It imposes no new requirement; or itself it has no economic impact.

List of Subjects in 44 CFR Part 67

Flood insurance, Floodplains.

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


The proposed modified base flood elevations for selected locations are:
## Proposed Modified Base Flood Elevations

<table>
<thead>
<tr>
<th>State</th>
<th>City/town/county</th>
<th>Source of flooding</th>
<th>Location</th>
<th>#Depth in feet above ground *Elevation in feet (NGVD)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Arkansas</td>
<td>Fayetteville, City,</td>
<td>Clabber Creek</td>
<td>Approximately 150 feet downstream of</td>
<td>Existing: None</td>
</tr>
<tr>
<td></td>
<td>Washington County</td>
<td></td>
<td>corporate limits.</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Hamstring Creek</td>
<td>Downstream corporate limits</td>
<td>Existing: None</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Approximately 0.3 mile upstream of State</td>
<td>Existing: None</td>
</tr>
<tr>
<td></td>
<td></td>
<td>South Fork Hamstring Creek</td>
<td>Confluence with Hamstring Creek</td>
<td>Existing: None</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>At upstream side of Giles Road</td>
<td>Existing: None</td>
</tr>
<tr>
<td>Arkansas</td>
<td>Fayetteville, City,</td>
<td>Clear Creek</td>
<td>Approximately .1 mile downstream of corporate</td>
<td>Existing: *1,168</td>
</tr>
<tr>
<td></td>
<td>Washington County</td>
<td></td>
<td>limits.</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>At downstream side of confluence of Johnson</td>
<td>Existing: *1,172</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>County Road.</td>
<td></td>
</tr>
<tr>
<td>Arkansas</td>
<td>Johnson, City,</td>
<td>Clear Creek</td>
<td>Approximately 100 feet downstream of</td>
<td>Existing: None</td>
</tr>
<tr>
<td></td>
<td>Washington County</td>
<td></td>
<td>John-son Road.</td>
<td></td>
</tr>
<tr>
<td>Arkansas</td>
<td>Mountainburg, City,</td>
<td>Warloop Creek</td>
<td>At the U.S. Route 71 and State Route 282</td>
<td>Existing: *751</td>
</tr>
<tr>
<td></td>
<td>Crawford County</td>
<td></td>
<td>Approximately 220 feet upstream of U.S. Route</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>71 and State Route 282.</td>
<td></td>
</tr>
<tr>
<td>Arkansas</td>
<td>Mulberry City, Crawford</td>
<td>Vine Prairie Creek Tributary</td>
<td>Approximately 0.3 mile upstream of U.S. Route</td>
<td>Existing: None</td>
</tr>
<tr>
<td></td>
<td>County</td>
<td></td>
<td>64.</td>
<td></td>
</tr>
<tr>
<td>Arkansas</td>
<td>Springdale, City,</td>
<td>Tributary 1</td>
<td>Approximately 30 feet downstream of Burlington</td>
<td>Existing: *1,322</td>
</tr>
<tr>
<td></td>
<td>Washington and Benton</td>
<td></td>
<td>Northern Railroad.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Counties</td>
<td>Tributary 5</td>
<td>Approximately 1 mile upstream of Old Missouri</td>
<td>Existing: *1,401</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Road.</td>
<td></td>
</tr>
<tr>
<td>Arkansas</td>
<td>Van Buren, City,</td>
<td>Arkansas River</td>
<td>At downstream corporate limits.</td>
<td>Existing: *410</td>
</tr>
<tr>
<td></td>
<td>Crawford County</td>
<td></td>
<td>Approximately 1,000 feet downstream of the</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Lee Creek</td>
<td>upstream corporate limits.</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>At the confluence with the Arkansas River</td>
<td>Existing: *414</td>
</tr>
<tr>
<td>Arkansas</td>
<td>West Fork, City,</td>
<td>West Fork White River</td>
<td>Approximately 0.97 river mile downstream of</td>
<td>Existing: *412</td>
</tr>
<tr>
<td></td>
<td>Washington County</td>
<td></td>
<td>Interstate Route 40 (eastbound).</td>
<td></td>
</tr>
</tbody>
</table>

Maps available for inspection at the City Hall, 113 W. Mountain Street, Fayetteville, Arkansas. Send comments to the Honorable William V. Martin, Mayor of the City of Fayetteville, Washington County, 113 Mountain Street, Fayetteville, Arkansas 72701.

Maps available for inspection at the City Hall, 113 W. Mountain Street, Fayetteville, Arkansas. Send comments to the Honorable Tony Bongo, Mayor of the City of Johnson, Washington County, P.O. Box 396, Johnson, Arkansas 72741.

Maps available for inspection at the City Hall, 113 W. Mountain Street, Fayetteville, Arkansas. Send comments to the Honorable Robert Duggin, Mayor of the City of Mountainburg, Crawford County, P.O. Box 347, Mountainburg, Arkansas 72646.

Maps available for inspection at the City Hall, 2nd and Main Street, Mulberry Arkansas. Send comments to the Honorable Arnold Feller, Mayor of the City of Mulberry, Crawford County, P.O. Box 448, Mulberry, Arkansas 72947.

Maps available for inspection at the City Hall, 201 North Spring Street, Springdale, Arkansas. Send comments to The Honorable Charles McKinney, Mayor of the City of Springdale, Washington and Benton Counties, 201 North Spring Street, Springdale, Arkansas 72764.

Maps available for inspection at the City Hall, 1000 E. Main, Van Buren, Arkansas. Send comments to The Honorable Robert Bell, Mayor of the City of Van Buren, Crawford County, P.O. Box 688, Van Buren, Arkansas 72956.

Maps available for inspection at the City Hall, 201 North Spring Street, Springdale, Arkansas. Send comments to The Honorable Charles McKinney, Mayor of the City of Springdale, Washington and Benton Counties, 201 North Spring Street, Springdale, Arkansas 72764.

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Maps available for inspection at the City Hall, 1000 E. Main, Van Buren, Arkansas. Send comments to The Honorable Robert Bell, Mayor of the City of Van Buren, Crawford County, P.O. Box 688, Van Buren, Arkansas 72956.
<table>
<thead>
<tr>
<th>State</th>
<th>City/town/county</th>
<th>Source of flooding</th>
<th>Location</th>
<th>#Depth in feet above ground</th>
<th>Existing</th>
<th>Modified</th>
</tr>
</thead>
<tbody>
<tr>
<td>Arizona</td>
<td>City of Avondale, Maricopa County.</td>
<td>Agua Fria River</td>
<td>Approximately 350 feet downstream of Litchfield Road.</td>
<td>*924</td>
<td>*924</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>At Broadway Road</td>
<td>*934</td>
<td>*935</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>At Lower Buckeye Road</td>
<td>*950</td>
<td>*950</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Approximately 150 feet downstream of Buckeye Road.</td>
<td>*962</td>
<td>*962</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>At Van Buren Street</td>
<td>*973</td>
<td>*971</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Approximately 875 feet upstream of Interstate 10 westbound.</td>
<td>*984</td>
<td>*981</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>At McDowell Road</td>
<td>*985</td>
<td>*985</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>At Thomas Road</td>
<td>*1,000</td>
<td>*999</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Approximately 530 feet upstream of Indian School Road.</td>
<td>*1,012</td>
<td>*1,010</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Shallow flooding at approximately 200 feet upstream of Buckeye Road along east bank of Agua Fria River.</td>
<td>*965</td>
<td>*964</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Shallow flooding at approximately 250 feet upstream of Buckeye Road along West bank of Agua Fria River.</td>
<td>*965</td>
<td>*963</td>
<td></td>
</tr>
<tr>
<td>Arizona</td>
<td>City of Avondale, Maricopa County.</td>
<td>Agua Fria River</td>
<td>Approximately 1,320 feet downstream of Glendale Avenue.</td>
<td>*1,049</td>
<td>*1,050</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>At Northern Avenue</td>
<td>*1,049</td>
<td>*1,050</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>At Olive Avenue</td>
<td>*1,079</td>
<td>*1,068</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Approximately 1,700 feet upstream of Olive Avenue.</td>
<td>*1,062</td>
<td>*1,085</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>At Peoria Avenue</td>
<td>*1,097</td>
<td>*1,094</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Agua Fria River West Split Flow</td>
<td>Approximately 1,500 feet downstream of Grand Avenue.</td>
<td>*1,117</td>
<td>*1,119</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Approximately 1,200 feet upstream of Grand Avenue.</td>
<td>*1,133</td>
<td>*1,131</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>At 115th Avenue</td>
<td>*1,138</td>
<td>*1,137</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Approximately 2,100 feet upstream of Bell Road.</td>
<td>*1,169</td>
<td>*1,165</td>
<td></td>
</tr>
<tr>
<td>Arizona</td>
<td>City of El Mirage, Maricopa County.</td>
<td>Agua Fria River</td>
<td>Approximately 0.9 mile downstream of Grand Avenue.</td>
<td>*1,110</td>
<td>*1,111</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Approximately 0.5 mile downstream of Grand Avenue.</td>
<td>*1,115</td>
<td>*1,118</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Approximately 0.3 mile upstream of Grand Avenue.</td>
<td>*1,133</td>
<td>*1,131</td>
<td></td>
</tr>
<tr>
<td>Arizona</td>
<td>City of Glendale, Maricopa County.</td>
<td>Agua Fria River</td>
<td>Approximately 0.5 mile upstream of confluence with New River.</td>
<td>*1,036</td>
<td>*1,039</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Approximately 1,320 feet downstream of Glendale Avenue.</td>
<td>*1,049</td>
<td>*1,050</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Approximately 1,700 feet upstream of Olive Road.</td>
<td>*1,085</td>
<td>*1,085</td>
<td></td>
</tr>
<tr>
<td>Arizona</td>
<td>City of Mesa, Maricopa County.</td>
<td>Salt River</td>
<td>At State Highway 87</td>
<td>*1,217</td>
<td>*1,217</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Approximately 2 miles upstream of State Highway 87.</td>
<td>None</td>
<td>*1,233</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>At North Gilbert Road</td>
<td>None</td>
<td>*1,254</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Approximately 2 miles upstream of North Gilbert Road.</td>
<td>None</td>
<td>*1,272</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Approximately 4 miles upstream of North Gilbert Road.</td>
<td>None</td>
<td>*1,286</td>
<td></td>
</tr>
<tr>
<td>Arizona</td>
<td>City of Peoria, Maricopa County.</td>
<td>Agua Fria River</td>
<td>At Northern Avenue</td>
<td>*1,065</td>
<td>*1,062</td>
<td></td>
</tr>
<tr>
<td>State</td>
<td>City/town/county</td>
<td>Source of flooding</td>
<td>Location</td>
<td>Existing</td>
<td>Modified</td>
<td></td>
</tr>
<tr>
<td>-------</td>
<td>-----------------</td>
<td>-------------------</td>
<td>----------</td>
<td>----------</td>
<td>----------</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td><strong>Approximately 1,700 feet upstream of Olive Road.</strong></td>
<td><strong>1,082</strong></td>
<td><strong>1,085</strong></td>
<td></td>
</tr>
<tr>
<td>Arizona</td>
<td>City of Prescott, Yavapai County.</td>
<td>Granite Creek</td>
<td><strong>Approximately 6.5 miles upstream of West Rose Garden Avenue.</strong></td>
<td>None</td>
<td><strong>1,313</strong></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td><strong>Approximately 1.5 miles downstream of Beardsley Canal.</strong></td>
<td>None</td>
<td><strong>1,315</strong></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td><strong>Approximately 2 miles upstream of Granite Reef Aqueduct.</strong></td>
<td>None</td>
<td><strong>1,378</strong></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td><strong>Approximately 0.8 miles upstream of Morris-town-New River Highway.</strong></td>
<td>None</td>
<td><strong>1,425</strong></td>
<td></td>
</tr>
</tbody>
</table>

Maps are available for review at the Engineering Department, 8320 West Madison Street, Peoria, Arizona.

Send comments to The Honorable Ron Travers, Mayor, City of Peoria, P.O. Box C-4038, Peoria, Arizona 85380.

| Arizona | Town of Surprise, Maricopa County. | Agua Fria River | **Approximately 2,100 feet upstream of Bell Road.** | **1,169** | **1,165** |
|         |                               |                 | **Approximately 1 mile downstream of West Rose Garden Avenue.** | **1,191** | **1,186** |

Maps are available for review at the Office of the Town Clerk, 12604 Sante Fe Drive, Surprise, Arizona.

Send comments to The Honorable Ray Villanueva, Mayor, Town of Surprise, 12604 Sante Fe Drive, Surprise, Arizona 85374.

| Arizona | City of Tempe, Maricopa County. | Salt River | **At Scottsdale Road.** | **1,163** | **1,163** |
|         |                               |             | **Approximately 740 feet upstream of Hayden Road.** | **1,173** | **1,174** |
|         |                               |             | **Approximately 1,700 feet upstream of Hayden Road.** | **1,174** | **1,174** |

Maps are available for review at the Public Works Department, 31 East Fifth Street, Tempe, Arizona.

Send comments to The Honorable Harry Mitchell, Mayor, City of Tempe, 31 East Fifth Street, Tempe, Arizona 85281.

| Arizona | Town of Youngtown, Maricopa County. | Agua Fria River | **Approximately 1,700 feet upstream of Olive Road.** | **1,082** | **1,085** |
|         |                               |                 | At Peoria Avenue | **1,097** | **1,094** |
|         |                               |                 | **Approximately 1,500 feet downstream of Grand Avenue.** | **1,117** | **1,119** |
|         |                               |                 | **Approximately 0.9 mile downstream of Grand Avenue.** | **1,110** | **1,111** |
|         |                               |                 | **Approximately 0.5 mile downstream of Grand Avenue.** | **1,115** | **1,118** |
|         |                               |                 | **Approximately 0.3 mile upstream of Grand Avenue.** | **1,133** | **1,131** |

Maps are available for review at the Department of Public Works, 12030 Clubhouse Square, Youngtown, Arizona.

Send comments to The Honorable James Weaver, Mayor, Town of Youngtown, 12030 Clubhouse Square, Youngtown, Arizona 85303.

| Colorado | City of Delta, Delta County. | Gunnison River | At confluence of Uncompahgre River | **4,218** | **4,219** |
|          |                               |                | **Approximately 2,400 feet upstream of confluence with Uncompahgre River.** | **4,922** | **4,923** |
|          |                               |                | **Approximately 2,550 feet downstream of U.S. Highway 50 southbound.** | **4,927** | **4,927** |
|          |                               |                | **At U.S. Highway 50 northbound.** | **4,933** | **4,931** |

Maps are available for review at City Hall, 360 Main Street, Delta, Colorado.

Send comments to The Honorable Karen Easter, Mayor, City of Delta, City Hall, P.O. Box 19, Delta, Colorado 81416.

| Colorado | Delta County, Unincorporated Areas. | Gunnison River | **Approximately 4,000 feet upstream of confluence with Uncompahgre River.** | **4,925** | **4,926** |
|          |                               |                | **Approximately 1,500 feet downstream of U.S. Highway 50 southbound.** | **4,930** | **4,930** |
|          |                               |                | **Just upstream of U.S. Highway 50 northbound.** | **4,934** | **4,931** |
|          |                               |                | **Approximately 4,600 feet upstream of U.S. Highway 50 northbound.** | **4,940** | **4,940** |
**PROPOSED MODIFIED BASE FLOOD ELEVATIONS—Continued**

<table>
<thead>
<tr>
<th>State</th>
<th>City/town/county</th>
<th>Source of flooding</th>
<th>Location</th>
<th>Existing</th>
<th>Modified</th>
</tr>
</thead>
<tbody>
<tr>
<td>Louisiana</td>
<td>Florien, Village, Sabine Parish.</td>
<td>Mickiff Creek</td>
<td>At downstream corporate limits</td>
<td>*241</td>
<td>*243</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Approximately 600 feet upstream of U.S. Route 171.</td>
<td>*251</td>
<td>*252</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Louisiana</td>
<td>Many, Town, Sabine Parish.</td>
<td>Harpoon Bayou</td>
<td>Approximately 1,300 feet downstream of U.S. Route 171.</td>
<td>None</td>
<td>*214</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Approximately 1,800 feet upstream of U.S. Route 171.</td>
<td>None</td>
<td>*219</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Approximately .5 mile downstream of State Route 1217.</td>
<td>None</td>
<td>*226</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Approximately 2,000 feet downstream of State Route 1217.</td>
<td>None</td>
<td>*237</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Approximately .6 mile downstream of Fairground Street.</td>
<td>None</td>
<td>*219</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>At downstream side of U.S. Route 171.</td>
<td>None</td>
<td>*236</td>
</tr>
<tr>
<td>Louisiana</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>New Jersey</td>
<td>Riverton, Borough, Burlington County.</td>
<td>Pompton Creek</td>
<td>Approximately .3 mile upstream of Broad Street &amp; CONRAIL.</td>
<td>*10</td>
<td>*11</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>At upstream corporate limits.</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Between Elm and Linden Streets north of Fourth Street.</td>
<td>*10</td>
<td>*11</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>None</td>
<td>*10</td>
</tr>
<tr>
<td>Texas</td>
<td>Bryan, City, Brazos County.</td>
<td>Burton Creek Tributary D</td>
<td>At confluence with Burton Creek</td>
<td>*269</td>
<td>*268</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>At approximately 800 feet upstream of confluence with Burton Creek.</td>
<td>*292</td>
<td>*290</td>
</tr>
<tr>
<td>Texas</td>
<td>Denton County, Unincorporated Areas.</td>
<td>Timber Creek</td>
<td>At the upstream corporate limits of the Town of Double Oak.</td>
<td>*629</td>
<td>*629</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Approximately 225 feet upstream of the upstream corporate limits of the Town of Double Oak.</td>
<td>*629</td>
<td>*628</td>
</tr>
</tbody>
</table>

Maps available for review at the Delta County Planner’s Office, 501 Palmer Street, Delta, Colorado.

Send comments to the Honorable Robert Watson, Chairman, Delta County Board of Commissioners, 501 Palmer Street, Delta, Colorado 81416.

Maps available for inspection at the Village Hall, Florien, Louisiana.

Send comments to The Honorable John Manasco, Mayor of the Village of Florien, Sabine Parish, P.O. Box 68, Florien, Louisiana 71426.

Maps available for inspection at the Town Hall, San Antonio Avenue, Many, Louisiana.

Send comments to The Honorable Kenneth Freeman, Mayor of the Town of Many, Sabine Parish P.O. Box 1330, Many, Louisiana 71449.

Maps available for inspection at the Riverton Municipal Building, 505 A Howard Street, Riverton, New Jersey.

Send comments to The Honorable Walter E. Engle, Mayor of the Borough of Riverton, Burlington County, P.O. Box 157, Riverton, New Jersey 08077.

Maps available for inspection at the City Hall, 300 S. Texas Avenue, Bryan, Texas.

Send comments to The Honorable Marvin Tate, Mayor of the City of Bryan, Brazos County, P.O. Box 1000, Bryan, Texas 77805.

Maps available for inspection at 110 West Hickory, Denton, Texas.

Send Comments to The Honorable Vic Burgess, Denton County Judge, 110 West Hickory, Denton, Texas 76201.

Maps available for inspection at the Engineering Department, Two Civic Center Plaza, El Paso, Texas.

Send comments to The Honorable Suzanne S. Azar, Mayor of the City of El Paso, El Paso County, Two Civic Center Plaza, El Paso, Texas 79901.
FOR FURTHER INFORMATION CONTACT:
Henry Straube, Mass Media Bureau, (202) 254-3394.

SUPPLEMENTARY INFORMATION:
List of Subjects in 47 CFR Part 73
Radio broadcasting.

Additional Study To Demonstrate Effect on an AM Channel by the Migration of a Single Station to the Expanded Band (MM Docket 87-267)

The Mass Media Bureau has conducted an additional study in an effort to supplement certain data which were presented in the Commission's Notice of Proposed Rule Making (NPRM) (MM Docket No. 87-267). That NPRM addressed the review of the technical assignment criteria for the AM broadcast service.

The new study, shown below as appendix 3A, is similar to appendix 3 of the NPRM which used an individual station on a particular frequency to illustrate the effects of the expanded band migration process. Recognizing that such a study may not be representative of all cases, the new study was conducted to further demonstrate the benefits of the migration process. A different frequency and a new migration candidate were selected for this new study, which reveals a more substantial reduction of interference on the subject frequency than that indicated in the previous example in appendix 3. It appears that the migration process could provide added interference reduction in the existing AM band since it is anticipated that more than one station on each channel would move to the expanded band once the process is fully implemented. This additional study may be helpful in developing comments in response to the NPRM. For further information on this matter, contact Henry A. Straube at (202) 254-3394.

APPENDIX 3A
Further Illustration of AM Interference Reduction Resulting from Migration of a Station from the Existing AM Band to the Expanded Portion of the AM Band

The following table demonstrates the potential for improvement which could be achieved on an AM channel during nighttime hours by the movement of one station from a frequency within the existing AM band to one of the frequencies within the expanded band, 1605 kHz to 1705 kHz. The situation presented here describes a case where a single station's removal from a frequency would result in a significant improvement to numerous other operations. The frequency used for this study, 1430 kHz, was chosen because the number of stations operating on this channel permits a showing of significant impact a single station's moving to the expanded band could have on the stations remaining on the channel. The station selected, WXTZ, Indianapolis, Indiana was used because of its location relative to other stations and its predicted effect on a large number of these stations. The study was based on the new nighttime standards proposed in MM Docket No. 87-267: The nighttime formulas, the 0% RSS exclusion principle, and the adjacent channel protection ratio.

<table>
<thead>
<tr>
<th>Call</th>
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<th>Including WXTZ</th>
<th>Excluding WXTZ</th>
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<td>Homestead, FL</td>
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<td>55</td>
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</table>
Federal Communications Commission.

Donna R. Searcy,
Secretary.

[FR Doc. 90–25053 Filed 11–1–90; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 90–473, RM–7392]

Radio Broadcasting Services; Edenton and Scotland Neck, NC

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by Lawrence F. and Margaret A. Loesch seeking the substitution of Channel 273C2 for Channel 272A at Edenton, North Carolina, and the modification of their license for Station WZBO-FM to specify operation on the higher powered channel. In addition, they request the substitution of Channel 238A for Channel 274A at Scotland Neck, North Carolina, and the modification of Station WWRT's construction permit to specify the alternate Class A channel. Channel 273C2 can be allotted to Edenton in compliance with the Commission's minimum distance separation requirements with a site restriction 17 kilometers (10.5 miles) northeast, in order to avoid a short-spacing to Crawford in compliance with the Commission's minimum distance separation requirements with a site restriction 17 kilometers (10.5 miles) northeast, in order to avoid a short-spacing to a construction permit for Station WGGA, Channel 270A at Raleigh, North Carolina 27602 [Counsel to petitioner].

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission’s Notice of Proposed Rule Making, MM Docket No. 90–473, adopted September 28, 1990, and released October 29, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1151, 209 Fayetteville Street Mall, Raleigh, North Carolina 27602 [Counsel to petitioner].

Addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Mark J. Prak, Esq., Tharrington, Smith & Hargrove, P.O. Box 1151, 209 Fayetteville Street Mall, Raleigh, North Carolina 27602. The Commission requests comments on or before January 4, 1991.

DATES: Comments must be filed on or before December 20, 1990, and reply comments on or before January 4, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Mark J. Prak, Esq., Tharrington, Smith & Hargrove, P.O. Box 1151, 209 Fayetteville Street Mall, Raleigh, North Carolina 27602 [Counsel to petitioner].

List of Subjects in 47 CFR Part 73.

Radio broadcasting.

Federal Communications Commission.

Kathleen B. Levitz, Deputy Chief, Policy and Rules Division, Media Bureau.

[FR Doc. 90–25053 Filed 11–1–90; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 90–496, RM–7381]

Radio Broadcasting Services; Crawford, GA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Georgia Family Radio Limited Partnership requesting the substitution of Channel 271C3 for Channel 271A at Crawford, Georgia, and modification of its construction permit (BMPC–801109IC) to specify operation on the higher class channel. Channel 271C3 can be allotted to Crawford in compliance with the Commission’s minimum distance separation requirements with a site restriction 17 kilometers (10.5 miles) northeast, in order to avoid a short-spacing to a construction permit for Station WGGA, Channel 270A at Cleveland, Georgia, and a vacant allotment for Channel 271A at Bolingbrooke, Georgia. The coordinates are North Latitude 33–57–10 and West Longitude 82–59–30. In accordance with § 1.420(g) of the Commission’s Rules, competing expressions of interest in the use of Channel 271C3 at Crawford will not be considered and petitioner will not be required to demonstrate the availability of an additional equivalent channel for use by such interested parties.

DATES: Comments must be filed on or before December 21, 1990, and reply comments on or before January 7, 1991.

Call | Location
--- | ---
WHNK | Madison, TN
KES | Gladewater, TX
KJO | Opelousas, LA
KCLK | Asotin, WA
KBRC | Mt Vernon, WA
WBEV | Beaver Dam, WI
WED | Weirton, WV

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<td>WED</td>
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NOTE: Coverage was Based on FCC Figure M–3 Soil Conductivity Values.
 petitioner of Station WMCI, Channel 267A, Mattoon, Illinois, seeking the substitution of Channel 267B1 for Channel 267A, and a change of community of license from Mattoon, Illinois, to Neoga, Illinois, and modification of the construction permit for Station WMCI to specify operation on Channel 267B1 at Neoga, Illinois. Petitioner's proposed coordinates are North Latitude 39-17-19 and West Longitude 88-16-15.

DATES: Comments must be filed on or before December 21, 1990, and reply comments on or before January 7, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Cary S. Smithwick, Smithwick & Belendiuk, P.C., 2033 M Street, NW., suite 207, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 90-477, adopted October 1, 1990, and released October 30, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch [room 230], 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all ex parte contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible ex parte contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73
Radio broadcasting.

Federal Communications Commission.
Kathleen B. Levitz,
Deputy Chief, Policy and Rules Division, Mass Media Bureau.

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.


Federal Communications Commission.
Kathleen B. Levitz,
Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90-29898 Filed 11-1-90; 8:45 am]
BILLING CODE 6712-01-M

47 CFR Part 73

MM Docket No. 90-497, RM-7420

Radio Broadcasting Services; Garapan, Saipan

AGENCY: Federal Communications Commission.
ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Commonwealth Radio Corp. ("petitioner"), seeking the allotment of Channel 262C2 to Garapan, Saipan, as that community's fourth local FM service. The proposed coordinates are North Latitude 15-11-10 and West Longitude 145-44-28.

DATES: Comments must be filed on or before December 21, 1990, and reply comments on or before January 7, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Robyn G. Nietert, Robert J. Rini, Brown, Finn & Nietert, Chartered, 1920 N Street, NW., suite 600, Washington, DC 20036 (Attorneys for Commonwealth Radio Corp.).

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 90-477, adopted September 28, 1990, and released October 30, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch [room 230], 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review all ex parte contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible ex parte contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73
Radio broadcasting.
SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 90-495, adopted September 28, 1990, and released October 30, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all ex parte contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permission ex parte contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73
Radio broadcasting.

SUMMARY: The Commission requests comments on a petition by Peter Moncure seeking the allotment of Channel 225A to Saugerties, New York, as the community's first local FM service. Channel 225A can be allotted to Saugerties in compliance with the Commission's minimum distance separation requirements with a site restriction of 7.4 kilometers (4.6 miles) south to avoid short-spacings to Stations WFLY, Channel 222B, Troy, New York, WHYN, Channel 229B, Springfield, Massachusetts, and WRVW, Channel 228A, Hudson, New York. The coordinates for Channel 225A at Saugerties are north latitude 42°01'00" and west longitude 73°59'18". Canadian concurrence is required since Saugerties is located within 320 kilometers (200 miles) of the U.S.-Canadian border.

DATES: Comments must be filed on or before December 21, 1990, and reply comments on or before January 7, 1991.

ADRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Peter Moncure, 1111 Fawn Road, Saugerties, New York 12477 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 834-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 90-494, adopted October 1, 1990, and released October 30, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all ex parte contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permission ex parte contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73
Radio broadcasting.

SUMMARY: The Commission requests comments on a petition by Paul C. Bjornstad seeking the allotment of Channel 273A to Cottage Grove, Oregon, as the community's first local FM service. Channel 273A can be allotted to Cottage Grove in compliance with the Commission's minimum distance separation requirements with a site restriction of 5.3 kilometers (3.3 miles) south to avoid a short-spacing to unoccupied but applied-for Channel 272A at Brownsville, Oregon. The coordinates for Channel 273A at Cottage Grove are North Latitude 43°45'04" and West Longitude 123°09'42"

DATES: Comments must be filed on or before December 21, 1990, and reply comments on or before January 7, 1991.

ADRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Margaret L. Tobey, Esq., Mark D. Schneider, Esq., Sidney & Austin, 1722 Eye Street, NW., Washington, DC 20006 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 834-6530.
This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

AGENCY FOR INTERNATIONAL DEVELOPMENT

Housing Guaranty Program; Investment Opportunity

The Agency for International Development (A.I.D.) has authorized the guaranty of a loan for the Government of Portugal as part of A.I.D.’s development assistance program. The proceeds of this loan will be used to finance shelter projects for low-income families in Portugal. The Government of Portugal has authorized A.I.D. to request proposals from eligible investors. The name and address of the Borrower’s representative to be contacted by interested U.S. lenders or investment bankers, and the amount of the loan and project number are indicated below:

Government of Portugal


Interested investors should submit their bids to the Borrower’s representative on November 14, 1990, 10:00 a.m., Eastern Standard Time. Bids should be open for a period of 48 hours from the bid closing date. Copies of all bids should be simultaneously sent to the following:

Mr. David Leibson, Housing and Urban Development Officer, American Embassy (A.I.D.), Avenida das Forcas Armadas, 1507 Lisboa Codex, Lisbon, Portugal, Telex No.: 12328 AMEMB P, Telephone No.: 351/1/726-8600 or 6659, 8880, 8970, Telefax No.: 351/1/720-9109

Sean P. Walsh, Agency for International Development, APRE/H, room 401, SA-2, Washington, DC 20523-0214, Telex No.: 89278, AID WSA, Telefax No.: 202/663-2552 [preferred communication], Telephone: 202/663-2530.

For your information the Borrower is currently considering the following terms:

(a) Amount: U.S. $25 million.
(b) Term: Up to 30 years.
(c) Grace period: 10 years on repayment of principal.
(d) Interest rate: Fixed, or variable, or variable with option to convert to fixed.
(e) Closing date: No later than December 31, 1990.
(f) Fees: Borrower agrees to pay all closing costs at closing from the proceeds of the loan. Lenders are requested to include all legal fees in their placement fee.

Selection of investment bankers and/or lenders and the terms of the loan are initially subject to the individual discretion of the Borrower and thereafter subject to approval by A.I.D. Disbursements under the loan will be subject to certain conditions required of the Borrower by A.I.D. as set forth in agreements between A.I.D. and the Borrower.

The full repayment of the loans will be guaranteed by A.I.D. The A.I.D. guaranty will be backed by the full faith and credit of the United States of America and will be issued pursuant to authority in section 222 of the Foreign Assistance Act of 1961, as amended (the “Act”).

Lenders eligible to receive an A.I.D. guaranty are those specified in section 286(c) of the Act. They are: (a) U.S. citizens; (2) domestic U.S. corporations, partnerships, or associations substantially beneficially owned by U.S. citizens; (3) foreign corporations whose share capital is at least 95 percent owned by U.S. citizens; and, (4) foreign partnerships or associations wholly owned by U.S. citizens.

To be eligible for an A.I.D. guaranty, the loans must be repayable in full no later than the thirtieth anniversary of the disbursement of the principal amount. The interest rates may be no higher than the maximum rate established from time to time by A.I.D.

Information as to the eligibility of investors and other aspects of the A.I.D. housing guaranty program can be obtained from:


Fredrik A. Hansen,
Deputy Director, Office of Housing and Urban Programs, Agency for International Development.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

National Commission on Wildfire Disasters; Nominations

AGENCY: Forest Service, USDA.

ACTION: Notice; extension of nomination period.

SUMMARY: In a notice published Thursday, September 6, 1990, (55 FR 36673), the Department of Agriculture invited nominations of agencies, organizations, and interested persons to serve as members of the National Commission on Wildfire Disasters. This Commission is authorized by the Wildfire Disaster Recovery Act of 1989. In a subsequent notice published Tuesday, October 10, 1990, (55 FR 41870), the deadline for submitting nominations was extended to November 2. Due to further delay in sending the direct notices by mail, the Secretary has now directed that the date for receiving nominations be extended to November 16, 1990.

DATES: Nominations must be received in writing by Friday, November 16, 1990.

ADDRESSES: Send written nominations to Chief (5100), Forest Service, USDA, P.O. Box 96090, Washington, DC 20090–6090.

FOR FURTHER INFORMATION CONTACT: Dennis W. Pendleton, Fire and Aviation Management Staff, Forest Service [202] 453–9511.


Allan J. West,
Deputy Chief, State and Private Forestry.

[FR Doc. 90–25982 Filed 11–1–90; 8:45 am]
Exemption of Salvage Timber Sale Project From Appeal, Bitterroot National Forest, MT

AGENCY: Forest Service, USDA.

ACTION: Notification that a salvage timber sale project is exempted from appeals under provisions of 36 CFR part 217.

SUMMARY: This is a notification that the decision to implement the Grid Point Salvage Timber Sale in the area of the Grid Point Fire on the Bitterroot National Forest is exempted from appeal. This is in conformance with provisions of 36 CFR 217.4(a)(11) as published January 23, 1989, at Vol. 54, No. 13, pages 3342–3370.

EFFECTIVE DATES: Effective on issuance of the decision notice for the Grid Point Salvage Timber Sale.

FOR FURTHER INFORMATION CONTACT: Bertha C. Gillam, Forest Supervisor, Bitterroot National Forest, 316 North Third Street, Hamilton, MT 59840.

Background
In July 1990 the Gird Point fire burned and killed the timber on approximately 1,700 acres of the Bitterroot National Forest. An additional 900 acres of area on which the timber was not killed is within the exterior perimeter of the fire. Approximately 1,000 acres of the killed timber is within Management Areas of the Bitterroot Forest Plan (September 1987) which provide for timber harvest in the management goals. In July 1990 an interdisciplinary Fire Rehabilitation Team surveyed the fire area and recommended, “that a Watershed Burned Area Rehabilitation funds request if not necessary and that rehab of fire suppression damage should stabilize the area and minimize erosion.” In August 1990 a Forest Interdisciplinary Team was assembled to analyze the opportunity to salvage trees that had been killed by the fire. The Forest Interdisciplinary Team identified the need to quickly salvage the timber which was killed so the trees would remain merchantable for sawlogs. There is a need to complete tractor and cable logging before the seedlings, which will regenerate naturally, are large enough to be damaged. Some germination of seedlings will occur in the spring of 1991.

Planned Actions
In August 1990 the District Ranger, Darby Ranger District, Bitterroot National Forest, proposed the salvage harvest of the trees which were killed by fire. The environmental analysis of this action was started in August 1990. The Interdisciplinary Team assigned to this analysis began scoping in August 1990. After press releases, letters requesting comments were sent to individuals and organizations thought to have an interest in the area and contracts with personnel from state agencies. Major issues were identified, as follows:
1. Public Safety on the Gird Point Road and the Skalkaho Highway.
2. Is the existing transportation system adequate?
3. Is it appropriate to log in Management Area 5 of the Bitterroot Forest Plan?
4. Will a salvage operation meet Visual quality Objectives?
5. Are there sites within the analysis area that are unsuitable for timber production?
6. How will the salvage sale affect water quality?
7. How much will a salvage sale help the current log shortage in the valley?
8. Will more firewood be available?
9. Will a salvage sale affect the spread of noxious weeds?
10. How will the salvage sale affect sensitive plants?

The Interdisciplinary Team developed seven alternatives to analyze, including the No Action Alternative. The effects of these alternatives are discussed in an Environmental Assessment which was prepared for the proposal. The Proposed Action (Modified Alternative 4A) would harvest 650 acres of the fire killed timber and produce an estimated 5MMBF of timber for harvest. This Proposed Action is within Management Areas 1 and 3a as indicated in the Bitterroot Forest Plan, September 1987. Approximately 1.6 miles of logging roads would be constructed. These roads will be ripped, revegetated, and closed to use after all harvest is complete. Road construction on overly steepened land, wet areas, and excessively rocky areas found to be unsuitable for timber management will be avoided in this alternative. Analysis indicates that this is cost effective in meeting the objectives of salvage.

The sale and accompanying work is designed to accomplish the objectives as quickly as possible and minimize the amount of salvage volume lost. To expedite this sale and the accompanying work, the process according to 36 CFR part 217 is being followed. Under this Regulation the following is exempt from appeal:

Decisions related to rehabilitation of National Forest System lands and recovery of forest resources resulting from natural disasters or other natural phenomena, such as wildfires . . . .

Upon publication of this notice in the Federal Register, The Decision Notice for the Gird Point Salvage Sale will be signed by the Forest Supervisor, Bitterroot National Forest. Therefore, this project will not be subject to review under 36 CFR part 217.


John Mununa,
Regional Forester, Northern Region.
[FR Doc. 90-25920 Filed 11-1-90; 8:45 am]
BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE
International Trade Administration
President’s Export Council; Meetings

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of a closed meeting.

SUMMARY: A swearing in ceremony and dinner meeting will be held for new members of the President's Export Council. The President's Export Council was established on December 20, 1973, and reconstituted May 4, 1979, to advise the President on matters relating to U.S. export trade. The primary purpose of the meeting is to brief those new members who have been appointed to the Council on the status of U.S. trade policy. Discussion will include relations with our trading partners, trade negotiating strategies, and other sensitive matters properly classified under Executive order 12356.

A Notice of Determination to close meetings or portions of meetings of the council to the public on the basis of 5 U.S.C. 552b(c)(1) has been approved in accordance with the Federal Advisory Committee Act. A copy of the notice is available for public inspection and copying in the Central Reference and Records Inspection Facility, room 6628, U.S. Department of Commerce, (202) 377-4217.
Western Pacific Precious Corals

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of availability of a fishery management plan amendment and request for comments.

SUMMARY: NOAA issues this notice that the Western Pacific Fishery Management Council (Council) has submitted Amendment 2 to the Precious corals Fishery Management Plan (FMP) of the Western Pacific Region for Secretarial review and is requesting comments from the public. Copies of Amendment 2 may be obtained from the Council at the address below.

DATES: Comments on the amendment should be submitted on or before December 13, 1990.

ADDRESSES: All comments should be sent to E.C. Fullerton, Regional Director, Southwest Region, NMFS, 300 South Ferry Street, Terminal Island, CA 90731. Copies of the amendment and the environmental assessment are available from the Western Pacific Fishery Management Council, 1164 Bishop Street, suite 1405, Honolulu, HI 96813.

FOR FURTHER INFORMATION CONTACT: Svein Fougner, NMFS, Terminal Island, California (213) 514-6600 or Alvin Katekaru, NMFS, Pacific Area Office, Honolulu, Hawaii, (808) 955-8831.

SUPPLEMENTARY INFORMATION: The Magnuson Fishery Conservation and Management Act (Magnuson Act, 16 U.S.C. 1801 et seq.) requires that each Regional Fishery Management Council submit any fishery management plan or amendment it prepares to the Secretary of Commerce (Secretary) for review and approval or disapproval. The Magnuson Act also requires that the Secretary, upon receiving a plan or amendment, immediately publish a notice that the plan or amendment is available for public review and comment. The Secretary will consider all public comments in determining whether to approve the plan or amendment. The Magnuson Act also established seven national standards that fishery management plans must meet to be approved, and requires the Secretary to publish guidelines for the Councils to use in applying these national standards. The guidelines (50 CFR part 602) were revised in 1989 (54 FR 30711 et seq.) to require that the Councils amend their fishery management plans to include definitions of overfishing for the respective fisheries. Amendment 2 to the FMP is intended to address the requirements of the Secretary's guidelines for compliance with national standards 1 and 2 of the Magnuson Act. Precious corals are slow growing, have low mortality, and have low recruitment rates. The FMP treats individual precious coral beds as distinct management units because of their widely separated distribution, even though recruitment may be dependent on reproduction at other coral beds. There are four categories of coral beds in the FMP: Established, conditional, exploratory, and exploratory. The regulations at CFR part 680 prescribe management measures for each class of bed and harvest quotas for some individual beds. Only established beds are fully harvested beds. Established beds are the only beds for which a maximum sustainable yield can be estimated; therefore, overfishing of precious coral is defined with respect to this classification of beds as follows: An established coral bed shall be deemed overfished with respect to recruitment when the total spawning biomass (all species combined) has been reduced to 20 percent of its unfished condition. This definition is based on cohort analysis of pink coral, Corallium secundum.

No Federal regulatory action is necessary to implement this amendment. The Amendment incorporates an environmental assessment, which is available upon request (see ADDRESSES). It has no direct effect on either the fishery resources or fishery participants and will not require rulemaking; therefore, neither a Regulatory Impact Analysis is necessary. There will be no impact on marine mammals or endangered species. There is no taking under Executive Order 12630. No information collection burdens are imposed. If actions are taken subsequently to implement new conservation and management measures to prevent overfishing, the appropriate analyses and determinations will be made at that time.

Amendment 2 does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 12612.

Authority: 16 U.S.C. 1801 et seq.


Joe P. Clem,
Acting Director, Office of Fishery Conservation and Management, National Marine Fisheries Service.

[FR Doc. 90-25918 Filed 10-29-90; 5:06 pm]
BILLING CODE 3510-22-M

Western Pacific Crustacean Fisheries

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of availability of a fishery management plan amendment and request for comments.

SUMMARY: NOAA issues this notice that the Western Pacific Fishery Management Council (Council) has submitted Amendment 6 to its Fishery Management Plan for Crustacean Fisheries of the Western Pacific Region (FMP) for Secretarial review and approval and is requesting comments from the public. Copies of the amendment may be obtained from the address below.

DATES: Comments on the amendment should be submitted on or before December 13, 1990.

ADDRESSES: All comments should be sent to E. C. Fullerton, Regional Director, Southwest Region, NMFS, 300 South Ferry Street, Terminal Island, CA 90731. Copies of the amendment and the environmental assessment are available from the Western Pacific Fishery Management Council, 1164 Bishop Street, Suite 1405, Honolulu, HI 96813.

FOR FURTHER INFORMATION CONTACT: Svein Fougner, NMFS, Terminal Island, California (213) 514-6600 or Alvin Z. Katekaru, NMFS, Pacific Area Office, Honolulu, Hawaii (808) 955-8831.

SUPPLEMENTARY INFORMATION: The Magnuson Fishery Conservation and Management Act (Magnuson Act, 16 U.S.C. 1801 et seq.) requires that each Regional Fishery Management Council submit any fishery management plan or amendment it prepares to the Secretary of Commerce (Secretary) for review and approval or disapproval. The Magnuson Act also requires that the Secretary, upon receiving a plan or amendment, immediately publish a notice that the plan or amendment is available for public review and comment. The Secretary will consider all public comments in determining whether to approve the plan or amendment. The Magnuson Act also established seven national standards that fishery management plans must meet to be approved, and requires the Secretary to publish guidelines for the Councils to use in applying these national standards. The guidelines (50 CFR part 602) were revised in 1989 (54 FR 30711 et seq.) to require that the Councils amend their fishery management plans to include definitions of overfishing for the respective fisheries. Amendment 6 to the FMP is intended to address the requirements of the Secretary's guidelines for compliance with national standards 1 and 2 of the Magnuson Act. The regulations at CFR part 680 prescribe management measures for each class of bed and harvest quotas for some individual beds. Only established beds are fully harvested beds. Established beds are the only beds for which a maximum sustainable yield can be estimated: therefore, overfishing of precious coral is defined with respect to this classification of beds as follows: An established coral bed shall be deemed overfished with respect to recruitment when the total spawning biomass (all species combined) has been reduced to 20 percent of its unfished condition. This definition is based on cohort analysis of pink coral, Corallium secundum.

No Federal regulatory action is necessary to implement this amendment. The Amendment incorporates an environmental assessment, which is available upon request (see ADDRESSES). It has no direct effect on either the fishery resources or fishery participants and will not require rulemaking; therefore, neither a Regulatory Impact Analysis is necessary. There will be no impact on marine mammals or endangered species. There is no taking under Executive Order 12630. No information collection burdens are imposed. If actions are taken subsequently to implement new conservation and management measures to prevent overfishing, the appropriate analyses and determinations will be made at that time.

Amendment 6 does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 12612.

Authority: 16 U.S.C. 1801 et seq.


Joe P. Clem,
Acting Director, Office of Fishery Conservation and Management, National Marine Fisheries Service.

[FR Doc. 90-25918 Filed 10-29-90; 5:06 pm]
BILLING CODE 3510-22-M
Act also requires that the Secretary, upon receiving a plan or amendment, immediately publish a notice that the plan or amendment is available for public review and comments. The Secretary will consider the public comments in determining whether to approve the plan or amendment. The Magnuson Act also established seven national standards that fishery management plans must meet to be approvable, and requires the Secretary to publish guidelines for the Councils to use in applying these national standards. These guidelines (50 CFR part 602) were revised in 1989 (54 FR 30711 et seq.) to require that the Councils amend their fishery management plans to include definitions of overfishing for the respective fisheries. Amendment 6 to the FMP is intended to address the requirements of the Secretary's guidelines for compliance with national standards 1 and 2 of the Magnuson Act.

Amendment 6 defines overfishing in terms of spawning potential ratio (SPR). This is a measure of the reproductive capacity of the spiny and slipper lobster stocks and is calculated as spawning stock biomass per recruit (SSBR) of the fished population divided by the SSBR of the unfished population. The SPR is inversely proportional to fishing mortality and ranges from 1.0 to 0.0. The size limits chosen by the Council to prevent overfishing under the FMP were set to maintain a SPR of 0.5; that is, SSBR when fishing mortality is equal to natural mortality would be 50 percent of the SSBR in the absence of fishing. This is the goal of the FMP. It is recognized, however, that declines in the stock can occur due to natural variability, as well as fishing, such that SPR can drop below 0.5. It is the Council's intent to take action to reverse any downward trend in SPR before the minimum SPR level of 0.2 specified in the overfishing definition is approached or reached. The FMP includes an annual review process under which the Council will evaluate the status of stocks and conditions in the fishery annually to determine the trend of the stocks relative to this definition of overfishing, and to take action before any stock becomes overfished.

No Federal regulatory action is necessary to implement this amendment. The Council has determined that the proposed amendment is consistent to the maximum extent practicable with the coastal zone programs of the governments in the Council's region and has asked for concurrence with this determination. The amendment incorporates an environmental assessment which is available upon request (see ADDRESSES). The amendment has no direct effect on either the fishery resources or fishery participants and will not require rulemaking; therefore neither a Regulatory Impact Analysis nor a Regulatory Flexibility Analysis is necessary. There will be no impact on marine mammals or endangered species. There is no taking as defined in Executive Order 12530. No information collection burdens are imposed. If actions are taken subsequently to implement new conservation and management measures to prevent overfishing, the appropriate analyses and determinations will be made at that time.

Amendment 6 does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 12812.

Authority: 16 U.S.C. 1801 et seq.


Joe P. Clem,
Acting Director, Office of Fishery Conservation and Management, National Marine Fisheries Services.

[FR Doc. 90-25919 Filed 11-29-90; 8:05 p.m.]
BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Negotiated Settlement on a Limit for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in the Republic of Fiji

October 30, 1990.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs amending a limit and restraint period.

EFFECTIVE DATE: November 6, 1990.

FOR FURTHER INFORMATION CONTACT: Jennifer Tellarico, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 566-5810. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION:


During negotiations held October 10-12, 1990 between the Governments of the United States and the Republic of Fiji, agreement was reached, among other things, to establish a bilateral agreement on cotton and man-made fiber textile products in Categories 351/651, produced or manufactured in Fiji and exported during three consecutive one-year periods, beginning on January 1, 1990 and extending through December 31, 1992. A formal exchange of notes will follow. In the letter published below, the Chairman of CITA directs the Commissioner of Customs to control imports for the first agreement period.

A description of the textile and apparel categories in terms of HTS numbers is available in the Correlation: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see Federal Register notice 54 FR 50797, published on December 11, 1989). Also see 55 FR 21214, published on May 23, 1990.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Memorandum of Understanding dated October 12, 1990, but are designed to assist only in the implementation of certain of its provisions.

Ronald I. Levin,
Acting Chairman, Committee for the Implementation of Textile Agreements.

October 30, 1990.

Commissioner of Customs,
Department of the Treasury,
Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on May 16, 1990 by the Chairman, Committee for the Implementation of Textile Agreements. This directive controls imports of cotton and man-made fiber textile products in Categories 351/651, produced or manufactured in the Republic of Fiji and exported during the twelve-month period which began on February 28, 1990 and extends through February 27, 1991.

Effective on November 6, 1990, you are directed to increase the limit for Categories 351/651 to 135,000 dozen \(^1\) for the amended restraint period which began on January 1, 1990 and extends through December 31, 1990. Also, you are directed to charge the following amounts to the limit for Categories 351/651. These charges are for goods exported and imported during the period January 1, 1990 through February 27, 1990. Charges previously made to Categories 351/651 shall be retained.

\(^1\) The limit has not been adjusted to account for any imports exported after December 31, 1989.
The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Ronald I. Levin,
Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 90-25943 Filed 11-1-90; 8:45 am]

BILLING CODE 3510-DR-M

Announcement of Import Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Mauritius

October 29, 1990.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits for the new agreement year.

EFFECTIVE DATE: November 5, 1990.

FOR FURTHER INFORMATION CONTACT: Anne Novak, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 566-5810. For information on embargoes and quota re-openings, call (202) 377-3718.

SUPPLEMENTARY INFORMATION:


The Governments of the United States and Mauritius agreed to amend the Bilateral Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Agreement, in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, before the Governments of the United States and Mauritius; and in accordance with the provisions of Executive Order 11653 of March 4, 1985, as amended, between the Governments of the United States and Mauritius; and in accordance with the provisions of Section 204 of the Agricultural Act of 1956, as amended, to prohibit, effective on November 5, 1990, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products in the following categories, produced or manufactured in Mauritius and exported during the twelve-month period beginning on October 1, 1990 and extending through September 30, 1991, in excess of the following restraint levels:

<table>
<thead>
<tr>
<th>Category</th>
<th>12-Mo. restraint level</th>
</tr>
</thead>
<tbody>
<tr>
<td>340/640</td>
<td>122,075 dozen</td>
</tr>
<tr>
<td>345, 438, 445, 448, 645 and 646 as a group. Levels not in a Group:</td>
<td></td>
</tr>
<tr>
<td>237</td>
<td>142,022 dozen</td>
</tr>
<tr>
<td>331</td>
<td>378,747 dozen pairs</td>
</tr>
<tr>
<td>335/335</td>
<td>56,612 dozen</td>
</tr>
<tr>
<td>336/336</td>
<td>68,454 dozen</td>
</tr>
<tr>
<td>338/338</td>
<td>267,645 dozen</td>
</tr>
<tr>
<td>340/640</td>
<td>428,899 dozen of which not more than 265,144 dozen shall be in Category 340-Y/ 340-Y-1</td>
</tr>
<tr>
<td>341/641</td>
<td>391,731 dozen</td>
</tr>
<tr>
<td>342/642/842</td>
<td>195,518 dozen</td>
</tr>
<tr>
<td>347/348</td>
<td>536,553 dozen</td>
</tr>
<tr>
<td>352/652</td>
<td>1,153,000 dozen of which not more than 955,060 dozen shall be in Category 352/ 352-Y</td>
</tr>
<tr>
<td>442</td>
<td>11,012 dozen</td>
</tr>
<tr>
<td>604-A 3</td>
<td>280,269 kilograms</td>
</tr>
<tr>
<td>636/639</td>
<td>307,762 dozen</td>
</tr>
<tr>
<td>647/648/647</td>
<td>441,867 dozen</td>
</tr>
</tbody>
</table>

For imports charged to these category numbers, the limits have not been adjusted to account for any imports exported after September 30, 1990.

Category 340-Y: only HTS numbers 6205.20.2015, 6205.20.2020, 6205.20.2040, 6205.20.2050 and 6205.20.2060. Category 604-A: only HTS number 5509.32.0000.

SUMMARY: This action adds to Procurement List 1990 commodities to be produced and services to be provided by workshops for the blind or other severely handicapped.

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1990: Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Additions to procurement list.

SUMMARY: This action adds to Procurement List 1990 commodities to be produced and services to be provided by workshops for the blind or other severely handicapped.

EFFECTIVE DATE: December 3, 1990.

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 July 27, August 24 and September 14, 1990, the Committee for Purchase from the Blind and Other Severely Handicapped published notices (55 FR 30745, 34728 and 37929) of proposed additions to Procurement List 1990, which was published on November 3, 1989 (54 FR 46540).

After consideration of the material presented to it concerning capability of qualified workshops to produce the commodities 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 commodities 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 commodities and services listed.

c. The actions will result in authorizing small entities to produce the commodities and provide the services procured by the Government.

Accordingly, the following commodities and services are hereby added to Procurement List 1990:

Commodities
Folder, Equipment Record
7510-00-065-0166
Teape, Pressure-Sensitive Adhesive
7510-00-080-0672
7510-00-074-5122
7510-00-074-5157
7510-00-074-5100
7510-00-074-5160
7510-00-080-0974
7510-00-074-5174
7510-00-090-0975
7510-00-074-5178

Cap, Garrison
8405-01-232-5343
8405-01-232-5344
8405-01-232-5345
8405-01-232-5346
8405-01-232-5347
8405-01-232-5348
8405-01-232-5349
8405-01-232-5350
8405-01-232-5351
8405-01-232-5352
8405-01-232-5353
8405-01-232-5354
8405-01-232-5355

Procurement List 1990: Proposed Additions and Deletions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed additions to and deletions from procurement list.

SUMMARY: The Committee has received proposals to add to and delete from Procurement List 1990 commodities to be produced and services to be provided by workshops for the blind and other severely handicapped.

COMMENTS MUST BE RECEIVED ON OR BEFORE: December 3, 1990.

ADDITIONS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, suite 1107, 1755 Jefferson Davis Highway, Arlington, Virignia 22202-3509.

Additions
If the Committee approves the proposed additions, all entities of the Federal Government will be required to procure the services listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following services to Procurement List 1990, which was published November 3, 1989 (54 FR 46540):

Janitorial/Custodial, NETPMSA, Saufley Field, Florida
Janitorial/Custodial, Federal Building and U.S. Courthouse, 550 West Fort Boise, Idaho

Janitorial/Custodial at the following
Baton Rouge, Louisiana locations:
Federal Building and U.S. Courthouse, 707 Florida
Social Security Building, 350 Donmoor
Restroom Cleaning, Federal Center (Buildings 1, 1A, 1B, 2, 2A and 2C), 74 North Washington, Battle Creek, Michigan

Deletions
It is proposed to delete the following commodities from Procurement List 1990, which was published November 3, 1989 (54 FR 46540):

Brush, Shoe and Stove
7920-00-065-0170
Brush Set, Shoe and Stove
7920-00-205-0200
Sponge, Plastic
7920-00-063-9100, 7920-00-633-9911, 7920-00-633-9915, 7920-00-685-4152
Pencil, Woodcased, with Imprinting
7510-050-8LP-0652

Beverly L. Milkman, Executive Director.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 857-1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51-2.6. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

Additions
If the Committee approves the proposed additions, all entities of the Federal Government will be required to procure the services listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following services to Procurement List 1990, which was published November 3, 1989 (54 FR 46540):

Janitorial/Custodial, NETPMSA, Saufley Field, Florida
Janitorial/Custodial, Federal Building and U.S. Courthouse, 550 West Fort Boise, Idaho

DEPARTMENT OF DEFENSE

Department of the Air Force

USAF Scientific Advisory Board; Meeting

October 29, 1990.

The USAF Scientific Advisory Board Logistics Cross-Matrix Panel will meet on 19 November 1990, from 2 p.m. to 5 p.m., 20 November 1990 from 8 a.m. to 5 p.m., and 21 November 1990 from 8 p.m. to 11 a.m. at AGMC, Aerospace Guidance and Metrology Center, Newark AF Station, OH. The purpose of the meeting is to indoctrinate LCMP on the mission and programs of the AGMC.

The request for the closed meeting is based on the fact that discussions will be held on classified defense information and contractor proprietary information matters listed in section 552(b)(6) of title 5, United States Code, specifically subparagraph (1) and (4) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697-8645.

Patsy J. Conner, Deputy Director
Air Force Federal Register Liaison Officer.

BILLING CODE 3620-12-M

BILLING CODE 3910-01-M

BILLING CODE 6320-33-M
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 December 3, 1990.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs Attention: Dan Chenok, Desk Officer, Office of Information and Regulatory Affairs, Office Building 3, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to James O'Donnell, Department of Education, 400 Maryland Avenue, SW., room 5624, Regional Office Building 3, Washington, DC 20202-4651.

FOR FURTHER INFORMATION CONTACT: James O'Donnell (202) 708-5174.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency’s ability to perform its statutory obligations.

The Acting 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 address specified above. Copies of the requests are available from James O'Donnell at the address specified above.


James O'Donnell, Acting Director, for Office of Information Resources Management.

Office of Elementary and Secondary Education

Type of Review: Extension.

Title: Status Report on Homeless Children and Youth from State Educational Agencies under the Stewart B. McKinney Homeless Assistance Act.

Frequency: Annually.

Affected Public: State or local governments.

Report Burden: Responses: 54.

Burden Hours: 4320.

Recordkeeping Burden: Recordkeepers: 0.

Burden Hours: 0.

Abstract: This study will collect data on reading skills and activities of fourth and ninth graders. This study is intended to develop a unified definition of literacy and measure the comparative ability of educational systems to teach literacy skills.

[FR Doc. 90-25905 Filed 11-1-90; 8:45 am]

BILLING CODE 4000-1-M

National Advisory Committee on Accreditation and Institutional Eligibility; Meeting

AGENCY: National Advisory Committee on Accreditation and Institutional Eligibility, Education.

ACTION: Notice of public meeting.

SUMMARY: This amend the notice of a public meeting of the National Advisory Committee on Accreditation and Institutional Eligibility, published in the Federal Register on Monday, October 15, 1990, Volume 55, Pages 41745 and 41746.

DATES AND TIMES: November 13, 14, and 15—8:30 a.m. until 5 p.m.


SUPPLEMENTARY INFORMATION: The public is being given less than 15 days' notice due to the delayed selection of the meeting site.

Authority: 5 U.S.C.A. Appendix 2.

Leonard L. Haynes III, Assistant Secretary for Postsecondary Education.

[FR Doc. 90-25921 Filed 11-1-90; 8:45 am]

BILLING CODE 4000-01-M

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-3857-4]

Environmental impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared October 15, 1990 through
undertake a commitment to prepare environmental impact statements for all reuse and major realignment actions and the environmentally sensitive resources (wetlands, wildlife habitats) be transferred if possible to agencies such as the National Park Service or the U.S. Fish and Wildlife Service.

EPA No. DS-DOE-A84229-00 Rating LO, Superconducting Super Collider (SSC) Construction and Operation, Design Modifications and Selected Site, Ellis County, TX.

Summary:
EPA has no objection to the proposed action. However, EPA requests additional information in the area of air quality assessment for the PM-10 standard to strengthen the supplemental final EIS.

Final EISs

Summary:
Review of the Final EIS has been completed and the project found to be satisfactory.

EPA No. F-BLM-K67021-CA Castle Mountain Open Pit Heap Leach Gold Mine Project, Construction and Operation, Permit Approval, Regulation Changes and Modifications, San Bernardino County, CA.

Summary:
Review of the Final EIS was not deemed necessary. No formal letter was sent to the agency.

EPA No. FS-MMS-A02118-00 Mid 1987—Mid 1992 Outer Continental Shelf (OCS) Oil and Gas Lease Sales, 5 Year Program Cumulative Impacts of OCS Development on Migratory Species Lease Offerings, Offshore the Alaska and Pacific Regions, AK, WA, CA and OR.

Summary:
EPA remains concerned that the cumulative impact level definitions did not make a distinction between threatened and endangered species and nonendangered species. The document described the qualitative method, but not the analytical approach that was used to establish the existing levels of impact and the incremental contribution to impact levels from the current and future leasing program and projected non-OCS activities.

William D. Dickerson.
Deputy Director, Office of Federal Activities.
[FR Doc. 90-26007 Filed 11-1-90; 8:45 am]
BILLING CODE 6560-50-M

[ER-FRL-3857-3]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 382-5073 or (202) 382-5075. Availability of Environmental Impact Statements

EIS No. 900394, Draft EIS, FAA, TX, Stinson Municipal Airport Improvement, Airport Layout Plan, Approval and Funding, City of San Antonio, Bexar County, TX, Due: December 17, 1990, Contact: John D. Anderson (210) 324-5510.


EIS No. 900396, Draft EIS, AFS, ID, Beartrack Open Pit Heap Leach Gold Mine Project, Construction and Operation, NPDES Permit and section 404 Permit, Salmon National Forest, Lemhi County, ID, Due: December 21, 1990, Contact: Tom Buchta (208) 756-2215.

EIS No. 900397, Final EIS, SCS, CA, Upper Penitencia Creek Watershed Flood Damage Reduction Plan, Funding, Implementation and 404 Permit, Cities of San Jose and Milpitas, Santa Clara County, CA, Due: December 03, 1990, Contact: Pearlie S. Reed (916) 449-2861.


EIS No. 900399, Final EIS, FHWA, NC, Northern Wake Expressway, Construction, NC-55 Near Morrisville to US 64 Near Knightdale, Funding and 404 Permit, Wake and Durham Counties, NC, Due: December 03, 1990, Contact: Nicholas L. Graf (919) 790-2869.

EIS No. 900400, Final EIS, FHWA, OH, KY, US 62/68/Ohio River Bridge Construction, Mason County, KY to
Brown County, OH, Funding, US Coast Guard Bridge Permit and COE Section 404 Permit, Mason Co., KY and Brown Co., OH, Due: December 12, 1990. Contact: Paul E. Toussaint (502) 227-7321.

EIS No. 900401, Draft EIS, FAA, TX, Dallas/Fort Worth International Airport, Construction and Operation, Runway 16/34 East and Runway 16/34 West, Airport Layout Plan, Approval and Funding, Cities of Dallas and Fort Worth, TX, Due: December 17, 1990, Contact: Ms. Mo Kean (317) 624-5610.

EIS No. 900402, Final EIS, BLM, WY, Grass Creek/Cody Resource Area Wilderness Designation, Suitability or Nonsuitability, Owl Creek, Bobcat Draw Badlands, Sheep Mountain, Red Butte and McCullough Peaks WSAs, several Counties, WY, Due: December 03, 1990, Contact: Joe Vessels (307) 347-9871.

EIS No. 900403, Draft EIS, AFS, OR, Mt. Ashland Ski Area Development Plan, Implementation, Additional Alternatives, Special Use Permit, Ashland Ranger District, Rogue River National Forest, Jackson County, OR, Due: December 17, 1990, Contact: Mary L. Smelcer (503) 482-3333. Dated: October 30, 1990. William D. Dickerson, Deputy Director, Office of Federal Activities.

[FR Doc. 90-28006 Filed 11-1-90; 8:45 am] BILLING CODE 6560-50-42

FEDERAL COMMUNICATIONS COMMISSION


The Federal Communications Commission has submitted the following information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of these submissions may be purchased from the Commission's copy contractor, International Transcription Service (202) 657-3900, 2100 M Street NW, Suite 140, Washington, DC 20037. For further information on these submissions contact Judy Boley, Federal Communications Commission, (202) 632-7513. Persons wishing to comment on these information collections should contact Bruce McConnell, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, (202) 395-3785. OMB Number: 3060-0147.

Title: Section 64.804, Extension of Unsecured Credit for Interstate and Foreign Communications Services to Candidates for Federal Office.

Action: Extension.

Respondents: Businesses or other for-profit.

Frequency of Responses: On occasion reporting.

Estimated Annual Burden: 60 responses; 1 hour average burden per response.

Needs and Uses: The reporting requirement contained in § 80.302 is necessary to ensure that the U.S. Coast Guard is quickly informed when a coast station which is responsible for maintaining a listening watch on a designated marine distress and safety frequency, discontinues, reduces or impairs its communications services. This notification allows the Coast Guard to seek an alternate means of providing radio coverage to protect the safety of life and property at sea or object to the planned discontinuance of service. The information is used by the U.S. Coast Guard district office nearest to the coast station. Once the Coast Guard is aware that such a situation exists, it is able to inform the maritime community that radio coverage has or will be affected and/or seek to provide coverage of the safety watch via alternate means. When appropriate the Coast Guard may file a petition to deny an application.

OMB Number: 3060-0165.

Title: Part 41, Franks § 41.31, Records to be maintained and reported to be filed.

Action: Extension.

Respondents: Businesses or other for-profit.

Frequency of Responses: On occasion reporting and recordkeeping requirement.

Estimated Annual Burden: 68 recordkeepers; 403 hours total annual burden; 6 hours average burden per recordkeeper.

Needs and Uses: Section 41.31 requires that common carriers subject to the Communications Act of 1934, as amended, maintain records to reflect the name, address, etc., of persons holding telephone or telegraph franks, so as to enable the Commission to compile, if needed, reports in this area. Though the FCC is not currently requiring the actual periodic reporting of this data, it is information which should continue to be maintained in case the need arises to assure that the franking privileges are being adequately policed by the companies themselves. This information helps to ensure that franks are being addressed fairly. Failure to have the information recorded would prohibit the FCC from being able to respond to complaints and to be able to police the activity.

OMB Number: 3060-0185.

Title: Section 80.302, Notice of discontinuance, reduction, or impairment of service involving a distress watch.

Action: Extension.

Respondents: Individuals or households, State or local governments, non-profit institutions, and businesses or other for-profit (including small businesses)

Frequency of Responses: On occasion reporting.

Estimated Annual Burden: 160 responses; 100 hours total annual burden; 1 hour average burden per response.

Needs and Uses: The reporting requirement contained in § 80.302 is necessary to ensure that the U.S. Coast Guard is quickly informed of a situation involving a coast station which is responsible for maintaining a listening watch on a designated marine distress and safety frequency, discontinues, reduces or impairs its communications services. This notification allows the Coast Guard to seek an alternate means of providing radio coverage to protect the safety of life and property at sea or object to the planned discontinuance of service. The information is used by the U.S. Coast Guard district office nearest to the coast station. Once the Coast Guard is aware that such a situation exists, it is able to inform the maritime community that radio coverage has or will be affected and/or seek to provide coverage of the safety watch via alternate means. When appropriate the Coast Guard may file a petition to deny an application.

OMB Number: 3060-0401.

Title: General Docket No. 87-112, Regional Plans for Public Safety Services.

Action: Extension.

Respondents: State or local governments.

Frequency of Responses: On occasion reporting.

Estimated Annual Burden: 30 responses; 12,490 hours total annual burden; 320 hours average burden per response.

Needs and Uses: The Commission was directed by the U.S. Congress to develop a plan to ensure that the present and future electromagnetic spectrum requirements of State and local public safety authorities are considered in allocation of the spectrum. The Commission established policies, procedures, and rules that constitute a national plan for public safety services (National Plan). The requirement is for public safety agencies to submit to the FCC, regional plans for their areas. The regional plans will define electromagnetic spectrum requirements and how the agencies plan to use the frequencies allocated for public safety use. The regional plans are used by the FCC in the development of a Public Safety National Plan.
SUMMARY: This notice amends the notice of a major disaster for the State of Georgia (FEMA-880-DR), dated October 19, 1990, and related determinations.


NOTICE: The notice of a major disaster for the State of Georgia, dated October 19, 1990, is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophes declared a major disaster by the President in his declaration of October 19, 1990:

The counties of Emanuel, Johnson, McDuffie, and Screven for Individual Assistance and Public Assistance; and Jenkins County for Individual Assistance only.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Grant C. Peterson,
Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 90-25968 Filed 11-1-90; 8:45 am]
BILLING CODE 6718-02-M

South Carolina; Major Disaster and Related Determinations

[FEMA-881-DR]

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of South Carolina (FEMA-881-DR), dated October 22, 1990, and related determinations.

DATES: October 22, 1990.


NOTICE: Notice is hereby given that, in a letter dated October 22, 1990, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq., Pub. L. 93-288, as amended by Pub. L. 100-707), as follows:

I have determined that the damage in certain areas of the State of South Carolina, resulting from severe storms and flooding beginning on October 11, 1990, is of sufficient severity and magnitude to warrant a major disaster declaration under Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the State of South Carolina.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses. You are authorized to provide individual Assistance and Public Assistance in the designated areas. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 5109(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Michael J. Polny of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of South Carolina to have been affected adversely by this declared major disaster:

The counties of Burke, Columbia, Jefferson, and Richmond for Individual Assistance and Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Jerry D. Jennings,
Deputy Director, Federal Emergency Management Agency.

[FR Doc. 90-25965 Filed 11-1-90; 8:45 am]
BILLING CODE 6718-02-M
Proposed agenda: The agenda will concentrate on status of efforts established within the 1990 Board of Visitors Workplan and preparation of their 1990 Annual Report, which will address issues such as core curriculum, emergency management standards project, use of technology and alternate delivery strategies in training, student stipends, heavy duty search and rescue, and program evaluation.

The meeting will be open to the public with approximately ten seats available on a first-come, first-serve basis. Members of the general public who plan to attend the meeting should contact the Office of the Superintendent, Emergency Management Institute, Office of Training, 16825 South Seton Avenue, Emmitsburg, Maryland 21727 (telephone number, 301-447-1251) on or before November 26, 1990.

Minutes of the meeting will be prepared by the Board and will be available for public viewing in the Director’s Office, Office of Training, Federal Emergency Management Agency, Building N. National Emergency Management Institute, Emmitsburg, Maryland 21727. Copies of the minutes will be available upon request 30 days after the meeting.

Laura Buchbinder,
Acting Director, Office of Training.

FEDERAL MARITIME COMMISSION
Agreement(s) Filed; Jacksonville Port Authority, et al.

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Jacksonville Port Authority, Jacksonville, Florida 32245, or at the Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations.

Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-200259-001.
Title: Jacksonville Port Authority, TMT/Amtrans Terminal Agreement.
Parties: Jacksonville Port Authority, TMT/Amtrans.

Synopsis: The Agreement amends the Parties’ basic agreement to provide for:
1) Extending the term of the agreement for one year; and
2) Rate increases on wharfage, container crane, container stacker or mobile gantry container crane, straddle carrier, and land rental.

By Order of the Federal Maritime Commission.
Joseph C. Polking,
Secretary.
Naomi B. Marr,
Associate Administrator, Office of
Management and Information Systems.

[FR Doc. 90–25634 Filed 11–1–90; 8:45 am]
BILLING CODE 4150–04–M

Food and Drug Administration

[Docket No. 90N–0370]
Bolar Pharmaceutical Co., Inc.;
Withdrawal of Approval of
Abbreviated New Drug Applications
for Meclofenamate Sodium Capsules

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of two abbreviated new drug applications (ANDA's) for meclofenamate sodium 50 milligrams (mg) and 100 mg capsules held by Bolar Pharmaceutical Co., Inc., 33 Ralph Ave., Copiague, NY 11726-0030 (Bolar). Bolar has requested that approval of the applications be withdrawn, thereby waiving its opportunity for a hearing. FDA has become aware that the applications contain untrue statements of material fact.

EFFECTIVE DATE: November 2, 1990.

FOR FURTHER INFORMATION CONTACT: Mary E. Catchings, Division of Regulatory Affairs (HFD–306), Center for Drug Evaluation and Research, Food and Drug Administration, 5000 Fishers Lane, Rockville, MD 20857, 301–295–8041.

SUPPLEMENTARY INFORMATION: Recently, FDA became aware of the submission of false data in support of the approval of ANDA's 70–400 and 70–401 held by Bolar for 50 mg and 100 mg meclofenamate sodium capsules, respectively. Bolar's products are a generic version of Meclomen Capsules manufactured by Parke Davis. The false submission includes the results of bioequivalence studies purportedly performed on a Bolar product that were actually performed on another firm's product. Bolar has ceased marketing these products and has recalled them to the retail level. In addition, by letter dated August 1, 1990, Bolar has requested that approval of its applications be withdrawn, thereby waiving its opportunity for a hearing.

Therefore, under section 505(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(e)) and under authority delegated to the Director of the Center for Drug Evaluation and Research (21 CFR 5.62), approval of abbreviated new drug applications 70–400 and 70–401, and all amendments and supplements thereto, is hereby withdrawn, effective November 2, 1990.

Dated: October 20, 1990.
Carl C. Feck,
Director, Center for Drug Evaluation and Research.

[FR Doc. 90–25953 Filed 11–2–90; 8:45 am]
BILLING CODE 4150–01–M

[Docket No. 90M–0317]
Wesley-Jessen; Premarket Approval of
AQUAFLEX® Litetint™ (Tetraflicon A)
For
Daily and Extended Wear Spherical
Hydrophilic Contact Lenses

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Wesley-Jessen, Chicago, IL, for premarket approval, under the Medical Device Amendments of 1976, of the AQUAFLEX® LiteTint™ (tetraflicon A) for Daily or Extended Wear Spherical Hydrophilic Contact Lenses. The lenses are to be manufactured under an agreement with CooperVision, Inc., San Jose, CA, which has authorized Wesley-Jessen to incorporate information contained in its approved premarket approval application and related supplements for the AQUAFLEX® (tetraflicon A) Hydrophilic Contact Lens. On September 14, 1990, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request.

A copy of all approved labeling is available for public inspection at CDRH—contact David M. Whipple (HFZ–460), address above. The labeling of the AQUAFLEX® LiteTint™ (tetraflicon A) for Daily or Extended Wear Spherical Hydrophilic Contact Lenses states that the lens is to be used only with certain solutions for disinfection and other purposes. The restrictive labeling informs new users that they must avoid using certain products, such as solutions intended for use with hard contact lenses only.

Opportunity for Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under part 12 (21 CFR part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's
action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the Federal Register. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before December 3, 1990, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. This notice is issued under the Federal Food, Drug, and Cosmetic Act (sections 515(d), 520(h) (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR (21 5.53)).

Added: October 25, 1990.

Elizabeth D. Jacobson,
Acting Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 90-25950 Filed 11-1-90; 8:45 am]
BILLING CODE 4160-01-M

[Docket No. 90M-0444]

Incstar Corp.; Premarket Approval of the CYCLO-TRAC® SP Whole Blood Radioimmunooassay for Cyclosporine and the CYCLO-TRAC® SP Serum/Plasma Radioimmunooassay for Cyclosporine

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by INCSTAR Corp., Stillwater, MN, for premarket approval, under the Medical Device Amendments of 1976, of the CYCLO-Trac® SP Whole Blood Radioimmunooassay for Cyclosporine and the CYCLO-Trac® SP Serum-Plasma Radioimmunooassay for Cyclosporine.

After reviewing the recommendation of the Clinical Chemistry and Clinical Toxicology Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter dated September 28, 1990, of the approval of the application.

DATES: Petitions for administrative review by December 3, 1990.

ADDRESSES: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA-305), Food and Drug Administration, room 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Kaiser Aziz, Center for Devices and Radiological Health (HFZ-440), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301-427-1243.

SUPPLEMENTARY INFORMATION: On November 17, 1989, INCSTAR Corp., Stillwater, MN 55082, submitted to CDRH an application for premarket approval of CYCLO-Trac® SP Whole Blood Radioimmunooassay for Cyclosporine and for CYCLO-Trac® SP Serum/Plasma Radioimmunooassay for Cyclosporine. The CYCLO-Trac® SP Whole Blood Radioimmunooassay for Cyclosporine (Cyclosporin A, Cyclosporin, Sandimmune®) is indicated for the quantitative measurement of cyclosporine in whole blood as an aid in the management of heart, kidney, and liver transplant patients receiving cyclosporine. The CYCLO-Trac® SP Serum/Plasma Radioimmunooassay for Cyclosporine (Cyclosporin A, Cyclosporin, Sandimmune®) is indicated for the quantitative measurement of cyclosporine in serum and plasma as an aid in the management of heart, kidney, and liver transplant patients.

On September 6, 1990, the Clinical Chemistry and Clinical Toxicology Devices Panel, an FDA advisory committee, reviewed and recommended approval of the application. On September 28, 1990, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact Kaiser Aziz (HFZ-440), address above.

Opportunity for Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360g(e)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under part 12 (21 CFR part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the Federal Register.
Cardiac Control Systems, Inc.; Premarket Approval of the Maestro® SAVVI™ Model 305 VDD Pacing System

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Cardiac Control Systems, Inc., Palm Coast, FL, under the Medical Device Amendments of 1976, of the Maestro® SAVVI™ Model 305 VDD Pacing System. After reviewing the recommendation of the Circulatory System Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter dated September 25, 1990, of the approval of the application.

DATES: Petitions for administrative review by December 3, 1990.

ADDRESSES: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (address above) and are available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact Mark D. Kramer (HFZ-450), address above.

Opportunity for Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360g(e)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under part 12 (21 CFR part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). Petitioners may, at any time on or before December 3, 1990, file with the CDRH—contact Mark D. Kramer (HFZ-450), address above.

National Institutes of Health

Consensus Development Conference On Clinical Use of Botulinum Toxin

Notice is hereby given of the NIH Consensus Development Conference on "Clinical Use of Botulinum Toxin" sponsored by the National Institute of Neurological Disorders and Stroke and by the NIH Office of Medical Applications of Research. The conference will be held November 12-14, 1990, in the Masur Auditorium of the Warren Grant Magnuson Clinical Center (building 10) at the National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892.

Botulinum toxin, well known and feared as a major cause of food poisoning, was recently approved by the Food and Drug Administration as a new drug for the treatment of several difficult-to-treat conditions, including blepharospasm, hemifacial spasm, and strabismus. In addition, the use of the toxin for several other conditions—such as spasmodic torticollis, and spasticity—has been investigated and looks promising. For a number of these disorders, such as the focal dystonias, there has not been an effective therapy, and the arrival of botulinum toxin has been met with a great deal of enthusiasm and interest. However, much of the data is new, and there are some controversies. It is important to clarify the state of the art including the indications, the contraindications, and the appropriate techniques for its use.

The conference will bring together neurologists, ophthalmologists, otolaryngologists, speech pathologists, other health care professionals, and the public. Following one-and-a-half days of presentations and discussion by the audience, an independent consensus panel will weigh the scientific evidence and write a draft statement in response to the following key questions:

- What are the mechanisms of action of botulinum toxin?
- What are the indications for botulinum toxin treatment?
- What are the contraindications for botulinum toxin treatment?
- What are the general principles of technique of injection and handling for...
safe and effective use of botulinum toxin?

- What are the short-term and long-term side effects and complications of therapy?
- What basic and clinical research is needed on botulinum toxin?

On the final day of the meeting, the consensus panel chairman will read the draft statement to the conference audience and invite comments and questions.

Information on the program may be obtained from: Conference Registrar, Prospect Associates, 1801 Rockville Pike, suite 500, Rockville, Maryland 20852, (301) 469-6336.


William F. Raub,
Acting Director, NIH.

[FR Doc. 90-2610 Filed 11-1-90; 6:45 am]

BILLING CODE 4140-0-M

Office of the Inspector General

Privacy Act of 1974; Report on Altered System


ACTION: Notification of Altered System of Records.

SUMMARY: In accordance with the requirements in the Privacy Act, the Office of Inspector General is publishing a notice of a major alteration to its system of records notice 09-90-0003 entitled "Criminal Investigative Files of the Inspector General, HHS/OS/OIG." The proposed alternations include substantive changes to the types of individuals included in the system, record retrieval, location of the records, and the routine uses of the information in the system. Other minor changes are being made for clarification or updating.

DATES: OIG has sent a report of the altered system notice to Congress and the Office of Management and Budget on October 25, 1990. Interested parties may submit comments on the proposed alteration on or before January 2, 1991. These changes will be effective 60 days from the date of submission to the Office of Management and Budget, and the proposed routine uses will be effective December 3, 1990.

ADDRESSES: Written comments should be addressed to Office of Inspector General, Department of Health and Human Services, Attention: LRR-30-N, room 5246, 330 Independence Avenue, SW., Washington, DC 20201. Comments received will be available for public inspection in room 5551, at the above address during normal business hours from 9 a.m. to 5 p.m.

FOR FURTHER INFORMATION CONTACT: Susan C. Callahan, Office of General Counsel, room 5541, at the above address or call (202) 619-0335.

SUPPLEMENTARY INFORMATION: The Office of Inspector General maintains information in this system of records in order to conduct, document, and track investigations covering a wide range of potential criminal violations involving HHS programs and operations. Since the establishment of the OIG in 1977, its investigative responsibilities have significantly broadened, and its investigative activities have grown increasingly more complex, requiring a major alteration of the notice to reflect these changes. The following summarizes the major changes being proposed:

Categories of Individuals Covered by the System

The current description of the individuals covered by this system, is being revised to more accurately describe the categories of subjects, witnesses, complainants, and other key individuals now in the system of records. This change will expand the categories of individuals, permitting retrieval of information on some additional key individuals who are not described in the current outdated description. This change is necessary in order to better track the status of complaints and investigations, and to facilitate the coordination of multiple cases involving individuals associated with each. This is also necessary because some targets of OIG investigations no longer fall within the categories of individuals described in the current system. For example, OIG investigations of Social Security number violations now often involve individuals who are not recipients under HHS programs.

Routine Uses

Paragraphs (a) and (e) have been combined into a new paragraph (a) which clarifies that disclosures to other law enforcement agencies covered by this provision permit disclosure of any information relevant to a legitimate investigation of the receiving agency regardless of whether the specific records disclosed indicate a particular violation. The purpose of these disclosures is to assist in the enforcement of laws of other governmental jurisdictions, a use consistent with the law enforcement purpose for which these records are maintained.

A new routine use, (b), is being added to more clearly provide for the disclosures necessary to the successful investigation and prosecution of OIG cases. It includes necessary disclosures such as those to grand juries, prosecutors, and judges made in the course of completing a case. Current routine uses (b) and (k), covering disclosures to the Department of Justice, are more limited and will be deleted. Disclosures covered by those provisions fall under the new routine use (b) and revised routine use (k) discussed below.

A new routine use (e) has been added to cover the infrequent situations where it is in the public interest to initiate a general release of information pertaining to an investigation. Such disclosures are necessary to effective law enforcement in order to alter the public and deter future criminal misconduct. Disclosures falling within this routine use include bulletins on particular crimes and announcements of particular actions such as arrests and indictments.

Revised routine use (k) outlines necessary disclosures made in the course of litigation involving HHS, its employees, or the United States. This has been revised based on guidance by the Office of Management and Budget. It is essentially the same type of disclosure provision found in most Federal systems of records and is necessary to the effective administration of justice in such proceedings.

A new routine use (m) is being added to provide for disclosures to third party contacts, including public and private organizations, in order to obtain information relevant to an OIG investigation, to identify violations, or otherwise assist in the conduct of OIG investigations. Such disclosures are necessary to effective law enforcement.

Retrievability

The OIG proposes to use the Social Security number to retrieve records in certain cases. Over the years, OIG has assumed responsibility for a number of investigations involving Social Security programs. Since Social Security program information is maintained by Social Security number, the use of the number as an additional retrieval mechanism can greatly facilitate locating specific case files pertaining to these and similar programs.

Other, minor changes are being made to clarify certain provisions and bring the notice into conformity with organizational, legislative, and policy changes. They include the following:
Acting Inspector General.

Records retention

The retention period for these records is being expanded from 5 years to 10 years to bring it into conformity with the requirements of 5 U.S.C. App. 3, authorize Inspectors General to conduct, supervise and coordinate investigations relating to the programs and operations of their respective agencies.

Authority for maintenance of the system:

Pursuant to the Inspector General Act of 1978, 5 U.S.C. App. 3, this system is maintained for the purpose of conducting, documenting, and tracking investigations conducted by the OIG or other investigative agencies regarding HHS programs and operations, documenting the outcome of OIG reviews of allegations and complaints received concerning HHS programs and operations, aiding in prosecutions brought against the subjects of OIG investigations, maintaining a record of the activities which were the subject of investigations, reporting the results of OIG investigations to other Departmental components for their use in operating and evaluating their programs and in imposition of civil or administrative sanctions, and acting as a repository and source for information necessary to fulfill the reporting requirements of 5 U.S.C. App. 3.

Routine uses of records maintained in the system:

a. Information from this system of records may be disclosed to any other federal agency or any foreign, state, or local government agency responsible for enforcing, investigating, or prosecuting violations of administrative, civil, or criminal law or regulation where that information is relevant to an enforcement proceeding, investigation, or prosecution within the agency's jurisdiction.

b. Information from this system of records may be disclosed to (1) the Department of Justice in connection with requests for legal advice and in connection with actual or potential criminal prosecutions or civil litigation pertaining to the Office of Inspector General, and (2) a Federal or State grand jury, a Federal or State court, administrative tribunal, opposing counsel, or witnesses in the course of civil or criminal proceedings pertaining to the Office of Inspector General.

c. Information from this system of records may be disclosed to a federal, state, or local agency maintaining civil, criminal or other relevant enforcement records or other pertinent records such as current licenses, if necessary to obtain a record relevant to an agency decision concerning the hiring or retention of an employee, the issuance of a license, grant or other benefit.

d. Information from this system of records may be disclosed to a federal agency in response to its request in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the record is relevant and necessary to the requesting agency's decision on the matter.

e. Relevant information may be disclosed from this system of records to the news media and general public where there exists a legitimate public interest, e.g., to provide information on events in the criminal process, such as indictments, and where necessary for protection from imminent threat to life or property.

f. Where federal agencies having the power to subpoena other federal agencies' records, such as the Internal Revenue Service, issue a subpoena to the Department for records in this system of records, the Department will make such records available.

g. When the Department contemplates that it will contract with a private firm for the purpose of collating, analyzing, aggregating or otherwise refining records in this system, relevant records will be disclosed to such contractor. The contractor shall be required to maintain Privacy Act safeguards with respect to such records.

h. Disclosures may be made to organizations deemed qualified by the Secretary to carry out quality assessments.

i. Information from this system of records may be disclosed in the course of employee discipline of competence determination proceedings.
j. Disclosures may be made to a Congressional office from the record of an individual in response to an inquiry from a Congressional office made at the request of that individual.

k. Information from this system of records may be disclosed to the Department of Justice, to a judicial or administrative tribunal, opposing counsel, and witnesses, in the course of proceedings involving HHS, an HHS employee (where the matter pertains to the employee’s official duties), or the United States, or any agency thereof where the litigation is likely to affect HHS, or HHS is a party or has an interest in the litigation and the use of the information is relevant and necessary to the litigation.

l. Information from this system of records may be disclosed to third party contacts, including public and private organizations, in order to obtain information relevant and necessary to the investigation of potential violations in HHS programs and operations, or where disclosure would enable the OIG to identify violations in HHS programs or operations or otherwise assist the OIG in pursuing on-going investigations.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:
The records, which take the form of index cards, investigative reports, microcomputer disks, computer mainframe files and computer printed listings are maintained under secure conditions in limited access areas. Written documents and computer disks are maintained in secure rooms, in security type safes or in combination locked computer rooms.

RETRIEVABILITY:
Records are retrieved by manual or computer search of indices containing the name or Social Security number of the individual to whom the record applies. Records may be cross-referenced by case or complaint number.

SAFEGUARDS:
Records are maintained in a restricted area and accessed only by Department personnel. Access within OIG is strictly limited to authorized staff members. All employees are given instructions on the sensitivity of such files and the restrictions on disclosure. Access within HHS is strictly limited to the Secretary, Under-Secretary, and other officials and employees on a need-to-know basis. All mainframe computer files and printed listings are safeguarded in accordance with the provisions of the National Institute of Standards and Technology Federal Information Processing Standards 41 and 21, and the HHS Information Resources Management Manual, Part 6, “ADP Systems Security.”

RETENTION AND DISPOSAL:
Investigative files are retained for 10 years after completion of the investigation and/or actions based thereon. Paper and computer indices are retained permanently. The records control schedule and disposal standards may be obtained by writing to the System Manager at the address below.

SYSTEM MANAGER AND ADDRESS:
Inspector General, Room 5250 Wilbur J. Cohen Building, Department of Health and Human Services, 330 Independence Avenue, SW, Washington, DC 20201.

NOTIFICATION PROCEDURES:
Exempt, however consideration will be given requests addressed to the system manager. For general inquiries, it would be helpful if the request included date of birth and Social Security number as well as the name of the individual.

RECORD ACCESS PROCEDURE:
Same as notification procedures. Requesters should also reasonably specify the record contents being sought.

CONTESTING RECORD PROCEDURE:
Contact the system manager at the address specified above, and reasonably identify the record, specify the information to be contested, and the corrective action sought with supporting justification.

RECORD SOURCE CATEGORIES:
The OIG collects information from a wide variety of sources, including information from the Department and other Federal, State, and local agencies, witnesses, complainants and other nongovernmental sources.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Pursuant to subsection [(jj)(2)] of the Privacy Act, 5 U.S.C. 552a(j)(2), the Secretary has exempted this system from the access, amendment, correction, and notification provisions of the Act, 5 U.S.C. 552a(c)(3), (d)(1)-(4), (e)(3), and (e)(4)(G) and (i).

[FR Doc. 90-25961 Filed 11-1-90; 8:45 am]
BILLING CODE 4150-04

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 35). The following requests have been submitted to OMB since the last list was last published on Friday, October 12, 1990.

[Call PHS Reports Clearance Officer on 202-245-2100 for copies of package]

1. Study of Food Label Formats—0910-0077—A sample of household food shoppers will be interviewed in an experimental setting to determine ability to identify nutrient differences between foods under alternative nutrition label formats. The data will provide input to proposed rulemaking to establish a new standardized format.

Respondents: Individuals or households; Number of Respondents: 1,550; Number of Responses per Respondent: 1; Average Burden per Response: 33 hours; Estimated Annual Burden: 512 hours.

2. Uncompensated Services Reporting and Recordkeeping (42 CFR 124 subpart F)—0915-0077—Health care facilities which have received funds under titles VI and XVI of the PHS Act are required to provide prescribed amounts of care to persons unable to pay and to submit to the Secretary data and information which reasonably demonstrates compliance with this requirement. Individuals denied such care have a right to appeal that denial to the Secretary. Respondents: Individuals or households, State or local governments, nonprofit institutions.

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3. Update Survey of Areas Closed or Otherwise Restricted Because of Toxic Substance Contamination—NEW—All States and territories of the U.S. will be contacted to provide information on closed and restricted areas because of toxic substance contamination. Site description, use limitations, and State agency authorities will be reported.

Respondents: State or local governments; Number of Respondents: 37; Number of Responses per Respondent: 1; Average Burden per Response: 9 hours; Estimated Annual Burden: 330 hours.

4. Medical Device Reporting—0910-0201—This regulation requires a manufacturer or importer of medical devices to report to FDA whenever they possess information suggesting a device has caused or contributed to a death, serious injury, or has malfunctioned, and is likely to cause or contribute to a death or serious injury. Importers are required to establish and maintain files or reports and records. Respondents: Businesses or other for-profit, small businesses or organizations.

Within 30 days of this notice directly to the OMB Desk Officer designated above at the following address:
Human Resources and Housing Branch, New Executive Office Building, room 2002, Washington, DC 20503.


James M. McCallum, Acting Deputy Assistant Secretary for Health (Planning and Evaluation).

[FR Doc. 90-25878 Filed 10-1-90; 8:45 am]

BILLING CODE 4160-17-M

Orphan Products Board; Public Meeting

AGENCY: Office of the Assistant Secretary for Health, DHHS.

ACTION: Notice of public meeting: Orphan Products Board.

SUMMARY: The Department of Health and Human Services and the Office of the Assistant Secretary for Health announce that a public meeting of the Orphan Products Board will be held on December 5, 1990 in Washington, DC. During the afternoon session there will be an opportunity for interested persons to present information and views on the issue of orphan products development.

The meeting will be chaired by Dr. James O. Mason, Assistant Secretary for Health and Chairman, Orphan Products Board. It will commence at 9 a.m., in room 600, Hubert H. Humphrey Building, 200 Independence Avenue, SW, Washington, DC 20201.

ADDRESS: Written requests to participate should be sent to Dr. John V. Kelsey, Executive Secretary, Orphan Products Board, Food and Drug Administration (HF-35), room 15-61, 5600 Fishers Lane, Rockville, Maryland 20857, and should be received by November 23, 1990.

FOR FURTHER INFORMATION CONTACT: Dr. John V. Kelsey, Executive Secretary, Orphan Products Board, Food and Drug Administration (HF-35), 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443-4903.

SUPPLEMENTARY INFORMATION: An orphan drug is a drug for the treatment of a rare disease or condition which either (1) has a prevalence in the United States of under 200,000 persons or (2) has a higher prevalence and for which there is no reasonable expectation that the cost of developing and making available in the United States a drug for such disease or condition will be recovered from sales in the United States of such drug. The Orphan Drug Act, Public Law 97-414 enacted on January 4, 1983, as amended, established a number of incentives to encourage the development and marketing of orphan drugs.

The Act also established an Orphan Products Board to promote the development of drugs and devices for rare diseases or conditions and to assure appropriate coordination among all interested Federal agencies, manufacturers, and organizations representing patients with rare diseases.

The Orphan Products Board is chaired by the Assistant Secretary for Health. The Board is composed of representatives from the Department of Health and Human Services (DHHS), the Veterans Administration (VA), the National Institute for Disability and Rehabilitation Research (NIDRR), and the Department of Defense (DoD).

Within DHHS, representatives from the Alcohol, Drug Abuse, and Mental Health Administration (ADAMHA), the Centers for Disease Control (CDC), the Food and Drug Administration (FDA), the Health Care Financing Administration (HCFA), the National Institutes of Health (NIH), and the Office of the Assistant Secretary for Health (OASH) serve on the Board.

This public meeting will have three purposes:

1. An update will be provided on the activities of the Orphan Products Board, and members of the Board will discuss their agencies' recent orphan product development activities, especially with respect to implementation of the recommendations of the National Commission on Orphan Diseases.

2. A ceremony will be held to honor the recipients of the Public Health Service Award for Exceptional Achievement in Orphan Products Development. This award recognizes the efforts of individuals who have contributed to the development of drugs for rare diseases or conditions. The awards will be presented by the Assistant Secretary for Health.

3. In keeping with its mandate to foster actions within the Department to facilitate the research, development, and approval of orphan products and to coordinate government activities with the private sector in order to achieve these goals, the Board encourages presentations by members of the public on any issues involving the development and availability of orphan products. Those persons wishing to make a presentation at the meeting on the third topic should submit a written request for a time slot to the Executive Secretary of the Orphan Products Board. The request for participation should be submitted before November 23, 1990, and should include:

OMB Desk Officer: Shannah Koss-McCallum.

Written comments and recommendations for the proposed information collections should be sent.
a. Name, address, and telephone number of the person desiring to make a presentation;
b. Affiliation, if any;
c. A summary of the presentation; and
d. The approximate amount of time required for the presentation (no more than 10 minutes, unless more time can be justified.)

Individuals and organizations with common interests or proposals are urged to coordinate or consolidate their presentations. Joint presentations may be required of persons or organizations with a common interest. The time available will be allocated among the individuals who request an opportunity for a presentation. Formal written statements or extensions of remarks (five copies) may be presented to the Chairman on the day of the meeting for inclusion in the record of the meeting. At the discretion of the Chairman, and as time permits, anyone in attendance may be heard. This time will, most likely, be at the end of the scheduled session. For those unable to attend the meeting, comments may be sent to the Executive Secretary of the Orphan Products Board at the address listed above.


Session I—Chairperson: Dr. James O. Mason.

9 a.m.: Introduction and Welcome—Dr. James O. Mason, Assistant Secretary for Health and Chairman, Orphan Products Board
9:15 a.m.: PHS Awards for Exceptional Achievement in Orphan Products Development—Dr. James O. Mason
9:30 a.m.: Implementation of the Recommendations of the National Commission on Orphan Diseases—Agency Representatives to the Orphan Products Board
10:30 a.m.: Break

Session II—Chairperson: Mr. James Friedman
10:45 a.m.: Access to Health Care/Health Insurance/Reimbursement Policy, Dr. Gail Wilensky, Administrator, HCFA
11:15 a.m.: Disability Determination and Eligibility for Supplemental Security Income—Representative, Social Security Administration
11:45 a.m.: Medical Foods and Medical Devices as Orphan Products: Summary of Reports—Dr. Marlene Haffner—FDA
12:15 p.m.: Lunch

Session III—Chairperson: Mr. James Friedman
1:30 p.m.: Who International Classification of Diseases (ICD XI) Genetic and Acquired Rare Diseases—Mr. Robert Israel, Deputy Director, NCHS/CDC
2 p.m.: Determining the Prevalence of Rare Diseases—Report from Workshop—Dr. Stephen Groft (NIH/OSPL), Dr. Stephen Heyse and Dr. Kayvon Safavi (NIH/NIAMS)
2:30 p.m.: Open Public Forum


James O. Mason,
Acting Secretary for Health.

[FR Doc. 90-25992 Filed 11-1-90; 8:45 am]
BILLING CODE 4160-17-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N-80-1917; FR-2606-N-96]

Federal Property Suitable as Facilities to Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized or underutilized Federal property determined by HUD to be suitable for use as facilities to assist homeless individuals. The properties identified in this Notice will be made available to the homeless in accordance with applicable law. Section 501(b) of the McKinney Act requires HUD to notify each Federal agency about any property of such agency that has been identified as suitable. Within 30 days of receipt of such notice from HUD, the agency must transmit to HUD (1) a letter of intent to declare the property excess to the agency's need or to make the property available on an interim basis for use as facilities to assist the homeless; or (2) a statement of the reasons that the property cannot be declared excess or made available on an interim basis for use as facilities to assist the homeless.

First, if the landholding agency declares the property excess to the agency's need, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law and the December 12, 1988 order. Second, if the landholding agency declares the property excess to the agency’s need, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law and the December 12, 1988 order. This Notice will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit such written expression of interest within 30 days of receipt of the Notice.
days from the date of this Notice. For complete details concerning the timing and processing of applications, the reader is encouraged to refer to HUD's Federal Register Notice on June 23, 1989 (54 FR 27975), as corrected on July 2, 1989 (54 FR 27975).

For more information regarding particular properties identified in this Notice (i.e., acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses:

- Ronald Rice, Federal Property Resources Services, CSA, 18th and F Streets NW, Washington, DC 20405; (202) 501-0067; U.S. Air Force: H. L. Lovejoy, Bolling AFB, HQ-USAF/LEER, Washington, DC 20332-5000; (202) 787-161; Dept of Agriculture: Marsha Pruitt, USDA, 14th and Independence Avenue SW, South Blvd, room 1568, Washington, DC 20250; (202) 447-3338. [These are not toll-free numbers.]

Date: October 25, 1990.

Paul Roitman Bardack,
Deputy Assistant Secretary for Economic Development.

### Suitable Land (by State)

#### Kentucky

- **Martins Fork Lake Property**
  - (See County), KY, Co: Harlan
  - Landholding Agency: GSA
  - Property Number: 549046002
  - Status: Unutilized
  - Comment: 23 acre; no utility and sewer lines available
  - GSA NO. 4-D-GR-KY-530A

#### Maine

- **White Mountain National Forest**
  - Stoneham, ME
  - Landholding Agency: GSA
  - Property Number: 549040062
  - Status: Unutilized
  - Comment: 2250 sq.ft; 2 story wood frame; needs major rehab; structurally unsound

#### South Dakota

- **Ellsworth Air Force Base**
  - Bldg. 8472B: Skyway Housing
    - Ellsworth Air Force Base
    - 847 Billy Mitchell
    - Ellsworth AFB, SD, Co: Pennington
    - Landholding Agency: Air Force
    - Property Number: 189040005
    - Status: Unutilized
    - Comment: 1170 sq.ft; two story wood frame residence; structurally deteriorated; possible asbestos; potential utilities; secured area with alternate access
    - Bldg. 8457B: Skyway Housing
    - Ellsworth Air Force Base
    - 843 Billy Mitchell
    - Ellsworth AFB, SD, Co: Pennington
    - Landholding Agency: Air Force
    - Property Number: 189040005
    - Status: Unutilized
    - Comment: 1114 sq.ft; two story wood frame residence; structurally deteriorated; possible asbestos; potential utilities; secured area with alternate access
    - Bldg. 8474B: Skyway Housing
    - Ellsworth Air Force Base
    - 64 Front Street
    - Ellsworth AFB, SD, Co: Pennington
    - Landholding Agency: Air Force
    - Property Number: 189040005
    - Status: Unutilized
    - Comment: 1120 sq.f; two story wood frame residence; structurally deteriorated; possible asbestos; potential utilities; secured area with alternate access
    - Bldg. 8462B: Skyway Housing
    - Ellsworth Air Force Base
    - 43 Front Street
    - Ellsworth AFB, SD, Co: Pennington
    - Landholding Agency: Air Force
    - Property Number: 189040005
    - Status: Unutilized
    - Comment: 1110 sq.ft; two story wood frame residence; structurally deteriorated; possible asbestos; potential utilities; secured area with alternate access
    - Bldg. 8425D: Skyway Housing
    - Ellsworth Air Force Base
    - 258 Billy Mitchell
    - Ellsworth AFB, SD, Co: Pennington
    - Landholding Agency: Air Force
    - Property Number: 189040007
    - Status: Unutilized
    - Comment: 980 sq. ft; two story wood frame residence; structurally deteriorated; possible asbestos; potential utilities; secured area with alternate access
    - Bldg. 8473G: Skyway Housing
    - Ellsworth Air Force Base
    - 258 Billy Mitchell
    - Ellsworth AFB, SD, Co: Pennington
    - Landholding Agency: Air Force
    - Property Number: 189040009
    - Status: Unutilized
    - Comment: 990 sq.ft; two story wood frame residence; structurally deteriorated; possible asbestos; potential utilities; secured area with alternate access
    - Bldg. 8458B: Skyway Housing
    - Ellsworth Air Force Base
    - 258 Billy Mitchell
    - Ellsworth AFB, SD, Co: Pennington
    - Landholding Agency: Air Force
    - Property Number: 189040017
    - Status: Unutilized
    - Comment: 963 sq.f; two story wood frame residence; structurally deteriorated; possible asbestos; potential utilities; secured area with alternate access
    - Bldg. 8475A: Skyway Housing
    - Ellsworth Air Force Base
    - 000 Arnold Lane
    - Ellsworth AFB, SD, Co: Pennington
    - Landholding Agency: Air Force
    - Property Number: 189040011
    - Status: Unutilized
    - Comment: 921 sq.f; two story wood frame residence; structurally deteriorated; possible asbestos; potential utilities; secured area with alternate access
    - Bldg. 8458A: Skyway Housing
    - Ellsworth Air Force Base
    - 16 Front Street
    - Ellsworth AFB, SD, Co: Pennington
    - Landholding Agency: Air Force
    - Property Number: 189040007
    - Status: Unutilized
    - Comment: 1213 sq. ft; two story wood frame residence; structurally deteriorated; possible asbestos; potential utilities; secured area with alternate access
    - Bldg. 8465B: Skyway Housing
    - Ellsworth Air Force Base
    - 249 Billy Mitchell
    - Ellsworth AFB, SD, Co: Pennington
    - Landholding Agency: Air Force
    - Property Number: 189040014
    - Status: Unutilized
    - Comment: 1213 sq.ft; two story wood frame residence; structurally deteriorated; possible asbestos; potential utilities; secured area with alternate access
    - Bldg. 8462B: Skyway Housing
    - Ellsworth Air Force Base
    - 14 Front Street
    - Ellsworth AFB, SD, Co: Pennington
    - Landholding Agency: Air Force
    - Property Number: 189040015
    - Status: Unutilized
    - Comment: 1236 sq.ft; one story wood frame residence; structurally deteriorated; possible asbestos; potential utilities; secured area with alternate access
    - Bldg. 8427G: Skyway Housing
    - Ellsworth Air Force Base
    - 18 Front Street
    - Ellsworth AFB, SD, Co: Pennington
    - Landholding Agency: Air Force
    - Property Number: 189040016
    - Status: Unutilized
    - Comment: 963 sq.ft; two story wood frame residence; structurally deteriorated; possible asbestos; potential utilities; secured area with alternate access
    - Bldg. 8447A: Skyway Housing
    - Ellsworth Air Force Base
    - 401 Billy Mitchell
    - Ellsworth AFB, SD, Co: Pennington
    - Landholding Agency: Air Force
    - Property Number: 189040004
    - Status: Unutilized
    - Comment: 963 sq.ft; two story wood frame residence; structurally deteriorated; possible asbestos; potential utilities; secured area with alternate access
DEPARTMENT OF THE INTERIOR
Office of the Secretary

DEPARTMENT OF EDUCATION

Call for Nominations to the Advisory Committee for the White House Conference on Indian Education

AGENCY: Office of the Secretary, Department of the Interior and Office of the Secretary, Department of Education.

ACTION: Notice.

SUMMARY: A White House Conference on Indian Education was authorized by sections 5501–5508 of Public Law 100–297, the Augustus F. Hawkins–Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988 as amended by Public Law 100–427, section 26, September 9, 1988 and Public Law 100–380, section 59, May 24, 1990 [25 U.S.C. 2001 note]. The purpose of the White House Conference on Indian Education shall be to: (1) Explore the feasibility of establishing an independent Board of Indian Education that would assume responsibility for all existing Federal programs relating to the education of Indians; and (2) develop recommendations for the improvement of education programs to make the programs more relevant to the needs of Indians.

- Both the Secretary of Education and the Secretary of the Interior have designated individuals to an Interagency Task Force which will plan and conduct the Conference. Also, both Departments will jointly name a Director of the Interagency Task Force.

Section 5508 of Public Law 100–297 calls for the establishment of an Advisory Committee of the Conference. The function of the Advisory Committee shall be to assist and advise the Task Force in planning and conducting the Conference. Ten (10) of the 24 individuals who will serve on the Advisory Committee are to be appointed by the President.

The purpose of this notice is to request federally and non-federally recognized Indian tribes, public and private schools serving Indian children, states, tribal organizations, and any other interested parties to nominate individuals for consideration by the President for appointment to the Advisory Committee. Final nominations to the President will include those individuals with demonstrated knowledge and experience in Indian education programs. Such final nominees should possess the qualifications necessary to support the two primary goals of the Conference.

DATES: Nominations will be accepted until December 1, 1990.

ADDRESSES: Nominations should be addressed to the Task Force on the White House Conference on Indian Education, Department of the Interior, 1804 C Street, NW, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT:
Benjamin Atencio, 202–208–7167.


Manuel Lujan, Jr., Secretary of the Interior.


Lauro Cavazos,
Secretary of Education.

[FR Doc. 90–26111 Filed 11–1–90; 8:45 am]
BILLING CODE 4110–29–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[40–10–01–4332–00; Fes 90–31]

Availability of Final Wilderness Environmental Impact Statement (EIS) for the Owl Creek, Bobcat Draw, Badlands, Sheep Mountain, and Red Butte Wilderness Study Area of the Grass Creek Resource Area and the McCullough Peaks Wilderness Study Area of the Cody Resource Area, Worland District, Wyoming

AGENCY: Bureau of Land Management, Interior.

SUMMARY: The Grass Creek/Cody Wilderness Environmental Statement assesses the environmental consequences of managing five wilderness study areas as wilderness or non-wilderness. The alternatives assessed include: (1) A "No Wilderness Alternative" for each wilderness study area; (2) an "All Wilderness Alternative" for each wilderness study area; (3) a "Conflict Reduction Alternative" for three wilderness study areas; and (4) a "Wilderness Manageability Alternative" for four wilderness study areas.

The names of the wilderness study areas, their total acreage and the acreage recommended suitable and nonsuitable under the Proposed Action are:

- Grass Creek/Cody: 8,020 acres suitable for wilderness and 11,350 acres suitable for wilderness
- Bobcat Draw Badlands: 17,150 acres suitable for wilderness
- Red Butte: 11,250 acres suitable for wilderness
- McCullough Peaks: 25,210 acres suitable for wilderness and 17,190 acres nonsuitable for wilderness
- Sheep Mountain: 23,250 acres suitable for wilderness
- Cheyenne Mountain: 11,350 acres suitable for wilderness

The Bureau of Land Management (BLM) will publish a Notice of Proposed Action for the Grass Creek/Cody Wilderness Environmental Statement in the Federal Register. BLM will then issue a Final Environmental Impact Statement (EIS) and a Final Decision Document with a recommendation to Congress. The decision will be based on a thorough review of the environmental consequences of the various alternatives.

[CA-010-01-4333.11]

Meeting of the Bakersfield District Advisory Council

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Meeting of the Bakersfield District Advisory Council.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committee Act (Pub. L. 92-463) and the Federal Land Policy and Management Act of 1976 (sec. 308), the Bakersfield District Advisory Council will meet in Bakersfield, California.

DATES: November 30-December 1, 1990.

ADDRESS: Field trip to the oil fields of western Kern County leaving from 4301 Rosedale Highway, Bakersfield at 8 a.m. Friday, November 30. Meeting in the Kern Council of Governments meeting room, 2nd floor, 1401 19th Street, Suite 230, Bakersfield, 8 a.m. to 4 p.m. Saturday, December 1.

SUPPLEMENTARY INFORMATION: The Bakersfield District Advisory Council is a 10 member council appointed by the Secretary of the Interior to give counsel and advice regarding planning and management of public lands resources to the District Manager of the Bureau of Land Management Bakersfield District. The Council will meet on Friday for a field trip to the oil fields of western Kern County where numerous federal oil leases are located. The agenda for the Saturday meeting will include a discussion of the planning objectives for the Resource Management Plan (RMP) now being written for the Caliente Resource Area, the potential for oil and gas development and how it may be affected by the RMP, and a report on the Carrizo Plain National Area. The meeting is open to the public, and anyone wishing to address the Council about any public land issue may do so during the public comment period from 1 to 2 p.m. Written comments may be submitted to the address below.

FOR FURTHER INFORMATION CONTACT: Larry Mercer, Public Affairs Officer, Bureau of Land Management, Bakersfield District Office, 800 Truxton Avenue, room 311, Bakersfield, CA 93301, telephone (805) 661-4229.

Dated: October 26, 1990.
Robert D. Rheiner, Jr.,
District Manager.
[FR Doc. 90-25945 Filed 11-1-90; 8:45 am]
BILLING CODE 4310-22-M

[AZ-020-4332-02]

Phoenix District Advisory Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Meeting of the Phoenix District Advisory Council.

DATE: December 5, 1990.

ADDRESS: 2015 West Deer Valley Road, Phoenix, Arizona.

SUMMARY: The Phoenix District Advisory Council of the Bureau of Land Management meets December 5 at the Phoenix District Office, 2015 West Deer Valley Road, Phoenix, at 9 a.m. to discuss and make recommendations on various public land issues.

The Council has been established by and will be managed according to the Federal Advisory Committee Act of 1972, the Federal Land Policy and Management Act of 1976, and the Public Rangelands Improvement Act of 1978. The agenda for the meeting includes:

- Kingman Resource Management Plan
- Phoenix Resource Management Plan Amendment
- Santa Maria Allotment AMP and EA
- Land Exchanges
- Southwest Regional Landfill
- Wilderness Legislation
- Barry M. Goldwater Range
- BLM Management Updates
- Business from the Floor
- Public Comments and Statements
- Future Meetings and Agenda Topics

SUPPLEMENTARY INFORMATION: This is a public meeting and the Bureau of Land Management welcomes the presentation of oral statements or the submission of written statements that address the issues on the meeting agenda or related matters.
ACTION: Notice of meeting.

SUMMARY: The Bureau of Land Management (BLM), Safford District announces a forthcoming meeting of the Safford District Grazing advisory Board.

DATES: Wednesday, December 5, 1990, 9 a.m.

ADDRESSES: BLM Office, 425 E. 4th Street, Safford, Arizona 85546.

SUPPLEMENTARY INFORMATION: This meeting is held in accordance with Public Law 92-463 and 46 CFR 718. The agenda for the meeting will include:

1. Election of Officers
2. Proposed Range Improvement Projects for Fiscal Year 1991
3. Allotment Management plans Proposed for Fiscal Year 1991
4. Wilderness Issues
5. Safford District Resource Management Plan
6. BLM Management Update
7. Business from the Floor

The meeting will be open to the public. Interested persons may make oral statements to the Board. A written copy of the oral statement may be required to be provided at the conclusion of the presentation. Written statements may also be filed for the Board's consideration. Anyone wishing to make an oral statement must notify the District Manager, Bureau of Land Management, 425 E. 4th St., Safford, Arizona 85546, by 4:15 p.m., Tuesday, December 4, 1990.

Summary minutes of the Board meeting will be maintained in the District Office and will be available for public inspection and reproduction [during regular business hours] within thirty (30) days following the meeting.

Ray A. Brady, District Manager.

[FR Doc. 90-25898 Filed 11-1-90; 8:45 am]
BILLING CODE 4310-32-M

[BR-030-01-4320-14]

Rawlins District Grazing Advisory Board; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Meeting of the Rawlins District Grazing Advisory Board.

SUMMARY: Notice is hereby given in accordance with Public Law 92-463 and 46 CFR 718. The agenda for the Rawlins District Grazing Advisory Board will be held. This notice sets forth the schedule and proposed agenda for the meeting.

DATES: December 6, 1990, 10 a.m. to 3 p.m.


FOR FURTHER INFORMATION CONTACT: John Spehar, District Range Conservationist, Rawlins District Office, Wyoming, 82301.

SUPPLEMENTARY INFORMATION: The agenda for the meeting will include:

1. Introduction and opening remarks
2. Election of a chairman and vice-chairman
3. Opportunity for the public to present information or make comments
4. Improvements proposed for completion in FY91 with range betterment (8100) funds
5. Update on status of Great Divide ROD and Divide RPS Update
6. Update on wild horse program

The meeting is open to the public. Written statements may also be filed for the board's consideration.

Summary minutes of this meeting will be on file in the Rawlins District Office and available for public inspection (during regular business hours) within 30 days of the meeting.

Richard Bastin, District Manager.

[FR Doc. 90-25897 Filed 11-1-90; 8:45 am]
BILLING CODE 4310-22-M

[AZ-040-01-4320-02]

Meeting for the Safford District Grazing Advisory Board

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting.

SUMMARY: The Bureau of Land Management (BLM), Safford District announces a forthcoming meeting of the Safford District Grazing advisory Board.

DATES: Wednesday, December 5, 1990, 9 a.m.

ADDRESSES: BLM Office, 425 E. 4th Street, Safford, Arizona 85546.

SUPPLEMENTARY INFORMATION: This meeting is held in accordance with Public Law 92-463. The agenda for the meeting will include:

1. Election of Officers
2. Proposed Range Improvement Projects for Fiscal Year 1991
3. Allotment Management plans Proposed for Fiscal Year 1991
4. Wilderness Issues
5. Safford District Resource Management Plan
6. BLM Management Update
7. Business from the Floor

The meeting will be open to the public. Interested persons may make oral statements to the Board. A written copy of the oral statement may be required to be provided at the conclusion of the presentation. Written statements may also be filed for the Board's consideration. Anyone wishing to make an oral statement must notify the District Manager, Bureau of Land Management, 425 E. 4th St., Safford, Arizona 85546, by 4:15 p.m., Tuesday, December 4, 1990.

Summary minutes of the Board meeting will be maintained in the District Office and will be available for public inspection and reproduction [during regular business hours] within thirty (30) days following the meeting.

Ray A. Brady, District Manager.

[FR Doc. 90-25898 Filed 11-1-90; 8:45 am]
BILLING CODE 4310-32-M

[BR-030-01-4320-14]

Rawlins District Grazing Advisory Board; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Meeting of the Rawlins District Grazing Advisory Board.

SUMMARY: Notice is hereby given in accordance with Public Law 92-463 and 46 CFR 718. The agenda for the Rawlins District Grazing Advisory Board will be held. This notice sets forth the schedule and proposed agenda for the meeting.

DATES: December 6, 1990, 10 a.m. to 3 p.m.


FOR FURTHER INFORMATION CONTACT: John Spehar, District Range Conservationist, Rawlins District Office, Bureau of Land Management, P.O. Box 670, Rawlins, Wyoming, 82301.

SUPPLEMENTARY INFORMATION: The agenda for the meeting will include:

1. Introduction and opening remarks
2. Election of a chairman and vice-chairman
3. Opportunity for the public to present information or make comments
4. Improvements proposed for completion in FY91 with range betterment (8100) funds
5. Update on status of Great Divide ROD and Divide RPS Update
6. Update on wild horse program

The meeting is open to the public. Written statements may also be filed for the board's consideration.

Summary minutes of this meeting will be on file in the Rawlins District Office and available for public inspection (during regular business hours) within 30 days of the meeting.

Richard Bastin, District Manager.

[FR Doc. 90-25897 Filed 11-1-90; 8:45 am]
BILLING CODE 4310-22-M

[1990-DE-4214-10; WWY 23824]

Opening Order, Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Opening order for public land revoked by Public Land Order (PLO) No. 6157 on February 8, 1982.

SUMMARY: This notice opens 22.50 acres of public land to the operation of the public land laws. Executive Order of September 29, 1917, creating Powersite Reserve No. 847, originally protected the Yellowtail (Big Horn Canyon) reservoir site. The land was not needed for the purpose for which it was withdrawn, and was subsequently revoke by PLO 6157 on February 8, 1982. Lot 8, section 6, of T. 50N., R. 95 W., was inadvertently omitted from the list of lands opened to entry by PLO 6157.

EFFECTIVE DATE: November 5, 1990.

FOR FURTHER INFORMATION CONTACT: Tamara J. Certich, BLM Wyoming State Office, Bureau of Land Management, 2515 Warren Avenue, P.O. Box 1828, Cheyenne, Wyoming 82003, 307-775-6115.

At 9:30 a.m. on November 5, 1990, the following described public land shall be open to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid applications received at or prior to 9:30 a.m. on November 5, 1990, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

Sixth Principal Meridian
T. 50 N., R. 95 W.
Sec. 6, lot 8.
The area described contains 22.50 acres in Big Horn County.

Ray Brubaker, State Director, Wyoming.
[FR Doc. 90-25898 Filed 11-1-90; 8:45 am]
BILLING CODE 4310-32-M

East Mojave National Scenic Area, California; Supplemental Rules Revision/Adoption

AGENCY: Bureau of Land Management, Interior.

ACTION: Revision of supplemental rules regarding firearms use in the East Mojave National Scenic Area.

SUMMARY: The purpose of this revision is to provide a better description of the "No Shooting" safety zones in the East Mojave National Scenic Area and corrects Federal Register Notice Vol. 53, No. 240, December 14, 1988.

Firearms Use

1. Except as otherwise provided by statute of the State of California, it shall be unlawful for any person to discharge a firearm in the East Mojave National Scenic Area within 150 yards of any building without having in his/her possession the written permission of the owner or tenant thereof, or within 150 yards of any tent, motor home, house trailer, or other temporary encampment of persons without having in his immediate possession the written permission of the occupants or tenants...
Management Plan recommended recreation sites, public within the Research Natural Area and adjacent Piute Creek Area of Environmental County Ordinance 22015). boundary of Providence Mountain Lands thereof. (Adoption of San Bernardino County Ordinance 22015).

2. The East Mojave Scenic Area Management Plan recommended establishment of shooting closures at the Pute Creek Area of Environmental Concern (ACEC), Granite Mountains Research Natural Area and adjacent recreation sites, public within the boundary of Providence Mountain Lands State Recreation Area, and within 150 yards of developed recreation sites including but not limited to Hole-in-the-Wall and Midhills campgrounds. Discharging of all firearms, including but not limited to target shooting and the taking of game, is prohibited within and into these areas. The shooting closures are specifically described as all Public Lands within:

a. Pute Creek ACEC: Located approximately 30 miles northwest of Needles, California and approximately 9 miles west of U.S. 95. Legally described as: 150 yards from Fort Pute Recreation Site at the Fort runs within:
   T.12N., R.12E., sections 13, 24, S.B.M.

b. Granite Mountains Research Natural Area: Located approximately 65 miles west of Needles, California and northwest of Interstate 40 off Kelbaker Road. Legally described as:
   T.12N., R.12E., sections 35, 36, S.B.M.
   T.13N., R.13E., sections 31, S.B.M.
   T.13N., R.13E., sections 1, 2, 11, 12, 13, 14, S.B.M.
   T.13N., R.13E., sections 4, 5, 6, 7, 8, 9, 10, 17, 18, S.B.M.—west of Kelbaker Road.

c. The discharge of firearms is prohibited across or within 50 yards of either side of the following roads:
   a. Kelbaker Road
   b. Ivanpah/Lanfair Roads
   c. Cedar Canyon Road
   d. Cima Road
   e. Kelso-Cima Road
   f. Black Canyon Road
   g. Ivanpah/Lanfair Roads
   h. Mojave Road
   i. Morningstar Mine Road

**Effective Date:** These rules and designations will be effective on or before December 3, 1990, and will remain in effect until rescinded or modified by the authorized officer. Enforcement of these rules will be implemented as areas are signed and information made available to the public.

**For Further Information Contact:**
Area Manager, Needles Resource Area, 301 W. Spikes Road, P.O. Box 686, Needles, CA 92363 (619) 326-3896.

**Supplementary Information:** "No Shooting" safety zones have been established to provide for the protection of person, property, and public land resources in high use areas within the East Mojave National Scenic Area. Authority for establishing supplemental rules is contained in title 43 CFR 8365.1-6. These rules have been recommended and adopted through the development of a comprehensive management plan for the East Mojave National Scenic Area, including extensive review by the public and other government agencies. Any person violating this restriction is subject to punishment pursuant to title 43 CFR 8365.1-6.

**October 25, 1990.**
Ed Hastey,
State Director.

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**Federal Register** / Vol. 55, No. 213 / Friday, November 2, 1990 / Notices 46257

**Reality Action; Recreation and Public Purposes Classification; Churchill County, NV**

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Classification of public land.

**SUMMARY:** The following described public lands in Churchill County, Nevada have been examined and found suitable for classification for lease or conveyance to Churchill County under the provisions of the Recreation and Public Purposes Act as amended (43 U.S.C. 660 et seq.).

**Mount Diablo Moridian**
T. 21 N., R. 28 E., Sec. 30, E½ W½, E½ W¼ W½ (containing 240 acres).

Churchill County proposes to use the lands for a motor racing complex. The subject lands were withdrawn for reclamation purposes in association with the Newlands Reclamation Project and are under Bureau of Reclamation jurisdiction. The Bureau of Reclamation has approved of the determination that the lands are not needed for reclamation or other Federal purposes. Lease or conveyance of the lands would be in the public interest.

The lease and/or patent, when issued, will be subject to the provisions of the Recreation and Public Purposes Act and applicable regulations of the Secretary of the Interior, and will contain the following reservations to the United States:
2. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe.

Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Carson City District Office.

Upon publication of this notice in the Federal Register, the lands will be segregated from all forms of appropriation under the public land laws, except for lease or conveyance under the Recreation and Public Purposes Act and leasing under the mineral leasing laws. The lands will remain closed to operations under the mining laws.

For a period of 45 days from the date of publication of this notice, interested persons may submit comments regarding the proposed lease/conveyance or classification of the lands to the District Manager, Carson City District Office, 1335 Hot Springs Road, Ste. 300, Carson City, NV 89706. Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, this classification will become effective 60 days from the date of publication in the Federal Register.

**Proposed Withdrawal and Reservation of Public Land and Public Minerals; Opportunity for Public Meeting; Colorado**

**Proposed Withdrawal and Reservation of Public Land and Public Minerals; Opportunity for Public Meeting; Colorado**

October 24, 1990.

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** The U.S. Department of Agriculture, Forest Service, proposes to withdraw public land and public domain minerals near La Junta, Colorado, for 20 years to protect and conserve paleontological, archaeological, and other natural resource values within the Purgatoire River Canyonslands. This notice closes the 40-acres of public land to operation of the public land laws and the entire 6,199 acres of Federal minerals to location and entry under the mining laws for up to two years. The lands remain open to mineral leasing.
DATES: Comments on this proposed withdrawal must be received on or before January 30, 1991.


FOR FURTHER INFORMATION CONTACT: Doris E. Chellius, (303) 239-3706.

SUPPLEMENTARY INFORMATION: On October 4, 1990, the Department of Agriculture, Forest Service, filed an application to withdraw the following described public land and these lands containing public domain minerals from location and entry under the United States mining laws (30 U.S.C. Ch. 2):

1. Sixth Principal Meridian

T. 27 S., R. 55 W., Sec. 29, NW¼ Sec. 30, SE¼ Sec. 28, NW¼ Sec. 27, NW¼ Sec. 26, NW¼ Sec. 25, NW¼ Sec. 24, NW¼ Sec. 23, NW¼, SE¼

T. 28 S., R. 55 W., Sec. 31, Lot 4, SE¼ Sec. 30, SW¼ Sec. 29, SW¼ Sec. 28, W¼ Sec. 27, W¼ Sec. 26, W¼ Sec. 24, W¼ Sec. 23, W¼

T. 29 S., R. 55 W., Sec. 2, Lot 2, SW¼ Sec. 1, Lot 1, SW¼

Sec. 3, Lots 3 and 4, SE¼, W¼

Sec. 4, Those portions of Lots 1, 2, and 3, SW¼ Southerly of the Pinon Canyon Manuever Site boundary

Sec. 16, NW¼ and SW¼

Sec. 20, NE¼

Sec. 29, W¼, SW¼, and NW¼

Sec. 30, Lots 3 and 4

Sec. 31, Lot 4, E¼, NE¼, SE¼, and SW¼

Sec. 32, E¼, W¼, NW¼, NW¼, SE¼, NW¼, and SW¼

T. 30 S., R. 55 W., Sec. 5, Lot 4

Sec. 6, Lots 1 and 2

T. 31 S., R. 55 W., Sec. 12, SW¼

Sec. 14, Those portions of SE¼ southerly of the Pinon Canyon Manuever Site boundary

Sec. 23, Those portions of NE¼ southerly of the Pinon Canyon Manuever Site boundary

Sec. 24, NW¼

Sec. 25, NW¼, NE¼ and NW¼

Sec. 26, W¼, SW¼, N¼, and SE¼

T. 32 S., R. 55 W., Sec. 2, Lot 2, SW¼

Sec. 4, Those portions of the W¼ southerly of the Pinon Canyon Manuever Site boundary

Sec. 7, Those portions of the W¼ southerly of the Pinon Canyon Manuever Site boundary

Sec. 8, SW¼

Sec. 9, SW¼

Sec. 10, N¼

Sec. 12, N¼, W¼

Sec. 13, NW¼

Sec. 17, N¼

T. 30 S., R. 56 W., Sec. 15, Those of the S½ lying southerly of the Pinon Canyon Manuever Site boundary.

Sec. 19, Those portions of the SE¼, NE¼SW¼, and NW¼ SE¼, lying southerly of the Pinon Canyon Manuever Site boundary

Sec. 20, NW¼SW¼ and SW¼

Sec. 30, Those portions of lot 2, SE¼, and E¼NW¼, lying southerly of the Pinon Canyon Manuever Site boundary.

The areas described aggregate approximately 6,150 acres of public domain minerals.

2. Sixth Principal Meridian

T. 29 S., R. 55 W., Sec. 17, SE¼

The area described contains 40 acres of public land.

The purpose of the withdrawal is to protect and conserve paleontological, archaeological, and other natural resources within the Purgatoire River Canyolands.

For a period of 90 days from the date of publication of this notice, persons who wish to submit comments in connection with this section should submit their comments or requests in writing to the Colorado State Director at the address shown above.

A public hearing will be scheduled and held on this proposed action as required by regulation and will be conducted in accordance with Bureau of Land Management Manual, section 2351.16B. A notice of the date, time, and place of the meeting will be published in the Federal Register at least 30 days prior to the meeting.

This application will be processed in accordance with the regulations set forth in 43 CFR 2310.

On the date of publication in the Federal Register the lands described in paragraphs 1 and 2 are segregated from operation of the mining laws; the public land described in paragraph 2 is further segregated from operation of all of the public land laws. The lands will be segregated as specified above unless the application is denied or cancelled or the withdrawal is approved prior to that date. There will be no change in land use other than the closures described above.

Robert S. Schmidt,
Chief, Branch of Realty Programs.

BILLING CODE 4310-J5-M

[FR Doc. 90-25949 Filed 11-1-90; 8:45 am]

Proposed Continuation of Withdrawal; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Forest Service, Department of Agriculture, proposes that the withdrawal of 40 acres of public land for the Elk City Administrative Site be continued for an additional 50 years. The lands, which are located outside of National Forest boundaries, are now being used for administrative site purposes. The lands would remain closed to surface entry and mining, but have been and would remain open to mineral leasing under the proposal.

EFFECTIVE DATE: Comments should be received on or before January 31, 1991.


The U.S. Forest Service proposes that the existing land withdrawal made by Executive Order 3975 of March 21, 1924, be continued for a period of 50 years pursuant to Section 204 of the Federal Land Policy and Management Act of 1976, 43 Stat. 2751; 43 U.S.C. 1714. The lands are described as follows:

Boise Meridian

T. 29 N., R. 8 E., Sec. 23, SW¼

The area described contains 40 acres in Idaho County.

The withdrawal is essential for protection of substantial capital improvements on the site. The withdrawal closed the land to surface entry and mining, but not to mineral leasing. No changes in the segregative effect or use of the land is proposed by this action.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuation may present their views in writing to the Idaho State Director at the above address.

The authorized officer of the Bureau of Land Management will undertake such investigations as necessary to determine the existing and potential demand for the lands and their resources. A report will also be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawal will be continued; and if so, for how long. The final determination of the withdrawal will be published in the Federal Register. The existing withdrawal will continue until such final determination is made.

William E. Ireland,
Chief, Realty Operations Section.
INTERSTATE COMMERCE COMMISSION

Release of Waybill Data for Use by the Chlorine Institute, Inc.

The Commission has received a request from The Chlorine Institute, Inc. for permission to use certain data from the Commission’s 1989 ICC Waybill Sample. A copy of the request may be obtained from the ICC Office of Economics.

The Waybill Sample contains confidential railroad and shipper data; therefore, if any parties object to this request, they should file their objections (an original and 2 copies) with the Director of the Commission’s Office of Economics within 14 calendar days of the date of this notice. The rules for release of waybill data (Ex Parte 385 [Sub-No. 2]) are codified at 49 CFR 1244.8.

Contact: James A. Nash, (202) 275-5754.

Sidney L. Strickland, Jr., Secretary.

[FR Doc. 90-25983 Filed 11-1-90; 8:45 am]
BILLING CODE 7035-01-M

[Finance Docket No. 31753]

Acadiana Railway Co.—Acquisition and Operation Exemption—Ogeechee Railway Co.; Exemption

In Finance Docket No. 31570, Ogeechee Railway Company—Purchase and Trackage Rights—Missouri Pacific Railroad Company Lines in Louisiana (not printed), served August 2, 1990,1 the Commission approved the purchase and operation by Ogeechee Railway Company (Ogeechee) of certain assets, including rail lines and trackage rights. Ogeechee and its affiliate, Acadiana Railway Company (Acadiana), have filed a notice of exemption to transfer a substantial portion of these assets from Ogeechee to Acadiana. The lines to be transferred consist of: (1) Approximately 216 miles of Missouri Pacific Railroad Company’s Crowley Line between Eunice (milepost 570.34) and Crowley (milepost 591.95), LA; (2) the overhead trackage rights between Eunice (milepost 570.3) and Opeulonas (milepost 500.2); and (3) approximately 5 miles of Southern Pacific Transportation Company’s Alexandria Branch between mileposts 20 and 25, near Opeulonas. The transaction was expected to be consummated on or about October 15, 1990.

This notice is related to a notice of exemption filed in Finance Docket No. 31749, Trans-Worx, Inc.—Continuance in Control Exemption—Ogeechee Railway Company and Acadiana Railway Company, under 49 CFR 1180.2(d)(2), for the continued control of Ogeechee and Acadiana by their corporate parent. Any comments must be filed with the Commission and served on: John M. Robinson, 9010 Old Spring Road, Kensington, MD 20895.

This notice is filed under 49 CFR 1150.31(a)(2). If the notice contains false or misleading information, the exemption is void ab initio. 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.

Decided: October 17, 1990.

By the Commission. David M. Konschnik, Secretary.

[FR Doc. 90-25860 Filed 11-1-90; 8:45 am]
BILLING CODE 7035-01-M

[Docket No. AB-55 (Sub-No. 359X)]

Exemption; CSX Transportation, Inc., Abandonment Exemption, in Washington County, NC

Applicant has filed a notice of exemption under 49 CFR 1152 subpart F—Exempt Abandonments to abandon its 2.41-mile line of railroad between mileposts ABC-188.04 and ABC-188.45, at Plymouth, in Washington County, NC.

Applicant has certified that: (1) No local or overhead traffic has moved over the line for at least 2 years; and (2) no formal complaint 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 of this exemption, any employee affected by the abandonment shall be protected under Oregon Short Line R. Co.—abandonment—Coshen, 390 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.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on December 2, 1990, (unless stayed pending reconsideration). Petitions to stay that do not involve environmental issues,1 formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2),2 and trail use/rail banking statements under 49 CFR 1152.29 must be filed by November 13, 1990.3 Petitions for reconsideration or requests for public use conditions under 49 CFR 1152.28 must be filed by November 23, 1990, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant’s representative: Charles M. Rosenberger, CSX Transportation, Inc., 500 Water Street, Jacksonville, FL 32202.

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 November 7, 1990. 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, 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: October 26, 1990.

1 A stay will be 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.Cd. 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.


3 The Commission will accept a late-filed trail use statement so long as it retains jurisdiction to do so.
By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,
Secretary.

[FR Doc. 90-25861 Filed 11-1-90; 8:45 am]
BILLING CODE 7035-01-M

Docket No. AB-317 (Sub-No. 1X)

Indiana Harbor Belt Railroad Co.
Discontinuance of Track Rights Exemption—In Lake County, IN;
Exemption

Applicant has filed a notice of exemption under 49 CFR 1152 subpart F—Exempt Abandonment and Discontinuances of Track Rights to discontinue its trackage rights over a 3-mile line of Consolidated Rail Corporation (CR) between mileposts 7.75 and 10.76, near Gary, in Lake County, IN.

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 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 of this exemption, any employee affected by the discontinuance shall be protected under Oregon Short Line R. Co.—Abandonment—Coshen, 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. 10065(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on December 2, 1990 (unless stayed pending reconsideration). Petitions to stay that do not involve environmental issues ¹ and formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2) ² must be filed by November 13, 1990. Petitions for reconsideration must be filed by November 23, 1990, with:
Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to:

Roger A. Serpe, Indiana Harbor Belt Railroad Company, 175 West Jackson Boulevard, Chicago, IL 60604.

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 discontinuance.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by November 7, 1990. 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, Chief, SEE at (202) 275-7064. Comments on environmental and energy concerns must be filed within 15 days after the EA becomes available to the public.

Environmental conditions will be imposed, where appropriate, in a subsequent decision.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,
Secretary.

[FR Doc. 90-25861 Filed 11-1-90; 8:45 am]
BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to Cerca

In accordance with Departmental Policy, 28 C.F.R. 50.7, notice is hereby given that a proposed consent decree in United States v. Builder's Hardware Finishers Inc., et al., Civil Action No. 90-5428 RB/EX was lodged with the United States District Court for the Central District of California on October 9, 1990. This agreement resolves a judicial enforcement action brought by the United States against the defendants, Bradley Lee Herman and Howard Lando Herman, pursuant to section 107 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), 42 U.S.C. 9607, as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA), Pub. L. No. 99-499, for reimbursement of investigative, enforcement and other response costs incurred by the United States in response to the release and threatened release of hazardous substances into the environment from a facility located at 1846 Sichel Street in the Lincoln Heights District of Los Angeles, California (hereafter referred to as the "Site").

This proposed consent decree provides for payment of $455,006.78 as partial reimbursement of past response costs incurred at the Site. The United States is continuing to pursue other parties for costs unreimbursed by this settlement.

The Department of Justice will receive for a period of 30 days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, 10th and Pennsylvania Streets, Washington, DC 20530, and should refer to United States v. BHFI et al., D.J. Ref. No. 90-11-3-535.

The proposed consent decree may be examined at the office of the United States Attorney, Central District of California, 111 United States Courthouse, 312 N. Spring Street, Los Angeles, California, 90012, and at the offices of the United States Environmental Protection Agency, Region IX, 1235 Mission Street, San Francisco, California, 94103, and at the office of the Environmental Enforcement Section, Environment and Natural Resources Division of the Department of Justice, Room 1535, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. The proposed consent decree may also be examined at the Environmental Enforcement Section Document Center, 1333 F Street, NW., Suite 800, Washington, DC 20004, 202-347-7329. A copy of the proposed consent decree may be obtained in person or by mail from the Document Center. In requesting a copy, please enclose a check in the amount of $8.00...
No comments or objections have been received. Therefore, pursuant to section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and title 21, Code of Federal Regulations, § 1301.54(e), the Deputy Assistant Administrator hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.


Gene R. Haislip,
Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 90-25908 Filed 11-1-90; 8:45 am]
BILLING CODE 4410-09-M

Manufacturer of Controlled Substances: Registration

By notice dated March 20, 1990, and published in the Federal Register on April 2, 1990 (55 FR 12289), Stepan Chemical Company, Natural Products Department, 100 West Hunter Avenue, Maywood, New Jersey 07607, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

<table>
<thead>
<tr>
<th>Drug</th>
<th>Schedule</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cocaine (9041)</td>
<td>II</td>
</tr>
<tr>
<td>Benzoyleggonine (9180)</td>
<td>II</td>
</tr>
</tbody>
</table>

No comments or objections have been received. Therefore, pursuant to section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and title 21, Code of Federal Regulations, § 1301.54(e), the Deputy Assistant Administrator hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.


Gene R. Haislip,
Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 90-25908 Filed 11-1-90; 8:45 am]
BILLING CODE 4410-09-M

Docket No. 89-25

James R. Luchs, M.D., Revocation of Registration

On April 10, 1990, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to James R. Luchs, M.D. (Registrant) 854 Pacific Avenue, Long Beach, California 90813. The Order to Show Cause proposed to revoke the Registrant’s DEA Certificate of Registration, AL7627106. The statutory predicate for the Order to Show Cause was the Registrant’s conviction of one felony count relating to controlled substances.

The Order to Show Cause was sent by registered mail to the Registrant where he was participating in a work release program following his conviction. It was delivered on June 8, 1990. Under 21 CFR 1301.54, a registrant has thirty days from
the date of receipt of the Order to Show Cause in which to file a written request for a hearing. In the alternative, a registrant may file a waiver of the opportunity for a hearing together with a written response to the allegations raised in the Order to Show Cause. 21 CFR 1301.54(c). If, however, one fails to timely request a hearing, he shall be deemed to have waived his request for a hearing, unless he shows good cause for such failure. When a registrant is deemed to have so waived his opportunity for a hearing, the Administrator may issue his final order without a hearing. See 21 CFR 1301.54(d), (e).

The Registrant has failed to respond in any way to the Order to Show Cause. More than ample time has been provided for a response. Therefore, the Administrator hereby enters his final order in this matter based upon the investigative file before him. 21 CFR 1301.57.

The Administrator finds that on November 28, 1988, the Registrant was charged with nine felony violations of the California Health and Safety Code. These offenses involved the unlawful sale of Schedule II controlled substances, the issuance of prescriptions for controlled substances for other than a legitimate purpose, and dispensing of Schedule II controlled substances for individuals for other than a legitimate purpose. On March 22, 1989, in the Superior Court of California, County of Los Angeles, the Registrant entered a plea of guilty, and was convicted of one felony count of the sale or transportation of a controlled substance in violation of section 11352 of the California Health and Safety Code. On March 22, 1989, the Registrant was sentenced to three years of confinement in state prison and was fined $100,000. The Administrator finds that on November 28, 1988, the Registrant was charged with nine felony violations of the California Health and Safety Code. These offenses involved the unlawful sale of Schedule II controlled substances, the issuance of prescriptions for controlled substances for other than a legitimate purpose, and dispensing of Schedule II controlled substances for individuals for other than a legitimate purpose. On March 22, 1989, in the Superior Court of California, County of Los Angeles, the Registrant entered a plea of guilty, and was convicted of one felony count of the sale or transportation of a controlled substance in violation of section 11352 of the California Health and Safety Code. On March 22, 1989, the Registrant was sentenced to three years of confinement in state prison and was fined $100,000.

The Administrator finds that the Registrant's conviction alone constitutes sufficient grounds to revoke his registration under 21 U.S.C. 824(a)(2). The Administrator further finds that additional grounds to revoke the Registrant's registration exist under 21 U.S.C. 824(a)(2) in that he is no longer licensed by the State of California and can no longer handle controlled substances there. Therefore, based on the Registrant's felony conviction relating to controlled substances and his lack of state authorization to handle controlled substances, the Administrator concludes that the registration of James R. Luchs, M.D., must be revoked under the provisions of 21 U.S.C. 824(a).

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 824(a)(2) and (3) and 21 CFR 0.100(b), hereby orders that the DEA Certificate of Registration, AL7627106, previously issued to James R. Luchs, M.D., be, and it is hereby, revoked. It is further ordered that any pending applications for renewal of that application be, and they are hereby, denied.

This order is effective November 2, 1990.


Robert C. Bonner, Administrator.

Manufacture of Controlled Substances; Application

Pursuant to § 1301.43(a) of title 21 of the Code of Federal Regulations (CFR), this notice is on April 26, 1990, Toxi-Lab Inc., 2 Goodyear, Irvine, California 92718, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

<table>
<thead>
<tr>
<th>Drug</th>
<th>Schedule</th>
</tr>
</thead>
<tbody>
<tr>
<td>Phencyclidine (7471)</td>
<td>II</td>
</tr>
<tr>
<td>1-phenylpiperidinocyclohexanecarbonitrile (PCC) (8869)</td>
<td>II</td>
</tr>
<tr>
<td>Benzoylglucine (9189)</td>
<td>II</td>
</tr>
</tbody>
</table>

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than (30 days from publication).


Gene R. Haislip, Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Office of the Assistant Secretary for Veterans' Employment and Training

Secretary of Labor's Committee on Veterans' Employment; Meeting

The Secretary's Committee on Veterans' Employment was established under section 508, title III, Pub. L. 97-306 "Veterans Compensation, Education and Employment Amendments of 1982," to bring to the attention of the Secretary, problems and issues relating to veterans' employment. Notice is hereby given that the Secretary of Labor's Committee on Veterans' Employment, Subcommittee on Veterans' Employment and Training Policy, will meet on Monday, November 19, 1990 at 1 p.m. in room N-3437A of the Department of Labor Frances Perkins Building.

Written comments are welcome and may be submitted by addressing them to: Robert L. Jones, Chairman, Subcommittee on Veterans' Employment and Training Policy, AMVETS National Headquarters, 4647 Forbes Boulevard, Lanham, MD 20706.

The primary item on the agenda is a preliminary discussion to outline strategies for development of a national veterans' training and employment policy. The public is invited.

Signed at Washington, DC this 29th day of October, 1990.

Thomas E. Collins, Assistant Secretary for Veterans' Employment and Training.

BILLING CODE 4510-79-M

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 fringes benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 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 superseded decisions thereto, contain no expiration dates and are effective from their date of notice in the Federal Register, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office 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 S-3014, Washington, DC 20210.

Corrections to General Wage Determination Decisions

Pursuant to the provisions of the Regulations set forth in title 29 of the Code of Federal Regulations, part 1, § 1.6(d), the Administrator of the Wage and Hour Division may correct any wage determination that contains clerical errors.

Corrections being issued in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" are indicated by Volume numbers. Dates of publication in the Federal Register are in parentheses following the decisions being modified;

Volume I

Connecticut CT90-1 p. 63, pp. 64-67.
New York NY90-10 p. 631, p. 832

Volume II

Illinois:
IL90-9 (Jan. 5, 1990) p. 143, p. 145
Missouri, MO90-1 (Jan. 5, 1990) p. 627, pp. 629-630
Texas, TX90-10 (Jan. 5, 1990) p. 1011, p. 1012

Volume III


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 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) 783-3238.

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 26th day of October 1990.

Alan L. Moss,
Director, Division of Wage Determinations.
[FR Doc. 90-25733 Filed 11-1-90; 8:45 am]
Mine Safety and Health Administration  
[Docket No. M-90-156-C]

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 75.326 (aircourses and belt haulage entries) to its Blacksville No. 2 Mine (J.D. No. 45-01968) located in Monongalia County, West Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977. A summary of the petitioner's statements follows:

1. The petition concerns the requirement that intake and return aircourses be separated from belt haulage entries and that belt haulage entries not be used to ventilate active working places.
2. As an alternate method, petitioner proposes to use belt air to ventilate active working places.
3. In support of this request, petitioner proposes to install an early warning fire detection system utilizing a low-level carbon monoxide detection system in all belt entries used as intake aircourses and to monitor the air at each belt drive and halfpice. The warning time provided by the system would be maximized. The CO monitoring system would initiate the fire alarm signals at a surface location where a responsible person, having two-way communications with all working sections, would be located. This person would notify the working sections and other personnel who may be endangered when the permanently established alert and alarm levels are reached. The CO system would be capable of identifying any activated sensor.
4. The CO system would be visually examined at least once each shift and tested weekly to ensure the monitoring system is functioning properly. The monitoring system would be calibrated with known concentrations of CO and air mixtures at least monthly. A record of all inspections would be maintained on the surface. The inspection record would show the time and date of each weekly inspection and monthly calibration.
5. If the CO monitoring system is deenergized, the belt conveyor would be allowed to continue operation and qualified persons would patrol and monitor the belt conveyor using handheld CO detecting devices. A CO detection device would also be available for use on each working section in the event the monitoring system is deenergized or fails.
6. Petitioner states that the proposed alternate method will at all times guarantee no less than the same measure of protection to the miners as would be provided 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 December 3, 1990. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,  
Director, Office of Standards, Regulations and Variances.

[Billing Code 4510-43-M]

[Docket No. M-90-154-C]

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 75.326 (aircourses and belt haulage entries) to its Loveridge No. 22 Mine (J.D. No. 46-01433) located in Marion County, West Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977. A summary of the petitioner's statements follows:

1. The petition concerns the requirement that intake and return aircourses be separated from belt haulage entries and that belt haulage entries not be used to ventilate active working places.
2. As an alternate method, petitioner proposes to use belt air to ventilate active working places.
3. In support of this request, petitioner proposes to install an early warning fire detection system utilizing a low-level carbon monoxide detection system in all belt entries used as intake aircourses and to monitor the air at each belt drive and halfpice. The warning time provided by the system would be maximized. The CO monitoring system would initiate the fire alarm signals at a surface location where a responsible person, having two-way communications with all working sections, would be located. This person would notify the working sections and other personnel who may be endangered when the permanently established alert and alarm levels are reached. The CO system would be capable of identifying any activated sensor.
4. The CO system would be visually examined at least once each shift and tested weekly to ensure the monitoring system is functioning properly. The monitoring system would be calibrated with known concentrations of CO and air mixtures at least monthly. A record of all inspections would be maintained on the surface. The inspection record would show the time and date of each weekly inspection and monthly calibration.
5. If the CO monitoring system is deenergized, the belt conveyor would be allowed to continue operation and qualified persons would patrol and monitor the belt conveyor using handheld CO detecting devices. A CO detection device would also be available for use on each working section in the event the monitoring system is deenergized or fails.
6. Petitioner states that the proposed alternate method will at all times guarantee no less than the same measure of protection to the miners as would be provided 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 December 3, 1990. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,  
Director, Office of Standards, Regulations and Variances.

[Billing Code 4510-43-M]
NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: Office of Records Administration, National Archives and Records Administration.

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Records schedules identify records of sufficient value to warrant preservation in the National Archives of the United States. Schedules also authorize agencies after a specified period to dispose of records lacking administrative, legal, research, or other value. Notice is published for records schedules that (1) propose the destruction of records not previously authorized for disposal, or (2) reduce the retention period for records already authorized for disposal. NARA invites public comments on such schedules, as required by 44 USC 3303(a).

DATES: Request for copies must be received in writing on or before December 17, 1990. Once the appraisal of the records is completed, NARA will send a copy of the schedule the requester will be given 30 days to submit comments.

ADDRESSES: Address requests for single copies of schedules identified in this notice to the Records Appraisal and Disposition Division (NIR), National Archives and Records Administration, Washington, DC 20408. Requesters must cite the control number assigned to each schedule when requesting a copy. The control number appears in parentheses immediately after the name of the requesting agency.

SUPPLEMENTARY INFORMATION: Each year U.S. Government agencies create billions of records on paper, film, magnetic tape, and other media. In order to control this accumulation, agency records managers prepare records schedules specifying when the agency no longer needs the records and what happens to the records after this period. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. These comprehensive schedules provide for the eventual transfer to the National Archives of historically valuable record and authorize the disposal of all other records. Most schedules, however, cover records of only one office or program or a few series of records, and many are updates of previously approved schedules. Such schedules also may include records that are designated for permanent retention.

 Destruction of records requires the approval of the Archivist of the United States. This approval is granted after a thorough study of the records that takes into account their administrative use by the agency of origin, the rights and interests of the Government and of private persons directly affected by the Government's activities, and historical or other value.

This public notice identifies the Federal agencies and their subdivisions requesting disposition authority, includes the control number assigned to each schedule, and briefly describes the records proposed for disposal. The records schedule contains additional information about the records and their disposition. Further information about the disposition process will be furnished to each requester.

Schedules Pending

1. Department of the Air Force (N1-AFU—91–3). Routine administrative records relating to courier services for classified documents.


11. Department of Commerce, Bureau of Export Administration (N1–311–90–1). Working papers relating to the compilation of approved minutes of meetings.


21. Interstate Commerce Commission, Bureau of Account (NI—134—90—2). Records relating to the valuation of railroads, including records pertaining to the tallying of data about railroads, the cost of railroad products, cost studies done for other Federal agencies, and correspondence of the Bureau of Valuation (permanently valuable valuation records have seen designated for transfer to the National Archives.
23. Department of Labor, Office of Economic Opportunity (NI—91—90—1). Facilitative records relating to Job Corps operations, including reading files, contract files, general correspondence, and audit reports, 1963—72.
26. National Aeronautics and Space Administration, Kennedy Space Center (NI—255—90—1). Records pertaining to testing, inspection, maintenance, scheduling, checking out and verification of on board systems and ground support.
27. National Aeronautics and Space Administration, Kennedy Space Center (NI—255—90—7). Case files documenting excess personal property returned to NASA by on site contractors.
28. National Aeronautics and Space Administration, Kennedy Space Center (NI—255—90—8). Case files of employees referred to counseling under the Employee Assistance Program.
29. National Aeronautics and Space Administration, Kennedy Space Center (NI—255—91—1). Technical engineering operations and support documents for the Space Shuttle Program.
30. National Archives and Records Administration (NI—CRS—91—1). Addition to General Records Schedule 9, Travel and Transportation Records, to cover records relating to applications for official passports.
32. Department of State, Foreign Service Institute, School of Language Studies (NI—59—90—30). Language training textbooks.
34. United States Postal Service (NI—28—90—2). “Workroom” posters determined during archival processing to lack sufficient archival value to warrant permanent retention by the National Archives.
36. National Aeronautics and Space Administration (NI—GRS—91—1). Records relating to the Space Station Freedom program may most effectively support potential science and applications users. The Subcommittee will meet to receive reports from NASA Division representatives and discuss issues relating to Space Station Freedom. The Subcommittee is chaired by Dr. Robert J. Bayuzick and is composed of 20 members. The meeting will be closed on Thursday, November 20, 1990, at 7:30 p.m.—10 p.m. to allow for a discussion on qualifications of individuals being considered for membership to the Space Station Science and Applications Advisory Subcommittee. Such a discussion would involve the privacy of the individuals involved. Since this session will be concerned with matters listed in 5 U.S.C. 552b(c)(6), it has been determined that the meeting will be closed to the public for this period of time. The remainder of the meeting will be open to the public up to the seating capacity of the room (approximately 50 people including members of the Group). It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants.

**SUPPLEMENTARY INFORMATION:** The Space Station Science and Applications Advisory Subcommittee (SSSSAS) reports to the Space Science and Applications Advisory Committee (SSAAC) and consults with and advises the NASA Office of Space Science and Applications (OSSA) on the new capabilities to be made available by the Space Station program and how these may be most effectively utilized. It also advises the NASA Space Station Freedom Office on how the Space Station program may most effectively support potential science and applications users. The Subcommittee will meet to receive reports from NASA Division representatives and discuss issues relating to Space Station Freedom. The Subcommittee is chaired by Dr. Robert J. Bayuzick and is composed of 20 members. The meeting will be closed on Thursday, November 20, 1990, at 7:30 p.m.—10 p.m. to allow for a discussion on qualifications of individuals being considered for membership to the Space Station Science and Applications Advisory Subcommittee. Such a discussion would involve the privacy of the individuals involved. Since this session will be concerned with matters listed in 5 U.S.C. 552b(c)(6), it has been determined that the meeting will be closed to the public for this period of time. The remainder of the meeting will be open to the public up to the seating capacity of the room (approximately 50 people including members of the Group). It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants.

**Type of meeting:** Open—except for a closed meeting, as noted in the agenda below.

**Agenda**

**Wednesday, November 28**

- **8:30 a.m.**—Opening Remarks.
- **9 a.m.**—Outlook of Space Science and Applications Outlook-Fiscal Year 1991.
- **9:30 a.m.**—Reports on Space Station Freedom (SSF).
- **11 a.m.**—Science Utilization Management Support of the SSF Preliminary Design Review Process.
- **11:30 a.m.**—Multilateral Science Working Group Status.
- **1 p.m.**—Bartering and Cooperative Programs Status.
- **1:30 p.m.**—Exploration and Technology SSF Utilization Plans.
- **2:15 p.m.**—Office of Commercial Programs SSF Utilization Plans.
- **3 p.m.**—Splinter Group Sessions.
- **7:30 p.m.**—Continuation of Splinter Group Sessions.
10 p.m.—Adjourn.

Thursday, November 29
8 a.m.—Utilization Technical Working Group.
8:45 a.m.—Small Attached and Rapid Response Project Status.
9:45 a.m.—Robotics Laboratory Briefing.
1 p.m.—SSF Data Management System Briefing.
3:30 p.m.—Reports on Office of Space Science and Applications Data Issues Update.
4 p.m.—Science Operations Workshop, Plenary Discussions and Findings.
7:30 p.m.—Closed Session.
10 p.m.—Adjourn.

Friday, November 30
8 a.m.—Woods Hole Response Plan.
9 a.m.—Splinter Group Sessions.
10:30 a.m.—Early Utilization of SSF.
12 noon—Splinter Group Sessions.
2 p.m.—Adjourn.

John W. Gaff,
Dated: October 20, 1990.
Advisory Committee Management Officer, National Aeronautics and Space Administration.
[FR Doc. 90-25922 Filed 11-1-90; 8:45 am]
BILLING CODE 7510-01-M

[Notice (90-91)]

NASA Advisory Council Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92-586, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council (NAC).

DATES: November 29, 1990, 1 p.m. to 5 p.m.; and November 30, 1990, 9:30 a.m. to 3 p.m.

ADDRESS: National Aeronautics and Space Administration, Room 7002, Federal Office Building B, 400 Maryland Avenue SW., Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Dr. Sylvia D. Fries, Code ADA-2, National Aeronautics and Space Administration, Washington, DC 20546, 202/353-8766.

SUPPLEMENTARY INFORMATION: The NAC was established as an interdisciplinary group to advise senior management on the full range of NASA's programs, policies, and plans. The Council is chaired by Dr. John McLucas and is composed of 25 members. Standing committees containing additional members report to the Council and provide advice in the substantive areas of aeronautics, aerospace medicine, space science and applications, space systems and technology, space station, commercial programs, and history, as they relate to NASA's activities. The meeting will be open to the public up to the seating capacity of the room, which is approximately 60 persons including Council members and other participants. It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Type of meeting: Open.

Agenda

Thursday, November 29, 1990
1 p.m.—Introductory Remarks.
1:30 p.m.—Unfinished Business from July NAC Meeting.
2:30 p.m.—NASA Program Status Reports.
5 p.m.—Adjourn.

Friday, November 30, 1990
8:30 a.m.—Overview of NASA Fiscal Year 1991 Budget and Discussion of Impact on NASA Programs.
1 p.m.—Update and Discussion.
—Advisory Committee on the Future of the U.S. Space Program.
—Exploration Outreach Synthesis Group.
2:30 p.m.—Council Planning.
3 p.m.—Adjourn.

John W. Gaff,
Advisory Committee Management Officer, National Aeronautics and Space Administration.
[FR Doc. 90-25923 Filed 11-1-90; 8:45 am]
BILLING CODE 7510-01-M

NATIONAL SCIENCE FOUNDATION


The National Science Foundation announces the following meeting:

Name: Program Advisory Panel for Advanced Scientific Computing.

Date and Time:
November 19—9 a.m.—5:30 p.m.
November 20—9 a.m.—12 p.m.
Place: Room 543, National Science Foundation, 1800 G Street NW., Washington, DC 20550.
Type of Meeting:
Open

Contact Person: Dr. Thomas Weber, Director, Division of Advanced Scientific Computing, room 417, National Science Foundation, 205/357-7558.

Purpose of Meeting: To provide advice and recommendations concerning NSF support of advanced scientific computing.

Agenda:

Open
—DASC Overview
—CISE Overview
—Meeting with NSF Director
—Subcommittee Organization and Functions
—Committee of Visitor Report

Closed
—In-depth Discussion of Committee of Visitors Report

Reason for Closing: Discussion of declinations that may be included in the Committee of Visitors Report. These matters are within exemptions (4) and (6) of U.S.C. 552b(c), Government in the Sunshine Act.

M. Rebecca Winkler,
Committee Management Officer.

[FR Doc. 90-25894 Filed 11-1-90; 8:45 am]
BILLING CODE 7555-01-M

Geography and Regional Science Panel; Meeting

The National Science Foundation announces the following meeting:

Name: Advisory Panel for Geography and Regional Science.

Date/Time: November 18, 1990, 8:30 a.m. to 6 p.m.; November 19, 1990, 8:30 a.m. to 5 p.m.
Place: Room 1243, National Science Foundation, 1800 G St., Washington, DC 20550.
Type of Meeting: Part Open—Open 11/20/90 2-3 p.m. Remainder Closed.
Contact Person: Dr. Thomas J. Baerwald, Program Director, Geography and Regional Science, National Science Foundation, 1800 G St., NW, room 336, Washington, DC 20550. Telephone: 202/357-7126.
Purpose of Meeting: To provide advice and recommendations concerning research proposals in Geography and Regional Science.

Agenda: To review and evaluate research proposals as part of the selection process for awards. [Open] 11/20/90 2-3 p.m.— discussion of Trends and Opportunities

Reason for Closing: The proposals reviewed contained information of a proprietary or confidential nature, including technical information, financial data (such as salaries), and personal information concerning individuals associated with the proposals. These matters are within the exemptions (4) and (6) of 5 U.S.C. 552b, Government in the Sunshine Act, February 18, 1977.
Amendment No. 143 to Facility Operating License No. DRP-32 and Amendment No. 143 to Facility Operating License No. DRP-37, issued to the Virginia Electric and Power Company (the licensee), which revised the Technical Specifications for operation of the Surry Plant, Units 1 and 2 (the facilities), located in Surry County, Virginia. The amendments were effective as of the date of issuance, to be implemented within 30 days.

The amendments revised the Technical Specifications for the heatup and cooldown curves to be effective to 15 effective full power years of operation.

The application for amendments complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR chapter I, which are set forth in the license amendments.

Notice of Consideration of Issuance of Amendments and Opportunity for Hearing in connection with this action was published in the Federal Register on April 13, 1988 (53 FR 12210).

Also in connection with this action, the Commission prepared an Environmental Assessment and Finding of No Significant Impact, which was published in the Federal Register on October 24, 1990 (55 FR 42919).

For further details with respect to the action, see (1) the application for amendments dated January 28, 1988, as supplemented February 20, 1989, (2) Amendment No. 147 to License No. DPR-32, and Amendment No. 143 to License No. DRP-37, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document room, 2120 L Street, NW., Washington DC, and at the Swem Library, College of William and Mary, Williamsburg, Virginia 23185.

Dated at Rockville, Maryland this 24th day of October, 1990.

For the Nuclear Regulatory Commission.
Bart C. Buckley,
Project Manager, Project Directorate II-2, Division of Reactor Projects—I/II Office of Nuclear Reactor Regulation.

OFFICE OF SCIENCE AND TECHNOLOGY POLICY
Meeting of the National Critical Technology Panel

The National Critical Technology Panel will meet on November 19, 1990. This meeting will be held at the offices of The Analytic Sciences Corporation (TASC), located at 1101 Wilson Blvd., suite 1500, Arlington, Virginia. The Panel will start its deliberations at 9 a.m., Monday, November 19th, and will conclude its activities at approximately 5 p.m.

The purpose of this Panel is to prepare and submit to the President a biennial report on national critical technologies on even-numbered years. These are to be the product and process technologies the Panel deems most critical to the United States, and shall not exceed 30 in number in any one year.

This meeting will be closed to the public, since discussions will take place in matters that are specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and in fact properly classified pursuant to such Executive order, according to 5 U.S.C. 522b(c)(1).

Discussions will also involve privileged information according to 5 U.S.C. 522b(c)(4).

For further information, please call Tom Russell, at the Office of Science and Technology Policy, Executive Office of the President, (202) 395-5736.


Damar W. Hawkins, Executive Assistant, Office of Science and Technology Policy.

OFFICE OF POSTAL SERVICES
IMPACT OF SERVICE AND RATE CHANGES FOR INTERNATIONAL SURFACE AIR LIFT (ISAL)

For the Postal Service.
Action: Notice.

SUMMARY: The Postal Service, after studying the comments submitted in response to its request in 55 FR 27915 for comments on proposed International Surface Air Lift (ISAL) service and rate changes, hereby gives notice that it is implementing changes in International Surface Air Lift service and rates effective at 12:01 a.m., January 12, 1991.

EFFECTIVE DATE: 12:01 a.m., January 12, 1991.

FOR FURTHER INFORMATION CONTACT: John F. Alepa (202) 266-2650.

SUPPLEMENTARY INFORMATION:

International Surface Air Lift (ISAL) is a bulk mailing service for international shipment of printed matters, such as publications, advertising materials, catalogs, directories, and books. This service is available from designated acceptance cities to approximately 125 countries. To use ISAL, a mailer must send at least 50 pounds of printed matter at one time, presorted by country of destination. Identical piece mailings are not required to qualify. Postage for ISAL mailings is currently calculated solely by weight, without regard to the number of pieces contained within a mailing. Full-service rates for ISAL currently range from $2.22 to $3.90 per pound, depending on the country of destination. For rate-setting purposes, destination countries eligible to receive ISAL are divided into five rate groupings (A through E). A 30-cent per-pound discount is currently given to ISAL mail tendered at the John F. Kennedy Airport-the New York gateway, and a 20% discount to M Bags (mail to a single addressee packed in specially-labeled bags and subject to a minimum weight limit).1

On July 6, 1990, the Postal Service published in the Federal Register (55 FR 27915) a notice of proposed service and rate changes for ISAL. These changes included: (1) New rates for ISAL service with both per-piece and per-pound elements to recover costs that vary with volume, and costs that vary with weight; (2) the addition of San Francisco and Miami as gateways where mailers may tender ISAL mailings and receive a "drop-ship" discount; (3) a direct-shipment option for mailers who present for a designated single destination country at least 750 pounds of mail that can be transported on a direct international flight or flight with on-line service from a designated acceptance point; (4) a discount of 20 cents per pound for mail tendered at a gateway or qualifying for direct shipment; and (5) the reconfiguration of rate groupings of destination countries from five to three, i.e., the Pacific Rim, Europe, and the

1 ISAL M Bags may be sent to all countries except Ethiopia.
I. The Basic ISAL Rate Structure

The Postal Service is restructuring the rates for ISAL service to reflect more accurately the way in which ISAL costs are incurred. The July 6 Federal Register notice proposed rates for ISAL service with both per-piece and per-pound elements. The per-piece rate was designed to recover those costs that vary by piece volume, while the per-pound rate was designed to recover those costs that vary by weight.

According to the original proposal, the postage for every piece of ISAL mail would contain a volume and weight rate component. Despite some reversion by respondents that a change in the ISAL rate structure was justified, many respondents objected to the proposed piece charge. These respondents, mostly mailers of lightweight pieces, objected to the disproportionate impact of the proposed rate change on lightweight mail. Two developments directly bear on this issue.

First, mailers have astutely recognized that, with the current pound-rate structure, they could increase the number of pieces per unit of weight mailed without incurring additional postage costs. This adaptation by mailers to use the current ISAL rates to their advantage has accelerated the growth in ISAL costs disproportionately to the increases in the pound-related costs. This condition has altered the current ISAL cost structure.

Second, when current ISAL rates were developed, they were based exclusively on what was then a pound-related cost structure. Postal administrations receiving ISAL mail sought terminal dues compensation for their handling and delivery of this mail solely on the basis of weight. This is no longer the case. Those postal administrations that now receive a majority of our outbound ISAL traffic seek compensation based either on an explicit average number of items per unit of weight or on an explicit piece-pound charge.

The proposed rate changes announced by the Postal Service on July 6 and the final rule announced today recognize, for example, that one pound of ISAL mail consisting of forty items, costs the Postal Service considerably more money to deliver than one pound consisting of only four items. These new rates will more equitably allocate to the full range of ISAL users their appropriate share of costs for ISAL service.

At least three respondents proposed continuing the pound structure by either increasing the pound rate or adding a per-pound surcharge for letter mail. The Postal Service has determined that neither of these proposals adequately recognizes cost causation due to pieces. Adoption of either proposal would result in an inequitable impact on those mailers whose traffic is already paying compensatory rates.

Several proposals were also offered which incorporated a piece rate into their designs. One respondent proposed adding a 10-cent per-piece surcharge for lightweight mail weighing a half-ounce or less. Mail weighing more than a half-ounce would continue to be charged on a pound rate under this suggestion. A variation of this proposal offered by another respondent would retain the pound rate, but would add a minimum piece rate of 17 cents. Another respondent suggested a dual rate structure in which pieces weighing less than four ounces would be charged a per-piece and per-pound rate. For pieces weighing more than four ounces, the mailer would have the option to use a piece and a pound rate or a pound rate only. This proposal would require a separate mailing revenue statement (PS Form 3650, Mailing Revenue Statement—International Surface Air Lift for Publications and Printed Matter) for each option selected by the mailer.

Another respondent suggested a break-point structure, with one rate for lightweight pieces and another for heavier pieces. This respondent did not provide specific rates. Common to these proposals was the recognition that very lightweight ISAL mail does not currently bear its fair share of postal costs.

Rate levels notwithstanding, a number of those commenting objected to the original proposal because it not only reduced the simplicity of the existing pound structure, but it also was administratively onerous for mail preparation. Respondents objected to being required to calculate both a piece and a pound component for each mailing and being required to count and affix postage to mailings containing pieces of nonidentical weights. The Postal Service agrees with these criticisms and believes they are equally applicable to most of the alternative proposals outlined above. Considerations of this nature prompted the suggestion for the break-point structure discussed in the preceding paragraph, or some other system, which would recognize the per-piece and per-pound cost component of
ISAL while at the same time minimizing the administrative burdens for both mailers and the Postal Service. For ease of applying metered postage to traffic tendered at the piece rate, it was also suggested that the piece rate be the same for each rate group.

The Postal Service has considered the various alternative structures and adopts a break-point system with a uniform piece rate as part of its final rule. From its own analysis of costs and known traffic patterns, the Postal Service establishes a break point at two ounces, above which only a pound rate will continue to apply. At or below this break point, a single piece rate of 24 cents will apply. This structure requires that an ISAL mailing be separated according to the volume over and under the break point. ISAL volume entered at the piece-rate would be eligible for a direct-shipment discount on the basis of total weight tendered. Likewise, such volumes taken to a gateway facility would also be discounted on the basis of tendered weight. The structure hereby adopted retains as much of the simplicity of the current system as possible, consistent with better alignment of ISAL rates with ISAL costs and the allocation of those costs to the full range of ISAL users.

The Postal Service acknowledges that this final rule will not satisfy the concerns of all mailers, and, in some situations, may result in an even greater rate impact than the rule proposed on July 6. Although cognizant of this concern, the Postal Service finds that it is not possible to avoid the situation entirely, while at the same time setting fair, reasonable, and compensatory rates for this service.

Two respondents suggested, as an alternative approach, that a minimum weight be established for ISAL mail. The Postal Service believes such action to be inappropriate, and that no mailer should be excluded from using ISAL based upon the weight characteristics of its pieces. The final rule adopted today does not exclude any mailer from using ISAL, but rather ensures that costs are apportioned equitably among all ISAL users.

Three respondents observed that the proposed piece-pound structure, as it would be applied to very lightweight mail, would result in much of this mail becoming as expensive, on a unit basis, as the premium International Priority Airmail (IPA) product. Although this observation is not incorrect, the observed anomaly is largely the consequence of how mailers have availed themselves of the current ISAL rate structure. This observed anomaly is less significant than the condition which allows some ISAL mailers to enjoy postage rates lower than rates for any comparable domestic service. Absent changes to the ISAL rate structure, the latter anomaly would continue to exist. One respondent observed that if the ISAL structure were to change for the reasons stated, then the IPA rates should also be adjusted to reflect these same considerations. Although the original proposal addressed only ISAL service, it is appropriate to advise that the mailpiece characteristics and pound rates for IPA do not warrant a change in rate structure at this time. However, the Postal Service is aware that rate adjustments may be required for IPA service in the future.

At least two respondents proposed a gradual phase-in of the new ISAL rates, to allow businesses using the service to absorb the rate increases over a period of time. If the intent of these comments is to suggest that it is preferable to raise rates incrementally on an annual basis, such annual increases can be considered in the future. The current ISAL rates have been in effect since July 1987; the idea of annual increases to reflect costs as they currently exist cannot be entertained in the manner suggested.

II. Rate Discounts

The July 6 notice proposed reducing from 30 to 20 cents per pound the discount applied to mail tendered at a gateway facility. Five respondents opposed this reduction, proposing that the discount remain at 30 cents per pound or even be increased. These respondents observed that reductions in the discount levels would be inconsistent with the worksharing concept in which mailers undertake some of the transportation in return for rate incentives. The Postal Service believes that the proposed 20-cent per-pound discount would still be consistent with the concept of worksharing. However, in response to the suggestion, the Postal Service will retain the current gateway discount and also apply it to the new direct-shipment option previously announced. Postal cost savings do not justify an increase in the gateway drop-shipment discount above the existing level, as suggested by one respondent.

One respondent suggested a greater discount for M Bags, viewing the proposed 20% discount as insufficient in light of the favorable terminal dues treatment this mail receives. This suggestion cannot be adopted at present because the Universal Postal Union Convention stipulates that a discount for M-Bags cannot exceed 20% of the non-M-Bag rate.

Three respondents proposed some version of volume or frequency-of-mailing discounts that would benefit large-volume mailers. Although such discounts offer some appeal from a marketing perspective, ISAL, as a bulk mailing service, offers rates that already represent volume discounts, as compared with the single piece rates for both surface and air printed matter set forth in the International Mail Manual. Furthermore, the new direct-shipment discount incorporated into the final rule is a form of volume discount since, to qualify for it, mailers must present at least 750 pounds of mail for a designated single destination country.

One respondent proposed a discount for ISAL shipments to countries where post-office-box delivery rather than residential delivery is the norm. This suggestion not only would introduce undesirable complexity into the ISAL system, but also would depend upon most differentials not always recognized by other postal administrations.

Another respondent suggested a new worksharing discount for sortations finer than those just by destination country. The discount would apply to mail sorted by zones for foreign countries using zone delivery similar to the ZIP Code system in the United States. This proposal would rely on the willingness of destination countries to recognize the cost savings from finer presentation and to pass on those savings to the Postal Service. This suggestion would also complicate the acceptance and verification process, a concern expressed by most other respondents.

III. Rate Groups

Respondents who addressed the issue of country groupings agreed with the reduction in the number of rate groups (currently at five), but some respondents expressed differences regarding the proposed reconfiguration. Three respondents proposed separating Central and South American countries from the third rate group proposed on July 6, because transportation costs to those countries are usually less than costs to the rest of the countries of the proposed group. This observation is correct. Accordingly, the Postal Service will increase its proposed three rate groups to four. They will consist of Europe (rate group 1) and the Pacific Rim (rate group 3) as originally proposed, and two groups separately recognizing the Western Hemisphere (rate group 2) and Africa/Asia 4 (rate group 4).

* Except for the Pacific Rim countries which comprise rate group 3.
One respondent suggested combining two proposed rate groups (groups 1 and 3) and charging an average pound rate to achieve greater simplicity. The Postal Service believes that the rate structure announced today is adequate and aligned with costs.

IV. Service Improvements

Respondents generally approved of the ISAL service improvements proposed by the Postal Service on July 6. Respondents who addressed this issue agreed with the opening of additional gateway facilities. One respondent proposed substituting Chicago for Miami as a gateway. However, operational constraints preclude the immediate designation of Chicago as a gateway facility. Additional gateway cities, such as Chicago, may later become feasible as operational issues are resolved.

Two respondents expressed concern as to the viability of the new direct-shipment option. These respondents doubted that cost savings could be realized by the Postal Service from this form of worksharing. They contended that acceptance city employees would be relatively unknowledgeable about ISAL and that duplication in operations would occur, resulting in higher costs and slower service. The Postal Service is confident that acceptance city employees will be able to implement the ISAL procedures efficiently, and that direct shipment will significantly benefit the Postal Service and mailers whose volumes and air traffic patterns qualify them for this discount.5

One respondent, whose Texas-based company mails ISAL from the Dallas/Ft. Worth Air Mail Facility, objected to what he perceived as a new regional zone structure that would require his company to truck mail at least 1,500 miles to one of the three gateway cities. This objection stems from a misunderstanding of the gateway concept. Nothing in the final rule affects this particular company’s use of the Dallas/Ft. Worth Air Mail Facility, either at the full-service rate, or, should its volumes and traffic patterns permit, at the new discounted direct-shipment rate. Rates announced today actually provide this respondent the opportunity to qualify for direct-ship discounts.

V. Preparation and Acceptance Procedures

Most respondents who addressed this issue objected to the July 6 proposal on the grounds that it transformed ISAL’s simple preparation and acceptance procedures into a more complicated system involving the metering of individual mailpieces. The Postal Service believes that the modifications made to the original proposal retain most of the simplicity of the product and do not impose unnecessary preparation or acceptance requirements.

Because ISAL users sending mail weighing more than two ounces will pay a pound rate only, such users can continue to use the imprint method of postage payment. Imprints can be used for a sack containing identical or nonidentical pieces. The weight-based postage structure for pieces weighing more than two ounces ensures that these generally larger and bulkier pieces will not require meter strips individually applied to them.

For shipments containing identical pieces weighing two ounces or less, mailers may use either permit imprints or metered postage.

Only for shipments containing nonidentical pieces weighing two ounces or less will preparation deviate from current practice. In this situation, metering rather than permit imprint will generally be required. However, mailers may use permit imprint with nonidentical pieces if authorized to use postage payment programs currently described under §§ 145.7, 145.8, or § 145.9 of the Domestic Mail Manual. One respondent expressed the fear that the July 6 proposal would be impossible to control. The Postal Service believes that the modifications made to the original proposal will facilitate verification and enforcement.

VI. Procedural Comments

Several respondents offered their opinions regarding the process by which these changes have been developed. Other respondents expressed concern over having sufficient time to implement the ISAL service and rate changes. One respondent observed that the July 6 proposal was drafted in imprecise terms. From the many thoughtful comments the Postal Service received regarding this proposal, it is apparent that the proposal was sufficiently clear, specific, and understandable.

The Postal Service values the range of helpful suggestions, many of which have been adopted.

One respondent contended that it was unfair to all mailers that the Postal Rate Commission not be allowed to oversee, at least on a voluntary basis, the ISAL service and rate changes. The Postal Service has not submitted these changes to the Postal Rate Commission because that independent agency does not have rate-review jurisdiction over international mail.

Two other respondents suggested that the increases proposed on July 6 be delayed while alternatives were explored. The Postal Service has benefited from the comments it has received to examine alternatives and adopt modifications to its original proposal. No further delay in announcing this final rule would serve any useful purpose.

Of concern to at least three of the respondents were the issue of effective date. The Postal Service did not propose an implementation date for the proposed ISAL service and rate changes, preferring to receive comments on the merits of the proposal. Those respondents raising the issues requested that sufficient time be provided for operational and administrative adjustments, as well as certain budgetary considerations within their own businesses. In view of these concerns, the Postal Service announces that this rule will take effect on January 12, 1991.

VII. Conclusion

Accordingly, the Postal Service hereby adopts the ISAL rate and service changes set forth in the two schedules below. These rate and service changes shall take effect at 12:01 a.m., on January 12, 1991.

(Authority: 39 U.S.C. 407, 410)

[To be eligible for the new direct-shipment discount, mailers must present at least 750 pounds of ISAL mail designated for a single destination country. Eligibility for this discount depends on the availability of a direct flight or flight with on-line service, as determined by the ISAL coordinator at the acceptance city. A mailer must contact the ISAL coordinator at the acceptance city before presenting its shipment to determine the availability of qualifying air service from that acceptance city and, thus, its eligibility for this discount.]
### ISAL Rate Groups

<table>
<thead>
<tr>
<th>Group 1, Europe</th>
<th>Group 2, Western Hemisphere</th>
<th>Group 3, Pacific Rim</th>
<th>Group 4, Africa/Asia</th>
</tr>
</thead>
<tbody>
<tr>
<td>Albania, Austria, Belgium, Bulgaria, Czechoslovakia, Denmark, Finland, France, Germany, Great Britain and Northern Ireland, Greece, Hungary, Iceland, Ireland, Italy 1, Luxembourg, Netherlands, Norway, Poland, Portugal, Romania, Spain 5, Sweden, Switzerland 4, Turkey, USSR, Yugoslavia</td>
<td>Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, Cuba, Dominican Republic, Ecuador, El Salvador, French Guiana, Guatemala, Guyana, Haiti, Honduras, Jamaica, Mexico, Netherlands Antilles and Aruba, Nicaragua, Panama, Paraguay, Peru, Suriname, Trinidad and Tobago, Uruguay, Venezuela</td>
<td>Australia, China, Fiji Islands, Hong Kong, Indonesia, Japan, Korea, Republic of, Malaysia, New Zealand, Papua New Guinea, Philippines, Singapore, Taiwan, Thailand</td>
<td>Algeria, Angola, Bahrain, Bangladesh, Benin, Burkina Faso, Burundi, Cameroon, Central African Republic, Congo, Cote d’Ivoire 5, Egypt, Ethiopia 5, Gabon, Ghana, India, Iran, Iraq 7, Israel, Jordan, Kenya, Kuwait 7, Lebanon, Liberia 7, Libya, Madagascar, Mali, Mauritania, Mauritius, Morocco, Mozambique, Niger, Nigeria, Oman, Pakistan, Qatar, Reunion, Rwanda, Saudi Arabia, Senegal, Sierra Leone, Somalia, South Africa, Sri Lanka, Sudan, Syria, Tanzania, Togo, Tunisia, Uganda, United Arab Emirates, Yemen, Republic of 5, Zaire, Zambia, Zimbabwe</td>
</tr>
</tbody>
</table>

1 Includes San Marino.
2 Includes Canary Islands.
3 Includes Liechtenstein.
4 Includes Iceland.
5 Includes Northern Ireland.
6 There is no M-Bag service to Ethiopia.
7 Due to current conditions, all mail service to these countries is suspended until further notice.
8 Prior to January 1, 1991, the Republic of Yemen was two separate countries: the Yemen Arab Republic and the People’s Democratic Republic of Yemen.

### International Surface Air Lift (ISAL)

<table>
<thead>
<tr>
<th>Rate group</th>
<th>Rate per piece (cents)</th>
<th>Rate Per Pound (dollars)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Drop ship, direct ship, or full service regular</td>
<td>Drop ship and direct ship</td>
<td>Full service 3</td>
</tr>
<tr>
<td></td>
<td>(Reg)</td>
<td>(M-bag)</td>
</tr>
<tr>
<td>1</td>
<td>24</td>
<td>2.55</td>
</tr>
<tr>
<td>2</td>
<td>24</td>
<td>2.05</td>
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<tr>
<td>3</td>
<td>24</td>
<td>2.10</td>
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<tr>
<td>4</td>
<td>24</td>
<td>2.90</td>
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</tr>
</tbody>
</table>

1 For ISAL pieces weighing 2 ounces or less, only a piece rate of 24 cents per piece applies (except for M-Bags). This piece rate is the same for drop ship, direct ship, and the full service option for regular ISAL mailings. M-Bag service is available for pieces posted to a single address under the applicable pound rates. Discounts for mailings consisting of pieces at or below the 2-ounce break point that qualify for drop ship or direct ship discount are based on the total weight of the mailing. A discount of 30 cents per pound applies to these mailings.

2 For ISAL pieces weighing more than 2 ounces, a pound rate applies to the total weight of the mailing. Mail entered at a gateway facility or qualifying for a direct ship discount from designated ISAL acceptance cities costs 30 cents per pound below the full-service pound rates. M-Bag rates are offered at 20% below the corresponding regular pound rates.

3 Includes Liechtenstein.

4 For ISAL mail tendered at the John F. Kennedy Air Mail Facility, San Francisco Air Mail Facility, and Miami Air Mail Facility, direct-ship service from designated ISAL acceptance cities qualifies for these rates only when a 750-pound minimum weight mailing is tendered by the mailer and appropriate transportation to the destination or transit hub is available.

5 For ISAL mail tendered at any acceptance city when the mailing does not qualify for direct-ship service.

### RAILROAD RETIREMENT BOARD

**Agency Forms Submitted for OMB Review**

**AGENCY:** Railroad Retirement Board.

**ACTION:** In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the Board has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

**SUMMARY OF PROPOSAL(S):**

2. Form(s) submitted: SF-10

3. OMB Number: 3220-0034.
4. Expiration date of current OMB clearance: Three years from date of approval.
5. Type of request: Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection.
7. Respondents: Individuals or households, Businesses or other for-profit.
8. Estimated annual number of respondents: 400.
10. Average time per response: 1 hour.
11. Total annual reporting hours: 40.
12. Collection description: Under 20 CFR 355.102, the Railroad Retirement Board (RRB) accepts claims for sickness benefits executed by other than the sick or injured employees, provided the RRB has the information needed to satisfy itself that the delegation should be made.

**ADDITIONAL INFORMATION OR COMMENTS:** Copies of the proposed forms and supporting documents can be obtained from Dennis Eagan, the agency clearance officer (312-751-4693). Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611 and the OMB reviewer, Laura Oliven (202-395-7316), Office of Management and Budget, room 3002, New Executive Office Building, Washington, DC 20503.

Dennis Eagan,
Clearance Officer.

**BILLING CODE:** 7705-01-M

**[FR Doc. 90-25899 Filed 11-1-90; 8:45 am]**
SECURITIES AND EXCHANGE COMMISSION
[Rel. No. 34-28584; File No. SR-PSE-90-38]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Stock Exchange, Inc. Relating to Transaction Fees and Charges Waiver

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on October 19, 1990, the Pacific Stock Exchange, Inc. ("PSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PSE, pursuant to rule 19b-4 of the Act, submitted a proposed rule change to amend its Schedule of Rates and Charges in order to waive certain transaction fees and charges for all equity trades of NIKE (stock symbol NKE). The waiver shall cover the time period of October 17, 1990 through January 17, 1991.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization 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 these statements may be examined at the places specified in Item IV below. The self-regulatory organization 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

Although fully confident that its specialists will provide superior markets in NKE, the Exchange believes that a three-month waiver of certain fees and charges is necessary and appropriate for the Exchange to remain on a competitive footing with other exchanges.

The statutory basis for the proposed rule change is section 6(b)(5) of the Act in that it will increase competition and the quality of markets.

B. Self-Regulatory Organization’s Statement on Burden on Competition and Immediate Effectiveness of the Proposed Rule Change

The Exchange believes that a three-month waiver of certain transaction fees and charges will increase competition among marketplaces.

C. Self-Regulatory Organization’s Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange, it has become effective pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of Securities Exchange Act rule 19b-4. At any time within 30 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission’s Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the PSE. All submissions should refer to File No. SR-PSE-90-38 and should be submitted by November 23, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,
Deputy Secretary.
[FR Doc. 90-25948 Filed 11-1-90; 8:45 am]
BILLING CODE 8010-01-M

[Rel. No. 34-28585; File No. SR-PHLX-89-48]

Self-Regulatory Organizations; Amendment to Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Its Revised Cash Index Participation

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on October 10, 1990, the Philadelphia Stock Exchange, Inc. ("PHLX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the amendment to the proposed rule change as described in Items I, II, and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PHLX hereby submits an amendment to proposed rule change SR-PHLX-89-48 regarding its revised Cash Index Participation ("CIP") filing. The text of the rule change, as amended, is attached as Exhibit A.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for the proposed rule change as described 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 Changes

The PHLX submitted SR-PHLX-89-48 on August 29, 1989. In this filing, the PHLX gave notice of its intent to reduce to zero all open interest in its then current CIP contracts, which had been
approved by the Commission in SR-PHLX-88-07. The PHLX also announced its exclusive license to file for and receive trading privileges in a new CIP contract that permits a holder to exercise the cash-out-privilege on a daily basis without a penalty and receive the next day’s opening index value of the Pertinent index.

After consultation with the Stock Clearing Corporation of Philadelphia (“SCCP”), the licensor of the revised CIP contract specifications, it has been determined that the proposed instrument’s appeal and utility to public investors can be heightened if a holder exercising the cash-out privilege can receive the same day’s closing index value. To accommodate this change, rule 1006B is being amended to provide an exercise of the cash-out privilege cut-off time for notices to be tendered to the Options Clearing Corporation (“OCC”). The cut-off time will be established as 3 p.m., Philadelphia time. Because an exercise notice may be tendered to the OCC only by the clearing member in whose account with the OCC the CIP is carried, members and member organizations, to the extent that they do not conflict with the rules and policies of the Exchange and the OCC, may establish fixed procedures as to the last hour at which they will accept exercise notices from their customers.

SCCP and PHLX have entered into an amendment of their preexisting licensing agreement whereby PHLX receives the exclusive rights to use these unique and key concept modifications in connection with PHLX’s CIP instrument. The proposed rule change is consistent with section 6(b)(5) of the Exchange Act, which provides in pertinent part that the rules of the exchange are designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities. The proposal, if approved, also assures the removal of impediments to and the perfection of the mechanism of a free and open market and a national market system, and, in general, protects investors and the public interest.

The proposed rule change is intended to underscore the spot characteristic and exclusive security’s nature of the CIP instrument. The Exchange believes that, particularly in light of the proposed CIP enhancements, CIPs will be very attractive to the investing public and thereby may ameliorate some of the volatility that has been associated with investor trading in the more highly leveraged derivative index products.

B. Self-Regulatory Organization’s Statement on Burden on Competition

The PHLX does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization’s Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The PHLX has prepared this rule change in close coordination with the Options Clearing Corporation and the SCCP.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the PHLX consents, the Commission will:

(A) By order approve such proposed rule change, or,

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission’s Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to File No. SR-PHLX-89-48 and should be submitted by November 23, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.


Exhibit A

The following text assumes that the revisions made in SR-PHLX-89-48, as filed on August 29, 1989, are incorporated. Accordingly, only the revisions made pursuant to this filing are denoted with new text italicized and deleted text bracketed:

Rules Applicable to Trading of Cash Index Participations.

Applicability and Definitions
Rule 1000B.
(a) No change.
(b) No change.

Designation of the Index
Rule 1001B. No change.

CIP Index Calculation.
Rule 1002B. No change.

Dissemination of Information
Rule 1003B. (a) The Exchange shall assure that the current index value is disseminated from time-to-time on days on which transactions in CIPs are made on the Exchange and that the [opening] closing index value is disseminated as promptly as it is available.

(b) No change.

Cash-Out Privilege
Rule 1004B. The purchaser of a CIP may exercise the CIP cash-out privilege at any time after establishing a CIP position. Exercise of the CIP cash-out privilege entitles the holder of a long CIP position to obtain the CIP [opening] closing index value as specified in Rule 1006B relating to exercise of the cash-out privilege.

Position Limits
Rule 1005B. No change.

Exercise Limits
Rule 1006B. No change.
Rule 1007B. No change.

Exercise of Cash-Out Privilege
Rule 1008B. (a) Exercise of the cash-out privilege shall entitle the holder of the CIP to receive the CIP index value as calculated at the [open] close of trading of the same business day [following] as the date of the exercise of the cash-out privilege.

(b) Notice of exercise of the CIP cash-out privilege must be [provided by] a purchaser of a CIP in accordance with the rules and procedures of the Options Clearing Corporation.

Exhibit A

Tendered to The Options Clearing Corporation by the clearing member in whose account with The Options Clearing Corporation the CIP is carried no later than 3:00 P.M., Philadelphia time, to be effective for the
An event-oriented order is made. An exercise notice may be tendered to The Options Clearing Corporation only by the clearing member in whose account with The Options Clearing Corporation, the GIP is carried. Members and member organizations, (to the extent that they do not conflict with the rules and procedures of the Exchange and The Options Clearing Corporation, they will establish fixed procedures as to the latest hour at which they will accept exercise notices from their customers.

### Delivery and Payment

#### Rule 1006B-1. No change.

#### Allocation of CIP Exercise Notices

Rule 1006B. No change.

#### Bids and Offers

Rule 1010B. No change.

### Limitation of Exchange Liability

#### Rule 1011B. Neither the Exchange, the Reporting Authority nor any Agent of the Exchange shall have any liability for damages, claims, losses or expenses caused by any errors, omissions, of delays in calculating or disseminating the current index value or the closing index value and tracking dividend payout dates or computing proportionate dividend payouts resulting from an act, condition or cause beyond the reasonable control of the Exchange or the Reporting Authority, including, but not limited to, an act of God; fire; flood; extraordinary weather conditions; war; insurrection; riot; strike; accident; action of government; communications or power failure; equipment or software malfunction; any error; omission or delay in the reports of transactions in one or more underlying securities; or any error; omission or delay in the reports of the current index value or the closing index value by the Exchange or the Reporting Authority.

### Reserve Authority

**Rule 1012. No change.**

**[FR Doc. 93-25949 Filed 11-1-90; 8:45 am]**

**BILING CODE 4010-01-48**

**[Rel. No. 35-25178]**

### Filings Under the Public Utility Holding Company Act of 1935 (“Act”)

**October 26, 1990.**

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transactions summarized below. The application(s) and/or declaration(s) and any amendments thereto are available for public inspection through the Commission’s Office of Public Reference.

### Interesting persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by November 20, 1990 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

### Mississippi Power Co., et al. (70-7528)

Alabama Power Company ("Alabama Power"), 600 North 18th Street, Birmingham, Alabama 35291, Georgia Power Company ("Georgia Power"), 333 Piedmont Avenue NE, Atlanta, Georgia 30308, Gulf Power Company ("Gulf Power"), 500 Bayfront Parkway, Pensacola, Florida 32520, and Mississippi Power Company ("Mississippi Power"), 2922 West Beach, Gulfport, Mississippi 35001, each a wholly owned electric-utility subsidiary company of The Southern Company ("Southern"), a registered holding company, have filed an application under sections 9(a) and 10 of the Act.

On March 9, 1989 (HCAR No. 24035), the Commission issued a notice (the “Notice”) of a proposal by Mississippi Power, Georgia Power and Gulf Power to lease or sublease to nonaffiliate companies, from time-to-time on or prior to December 31, 1992, coal hopper railroad cars owned or leased by Mississippi Power, Georgia Power or Gulf Power such that any nonaffiliate lease or sublease will not exceed one year in duration and will give Mississippi Power, Georgia Power or Gulf Power, as the case may be, the right of termination, upon reasonable notice, to terminate the return of the cars to customer service if needed earlier.

It is now stated that Alabama Power proposes to lease its railcars under the same circumstances and pursuant to the same terms and conditions as stated in the Notice.

In addition, Alabama Power, Georgia Power, Gulf Power and Mississippi Power propose to extend the term during which they may lease or sublease to nonaffiliate companies from December 31, 1992. Finally, the amendment states that no more than 500 railcars will be leased or subleased at any one time pursuant to the authority granted hereunder.

### Indiana Michigan Power Company (70-7713)

Indiana Michigan Power Company ("I&M"), 1 Riverside Plaza, Columbus, Ohio 43215, a subsidiary of American Electric Power Company, Inc., a registered holding company, has filed an application under sections 9(a) and 10 of the Act.

By orders dated November 1, 1978 and March 21, 1977 (HCAR Nos. 20759 and 19650, respectively), I&M was authorized to lease the nuclear fuel ("Nuclear Fuel") required for use at its Donald C. Cook Nuclear Plant ("Cook Plant") from PruLease, Inc. In order to restructure its leasing arrangements, I&M now proposes to enter into a lease (“Lease”) of the Nuclear Fuel with DCC Fuel Corporation, a special purpose corporation to be formed under the laws of Ohio ("Corporation"), all the stock of which will be held by The Huntington Trust Company, N.A., as Trustee ("Trustee") of DCC Fuel Trust ("Trust"). The Trust will be formed under the laws of the State of Ohio pursuant to a trust agreement among I&M, as trustee, the Trustee and I&M, as trust beneficiary. The Trustee is not affiliated with I&M or any of its affiliated companies.

Under the terms of the Lease, which is substantially the same as the present lease except for the determination of the monthly lease payments, the Corporation will be responsible for all payments to suppliers, processors and manufacturers necessary to provide Nuclear Fuel for th Cook Plant for the lease period of three years. The maximum value of Nuclear Fuel to be under the Lease will not be in excess of $175 million, the maximum value under the current lease with PruLease. Under the Lease, I&M will be responsible for operating, maintaining, repairing, replacing, and insuring the Nuclear Fuel and for paying all taxes and costs arising out of the ownership, possession or use thereof.

### Eastern Edison Company et al. (70-7739)

Eastern Edison Company ("Eastern Edison"), 110 Mulberry Street, Brockton, Massachusetts 02107, a subsidiary of Eastern Utilities Associates, a registered holding company, and its...
Eastern Edison proposes to issue and sell from time-to-time, through September 30, 1992: (a) Up to $100 million aggregate principal amount of one or more series of First Mortgage and Collateral Trust Bonds of Eastern Additional Bonds); (b) up to $100 million aggregate principal amount of one or more series of medium term securities either as first mortgage bonds ("Secured MTN") or unsecured notes ("Unsecured MTN") (collectively, "MTNs"); and (c) up to $100 million aggregate principal amount of all the Additional Bonds, MTNs and Unsecured Notes will not exceed $100 million (collectively, "Debt").

The Additional Bonds and the Secured MTNs will be issued under Eastern Edison's Indenture of First Mortgage and Deed of Trust dated as of September 1, 1948 as supplemented. Unsecured MTNs will be issued under an indenture between Eastern Edison and a trustee to be selected. The Unsecured Notes will be issued under note agreements to financial institutions and will mature in not more than 10 years.

Each series of Additional Bonds will mature in not less than five, nor more than thirty years from the first day of the month of issuance and will be sold at a price of not less than 98%, nor more than 102.75% of the principal amount of such series. Additional Bonds of each series will be redeemable at the option of Eastern Edison at general redemption prices, except that during the first five years after issuance, no such redemption may be made for the purpose of refunding at an effective interest or dividend cost less than the effective interest cost to Eastern Edison of such series. Additional Bonds of each series may also be redeemable at special redemption prices through the use of sinking fund and replacement fund monies and for other limited purposes.

The MTNs will mature in 9 months to 35 years as determined by agreement between Eastern Edison and the respective purchaser or its agent. Under certain circumstances, MTNs would not be redeemable for a period of up to ten years, as determined from time-to-time, by Eastern Edison and the purchaser or its agent, after which time they would be redeemable at Eastern Edison's option at par or at various premiums above the principal amount.

Eastern Edison proposes to issue and sell the Additional Bonds and MTNs either in accordance with the competitive bidding requirements of rule 50 or under an exemption from the competitive bidding requirements under subsection (a)(3), and requests authorization to begin negotiating the sale of the Additional Bonds, MTNs and Unsecured Notes.

Eastern Edison requests an exception, with regards to the Secured MTNs, from the standards required under the Statement of Policy Regarding First Mortgage Subordinated Bonds Subject to the Act by orders dated February 16, 1966 (HCAR No. 13106) and May 8, 1969 (HCAR No. 16509), regarding sinking funds and redemption provisions.

The net proceeds of the Debt will be used by Eastern Edison to: (1) Repay outstanding short-term bank borrowings; (2) reduce the need for such borrowings in the future; (3) invest in Montaup through capital contributions or the purchase of Montaup Debenture Bonds; (4) pay underwriting costs and other issuance expenses of the Additional Bonds and the MTNs; and (5) for general corporate purposes. The proceeds of the Debt or any part thereof may be temporarily invested in securities.

Montaup proposes to issue and sell Eastern Edison Debenture Bonds in a principal aggregate amount not in excess of the amount of Debt proposed to be issued by Eastern Edison ("New Debenture Bonds"). Eastern Edison also proposes to make capital contributions to Montaup and to purchase the New Debenture Bonds at their principal amount plus accrued interest to an aggregate principal which, together, will not exceed the amount of the Debt. The New Debenture Bonds themselves will contain all of their terms and there will be no indenture or similar instrument governing them. The net proceeds of the New Debenture Bonds will be used by Montaup to: (a) Repay outstanding short-term bank borrowings; (b) reduce the need for such borrowings in the future; and (c) for general corporate purposes.

Entergy Corp. (70-7801)

Entergy Corporation ("Entergy"). 225 Baronne Street, New Orleans, Louisiana 70112, a registered holding company, has filed an application-declaration under sections 9(a), 10 and 12(f) of the Act and rules 43 and 45 thereunder.

Entergy proposes to acquire for its own account additional shares of its common stock, not to exceed 10% of the shares issued and outstanding as of October 31, 1990, in negotiated or open market transactions or through tender offers from time-to-time through December 31, 1992.
consisted of $23,350,000 in open account advances from CNG. Therefore, CNGP and CNG request approval to engage in open account advances in an amount up to CNGD's unused open account advances as of the date of the proposed merger.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.
Margaret H. McFarland, Deputy Secretary.

[Federal Register Doc. 25940 Filed 11-1-90; 8:45 am]
BILLING CODE 8010-01-M

[Rel. No. IC-17824; 811-4693]
Schafer Value Trust, Inc.; Application
October 29, 1990.

AGENCY: Securities and Exchange Commission (“SEC” or “Commission”).

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the “1940 Act”).

APPLICANT: Schafer Value Trust, Inc.

RELEVANT 1940 ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks a conditional order declaring that it has ceased to be an investment company under the 1940 Act.

FILING DATE: The application on Form N-8F was filed on October 3, 1990.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC’s Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on November 26, 1990, and should be accompanied by proof of service on applicant, in the form of affidavit or, for lawyers, a certificate of service.

Hearing requests should state the nature of the writer’s interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC’s Secretary.

ADRESSES: Secretary, SEC, 450 5th Street, N.W., Washington, DC 20549. Applicant, 645 Fifth Avenue, New York, NY 10022.

FOR FURTHER INFORMATION CONTACT: Felice R. Foundos, Law Clerk, (202) 272-2190, or Jeremy N. Rubenstein, Branch Chief, (202) 272-2023 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC’s Public Reference Branch or by contacting the SEC’s commercial copier at (300) 321-3232 (in Maryland (301) 738-1400).

Applicant’s Representatives
1. Applicant is a closed-end diversified management company organized as a corporation under the laws of the State of Maryland. On June 4, 1986, applicant filed a registration statement pursuant to section 8(b) of the 1940 Act. On that date, applicant also filed a registration statement pursuant to the Securities Act of 1933, which registered 26,000,000 shares of common stock. The registration statement became effective on October 1, 1986.

2. At a meeting held on March 26, 1990, applicant’s board of directors adopted a plan of liquidation and dissolution and called for consideration of the plan at applicant’s annual meeting of shareholders. On May 4, 1990, applicant filed proxy materials with the Commission relating to the proposed dissolution. Applicant’s shareholders approved the liquidation and dissolution at the annual shareholders’ meeting held on May 29, 1990.

3. Pursuant to the liquidation, the stock held in applicant’s portfolio was sold through brokers or market makers at no less than the market price on the date of the sale. Brokerage commissions incurred in the liquidation totalled $123,382. The balance of applicant’s cash and cash equivalents.

4. As of September 17, 1990, pursuant to applicant’s plan of liquidation and dissolution, applicant had distributed $3,227,270.79 in cash to the shareholders of applicant in redemption of their shares. Each shareholder received $.425 per share, representing the net asset value per share on the distribution date. Applicant redefined a total of 7,593,577 shares.

5. At the time of filing, applicant had retained $28,964.98 to be distributed to 199 shareholders who had not presented their shares for redemption. On September 28, 1990, applicant mailed a notice to the shareholders who had not redeemed their shares informing them of their right to redemption. Applicant will continue its efforts to notify these shareholders.

6. Applicant had retained $106,455.03 to pay the expenses of liquidation (including payment for expenses billed but not yet paid by the applicant totaling $44,106.63).

7. Applicant has filed Articles of Dissolution with the Secretary of State of Maryland. The Articles became effective on July 12, 1990. Applicant mailed a notice of dissolution to all its known creditors.

8. As of the date of the application, the applicant had no debts, or liabilities (other than those described above), and was not a party to any litigation or administrative proceeding.

9. Applicant is neither engaged in nor proposes to engage in any business activities other than those necessary for the winding up of its affairs.

For the Commission, by the Division of Investment Management, under delegated authority.
Margaret H. McFarland, Deputy Secretary.

[FR Doc. 25940 Filed 11-1-90; 8:45 am]
BILLING CODE 8010-01-M

[Rel. No. IC-17826; 811-407]
State Bond and Mortgage Company; Application for Deregistration
October 29, 1990.

AGENCY: Securities and Exchange Commission (“SEC”).

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the “1940 Act”).

APPLICANT: State Bond and Mortgage Company (“Applicant”).

RELEVANT 1940 ACT SECTION: Order requested under section 8(f) of the 1940 Act.

SUMMARY OF APPLICATION: Applicant seeks a conditional order declaring that it has ceased to be an investment company under the 1940 Act because, among other things, it has become primarily engaged, through wholly-owned subsidiaries, in businesses that are excepted from the definition of an investment company under sections 3(c)(3) and 3(c)(6) of the 1940 Act.

FILING DATE: The application was filed on June 27, 1990, and amended on September 28, 1990.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued, unless the SEC orders a hearing, upon Applicant notifying the SEC, by amending the application, that Applicant’s restructuring, as described in the application, has been consummated. Interested persons may request a hearing by writing to the SEC’s Secretary and serving Applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on November 26, 1990, and should be accompanied by proof of service on Applicant, in the form of affidavit or, for lawyers, a certificate of service.

Hearing requests should state the nature
of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESS: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549.
Applicant, 8500 Normandale Lake Boulevard, Suite 1650, Minneapolis, Minnesota 55437.

FOR FURTHER INFORMATION CONTACT:
Robert A. Robertson, Staff Attorney, at (202) 504-2283, or Stephanie M. Monaco, Branch Chief, at (202) 272-3030 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch or by contacting the SEC's commercial copier at (800) 231-3282 (in Maryland (301) 738-1400).

Applicant's Representations
1. Applicant represents that it is a registered investment company under the 1940 Act presently engaged in, among other things, the business of issuing face-amount certificates (as defined in section 2(a)(15) of the 1940 Act) of the single payment type. Applicant has issued and has outstanding both installment and single payment type face-amount certificates.
2. Applicant believes it is primarily engaged in the life insurance business through a wholly owned subsidiary that is an insurance company as defined in section 2(a)(17) of the 1940 Act (the "Insurance Subsidiary"). In addition, Applicant is engaged in the banking business through a wholly owned subsidiary that is a bank as defined in section 2(a)(5) of the 1940 Act (the "Bank Subsidiary"). Applicant also is engaged in the securities and insurance brokerage business through another wholly owned subsidiary (the "Broker/Dealer Subsidiary"), and it is a registered investment adviser for several affiliated open-end investment companies.
3. In connection with the filing of the application, and as contemplated by section 13(a)(4) of the 1940 Act, Applicant held a Special Meeting of Shareholders on October 17, 1990 where the Applicant's shareholders considered and approved the proposed plan to restructure it (the "Restructuring"). The Restructuring would include the termination of Applicant's registration under the 1940 Act.
4. Under the Restructuring, a wholly owned subsidiary of Applicant, which is registered under the 1940 Act (the "Face-
Amount Certificate Subsidiary"), will assume all of Applicant's obligations to all certificate holders under Applicant's currently outstanding face-amount certificates (the "SB&M Certificates"). In consideration of the Face-Amount Certificate Subsidiary assuming these obligations and issuing of all of its common stock to Applicant, Applicant will transfer to the Face-Amount Certificate Subsidiary assets, which constitute qualified investments under the provisions of section 28(b) of the 1940 Act, having an aggregate value at least equal to the then aggregate amount of Applicant's face-amount certificate reserves plus $250,000. The book value of the assets to be transferred totaled approximately $64.4 million on December 31, 1989. The assets and liabilities transferred will be as of the date of the transfer, but Applicant does not expect them to be substantially different from those presented. Upon the transfer of the face-amount certificate business to the Face-Amount Certificate Subsidiary, Applicant will cease to issue new face-amount certificates. However, Applicant will remain liable for the SB&M Certificates until their maturity or surrender and payment in accordance with their terms.
5. Applicant also plans to sell all of the outstanding capital stock of its Bank Subsidiary, and contribute the entire net proceeds to the capital of its Insurance Subsidiary. This increased capital will allow the Insurance Subsidiary to increase its business.

Applicant's Legal Analysis
1. Section 8(f) of the 1940 Act provides, in pertinent part, that whenever the SEC, upon application, finds that a registered investment company has ceased to be an investment company, it shall so declare by order and, upon the effectiveness of such order, the registration of such company shall cease to be in effect. If necessary for the protection of investors, such an order may be made subject to appropriate conditions.
2. After the Restructuring, Applicant will continue to come within the definition of an investment company under section 3(a)(2) of the 1940 Act because the SB&M Certificates will remain outstanding. Section 3(a)(2) provides that an "investment company" includes any issuer that "is engaged or proposes to engage in the business of issuing face-amount certificates of the installment type, or has been engaged in such business and has any such certificates outstanding." However, notwithstanding section 3(a)(2), Applicant believes that it is excepted from the definition of an investment company by virtue of sections 3(c)(3) and 3(c)(6) of the 1940 Act.
3. Section 3(c)(6) of the 1940 Act excepts from the definition of an investment company, among other things, "any company primarily engaged, directly or through majority owned subsidiaries, in one or more of the businesses described in (section 3(c)(3) of the 1940 Act), or in one or more of such businesses (from which not less than 25 per centum of such company's gross income during its last fiscal year was derived) together with an additional business or businesses other than investing, reinvesting, owning, holding or trading in securities." Section 3(c)(3) of the 1940 Act excludes from the definition of an investment company "(a)ny bank or insurance company.

4. The business that a company is "primarily engaged" in is a question of fact. SEC v. Fifth Avenue Coach Lines, Inc., 289 F.Supp. 2 (S.D. N.Y. 1968), affirmed 435 F.2d 510 (2nd Cir.1970). In determining the primary business in which a company is engaged, the SEC considers, among other things: (a) The issuer's historical development, (b) the issuer's public representations of policy, (c) the activities of the issuer's officers and directors, (d) the nature of the issuer's present assets, and (e) the sources of the issuer's present income. Tonopah Mining Company of Nevada, 26 S.E.C. 428 (1947); The Great American Life Underwriters, Inc., 41 S.E.C. 1 (1990).
5. The development of Applicant's life insurance, banking, brokerage and investment management businesses has occurred over the past 24 years, and these non-Investment company businesses, particularly life insurance, have, over that time, become the most significant factor in Applicant's financial condition and performance. Applicant's Insurance Subsidiary accounted for 70% of its total assets, 74% of its gross income and 80% of its net income for the year ended December 31, 1989. By including the financial results of the Bank Subsidiary, these percentages rise to 88%, 86% and 95%, respectively. Management of the insurance business and other businesses not regulated by the 1940 Act consumes essentially all of the time of Applicant's directors, officers and employees. Applicant believes that its business activities, together with the exception, form the definition of an investment company under section 3(c)(3) and section 3(c)(6).
6. In addition to Applicant's reliance on being primarily engaged solely in section 3(c)(3) businesses, section 3(c)(6) provides an alternative approach for
establishing that an entity is not an investment company within the meaning of the 1940 Act. The second portion of section 3(c)(6) includes, among other things, a company primarily engaged in a business or businesses excepted by sections 3(c)(3), from which the company derived at least 25% of its gross income in the last fiscal year, and other businesses, other than investing, reinvesting, owning, holding or trading in securities. This alternative approach of section 3(c)(6) encompasses diversified companies, primarily engaged in excepted and other businesses, as long as the primary engagement of the company does not involve investment company activities.

7. Applicant, through a wholly owned subsidiary, is engaged in the life insurance business. As stated above, Applicant's Insurance Subsidiary, a section 3(c)(3) excepted business, accounted for 74% of its gross income in 1989. Moreover, its Bank Subsidiary, also a 3(c)(3) excepted business, with the Insurance Subsidiary accounted for 88% of Applicant's gross income. In addition to life insurance and banking, Applicant is engaged in managing investment companies. When this non-investment company business is added to the insurance and banking businesses, they account for 68% of Applicant's total assets, 88% of its gross income and all of its net income for the year ended December 31, 1989. When the brokerage business, excepted from the definition of an investment company by section 3(c)(2) of the 1940 Act, is added together with the insurance, banking and investment company management businesses, such businesses collectively account for 92% of Applicant's total assets and 92% of its gross income for the year ended December 31, 1989. Thus, under this alternative approach of section 3(c)(6), Applicant believes it also would be excepted from the definition of an investment company.

8. In addition to Applicant's belief that its business is excepted from the definition of an investment company, it believes that the holders of the SB&M Certificates will continue to be sufficiently protected as investors in the SB&M Certificates. The Face-Amount Certificate Subsidiary will maintain these assets on deposit in a similar manner with the same custodian. The book value of the assets to be transferred totaled approximately $64.4 million on December 31, 1989.

9. The Face-Amount Certificate Subsidiary will comply with the applicable provisions of state and federal law, including the 1940 Act. It intends to operate its face-amount certificate business in the same manner as Applicant has over the past several years. Moreover, Applicant's personnel, and officers familiar with the face-amount certificate business will continue to oversee the business of the Face-Amount Certificate Subsidiary.

10. In light of the above, in conjunction with the conditions to which Applicant has agreed, Applicant believes that its request for an order under section 8(f) that it has ceased to be an investment company is warranted and is consistent with the protection of investors.

Applicant's Conditions

Applicant agrees to the following conditions in connection with the relief requested:

1. Applicant will not issue any additional “face-amount certificates” as defined in section 2(a)(15) of the 1940 Act.

2. Applicant will maintain 100% ownership of the Face-Amount Certificate Subsidiary so long as any SB&M Certificates are outstanding and the Face-Amount Certificate Subsidiary is a registered investment company under the 1940 Act.

3. Applicant will require the Face-Amount Certificate Subsidiary to maintain reserves for the SB&M Certificates as required by section 28 of the 1940 Act and require the Face-Amount Certificate Subsidiary to comply with all other applicable provisions of the 1940 Act as long as SB&M Certificates are outstanding and the Face-Amount Certificate Subsidiary is a registered investment company under the 1940 Act.

4. Until released from such obligation by the holders thereof or such obligations are paid in accordance with their terms upon maturity or surrender, Applicant will remain liable to the SB&M Certificate holders for all amounts due them under the SB&M Certificates.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,
Deputy Secretary.
[FR Doc. 90-25967 Filed 11-1-90; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

Region I Advisory Council Meeting; Correction

The U.S. Small Business Administration Region I Advisory Council, located in the geographical area of Boston, will hold a public meeting at 10 a.m. on Monday, November 5, 1990, at the U.S. Small Business Administration, 155 Federal Street, 9th Floor, Boston, Massachusetts, to discuss such matters as may be presented by members, staff of the Small Business Administration or others present. The first notice of this meeting, published at 55 FR 42143 (October 17, 1990), incorrectly stated the meeting date as November 15, 1990.

For further information, write or call Raymond R. Arruda, Special Assistant to the Regional Administrator, U.S. Small Business Administration, 155 Federal Street, 9th Floor, Boston, Massachusetts 02110, telephone (617) 451-2030.

Dated: October 26, 1990.
Veronica De Nardo,
Acting Director, Office of Advisory Councils.
[FR Doc. 90-25960 Filed 11-1-90; 8:45 am]

BILLING CODE 8025-01-M

Region I Advisory Council Meeting; Massachusetts

The U.S. Small Business Administration Region I Advisory Council, located in the geographical area of Boston, will hold a public meeting at 10 a.m. on Tuesday, November 13, 1990, in the Conference Room in the Thomas P. O'Neill, Jr., Federal Building, 10 Causeway Street, room 265, Boston, Massachusetts, to discuss such matters as may be presented by members, staff of the Small Business Administration or others present.

For further information, write or call John J. McNally, Jr., District Director, U.S. Small Business Administration, 10 Causeway Street, room 265, Boston, Massachusetts 02222-1093, telephone (617) 565-5561.
Region VII Advisory Council Meeting, Missouri

The U.S. Small Business Administration Region VII Advisory Council, located in the geographical area of St. Louis, will hold a public meeting at 9 a.m. on Tuesday, December 4, 1990, at the District Office of the U.S. Small Business Administration, 815 Olive Street, room 242, St. Louis, Missouri, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Veronica De Nardo, Acting Director, Office of Advisory Councils, or Robert L. Andrews, District Director, U.S. Small Business Administration, 815 Olive Street, room 242, St. Louis, Missouri 63101; telephone (314) 539-6600.

Veronica De Nardo, Acting Director, Office of Advisory Councils.

BILLY COOE 8025-01-M

Region II Advisory Council Meeting; Puerto Rico

The U.S. Small Business Administration Region II Advisory Council, located in the geographical area of San Juan, will hold a public meeting at 9 a.m. on Wednesday, November 7, 1990, at the Buccaneer Hotel on St. Croix, U.S. Virgin Islands, to discuss such matters as may be presented by members, staff of the Small Business Administration, or others present.

For further information, write or call Mrs. Doris Staszek, Chairperson, Cond. Santa Ana, A Street Corner 19, apt. 2C, Guaynabo, Puerto Rico, 00697; telephone (809) 759-8405/8605, 761-0710.

Dated: October 26, 1990.
Veronica De Nardo, Acting Director, Office of Advisory Councils.

BILLY COOE 8025-01-M

Region X Advisory Council Meeting; Washington

The U.S. Small Business Administration Region X Advisory Council, located in the geographical area of Seattle, will hold a public meeting at 9:30 a.m. on Tuesday, December 4, 1990, at the Henry M. Jackson Federal Building, 915 Second Avenue, room 1792, Seattle, Washington, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Robert P. Meredith, Acting District Director, U.S. Small Business Administration, 915 Second Avenue, room 1792, Seattle, Washington 98174, phone (206) 442-704.

Veronica De Nardo, Acting Director, Office of Advisory Councils.

BILLY COOE 8025-01-M

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Petitions for Exemption, Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR chapter I), dispositions of certain petitions previously received, and corrections.
The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

**DATES:** Comments on petitions received must identify the petition document number involved and must be received on or before November 23, 1990.

**ADDRESSES:** Send comments on any petition in triplicate to:
Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-10), Petition Docket No. 500 Independence Avenue, SW., Washington, DC 20591.

**FOR FURTHER INFORMATION CONTACT:**
The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-10), room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3132.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, DC, on October 25, 1990.
Denise Donovan Hall, Manager, Program Management Staff, Office of the Chief Counsel.

**Petitions for Exemption**

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**Petitioner:** University of North Dakota.
**Sections of the FAR Affected:** 14 CFR part 141, appendix D, paragraph 3(c).
**Description of Relief Sought:** To amend Exemption No. 3825E to allow aviation students allowable credit for more than the present 50-hour limitation.

**Disposition of Petitions**

**Docket No.:** 23653.
**Petitioner:** University of North Dakota.
**Description of Relief Sought:** To allow Mr. Cummings, President of Cummings Rigging Works, to exercise the privileges of his Master Parachute Rigger certificates without having available a smooth top table at least 3 feet wide by 40 feet long.

**Description of Relief Sought:** To allow Mr. Cummings, President of Cummings Rigging Works, to exercise the privileges of his Master Parachute Rigger certificates without having available a smooth top table at least 3 feet wide by 40 feet long.

**Dispositions of Petitions**

**Docket No.:** 18324.
**Petitioner:** American Airlines Maintenance & Engineering Center.
**Sections of the FAR Affected:** 14 CFR 43.3 and 121.709(b)(3).
**Description of Relief Sought/Disposition:** To extend Exemption No. 2678F that allows petitioner's certificated flight engineers to stow passenger supplemental oxygen masks during flight and to make an entry in the aircraft maintenance logbooks in reference to that function.

**Grant, October 18, 1990, Exemption No. 2678G**

**Docket No.:** 25568.
**Petitioner:** The Soaring Society of America, Inc.
**Sections of the FAR Affected:** 14 CFR 45.11(a) and (d) and 45.29(h).
**Description of Relief Sought/Disposition:** To extend Exemption No. 4988 that allows owners, operators, and manufacturers of gliders to forego the requirement to secure an identification plate or display and model and serial number on the exterior of the aircraft at specified locations.

**Grant, October 18, 1990, Exemption No. 4988A**

**Docket No.:** 25775.
**Petitioner:** Petroleum Helicopters, Inc.
**Sections of the FAR Affected:** 14 CFR 43.3.
**Description of Relief Sought/Disposition:** To allow appropriately trained flight crewmembers to remove, replace, and service patient oxygen systems that are installed on petitioner's fleet of emergency medical aircraft.

**Grant, October 15, 1990, Exemption No. 5244**

**Docket No.:** 26132.
**Petitioner:** Sierra Academy of Aeronautics.
**Sections of the FAR Affected:** 14 CFR part 141, appendix F, paragraph (c)(III)(a).
**Description of Relief Sought/Disposition:** To allow petitioner to conduct its Commercial Pilot, Helicopter Course, utilizing helicopters only, with 80 hours of flight instruction and 70 hours of directed solo training versus 50 hours of flight instruction and 100 hours of directed solo training as required by the regulations.

**Grant, October 22, 1990, Exemption No. 5245**

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**DEPARTMENT OF THE TREASURY**

**Office of Thrift Supervision**

**CitySavings and Loan Association, F.A.: Appointment of Conservator**

Notice is hereby given that, pursuant to the authority contained in section 5 (d)(2)(B) and (H) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for CitySavings and Loan Association, F.A., San Antonio, Texas, on October 26, 1990.

**Dated:** October 26, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington, Executive Secretary.

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**CitySavings and Loan Association, Appointment of Receiver**

Notice is hereby given that, pursuant to the authority contained in section 5 (d)(2)(C) and (H) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for CitySavings and Loan Association, San
Southeastern Savings Association; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2)(F) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for Southeastern Savings Association, Dayton, Texas, Docket No. 7593, on October 26, 1990.

Dated: October 26, 1990.
By the Office of Thrift Supervision.
Nadine Y. Washington,
Executive Secretary.

Southmost Savings and Loan Association; Replacement of Conservator with a Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5(d)(2) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, the Office of Thrift Supervision has duly replaced the Resolution Trust Corporation as Conservator for Southmost Savings and Loan Association, Brownsville, Texas, with the Resolution Trust Corporation as sole Receiver for the Association on October 26, 1990.

Dated: October 26, 1990.
By the Office of Thrift Supervision.
Nadine Y. Washington,
Executive Secretary.

Summit First Saving and Loan Association, F.A.; Replacement of Conservator With a Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5(d)(2) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for Summit First Savings and Loan Association, F.A., Summit, Illinois, Docket No. 8870, with the Resolution Trust Corporation as sole Receiver for the Association on October 26, 1990.

Dated: October 26, 1990.
By the Office of Thrift Supervision.
Nadine Y. Washington,
Executive Secretary.

Millington Savings Bank, SLA, Millington, NJ; Final Action; Approval of Conversion Application

Notice is hereby given that on October 22, 1990, the Office of the Chief Counsel, Office of Thrift Supervision, acting pursuant to delegated authority, approved the application of Millington Savings Bank, SLA, Millington, New Jersey, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Secretariat, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, and District Director, Office of Thrift Supervision, New York District Office, 10 Exchange Place Centre, 17th Floor, Jersey City, New Jersey 07302.

By the Office of Thrift Supervision.
Nadine Y. Washington,
Executive Secretary.
SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552(e)(3)), that the regular meeting of the Farm Credit Administration Board (Board) scheduled for Tuesday, November 6, 1990, will not be held. FOR FURTHER INFORMATION CONTACT: Curtis M. Anderson, Secretary to the Farm Credit Administration Board, (703) 863-4003, TDD (703) 863-4444. ADDRESSES: Farm Credit Administration, 1501 Farm Credit Drive, McLean Virginia 22102-5090. Dated: October 30, 1990. Curtis M. Anderson, Secretary, Farm Credit Administration Board. [FR Doc. 90-26073 Filed 10-31-90; 10:38 am] BILLING CODE 6755-01-M RESOLUTION TRUST CORPORATION Notice of Agency Meeting Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:50 p.m. on Tuesday, October 30, 1990, the Board of Directors of the Resolution Trust Corporation met in closed session to consider matters relating to the resolution of failed thrift institutions. In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), concurred in by Chairman L. William Seidman, Vice Chairman Andrew C. Hove, and Director T. Timothy Ryan, Jr. (Director of the Office of Thrift Supervision), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(8), (c)(9)(A)(ii), and (c)(9)(B)).
The meeting was held in the Board Room of the Federal Deposit Insurance Corporation Building located at 550—17th Street, NW., Washington, DC.

Resolution Trust Corporation.
John M. Buckley, Jr.,
Executive Secretary.

[FR Doc. 90–20115 Filed 10–31–90; 12:57 pm]
BILLING CODE 6714–01–M
Corrections

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE
Food and Nutrition Service
7 CFR Part 246
Special Supplemental Food Program for Women, Infants and Children (WIC); Review of Food Packages

Correction
In proposed rule document 90-25129 beginning on page 42856, in the issue of Wednesday, October 24, 1990, make the following corrections:

1. On page 42857, in the third column, in the first full paragraph, in the second line from the bottom, "instruction" should read "introduction".
2. On page 42858, in the first column, in the second full paragraph, in the first line, "Specially" should read "Specifically"; and in the 10th line from the bottom of the page, after "to" insert "the".
3. On the same page, in the second column, in the second full paragraph, in the fifth line, after "of" insert "a".
4. On the same page, in the third column, in the paragraph numbered 2, in the fifth and sixth lines, remove the phrase "(i.e., high nutrient to calorie rate)" and bioavailable sources"; and the paragraph numbered 3, in the third, fourth and fifth lines, remove the phrase "and maximum monthly allotments of foods within each package,"
5. On page 4269, in footnote 2, in the second line, "100 milligrams" should read "10 milligrams".

DEPARTMENT OF THE INTERIOR
Bureau of Land Management
[ID-943-90-4214-11;DI-05280]
Proposed Continuation of Withdrawal; Idaho

Correction
In notice document 90-11484 beginning on page 20537 in the issue of Thursday, May 17, 1990, make the following corrections:

1. On page 20537, in the second column, in the 24th line, "W 1/2W1 AE y*E%" should read "WVfefSWVi SEy4SEy4".
2. On the same page, in the same column, in the 28th and 30th lines, "Kiwanas" was misspelled.
3. On the same page, in the same column, in the 21st line from the bottom, "Ey2NEy4swy4SEy4" should read "Ey2NEy4swy4SEy4".
4. On the same page, in the same column, in the fifth line from the bottom, delete the second comma (,).
5. On the same page, in the third column, in the 33rd line, "Sturgil" was misspelled.

BILLING CODE 1505-01-D

DEPARTMENT OF LABOR
Employment and Training Administration
Labor Surplus Area Classifications Under Executive Orders 12073 and 10582; Annual List of Labor Surplus Areas

Correction
In notice document 90-24751 beginning on page 42509, in the issue of Friday, October 19, 1990, make the following corrections:

1. On page 42514, in the second column, in the 44th line, after "Saginaw City" insert "Saginaw Township".
2. On page 42515, in the fifth column, in the 13th line, "Nobel" should read "Noble".
3. On the same page, in the sixth column, in the 19th line, "Nobel" should read "Noble".
4. On page 42517, in the third column, in the 14th line from the last, "Tutus" should read "Titus".
5. On the same page, in the fifth column, under "WASHINGTON", in the third line, "Benton" should read "Benton".
6. On the same page, in the sixth column, in the 27th line from the bottom, "Benton" should read "Benton".
Securities and Exchange Commission

17 CFR Part 200 et al.
Multijurisdictional Disclosure and Modifications to the Current Registration and Reporting System for Canadian Issuers; Proposed Revisions to Rules and Forms and Request for Comments
The Securities and Exchange Commission (the "Commission") is proposing for comment revised new Forms F-7, F-8, F-9 and F-10 under the Securities Act of 1933 (the "Securities Act"), revised new Form F-X under both the Securities Act and the Exchange Act, revised new Rule 10-11 under the Trust Indenture Act of 1939 (the "Trust Indenture Act"), and revised new Form T-5 under the Trust Indenture Act of 1939 (the "Trust Indenture Act"). The multijurisdictional disclosure system ("MJDS") is intended to facilitate cross-border offerings of securities and continuous reporting by specified Canadian issuers. To remove unnecessary impediments to transnational capital formation, the multijurisdictional disclosure system would permit Canadian issuers meeting eligibility criteria to satisfy certain securities registration and reporting requirements in the United States by providing disclosure documents prepared in accordance with the requirements of Canadian regulatory authorities.

In connection with the multijurisdictional disclosure system, the Commission also is publishing for comment revisions to existing rules and forms to permit registration and reporting under the Securities Act of 1933 and the Securities Exchange Act of 1934 by Canadian foreign private issuers on an equal basis with all other foreign private issuers.

DATES: Comments should be received on or before December 15, 1990.

ADDRESSES: 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: Anita Klein, Office of International Corporate Finance, Division of Corporation Finance at (202) 272-3246; David Sirignano and Catherine Dixon, Office of Tender Offers, Division of Corporation Finance at (202) 272-3097; Michael Hyatte, 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) 272-2558; Nancy Sanow and Ethan Corey, Office of Legal Policy and Trading Practices, Division of Market Regulation at (202) 272-2880; Securities and Exchange Commission, 450 Fifth Street N.W., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Commission is proposing for comment revised new Forms F-7, F-8, F-9 and F-10 under the Securities Act of 1933 (the "Securities Act"), revised new Form F-X and revised new Schedules 14D-F, 14F-9F and 13E-F4 under the Securities Exchange Act of 1934 (the "Exchange Act"); revised new Form T-5 under the Trust Indenture Act of 1939 (the "Trust Indenture Act") and revised new Form F-X under both the Securities Act and the Exchange Act.

I. EXECUTIVE SUMMARY
On July 24, 1989, the Commission published for comment proposed rules, forms, and schedules that would have provided the foundation for a multijurisdictional disclosure system ("MJDS") to facilitate cross-border securities offerings by certain Canadian issuers. The Ontario Securities Commission ("OSC") and the Commission des valeurs mobilières du Québec ("CVMQ") concurrently issued for comment proposals that would establish a MJDS in Canada. The MJDS would permit issuers to make public offerings and tender offers in Canada and the United States using disclosure documents prepared in accordance with home country requirements.

The MJDS is a hybrid of two approaches for enhancing the efficiency of multinational capital-raising: mutual recognition and harmonization of disclosure standards. While the multijurisdictional disclosure effort is based on the concept of mutual...
mandates and disclosure requirements. The existence of a well-developed, U.S. and Canadian investor protection first partner for the United States in part proposal were received. Those letters and a documents prepared according to the United States using disclosure requirements, and U.S. tender offer regulations regarding third-party and issuer exchange and cash tender offers (where a limited percentage of the class of securities were held of record by U.S. residents).

The Commission has reviewed the comments received on the original proposal, which were generally supportive but suggested refinements, and is proposing a revised MJDS for comment. The revised MJDS proposed today, like the original proposal, would permit single-jurisdiction regulation of certain securities offerings and continuous reporting obligations, so that cross-border securities offerings in the United States and Canada could be made more efficiently and at less expense. Like the original proposal, the reproposal would constitute a first step in that it is limited to large Canadian issuers or to certain types of offerings, rather than providing for multi-jurisdictional registration and disclosure for any offering by a Canadian issuer.

The reproposal would continue to cover registration of offerings by "substantial" 1 Canadian foreign private issuers and crown corporations. 2 Primarily because of concerns regarding exclusion of U.S. investors from such investment opportunities, registration also would continue to be permitted under the reproposal for certain rights and exchange offers by Canadian foreign private issuers and crown corporations. 3 In addition, compliance with Canadian law would be deemed to satisfy the requirements of the Williams Act in the case of tender offers made for the securities of a Canadian issuer where less than 20 percent of the target's securities are held by U.S. residents.

Under both the original proposal and the reproposal, to be eligible to register securities under the Securities Act in connection with the MJDS, a Canadian issuer generally would be required to have a three-year reporting history in Canada, 4 and to be in compliance at the time of filing with the Canadian reporting requirements as administered by Canadian regulatory authorities. Issuers also would be required, except in the case of rights offerings, to meet tests of minimum market value or public float.

Continuous reporting under the reproposal differs from the original proposal in two limited ways. Under the reproposal, continuous reporting by use of home jurisdiction documents would be extended to substantial Canadian issuers who have reporting obligations arising from Securities Act registration in the case of other securities, (CN) $360 million would be required to meet the designation as a "substantial" issuer.

A Canadian crown corporation is a corporation all of whose common shares or comparable equity is owned directly or indirectly by the government of Canada or a province of Canada. 5 Foreign issuers making rights or exchange offers frequently do not extend such offers to U.S. holders because they are unwilling to bear the costs and other obligations of registering securities in the United States. To avoid filing a registration statement in the United States, Canadian exchange offering may exclude U.S. shareholders or restrict them to receiving cash. U.S. holders of securities are thereby denied the opportunity to realize full 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 Canadian corporate law. In the case of rights offers, U.S. investors may be given cash which amounts to less than the market value of the right or may be excluded entirely.

In the context of investments grade debt and preferred stock, a "substantial" issuer is defined as one that meets the eligibility requirements for Form F-1, including a market value of at least (CN) $80 million in the case of certain convertible securities.

outside the MJDS. The information-supplying exemption from Exchange Act reporting requirements provided by Rule 12g3-2(b) would be extended to cover Canadian issuers who have registered securities on MJDS forms.

As reproposed today, the scope of the MJDS would be extended in two significant ways. First, under the reproposal the MJDS would be extended in scope by eliminating one of the requirements for registration under the Securities Act on Form F-7. As originally proposed, securities to be offered in a rights offering could have been registered on Form F-7 only if less than 20 percent of the class of such securities were held of record by U.S. residents. No such ceiling on U.S. ownership would be imposed under the reproposal.

The other significant extension in the MJDS's scope involves Form F-8, which only would have encompassed Securities Act registration involving exchange offers under the original proposal. Form F-8 has been expanded under the reproposal to cover registration of securities in connection with Canadian statutory amalgamations, mergers, arrangements and other reorganizations that require the vote of shareholders of the participating companies ("business combinations"). With limited exceptions, registration on Form F-8 of such a transaction would be permitted if: The participants are Canadian-organized or incorporated; the predecessor participants 6 have been listed on The Montreal Exchange ("ME") or The Toronto Stock Exchange ("TSE") for 36 months, and each has a public float of (CN) $75 million; and less than 20 percent of the class of the securities being registered by the successor would be held of record by U.S. residents other than U.S. affiliates, 7 as measured upon completion of the business combination. The information provided to Canadian regulatory authorities in satisfaction of the Canadian proxy requirements would be filed with the Commission under...
In addition to the modifications to the original proposal, the Commission is proposing revisions to existing rules and forms that would affect all Canadian issuers. The reproposal would eliminate existing restrictions imposed upon many Canadian foreign private issuers that prevent their use of Form 20-F to meet their Exchange Act registration and reporting obligations. Those Canadian issuers have been precluded by such restrictions from use of the Commission’s foreign integrated disclosure system under the Securities Act and the Exchange Act and effectively have been required to use the same Commission forms as U.S. issuers. Proposed revisions to rules and forms under those Acts would establish treatment equal to that of other foreign private issuers for all Canadian foreign private issuers registering and reporting, whether or not they do so under the MJDS. Additionally, as with foreign private issuers of all other foreign jurisdictions, all Canadian foreign private issuers would be exempt from the U.S. proxy requirements and from application of Section 16 of the Exchange Act.13

The Commission anticipates that shortly after publication of this reproposal the Canadian securities authorities will be publishing for comment a draft National Policy Statement that would propose a method for the implementation of the MJDS in Canada.14

While Canada is the first partner for the United States in this initiative, the MJDS was designed with the intention of mitigating difficulties posed by multinational offerings on a broader scale. In recognition that, notwithstanding the Commission’s efforts to accommodate U.S. offerings by foreign issuers, U.S. requirements continue to deter such entry into the U.S. securities markets, the Commission is continuing its work with securities regulators of other foreign jurisdictions with a view toward extending the multijurisdictional disclosure system.

II. THE REVISED MULTIJURISDICTIONAL DISCLOSURE SYSTEM

A. Overview

As discussed below, each of the proposed Securities Act and Exchange Act MJDS Forms has been refined to some degree. In addition, all of the MJDS forms have been modified to indicate that only “Canadian foreign private issuers” 15 and Canadian crown corporations are eligible to rely upon the reproposal. The original proposal referred simply to Canadian issuers. The “foreign private issuer” definition performs the function of determining when non-governmental issuers, despite their incorporation or organization in a foreign country, ought to be viewed as U.S. issuers. Such issuers who do not meet the definition of “foreign private issuer” must use the same forms as U.S. issuers for purposes of registration and reporting under the Securities Act and Exchange Act. Commenters are requested to address whether the shift in scope to foreign private issuers and crown corporations would exclude any group of Canadian issuers who should be able to use the MJDS.

B. Securities Act Registration

The Securities Act rules in Regulation C mandating standards for the preparation and form of prospectuses would be inapplicable under the MJDS, unless otherwise specified in the MJDS forms.16 As clarified in the reproposal, however, Securities Act rules regarding other aspects of the U.S. sale of securities generally would apply. For example, requirements for prospectus delivery 17 would apply to MJDS offerings in the United States, as would safe harbor provisions relating to advertisements and other notices regarding MJDS offerings.18 In addition, publication of recommendations, opinions or other information with respect to a MJDS registrant or its securities would be permitted to the extent provided by Securities Act safe harbor rules.19

Reliance upon Securities Act rules other than those in Regulation C would be appropriate in connection with MJDS offerings unless the MJDS form specifies otherwise or the rule, by its terms, is inapplicable. Where appropriate, Securities Act rules are proposed to be...
amended to allow application to MJDS offerings.36

In light of the absence of requirements for such disclosure under Canadian law, each of the MJDS Securities Act registration forms has been revised to reflect information regarding indemnification provisions relating to directors, officers or controlling persons of the registrant.37 A statement regarding the Commission’s opinion that indemnification against Securities Act liabilities is against public policy and is therefore unenforceable also would be required.

As reproposed, all of the MJDS Securities Act registration forms under the reproposal also have been revised to permit registration by an issuer who is the product of a recent statutory business combination.32 Such issuers might have been ineligible to register under the MJDS as originally proposed due to the 36-month listing or reporting history requirement. To determine eligibility under the reproposal, the listing or reporting history of the registrant would be combined with each of its predecessor companies in turn. For example, if A had been reporting for 4 years in Canada, and B had been reporting for 2 years in Canada, and A and B in a business combination formed C, which has been reporting for 1 year in Canada, C would be deemed to meet the three-year reporting history requirement. The one year of reporting by C when added to the reporting history of A and when added to the reporting history of B in each case would be 3 years or more. If, however, either A or B had been reporting for under 2 years, C would not be deemed to satisfy the 3-year reporting history test. The listing or reporting history test would disregard any predecessor whose assets and income would constitute less than 20 percent of the assets and income from the continuing operations before income taxes, extraordinary items and cumulative effect of a change in accounting principles of the successor registrant, as measured based on pro forma combination of the participating companies’ most recently completed fiscal years prior to the business combination.33

Comment is requested regarding the proposed method by which a newly-formed company resulting from a business combination is able to use the revised MJDS Securities Act forms. Should a minimum period of time during which the successor registrant has been listed or reporting be imposed? Should the listing or reporting period of the successor be added instead to the listing or reporting period of each predecessor, regardless of size, to determine satisfaction of the 36-month reporting history requirement? Should the threshold for disregarding listing or reporting histories of smaller predecessors be higher (e.g., 25 percent) or lower (e.g., 15 or 10 percent)? Should the revised measurement of the listing or reporting histories apply only to some of the MJDS Securities Act registration forms and, if so, to which ones?

1. Offerings by Substantial Issuers
a. Form F-10 offerings. Offerings of any type of securities for cash or in connection with exchange offers or business combinations could be registered on proposed Form F-10 by “substantial” Canadian issuers. The eligibility requirements for use of Form F-10 in the reproposal would remain substantially as proposed. “Substantial” in the context of Form F-10 would include those issuers with a common stock market value of at least (CN) $360 million and a public float of (CN) $75 million. Compliance for 36 months with Canadian continuous disclosure requirements would still be required of the registrant. In response to commenters’ requests for clarification regarding the types of securities to be included in the market value and public float measurements, such tests would be based on the issuer’s equity shares under the reproposal.34 rather than the issuer’s common stock as originally proposed. In addition, the measurement of market value would differ slightly under the reproposal in that it could be computed as of a date within 60 days prior to the date of filing, rather than within 30 days as originally proposed.35

Comment is solicited regarding whether the measurement of market value within the last 60 days would present difficulties for any issuer and, if so, whether measurement should be made as of the end of the issuer’s last fiscal year.

In order to take account of the effect of a guarantee on investors’ evaluation of an issuer’s securities, and in response to public comment, Form F-10 eligibility would be extended to the registration of non-convertible debt or non-convertible preferred securities of a Canadian-organized, majority-owned subsidiary, Where a Canadian parent satisfies the three-year reporting history, the (CN) $360 million market value and the (CN) $75 million public float tests, and fully and unconditionally guarantees the securities as to principal and interest (if debt) or liquidation preference, redemption price and dividends (if preferred securities), such a subsidiary would be deemed to meet such eligibility requirements.36

As originally proposed, banks registering securities on proposed Form F-10 would have been required to disclose additional industry-specific information prescribed by Securities Act Industry Guide 3.37 Upon further review of applicable Canadian law and reports by Canadian banks thereunder, it appears that sufficient disclosure would be required in Canada. The reproposal therefore would not require such supplemental disclosure of any industry-specific information from Guide 3.

Comment is solicited on the adequacy of the Canadian disclosure for banks.

b. Offerings of investment grade debt and preferred stock (Form F-9). Form F-9, as initially proposed, would have permitted registration of offerings by substantial issuers of investment grade debt securities 38 or investment grade preferred stock, provided such securities either were not convertible or were convertible only after one year elapsed from the date of issuance. As generally defined in the United States, securities would have been “investment grade”

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36 See, e.g., proposed revisions to Rules 150 and 175, 17 CFR 230.150 and 230.175. Similarly, Rule 3b-6 under the Exchange Act, 17 CFR 230.3b-6, and Rule 4a-11 under the Trust Indenture Act would be amended to allow reliance thereon by MJDS issuers.

37 The newly required indemnification disclosure is based on the requirements of Item 510 of Regulation S-K, 17 CFR 239.510.

38 Such revisions would not apply with respect to registration on Form F-8 in connection with a business combination.

39 The market value of the “public float” is the market value of all outstanding equity securities owned by non-affiliates, and would be determined according to Canadian practice. In the MJDS, Canadian (but not U.S.) issuers would include non-voting common stock in the calculation of public float.

40 “Equity shares” would be defined to include common shares, non-voting equity shares, and subordinated or restricted voting equity shares, but would not include preferred shares.

41 Conforming changes in the measurement of market value have been made in other MJDS forms under a market value test. See proposed Form F-6, F-8 and F-9. A date within sixty days is also used in existing Form S-3.

42 Similar treatment for registration of guaranteed securities is contemplated in existing Securities Act forms. See General Instruction LA. of Form F-3. General Instruction LC. of Form S-3, and General Instructions LC. of Forms S-2 and F-2.

43 Canadian banks and pooling companies using Form F-10 would have been required to disclose in the prospectus the information set out under Item III.C., “Risk Elements,” and Item IV., “Summary of Loan Loss Experience” of Industry Guide 3.

44 It should be noted that where debt securities are to be offered pursuant to the system, a trust indenture relating to such securities must be qualified under the Trust Indenture Act. See infra Section II.G.
under the original proposal if, at the time of effectiveness of the registration statement, at least one nationally recognized statistical rating organization had rated the security in one of its generic rating categories that signifies investment grade; typically the four highest rating categories. To provide for uniform treatment in Canada and the United States in connection with the MJDS, the Commission would give parallel recognition to the fourth highest rating category.

Comment is requested regarding whether the four highest rating categories should be used to signify investment grade, whether or not the fourth highest rating is recognized in Canada as signifying investment grade.

As originally proposed, an issuer of eligible investment grade securities would have been required to be incorporated under the laws of Canada or any Canadian province or territory, have a total market value for its common stock of at least (CN) $180 million, and have a public float of (CN) $75 million. As noted by commenters, Form F-9 as originally proposed would not have been available to captive finance subsidiaries, crown corporations and other wholly-owned subsidiaries due to their unique inability to meet the public float and market value tests. To avoid such a result, the eligibility requirements for Form F-9 in the reproposal have been changed with respect to investment grade securities with no conversion right. When such securities are offered, the issuer would not have to meet the market value or public float tests to use Form F-9. The public float and market value tests would continue to apply to eligible convertible securities given the likelihood of publicly held equity. Form F-9 would continue to require in all cases that the issuer (or, in the case of guaranteed securities, its parent) have a 36-month reporting history.

Comment is requested regarding the deletion of the public float and market value tests for non-convertible securities. In place of the public float and market value tests, should an issuer have some minimum amount of debt securities or preferred equity securities outstanding in order to be eligible to use Form F-9 to register an offering of such securities, and, if so, what should such minimum amount be? Should convertible securities registrable on Form F-9 (i.e., securities convertible only after 1 year from issuance) be subject to the same test as non-convertible securities? In light of the deletion of the market value and public float tests, should the 36-month reporting requirement be changed to a 36-month listing requirement (as in Forms F-7 and F-8) for non-convertible investment grade securities?

In a parallel fashion to Form F-10, Form F-9 has been expanded to allow its use by certain issuers of guaranteed securities. A majority-owned subsidiary issuing non-convertible, Form F-9-eligible securities would not have to satisfy the 36-month reporting requirement if its parent does and its parent fully and unconditionally guarantees the securities.

2. Exchange Offers and Business Combinations (Form F-8)

a. Exchange offer registration. As originally proposed, Form F-8 would have been available solely for exchange offers that are primarily Canadian in character, in which the securities being registered would be all or a portion of the consideration offered, less than 20 percent of the securities of the target class was held of record by U.S. residents, and the aggregate market value of the public float of the registrant's common stock equalled or exceeded (CN) $75 million. Registrants also would have been required to have their securities listed on the TSE or the 'ME for the 36 months immediately preceding the offering. Except as noted below, those requirements would remain unchanged in the reproposal.

Comment is solicited with respect to both exchange offer and business combination requirements regarding whether a 36-month listing of a class of securities on the Vancouver Stock Exchange ("VSE") and membership on the VSE Senior Board should be added as an alternative to the 36-month listing on the ME or TSE. In addition, comment is requested regarding whether the 36-month listing requirement should be changed to a requirement for a 36-month reporting history with any securities commission or equivalent regulatory authority in Canada.

As discussed more fully below in connection with tender offers, commenters have suggested that the 20 percent ceiling for U.S. record ownership of securities be raised or eliminated. The Commission is considering raising the threshold for reliance on Canadian tender offer regulation up to a level of 40 percent. Assuming the Commission determines to raise the tender offer threshold, comment is solicited as to the appropriateness of raising the threshold level for use of Form F-8 to an equivalent level. Given the lack of reconciliation of financial statements to U.S. generally accepted accounting principles, should the Form F-8 threshold remain at 20 percent notwithstanding a change in the MJDS tender offer threshold? What would the relative costs and benefits be to those exchange offerors that, because of the existence of two separate ownership thresholds or otherwise, would be able to comply with U.S. tender offer rules under the MJDS by satisfying Canadian tender offer requirements, but would be ineligible to use a MJDS form to meet U.S. securities registration requirements by using Canadian disclosure documents?

Commenters on the original proposal noted the difficulty Canadian affiliates of U.S. corporations may encounter in satisfying the U.S. record ownership requirements applicable to exchange offers conducted under the MJDS. Canadian companies controlled by a single majority U.S. shareholder would be unable to use the MJDS for such offers, even where a minimal amount of securities otherwise was held publicly in

satisfied by use of proposed Schedules 14D-1F or 13D-4F.

See infra section II.B.2.d.
the United States.36 This result would appear to undermine the Commission’s intent to ensure full participation by U.S. residents who own only a small percentage of all Canadian securities sought in a cross-border offer. Accordingly, in the reproposal, the percentage would be calculated by reference to that percentage of the issuer’s securities held of record by U.S. residents other than U.S. affiliates of the issuer.37 Comment is requested on the appropriateness of using such a modified public float test.

The reproposal also has been revised to clarify that, in measuring the percentage of the class of securities held in the United States, securities convertible into or exchangeable for securities of such class are not included. Comment is requested as to the appropriateness of excluding those types of securities.

b. Business combination registration.

Under the reproposal, Form F-8 would be expanded to allow registration in connection with business combinations.38 When securities are part of the consideration in such a business combination, generally an exemption is granted from the prospectus requirements under Canadian law in light of the disclosure provided in the information circular required by Canadian proxy solicitation rules.39 Under existing rules, Ontario does not set forth specific disclosure requirements for such circular, but does require the transaction to be described “in sufficient detail to permit security holders to form a reasoned judgment concerning the matter.” 40 Such rules refer to prospectus and takeover bid forms for guidance as to materiality. Quebec’s rules are similar to Ontario’s rules, although Quebec requires clearance or non-objection from the CVMQ as a condition to the prospectus exemption.41 Other provinces and territories also have requirements similar to the Ontario rules.

Canadian securities regulators have indicated that they will take action in order to require prospectus-level disclosure in information circulars used for such business combinations. Contingent upon such action being taken, the Commission is proposing to recognize the adequacy of Canadian disclosure in the information circulars by allowing use of Form F-8 (or Form F-10 where the requirements are satisfied) in such cases to satisfy Securities Act registration requirements.42 All information circulars and other disclosure documents required to be delivered by companies participating in business combinations to securityholders whose votes are being solicited in connection therewith would be filed under cover of Form F-8 and delivered to securityholders in the United States.

Proposed eligibility requirements for use of Form F-8 in connection with such business combinations are similar to the F-8 exchange offer requirements. Each company participating in the business combination would have to be incorporated or organized in a Canadian jurisdiction and be a foreign private issuer or a crown corporation. Each company participating in the business combination, other than the registrant, would be required to have had a class of its securities listed on the ME or TSE for 36 months prior to filing the Form F-8.43 Each participating company, other than the registrant, would also be required to have a public float of at least (CN) $75 million. In addition, as in the case of exchange offers on Form F-8, the securities to be registered in connection with a business combination must be offered to U.S. residents upon the same terms and conditions as offered to residents of Canada.

In order to allow the use of Form F-8 for second-step business combinations occurring after an exchange offer, a participating company whose equity shares were the subject of an exchange offer registered on Form F-8, Form F-9 or Form F-10 that terminated during the last six months would be presumed to satisfy the public float test if such test was satisfied by the participating company immediately prior to commencement of the exchange offer.44 Otherwise, the reduction in the participating company’s public float resulting from the exchange offer might prevent the satisfaction of the public float test for purposes of the second-step business combination. Comment is solicited regarding whether six months is an appropriate measure to ensure that the exchange offer and the subsequent business combination are part of a single transaction.

Eligibility for Form F-8 in terms of U.S. shareholdings would be assessed on the basis of securities to be offered by the successor registrant: where less than 20 percent of the class of securities to be offered by the successor registrant would be held of record, as if measured upon completion of the business combination, by U.S. residents other than U.S. affiliates of the registrant Form F-8 would be available. Comment is solicited on whether the 20 percent threshold for business combinations should be raised if the threshold is raised for exchange offers on Form F-8. Under the reproposal, the calculation of U.S. record holders would be made as of a participant’s last fiscal quarter or, if such quarter ended within the last 60 days, as of the participant’s preceding quarter. Comment is requested regarding whether such calculation should be made instead as of a particular date within the last 60 days, and whether all participants should use the same date for calculation.

In order not to preclude use of the MJDS when a smaller participant is participating in a business combination, Form F-8 would not impose a public float or listing requirement on a participating company if its assets and income, respectively, would contribute less than 20 percent of the successor registrant’s total assets and income from continuing operations before income taxes, extraordinary items and cumulative effect of a change in accounting principles, as measured based on pro forma combination of the participating companies’ most recently completed fiscal years. Comment is solicited regarding whether the 20 percent limitation reflects a contribution small enough to justify disregarding such requirements. The 20 percent percentage instead be lower (for example, no more than 10 percent or 15 percent), or higher (for example, no more than 25 percent)? Should the test be based on a measurement other than

46 Form F-10 has been revised similarly to allow for its use in connection with second-step business combinations.
Pursuant to amendments proposed to the Commission’s tender offer rules and schedules, third-party and issuer tender offer filings in connection with offers made in both jurisdictions for a class of securities of a Canadian issuer, less than 20 percent of which was held of record by U.S. residents, would have been permitted to proceed in the United States in accordance with all relevant Canadian federal, provincial and territorial rules and regulations, provided the offer were extended to all holders of the class of securities in the United States and Canada and the transaction itself were covered by and not exempt from substantive provisions of Canadian law governing the terms and conditions of the offer. In the case of an exchange offer conducted within the framework of the MJDS, a Canadian bidder or issuer also would have been required to register the securities either on Form F-8 or another appropriate Securities Act form.

Commenters addressing the tender offer issues have focused primarily on the appropriateness of the 20 percent limitation to be imposed on U.S. record ownership, the method for calculating this percentage, and the effect of discretionary exemptive orders granted by Canadian securities regulators. Upon consideration of the comments submitted, the following revisions are being proposed.

As with Form F-8, the Commission proposes that the percentage limitation set forth in the MJDS tender offer rules and schedules be calculated by reference to securities held of record by U.S. residents other than U.S. affiliates of the issuer. Canadian securities regulators propose to adopt a similar approach under their respective tender offer rules with respect to predominantly U.S. tender and exchange offers qualifying under the MJDS.

Several commenters have urged relaxation or elimination of the 20 percent ceiling proposed for U.S. record ownership in connection with tender and exchange offers to be covered by the MJDS. Although the reproposal retains the proposed 20 percent limitation, the Commission will consider the appropriateness of raising the ownership threshold. Comment therefore is sought on the costs and benefits of establishing an ownership threshold of 40 percent of the subject class of securities held by U.S. residents unaffiliated with the issuer, so long as the United States is not the largest market for such securities. Alternatively, should the threshold be raised only to 25 or 33 percent of the subject class held by non-affiliated U.S. residents? Whether or not the United States would become the largest market for the subject securities would be determined by reference to the relative trading volume of the securities in the United States, Canada and any other world market on which the securities are traded. More specifically, the United States would be regarded as the largest market for securities subject to a MJDS tender or exchange offer where the securities exchanges and inter-dealer quotation systems in this country in the aggregate constitute the single largest market for the subject class of securities in the shorter of the offeree's prior fiscal year or the period since the offeree's incorporation.

Commenters have pointed out that, under the proposal, an issuer or third-party bidder competing with an initial offer launched under the MJDS might be unable to avail itself of the advantages of filing a single set of home-jurisdiction disclosure documents, given the risk that...
the prescribed threshold might be exceeded due to arbitrage activity and other share transfers triggered by the initial offer. To address this concern, the reproposal provides that the date of the first bid made under the MJDS would be determinative of U.S. record ownership for all subsequent, competing bids. The operative date for determining U.S. ownership in connection with the first bid will continue to be either the end of the issuer’s last quarter or, if such quarter terminated within 60 days of the filing date, as of the end of the issuer’s preceding quarter. Proposed Schedules 14D-1F and 13E-4F and Form F-8 have been revised to stipulate that a bidder or issuer that commences an offer during the pendency of an earlier offer conducted under the MJDS would determine the percentage of the class of subject shares held by unaffiliated U.S. recordholders as though the subsequent offer were filed on the same date as the initial third-party or issuer offer already in progress.

Commenters also questioned how, particularly in an unsolicited bid situation, the bidder would be able to ascertain the level of U.S. record ownership. In light of these comments, the reproposal would create a safe harbor that would afford third-party bidders commencing an unsolicited offer the benefit of a conclusive presumption that U.S. record ownership of the subject class of securities does not exceed the prescribed level, unless the aggregate trading volume of that class in the U.S. markets in the prior 12 months exceeded its aggregate trading volume in Canadian markets, or unless documents publicly filed by the issuer with Canadian or U.S. securities regulators within 18 months of the commencement of the offer disclose that U.S. persons held more than the threshold amount of subject securities, or the offeror otherwise possesses such knowledge. Comment is sought on the appropriateness of the proposed safe harbor specifically, is the presumption too broad with respect to a 20 percent threshold, when triggered, so long as the U.S. market does not exceed the Canadian market? Should the bidder be required in addition to certify that, after reasonable investigation, it believes that less than 20 percent of the target’s shares is held in the United States?

An important condition to use of the MJDS to effect cross-border tender and exchange offers would be the non-availability of a transactional exemption in the home jurisdiction. By way of illustration, the Commission noted in the proposing release that an exempt takeover or issuer bid conducted on the TSE or ME would be governed by the Williams Act and the rules thereunder, since such a bid would not be regulated by Canada’s federal, provincial or territorial securities laws. Nonetheless, as a commenter suggested, a grant of a disjunctive order excerpting a Canadian bidder or issuer from one or more of the applicable takeover rules, rather than a blanket transactional exemption, should not disqualify per se that bidder or issuer from proceeding under the MJDS with a tender or exchange offer in the United States. A bidder’s obligation to comply with all provisions of the Williams Act in the event a Canadian exemptive order is granted with respect to a cross-border offering will be determined on a case-by-case basis by Commission order entered by the Division of Corporation Finance (or, in the case of an issuer tender offer, the Division of Market Regulation) pursuant to delegated authority, based upon a determination whether, in light of the exemption from Canadian regulatory authorities, application of the Williams Act is necessary or appropriate to protect the public interest. All requests for entry of such orders with respect to routine matters would be resolved on an expedited basis either on the day of the Commission’s receipt of the request or the following business day, and would be granted in the ordinary course.

A Commission order granting an exemptive order would be necessary if the offer remains fully subject to the laws or regulations governing tender offers of Canada or any one of its provinces or territories. Commenters are invited to address the feasibility of this approach.

Modifications to proposed Rule 14e-1(b) have been made to clarify that tender offers, including issuer tender offers, that are subject only to section 14(e) of the Exchange Act and Regulation 14E, but otherwise would satisfy the requirement of proposed Rules 13e-4(h) and 14d-1(b) with respect to the percentage of the Canadian target shares held in the United States, can take advantage of the MJDS without the necessity of filing any schedule or offering documents with the Commission.

e. Exchange Act Provisions Affecting the Activities of Participants in Tender and Exchange Offers. 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-13.

In connection with the original proposal, the Commission requested comment regarding proposed no-action positions with respect to such Rules. The contemplated no-action positions would have applied solely to exchange and tender offers on Form F-8 and Schedules 14D-1F and 13E-4F, and would have permitted securities purchases in Canada under certain conditions. The Commission is reproposing the no-action positions and solicits additional comment on them.

3. Rights Offers (Form F-7)

Form F-7 would be used by Canadian issuers making rights offerings in the United States. To be eligible to use Form F-7 under the original proposal, the issuer would have had to have been incorporated in Canada, and have had a class of securities listed on the TSE or the ME for the 36 months immediately preceding the offer, and would have to have been regulated by Canadian securities commissions or provincial securities regulators. The issuer would have been required to provide a description of the Canadian corporation's corporate structure and corporate governance practices, and the commenters were invited to comment on this requirement.

To be eligible to use Form F-7 under the proposed rule, an issuer would be required to be incorporated in Canada and have a class of securities listed on the TSE or the ME for the 36 months immediately preceding the filing of the offer. The issuer would be required to disclose the issuer's country of incorporation and domicile, the issuer's corporate structure, and the issuer's corporate governance practices. The issuer would be required to provide a description of the issuer's corporate governance practices, and the commenters were invited to comment on this requirement.
preceding the offering. Those requirements remain in the reproposal. Comment is requested regarding whether a 36-month listing of a class of securities on the Vancouver Stock Exchange (\"VSE\") and membership on the VSE Sectors Board should be added as an alternative to the 36-month listing on the MF or TSE.

To exclude major financings, the original proposal would have provided that an eligible offer could not increase the capital of the class of securities offered by more than 25 percent. That percentage test was based upon the Canadian regulatory formulation of rights offerings that are exempt from prospectus requirements. To parallel Canadian requirements, the percentage test in the reproposal has been changed to measure whether the number of the outstanding securities of the class to be issued upon exercise of the rights or, in the case of debt, the principal amount of the outstanding long-term debt of the issuer (for classes of securities into which such securities are convertible) would increase by more than 25 percent if all rights issued as part of the same offering and within the last 12 months were exercised (and, if applicable, all such securities were converted).

As with exchange offers on Form F-8, the original proposal would have provided that U.S. residents must hold of record less than 20 percent of the class of securities to which the rights offering related. Commenters suggested that the 20 percent ceiling be eliminated or at least increased. To permit U.S. investors in Canadian issuers with a larger percentage of U.S. shareholders to obtain the benefit of participation in a rights offering, particularly since investors already holding the securities can be expected to make a further investment based on the same type of information on which they relied when they bought the securities previously, the Commission has deleted the 20 percent threshold requirement. Comment is solicited regarding such deletion.

To preclude a public offering being made indirectly to new investors by an issuer not eligible to make such an offering, the original proposal would have provided that the rights issued in connection with Form F-7 could not be transferable to U.S. residents. That requirement would be retained under the reproposal. In response to comments regarding whether that requirement would preclude transfers outside the United States, Form F-6 has been revised to clarify that the prohibition on transferability to U.S. residents would not preclude resale of such rights outside the United States in accordance with Rule 904 of Regulation S under the Securities Act. Consistent with Canadian regulations, a further condition of Form F-7 as proposed and reproposed is that the exercise period of the rights not exceed 90 days. To parallel the Canadian MJDS, the reproposal also would provide that the rights be exercisable immediately upon issuance.

C. Exchange Act Registration and Reporting

Canadian issuers that make a registered offering of securities in the United States on MJDS forms or acquire a certain number of shareholders of record resident in the United States in connection with the MJDS would be subject to registration and reporting requirements under the Exchange Act. Similarly, MJDS issuers wishing to list securities on a national securities exchange or have them quoted on NASDAQ would be subject to the Exchange Act requirements. The reproposal would continue to extend to reporting obligations under the Exchange Act covered under the original proposal, but also would extend to other limited reporting obligations. In addition, the reproposal would preclude disruption of Canadian issuers' reliance on an existing exemption from reporting obligations.

1. Section 15(d) Obligations

Both the original proposal and the reproposal would allow any continuous reporting obligation resulting solely from registration on MJDS Securities Act forms to be satisfied by having the Canadian issuer file with the Commission its home jurisdiction periodic disclosure documents. The requirement would be retained under the reproposal.

reproposal, however, would go further. A Canadian issuer eligible to use Form F-10 could satisfy a reporting obligation arising from registration of securities on non-MJDS Securities Act forms by filing its home jurisdiction periodic disclosure documents together with a reconciliation as required by Item 17 of Form 20-F. Similarly, a Canadian issuer eligible to use Form F-9 could satisfy a reporting obligation arising from registration of F-9-eligible securities on non-MJDS Securities Act forms by filing home jurisdiction periodic disclosure documents, in which case no reconciliation would be required. Thus, a substantial Canadian issuer would not be prevented from choosing to register on non-MJDS forms because of its resultant inability to rely upon the MJDS continuous reporting forms.

2. Non-NASDAQ-Related Section 12(g) Obligations

The reproposal, like the original proposal, would provide that substantial Canadian issuers incurring registration and reporting obligations due to the number of their U.S. resident shareholders could comply with such obligations in most instances by filing their home jurisdiction periodic disclosure documents. Otherwise, Canadian issuers would fulfill such obligations by filing the Commission's periodic disclosure documents.

Existing Rule 12g3-2(b) provides an exemption from Commission continuous reporting requirements to foreign issuers furnishing information made public in their home jurisdictions. Since Rule 12g3-2(b) is generally not available to an issuer who has registered securities under the Securities Act, the reproposal would extend the section 12(g) of the Exchange Act, 15 U.S.C. 78l(g). Currently, Form 20-F is used to register under section 12(g) and for annual reports, and Form 6-K is used for other periodic reports, by Canadian issuers that have not registered an offering under the Securities Act, listed securities on a national exchange or acquired an issuer reporting on Form 10-K. See General Instruction A(b) to Form 20-F. Other Canadian issuers generally register on Form 10 and report on Forms 10-K, 10-Q and 10-D along with domestic issuers. The use of domestic issuers' forms would be eliminated by the reproposal. See infra section III.

17 CFR 200.904. Resales otherwise made in compliance with Rule 904 may be executed, on or through the facilities of the ME, TSE and the VSE, among other markets.

Foreign private issuers are exempt from the requirements of section 12(f) if they have fewer than 300 U.S. holders. Rule 12g3-2(b) exempts from Section 12(g) issuers that furnish to the Commission the documents that they either make public or are required to make public, file with their home regulatory agency, or distribute to their security holders. Rule 12g3-2(b) is not available to issuers quoted on NASDAQ.

TSX sections 12(g), 13(a) and 15(d) of the Exchange Act, 15 U.S.C. 78t(b), 78m(a), 78m(d).


See section 12(g) of the Exchange Act, 15 U.S.C. 78l(g).

See Rule 12g3-2(b) proposed Rule 12g3-2(b) at 54 FR 32252.

Section 12g3-2(b) is generally not available to an issuer who has registered securities under the Securities Act, under the

17 CFR 240.12g3-2(b).

Under the original proposal, Rule 12g3-2(b) would not have been amended except to extend relief in connection with certain exchange offers. See proposed Rule 12g3-2(d)(1) at 51 FR 32252.

Rule 12g3-2(d)(1) [17 CFR 240.12g3-2(d)(1)] provides, inter alia, that issuers with a reporting obligation under section 12(d) (either suspended or currently in operation) with Form 20-F will be eligible to rely upon the exemption provided by Rule 12g3-2(b).
original proposal a Canadian issuer would have become ineligible for such exemption if it registered an offering in the United States under the MJDS. Without the exemption, such a Canadian issuer generally would have had to file Commission continuous disclosure documents (Forms 20-F and 6-K) to satisfy its section 12(g) reporting obligations. To avoid disruption of Canadian issuer’s reliance on that exemption, which could have acted as a disincentive for such issuers to make offerings under the MJDS, the Commission is proposing revisions to the Rule 12g3-2(b) exemption. Under the reproposal, Canadian foreign private issuers would not be precluded from relying upon that exemption if they acquire a reporting obligation by virtue of registration on Forms F-7, F-8, F-9 and F-10. Moreover, Canadian issuers who are reporting under the Exchange Act by filing home jurisdiction disclosure documents would be allowed to satisfy the 12g3-2(b) exemption simultaneously by indicating on the cover page of the Forms 40-F and 6-K that the information is being filed for both purposes.73

3. Section 12(b) Obligations and NASDAQ-Related section 12(g) Obligations

The treatment of Canadian issuers who have a reporting obligation arising from listing their securities on a national stock exchange or having them quoted on NASDAQ is essentially unchanged in the reproposal. Canadian issuers that have a class of securities listed or quoted generally would file Commission-mandated registration and continuous disclosure documents. Under the MJDS, issuers eligible to use Form F-10 and issuers eligible to use Form F-9 who are listing or having quoted on NASDAQ certain F-9-eligible securities, would be able to comply with such reporting obligations by filing home jurisdiction disclosure documents.

4. Revisions to Forms 40-F and 6-K

Form 40-F has been refined in several ways to reflect its multiple uses. As reproposed, Form 40-F has been clarified to provide that an issuer registering securities under section 12 would file home jurisdiction information of the same type required to be furnished under Rule 12g3-2(b) that it has made public since the beginning of its last full fiscal year. Revisions also have been made to Forms 40-F and 6-K in the reproposal to clarify that Canadian issuers satisfying their continuous reporting obligations through the MJDS would file the Annual Information Forms under cover of Form 40-F and would furnish all other material home jurisdiction information under cover of Form 6-K. In light of the absence of requirements for such information in the Annual Information Forms, Form 40-F also would require a description of the securities based on Item 202 of Regulation S-K under the Securities Act, if such information actually is not contained in the home jurisdiction documents furnished.

There are three principal differences to an issuer in filing documents under cover of Form 6-K rather than under cover of Form 40-F. First, annual information filed under cover of Form 40-F would have to be filed the same day it is made public in the home jurisdiction. Information sent for MJDS purposes under cover of Form 6-K would have to be provided to the Commission “promptly” after it is made public in the home jurisdiction. Second, registration statements and annual reports filed under cover of Form 40-F would have to be in English, and exhibits and other documents filed therewith in a foreign language would have to be accompanied by an English summary, version or translation. English versions or summaries of Form 6-K documents in a foreign language need only be provided if the documents are distributed directly to securityholders of any class to which a reporting obligation under section 13(a) or 15(d) of the Exchange Act applies or if the documents are in the form of a press release. Finally, information and documents furnished on Form 6-K are not deemed to be “filed” for the purposes of section 18 of the Exchange Act or otherwise subject to the liabilities of that section. Information is “filed” under cover of Form 40-F and would be subject to section 18 liability. Comment is requested as to whether such changes in timing, translation and liability with respect to information proposed to be furnished under Form 6-K rather than Form 40-F would have a material adverse effect on investors.

Finally, Form 40-F has been revised to address in greater detail the extent to which Exchange Act rules would apply. As originally proposed, Form 40-F was silent on the subject, but proposed new Exchange Act rules would have stated that Regulations 13A and 15D do not apply to registrants using Form 40-F. Such rules would be retained under the reproposal,74 but Form 40-F would clarify that, unless specified therein, all other Exchange Act rules would apply. Specific provisions have been added to Form 40-F to clarify that Exchange Act rules regarding fees, amendments and effectiveness of registration statements would apply. The Form also would specify rules that would not apply, particularly those contained in Regulation 12B relating to the preparation and form of Exchange Act reports and registration statements.

5. Proxy and Insider Reporting Obligations

Under the original proposal, the Commission would have amended its proxy rules to allow proxy material for an annual meeting at which the only matters being voted upon were routine items to be prepared in accordance with Canadian requirements.75 In addition, any Canadian issuer subject to U.S. proxy rules that complied with applicable Canadian shareholder proposal rules would have been deemed to have complied with the requirements of the Commission proxy rule relating to shareholder proposals.76 As discussed more fully below, such limited relief for routine proxies and shareholder proposals is unnecessary under the reproposal given the exemption from Commission proxy rules that would be provided for Canadian foreign private issuers.77

Similarly, the original proposal contained relief for Canadian issuers from the operation of the reporting provisions of section 16 of the Exchange Act. Commission insider reports would have been required only from persons required to report their securities holdings in Canada, and reports filed with the Canadian authorities could have been furnished to satisfy the reporting obligations with the Commission.78 Such limited relief is unnecessary under the reproposal because proposed revisions (discussed in detail below) would exempt holders.

73 As reproposed. Forms 40-F and 6-K would allow the person filing to indicate that it is also providing the information pursuant to Rule 12g3-2(b) by virtue of such filing.

74 See proposed Rules 13a-3 and 15d-4, which clarify that Regulations 13A and 15D would be deemed satisfied by an issuer eligible to file Forms 40-F and 6-K, that reports in accordance with such rules regarding fees, amendments and effectiveness of registration statements would apply, and that certain Canadian foreign private issuers also would be exempt from the operation of section 16 of the Exchange Act. Commission insider reports would have been required only from persons required to report their securities holdings in Canada, and reports filed with the Canadian authorities could have been furnished to satisfy the reporting obligations with the Commission.

75 Such matters as the election of directors and ratification or approval of accountants would have been considered routine. See proposed Rule 14a-6(m) at 54 FR 32355.

76 Such matters as the election of directors and ratification or approval of accountants would have been considered routine. See proposed Rule 14a-6(m) at 54 FR 32355.

77 See proposed revisions to Rule 2a12-3 discussed infra in Section III.

78 An exemption from section 16 for Canadian foreign private issuers also was contemplated in a Commission release proposing revisions to section 16. See 59 FR 39967, 39978 (Aug. 30, 1994).
of equity securities of Canadian foreign private issuers from section 16.78

D. Accounting Considerations

1. Reconciliation of Financial Statements

Reconciliation requirements originally proposed generally have been retained in the reproposal. In the case of offerings on Form F-10, reconciliation to U.S. GAAP would be required as specified in Item 18 of Commission Form 20-F. For registration on other Securities Act MJDS forms, including registration in connection with business combinations on Form F-8 as newly proposed, reconciliation would not be mandated.

With regard to continuous reporting requirements, no reconciliation of financial statement disclosures would be required for documents filed to meet a reporting obligation under section 15(d) existing solely because of an offering under the MJDS on Forms F-7, F-8 or F-9. The reproposal clarifies that reconciliation as specified in Item 18 of Form 20-F would be required to meet reporting obligations arising from use of Form F-10. Reconciliation to Item 27 of Form 20-F generally would be required for Canadian documents filed to meet reporting requirements under section 13 and otherwise under section 15(d). The reproposal clarifies that reconciliation of financial statements would not be required to satisfy a continuous reporting obligation that arose in connection with securities that would be eligible for registration on Form F-9.

Commenters expressed divergent views with respect to the reconciliation requirements of the original proposal. Several commenters objected to the reconciliation requirement or stated that reconciliation was unnecessary. The most common argument against reconciliation was based upon the broad comparability of Canadian accounting and auditing standards to those of the United States, which such commenters contend results in non-material differences. A discussion of the differences between U.S. and Canadian GAAP that would be material to the issuer's financial statements was proposed by several of those commenters as an alternative to reconciliation. One commenter noted that financial analysts around the world comprehend the financial positions of companies without reconciliation of financial statements, relying instead on free cash flow to compare companies' values. Other commenters cited a company's trends in earnings and return on capital as more important information than the comparison of earnings between companies facilitated by reconciliation.

In contrast, some commenters were of the opinion that differences between U.S. and Canadian GAAP are sufficient to warrant reconciliation. Segment and supplemental oil and gas disclosures in accordance with U.S. GAAP were cited specifically as reasons to require reconciliation. Full reconciliation in cases where material differences would exist in reported results was suggested. Other commenters noted that antifraud provisions would be operative and require complete and accurate financial statement disclosures not misleading to U.S. investors. The loss of useful information of specific types, such as information regarding pensions, post-employment benefits, income taxes and business combinations, was cited as another reason to require reconciliation.

Commenters were divided with regard to whether U.S. issuers would be unduly disadvantaged if reconciliation were not required of Canadian MJDS issuers. Commenters were also divided on the issue of whether Item 17 reconciliation would provide clear and consistently applied treatment.

After reviewing the comments, as well as the potential differences arising under the two different GAAPs, the Commission does not propose to eliminate the reconciliation requirements as originally proposed. Commenters are invited nonetheless to provide any further suggestions or information to the Commission that bears on the need for reconciliation, the costs of reconciliation, and the effects on U.S. issuers of not requiring a reconciliation as proposed.

2. Auditing Standards

Audits conducted in accordance with generally accepted auditing standards in Canada would be accepted in the United States pursuant to the reproposal, as they would have been under the original proposal. Canadian auditors would be required to follow the existing Canadian professional guidelines 81 regarding additional comments for U.S. readers that may be appropriate with respect to contingencies and going-concern considerations.

3. Auditor Independence Issues

As originally proposed, auditor independence requirements would not have been affected by the MJDS and accountants would have continued to have been required to satisfy the independence rules of the jurisdiction in which an offer were made. 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 non-audit services and financial interests associated with the client. 82 Canadian regulatory bodies have not developed independence rules similar to those of the Commission.

Several commenters suggested that it would be unreasonable to bar a Canadian issuer from use of the MJDS because its Canadian auditor, who observed all Canadian independence requirements, did not anticipate the U.S. offering and thus comply fully with the more extensive U.S. independence rules for the earlier periods presented in the prospectus.

The Commission continues to believe that all auditors reporting on financial statements filed in its jurisdiction should be independent in fact, and that the staff is currently re-evaluating the efficacy of its present rules and practices in this regard on a broader basis. In response to comments raised, the reproposal would require compliance by auditors with U.S. independence requirements only commencing with their report on financial statements for the most recent fiscal year (the balance sheet at year-end and the statements of operations and cash flows for the year then ended) included in the initial registration statement under the Securities Act or the Exchange Act on a MJDS form. With respect to reports for periods prior to such fiscal year, compliance with the ethics and independence standards of the home jurisdiction would be required (unless U.S. independence rules were previously more extensive). In addition, all financial statements for such prior periods. U.S. independence rules would apply to audited financial statements contained in all MJDS Securities Act and Exchange Act registration statements and Exchange Act reports for periods subsequent to such fiscal year. With respect to continuous

81 See Canadian Institute of Chartered Accountants Auditing Guidelines, "Canada-United States reporting conflict with respect to contingencies and going concern considerations." (December 1988).

reporting, for example, the first year an issuer reported on Form 40-F, compliance with the U.S. independence requirements would be necessary only for the most recent year’s financial statements; in the second year of reporting, compliance would be required for the most recent two years’ financial statements (since compliance was required previously for the earlier year). The Commission requests comments on the appropriateness of not requiring independence standards to be met for the full period covered by an auditor’s report.

It should be noted that a Canadian auditor would not necessarily be precluded from continuing as auditor for a client because U.S. rather than Canadian independence rules apply. Auditors who anticipate any difficulties in complying with U.S. independence rules and regulations are encouraged to contact the Division of Corporation Finance to discuss such matters.

E. Mechanics of the MJDS

An issuer using the MJDS would prepare a disclosure document according to the requirements of its home jurisdiction and use that document for securities 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.8 The Securities Act registration forms initially proposed under the MJDS have been revised to clarify that a prospectus used in the United States need not contain any disclosure applicable solely to Canadian offerees or purchasers that would not be material to U.S. offerees or purchasers.84

1. Incorporation by Reference

In response to commenters’ requests for clarification, the reproposal addresses when information filed under cover of Form 40-F or furnished on Form 6-K in connection with the MJDS may be incorporated by reference in Securities Act registration statements. Forms F-2, F-3, F-4 and S-8 would be incorporated by reference on the same basis that Form 20-F information may be so incorporated, provided the registrant would be eligible to use Form F-10 or, if the securities being registered on Form F-2, F-3, F-4 or S-8 would be F-9-eligible securities, the registrant would be eligible to use Form F-9. In addition, Forms F-2, F-3 and F-4 are proposed to be amended to allow incorporation of Form 40-F information by Canadian issuers who have been reporting under such forms.

Incorporation by reference of Form 40-F information would be limited to issuers eligible to use Form F-10, or Form F-9 (with regard to Form F-9-eligible securities), because allowing other MJDS issuers to incorporate by reference would be tantamount to converting them into Form F-10 issuers without applying a size test. Such issuers would not have sufficient restrictions on the type of securities they could register under Form F-2 or F-3. Key parts of the disclosure would come from the Canadian documents incorporated from Form 40-F. To maintain the integrity of the issuer distinctions made in Forms F-7 through F-10, no other issuers could incorporate Form 40-F and 6-K information filed in connection with MJDS. Forms S-2 and S-3 need not be amended in light of the fact that proposed MJDS changes to existing forms and rules would allow Canadian private issuers to use the foreign integrated disclosure system on the same basis as other foreign private issuers. Thus, Canadian issuers would no longer be likely to use Forms S-2 and S-3. Furthermore, it would not be appropriate to revise Forms S-2 and S-3 to allow incorporation by reference from MJDS forms because incorporation of information from the foreign integrated disclosure system is generally not allowed in the U.S. issuer integrated disclosure forms.85 Comment is requested with regard to the proposed system of incorporating MJDS Exchange Act forms.

2. Form F-X

Under both the original proposal and the reproposal, 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. In recognition of the proposed exemptive procedures under the MJDS that would allow a Canadian person to act as sole trustee under an indenture, Form F-X has been expanded to cover the consents, undertaking and appointment of agent that would be required of such a trustee.86 Form F-X also has been modified in response to commenters’ concerns about undue expense and burden to require signature of a corporate entity, rather than signature of a majority of the members of the board of directors of a corporation. In addition, the requirement that such consents be notarized has been eliminated.

Form F-X has been revised to eliminate the reference to a specific period (i.e., for as long as any of the securities involved in a MJDS transaction are outstanding) for a consent to service of process or administrative subpoenas and an appointment of agent for service of process. Comment is solicited on the appropriateness of omitting this reference. Should the original reference be retained or should a fixed period of years—for example 5, 10 or 15 years—be used either alone or in conjunction with a reference to the life of the outstanding security?

3. Time of Filing

As originally proposed, registration statements on the MJDS forms were to 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 would have been filed on the same day with the Commission. In response to commenters’ concerns about the practicability of filing documents simultaneously in two countries, the reproposed Securities Act registration forms (Forms F-7, F-8, F-9 and F-10) would no longer require same-day filing as a prerequisite to reliance on the MJDS. The Commission notes, however, that regardless of the absence of such a requirement, offers and sales may not be made until requisite filings have been made and, in the latter case, declared effective. Where a single offering is being made under the MJDS in Canada and the United States, no offers may be made prior to filing of a registration statement with the Commission and no sales may be made prior to the effective date of such registration statement.87

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8 See infra section II.C. See also proposed Rule 4d-6 under the Trust Indenture Act.
84 See the Note of the Securities Act, 15 U.S.C. 77b.
Form 40-F has been amended under the reproposal to clarify that, in connection with annual reporting, the form shall be filed with the Commission the same day the information is due to be filed with the home jurisdiction securities regulatory authority.

4. Effective Date

As originally proposed, registration statements and post-effective amendments would have been deemed effective on the date the securities legally could be sold in the principal Canadian jurisdiction. With respect to exchange offers, which commence in Canada upon dissemination of offering documents to target company shareholders, filings on Form F-8 would have become effective upon filing with the Commission.

Under the reproposal, the effectiveness provision has been revised with regard to forms F-7 and F-8 (and for securities offered in an exchange offer or business combination on Forms F-9 or F-10) to reflect the fact that a principal jurisdiction is not always designated for Canadian rights and exchange offers. As revised, the effective date for registration of securities on such forms would be upon written or oral notification of the Commission by the registrant or the applicable Canadian securities regulators that the securities legally may be sold in Ontario or Quebec or, if the securities are being offered in only one of such provinces, such securities legally may be sold in Ontario or Quebec.

Similarly, post-effective amendments to such forms would become effective upon notification of the Commission by the registrant or the applicable Canadian securities regulators that the amendment to home jurisdiction documents legally may be used in both Ontario or Quebec.

The effectiveness provision relating to Forms F-9 and F-10 for offerings not in connection with exchange offers or business combinations also has been amended to clarify that such forms would become effective upon written or oral notification of the Commission by the registrant or the applicable Canadian securities regulator that the securities legally may be sold in the designated principal jurisdiction. Similarly, post-effective amendments to such forms would become effective upon such a notification that the amendment legally may be used in the principal jurisdiction.

In the case of a U.S.-only offering on Form F-9 or Form F-10, the registration statement would have been made effective under the original proposal on the date specified by the registrant, but in no event before seven days after the date the registration statement was filed with the Commission.

This seven-day period corresponded to the average time that is required for a registration statement to be reviewed in Canada. The reproposal would clarify that such seven-day period need not elapse prior to effectiveness with the Commission, if the principal jurisdiction’s securities regulator issued a receipt or notification of clearance for the registration statement or post-effective amendment; in such case the effective date with the Commission would be the date of issuance of the receipt or clearance notification.

Two additional clarifying revisions are reflected in the reproposed effective date provisions. First, to reflect the fact that documents possibly may be filed later with the Commission than with the Canadian regulatory authorities, a registration statement or post-effective amendment could not become effective until all disclosure documents filed with the Canadian jurisdictions on or before the time the securities could be legally sold had been filed with the Commission.

Second, since the effectiveness of a registration statement or post-effective amendment may be postponed under the circumstances noted in such clarifying revision, the reproposal would provide that effectiveness would occur at the time such delaying conditions are no longer applicable.

Comment is solicited regarding the method under the reproposal by which the effective date of an MJDS registration statement or post-effective amendment is determined.

5. Shelf Offerings and Post-Effective Pricing Procedures

As originally proposed, registrants on the MJDS forms would have been able to make a delayed or continuous offering to the same extent foreign private issuers currently may make such offerings pursuant to Rule 415. Prospectus updating would have been accomplished in compliance with

F. Exclusion of Investment Companies

The original proposal would have provided that MJDS forms are not available to registrants who are investment companies, as defined in Section 3 of the Investment Company Act of 1940. Commenters requested

Canadian law requires a prospectus to be amended to reflect any material change in the information contained therein not described in a material change report incorporated by reference into the prospectus.

"See proposed Rule 467(b).
See proposed Rule 467(d).
8 See proposed Rule 467(e)(1).
9 See proposed Rule 467(f).
14 Accordingly, the cover pages of Forms F-7, F-8, F-9 and F-10 have been revised to require that the registrant indicate whether the offering is being made on a delayed or continuous basis under home jurisdiction rules.
15 See proposed revisions to Rule 424, 17 CFR 230.424.
16 "See proposed Rule 467(a)."
that the exclusion of investment companies be revised in light of the Commission's interpretation of the definition of investment company to include Canadian banks and certain other financial intermediaries.

Since the date of the original proposal, the Commission has published for comment amendments to Rule 6c-9 Rule 6c-9 currently provides an exemption from the registration provisions of that Act for foreign banks offering their debt securities and nonvoting preferred stock within the United States, either directly or through finance subsidiaries. The proposed amendments would expand the exemption to foreign banks offering equity securities and foreign insurance companies and finance subsidiaries of foreign banks and insurance companies offering their securities. The proposed rule would specifically include Canadian trust companies and loan companies within the definition of foreign bank.106

In light of the exemptive approach taken in the recent Rule 6c-9 proposal, the MJDS as reposed would be available to Canadian issuers if they are not registered or required to be registered as investment companies under the Investment Company Act, either in reliance on an individual exemptive order or on an exemptive rule. Basing the exclusion on whether registration is required would allow Canadian issuers, for example, within the definition of "investment company" but exempted from registration under an expanded version of Rule 6c-9 to take advantage of the MJDS.

C. Trust Indenture Act

The original proposal included rules and forms designed to provide exemptions under Section 304(d) of the Trust Indenture Act of 1939 107 from the required appointment of a U.S. trustee under a qualified indenture.108 Exemptions under the proposed rules would have allowed a Canadian institutional trustee to act as sole trustee under a qualified indenture if the securities under the indenture were eligible for registration on Form F-7, F-8, F-9 or F-10, and if the indenture provided for a Canadian institutional trustee authorized by law to exercise trust powers and subject to supervision or examination by governmental authority.

The proposed Trust Indenture Act rules and form,109 which are reposed largely unchanged, would provide alternative procedures for the exemptive application. Form T-5 would allow an obligor to apply for an exemption from the U.S. trustee requirement in isolation from a registered public offering in the United States.110 Forms F-7, F-8, F-9 and F-10 would allow application for an exemption from the U.S. trustee requirement by indication on the facing sheet that the registration statement constitutes such an application. Part II of such forms would call for the same substantive information required by Form T-5. Unlike the original proposal, the reproposal would require a Canadian trustee benefiting from an exemptive application to file a Form F-X in connection with such application.

With one exception, exemptive orders granted under the new rules would be permanent as to the obligor and trust indenture described in the application.111 Orders granted for securities that the applicant reasonably expects to issue within two years from the date of the application,112 would remain in effect for those two years, unless the applicant files a registration statement relating to the securities described in the earlier exemptive order. In the latter event, the exemptive order would become permanent without further action by the applicant. Substitution of the identified trustee after the Commission's issuance of an exemptive order would not cause a need to seek a further exemption. To ensure the presence of a suitable trustee, however, the obligor would be required to undertake that any substitute trustee would satisfy the conditions of Rule 4d-1(c)(2) and would consent to service of process.113

In response to public comment, the reproposal would allow exemptive applications in relation to unissued securities reasonably expected to be issued within two years of the date of application, a change from the one-year standard originally proposed. The two-year standard of the reproposal is similar to the standard used in Rule 415(a)(2).114 Adoption of a two-year standard would allow better coordination between Trust Indenture Act procedures and delayed or continuous offerings.

Notice procedures for exemptive applications relating to indentures under which securities are outstanding also have been modified in the reproposal.115 In response to public comment suggesting that a requirement of notice to all holders by first-class mail might be overly burdensome, the reproposal would require notice to such holders by means of publication in a daily newspaper of general circulation.116 In addition, the reproposal would dispense with any requirement of notice to holders for certain indentures under which securities of other series are outstanding if the terms of the outstanding series are such that they may be considered as if issued under a different indenture. In such a circumstance, there would be no clear legal interest of holders of the outstanding series that would require notice to them that a Canadian trustee might serve as indenture trustee under a different series. "Series" would be defined with reference to the presence or absence of the right of holders in common to vote to direct the trustee to take action.117 Where securities holders of an outstanding series will have no right to vote or consent together with a distinct series under the same indenture, no notice to the holders under the first series will be required regarding the service of a Canadian trustee under the second series. Public comment is requested on the adequacy of the notice procedures prescribed by the reproposal.

The Trust Indenture Reform Act, which has been passed by both houses of the Congress but has yet to be considered by a conference of such houses, would eliminate the need for the proposed rules and forms under the Trust Indenture Act. If enacted, such Act would conditionally permit foreign persons to act as sole trustees under qualified indentures. Pending final passage of the Act, the rules and forms discussed above are proposed.

H. Liability

Commenters on the original proposal requested clarification that an offering document prepared in accordance with MJDS forms would not be considered misleading solely because information required by existing Commission forms is omitted based on applicable Canadian rules. By adopting the MJDS, the Commission in essence would adopt...
as its own requirements the disclosure requirements of Canadian forms. The effect would be the same as if the Commission had set forth each Canadian requirement within the MJDS forms.

The fact that different disclosure would be required under forms available to different issuers that are used for similar purposes is clearly not without precedent in Commission practice. Separate sets of forms exist today under the Securities Act and the Exchange Act for foreign and U.S. issuers. Thus, identical disclosure is not required now with respect to similar U.S. and foreign issuers given the variations in the applicable form requirements. The risks associated with omitting to disclose information required under forms that are inapplicable to the issuer would be no greater under the MJDS than it would be under any other Commission form.

Disclosure requirements of a particular form by reference to the requirements of foreign securities regulatory authorities is a new approach for the Commission. Commenters focusing on that unique aspect of the MJDS should not lose sight, however, of the fact that the fundamental aspects of creating a set of disclosure requirements for a group of issuers under the MJDS remain unchanged from similar past Commission disclosure initiatives like the formulation of the Commission’s foreign integrated disclosure system. Whether or not looking to foreign requirements, the Commission makes a determination that the required items of information should be set forth by a particular group of issuers to provide adequate disclosure to protect U.S. investors. In this case, the Commission has conducted a comprehensive examination of Canadian requirements and concluded they are appropriate for Canadian issuers under the MJDS. Given that determination, the fact that another form requires information different from, or in addition to, the MJDS forms does not indicate or suggest the disclosure provided under the MJDS forms is inadequate.

I. The Canadian Multijurisdictional Disclosure System

The Canadian MJDS for U.S. issuers is very similar in scope to the MJDS for Canadian issuers proposed by the Commission. Under the MJDS 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. Tender offers meeting eligibility criteria similar to those set forth in this reproposal would be deemed to comply with applicable Canadian regulations if they were conducted in accordance with the provisions of the Williams Act. Like the U.S. MJDS as set forth in this reproposal, the Canadian MJDS is expected to be extended to include business combinations meeting similar eligibility criteria. Other MJDS revisions set forth in this reproposal, such as the removal of a 20 percent U.S. ownership ceiling for rights offerings and the removal of public float and market value requirements for non-convertible investment grade securities, also are expected to be reflected similarly in the Canadian MJDS.

The Canadian MJDS for U.S. issuers would be implemented in Canada through publication of a national policy statement by the Canadian Securities Administrators ("CSA"), together with the issuance of blanket orders and rulings by the securities regulatory authority of each Canadian province and territory. It is anticipated that the CSA will be releasing for comment shortly after publication of this reproposal Draft National Policy Statement No. 45, which would set out the proposed rules governing the use of the MJDS.114

J. Monitoring Efforts in Connection With the MJDS

The CSA has considered the potential impact which the proposed system may have on the Canadian capital markets. The CSA believes the system will benefit the Canadian capital markets and all of the participants in it. However, there is a Canadian concern that the U.S. Glass-Steagall Act may put bank-owned dealers at a disadvantage in competing for underwriting assignments when Canadian issuers use the MJDS to finance in the United States. As a result of the Glass-Steagall Act, bank-owned dealers are currently subject to various restrictions on their U.S. underwriting activities, including, most importantly, a limit on the dollar volume of U.S. underwritings. The bank-owned dealers are particularly

114Copies of such policy statement will be made available in Canada and will also be made available at the Commission’s Public Reference Room at 450 Fifth Street, N.W., Washington, DC 20549. Comments regarding such policy statement may be directed to the CSA or on or before November 30, 1990 at Canadian Securities Administrators, International Market Subcommittee, c/o Office of the Secretary, Ontario Securities Commission, Suite 600, Box 55, 20 Queen Street West, Toronto, Ontario, M5H 3R8.

115In the 1977 release adopting Form 20-F, however, the Commission stated that the new form would be unavailable to what were characterized as “essentially U.S. companies” Exchange Act Release No. 10671, 33 FR 13191 (Nov. 29, 1968) (44 FR 70312). The Release notes that any “North American issuer” having certain characteristics is not eligible to use Form 20-F, but must use the form appropriate for United States issuers.

trend towards internationalization of the world’s securities markets, and the resultant availability in the United States of securities of issuers from many countries, undermines the logic of differentiating Canadian issuers based on the proximity of Canada to the United States. The high standards of disclosure required by Canadian law and the principles of fairness and comity also militate against unequal treatment of Canadian issuers relative to other foreign issuers. Moreover, the Commission’s present foreign integrated disclosure system is designed to facilitate transnational disclosure and periodic reporting by foreign private issuers through standardized forms established with consideration of specific needs and practices of foreign issuers. The inelegibility of certain Canadian issuers to avail themselves of that system needlessly complicates the otherwise parallel disclosure systems for U.S. and foreign private issuers. 

Generally, foreign private issuers who register or file reports under the Exchange Act in connection with listing on a national securities exchange or for purposes of the Securities Act and the Exchange Act use forms specifically register or file reports under the Securities Act, constitute the basic framework of the Commission’s foreign integrated disclosure system. See Securities Act Release No. 6000 (Nov. 23, 1991) (40 FR 65511). Generally, foreign private issuers who register or file reports under the Exchange Act use forms specifically designed for them. Any non-Canadian private issuer may use Form 20-F as a registration statement or as an annual report under the Exchange Act. A Canadian foreign private issuer, on the other hand, currently may use that form as a registration statement (other than in connection with listing on a national securities exchange) or as an annual report, only if such issuer does not have (and has not had during the previous twelve months) any class of securities registered under the Exchange Act in connection with a listing on a national securities exchange or a reporting obligation under the Exchange Act arising from registration of securities under the Securities Act. 

Additionally, a Canadian issuer may not use that form if it issued its securities in a transaction to acquire by merger, consolidation, exchange of securities or acquisition of assets an issuer that filed annual reports under the Exchange Act on the form prescribed for U.S. issuers. Those Canadian issuers who may not use Form 20-F must file annual reports, quarterly reports and other current reports on forms prescribed for U.S. issuers.

Use of Securities Act registration forms designed for foreign issuers is contingent on the registrant’s eligibility for use of Form 20-F. Thus, those Canadian foreign private issuers ineligible to use Form 20-F are excluded from using Securities Act forms for foreign issuers. Generally, under the current system, a Canadian issuer is able to use Form F-1 the first time it registers securities under the Securities Act. Therefore, due to the existence of its section 15(d) reporting obligation, it must use Securities Act forms for U.S. issuers. 

Under the reproposal, the Form 20-F restrictions on use by Canadian issuers would be deleted. In addition, revisions to Rules 12g-3, 13a-10, 13a-16, 15d-5, 15d-10 and 15d-16, and to Forms S-4, S-8, and S-11, and F-1, F-2, F-4, S-3, and F-4, under the Securities Act, would be made to reflect the removal of such restrictions. Those changes would allow Canadian issuers equal access to Commission forms for foreign issuers.

Under the proposed revisions, Canadian foreign private issuers (like other foreign issuers) would continue to be eligible to use forms prescribed for U.S. issuers, if they so elected. Since Canadian foreign private issuers would no longer be subject to the disclosure requirements pertaining to U.S. issuers, they would no longer have to comply with full industry segment reporting, to meet different filing time requirements than other foreign issuers or to provide more details regarding management remuneration and related party transactions than other foreign issuers.

The proposed revisions also would affect the application to Canadian private issuers of the U.S. proxy and insider reporting requirements. Rule 14a-3 under the Exchange Act exempts foreign private issuers eligible to use Form 20-F from sections 14(a), 14(b), 14(c), 14(f) and 16 of the Exchange Act. Under the reproposal, the exemption would be made available to all foreign private issuers without reference to form eligibility. As a result of the exemption, the Commission’s shareholder communications rules would not apply to securities of...
Canadian issuers.\textsuperscript{146} Nevertheless, the Commission would expect U.S. brokers, dealers, voting trustees, banks, associations, and other entities that exercise fiduciary powers in nominee name or otherwise, to treat in the same manner a request from a Canadian issuer for information regarding U.S. beneficial holders of its securities in connection with its solicitations of proxies, consents or authorizations as similar requests from U.S. issuers are treated. Comment is solicited regarding whether any regulatory requirement should be imposed by the Commission to ensure such a result. Comment is solicited regarding the proposed revisions to the Commission's foreign integrated disclosure system with regard to Canadian issuers.

IV. State Securities Regulation

In addition to complying with the federal securities laws, issuers selling their securities in the United States are subject to state securities laws (including the District of Columbia and Puerto Rico) in those jurisdictions where offers and sales are made. The North American Securities Administrators Association ("NASAA"), which represents all state securities regulators as well as Canadian provincial regulators and the securities authorities of Mexico, passed a resolution on September 14, 1969 endorsing the MJDS issued by such changes. In fact, in light of the expansion of the exemption from the duplication of requirements that would result from the proposed revisions to existing rules and forms to treat in the same manner a request from a Canadian issuer for information regarding U.S. beneficial holders of its securities in connection with its solicitations of proxies, consents or authorizations as similar requests from U.S. issuers are treated. Comment is solicited regarding whether any regulatory requirement should be imposed by the Commission to ensure such a result.

Comment is solicited regarding the proposed revisions to the Commission's foreign integrated disclosure system with regard to Canadian issuers.

V. Request for Comments

Any interested person wishing to submit written comments on any aspect of the proposed MJDS, the Commission requests commenters to provide views and data as to the costs and benefits associated with multijurisdictional offerings and tender offers and continuous disclosure requirements under current law as compared to such costs and benefits under the proposed MJDS. The Commission is not aware of any additional costs that would result from the proposed MJDS, but as eligible issuers would be able to avoid expenses associated with the preparation of more than one disclosure document benefits are expected to result for such issuers. With respect to the proposed revisions to existing rules and forms to treat Canadian foreign private issuers like all other foreign private issuers, additional costs are also not anticipated. Since use of the foreign integrated disclosure system would be voluntary for Canadian issuers currently using Commission forms, the costs of converting from one system to the other would not be mandated. In fact, in light of the expansion of the exemption from the proxy rules and the operation of section 16, some benefit may be expected to result. U.S. issuers would be unaffected by such changes.

VI. Cost-Benefit Analysis

To evaluate fully the benefits and costs associated with the proposed MJDS, the Commission requests commenters to provide views and data as to the costs and benefits associated with multijurisdictional offerings and tender offers and continuous disclosure requirements under current law as compared to such costs and benefits under the proposed MJDS. The Commission is not aware of any additional costs that would result from the proposed MJDS, but as eligible issuers would be able to avoid expenses associated with the preparation of more than one disclosure document benefits are expected to result for such issuers. With respect to the proposed revisions to existing rules and forms to treat Canadian foreign private issuers like all other foreign private issuers, additional costs are also not anticipated. Since use of the foreign integrated disclosure system would be voluntary for Canadian issuers currently using Commission forms, the costs of converting from one system to the other would not be mandated. In fact, in light of the expansion of the exemption from the proxy rules and the operation of section 16, some benefit may be expected to result. U.S. issuers would be unaffected by such changes.

VII. Regulatory Flexibility Act

Certification

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Chairman of the Commission has certified that the proposed MJDS and the revisions to the registration and reporting procedures for Canadian issuers will not, if adopted, have a significant impact on a substantial number of small entities. That certification, including the reasons therefor, is attached to this release as appendix B.

VIII. Table of Contents of Rule, Form and Schedule Proposals and Changes

1. 17 CFR Part 200—Authority—
   Rule 30-1(f) of Rules on Delegating Functions to Division Directors, Regional Administrators and the Secretary of the Commission—
   Rule 30-1(a)(35) of Rules on Delegating Functions to Division Directors, Regional Administrators and the Secretary of the Commission—
2. 17 CFR Part 210—Authority:
   Rules 3-01, 3-02, 3-12 and 3-19 of Regulation S-X
3. 17 CFR Part 229—Authority:
   Items 302, 402, and 404 of Regulation S-K

Securities Act

4. 17 CFR Part 230—Authority
5. Rule 158—Definitions for Section 11(a)
6. Rule 17b-1(b)(1)—Liability for Certain Statements by Issuers
7. Rule 424—Filing of Prospectuses, Number of Copies
8. Rule 407—Effectiveness of Registration Statements and Post-effective Amendments thereto on Forms F-7, F-8, F-9 and F-10
9. Rule 502—General Conditions to be Met
10. 17 CFR Part 239—Authority
11. Form S—4—Instruction F
12. Form S—8—General Instructions G, C, and Items 3, 9
13. Form S—11—General Instruction E
14. Description of Form F-1
15. Description of Form F-2
16. Description of Form F-3
17. Description of Form F-4
18. Description of New Forms:
   Form F-7—Registration Statement
   Form F-8—Registration Statement
   Form F-9—Registration Statement
   Form F-10—Registration Statement
   Form F—X—Appointment of Agent

Exchange Act

19. 17 CFR Part 240—Authority
20. Rule 310—Exemptions from Sections 14(a) 14(b), 14(c) and 14(d) and Section 16
21. Rule 3b–6—Liability for Certain Statements by Issuers
22. Rule 12g–3—Registration of Securities of Successor Issuers
23. Rule 12g–2—Exemption for ADRs and Certain Foreign Securities
24. Rule 13a–3—Reporting by Form 40–F Registrant
25. Rule 13a–10—Transition Reports
26. Rule 13a–16—Reports of Foreign Private Issuers on Form 8–K
27. Rule 13e–4(b)—Tender Offers by Issuers
28. Schedule 13e–4F—Tender Offer Statement
29. Rule 14d–1(b)—Scope of and Definitions Applicable to Regulations 14D and 14F
30. Schedule 14d–1F—Tender Offer Statement
Continues to read in part as follows:


2. By amending §200.30-1 to add paragraph (f)(14) (introductory text of paragraph (f) is republished) to read as follows:

**§200.30-1 Delegation of authority to Director of Division of Corporation Finance.**

* * * * *


* * * * *

(14) To determine whether, in light of any exemptive order granted by a Canadian federal, provincial or territorial regulatory authority with respect to a tender or exchange offer otherwise eligible to be made pursuant to Rule 14d-1(b) (§240.14d-1(b) of this chapter), application of certain tender offer provisions of the Exchange Act (Sections 14d(d)1 through 14(d)(7), Regulation 14D and Schedules 14D-1 and 14D-9 thereunder, and Rule 14e-1 of Regulation 14E) is necessary or appropriate in the public interest.

* * * * *

3. By revising paragraph (a)(35) of §200.30-3 to read as follows:

**§200.30-3 Delegation of authority to Director of Division of Market Regulation**

* * * * *


* * * * *

(35)(i) To grant exemptions from Rule 13e-4 (§240.13e-4 of this chapter) pursuant to Rule 13e-4(g)(7) (§240.13e-4(g)(7) of this chapter):

(ii) To determine whether, in light of any exemptive order granted by a Canadian federal, provincial or territorial regulatory authority with respect to a tender or exchange offer otherwise eligible to be made pursuant to Rule 13e-4(b) (§240.13e-4(b) of this chapter), application of certain tender offer provisions of the Exchange Act (section 13e(d)1, and Rule 13e-4 and Schedule 13e-4 thereunder) is necessary or appropriate in the public interest.

**PART 210—FORM AND CONTENT OF FINANCIAL STATEMENTS, SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934, PUBLIC UTILITY HOLDING COMPANY ACT OF 1935, INVESTMENT COMPANY ACT OF 1940, AND ENERGY POLICY AND CONSERVATION ACT OF 1975**

4. The authority citation for part 210 continues to read in part as follows:

*Authority: Secs. 6, 7, 8, 10, 19 and Schedule A of the Securities Act of 1933 (15 U.S.C. 77f, 77g, 77h, 77i, 77j, 77k, 77aa(5)(B), secs. 12, 13, 14, 15(d) and 23(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78d, 78m, 78n, 78o(d), 78w(a)); secs. 5(b), 10(a), 14 and 20(a) of the Public Utility Holding Company Act of 1935 (15 U.S.C. 79(b), 79(a), 79n, 79o(a)), and secs. 8, 20, 30, 31 and 38(a) of the Investment Company Act of 1940 (15 U.S.C. 80a-8, 80a-20, 80a-29, 80a-30, 80a-37a), unless otherwise noted.*

5. By revising paragraph (h) of §210.3-01 to read as follows:

**§210.3-01 Consolidated balance sheets.**

* * * * *

(h) Any foreign private issuer, other than a registered management investment company or an employee plan, may file the financial statements required by §210.3-19 in lieu of the financial statements specified in this rule.

6. By revising paragraph (d) of §210.3-02 to read as follows:

**§210.3-02 Consolidated statements of income and changes in financial position.**

* * * * *

(d) Any foreign private issuer, other than a registered management investment company or an employee plan, may file the financial statements required by §210.3-19 in lieu of the financial statements specified in this rule.

7. By revising paragraph (f) of §210.3-12 to read as follows:

**§210.3-12 Age of financial statements at effective date of registration statement or at mailing date of proxy statement.**

* * * * *

(f) Any foreign private issuer may file financial statements whose age is specified in §210.3-19.

8. By revising paragraph (a) of §210.3-19 to read as follows:

**§210.3-19 Special provisions as to financial statements for foreign private issuers.**

* * * * *

(a) A foreign private issuer, as defined in Rule 405 (§240.405 of this chapter), other than a registered management investment company or an employee
plan, shall include the following financial statements for the registrant and its subsidiaries consolidated and, where appropriate, its predecessors:
(1) Audited balance sheets as of the end of each of the two most recent fiscal years.
(2) Audited statements of income and changes in financial position for each of the three fiscal years preceding the date of the most recent audited balance sheet being filed.

PART 229—STANDARD INSTRUCTIONS FOR FILING FORMS UNDER SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934 AND ENERGY POLICY AND CONSERVATION ACT OF 1975—REGULATION S-K

9. The authority citation for part 229 continues to read as follows:
Authority: 15 U.S.C. 77f, 77g, 77j, 77a, 77aa(25), 77a(26), 78j, 78m, 78n, 78o, 78w, 80a-8, 80a-29, 80a-30 and 80a-37, as amended, unless otherwise noted.

10. By revising paragraph (a)(5) of §229.302 to read as follows:
§ 229.302 (Item 302) Supplementary financial information.

(a) * * *
(5) This paragraph (a) applies to any registrant, except a foreign private issuer, that meets both of the following tests:

11. By revising General Instruction 1. to §229.402 to read as follows:

§ 229.402 (Item 402) Executive compensation.

General Instructions to Item 402
1. Foreign private issuers. A foreign private issuer may respond to all of Item 402 by indicating the aggregate payments or benefits paid or to be paid to all executive officers as a group unless such registrants disclose to their security holders or otherwise make public the information specified in this section for individually named executive officers, in which case such information also shall be disclosed.

12. By revising Instruction 3 to §229.404 to read as follows:

§ 229.404 (Item 404) Certain relationships and related transactions.

Instructions to Item 404.

3. A foreign private issuer may respond to Item 404 only to the extent that the registrant discloses to its security holders or otherwise makes public the information specified in that Item.

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

13. The authority citation for part 230 is amended by adding the following citation:
Authority: 15 U.S.C. 77b, 77f, 77g, 77j, 77s, 77aa(25), 77a(26), 78j, 78m, 78n, 78o, 78w, 80a-8, 80a-29, 80a-30 and 80a-37, as amended, unless otherwise noted.

Section 230.175 is also issued under 15 U.S.C. 78j, 78m, 80a-8, 80a-29, 80a-30(c), 42 U.S.C. 6303 and 12 U.S.C. 241.

14. The authority citations following §§230.158 and 230.175 are removed.

15. By revising paragraphs (a) and (b) of §230.158 to read as follows:

§ 230.158 Definitions of certain terms in the last paragraph of section 11(a).
(a) An “earning statement” made generally available to securityholders of the registrant pursuant to the last paragraph of section 11(a) of the Act shall be sufficient for the purposes of such paragraph if:
(1) There is included the information required for statements of income contained therein:
(i) In Item 8 of Form 10-K (§249.310 of this chapter), Part 1, Item 1 of Form 10-Q (§249.308a of this chapter), or Rule 14a-3(b) (§249.44a-3(b) of this chapter) under the Securities Exchange Act of 1934;
(ii) In Item 17 of Form 20-F (§249.220f of this chapter), if appropriate; or
(iii) In Form 40-F (§249.240f of this chapter); and
(b) The information specified in the last paragraph of section 11(a) is contained in one report or any combination of reports either:
(i) On Form 10-K, Form 10-Q, Form 8-K (§249.306 of this chapter), or in the annual report to securityholders pursuant to Rule 14a-3 under the Securities Exchange Act of 1934; or
(ii) On Form 20-F, Form 40-F or Form 6-K (§249.308 of this chapter).

A subsidiary issuing debt securities guaranteed by its parent will be deemed to have met the requirements of this paragraph if the parent’s income statements satisfy the criteria of this paragraph and information respecting the subsidiary is included to the same extent as was presented in the registration statement. An “earning statement” not meeting the requirements of this paragraph may otherwise be sufficient for the purposes of the last paragraph of section 11(a).
(b) For purposes of the last paragraph of Section 11(a) only, the “earning statement” contemplated by paragraph (a) of this section shall be deemed to be “made generally available to its securityholders” if the registrant (1) is required to file reports pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 and (2) has filed its report or reports on Form 10-K, Form 10-Q, Form 8-K, Form 20-F, Form 40-F, or Form 6-K, or has supplied to the Commission copies of the annual report sent to securityholders pursuant to Rule 14a-3(c), containing such information. A registrant may use other methods to make an earning statement “generally available to its securityholders” for purposes of the last paragraph of section 11(a).

16. By revising paragraph (b)(1)(i) of §230.175 to read as follows:

§ 230.175 Liability for certain statements by issuers.

(b) * * *
(1) * * *
(i) At the time such statements are made or reaffirmed, either the issuer is subject to the reporting requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934 and has complied with the requirements of Rule 13a-1 or 15d-1 thereunder, if applicable, to file its most recent annual report on Form 10-K, Form 20-F or Form 40-F; or if the issuer is not subject to the reporting requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934, the statements are made in a registration statement filed under the Act or pursuant to section 12(b) or (g) of the Securities Exchange Act of 1934, and

17. By revising existing paragraph (b)(3) and by adding a new paragraph (b)(6) to §230.424 to read as follows:

§ 230.424 Filing of prospectuses, number of copies.

(b) * * *
(3) A form of prospectus that reflects facts or events other than those covered in paragraphs (b)(1), (2) and (6) of this section that constitute a substantive change from or addition to the information set forth in the last form of prospectus filed with the Commission under this section or as part of a registration statement under the Securities Act shall be filed with the Commission no later than the fifth business day after the date it is first used after effectiveness in connection with a public offering or sales, or transmitted by a means reasonably
§ 230.467 Effectiveness of registration statements and post-effective amendments thereto made on Forms F-7, F-8, F-9, and F-10.

(a) A registration statement on Form F-7 or Form F-8 [§ 239.37 or § 239.38 of this chapter] or a registration statement on Form F-9 or Form F-10 [§ 239.39 or § 239.40 of this chapter] relating to securities offered in connection with an exchange offer or a business combination, shall become effective upon notification of the Commission by the registrant or the applicable Canadian securities regulatory authorities that such securities legally may be sold in Ontario and Quebec or, if such securities are being offered in only one of those provinces, at the time such securities legally may be sold in Ontario or Quebec. A post-effective amendment to such registration statement shall become effective upon notification of the Commission by the registrant or the applicable Canadian securities regulatory authorities that the amendment to home jurisdiction document(s) legally may be used in Ontario and Quebec or, if filed in only one such province, at the time such amendment legally may be used in Ontario or Quebec.

(b) A registration statement on Forms F-7 or F-10 relating to securities other than those offered in connection with an exchange offer or a business combination, filed in connection with a contemporaneous offering of securities in the registrant’s home jurisdiction, shall become effective upon notification of the Commission by the registrant or the applicable Canadian securities regulatory authorities that the amendment to home jurisdiction document(s) legally may be used in the registrant’s home jurisdiction.

(c) Where no contemporaneous offering is being made in the registrant’s home jurisdiction, a registrant filing on Form F-9 or Form F-10 may designate on the facing page of the registration statement, or a post-effective amendment thereto, 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

(1) Such registration statement or post-effective amendment shall not become effective prior to seven calendar days after the date of filing with the Commission unless the securities regulatory authority in the principal jurisdiction issued a receipt or notification of clearance; and

(2) If such registration statement or post-effective amendment is selected for review by a regulatory authority in the principal jurisdiction, it shall not become effective prior to issuance by such regulatory authority of a receipt or notification of clearance.

(d) Notwithstanding the provisions of paragraphs (a), (b) and (c) of this section:

(1) A registration statement shall not become effective prior to the time of filing with the Commission of all disclosure documents relating to the securities being offered that were filed with any securities regulatory authority in Canada on or before the time the securities legally could be sold in all provinces and territories in which such securities are being offered; and

(2) A post-effective amendment shall not become effective prior to the time of filing with the Commission of all disclosure documents relating to the securities being offered that were filed with any securities regulatory authority in Canada on or before the time the amendment legally could be used in all provinces and territories in which such securities are being offered; and

(3) A registration statement or post-effective amendment relating to an issue of debt securities shall not 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 that have not been satisfied has been granted pursuant to Section 304(d) (15 U.S.C. 78dd(d)) or Rule 4d-5 (17 CFR 240.4d-5) under that Act.

(e) When the effectiveness of a registration statement or a post-effective amendment is postponed pursuant to the proviso in paragraph (c) or pursuant to paragraphs (d)(1), (d)(2) or (d)(3) of this section, such registration statement or post-effective amendment shall become effective at the time the registrant notifies or demonstrates to the Commission that such provisions are no longer applicable.

19. By revising paragraphs (b)[2][i][D] and (b)[2][ii][D] of § 230.502 to read as follows:

§ 230.502 General conditions to be met.

* * * * *

(b) * * *

(ii) * * *

(D) If the issuer is a foreign private issuer, the issuer shall disclose the same kind of information required to be included in a registration statement filed under the Act on the form that the issuer would be entitled to use. The financial statements need be certified only to the extent required by paragraph (b)[2][ii][B] or (C) of this section, as appropriate.

* * * * *

(D) If the issuer is a foreign private issuer, the issuer may provide in lieu of the information specified in paragraphs (b)[2][ii][A] or (B) of this section, the information contained in its most recent filing on Form 20-F or Form F-1 (§ 239.31 of the chapter).

* * * * *

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

20. The authority citation for part 239 is amended by adding the following citation:

Authority: The Securities Act of 1933, 15 U.S.C. 77a, et seq., unless otherwise noted.

Sections 239.31, 239.32 and 239.33 are also issued under 15 U.S.C. 78d, 78m, 78o, 78w, 78x, 78aa, 78bb, 78cc, 78dd, 78dd(d), 78dd(d)(1), 78dd(d)(2), 78dd(d)(3), 78ee, 78ff, 78gg, 78hh, 78ii, 78jj, 78kk, 78ll, 78mm, 78nn, 78pp, 78qq, 78rr, and 78ss of title 11 and 12 U.S.C.

* * * * *

21. The authority citations following §§ 239.31, 239.32 and 239.33 are removed.

22. By revising General Instruction F to Form S-4 to read as follows:

Note: The Forms do not appear in the Code of Federal Regulations.

Form S-4

General Instructions

* * * * *

F. Transactions Involving Foreign Private Issuers.

If a U.S. registrant is acquiring a foreign private issuer, as defined by Rule 405 (§ 230.405 of this chapter), such registrant may use this Form and may present...
information about the foreign private issuer pursuant to Form F-4. If the registrant is a foreign private issuer, such registrant may use Form F-4 and
1. If the company being acquired is a foreign private issuer, may present information about such company pursuant to Form F-4 or
2. If the company being acquired is a U.S. company, may present information about such company pursuant to this Form.

23. By revising General Instructions C, C.2.(a) and G(2), paragraph (a) of Item 3, and Note [2] to Item 9 of Form S-8 to read as follows:

Note: The Forms do not appear in the Code of Federal Regulations.
Form S-8

General Instructions

1. Securities. Reoffers and resales of the following securities may be made on a continuous or delayed basis in the future, as provided by Rule 415 (§ 230.415), pursuant to a registration statement on this form by means of a separate prospectus ("reefer prospectus"), which is prepared in accordance with the requirements of Part I of Form S-3 (or, if the registrant is a foreign private issuer, in accordance with Part I of Form F-3), filed with the registration statement on Form S-8 or, in the case of control securities, as post-effective amendment thereto:

(a) Control securities, which are defined for purposes of this General Instruction C as securities acquired under a Securities Act registration statement held by affiliates of the registrant as defined in Rule 405 (§ 230.405). Control securities may be included in a reoffer prospectus only if they have been or will be acquired by the selling securityholder pursuant to an employee benefit plan; or
(b) Restricted securities, which are defined for purposes of this General Instruction C as securities issued under any employee benefit plan of the registrant meeting the definition of "restricted securities" in Rule 144(a)(3) (§ 230.144(a)(3)), whether or not held by affiliates of the registrant. Restricted securities may be included in a reoffer prospectus only if they have been acquired by the selling securityholder prior to the filing of the registration statement.

2. Limitations. The reoffer prospectus may be used as follows:

(a) If the registrant, at the time of filing such prospectus, satisfies the registrant requirements for use of Form S-3 (or if the registrant is a foreign private issuer, the registrant requirements for use of Form F-3), then control and restricted securities may be registered for reoffer and resale without any limitations.

G. Updating

Updating of information constituting the Section 10(a) prospectus pursuant to Rule 426(a) (§ 230.426(a)) during the offering of the securities shall be accomplished as follows:

(1) * * *
(2) Registrant information shall be updated by the filing of Exchange Act reports, which are incorporated by reference in the registration statement and the Section 10(a) prospectus. Any material changes in the registrant's affairs required to be disclosed in the registration statement but not required to be included in a specific Exchange Act report shall be reported on Form 6-K (§ 249.306) pursuant to Item 5 thereof (or, if the registrant is a foreign private issuer, on Form 6-K (§ 249.306)).

* * *

Item 3. Incorporation of Documents by Reference.

* * *

(a) The registrant's latest annual report, and where interests in the plan are being registered, the plan's latest annual report, filed pursuant to Section 13(a) or 15(d) of the Exchange Act, or in the case of the registrant either: (1) the latest prospectus filed pursuant to Rule 424(b) under the Act that contains audited financial statements for the registrant's latest fiscal year for which such statements have been filed, or (2) the registrant's effective registration statement on Form 10, Form 20-F or, in the case of registrants described in General Instruction A, (2) of Form 40-F, on Form 40-F filed under the Exchange Act containing audited financial statements for the registrant's latest fiscal year.

* * *

Item 9. Undertakings.

* * *

Notes to Item 9: (1) * * *
(2) With respect to registration statements filed on this form, foreign private issuers are not required to furnish the Item 512(a)(4) undertaking.

24. By revising General Instruction E to Form S-11 to read as follows:

Note: The Forms do not appear in the Code of Federal Regulations.
Form S-11

General Instructions

* * *

E. Foreign issuers

A foreign private issuer may comply with Items 19, 20, 21, 22 and 26 of this Form by furnishing the information specified in Items 3, 4, 10, 11, and 16, respectively, of Form 20-F (§ 249.220f of this chapter).

25. By revising paragraph (a) of § 239.31 and revising General Instruction I.A. of Form F-1 to read as follows:

§ 239.31 Form F-1, registration statement under the Securities Act of 1933 for securities of certain foreign private issuers.

(a) Form F-1 shall be used for registration under the Securities Act of 1933 ("Securities Act") of securities of all foreign private issuers, as defined in Rule 405 (§ 230.405 of this chapter) for which no other form is authorized or prescribed.

* * *

Note: The Forms do not appear in the Code of Federal Regulations.
Form F-1

General Instructions

I. Eligibility Requirements for Use of Form F-1

A. Form F-1 shall be used for registration under the Securities Act of 1933 ("Securities Act") of securities of all foreign private issuers as defined in Rule 405 (§ 230.405 of this chapter) for which no other form is authorized or prescribed.

* * *

26. By revising paragraphs (a), [b][2], (d), (e) and (g) of § 239.32, revising General Instructions I.A., I.D., I.E. and I.G. of Form F-2, and revising paragraphs (a) and (b)[2] of Item 11, Item 12 and Instructions 1 and 4 thereto of Form F-2 to read as follows:

§ 239.32 Form F-2, for registration under the Securities Act of 1933 for securities of certain foreign private issuers.

* * *

(a) The registrant has a class of securities registered pursuant to section 12(b) of the Securities Exchange Act of 1934 (the "Exchange Act") or has a class of equity securities registered pursuant to section 12(g) of the Exchange Act or is required to file reports pursuant to section 15(d) of the Exchange Act and has filed annual reports on Form 20-F ($249.220f of this chapter), or, in the case of certain Canadian registrants, on Form 10-K ($249.310 of this chapter) or, in the case of registrants described in General Instruction A, (2) of Form 40-F, on Form 40-F ($249.240f of this chapter) under the Exchange Act.

27. By revising paragraph (b)(1)(i) of this section do not apply to any registrant if (i) the aggregate market value worldwide of the voting stock of the registrant held by non-affiliates is the equivalent of $300 million or more, or if non-convertible debt securities that are "investment grade debt securities," as defined below, are being registered and (ii) the registrant has filed at least one Form 20-F, Form 40-F or Form 10-K that is the latest required to have been filed.

(d) The financial statements in the registrant's latest filing on Form 20-F, Form 40-F or Form 10-K comply with Item 16 of Form 20-F.
(e) The provisions of paragraphs (b)(1)(i) and (d) of this section do not apply if the Registrant has filed at least one Form 20-F, Form 40-F or Form 10-K that is the latest required to have been filed and if the only securities being registered are to be offered:
(1) Upon the exercise of outstanding rights granted by the issuer of the securities to be offered, if such rights are granted pro rata to all existing securityholders of the class of securities to which the rights attach;
(2) Pursuant to a dividend or interest reinvestment plan; or
(3) Upon the conversion of outstanding convertible securities or upon the exercise of outstanding transferable warrants issued by the issuer of the securities to be offered, or by an affiliate of such issuer.

The exemptions in this paragraph (e) are unavailable if securities are to be offered or sold in a standby underwriting in the United States or similar arrangement.

(g) If a registrant is a majority-owned subsidiary which does not meet the conditions of these eligibility requirements, it nevertheless shall be deemed to have met such conditions if its parent meets the conditions and if the parent fully guarantees the securities being registered as to principal and interest. Note: In such an instance the parent-guarantor is the issuer of a separate security consisting of the guarantee which must be concurrently registered but may be registered on the same registration statement as are the guaranteed securities. Both the parent-guarantor and the subsidiary shall each disclose the information required by this Form as if each were the only registrant except that the subsidiary will not be eligible to file annual reports on Form 20-F or Form 40-F after the effective date of the registration statement, then it shall disclose the information specified in Form S-2 (§ 239.15 of this chapter). Rule 3-10 of Regulation S-X (§ 210.3-10 of this chapter) specifies the financial statements required.

Note: The Forms do not appear in the Code of Federal Regulations.

Form F-2

GENERAL INSTRUCTIONS

I. Eligibility Requirements for Use of Form F-2

A. The Registrant has a class of securities registered pursuant to section 12(b) of the Securities Exchange Act of 1934 ("Exchange Act") or has a class of equity securities registered pursuant to section 12(g) of the Exchange Act or is required to file reports pursuant to section 15(d) of the Exchange Act and has filed annual reports on Form 20-F (§ 240.220f of this chapter), in the case of certain Canadian registrants, on Form 10-K (§ 240.310 of this chapter) or, in the case of registrants described in General Instruction A. (2) of Form F-4, on Form F-4 (§ 240.240f of this chapter) under the Exchange Act.

D. The financial statements in the registrant's latest filing on Form 20-F, Form 40-F or Form 10-K comply with Item 16 thereof.

E. The provisions of paragraphs (B)(1)(a) and (D) do not apply if the Registrant has filed at least one Form 20-F, Form 40-F or Form 10-K that is the latest required to have been filed and if the only securities being registered are to be offered:
(1) Upon the exercise of outstanding rights granted by the issuer of the securities to be offered, if such rights are granted pro rata to all existing securityholders of the class of securities to which the rights attach; or
(2) Pursuant to a dividend or interest reinvestment plan; or
(3) Upon the conversion of outstanding convertible securities or upon the exercise of outstanding transferable warrants, issued by the issuer of the securities to be offered, or by an affiliate of such issuer.

The exemptions in this paragraph (E) are unavailable if securities are to be offered or sold in a standby underwriting in the United States or similar arrangement.

G. If a registrant is a majority-owned subsidiary which does not meet the conditions of these eligibility requirements, it nevertheless shall be deemed to have met such conditions if its parent meets the conditions and if the parent fully guarantees the securities being registered as to principal and interest. Note: In such an instance the parent-guarantor and the subsidiary shall each disclose the information required by this Form as if each were the only registrant except that the subsidiary will not be eligible to file annual reports on Form 20-F or Form 40-F after the effective date of the registration statement, then it shall disclose the information specified in Form S-2 (§ 239.15 of this chapter) and revising General Instructions I.A.I., (a)(6)(iii), the Note following (a)(6)(iii), paragraphs (b)(1) and (b)(3) of § 239.33, and revising General Instructions I.A.1., I.A.6.(ii), I.B.1. and I.B.3., and paragraphs (a) and (b)(2) of Item 11 and paragraphs (a) and (b) of Item 12 of Form F-3 to read as follows:

§ 239.33 Form F-3, for registration under the Securities Act of 1933 of securities of certain foreign private issuers offered pursuant to certain types of transactions.

(a) * * *

(1) The registrant has a class of securities registered pursuant to section 12(b) of the Securities Exchange Act of 1934 ("Exchange Act") or has a class of equity securities registered pursuant to section 12(g) of the Exchange Act or is required to file reports pursuant to section 15(d) of the Exchange Act and has filed annual reports on Form 20-F, in the case of certain Canadian registrants, on Form 10-K (§ 240.310 of this chapter) or, in the case of registrants described in General Instruction A. (2) of Form F-4,
on Form 40-F (§ 249.240f of this chapter) under the Exchange Act.

[1] Majority owned Subsidiaries. If a registrant is a majority-owned subsidiary, security offerings may be registered on this Form if:

(iii) The parent of the registrant-subsidiary meets the Registrant Requirements and the applicable Transaction Requirements and fully guarantees the securities being registered as to principal and interest.

Note: In the situations described in paragraphs (a) (ii), (iii), and (iii) of this section, the parent-guarantor is the issuer of a separate security consisting of the guarantee which must be concurrently registered but may be registered on the same registration statement as the guaranteed securities. Both the parent-guarantor and the subsidiary shall each disclose the information required by this Form as if each were the only registrant except that if the subsidiary will not be eligible to file annual reports on Form 20-F or Form 40-F after the effective date of the registration statement, then it shall disclose the information specified in Form S-3 (§ 239.13 of this chapter), Rule 3-10 of Regulation S-X (§ 210.3-10 of this chapter) specifies the financial statements required.

(b) Transaction requirements. Security offerings meeting any of the following conditions and made by registrants meeting the Registrant Requirements above may be registered on this Form:

(1) Primary offerings by certain registrants. Securities to be offered for cash by or on behalf of a registrant, if the financial statements in the registrant’s latest filing on Form 20-F, Form 40-F or Form 10-K comply with Item 18 of Form 20-F.

(2) Transactions involving secondary offerings. Outstanding securities to be offered for the account of any person other than the issuer, including securities acquired by standby underwriters in connection with the call or redemption by the issuer of warrants or a class of convertible securities. In addition, Form F-3 may be used by affiliates to register securities for resale pursuant to the conditions specified in General Instruction C to Form S-8 (§ 239.16b of this chapter) if the financial statements in the registrant’s latest filing on Form 20-F, Form 40-F or Form 10-K comply with Item 18 of Form 20-F.

General Instructions

1. Eligibility Requirements for Use of Form F-3

A. Registrant Requirements

1. The registrant has a class of securities registered pursuant to section 12(b) of the Securities Exchange Act of 1934 ("Exchange Act") or has a class of equity securities registered pursuant to section 12(g) of the Exchange Act or is required to file reports pursuant to section 15(d) of the Exchange Act and has filed annual reports on Form 20-F (§ 249.220f of this chapter), or, in the case of certain Canadian registrants, on Form 10-K (§ 249.310 of this chapter) or, in the case of registrants described in General Instruction A(2) of Form 40-F, on Form 40-F (§ 249.240f of this chapter) under the Exchange Act.

6. Majority owned subsidiaries. If a registrant is a majority-owned subsidiary, security offerings may be registered on this Form if:

(iii) The parent of the registrant-subsidiary meets the Registrant Requirements and the applicable Transaction Requirements and fully guarantees the securities being registered as to principal and interest.

Note: In the situations described in (i), (ii), and (iii) above, the parent-guarantor is the issuer of a separate security consisting of the guarantee which must be concurrently registered but may be registered on the same registration statement as the guaranteed securities. Both the parent-guarantor and the subsidiary shall each disclose the information required by this Form as if each were the only registrant except that if the subsidiary will not be eligible to file annual reports on Form 20-F or Form 40-F after the effective date of the registration statement, then it shall disclose the information specified in Form S-3 (§ 239.13 of this chapter), Rule 3-10 of Regulation S-X (§ 210.3-10 of this chapter) specifies the financial statements required.

(b) Transaction requirements. Security offerings meeting any of the following conditions and made by registrants meeting the Registrant Requirements above may be registered on this Form:

(1) Primary offerings by certain registrants. Securities to be offered for cash by or on behalf of a registrant, if the financial statements in the registrant’s latest filing on Form 20-F, Form 40-F or Form 10-K comply with Item 18 of Form 20-F.

(2) Transactions involving secondary offerings. Outstanding securities to be offered for the account of any person other than the issuer, including securities acquired by standby underwriters in connection with the call or redemption by the issuer of warrants or a class of convertible securities. In addition, Form F-3 may be used by affiliates

Item 11. Material Changes

(a) Describe any and all material changes in the registrant’s affairs which have occurred since the end of the latest fiscal year for which certified financial statements were included in the latest filing on Form 20-F, Form 40-F or Form 10-K under the Exchange Act.

(b) Rule 3-10 of Regulation S-X (§ 210.3-10 of this chapter) specifies the financial statements necessary to comply with that rule shall be presented either in the prospectus or in an amended Form 20-F, Form 40-F or Form 10-K in which case the prospectus shall disclose that the Form 20-F, Form 40-F or Form 10-K has been so amended.

Item 12. Incorporation of Certain Information by Reference

(a) The registrant’s latest Form 20-F, Form 40-F or Form 10-K filed pursuant to the Exchange Act that contains certified financial statements for the registrant’s latest fiscal year for which a Form 20-F, Form 40-F or Form 10-K was required to have been filed and any report on Form 10-Q or Form 8-K filed since the end of the fiscal year covered by such annual report shall be incorporated by reference. If capital stock is to be registered and securities of the same class are registered under section 12 of the Exchange Act, the description of such class of securities which is contained in a registration statement filed under the Exchange Act, including any amendment or reports filed for the purpose of updating such description shall be incorporated by reference.

Instruction: If the registrant’s latest filing on Form 20-F, Form 40-F or Form 10-K is amended to include the information specified in item 18 of Form 20-F, the prospectus shall state that the Form 20-F, Form 40-F or Form 10-K has been so amended. Reference is made to the Transaction Requirements in General Instruction I.B. that, in some cases, require the financial statements in the Form 20-F, Form 40-F or Form 10-K to comply with Item 18 of Form 20-F as a condition for eligibility to use Form F-3.

(b) The prospectus also shall state that all subsequent filings on Form 20-F, Form 40-F, Form 10-K, Form 10-Q or Form 8-K filed by the registrant pursuant to the Exchange Act, prior to the termination of the offering, shall be deemed to be incorporated by reference to the prospectus.
Item 10. Information With Respect to F-3 Companies

If the registrant meets the requirements for use of Form F-3 and elects to furnish information in accordance with the provisions of this Item, furnish information as required below:

(a) Describe any and all material changes in the registrant's affairs that have occurred since the end of the latest fiscal year for which audited financial statements were included in the latest annual report on Form 20-F or, in case of Canadian registrants, on Form 10-K or, in the case of registrants described in General Instruction A.(2) of Form 40-F, on Form 40-F and that have not been described in a report on Form 6-K (§ 230.306 of this chapter), Form 10-Q (§ 240.30b(a) of this chapter) or Form 8-K (§ 240.308 of this chapter) filed under the Exchange Act.

(b) If the financial statements incorporated by reference from the registrant's latest Form 20-F or, in the case of certain Canadian registrants, Form 10-K or, in the case of registrants described in General Instruction A.(2) of Form 40-F, Form 40-F and that have not been described in a report on Form 6-K (§ 230.306 of this chapter), Form 10-Q (§ 240.30b(a) of this chapter) or Form 8-K (§ 240.308 of this chapter) filed under the Exchange Act:

(3) If securities of the registrant are being offered in exchange for securities of any other issuer, the termination of the offering; or
(4) If securities are being offered in a reoffering or resale of securities acquired pursuant to this registration statement, the termination of such reoffering.

**Instruct**

Attention is directed to Rule 439 (§ 230.439 of this chapter) regarding consent to the use of material incorporated by reference.

Item 12. Information With Respect to F-2 or F-3 Registrants

If the registrant meets the requirements for use of Form F-2 or F-3 and elects to comply with this Item, furnish the information required by either paragraph (a) or (b) of this Item. However, the registrant shall not provide prospectus information in the manner allowed by paragraph (a) of this Item if the financial statements in the registrant's latest annual report on Form 20-F or, in the case of certain Canadian registrants, on Form 10-K or, in the case of registrants described in General Instruction A.(2) of Form 40-F, Form 40-F filed pursuant to section 13(a) or 15(d) of the Exchange Act which contains financial statements for the registrant's latest fiscal year for which a Form 20-F, Form 40-F or Form 10-K was required to be filed:

(2) **
(3)

**Instructions**

1. All annual reports on Form 20-F, on Form 10-K or on Form 40-F filed by the registrant applicable to Items 11 (a) and (b) hereof shall contain financial statements that comply with Item 18 of Form 20-F except that financial statements of the registrants may comply with Item 17 of Form 20-F if the only securities being registered are investment grade debt as defined in the General Instructions to Form F-3.

2. Where common equity securities are being issued, the information required by Item 5 of Form 20-F, nature of trading markets, should be updated, to cover any subsequent interim periods for which interim financial statements are required to be included to comply with Rule 3-19 to Regulation S-X. Such updating may be made in the prospectus, in an amended Form 20-F or, in the case of certain Canadian registrants, on Form 10-K or, in the case of registrants described in General Instruction A.(2) of Form 40-F, on Form 40-F, or in a Form 6-K, Form 10-Q or Form 8-K, as applicable.

(2) The prospectus also shall state that all annual reports on Form 20-F or, in the case of certain Canadian registrants, on Form 10-K or, in the case of the registrants described in General Instruction A.(2) of Form 40-F, on Form 40-F and all Forms 10-Q and 8-K, and any Form 6-K so designated, subsequently filed by the registrant pursuant to sections 13(a), 13(c) or 15(d) of the Exchange Act, prior to one of the following dates, whichever is applicable, shall be deemed to be incorporated by reference into the prospectus:

(1) If a meeting of securityholders is to be held, the date on which such meeting is held;
(2) If a meeting of securityholders is not to be held, the date on which the transaction is consummated;
(3) If securities of the registrant are being offered in exchange for securities of any other issuer, the termination of the offering; or
(4) If securities are being offered in a reoffering or resale of securities acquired pursuant to this registration statement, the termination of such reoffering.
pursuant to Rule 11-01(b) of Regulation S-X, or (3) any financial information required because of a material disposition of assets outside of the normal course of business.  
(a) If the registrant elects to deliver this prospectus together with its latest annual report on Form 20-F or, in the case of certain Canadian registrants, on Form 10-K or, in the case of other registrants described in General Instruction A(2) of Form 40-F, on Form 40-F, or a complete and legible facsimile of such Form 20-F, Form 10-K or Form 40-F:

(1) Indicate that the prospectus is accompanied by the registrant's latest annual report on Form 20-F, Form 10-K or Form 40-F.

(2) If the financial statements incorporated by reference from the registrant's latest Form 20-F, Form 10-K or Form 40-F in accordance with Item 13 are not sufficiently current to comply with the requirements of Item 3-19 of Regulation S-X, provide the information required by Rule 10-01 of Regulation S-X and Item 13 of Form 20-F by one of the following means:

(i) Including such information in the prospectus;

(ii) Providing without charge to whom a prospectus is delivered a copy of the registrant's Form 10-Q, Form 8-K or Form 6-K report that contains such later information; or

(iii) In an amended Form 20-F, Form 40-F or Form 10-K in which case the prospectus shall disclose that the Form 20-F, Form 40-F or Form 10-K has been so amended.

(b) If not reflected on the registrant's latest Form 20-F, Form 10-K or Form 40-F annual report, provide information required by Rule 3-05 and Article 11 of Regulation S-X with respect to transactions other than that pursuant to which the securities being registered are to be issued.

(c) Describe any and all material changes in the registrant's affairs which have occurred since the end of the latest fiscal year for which audited financial statements were included in the latest filing on Form 20-F, Form 10-K or Form 40-F, Form 8-K, Form F-2 or F-3 and elect to furnish such information in accordance with paragraph (2)(ii) of this Item.

(d) Where common equity securities are being issued, the information required by Item 5 of Form 20-F, nature of trading markets, should be updated to cover any subsequent interim periods for which interim financial statements are required to be included to comply with Rule 3-19 of Regulation S-X. Such updating may be made in the prospectus, in an amended Form 20-F, Form 10-K or Form 40-F, or in a Form 6-K, Form 10-Q or Form 8-K.

(e) The interim financial information as required by Rule 10-01 of Regulation S-X sufficient to meet the requirements of Rule 3-19 of Regulation S-X for which a material retroactive restatement of financial statements is required by Rule 3-05 and Article 11 of Regulation S-X and Item 13 of Form 20-F or, in the case of registrants described in General Instruction A(2) of Form 40-F, on Form 40-F, or reports on Form 6-K, Form 10-Q or Form 8-K.

(f) Any financial information required because of a material disposition of assets outside of the normal course of business.

Instruction: Reference is made to Item 4-01(a)(2) of Regulation S-X.

(2) Furnish the information required by the following:

(i) Items 1(a)(3) and (a)(4) of Form 20-F, principal products, principal markets, methods of distribution, sales and revenues by categories of activity and into geographical markets;

(ii) Item 2 of Form 20-F, properties if the registrant is engaged significantly in extractive industries;

(iii) Item 3 of Form 20-F, exchange controls and other limitations on securityholders;

(iv) Item 7 of Form 20-F, taxation;

(v) Item 8 of Form 20-F, selected financial date;

(vi) Item 9 of Form 20-F, management's discussion and analysis of financial condition and results of operations;

(vii) Financial statements required by Item 16 of Form 20-F (Schedules required under Regulation S-X will be filed as "Financial Statement Schedules" pursuant to Item 15(a) of this Form) and financial information required by Rule 3-05 and Article 11 of Regulation S-X with respect to transactions other than that pursuant to which the securities being registered are to be issued; and

(viii) Where common equity securities are being issued, Item 5 of Form 20-F, nature of trading markets, updated to cover any subsequent interim periods for which interim financial statements are required to comply with Rule 3-19 of Regulation S-X.

Item 13. Incorporation of Certain Information by Reference

If the registrant meets the requirements of Form F-2 or F-3 and elects to furnish information in accordance with the provisions of Item 12 of this Form:

(a) Incorporate by reference into the prospectus, by means of a statement to that effect in the prospectus listing all documents so incorporated, and deliver with the prospectus the documents listed in paragraphs (1) and, if applicable, (2) below:

(1) The registrant's latest annual report on Form 20-F or, in the case of certain Canadian registrants, on Form 10-K or, in the case of registrants described in General Instruction A(2) of Form 40-F, on Form 40-F filed pursuant to Section 13(a) or 15(d) of the Exchange Act which contains audited financial statements for the registrant's latest fiscal year for which a Form 20-F, Form 10-K or Form 40-F was required to be filed; and

(2) All other reports filed pursuant to Section 13(a) or 15(d) of the Exchange Act since the end of the fiscal year covered by the annual report referred to in paragraph (a)(1) of this Item.

Instructions

1. All annual reports on Form 20-F, Form 10-K or Form 40-F filed by the registrant applicable to Item 13(a) or (b) herein shall contain financial statements that comply with Item 18 of Form 20-F.

2. Where common equity securities are being issued, the information required by Item 5 of Form 20-F, nature of trading markets, should be updated to cover any subsequent interim periods for which interim financial statements are required to be included to comply with Rule 3-19 of Regulation S-X. Such updating may be made in the prospectus, in an amended Form 20-F, Form 10-K or Form 40-F, or in a Form 6-K, Form 10-Q or Form 8-K.

3. The registrant may incorporate by reference and deliver with the prospectus any Form F-2, Form 10-Q or Form 8-K containing information meeting the requirements of Form F-2. See Rules 4-01(a)(2) and 10-01 of Regulation S-X and Item 18 of Form 20-F.

4. Attention is directed to Rule 439 regarding consent to the use of material incorporated by reference.

(b) The registrant also may state, if it so chooses, that specifically described portions of its annual reports on Form 20-F or, in the case of certain Canadian registrants, on Form 10-K or, in the case of registrants described in General Instruction A(2) of Form 40-F, on Form 40-F, or reports on Form 6-K, Form 10-Q or Form 8-K are not part of the registration statement. In such case, the description of portions that are not incorporated by reference or that are excluded shall be made with clarity and in reasonable detail.

* * * * *

Item 17. Information With Respect to Foreign Companies Other Than F-2 or F-3 Companies.

* * *

(b) If the company being acquired is not subject to the reporting requirements of either section 13(a) or 15(d) of the Exchange Act.
(1) The time the successor registrant has been listed on one of such exchanges, when added separately to the time each predecessor had been so listed at the time of the business combination, in each case equals at least 36 calendar months, Provided, However, That the listing history of the successor registrant and any predecessor whose assets and income, respectively, would contribute less than 20 percent of the total assets and income from continuing operations before income taxes, extraordinary items and cumulative effect of a change in accounting principles of the successor registrant, as measured based on pro forma combination of the participating companies’ most recently completed fiscal years immediately prior to the business combination, need not be combined for purposes of satisfying such 36-month listing requirement; and

(2) The successor registrant has had a class of its securities listed on at least one of such exchanges since the business combination and is currently in compliance with the obligations arising from such listing.

(d) The rights shall be exercisable immediately upon issuance and the exercise period for the rights granted to any securityholder in connection with the transaction shall be 90 days or fewer. The rights in connection with the transaction granted to securityholders 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 resold outside the United States in accordance with Rule 904 of Regulation S under the Securities Act.

Instructi

For purposes of this Form, the term “U.S. resident” shall mean any person whose address appears on the records as being located in the United States.

(e) This Form shall not be used if the number of the outstanding securities of the class to be issued upon exercise of the rights or, in the case of debt, the principal amount of the outstanding long-term debt of the issuer (or a class into which such securities are convertible) would increase by more than 25 percent if all rights issued as a part of the offering and within the 12 months prior to the offering were exercised (and, if applicable, all such securities were converted).

(f) This Form shall not be used if the registrant is registered or required to register under the Investment Company Act of 1940.

[(g)(1) 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.

(2) If, however, an amendment to the home jurisdiction document(s) is filed after effectiveness of this registration statement that increases the number of securities that may be sold, in lieu of filing a post-effective amendment hereof, 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: “Pursuant to Rule 429 under the Securities Act, the prospectus contained in this registration statement relates to registration statement[s] 33—[insert file numbers of previous registration statements].”

(3) Registrants shall file a Form F-X (§ 249.250 of this chapter) with the Commission together with this Form.

§ 239.38 Form F-8, for registration under the Securities Act of 1933 of securities of certain Canadian issuers to be issued in exchange offers or a business combination.

(a) Form F-8 may be used for registration under the Securities Act of 1933 (“Securities Act”) of the securities to be issued in an exchange offer or in connection with a statutory amalgamation, merger, arrangement or other reorganization requiring the vote of shareholders of the participating companies (a “business combination”). Securities may be registered on this Form whether they constitute the sole security of the issuing corporation or an indirect holding company.

(b) In the case of a business combination, Form F-8 is available to any registrant that:

(1) Is incorporated or organized under the laws of Canada or any Canadian province or territory;

(2) Is a foreign private issuer or a crown corporation; and

(3) Has had a class of its securities listed on The Montreal Exchange or The Toronto Stock Exchange for the 36 calendar months immediately preceding the filing of a registration statement on this Form, and currently is in compliance with the obligations arising from such listing.

Instructi

For purposes of this Form, “foreign private issuer” shall be construed in accordance with Rule 405 under the Securities Act.

2. For purposes of this Form, the term “crown corporation” shall mean a corporation all of whose common shares or comparable equity is owned directly or indirectly by the government of Canada or a province or territory of Canada.

(c) If the registrant is a successor registrant subsisting after a statutory amalgamation, merger, arrangement or other reorganization requiring the vote of shareholders of the participating companies (a “business combination”), the registrant shall be deemed to meet the requirements of paragraph (b)(3) of this section if:

(1) It is incorporated or organized under the laws of Canada, or any Canadian province or territory;

(2) It is a foreign private issuer or a crown corporation;

(3) It has had a class of its securities listed on The Montreal Exchange or The Toronto Stock Exchange for the 36 months immediately preceding the filing of a registration statement on this Form, and currently is in compliance with the obligations arising from such listing.

Instructi

For purposes of this Form, “foreign private issuer” shall be construed in accordance with Rule 405 under the Securities Act.

3. For purposes of this Form, “crown corporation” shall mean a corporation all of whose common shares or comparable equity is owned directly or indirectly by the government of Canada or a province or territory of Canada.

(d) If the registrant is a successor registrant subsisting after a statutory amalgamation, merger, arrangement or other reorganization requiring the vote of shareholders of the participating companies (a “business combination”), the registrant shall be deemed to meet the requirements of paragraph (b)(3) of this section if:

(1) It is incorporated or organized under the laws of Canada, or any Canadian province or territory;

(2) It is a foreign private issuer or a crown corporation;

(3) It has had a class of its securities listed on The Montreal Exchange or The Toronto Stock Exchange for the 36 months immediately preceding the filing of a registration statement on this Form, and currently is in compliance with the obligations arising from such listing.

Instructi

For purposes of this Form, “foreign private issuer” shall be construed in accordance with Rule 405 under the Securities Act.

4. For purposes of this Form, “crown corporation” shall mean a corporation all of whose common shares or comparable equity is owned directly or indirectly by the government of Canada or a province or territory of Canada.

5. For purposes of this Form, “foreign private issuer” shall be construed in accordance with Rule 405 under the Securities Act.

6. For purposes of this Form, “crown corporation” shall mean a corporation all of whose common shares or comparable equity is owned directly or indirectly by the government of Canada or a province or territory of Canada.

7. For purposes of this Form, “foreign private issuer” shall be construed in accordance with Rule 405 under the Securities Act.

8. For purposes of this Form, “crown corporation” shall mean a corporation all of whose common shares or comparable equity is owned directly or indirectly by the government of Canada or a province or territory of Canada.
cumulative effect of a change in income taxes, extraordinary items and cumulative effect of a change in income from continuing operations before income taxes, extraordinary items and cumulative effect of a change in

Instructions
1. For purposes of this Form, "foreign private issuer" shall be construed in accordance with Rule 405 under the Securities Act.
2. For purposes of this Form, the term "subsisting after a business combination" shall mean a corporation all of whose common shares or comparable equity is owned directly or indirectly by the government of Canada or a province or territory of Canada.
3. For purposes of this Form, "successor registrant" shall mean a corporation all of whose common shares or comparable equity is owned directly or indirectly by the government of Canada or a province or territory of Canada.
4. For purposes of this Form, "subsisting after a business combination" shall mean a corporation all of whose common shares or comparable equity is owned directly or indirectly by the government of Canada or a province or territory of Canada.
5. For purposes of this Form, "subsisting after a business combination" shall mean a corporation all of whose common shares or comparable equity is owned directly or indirectly by the government of Canada or a province or territory of Canada.
6. For purposes of this Form, the market value of the public float of the registrant's outstanding equity shares shall be computed by use of the price at which such shares were last sold, or the average of the bid and asked prices of such shares, in the principal market for such shares as of a date within 60 days prior to the date of filing.
7. In the case of an exchange offer, 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.
8. In the case of an exchange offer, if the registrant is a successor registrant subsisting after a business combination, it shall be deemed to meet the requirements of paragraph (b)(3) of this section if:
(a) The time the successor registrant has had a class of its securities listed on The Montreal Exchange or The Toronto Stock Exchange, when added separately to the time each predecessor had been so listed at the time of the business combination, in each case equals at least 36 calendar months. Provided, however, that the listing history of the successor registrant and any predecessor whose assets and income, respectively, would contribute less than 20 percent of the total assets and income from continuing operations before income taxes, extraordinary items and cumulative effect of a change in accounting principles of the successor registrant, as measured based on pro forma combination of the participating companies' most recently completed fiscal years immediately prior to the business combination, need not be combined if all or substantially all of satisfying such 36-month listing requirement; and
(b) The successor registrant has had a class of its securities listed on at least one of such exchanges since the business combination, and is currently in compliance with the obligations arising from such listing.
(c) In the case of an exchange offer, 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 be a foreign private issuer or a crown corporation, and less than 20 percent of the class of subject securities shall be held of record by U.S. residents other than U.S. affiliates of the issuer.

Instructions
1. For purposes of this Form, the term "U.S. resident" shall mean any person whose address appears on the records as being located in the United States. With respect to any unsolicited tender offer, including any exchange offer, otherwise eligible to proceed in accordance with Rule 14d-1(b) under the Securities Exchange Act of 1934 (the "Exchange Act"), U.S. residents unaffiliated with the issuer will be presumed to hold of record less than 20 percent of the subject class of securities, unless (a) the aggregate trading volume of that class on any securities exchange and in any inter-dealer quotation system in the United States exceeded its aggregate trading volume on any securities exchange and in any inter-dealer quotation system in Canada over the 12-month period prior to commencement of this offer; (b) disclosure was made in documents that were filed publicly by the issuer with Canadian federal, provincial or territorial securities regulators, or with the Commission or any state securities authority in the United States, within 18 months of the date of commencement of this offer, disclose that U.S. residents unaffiliated with the issuer held of record more than 20 percent of the subject class of securities; or (c) the offeror has actual knowledge that the level of unaffiliated U.S. record ownership of the subject class of securities exceeds 20 percent.
2. If this Form is filed during the pendency of one or more ongoing third-party or issuer cash tender or exchange offers for securities of the class subject to the offer that was commenced on Schedule 13E-4F, Schedule 13D-4F, and/or Form F-8, the date for calculation of U.S. record ownership for purposes of this Form shall be the same as that date used by the initial bidder or issuer.
3. For purposes of this Form, "held of record" shall be construed in accordance with Rule 12g5-1 under the Exchange Act. For purposes of this Form, the class of subject securities shall not include any securities that may be converted into or are exchangeable for the subject securities.
4. For purposes of exchange offers, the calculation of U.S. record holders shall be made as of the end of the subject issuer's last quarter, or, if such quarter terminated within 60 days of the filing date, as of the end of such issuer's preceding quarter.
5. For purposes of exchange offers, the calculation of U.S. record holders shall be made as of the end of the subject issuer's last quarter, or, if such quarter terminated within 60 days of the filing date, as of the end of such issuer's preceding quarter.
6. For purposes of exchange offers, the calculation of U.S. record holders shall be made as of the end of the subject issuer's last quarter, or, if such quarter terminated within 60 days of the filing date, as of the end of such issuer's preceding quarter.
7. For purposes of exchange offers, the calculation of U.S. record holders shall be made as of the end of the subject issuer's last quarter, or, if such quarter terminated within 60 days of the filing date, as of the end of such issuer's preceding quarter.
8. For purposes of exchange offers, the calculation of U.S. record holders shall be made as of the end of the subject issuer's last quarter, or, if such quarter terminated within 60 days of the filing date, as of the end of such issuer's preceding quarter.
9. For purposes of exchange offers, the calculation of U.S. record holders shall be made as of the end of the subject issuer's last quarter, or, if such quarter terminated within 60 days of the filing date, as of the end of such issuer's preceding quarter.
10. For purposes of exchange offers, the calculation of U.S. record holders shall be made as of the end of the subject issuer's last quarter, or, if such quarter terminated within 60 days of the filing date, as of the end of such issuer's preceding quarter.
11. For purposes of exchange offers, the calculation of U.S. record holders shall be made as of the end of the subject issuer's last quarter, or, if such quarter terminated within 60 days of the filing date, as of the end of such issuer's preceding quarter.
12. For purposes of exchange offers, the calculation of U.S. record holders shall be made as of the end of the subject issuer's last quarter, or, if such quarter terminated within 60 days of the filing date, as of the end of such issuer's preceding quarter.
13. For purposes of exchange offers, the calculation of U.S. record holders shall be made as of the end of the subject issuer's last quarter, or, if such quarter terminated within 60 days of the filing date, as of the end of such issuer's preceding quarter.
14. For purposes of exchange offers, the calculation of U.S. record holders shall be made as of the end of the subject issuer's last quarter, or, if such quarter terminated within 60 days of the filing date, as of the end of such issuer's preceding quarter.
15. For purposes of exchange offers, the calculation of U.S. record holders shall be made as of the end of the subject issuer's last quarter, or, if such quarter terminated within 60 days of the filing date, as of the end of such issuer's preceding quarter.
16. For purposes of exchange offers, the calculation of U.S. record holders shall be made as of the end of the subject issuer's last quarter, or, if such quarter terminated within 60 days of the filing date, as of the end of such issuer's preceding quarter.
17. For purposes of exchange offers, the calculation of U.S. record holders shall be made as of the end of the subject issuer's last quarter, or, if such quarter terminated within 60 days of the filing date, as of the end of such issuer's preceding quarter.
18. For purposes of exchange offers, the calculation of U.S. record holders shall be made as of the end of the subject issuer's last quarter, or, if such quarter terminated within 60 days of the filing date, as of the end of such issuer's preceding quarter.
19. For purposes of exchange offers, the calculation of U.S. record holders shall be made as of the end of the subject issuer's last quarter, or, if such quarter terminated within 60 days of the filing date, as of the end of such issuer's preceding quarter.
20. For purposes of exchange offers, the calculation of U.S. record holders shall be made as of the end of the subject issuer's last quarter, or, if such quarter terminated within 60 days of the filing date, as of the end of such issuer's preceding quarter.
21. For purposes of exchange offers, the calculation of U.S. record holders shall be made as of the end of the subject issuer's last quarter, or, if such quarter terminated within 60 days of the filing date, as of the end of such issuer's preceding quarter.
22. For purposes of exchange offers, the calculation of U.S. record holders shall be made as of the end of the subject issuer's last quarter, or, if such quarter terminated within 60 days of the filing date, as of the end of such issuer's preceding quarter.
23. For purposes of exchange offers, the calculation of U.S. record holders shall be made as of the end of the subject issuer's last quarter, or, if such quarter terminated within 60 days of the filing date, as of the end of such issuer's preceding quarter.
24. For purposes of exchange offers, the calculation of U.S. record holders shall be made as of the end of the subject issuer's last quarter, or, if such quarter terminated within 60 days of the filing date, as of the end of such issuer's preceding quarter.
25. For purposes of exchange offers, the calculation of U.S. record holders shall be made as of the end of the subject issuer's last quarter, or, if such quarter terminated within 60 days of the filing date, as of the end of such issuer's preceding quarter.
26. For purposes of exchange offers, the calculation of U.S. record holders shall be made as of the end of the subject issuer's last quarter, or, if such quarter terminated within 60 days of the filing date, as of the end of such issuer's preceding quarter.
27. For purposes of exchange offers, the calculation of U.S. record holders shall be made as of the end of the subject issuer's last quarter, or, if such quarter terminated within 60 days of the filing date, as of the end of such issuer's preceding quarter.
28. For purposes of exchange offers, the calculation of U.S. record holders shall be made as of the end of the subject issuer's last quarter, or, if such quarter terminated within 60 days of the filing date, as of the end of such issuer's preceding quarter.
29. For purposes of exchange offers, the calculation of U.S. record holders shall be made as of the end of the subject issuer's last quarter, or, if such quarter terminated within 60 days of the filing date, as of the end of such issuer's preceding quarter.
30. For purposes of exchange offers, the calculation of U.S. record holders shall be made as of the end of the subject issuer's last quarter, or, if such quarter terminated within 60 days of the filing date, as of the end of such issuer's preceding quarter.
immediately prior to commencement of such exchange offer.

(g) In the case of a business combination, less than 20 percent of the class of securities to be offered by the successor registrant shall be held of record by U.S. residents other than U.S. affiliates of the registrant, as if measured immediately after completion of the business combination.

Instruction: For purposes of business combinations, the calculation of U.S. record holders shall be made by a participant as of the end of such participant's last quarter or, if such quarter is terminated within 60 days of the filing date, as of the end of such participant's preceding quarter.

(h) In the case of a business combination, the securities to be registered on this Form shall be offered to U.S. residents upon the same terms and conditions as they are offered to residents of Canada.

(i) This Form shall not be used if the registrant is registered or required to register under the Investment Company Act of 1940.

(j)(1) 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.

(2) If, however, an amendment to the home jurisdiction document(s) is filed after effectiveness of this registration statement that increases the number of securities that may be sold, in lieu of filing a post-effective amendment hereto, a new registration statement shall be filed on this Form. As provided in Rule 423, 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: "Pursuant to Rule 423 under the Securities Act, the prospectus contained in this registration statement relates to a registration statement(s) [33-][insert file numbers of previous registration statements]."

(k) Registrants shall file a Form F-X (§ 249.250 of this chapter) with the Commission together with this Form.

§ 239.39 Form F-9, for registration under the Securities Act of 1933 of certain investment grade debt or preferred securities of certain Canadian issuers.

(a) This Form F-9 may be used for the registration under the Securities Act of 1933 (the "Securities Act") of investment grade debt or preferred securities that are:

1. Offered for cash or in connection with an exchange offer; and
2. Either non-convertible or not convertible for a period of at least one year from the date of issuance and thereafter only convertible into a security of another class of the issuer.

Instruction

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; but for purposes of this Form, only the three highest rating categories signify investment grade, but for purposes of this Form, only the three highest rating categories (within which there may be subcategories or gradations indicating relative standing) shall signify investment grade.

(b) Form F-9 is available to any registrant that:

1. Is incorporated or organized under the laws of Canada, or any Canadian province or territory;
2. Is a foreign private issuer or a crown corporation;
3. Has been subject to the continuous disclosure 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;
4. Has an aggregate market value of its outstanding equity shares of (CN) $180 million or more; and
5. Has an aggregate market value of the public float of its outstanding equity shares of (CN) $75 million or more.

Provided, however, That the requirements set forth in paragraphs (b) (4) and (5) of this section shall not apply if the securities being registered on this Form do not carry any conversion right.

Instructions

1. For purposes of this Form, "foreign private issuer" shall be construed in accordance with Rule 405 under the Securities Act.
2. For purposes of this Form, the term "crown corporation" shall mean a corporation all of whose common shares or comparable equity is owned directly or indirectly by the government of Canada or a province or territory of Canada.
3. For purposes of this Form, the "public float" of specified securities shall mean only such securities held by persons other than affiliates of the issuer.
4. For purposes of this Form, "affiliate" shall mean any person who beneficially owns, directly or indirectly, or exercises control or direction over, more than 10 percent of the outstanding equity shares of the registrant.

5. For purposes of this Form, "equity shares" shall mean common shares, voting shares and subordinate or restricted voting equity shares, but excludes preferred shares.

6. For purposes of this Form, the market value of the registrant's outstanding equity shares (whether or not held by affiliates) shall be computed by use of the price at which such shares were last sold, or the average of the bid and asked prices of such shares, in the principal market for such shares as of a date within 60 days prior to the date of filing.

(c) In the case of an exchange offer, the securities to be registered on Form F-9 shall be offered to U.S. residents upon the same terms and conditions as they are offered to residents of Canada.

(d) If the registrant is a majority-owned subsidiary offering non-convertible debt securities or non-convertible preferred shares, it shall be deemed to meet the requirements of paragraph (b)(3) of this section if the parent of the registrant-subsidiary meets the requirements of paragraphs (b) of this section, as applicable, and fully and unconditionally guarantees the securities being registered as to principal and interest (if debt securities) or as to liquidation preference, redemption price and dividends (if preferred securities).

(e) If the registrant is a successor registrant subsisting after a statutory amalgamation, merger, arrangement or other reorganization, the vote of shareholders of the participating companies (a "business combination"), the registrant shall be deemed to meet the requirements of paragraph (b)(3) of this section if:

(1) The time the successor registrant has been subject to the continuous disclosure requirements of any securities commission or equivalent regulatory authority in Canada, when added separately to the time each predecessor had been subject to such requirements at the time of the business combination, in each case equals at least 36 calendar months, Provided, however. That the reporting history of the successor registrant and any predecessor whose assets and income, respectively, would contribute less than 20 percent of the total assets and income from continuing operations before income taxes, extraordinary items and cumulative effect of a change in accounting principles of the successor registrant, as measured based on pro
forma combination of the participating companies' most recently completed fiscal years immediately prior to the business combination, need not be combined for purposes of satisfying such 36-month reporting requirements; and
(2) The successor registrant has been subject to such continuous disclosure requirements since the business combination, and is currently in compliance with its obligations thereunder.

(i) This Form shall not be used if the registrant is registered or required to register under the Investment Company Act of 1940.

(g) (1) 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.

(2) If, however, an amendment to the home jurisdiction document[s] is filed after effectiveness of this registration statement that increases the number of securities that may be sold, 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: "Pursuant to Rule 429 under the Securities Act, the prospectus contained in this registration statement relates to registration statement[s] 33—[insert file numbers of previous registration statements]."

(h) If the offering to be registered on this Form is not being made contemporaneously in Canada, the registration statement on this Form and any amendments hereto shall be prepared and filed as if the offering were being made contemporaneously in Canada. The Commission has been advised that the principal jurisdiction in Canada designated by the registrant in connection with such an offering will require the filing of such documents and may select them for review.

(i) Registrants shall file a Form F-X ($249.250 of this chapter) with the Commission together with this Form.

§ 239.40 Form F-10, for registration under the Securities Act of 1933 of securities of certain Canadian issuers.

(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 that:

(1) Is incorporated or organized under the laws of Canada or any Canadian province or territory;

(2) Is a foreign private issuer or a crown corporation;

(3) Has been subject to the continuous disclosure 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 is currently in compliance with such obligations, Provided, however, That in case of a statutory amalgamation, merger, arrangement or other reorganization requiring the vote of shareholders of the participating companies (a "business combination"), each participating company must meet such 36-month reporting obligation, except that neither the registrant nor any participating company whose assets and income, respectively, would contribute less than 20 percent of the total assets and income from continuing operations before income taxes, extraordinary items and cumulative effect of a change in accounting principles of the registrant, as measured based on pro forma combination of the participating companies' most recently completed fiscal years, shall be required to meet such reporting requirement;

(4) Has an aggregate market value of its outstanding equity shares of (CN) $360 million or more, Provided, however, That in the case of a business combination, the aggregate market value of the outstanding shares of each company participating in the business combination is (CN) $360 million or more, except that neither the registrant nor any participating company whose assets and income, respectively, would contribute less than 20 percent of the total assets and income from continuing operations before income taxes, extraordinary items and cumulative effect of a change in accounting principles of the registrant, as measured based on pro forma combination of the participating companies' most recently completed fiscal years, shall be required to meet such market value requirement; and

(5) Has an aggregate market value of the public float of such equity shares held by non-affiliates of (CN) $75 million or more; Provided, however, That in the case of a business combination, the aggregate market value of the public float of the outstanding equity shares of each company participating in the business combination is (CN) $75 million or more, except that neither the registrant nor any participating company whose assets and income, respectively, would contribute less than 20 percent of the total assets and income from continuing operations before income taxes, extraordinary items and cumulative effect of a change in accounting principles of the registrant, as measured based on pro forma combination of the participating companies' most recently completed fiscal years, shall be required to meet such public float requirement; and, Provided, further, That in the case of a business combination, such public float requirement shall be deemed satisfied in the case of a participant whose equity shares were the subject of an exchange offer registered on Form F-8, Form F-9 or Form F-10 that terminated within the last six months, if the participant would have satisfied such public float requirement immediately prior to commencement of such exchange offer.

Instructions

1. For purposes of this Form, "foreign private issuer" shall be construed in accordance with Rule 405 under the Securities Act.

2. For purposes of this Form, the term "crown corporation" shall mean a corporation all of whose common shares or comparable equity is owned directly or indirectly by the government of Canada or a province or territory of Canada.

3. For purposes of this Form, the "public float" of specified securities shall mean only such securities held by persons other than affiliates of the issuer.

4. For purposes of this Form, "affiliate" shall mean any person who beneficially owns, directly or indirectly, or exercises control over, more than 10 percent of the outstanding equity shares of the registrant. The determination of affiliates shall be made as of the end of the registrant's most recent completed fiscal year.

5. For purposes of this Form, "equity shares" shall mean common shares, non-voting equity shares and subordinate or restricted voting equity shares, but shall not include preferred shares.

6. For purposes of this Form, the market value of the registrant's outstanding equity shares (whether or not held by affiliates) shall be computed by use of the price at which such shares were last sold, or the average of the bid and asked prices of such shares, in the principal market for such shares as of a date within 60 days prior to the date of filing.

(c) In the case of an exchange offer, the issue of the securities to be exchanged ("exchange securities") for securities of the Registrant shall be incorporated or organized under the laws of Canada or any Canadian province or territory and be a foreign private issuer or a crown corporation.
(d) In the case of a business combination, each company participating in the business combination shall be incorporated or organized under the laws of Canada or any Canadian province or territory and be a foreign private issuer or a crown corporation.

(e) In the case of an exchange offer or a business combination, the securities to be registered on Form F-10 shall be offered to U.S. residents upon the same terms and conditions as they are offered to residents of Canada.

(f) With respect to registration of non-convertible debt securities or non-convertible preferred securities on this Form, if the registrant is a majority-owned subsidiary, it shall be deemed to meet the requirements of paragraphs (b)(3), (b)(4), and (b)(5) of this section if the parent of the registrant-subsidiary meets the requirements of paragraph (b) of this section and fully and unconditionally guarantees the securities being registered as to principal and interest (if debt securities) or as to liquidation preference, redemption price and dividends (if preferred shares).

(g) If the registrant is a successor registrant subsisting after a business combination, it shall be deemed to meet the requirements of paragraph (b)(3) of this section if:

(1) The time the successor registrant has been subject to the continuous disclosure requirements of any securities commission or equivalent regulatory authority in Canada, when added separately to the time a predecessor had been subject to such requirements at the time of the business combination, in each case equals at least 36 calendar months. Provided, however, that the reporting history of any successor registrant and any predecessor whose assets and income, respectively, would contribute less than 20 percent of the total assets and income from continuing operations before income taxes, extraordinary items and cumulative effect of a change in accounting principles of the successor registrant, as measured based on pro forma combination of the participating companies' most recently completed fiscal years immediately prior to the business combination, need not be combined for purposes of satisfying such 36-month reporting requirement; and

(2) The successor registrant has been subject to such continuous disclosure requirements since the business combination, and is currently in compliance with its obligations thereunder.

(h) This Form shall not be used if the registrant is registered or required to register under the Investment Company Act of 1940.

(i) (1) 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.

(2) If, however, an amendment to the home jurisdiction document(s) is filed after effectiveness of this registration statement that increases the number of securities that may be sold, 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: "Pursuant to Rule 429 under the Securities Act of 1933, the prospectus contained in this registration statement relates to registration statement[s] —[insert file numbers of previous registration statements]."

(j) If the offering to be registered on this Form is not being made contemporaneously in Canada, the registration statement on this Form and any amendments hereto shall be prepared and filed as if the offering were being made contemporaneously in Canada. The Commission has been advised that the principal jurisdiction in Canada designated by the registrant in connection with such an offering will require the filing of such documents and may select them for review.

(k) Registrants shall file a Form F-X ($ 249.250 of this chapter) with the Commission together with this Form.

§ 238.41 Form F-X, for appointment of agent for service of process by issuers registering securities on Forms F-7, F-8, F-9 or F-10 (§§ 238.37, 239.38, 239.39 or 239.40 of this chapter), or registering securities or filing periodic reports on Form 40-F (§ 249.240 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 on Form 40-F under the Securities Exchange Act of 1934;

(c) By any issuer filing an annual report on Form 40-F, if it has not previously filed a Form F-X in connection with the class of securities in relation to which the obligation to file a report on Form 40-F arises;

(d) By any issuer or other person filing tender offer documents on Schedules 13E-4F, 14D-1F or 14D-9F; and

(e) By any trustee for which an exemption from the requirements of section 310(a)(1) of the Trust Indenture Act of 1939 has been applied pursuant to Rule 4d-1 thereunder.

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

30. The authority citation for part 240 continues to read in part as follows:

Authority: 15 U.S.C. 78w, as amended, unless otherwise noted. * * *

31. By revising paragraph (b) to § 240.3a12-3 to read as follows:

§ 240.3a12-3 Exemptions from sections 14(a), 14(b), 14(c), 14(f) and 16 for securities of certain foreign issuers.

32. By revising paragraph (b)(1)(i) of § 240.3b-6 to read as follows:

§ 240.3b-6 Liability for certain statements by issuers.

(b) Securities registered by a foreign private issuer, as defined in Rule 3b-4 (§ 240.3b-4 of this chapter), shall be exempt from sections 14(a), 14(b), 14(c), 14(f) and 16 of the Act.

33. By revising paragraphs (a), (b) and (c)(2) and removing paragraph (c)(3) to § 240.12g-3 to read as follows:

Authority: 15 U.S.C. 78w, as amended, unless otherwise noted. * * *

40-F (§ 249.2401 of this chapter), or by any person filing tender offer documents on Schedule 13E-4F, 14D-1F or 14D-9F, to register under the Investment Company Act of 1940.

40-F (§ 249.2401 of this chapter), or by any person filing tender offer documents on Schedule 13E-4F, 14D-1F or 14D-9F, to register under the Investment Company Act of 1940.

* * *
§ 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 12g-3-2 (§ 240.12g-3-2 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 any class of equity securities of another issuer which is required to file a 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 12g-3-2 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.

(c) An issuer that is deemed to have a class of securities registered pursuant to section 12 according to either paragraph (a) or (b) of this section shall file reports on the same forms and such class of securities shall be subject to the provisions of sections 14 and 16 to the same extent as the predecessor issuer, except as follows:

(1) A foreign private issuer shall be eligible to file on Form 20-F and to use the exemption in Rule 3a12-3.

34. By revising paragraphs (b)(4), (d)(1) and (d)(2) of § 240.12g-2 to read as follows:

§ 240.12g-2 Exemptions for American depositary receipts and certain foreign securities.

(b) * * *

(4) Only one complete copy of any information or document need be furnished under paragraph (b)(1) of this section. Such information and documents need not be under cover of any prescribed form and shall not be deemed to be "filed" with the Commission or otherwise subject to the liabilities of section 18 of the Act. Press releases and all other communications or materials distributed directly to security holders of each class of securities to which the exemption relates shall be in English. English versions or adequate summaries in English may be furnished in lieu of original English translations. No other documents need be furnished unless the issuer has prepared or caused to be prepared, English translations, versions, or summaries of them. If no English translations, versions, or summaries have been prepared, a brief description in English of any such documents shall be furnished. Information or documents in a language other than English are not required to be furnished. If practicable, the Commission file number shall appear on the information furnished or in an accompanying letter. Any information or document previously sent to the Commission under cover of Form 40-F or Form 8-K need not be furnished under paragraph (b)(1) of this section.

(d) * * *

(1) Securities of a foreign private issuer that has or has had during the prior eighteen months any securities registered under section 12 of the Act or a reporting obligation (suspended or active) under section 15(d) of the Act (other than arising solely by virtue of the use of Form F-7, F-8, F-9 or F-10); (2) Securities of a foreign private issuer issued in a transaction (other than a transaction registered on Form F-8 or Form F-10) to acquire by merger, consolidation, exchange of securities or acquisition of assets, another issuer that had securities registered under section 12 of the Act or a reporting obligation (suspended or active) under section 15(d) of the Act; and

35. 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 Forms 40-F and 6-K and files reports in accordance therewith shall be deemed to satisfy the requirements of Regulation 13A (§§ 240.13a-1 through 240.13a-17 of this chapter).

36. By revising paragraph (g)(1) and the Note following paragraph (f) to § 240.13a-10 to read as follows:

§ 240.13a-10 Transition reports.

(1) Paragraphs (a) through (i) of this section shall not apply to foreign private issuers.

37. By revising paragraph (a) of § 240.13a-16 to read as follows:

§ 240.13a-16 Reports of foreign private issuers on Form 6-K (17 CFR 249.306).

(a) Every foreign private issuer which is subject to Rule 13a-1 (17 CFR 240.13a-1) shall make reports on Form 6-K, except that this rule shall not apply to:

(1) * * *

(2) Issuers of American depositary receipts for securities of any foreign issuer.

38. By adding paragraph (h) to § 240.13a-4 to read as follows:

§ 240.13a-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, is a foreign private issuer or a crown corporation, and is not registered or required to register under 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 other than U.S. affiliates of the

Note: In addition to the report or reports to be filed pursuant to this section, every issuer, except a foreign private issuer or an investment company required to file reports pursuant to Rule 30b1-1 under the Investment Company Act of 1940, that changes its fiscal closing date is required to file a report on Form 8-K responding to Item 8 thereof within the period specified in General Instruction B.1. to that form.

37. By revising paragraph (a) of § 240.13a-16 to read as follows:
[Section of the document]

I. Eligibility Requirements for Use of Schedule 13E-4F

A. Schedule 13E-4F may be used by any foreign private issuer or crown corporation if: (1) the issuer is registered or required to register under the laws of Canada or any province or territory thereof; (2) the issuer is making a cash tender or exchange offer for the issuer's own securities; and (3) 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 other than U.S. affiliates of such issuer. The calculation of U.S. record holders shall be made as of the end of the issuer's last quarter or, if such quarter terminated within 60 days of the filing date, as of the end of the issuer's preceding quarter.

Instructions

1. For purposes of this Schedule, "foreign private issuer" shall be construed in accordance with Rule 405 under the Securities Act.
2. For purposes of this Schedule, the term "crown corporation" shall mean a corporation all of whose common shares or comparable equity is owned directly or indirectly by the government of Canada or a province or territory of Canada.
3. For purposes of this Schedule, the term "U.S. resident" shall mean any person whose address appears on the records as being located in the United States.
4. For purposes of this Schedule, "held of record" shall be construed in accordance with Rule 12b-1 under the Securities Exchange Act of 1934 (the "Exchange Act").
5. For purposes of this Schedule, "affiliate" shall mean any person who beneficially owns, directly or indirectly, or exercises control or direction over, more than 10 percent of the outstanding equity shares of the issuer.
6. If this Schedule is filed during the pendency of one or more ongoing third-party or non-cash tender or exchange offers for securities of the class subject to this offer that was commenced on Schedule 14D-1F and/or Form F-8, the date for calculation of U.S. record ownership for purposes of this Schedule shall be the same as that date used by the initial bidder or issuer.
7. For purposes of this Schedule, the class of subject securities shall not include any securities that may be converted into or are exchangeable for the subject securities.
8. Any issuer using this Schedule must extend the cash tender or exchange offer to holders of the class of securities subject to the offer residing in the United States upon the same terms and conditions as it is extended to securityholders 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.
9. This Schedule shall not be used if the issuer is registered or required to register under 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 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. At the time this Schedule is filed with the Commission, the issuer shall pay to the Commission in U.S. dollars, by a U.S. postal money order, certified check, bank cashier's check or bank money order, a fee of one-fortieth 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 consideration shall be based on 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 by the issuer, 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.

[End of section]
(3) When the fee is based upon the market value of the securities, such market value shall be computed 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 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 individual 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 any number 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 registrant.

III. Compliance with the Exchange Act

A. Pursuant to Rule 13e-4(b) under the Exchange Act, the issuer shall be deemed to comply 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 cash tender offer or exchange offer for securities that may be made pursuant to this Schedule: Provided That, if a transactional exemption from the requirements of any Canadian federal, provincial or territorial law, regulation or policy relating to reporting, filing or other required disclosure is granted, the issuer shall include in this registration statement.

B. Any cash tender or exchange offer made pursuant to this Schedule is not exempt from the antifraud provisions of Section 10(b) of the Exchange Act.

C. The issuer's attention is directed to Rule 10b-6 under the Exchange Act, in the case of an issuer tender offer or issuer exchange offer, (See Note following Part III.1. 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 by the issuer in the proposed transaction pursuant to the laws, regulations or policies of the issuer's home jurisdiction in which the issuer is incorporated or organized, and any other Canadian federal, provincial and/or territorial law, regulation or policy referring to the terms and conditions of the offer. The Schedule need not include any documents incorporated by reference in connection with the terms and conditions of the offer.

(b) Any amendment made by the issuer 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 issuer have to be offered or cancelled in the transaction: (i) such securities shall be registered under the laws of the issuer's jurisdiction on the Commission's Form F-8, and (ii) the home jurisdiction procedures shall be included in this registration statement.

Item 2. Informational Legends

The following legend shall appear on the outside front cover of each home jurisdiction document(s) in bold-face roman type at least as high as ten-point modern type and at least two-points leaded:

"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. 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."

"Prospective investors should be aware that the issuer or its affiliates, directly or indirectly, may bid for or make purchases of the securities of the issuer subject to the offer, or of its related securities, during the period of the prospectus, and 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. 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 also shall be filed.

Part III—Undertaking and Consent to Service of Process

1. Undertaking

The 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 cash tender or exchange offer covered by this Schedule.

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 of the type taken at the time of purchase, on the same basis as it is required to be disclosed in Canada pursuant to Canadian federal and/or provincial or
terrestrial 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), provided that the issuer has in its possession or control the power of attorney which designates an agent for service of process, and that the power of attorney which designates an agent for service of process, and that the

certification that the information set forth in this statement is true, complete and correct.

(Name and Title) ----------------------------------------

(Signature) 

(DATE) 

40. By amending § 240.14d-1 to redesignate paragraph (b) as (c) and to add a new paragraph (b) and Notes thereto to read as follows:

§ 240.14d-1 Scope of and definitions applicable to Regulations 14D and 14E.

(b) The requirements imposed by sections 14(d)(1) through 14(d)(7) of the Act, Regulation 14D and Schedules 14D-1 and 14D-9 thereunder, and Rule 14e-1 of Regulation 14E under the Act, shall be deemed satisfied with the respect to any tender offer, including any exchange offer, for the securities of an issuer incorporated or organized under the laws of Canada or any Canadian province or territory. If such issuer is a foreign private issuer or a crown corporation and is not registered or required to register under the Investment Company Act of 1940, if less than the subject class of securities and is otherwise eligible to proceed in accordance with Rule 14e-1(b) under the Act, U.S. residents unaffiliated with the issuer will be presumed to hold of record less than 20 percent of the subject class of securities, unless (a) the aggregate trading volume of that class on any securities exchange and in any inter-dealer quotation system in the United States exceeded its aggregate trading volume on any securities exchange and in any inter-dealer quotation system in Canada over the 12-month period prior to commencement of this offer; (b) disclosure has been made in documents that were filed publicly by the issuer with Canadian federal, provincial or territorial securities regulators, or with the Commission or any state securities authority in the United States, within 18 months of the date of commencement of this offer, disclose that U.S. residents unaffiliated with the issuer held of record more than 20 percent of the subject class of securities; or (c) the offeror has actual knowledge that the level of unaffiliated U.S. record ownership of the subject class of securities exceeds 20 percent.

2. Notwithstanding the grant of an exemption from one or more of the applicable Canadian regulatory provisions, the tender offer will be eligible to proceed in accordance with the requirements of this section if the Commission by order determines that the applicable Canadian regulatory provisions are adequate to protect the interest of investors.

41. By adding § 240.14d-102 to read as follows:
§ 240.14d-102 Schedule 14D-1F. Tender offer statement pursuant to rule 14d-1(b) under the Securities Exchange Act of 1934.

U.S. Securities and Exchange Commission, Washington, DC 20549

Schedule 14D-1F

OMB Approval
OMB Number: 3235-0376

Approve: Approval Pending
Estimated average burden hours per response—2.0

Tender Offer Statement Pursuant to Rule 14d-1(b) Under the Securities Exchange Act of 1934

(Amendment No. ...)

(Name of Subject Company [Issuer])

(Translation of Subject Company’s [Issuer’s] name into English (if applicable))

(Jurisdiction of Subject Company’s [Issuer’s] Incorporation or Organization)

(Bidder)

(Title of Class of Securities)

(CUSIP Number of Class of Securities (if applicable))

(Date tender offer first published, sent or given to securityholders)

Calculation of Filing Fees
Transaction Valuation
Amount of Filing Fee *

* Set forth the amount on which the filing fee is calculated and state how it was determined. See General Instruction H.C. for rules governing the calculation of the filing fee.

General Instructions

1. Eligibility Requirements for Use of Schedule 14D-1F

A. Schedule 14D-1F may be used by any person making a cash tender or exchange offer (the “bidder”) for securities of any issuer incorporated or organized under the laws of Canada or any Canadian province or territory that is a foreign private issuer or a crown corporation, where less than 20 percent of the class of such issuer’s securities that is the subject of the offer is held of record more than 20 percent of the outstanding equity shares of the issuer. The determination of affiliates shall be made as of the end of the issuer’s most recently completed fiscal year.

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. At the time this Schedule is filed with the Commission, the bidder shall pay to the Commission in U.S. dollars, by a U.S. postal money order, certified check, bank cashier’s check or bank money order, a fee of one-fourth 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 of 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 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 bid price 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 deficit, in which case one-third of the principal amount, par value or stated value of such securities shall be used.

3. If 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 other over-the-counter securities) as of a specified date within five business days prior to the date of filing the Schedule.

D. This Schedule shall not be used to comply with the reporting requirements of section 13(d)(1) of 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 (form 14d-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. 

C. At the time this Schedule is filed with the Commission, the bidder shall pay to the Commission in U.S. dollars, by a U.S. postal money order, certified check, bank cashier’s check or bank money order, a fee of one-fourth 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 of 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 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 bid price 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 deficit, in which case one-third of the principal amount, par value or stated value of such securities shall be used.

3. If 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 other over-the-counter securities) as of a specified date within five business days prior to the date of filing the Schedule.

D. This Schedule shall not be used to comply with the reporting requirements of section 13(d)(1) of 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 (form 14d-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. 

C. At the time this Schedule is filed with the Commission, the bidder shall pay to the Commission in U.S. dollars, by a U.S. postal money order, certified check, bank cashier’s check or bank money order, a fee of one-fourth 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 of 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 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 bid price 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 deficit, in which case one-third of the principal amount, par value or stated value of such securities shall be used.

3. If 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 other over-the-counter securities) as of a specified date within five business days prior to the date of filing the Schedule.
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 into 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 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.

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-1(b) under the Exchange Act, the bidder shall be deemed to comply with the requirements of Sections 14(a)(1) through 14(a)(7) of the Exchange Act, Regulation 14D of the Exchange Act and Schedule 14D–1 thereunder, and Rule 14e–1 under Regulation 14E of the Exchange Act, in connection with a cash tender or exchange offer for securities that may be made pursuant to this Schedule; Provided That, if a transactional exemption from such requirements is applicable, the bidder (absent an Order from the Commission) shall comply with the provisions of Sections 14(a)(1) through 14(a)(7), Regulation 14D and Schedule 14D–1 thereunder, Rule 14E–1 of Regulation 14E, and any other applicable U.S. statute or rule.

B. Any cash tender or exchange 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 this Schedule shall be deemed “filed” for purposes of Section 16 of the Exchange Act.

C. Any bidder's name is signed to this Schedule 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 cash or tender offer. (See Note following Part III.1. 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 the issuer's country and/or any of its provinces or territories governing the conduct of the tender offer. It shall not include any documents incorporated by reference into such disclosure documents (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) If in an exchange offer where securities of the bidder have been or are to be offered or cancelled in the transaction, such securities shall be registered 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 leading:

“Prospective investors should be aware that 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 federal laws or provincial or territorial laws, regulations or policies, or otherwise discloses, information regarding future purchases of the issuer's securities during the cash tender or exchange offer covered by this Schedule.”

The enforcement by investors of civil liabilities under the federal securities laws may be affected adversely by the fact that the subject company is located in a foreign country, that some or all of its officers and directors are residents of a foreign country, or that the issuer's securities are subject to disclosure requirements of the United States, that may be different from those of the United States.

In the case of an exchange offer:

The bidder 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 cash tender or exchange offer covered by this Schedule.

Note: No-action position taken under Rule 10b–13 in the case of a third party or affiliate cash tender offer:

The staff of the Division of Market Regulation has taken the 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 issuer's securities subject to 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, or otherwise is disclosed.

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 for bids and purchases by the bidder of the issuer's or bidder's securities in Canada, as permitted by provincial or territorial laws, regulations or policies. 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. 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 of the issuer's or bidder's securities in Canada, as permitted by 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 in 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 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

At the time of filing this Schedule, the bidder shall 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 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.

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 purport 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.

D. 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)

42. By adding § 240.14d-103 to read as follows:

§ 240.14d-103 Schedule 14d-9F—Solicitation/recommendation statement pursuant to rules 14d-1(b) and 14e-2(c) under the Securities Exchange Act of 1934.


O.M.B. Number: 3235-0382

Expires: Approval Pending

42. By adding § 240.14d-103 to read as follows:

A. Solicitation/recommendation statement pursuant to rules 14d-1(b) and 14e-2(c) under the Securities Exchange Act of 1934.

B. The manually signed original of the Solicitation/recommendation statement 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.

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.

B. Any change to the name or address of a registrant's agent for service shall be communicated promptly in writing to the 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.

C. Any change to the name or address of a registrant's agent for service shall be communicated promptly in writing to the 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.

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 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.

E. Any change to the name or address of a registrant's agent for service shall be communicated promptly in writing to the registrant.
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 the subject of a cash tender or exchange offer filed on Schedule 14d-1, and may be filed by any director or officer of such issuer.

B. Any recommendation with respect to a cash tender or exchange 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 this Schedule 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 furnished 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 shall be 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 leading:

“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 the 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 convenient reference.

(1) File a copy of any document that, in accordance with the requirements of the home jurisdiction(s), must be made publicly 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 shall also 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

At the time of filing this Schedule, the person(s) so filing shall 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:

(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 have been joined as defendant or respondent, in any appropriate court in 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 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 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 typed 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-8F 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.

(Signature)

(Name and Title)

(Date)

43. By adding paragraph (c) to § 240.14a-2 to read as follows:

§ 240.14a-2 Position of 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-9F the entire disclosure document(s) required to be furnished to holders of securities of the subject issuer by the laws, regulations and policies of Canada and/or any of its provinces or territories governing the conduct of the tender offer, and shall disseminate such document(s) in accordance with such laws, regulations and policies.

44. By adding § 240.15d-4 to read as follows:
§ 240.15d-4 Reporting by Form 40-F Registrants.

A registrant that is eligible to use Forms 40-F and 6-K and files reports in accordance therewith shall be deemed to satisfy the requirements of Regulation 15d (§§ 240.15d-1 through 240.15d-21 of this section).

§ 240.15d-5 Reporting by successor issuers.

(b) An issuer that is deemed to be a successor issuer according to paragraph (a) of this section shall file reports on the same forms as the predecessor issuer except as follows:

(1) An issuer that is not a foreign issuer shall not be eligible to file on Form 20-F (§ 240.220f of this chapter).

(2) A foreign private issuer shall be eligible to file on Form 20-F.

(c) The provisions of paragraph (a) of this section shall not apply to an issuer of securities in connection with a succession that was registered on Form F-8 (§ 239.38 of this chapter) or Form F-10 (§ 239.40 of this chapter).

§ 240.15d-10 Transition reports.

(g) (1) Paragraphs (a) through (f) of this section shall not apply to foreign private issuers.

(2) Issuers of American depositary receipts for securities of any foreign issuer.

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

48. The authority citation for Part 249 continues to read in part as follows:


49. By revising paragraph (a), removing existing paragraph (b), redesignating existing paragraphs (c) as (b) and (d) as (c) of § 249.220f; and revising General Instruction A(a), removing existing General Instruction A(b), redesignating existing General Instructions A(c) as A(b) and A(d) as A(c) to Form 20-F to read as follows:

§ 249.220f Form 20-F, registration of securities of foreign private issuers pursuant to section 12(b) or (g) and annual and transition reports pursuant to sections 13 and 15(d).

(a) Any foreign private issuer may use this form as a registration statement under section 12 of the Securities Exchange Act of 1934 (the "Exchange Act") or as an annual or transition report filed under Section 13(a) or 15(d) of the Exchange Act.

(b) An annual report on this form shall be filed within six months after the end of the fiscal year covered by such report.

(c) A transition report on this form shall be filed in accordance with the requirements set forth in § 249.13a-10 or § 240.15d-10 applicable when the issuer changes its fiscal year end.

Note: The Forms do not appear in the Code of Federal Regulations.

Form 20-F

General Instructions

A. Rule as to Use of Form 20-F

(a) Any foreign private issuer may use this form as a registration statement under section 12 of the Securities Exchange Act of 1934 (the "Exchange Act") or as an annual or transition report filed under section 13(a) or 15(d) of the Exchange Act.

(b) An annual report on this form shall be filed within six months after the end of the fiscal year covered by such report.

(c) A transition report on this form shall be filed in accordance with the requirements set forth in § 240.13a-10 or § 240.15d-10 applicable when the issuer changes its fiscal year end.

50. By adding § 249.240f and 249.250 to read as follows:

Note: See appendix of this release for text of Forms. The Forms do not appear in the Code of Federal Regulations.

§ 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 (§ 240.15d-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 their having filed a registration statement on Form F-7, F-8, F-10 or F-10 under the Securities Act of 1933 (the "Securities Act").

(b) Form 40-F may be used to register securities with the Commission pursuant to section 12(b) or 12(g) of the Exchange Act, 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, and to file reports with the Commission pursuant to section 15(d) of the Exchange Act if:

(1) The registrant is incorporated or organized under the laws of Canada or any Canadian province or territory;

(2) The registrant is a foreign private issuer or a crown corporation;

(3) The registrant 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 this Form and is currently in compliance with such obligations;

(4) The market value of the outstanding equity shares of the registrant is:

(i) [CN] $180 million or more if a report or registration statement filed on this Form relates to convertible securities of a Form F-9-eligible issuer that would be eligible for registration under the Securities Act on Form F-9, or

(ii) [CN] $350 million or more if the case of all other reporting requirements: Provided, however, That no market value threshold need be satisfied in connection with non-convertible securities eligible for registration on Form F-9;

(5) The aggregate market value of the public float of such equity shares is (CN) $75 million or more: Provided, however, That no market value threshold need be satisfied in connection with non-convertible securities eligible for registration on Form F-9.

Instructions

1. For purposes of this Form, "foreign private issuer" shall be construed in accordance with Rule 405 under the Securities Act.
2. For purposes of this Form, the term "crown corporation" shall mean a corporation all of whose common shares or comparable equity is owned directly or indirectly by the government of Canada or a province or territory of Canada.

3. For purposes of this Form, the "public float" of specified securities shall mean only such securities held by persons other than affiliates of the issuer.

4. For the purposes of this Form, "affiliate" shall mean any person who beneficially owns directly or indirectly, or exercises control or direction over, more than 10 percent of the outstanding equity shares of the registrant. The determination of affiliates shall be made as of the end of the registrant's most recent completed fiscal year.

5. For purposes of this Form, "equity shares" shall mean common shares, non-voting equity shares and subordinate or restricted voting equity shares, but shall not include preferred shares.

6. For purposes of this Form, the market value of the registrant's outstanding equity shares (whether or not held by affiliates) shall be computed by use of the price at which the shares were last sold, or the average of the bid and asked prices of such shares, in the principal market for such shares as of a date within 60 days prior to the date of filing.

7. If the registrant is a successor registrant subsisting after a business combination, it shall be deemed to meet the requirements of paragraph (b)(3) of this section if:

   (1) The time the successor registrant has been subject to the continuous disclosure requirements of any securities commission or equivalent regulatory authority in Canada, when added separately to the time each predecessor had been subject to such requirements at the time of the business combination, in each case equals at least 36 calendar months, Provided, however, That the reporting history of the successor registrant and any predecessor whose assets and income, respectively, would contribute less than 20 percent of the total assets and income from continuing operations before income taxes, extraordinary items and cumulative effect of a change in accounting principles of the successor registrant, as measured based on pro forma combination of the participating companies' most recently completed fiscal years immediately prior to the business combination, need not be combined for purposes of satisfying such 36-month reporting requirement; and

   (2) The successor registrant has been subject to such continuous disclosure requirements since the business combination, and is currently in compliance with its obligations thereunder.

(d) This Form shall not be used if the registrant is registered or required to register under the Investment Company Act of 1940.

(e) An annual report on this Form or any amendment thereto shall be filed on the same day the information included herein is due to be filed with the securities commission or equivalent regulatory authority of the jurisdiction of incorporation of the registrant.

(f) Registrants registering securities on this Form and registrants filing annual reports on this Form who have not previously filed a Form F-X (§ 249.250 of this chapter) in connection with the class of securities in relation to which the obligation to file this report arises, shall file a Form F-X with the Commission together with this Form.

(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.

§ 249.250 Form F-X, for appointment of agent for service of process by 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 registrants filing periodic reports on Form 40-F (§ 249.241 of this chapter), or any person filing tender offer documents on Schedule 13e-4, 14d-1 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 on Form 40-F under the Securities Exchange Act of 1934;

(c) By an issuer filing an annual report on Form 40-F if it has not previously filed a Form F-X in connection with the class of securities in relation to which the obligation to file a report on Form 40-F arises;

(d) By an issuer or other person filing tender offer documents on Schedules 13e-4, 14d-1 or 14d-9F; and

(e) By any trustee for which an exemption from the requirements of Section 310(a)(1) of the Trust Indenture Act of 1939 has been applied pursuant to Rule 4d-1 thereunder.

51. By revising General Instructions A and B and revising the cover page of Form 6-K to read as follows:

Note: The Forms do not appear in the Code of Federal Regulations.

Form 6-K—Report of Foreign Private Issuer Pursuant to Rule 13a-16 or 15d-16 Under the Securities Exchange Act of 1934

General Instructions

A. Rule as to Use of Form 6-K

This form shall be used by foreign private issuers which are required to furnish reports pursuant to Rule 13a-16 or 15d-16 under the Securities Exchange Act of 1934.

B. Information and Document Required to be Furnished

Subject to General Instruction D herein, an issuer furnishing a report on this form shall furnish whatever information, not required to be furnished on Form 40-F or previously furnished, such issuer (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, or (ii) files or is required to file with a stock exchange on which its securities are traded and which was made public by that exchange, or (iii) distributes or is required to distribute to its securityholders.

The information required to be furnished pursuant to (i), (ii) or (iii) above is that which is material with respect to the issuer and its subsidiaries concerning; changes in business; changes in management or control; acquisitions or dispositions of assets; bankruptcy or receivership; changes in registrant's certifying accountants; the financial condition and results of operations; material legal proceedings; changes in securities or in the security for registered securities; defaults upon senior securities; material increases or decreases in the amount outstanding of securities or indebtedness; the results of the submission of matters to a vote of securityholders; transactions with directors, officers or principal securityholders; the granting of options or payment of other compensation to directors or officers; and any other information which the registrant deems of material importance to securityholders.

This report is required to be furnished promptly after the material contained in the report is made public as described above. The information and documents furnished in this report shall not be deemed to be "filed" for the purposes of Section 16 of the Act or otherwise subject to the liabilities of that section.

If a report furnished on this form incorporates by reference any information not previously filed with the Commission, such information must be attached as an exhibit and furnished with the form.

Form 6-K—Report of Foreign Private Issuer Pursuant to Rule 13a-16 or 15d-16 of the Securities Exchange Act of 1934

For the month of

(Translation of Registrant's name into English)

(Address of principal executive office)

[Indicate by check mark whether the registrant files or will file annual reports under cover Form 20-F or Form 40-F.

Form 20-F Form 40-F

[Indicate by check mark whether the registrant by filing the information contained
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in this Form is also thereby furnishing the information to the Commission pursuant to Rule 12g3-2(b) under the Securities Exchange Act of 1934.

Yes ___
No ___

[If "Yes" is marked, indicate below the file number assigned to the registrant in connection with Rule 12g3-2(b): 82—___]

Signature

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

[Registrant]
By ______________________________________[
(Signature)*
Date

*Print the name and title under the signature of the signing officer.

PART 260—GENERAL RULES AND REGULATIONS, TRUST INDENTURE ACT OF 1939

52. The authority citation for part 260 continues to read in part as follows:


53. By revising paragraph (b)(1)(i) of § 260.0-11 to read as follows:

§ 260.0-11 Liability for certain statements by issuers.
   * * * * *
   (b) * * *
   (f) * * *
   (i) At the time such statements are made or reaffirmed, either the issuer is subject to the reporting requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934 and has complied with the requirements of Rule 13a-1 or 15d-1 thereunder, if applicable, to file its most recent annual report on Form 10-K or Form 20-F or Form 40-F; or if the issuer is not subject to the reporting requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934, the statements are made in a registration statement filed under the Securities Act of 1933 or pursuant to section 12(b) or (g) of the Securities Exchange Act of 1934, and

54. By adding § 260.4d-1 to read as follows:

§ 260.4d-1 Application for exemption from section 310(a)(1).

An application for an exemption from the requirements of section 310(a)(1) of the Act may be filed pursuant to section 304(d) 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 securities that the applicant reasonably expects to issue within two years from the date of application; and

(c) Securities that have been or will be issued under an indenture that (1) has been or will be qualified under the Act, and

(2) 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, (ii) is authorized under such laws to exercise corporate trust powers, and (iii) is subject to supervision or examination by governmental authority.

55. 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 of 1933 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.

56. By adding § 260.4d-3 to read as follows:

§ 260.4d-3 General requirements as to form and content of applications.

Rule 4c-3 (§ 260.4c-3 of this chapter) and Rules 7a-15 through 7a-37 (§§ 260.7a-15 through 7a-37 of this chapter) shall be applicable to applications on Form T-5.

57. By adding § 260.4d-4 to read as follows:

§ 260.4d-4 Notice of application under Rule 4d-1.

(a) If an applicant under Rule 4d-1 (§ 260.4d-1 of this chapter) 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 cause to be published in a daily newspaper of general circulation notice of such application. 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 published 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 asserted matters of fact and law.

(b) The requirement of notice under paragraph (a) of this section shall not apply to an application relating to an indenture under which the outstanding securities are issued in a series distinct from the series to which the application relates. For the purpose of this rule, "series" shall mean a series, class or group of securities issuable under an indenture pursuant to whose terms holders of one such series may vote to direct the indenture trustee, or otherwise take action pursuant to a vote of such holders, separately from holders of another series.

58. 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 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. The Commission may order a hearing notwithstanding that the applicant shall have filed such a waiver and request whenever, in the judgment of the Commission, such a hearing is necessary or appropriate in the public interest.

(b) At the request of the Commission, the applicant shall 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.

59. By adding § 260.4d-6 to read as follows:

§ 260.4d-6 Granting of applications; Appeal to court.

(a) The Commission may grant an application after considering all the information and documents comprising the record, including any appeal to a court. The Commission may, within 30 days after the date of grant of an application, request any interested person to submit additional information or documents as the Commission deems necessary in connection with such application.

(b) Any interested person desiring an appeal may submit a written request for a hearing to the Commission, and the Commission shall, after consideration of all relevant information, rules and regulations, grant a hearing whenever, in the judgment of the Commission, such a hearing is necessary or appropriate in the public interest.
§ 260.4d-6 Consent of trustee to service of process.

At the time of filing an application pursuant to § 260.4d-1, the applicant shall furnish to the Commission in a form prescribed by or acceptable to it, a written irrevocable consent of the trustee and power of attorney that 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 sales 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 said 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

60. The authority cited for part 269 continues to read as follows:

61. By redesignating existing §§ 269.5, 269.6 and 269.7 as 269.6, 269.7 and 269.8; and adding a new § 269.9 to read as follows:

Note: See appendix of this release for text of proposed Forms. The Forms do not appear in the Code of Federal Regulations.

§ 269.5 Form T-5, for application for exemption pursuant to Rule 4d-1 under the Act.

This Form shall be used for applications for exemptions filed pursuant to Rule 4d-1 under the Trust Indenture Act of 1939, except those filed pursuant to subparagraph (b) of Rule 4d-2 under the Trust Indenture Act of 1939.

By the Commission.
Margaret H. McFarland,
Deputy Secretary.


Form F-7

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 statement.

The Registrant hereby amends this registration statement on such date or dates as may be necessary to delay its effective date until the registration statement shall become effective as provided in Rule 407 under the Securities Act of 1933 or on such date as the Commission, acting pursuant to Section 8(a) of the Act, may determine.

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 the Registrant's securities offered for cash upon the exercise of rights granted to its existing securityholders.

B. Form F-7 is available to any Registrant that:

[1] is incorporated or organized under the laws of Canada or any Canadian province or territory;

[2] is a foreign private issuer or a crown corporation; and

[3] has had a class of its securities listed on The Montreal Exchange or The Toronto Stock Exchange for 36 calendar months immediately preceding the filing of a registration statement on this Form, and currently is in compliance with the obligations arising from such listing.

Instructions

1. For purposes of this Form, "foreign private issuer" shall be construed in accordance with Rule 405 under the Securities Act.

2. For purposes of this Form, the term "crown corporation" shall mean a corporation all of whose commercial shares or comparable equity is owned directly or indirectly by the government of Canada or a province or territory of Canada.

3. If the Registrant is a successor registrant subsisting after a statutory amalgamation, merger, arrangement or other reorganization requiring the vote of shareholders of the participating companies (a "business combination"), the Registrant shall be deemed to meet the requirements of I.B.(3) above if: (1) the time the successor registrant has been listed on one of such exchanges, when added separately to the time each predecessor had been so listed at the time of the business combination, in each case equals at least 36 calendar months, provided however, that the listing history of the successor registrant and any predecessor whose assets and income, respectively, would contribute less than 20 percent of the total assets and income from continuing operations before income taxes, extraordinary items and cumulative effect of a change in accounting principles of the successor registrant, as measured based on pro forma combination of the participating companies' most recently completed fiscal years immediately prior to the business
combination, need not be combined for purposes of satisfying such 36-month listing requirement; and (2) the successor registrant need not be combined for purposes of satisfying such 36-month listing requirement. The successor registrant, when required to be located in the United States, shall be deemed to be located in the United States if the successor registrant is a U.S. resident.

C. 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 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 amendments thereto, similarly bound, also shall be filed. No exhibits are required to accompany such additional copies.

D. At least one copy of every registration statement and any post-effective amendments thereto shall be signed manually by the persons specified herein. Unsigned copies shall be conformed.

E. In accordance with Rule 111 under the Securities Act, the registration statement, the Registrant shall pay to the Commission in U.S. dollars a fee of one-fortieth of one cent per share of the maximum aggregate price at which such securities are registered in this statement, if not made contemporaneously in Canada, may be made pursuant to the home jurisdiction's shelf procedures or procedures for pricing offerings after the final receipt has been issued, three copies of each supplement to, or supplemented version of, the home jurisdiction disclosure document(s) prepared under such procedures shall be filed with the Commission with one business day after such supplement or supplemented version is filed with any Canadian jurisdiction. Such filings shall be deemed not to constitute amendments to this registration statement. Each such filing shall contain in the upper right corner of the cover page the following legend, which may be set forth in longhand if legible: "Filed pursuant to General Instruction I.II. of Form F-7; File No. 33-[insert number of the registration statement]."

Note: Offerings registered on this Form, whether or not made contemporaneously in Canada, may be made pursuant to National Policy Statement 1-3500 and procedures for pricing offerings after the final receipt has been issued. Rules 415 and 430A under the Securities Act are not available for offerings registered on this Form.

III. Compliance with Exchange Act, Trust Indenture Act and Auditor Independence and Reporting Requirements

A. Pursuant to Rule 15d-4 under the Securities Exchange Act of 1934 (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, a reporting statement that contains certain home jurisdiction documents. The 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, 10b-7 and 10b-4 under the Exchange Act.

B. Pursuant to Rule 40-2(b) under the Trust Indenture Act of 1939 (the "Trust Indenture Act"), a Registrant registering such securities on this Form may apply for exemption from the U.S. trustee provisions of Section 310(b)
shall contain additional information and include any documents incorporated by reference thereto in accordance with the requirements of such jurisdiction as prepared in accordance with the disclosure requirements of the jurisdiction in which the Registrant is incorporated or organized and any other applicable Canadian, provincial or territorial securities legislation (except to the extent such rights are available to U.S. offerees or purchasers). (v) certificates of the issuer or any underwriter.

Item 2. Informational Legends

The following legends, to the extent applicable, shall appear on the outside front cover page of the prospectus (or on a sticker thereeto) in bold-face roman type at least as high as ten-point modern type and at least two points heavier:

"This offering is made by a foreign issuer, that is permitted, under a multijurisdictional disclosure system adopted by the United States, to prepare this prospectus in accordance with the disclosure requirements of its home country. Prospective investors should be aware that such requirements are different from those of the United States. Financial statements included or incorporated 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 home 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 incorporated or organized under the laws of a foreign country, that some or all of its officers and directors may be residents of a foreign country, that some or all of the experts named in the registration statement may be residents of a foreign country, and that all or a substantial portion of the assets of the Registrant and said persons may be located outside the United States."

"These securities have not been approved or disapproved by the securities and exchange commission nor has the commission passed upon the accuracy or adequacy of this prospectus: Any representation to the contrary is a criminal offense."

Any prospectus to be used before the effective date of the registration statement shall contain, on the outside front cover page (or on a sticker thereeto) the following statement printed in red ink in type as large as that generally used in the body of the prospectus:

"Information contained herein is subject to completion or amendment. A registration statement relating to these securities has been filed with the Securities and Exchange Commission. These securities may not be sold nor may offers to buy be accepted prior to the time the registration statement becomes effective. This prospectus shall not constitute an offer to sell or the solicitation of an offer to buy nor shall there be any sale of these securities in any State in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of any such State."

The Registrant should also include in the prospectus any legend or information required by the laws of any jurisdiction in which the securities are to be offered.

Item 3. List of Documents Filed with the Commission

There shall be set forth in or 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

Provide a brief description of the indemnification provisions relating to directors, officers and controlling persons of the Registrant against liability arising under the Securities Act (including any provision of the underwriting agreement which relates to indemnification of the underwriter or its controlling persons by the Registrant against such liabilities where a director, officer or controlling person of the Registrant is such an underwriter or controlling person thereof or a member of any firm which is such an underwriter), together with a statement in substantially the following form:

"Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers or persons controlling the Registrant pursuant to the foregoing provisions, the Registrant has been informed in the opinion of the U.S. Securities and Exchange Commission such indemnification is against public policy as expressed in the Act and is therefore unenforceable. The exhibits specified below shall be filed as part of the registration statement. Exhibits shall be appropriately lettered or numbered for convenient reference.

(1) 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) 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
2. Consent to Service of Process

(a) At the time of filing Form F-7, the Registrant shall 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 connection with:

(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 or of the District of Columbia or Puerto Rico,

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 or in connection with the securities registered on 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 before or during the time and place of process served, 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 as valid and binding as if due personal service thereof had been made.

(b) At the time of filing Form F-7, any trustee for which an exemption pursuant to Rule 4d-1 under the Trust Indenture Act is being applied by virtue of filing this Form shall 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 connection with:

(1) any investigation or administrative proceeding conducted by the Commission; and

(2) 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 of the United States, of the District of Columbia or Puerto Rico,

where the investigation, proceeding or cause of action arises out of or relates to or concerns the securities in connection with which the trustee acts as trustee pursuant to an exemption under Rule 4d-1 under the Trust Indenture Act 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.

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 or 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-7 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 or of the District of Columbia or Puerto Rico by service of said subpoena or process upon the Registrant’s designated agent.

U.S. Securities and Exchange Commission.
Washington, D.C. 20549
Form F-8

OMB Approval
OMB Number: 3235-0378
Expires: Approval Pending Estimated average burden hours per response—2.0

Registration Statement Under the Securities Act of 1933

(exact name of Registrant as specified in its charter)

(Translation of Registrant’s name into English (if applicable))

(Province or other jurisdiction of incorporation or organization)

(Primary Standard Industrial Classification Code Number (if applicable))
Federal Register / Vol. 55, No. 213 / Friday, November 2, 1990 / Proposed Rules

46333

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 or in connection with a statutory amalgamation, merger, arrangement or other reorganization requiring the vote of shareholders of the participating companies (a "business combination"). Securities may be registered on this Form whether they constitute the sole consideration for such exchange offer or business combination, or are offered in conjunction with cash.

B. This Form shall not be used if the Registrant is registered or required to register under the Investment Company Act of 1940.

C. 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.

If, however, an amendment to the home jurisdiction document(s) is filed after effectiveness of this registration statement that increases the number of securities that may be sold, 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: "Pursuant to Rule 429 under the Securities Act, the prospectus contained in this registration statement relates to registration statement[s] 33-[insert file numbers of previous registration statements]."

II. Eligibility Requirements for Exchange Offers

A. In the case of an exchange offer, Form F-8 is available to any Registrant that:

(1) is incorporated or organized under the laws of Canada or any Canadian province or territory;

(2) is a foreign private issuer or a crown corporation;

(3) has had a class of its securities listed on The Montreal Exchange or The Toronto Stock Exchange for the 36 calendar months immediately preceding the filing of the registration statement on this Form, and currently is in compliance with the obligations arising from such listing; and

(4) has an aggregate market value of the public float of its outstanding equity shares of (CN) $75 million or more.

Instructions

1. For purposes of this Form, the "foreign private issuer" shall be construed in accordance with Rule 402 under the Securities Act.

2. For purposes of this Form, the term "crown corporation" shall mean a corporation all of whose common shares or comparable equity is owned directly or indirectly by the government of Canada or a province or territory of Canada.

3. For purposes of this Form, "equity shares" shall mean common shares, non-voting equity shares and subordinate or restricted voting equity shares, but shall not include preferred shares.

4. For purposes of this Form, the "public float" of specified securities shall mean only such securities held by persons other than affiliates of the issuer.

5. For purposes of this Form, "affiliates" shall mean any person who beneficially owns, directly or indirectly, or exercises control or direction over more than 10 percent of the outstanding equity shares of the Registrant. The determination of affiliates shall be made as of the end of the Registrant's most recent completed fiscal year.

6. For purposes of this Form, the market value of the public float of the Registrant's outstanding equity shares shall be computed by use of the price at which such shares were last sold, or the average of the bid and asked prices of such shares, in the principal market for such shares as of a date within 60 days prior to the date of filing.

B. In the case of an exchange offer, 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.

C. In the case of an exchange offer, if the Registrant is a successor registrant subsisting after a business combination, it shall be deemed to meet the requirements of [A.(3) above if: (1) the time the successor registrant has had a class of its securities listed on The Montreal Exchange or The Toronto Stock Exchange, when added separately to the time each predecessor had been so listed at the time of the business combination, in each case equals at least 30 calendar months, provided, however, that the listing history of the successor registrant and any predecessor whose assets and income, respectively, would contribute less than 20 percent of the total assets and income from continuing operations before income taxes, extraordinary items and cumulative effect of a change in accounting principles, of the registrant registrant, as measured based on pro forma combination of the participating companies' most recently completed fiscal years immediately prior to the business combination, need not be combined for purposes of satisfying such 36-month listing requirement; and (2) the successor registrant has had a class of its securities listed on at least one of such exchanges since the business combination, and is currently in compliance with the obligations arising from such listing.

D. In the case of an exchange offer, 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 be a foreign private issuer or a crown corporation, and less than 20 percent of the class of subject securities shall be held of record by U.S. residents other than U.S. affiliates of the issuer.

Instructions

1. For purposes of this Form, the term "U.S. resident" shall mean any persons whose address appears on the records as being located in the United States. With respect to any unsolicited tender offer, including any exchange offer, otherwise eligible to proceed in accordance with Rule 14d-1(b) under the Securities Exchange Act of 1934 (the "Exchange Act"), U.S. residents unaffiliated with the issuer will be presumed to hold of record less than 20 percent of the subject class of securities, unless (a) the aggregate trading volume of that class on any securities exchange and in any inter-dealer quotation system in the United States is less than 5 percent of the aggregate trading volume on any securities exchange and in any inter-dealer quotation system in Canada over the 12-month period prior to the date of filing 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 statement.

The Registrant hereby amends this registration statement on such date or dates as may be necessary to delay its effective date until the registration statement shall become effective as provided in Rule 467 under the Securities Act of 1933 or on such date as the Commission, acting pursuant to Section 8(a) of the Act, may determine.

General Instructions

I. General Eligibility Requirements for Use of Form F-8

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 or in connection with a statutory amalgamation, merger, arrangement or other reorganization requiring the vote of shareholders of the participating companies (a "business combination"). Securities may be registered on this Form whether they constitute the sole consideration for such exchange offer or business combination, or are offered in conjunction with cash.

B. This Form shall not be used if the Registrant is registered or required to register under the Investment Company Act of 1940.

C. 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
securities regulators, or with the Commission or any state securities authority in the United States, within 18 months of the date of commencement. (b) The 20 percent held of record requirement shall not apply if the issuer held of record more that 20 percent of the subject class of securities; or (c) the offeror has actual knowledge that the level of unaffiliated U.S. record ownership of the subject class of securities exceeds 20 percent.

2. If this Form is filed during the pendency of one or more ongoing third-party or issuer cash tender or exchange offers for securities of the class subject to the offer that commenced on Schedule 13E-4F, Schedule 14D-1F, and/or Form F-4, the date for calculation of U.S. record ownership for purposes of this Form shall be the same as that date used by the initial bidder or issuer.

3. For purposes of this Form, “held of record” shall be construed in accordance with Rule 12g5-1 under the Exchange Act.

4. For purposes of this Form, the class of subject securities shall not include any securities that may be converted into or are exchangeable for the subject securities.

5. For purposes of exchange offers, the calculation of U.S. record holders shall be made as of the end of the subject issuer’s last quarter or, if such quarter terminated within 60 days of the filing date, as of the end of such issuer’s preceding quarter.

III. Eligibility Requirements for Business Combinations

A. In the case of a business combination, Form F-8 is available if:

1. each company participating in the business combination, including the Registrant, is incorporated or organized under the laws of Canada or any Canadian province or territory and is a foreign private issuer or a crown corporation;

2. each company participating in the business combination has had a class of its securities listed on The Montreal Exchange or The Toronto Stock Exchange for the 36 calendar months immediately preceding the filing of this Form and is a going concern;

3. the securities to be registered on this Form must be registered under which they are made, not misleading, 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, shall apply to filings on this Form.

B. Rule 408 under the Securities Act, 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, shall apply to filings on this Form.

C. 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 that 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. Three copies of the complete registration statement and any amendments thereto, similarity of the registration statement and any amendments thereto, similarity of the registration statement and any amendments thereto, shall also be filed. No exhibits are required to accompany such additional copies.

D. At least one copy of every registration statement and any post-effective amendment thereto shall be signed manually by the person(s) specified therein. Unsigned copies shall be conformed.

E. In accordance with Rule 111 under the Securities Act, the time of filing this registration statement, the Registrant shall pay to the Commission in U.S. dollars a fee of one-twentieth 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 amount of securities to be registered on this Form need not exceed the amount to be offered in the United States as part of the offering.

F. In the case of an exchange offer, the registration fee is to be calculated as follows:

1. Upon the basis of the market value of the securities that may be received by the Registrant or cancelled in the exchange offer from United States residents as established by the price of securities of the same class as determined in accordance with paragraph (4) of this section.

2. If there is no market for the securities to be received by the Registrant or cancelled in the exchange offer from United States residents or if the market 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 or receivership or has an accumulated 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 from United States residents in connection with the exchange offer, the amount thereof shall be added to the value of the securities to be received by the Registrant or cancelled as computed in accordance with paragraph (1) or (2) of this section. If any cash is to be paid by the Registrant in connection with the exchange offer, the amount thereof shall be deducted from the value of the securities to be received by the Registrant in 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 90 days prior to the date of filing.

G. In the case of a business combination, the registration fee is to be calculated as follows:

1. Upon the basis of the market value of the equity securities of the predecessor companies held by United States residents being offered the Registrant’s securities, as established by the price of the predecessors’ equity securities computed in accordance with paragraph (4) of this section.

2. If there is no market for the securities of the predecessor companies, 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 or receivership or has an accumulated deficit.
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 is to be paid by the Registrant in connection with the business combination, the amount thereof shall be added to the value of the securities as computed in accordance with paragraph (1) or (2) of this section.

IV. Compliance with Exchange Act, Trust Indenture Act and Auditor Independence and Reporting Requirements

A. Pursuant to Rule 13e-4(b) under the Exchange Act, the provisions of Rule 13e-4 are not applicable to a registration statement under Rule 14e-1 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, or Rules 14d-4 or 14e-1 therein, and Rule 14a-1 under Regulation 14A, are not applicable to a transaction involving offerings of securities that may be registered on this Form in connection with exchange acts, or to any exhibition of 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 a transaction otherwise is subject to those sections.

B. Pursuant to Rule 15d-4 under the Exchange Act, reporting obligations under Section 16(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, certain home jurisdiction documents. 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-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.]

C. 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 (7) of Part II hereof. 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. The Registrant's attention is directed to other provisions of the Trust Indenture Act that may be applicable.

D. The Commission's rules on auditor independence, as codified in Section 600 of the Codification of Financial Reporting Policies, apply to auditor reports on all financial statements that are included in this registration statement, except that such rules do not apply with respect to periods prior to the most recent fiscal year for which financial statements are not included in the registration statement under the Securities Act filed by the issuer on Form F-7, Form F-8, Form F-9 or Form F-10 or under the Exchange Act filed by the issuer on Form 40-F. Notwithstanding the exception in the previous sentence, such rules do apply with respect to any periods prior to the most recent fiscal year if the issuer previously was required to file with the Commission a report, or registration statement containing an audit report on financial statements for such prior periods as to which the Commission's rules on auditor independence applied.

E. Independent accountants reporting on financial statements included in the registration statement shall consider Canadian auditing guidelines pertaining to Form 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 hereof. In addition, the accountant's consent specifically should refer to any additional comments provided for U.S. readers.

Part I-Information Required to be Delivered to Offerees or Purchasers

Item 1. Home Jurisdiction Document

In the case of an exchange offer, 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 including, where applicable, the rules of any stock exchange in such jurisdiction upon which the Registrant has any class of securities listed, or has applied for such listing. Except as noted hereinafter, such disclosure document(s) shall be prepared in accordance with the disclosure requirements of such jurisdiction as interpreted and applied by the securities commission or other regulatory authority in such jurisdiction.

In the case of a business combination, the prospectus shall consist of the entire disclosure document or documents required to be delivered to holders of securities whose votes are being solicited in connection with the proposed business combination. The information specified by Item (7) of Part II hereof, 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. The Registrant's attention is directed to other provisions of the Trust Indenture Act that may be applicable.

Note: Offerings registered on this Form, whether or not made contemporaneously in Canada, may, referencing the filing number of the relevant registration statement. Each such filing shall contain in the upper right corner of the cover page the following legend, which may be set forth in long form if legible: "Filed pursuant to General Instruction IV.K. of Form F-8. File No. 33--[insert number of the registration statement]."

In the Canada-U.S. reporting conflict with respect to contingencies and going concern considerations.
Notwithstanding the foregoing, the prospectus used in the United States need not contain any disclosure applicable solely to Canadian offerees or purchasers and that would not be material to offerees or purchasers in the United States, including, without limitation (i) any Canadian "red herring" legend; (ii) any discussion of Canadian tax considerations (other than those material to U.S. offerees or purchasers; (iii) the names of any Canadian underwriters not acting as underwriters in the United States or a description of the Canadian plan of distribution (except to the extent necessary to describe the material facts of the U.S. plan of distribution); (iv) any description of offerees' or purchasers' statutory rights under applicable Canadian, provincial or territorial securities legislation (except to the extent such rights are available to U.S. offerees or purchasers); or (v) certificates of the issuer or any underwriter.

Item 2. Informational Legends

The following legend, to the extent applicable, shall appear on the outside front cover of the prospectus (or on a sticker thereto) in bold-face roman type at least as high as ten-point modem type and at least two points leaded:

"This offering is made by a foreign issuer that is permitted, under a multijurisdictional disclosure system adopted by the United States, to prepare this prospectus in accordance with the disclosure requirements of its home country. Prospective investors should be aware that acquisition of the securities described herein may have tax consequences both in the United States and in the home 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 incorporated or organized under the laws of a foreign country, that some or all of its officers and directors may be residents of a foreign country, that some or all of the underwriters or experts named in the registration statement may be residents of a foreign country, and that all or a substantial portion of the assets of the Registrant and said persons may be located outside the United States."

"These securities have not been approved or disapproved by the Securities and Exchange Commission nor has the Commission passed upon the accuracy or adequacy of this prospectus. Any representation to the contrary is a criminal offense."

The following legend shall appear in the manner noted above in any prospectus relating to an exchange offer:

"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."

Any prospectus to be used before the effective date of the registration statement shall contain, on the outside front cover page (or on a sticker thereto) the following statement printed in red ink in type as large as that generally used in the body of the prospectus:

"Information contained herein is subject to completion or amendment. A registration statement relating to these securities has been filed with the Securities and Exchange Commission. These securities may not be sold nor may offers to buy accepted prior to the time the registration statement becomes effective. This prospectus shall not constitute an offer to sell or the solicitation of an offer to buy nor shall there be any sale of these securities in any State in which such offer, solicitation or sale would be unlawful prior to registration under the securities laws of any such State."

The Registrant should also include in the prospectus any legend or information required by the laws of any jurisdiction in which the securities are to be offered.

Item 3. List of Documents Filed with the Commission

There shall be set forth in or 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 Delivered to Offerees or Purchasers

Provide a brief description of the indemnification provisions relating to directors, officers and controlling persons of the Registrant against liability arising under the Securities Act (including any provision of the underwriting agreement which relates to indemnification of the underwriter or its controlling persons by the Registrant against such liabilities where a director, officer or controlling person of the Registrant is such an underwriter or controlling person thereof or a member of any firm which is such an underwriter), together with a statement in substantially the following form:

"Insofar as indemnification for liabilities arising under the Securities Act (including any provision of the underwriting agreement which relates to indemnification of the underwriter or its controlling persons by the Registrant against such liabilities) is against public policy..."
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-8 or to transactions in said securities.

b. In the case of an exchange offer, Registrant further 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, 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 bids or purchases are not made for the purpose of creating actual, or apparent, active trading in or raising the price of such securities; (ii) the Registrant discloses on Form F-X the possibility of, or the intent to make, such purchases; and (iii) the Registrant 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, provincial or territorial laws, regulations or policies, or otherwise is disclosed.

2. Consent to Service of Process

(a) At the time of filing Form F-8, the Registrant shall 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 connection with:

(1) any investigation or administrative proceeding conducted by the Commission; and

(2) 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 or of the District of Columbia or Puerto Rico where the investigation, proceeding or cause of action arises or of or relates to or concerns any offering made or purported to be made in connection with the securities registered on Form F-8 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.

(b) At the time of filing Form F-8, any trustee for which an exemption pursuant to Rule 4d-1 under the Trust Indenture Act is being applied by virtue of filing this Form will 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 connection with:

(1) any investigation or administrative proceeding conducted by the Commission; and

(2) 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 or of the District of Columbia or Puerto Rico where the investigation, proceeding or cause of action arises or of or relates to or concerns the securities in connection with which the trustee acts as trustee pursuant to an exemption under Rule 4d-1 under the Trust Indenture Act 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-8 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) of on .

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

(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. If the securities to be offered are those of a corporation not yet in existence at the time the registration statement is filed and which will be a party to a consolidation involving two or more existing corporations, then each such existing corporation shall be deemed a Registrant and shall be so designated on the cover page of this Form, and the registration statement shall be signed by each such existing corporation and by the officers and directors of each such existing corporation as if each such existing corporation were the sole Registrant.

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 or of the District of Columbia or Puerto Rico by service of said subpoena or process upon the Registrant's designated agent.

U.S. Securities and Exchange Commission, Washington, D.C. 20549

OMB Approval

OMB Number: 3235-0377

Expires: Approval Pending

Estimated average burden hours per response—2.0

Form F-9

Registration Statement Under the Securities Act of 1933

(Exact name of Registrant as specified in its charter)

(Translation of Registrant's name into English (if applicable))

(Province or other jurisdiction of incorporation or organization)
The Registrant hereby amends this registration statement on such date as the Commission, acting pursuant to Rules 407(a) or (b) on the date on which the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to the home jurisdiction's shelf procedures, check the following box. [ ]

**Proposed maximum aggregate offering price or value of securities to be registered on Form F-9:**

(1) pursuant to Rule 407(a) if in connection with an exchange offer

(2) pursuant to Rule 407(b) on (date) at (time) (day(s) of the week not sooner 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, as amended, Section 310 of last Act

[ ] There are no existing security holders under the indenture to which such application relates

If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to the home jurisdiction's shelf procedures, check the following box. [ ]

**Calculation of Registration Fee**

Title of each class of securities to be registered

Amount to be registered

Proposed maximum offering price per unit

Proposed maximum aggregate offering price

Amount of registration fee

**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 debt or preferred securities that are:

1. offered for cash or in connection with an exchange offer; and
2. either non-convertible or not convertible for a period of at least one year from the date of issuance and thereafter only convertible into a security of another class of the issuer.

**Instructions**

Securities shall be "investment grade" if, at the time of effectiveness of the registration statement, at least one internationally recognized statistical rating organization (as that term is used in relation to Rule 15c3-1 or 15c3-2 under the Securities Exchange Act of 1934 (the "Exchange Act")) (§ 240.15c3-1 or 240.15c3-2 of this chapter) has rated the security in one of its generic rating categories that signifies investment grade; typically the four highest rating categories signify investment grade, but for purposes of this Form only the three highest rating categories (within which there may be subcategories or gradations indicating relative standing) shall signify investment grade.

B. Form F-9 is available to any Registrant that:

1. is incorporated or organized under the laws of Canada or any Canadian province or territory;
2. is a foreign private issuer or a crown corporation;
3. has been subject to the continuous disclosure 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 is currently in compliance with such obligations;
4. has an aggregate market value of its outstanding equity shares of (CN) $180 million or more; and
5. has an aggregate market value of the public float of its outstanding equity shares of (CN) $76 million or more.

provisioned, however, that the requirements set forth in (4) and (5) above shall not apply if the securities being registered on this Form do not carry any conversion right.

**Instructions**

1. For purposes of this Form, "foreign private issuer" shall be construed in accordance with Rule 405 under the Securities Act.

2. For purposes of this Form, the term "crown corporation" shall mean a corporation all of whose common shares or comparable equity is owned directly or indirectly by the government of Canada or a province or territory of Canada.

3. For purposes of this Form, the "public float" of specified securities shall mean only such securities held by persons other than affiliates of the issuer.

4. For purposes of this Form, "affiliate" shall mean any person who beneficially owns, directly or indirectly, or exercises control or direction over, more than 10 percent of the outstanding equity shares of the Registrant. The determination of affiliates shall be made as of the end of the Registrant's most recent completed fiscal year.

5. For purposes of this Form, "equity shares" shall mean common shares, non-voting equity shares and subordinate or restricted voting equity shares, but shall not include preferred shares.

6. For purposes of this Form, the market value of the Registrant's outstanding equity shares (whether or not held by affiliates) shall be computed by use of the price at which such shares were last sold, or the average of the bid and asked prices of such shares, in the principal market for such shares as of a date within 60 days prior to the date of filing.

C. In the case of an exchange offer, the securities to be registered on Form F-9 shall be offered to U.S. residents upon the same terms and conditions as are offered to residents of Canada.

D. In the case of an exchange offer, 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 be a foreign private issuer or a crown corporation. For purposes of this Form, the class of subject securities shall not include any securities that may be converted into or are exchangeable for the subject securities.

E. If the Registrant is a majority-owned subsidiary offering non-convertible debt securities or non-convertible preferred shares, it shall be deemed to meet the requirements of I.B.3 above if the parent of the Registrant-subsidiary meets I.B. above, as applicable, and fully and unconditionally guarantees the subject securities, registered to principal and interest (if debt securities) or as to liquidation preference, redemption price and dividends (if preferred securities).

F. If the Registrant is a successor registrant subsisting after a statutory amalgamation, merger, arrangement, or other reorganization requiring the vote of shareholders of the participating companies (a "business combination"), the Registrant shall be deemed to meet the requirements of I.B.3 above if:

1. the time the successor registrant has been subject to the continuous disclosure requirements of any securities commission or equivalent regulatory authority in Canada, when added separately to the time each predecessor had been subject to such requirements at the time of the business combination, in each case equals at least 36 calendar months provided, however, that the reporting history of the successor registrant and any predecessor whose reports and income, respectively, would contribute less than 20 percent of the total assets and income from continuing operations before income taxes, extraordinary items and cumulative effect of a change in accounting principles of the successor registrant, as measured based on pro forma combination of the participating companies' most recently completed fiscal years immediately prior to the business combination, need not be combined for purposes of this paragraph; and (2) the successor registrant has been subject to such continuous disclosure requirements since the business combination, and is currently in compliance with its obligations thereunder.

G. This Form shall not be used if the Registrant is registered or required to register under the Investment Company Act of 1940.

H. A Registrant statement on this Form, and any post-effective amendment thereof, shall become effective in accordance with Rule 467.
1. 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.

2. Any amendment to any jurisdiction document(s) is filed after effectiveness of this registration statement that increases the number of securities that may be sold, in lieu of filing a post-effective amendment hereto, a new registration statement shall be filed on this Form. As provided in Rule 428, the prospectus included in the new registration statement shall be deemed to include a prospectus covering the unsold securities registered prior to the filing of this Form. If this is the case, the following legend shall appear at the bottom of the facing page of the registration statement: “Pursuant to Rule 429 such filed Securities Act, the prospectus contained in this registration statement relates to registration statement[s] [insert file numbers of previous registration statements].”

3. If the offering to be registered on this Form is not being made contemporaneously in Canada, the registration statement on this Form and any amendments hereto shall be prepared and filed as if the offering were being made contemporaneously in Canada. The Commission has been advised that the principal jurisdiction in Canada designated by the Registrant in connection with such an offering will require the filing of such documents and may select them for review.

II. Application of General Rules and Regulations

A. The rules comprising Regulation C under the Securities Act shall not apply to filings on this Form unless specifically referenced to in the Form. Instead, the rules and regulations applicable in the home jurisdiction regarding the form and method of preparation of disclosures and documents shall apply to filings on this Form. A registration statement or amendment thereto on this Form shall be deemed to be filed on the proper form unless objection to the Form is made by the Commission prior to the date of filing the registration statement shall be used, unless the issuer of such securities 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.

B. Rule 408 under the Securities Act, which provides that in addition to the information expressly required to be included in the registration statement, there shall be added such extraneous material information, if any, as may be necessary to make the required statements, in the light of the circumstances under which they are made, not misleading, shall apply to filings on this Form.

C. Three additional 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 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 still 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 amendments thereto, similarly bound, shall also be filed. No exhibits are required to accompany such additional copies.

D. 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.

E. In accordance with Rule 111 under the Securities Act, at the time of filing this registration statement, the Registrant shall pay to the Commission in U.S. dollars a fee of one tenth 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 amount of securities to be registered on this Form need not exceed the amount to be offered in the United States as part of the offering.

F. In the case of an exchange offer, the registration fee is to be calculated as follows:

1. Upon the basis of the market value of the securities to be received by the Registrant or cancelled in the exchange offer from United States residents as established by the price of securities of the same class, as determined in accordance with paragraph (4) of this section.

2. If there is no market for the securities to be received by the Registrant or cancelled in the exchange 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 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. If any cash may be received by the Registrant from United States residents in connection with the exchange offer, the amount thereof shall be added to the value of the securities to be received by the Registrant or cancelled as computed in accordance with paragraph (1) or (2) of this section. If any cash is to be paid by the Registrant in connection with the exchange offer, the amount thereof shall be deducted from the value of the securities to be received by the Registrant in 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.

G. Subject to the requirements of Item 1 of Part I, if any part of the registration statement or any amendment thereto, or any exhibit or other paper or document filed as part of the registration statement or amendment is in a language other than English, it shall be accompanied by a summary, version or translation in the English language.

H. One manually signed original and any amendments hereto 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 such document through the last page of such document, including any exhibits or attachments thereto. Further, the total number of pages contained in such numbered original shall be set forth on the first page of the document.

I. 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 relevant registration statement.

J. Where the offering registered on this Form is being made pursuant to the home jurisdiction’s shelf procedures or procedures for pricing offerings after the final receipt has been issued, three copies of each supplement to, or supplemented version of, the home jurisdiction disclosure document(s) prepared under such procedures shall be filed with the Commission within one business day after such supplement or supplemented version is filed with the principal jurisdiction. Such filings shall be deemed not to constitute amendments to this registration statement. Each such filing shall contain in the upper right corner of the cover page the following legend, which may be set forth in longhand if legible: “Filed pursuant to General Instruction I.I. of Form F-4 File No. [insert number of the registration statement].”

Note: Offerings registered on this Form, whether or not made contemporaneously in Canada, may be made pursuant to National Policy Statement No. 44 shelf procedures and procedures for pricing offerings after the final receipt has been issued. Rules 415 and 430A under the Securities Act are not available for offerings registered on this Form.

III. Compliance with Exchange Act, Trust Indenture Act and Auditor Independence and Reporting Requirements

A. Pursuant to Rule 13e-4(b) under the Exchange Act, the provisions of Rule 13e-4(d) and 13e-4(b) under the Exchange Act, the provisions of Section 14(d)(1) through 14(d)(7) of the Exchange Act, Regulation 14D under the Exchange Act, Schedule 14D-1 thereunder, and Rule 14E, are not applicable to a transaction involving offerings of securities that may be registered on this Form in connection with exchange offers 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 a transactional 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(e) or 14(e) of the Exchange Act or Rules 10b-5, 13e-3(b)(1) or 14e-3 thereunder, if the transaction otherwise is subject to those sections.

B. 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,
certain home jurisdiction documents. 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 and 10b-7 under the Exchange Act.

C. Pursuant to Rule 4d-2(b) under the Trust Indenture Act of 1939 (the “Trust Indenture Act”), a Registrant registering debt securities on Form T-1 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 (9) of Part II hereof. 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. The Registrant’s attention is directed towards other provisions of the Trust Indenture Act that may be applicable.

D. The Commission’s rules on auditor independence, as codified in Section 600 of the Codification of Financial Reporting Policies, apply to auditor reports on all financial statements that are included in this registration statement, except that such rules do not apply with respect to periods prior to the most recent fiscal year for which financial statements are included in the registration statement under the Securities Act filed by the issuer on Form F-7, Form F-3, Form F-9 or Form F-10 or under the Exchange Act filed by the issuer on Form 40-F.

Notwithstanding the exception in the previous sentence, such rules do apply with respect to any periods prior to the most recent fiscal year if the issuer previously was required to file with the Commission a report or registration statement containing an audit report on financial statements for such prior periods as to which the Commission’s rules on auditor independence apply.

E. Independent accountants reporting on financial statements included in the registration statement should consider Canadian auditing guidelines pertaining to the Codification of Financial Reporting Policies, apply to auditor reports on all financial statements that are included in this registration statement, except that such rules do not apply with respect to periods prior to the most recent fiscal year for which financial statements are included in the registration statement under the Securities Act filed by the issuer on Form F-7, Form F-3, Form F-9 or Form F-10 or under the Exchange Act filed by the issuer on Form 40-F.

Notwithstanding the exception in the previous sentence, such rules do apply with respect to any periods prior to the most recent fiscal year if the issuer previously was required to file with the Commission a report or registration statement containing an audit report on financial statements for such prior periods as to which the Commission’s rules on auditor independence apply.

The following legend, to the extent applicable, shall appear on the outside front cover page of the prospectus (or on a sticker thereto) 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 that is permitted under a multijurisdictional disclosure system adopted by the United States, to prepare this prospectus in accordance with the disclosure requirements of its home country. Prospective investors should be aware that such requirements are different from those of the United States. The financial statements included or incorporated therein, 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 home 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 incorporated or organized under the laws of a foreign country, that some or all of its officers and directors may be residents of a foreign country, that some or all of the underwriters or experts named in the registration statement may be residents of a foreign country and that all or a substantial portion of the assets of the Registrant and said persons may be located outside the United States.”

These securities have not been approved or disapproved by the securities and exchange commission nor has the commission passed upon the accuracy or adequacy of this prospectus. Any representation to the contrary is a criminal offense.”

The following legent shall appear in the manner noted above in any prospectus relating to an exchange offer.

“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.”

Any prospectus to be used before the effective date of the registration statement shall contain, on the outside front cover page (or on a sticker thereto) the following statement printed in red ink in type as large as that generally used in the body of the prospectus:

“Information contained herein is subject to completion or amendment. A registration statement relating to these securities has been filed with the Securities and Exchange Commission. These securities may not be sold nor may offers to buy be accepted prior to the time the registration statement becomes effective. This prospectus shall not constitute an offer to sell or the solicitation of an offer to buy nor shall there be any sale of these securities in any State in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of such State.

The Registrant should also include in the prospectus any legend or information required by the laws of any jurisdiction in which the securities are to be offered.
Item 3. List of Documents Filed with the Commission

There shall be set forth in or attached to the prospectus a list of all documents filed with the Commission as part of the registration statement as set forth below:

Part II—Information Not Required To Be Delivered to Offerees or Purchasers

Provide a brief description of the documents referred to in paragraph (a) of this item and indicate if any such document is incorporated by reference into, or filed with the principal jurisdiction if the offering were made in such jurisdiction.

[Continued]

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 to be filed as having certified such financial statements. Note: The consents required by this item shall specifically indicate consent regarding the use of the report or valuation in the registration statement filed in the United States.

[Continued]

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Delivered to Offerees or Purchasers

There shall be set forth in or attached to the registration statement a list of all documents filed with the Commission not more than one year prior to the date of this filing, provided that such Form T-5 may be incorporated by reference.

Part III—Undertaking and Consent to Service of Process

1. Undertaking

Registrant undertakes to make available, in convenient form, to any 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-9 or to transactions in said securities.

2. Consent to Service of Process

(a) At the time of filing Form F-9, the Registrant shall 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 connection with:

1. Any investigation or administrative proceeding conducted by the Commission; and

2. Any civil suit or action brought against the trustee or to which the trustee has been joined as defendant or respondent, in any court or administrative tribunal to which the trustee acts as trustee pursuant to an exemption under Rule 4d-1 under the Trust Indenture Act 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 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, in the City of , State (Province or Territory) of , on

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 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-4 for 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 or of the District of Columbia or Puerto Rico by service of said subpoena or process upon the Registrant's designated agent.

D. Where eligibility for use of this Form is based on the assignment of a security rating, the Registrant may sign the registration statement notwithstanding the fact that such security rating has not been assigned by the Registrant reasonably believes, and so states, that the security rating requirement will be met by the time of effectiveness.

U.S. Securities and Exchange Commission Washington, D.C. 20549
OMB Approval OMB Number: 3235-0380
Exempt Approval Pending
Estimated average burden hours per response 2.0
Form F-10
Registration Statement Under the Securities Act of 1933

(Exact name of Registrant as specified in its charter)

(Translation of Registrant's name into English (if applicable))

(Province or other jurisdiction of incorporation or organization)

Primary Standard Industrial Classification Code Number (if applicable)

(I.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 (if applicable))

It is proposed that this filing will become effective (check appropriate box)

[ ] pursuant to Rule 416(a) (if in connection with an exchange offer or business combination)

[ ] pursuant to Rule 416(b) on the date on which the securities legally may be sold in the Registrant's principal jurisdiction

[ ] pursuant to Rule 416(c) on (date) at (time) (designate a time not sooner 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 securityholders under the indenture to which such application relates

If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to the home jurisdiction's shelf procedures, check the following box.)

Calculation of Registration Fee*

Title of each class of securities to be registered

Amount to be registered

Proposed maximum offering price per unit

Proposed maximum aggregate offering price

Amount of registration fee

*See General Instruction I.E. 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 registration statement.

The Registrant hereby amends this registration statement on such date or dates as may be necessary to delay its effective date until the registration statement shall become effective as provided in Rule 467 under the Securities Act of 1933 or on such date as the Commission, acting pursuant to Section 8(a) of the Act, may determine.

GENERAL INSTRUCTIONS

1. 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 that:

(1) is incorporated or organized under the laws of Canada or any Canadian province or territory;

(2) is a foreign private issuer or a crown corporation;

(3) has been subject to the continuous disclosure 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 is currently in compliance with such obligations; provided, however, that in case of a statutory amalgamation, merger, arrangement or other reorganization requiring the vote of shareholders of the participating companies (a "business combination"), each participating company must meet such 36-month reporting obligation, except that neither the Registrant nor any participating company whose assets and income, respectively, would contribute less than 20 percent of the total assets and income from continuing operations before income taxes, extraordinary items and cumulative effect of a change in accounting principles of the Registrant, as measured based on pro forma combination of the participating companies' most recently completed fiscal years, shall be required to meet such reporting requirement;

(4) has an aggregate market value of its outstanding equity shares of (CN) $350 million or more, provided, however, that in the case of a business combination, the aggregate market value of the outstanding shares of each company participating in the business combination is (CN) $350 million or more, except that neither the Registrant nor any participating company whose assets and income, respectively, would contribute less than 20 percent of the total assets and income from continuing operations before income taxes, extraordinary items and cumulative effect of a change in accounting principles of the Registrant, as measured based on pro forma combination of the participating companies' most recently completed fiscal years, shall be required to meet such market value requirement; and

(5) has an aggregate market value of the public float of its outstanding equity shares of (CN) $75 million or more, provided, however, that in the case of a business combination, the aggregate market value of the public float of the outstanding equity shares of each company participating in the business combination is (CN) $75 million or more, except that neither the Registrant nor any participating company whose assets and income, respectively, would contribute less than 20 percent of the total assets and income from continuing operations before income taxes, extraordinary items and cumulative effect of a change in accounting principles of the Registrant, as measured based on pro forma combination of the participating companies' most recently completed fiscal years, shall be required to meet such public float requirement; and, provided further, that in the case of a business combination, such public float requirement shall be deemed satisfied in the case of a participant whose equity shares were the subject of an exchange offer registered on Form F-8, Form F-9 or Form F-10 that terminated within the last six months, if the participant would have satisfied such public float requirement immediately prior to commencement of such exchange offer.

Instructions

1. For purposes of this Form, "foreign private issuer" shall be construed in accordance with Rule 405 under the Securities Act.

2. For purposes of this Form, "crown corporation" shall mean a corporation all of whose common shares or comparable equity is owned directly or indirectly by the
government of Canada or a province or territory of Canada.

3. For purposes of this Form, the "public float" of the securities being registered shall mean only such securities which are owned, directly or indirectly, by persons other than affiliates of the issuer.

4. For purposes of this Form, "affiliate" shall mean any person who beneficially owns, directly or indirectly, or exercises control or direction over, more than 10 percent of the outstanding equity shares of the Registrant. The determination of affiliates shall be made as of the end of the Registrant's most recent completed fiscal year.

5. For purposes of this Form, "equity shares" shall mean common shares, non-voting equity shares and subordinate or restricted voting equity shares, but shall not include preferred shares.

6. For purposes of this Form, the market value of the Registrant's outstanding equity shares (whether or not held by affiliates) shall be computed by use of the price at which such shares were last sold, or the average of the bid and asked prices of such shares, in the principal market for such shares as of a date within 60 days prior to the date of filing.

C. In the case of an exchange offer, 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 the United States or any Canadian province or territory and be a foreign private issuer or a crown corporation.

D. In the case of a business combination, each company participating in the business combination shall be incorporated or organized under the laws of Canada or any Canadian province or territory and be a foreign private issuer or a crown corporation.

E. In the case of an exchange offer or a business combination, the securities to be registered on Form F-10 shall be offered to U.S. residents upon the same terms and conditions as they are offered to residents of Canada.

F. With respect to registration of non-convertible debt securities or non-convertible preferred securities on this Form, if the Registrant is a majority-owned subsidiary, it shall be deemed to meet the requirements of I.B. (4) and (5) above if the parent of the Registrant-subsidiary meets the requirements of I.B. above and fully and unconditionally guarantees the securities being registered as to principal and interest (if debt securities) or as to liquidation preference, redemption price and dividends (if preferred shares).

G. If the Registrant is a successor registrant surviving after a business combination, it shall be deemed to meet the requirements of I.B. (4) above if the successor registrant has been subject to the continuous disclosure requirements of any securities commission or equivalent regulatory authority in Canada, when added separately to the time the predecessor registrant had been subject to such requirements at the time of the business combination, in each case equals at least 30 calendar months, provided, however, that the reporting history of the predecessor registrant and any predecessor whose assets and income, respectively, would contribute less than 20 percent of the total assets and income from continuing operations before income taxes, extraordinary items and cumulative effect of a change in accounting principles of the successor registrant and such predecessor shall be computed on a pro forma basis, and board of the participating companies' most recently completed fiscal years immediately prior to the business combination, need not be combined for purposes of satisfying such 30-month reporting requirement and (2) the successor registrant has been subject to such continuous disclosure requirements since the business combination, and is currently in compliance with its obligations thereunder.

H. This Form shall not be used if the Registrant is registered or required to register under the Investment Company Act of 1940.

I. A registration statement on this Form, and any post-effective amendment thereto, shall become effective in accordance with Rule 467.

J. Any amendment to a registration statement on this Form shall be filed under cover of an amendment 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.

K. If, however, an amendment to the home jurisdiction document(s) is filed after effectiveness of this registration statement that increases the number of securities that may be sold by means of such a post-effective amendment hereof, 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: "Pursuant to Rule 429 under the Securities Act, the prospectus contained in this registration statement relates to registration statement[s] [ ]—[insert file numbers of previous registration statements]

L. If the offering to be registered on this Form is not being made contemporaneously in Canada, the registration statement on this Form and any amendments hereof shall be prepared and filed as if the offering were made contemporaneously in Canada. The Commission has been advised that the principal jurisdiction in Canada designated by the Registrant in connection with such an offering will require the filing of such documents and may select them for review.

II. Application of General Rules and Regulations

A. The rules comprising Regulation C under the Securities Act shall not apply to filings on this Form unless specifically referred to in the Form. Instead, the rules and regulations applicable in the home jurisdiction regarding the Form and method of preparation of disclosure documents to be applied to filings on this Form. A registration statement or amendment thereto on this Form 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. Securities Act rules and regulations other than Regulation C shall apply to filings on this Form unless specifically excluded in this Form.

B. Rule 409 under the Securities Act, 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, shall apply to filings on this Form.

C. 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 amendments thereto, similarly bound, also shall be filed. No exhibits are required to accompany such additional copies.

D. At least one copy of every registration statement and any amendment thereto shall be signed manually by the persons specified herein. Inscribed signatures will be deemed to be the same as signatures signed manually.

E. In accordance with Rule 111 under the Securities Act, at the time of filing this registration statement, the Registrant shall pay to the Commission in U.S. dollars a fee of one fourth of one 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 amount of securities to be registered on this Form need not exceed the amount to be offered in the United States as part of the offering.

F. In the case of an exchange offer, the registration fee is to be calculated as follows: 

1. Upon the basis of the market value of the securities that may be received by the Registrant or cancelled in the exchange offer from United States residents as established by the price of securities of the same class, as determined in accordance with paragraph (4) of this section.

2. If there is no market for the securities to be received by the Registrant or cancelled in the exchange offer, the book value of such securities computed as of the practicable date prior to the date of filing the registration statement shall be used, unless the issuer of such securities 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. If any cash may be received by the Registrant from United States residents in connection with the exchange offer, the amount thereof shall be added to the value of the securities to be received by the Registrant or cancelled as computed in accordance with paragraph (1) or (2) of this section. If any cash is to be paid by the Registrant in connection with the exchange offer, the amount thereof shall be deducted from the
value of the securities to be received by the Registrant in 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 60 days prior to the date of filing the registration statement.

G. In the case of a business combination, the registration fee is to be calculated as follows:

(1) Upon the basis of the market value of the equity securities of the predecessor companies held by United States residents being offered the Registrant's securities, as established by the price of the predecessor's securities at the same class determined in accordance with paragraph (4) of this section.

(2) If there is no market for the securities of the predecessor companies, 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 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) If any cash may be received by the Registrant from United States residents in connection with the business combination, the amount thereof shall be added to the value of the securities as computed in accordance with paragraph (1) or (2) of this section. If any cash is to be paid to the Registrant in connection with the business combination, the amount thereof shall be deducted from the value of the securities as computed in accordance with paragraph (1) or (2) of this section.

(4) The market value of a predecessor's outstanding equity securities shall be the average of the bid and asked prices of such securities, in the principal market for such securities as of a date within 60 days prior to the date of filing.

H. Subject to the requirements of Item 1 of Part I, if any part of the registration statement or an amendment thereto, or any exhibit or other paper or document filed as part of the registration statement or amendment, is in a language other than English, it shall be accompanied by a summary, version or translation in the English language.

I. One 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 handwriting, typewritten, printed or other legible form of notation from the first page of such document through the last page of such document, including any exhibits or attachments thereto. Further, the total number of pages contained in such numbered original shall be set forth on the first page of the document.

J. 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 relevant registration statement.

K. Where the offering registered on this Form is a transaction involving an exchange offer or a tender offer, or is made under Rule 14e-1 or Rule 14e-5 under the Exchange Act, the provisions of Rule 14e-1 or Rule 14e-5 are applicable to such transaction.

L. If no prospectus shall consist of the entire registration statement, or any part thereof, as the Commission may require.

M. The filing of this registration statement under the Securities Act does not constitute an audit report on financial statements for such prior periods as to which the Commission's rules on auditor independence apply.

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 3 of Part I hereof. In addition, the accountant's consent specifically should refer to any additional comments provided for U.S. readers.

E. 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) and 14(d)(2) of the Exchange Act, Regulation 14D under the Exchange Act and Rule 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 in connection with exchange offers pursuant to Rule 13e-4. Where such 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 a transactional 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(e) and 14(e) of the Exchange Act or Rules 10b-5, 13e-4(b)(1) or 14e-3 thereunder, if the transaction otherwise is subject to those sections.

Part I—Information Required To Be Delivered To Offerees or Purchasers

Item 1. Home Jurisdiction Document

In the case of an exchange offer, 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 including, where applicable, the rules of any stock exchange in such jurisdiction upon which the Registrant has any class of securities listed, or has applied for such listing.

In the case of a business combination, the prospectus shall consist of the entire disclosure document or documents required to be delivered to holders of securities whose votes are being solicited in connection with the proposed business combination pursuant to the laws of the jurisdiction(s) governing such solicitation including, where applicable, the rules of any stock exchange in such jurisdictions upon which the securities of the participating companies are listed, or for application for listing has been made. In all other cases, the prospectus shall include the entire disclosure document or documents required to be delivered to
offers or purchasers by the Registrant in connection with the transaction pursuant to the laws of the principal jurisdiction (or, if the offering is not being made contemporaneously in Canada, pursuant to such laws as would have been made in Canada) including, where applicable, the rules of any stock exchange in such jurisdiction upon which the Registrant has any class of securities listed, or has applied for such listing. Except as noted hereinafter, such disclosure document(s) shall be prepared in accordance with the disclosure requirements of such jurisdiction as interpreted and applied by the securities commission or other regulatory authority in such jurisdiction.

The prospectus used in the United States shall contain additional information and legends required by this Form. It need not incorporate any documents incorporated by reference into home jurisdiction disclosure document(s) and not required to be delivered to offers or purchasers or securities being solicited (in the case of a business combination) to the laws of the principal jurisdiction. If any part of the document(s) to be delivered to offers or purchasers is in a language other than English, it shall be accompanied by a translation in the English language.

Notwithstanding the foregoing, the prospectus used in the United States need not contain any disclosure applicable solely to Canadian offers or purchasers that would not be material to offers or purchasers in the United States, including, without limitation, (i) any Canadian "red herring" legend; (ii) any discussion of Canadian tax considerations other than those material to U.S. offers or purchasers; (iii) the names of any Canadian underwriters not acting as underwriters in the United States or a description of the Canadian plan of distribution; (iv) any description of offers or purchasers' statutory rights under applicable Canadian, provincial or territorial securities legislation (except to the extent such rights are available to U.S. offers or purchasers); or (v) certificates of the issuer or any underwriter.

Item 2. Additional Information
The following information also shall be provided to offers or purchasers as part of the prospectus. Financial Statements. Financial statements included in the home jurisdiction document should be supplemented to the extent necessary to satisfy the requirements of Item 18 of Form 20-F under the Exchange Act.

Item 3. Informational Legends
The following legends, to the extent applicable, shall appear on the outside front cover page of the prospectus (or on a sticker thereto) in ten-point roman type at least as high as ten-point modern type and at least two points headed:
"This offering is made by a foreign issuer that is permitted, under a multijurisdictional disclosure system adopted by the United States, to prepare this prospectus in accordance with the disclosure requirements of its home country. Prospective investors should be aware that such requirements are different from those of the United States. Financial statements included or incorporated 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 home country of the Registrant. Such consequences for investors who are resident in, or citizens of, the United States may not be describable fully herein.

"The enforcement of investors of civil liabilities under the federal securities laws may be affected adversely by the fact that the Registrant is incorporated or organized under the laws of a foreign country, that some or all of its officers and directors may be residents of a foreign country, that some or all of the underwriters or experts named in the registration statement may be residents of a foreign country, that the removal of substantial portion of the assets of the Registrant and said persons may be located outside the United States."

"These Securities have not been Approved or Disapproved by the Securities and Exchange Commission nor has the Commission Passed upon the Accuracy or Adequacy of this Prospectus. Any Representation to the Contrary is a Criminal Offense."

The following legend shall appear in the manner noted above in any prospectus relating to an exchange offer:
"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."

Any prospectus to be used before the effective date of the registration statement shall contain, on the outside front cover page (or on a sticker thereto) the following statement printed in red ink in type as large as that generally used in the body of the prospectus:
"Information contained herein is subject to completion or amendment. A registration statement relating to these securities has been filed with the Securities and Exchange Commission. These securities may not be sold nor may offers to buy be accepted prior to the time the registration statement becomes effective. This prospectus shall not constitute an offer to sell or the solicitation of an offer to buy nor shall there be any sale of these securities in any State in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of any such State."

The Registrant should also include in the prospectus any legend or information required by the laws of any jurisdiction in which the securities are to be offered.

Item 4. List of Documents Filed with the Commission
There shall be set forth in or 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 Delivered to Offers or Purchasers
Provide a brief description of the indemnification provisions relating to directors, officers and controlling persons of the Registrant against liability arising under the Securities Act (including any provision of the underwriting agreement which relates to indemnification of the underwriter or its controlling persons by the Registrant against such liabilities where a director, officer or controlling person of the Registrant is such an underwriter or controlling person thereof or a member of any firm which is such an underwriter), together with a statement in substantially the following form:

Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers or persons controlling the Registrant under the provisions of the foregoing provisions, the Registrant has been informed that in the opinion of the U.S. Securities and Exchange Commission such indemnification is against public policy as expressed in the Act and is therefore unenforceable.

The exhibits specified below shall be filed as part of the registration statement. Exhibits shall be appropriately lettered or numbered for convenient reference.

(1) In the case of an exchange offer or a business combination, any reports or information that, in accordance with the requirements of the home jurisdiction of the subject issuer or, in the case of a business combination, in accordance with the requirements of the home jurisdiction(s) of companies involved in the transaction other than the Registrant, must be made publicly available by the Registrant in connection with the transaction.

(2) In the case of an exchange offer or a business combination, a copy of any agreement relating to the proposed acquisition or business combination, as applicable.

(3) In all other cases, any reports or information that in accordance with the requirements of the principal jurisdiction must be made publicly available in connection with the offering (or, if the offering is not being made contemporaneously in Canada, the reports or information that would be required to be made publicly available by the principal jurisdiction if the offering were made in Canada).

(4) Copies of any documents incorporated by reference into, or filed with the principal jurisdiction or any other regulatory authority concurrently with, the prospectus.

(5) 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.
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, unless the Commission dispenses with such filing as impracticable or as involving undue hardship in accordance with Rule 437.

Any other consent required by Rule 430 or 438. 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.

Any person to whom a certificate of the Registrant is issued pursuant to a power of attorney, certified copies of a resolution of the Registrant's board of directors or similar governing body authorizing such signature.

A copy of any indenture relating to the registered securities and, if such indenture is to be qualified under the Trust Indenture Act, a cross-reference sheet to the location in the indenture of information included pursuant to Sections 310-318(a) of the Trust Indenture Act. If there is a tabulation of contents, and, if any such indenture is to be qualified under the Trust Indenture Act, the statement of eligibility of the trustee on Form T-1 and, if applicable, for individual trustee(s) on Form T-2.

(b) At the time of filing Form F-10, any trustee for which an exemption pursuant to Rule 4d-1 under the Trust Indenture Act is being applied by virtue of filing this 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 connection with:

(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 or of the District of Columbia or Puerto Rico, 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 on Form F-10 or any purchases or sales of any security in connection therewith, and stipulates and agrees that any such civil suit or action or 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.

(b) At the time of filing Form F-10, any trustee for which an exemption pursuant to Rule 4d-1 under the Trust Indenture Act is being applied by virtue of filing this 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 connection with:

(1) any investigation or administrative proceeding conducted by the Commission; and

(2) 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, or of the District of Columbia or Puerto Rico, where the investigation, proceeding or cause of action arises out of or relates to or concerns the securities in connection with which the trustee acts as trustee pursuant to an exemption under Rule 4d-1 under the Trust Indenture Act 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.

2. Consent to Service of Process
(a) At the time of filing Form F-10, the Registrant shall 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 connection with:

(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 or of the District of Columbia or Puerto Rico, 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 on Form F-10 or any purchases or sales of any security in connection therewith, and stipulates and agrees that any such civil suit or action or 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.

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. If the securities to be offered are those of a corporation not yet in existence at the time the registration statement is filed and which will be a party to a consolidation involving two or more existing corporations, then each such existing corporation shall be deemed a Registrant and shall be designated on the cover page of this Form, and the registration statement shall be signed by each such existing corporation and by the officers and directors of each such existing corporation as if each such existing corporation were the sole Registrant.

D. By signing this form, the Registrant consents with the 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 of the District of Columbia or Puerto Rico by service of said subpoena or process upon the Registrant's designated agent.

U.S. Securities and Exchange Commission, Washington, D.C. 20549

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GENERAL INSTRUCTIONS

A. Rules As To Use of Form 40-F

(1) 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 such Section solely by reason of their having filed a registration statement on Form F-7, F-8, F-9 or F-10 under the Securities Act of 1933 (the "Securities Act").

(2) Form 40-F may be used to register securities with the Commission pursuant to Section 12(b) or 12(g) of the Exchange Act, to file reports with the Commission pursuant to Section 13(f) of the Exchange Act and Rule 13a-3 (17 CFR § 240.13a-3) thereunder, and to file reports with the Commission pursuant to Section 15(d) of the Exchange Act if: (i) the Registrant is incorporated or organized under the laws of Canada or any Canadian province or territory; (ii) the Registrant is a foreign private issuer or a crown corporation; (iii) the Registrant 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 this Form and be currently in compliance with such obligations; (iv) the aggregate market value of the outstanding equity shares of such Registrant is: (a) (CN) $180 million or more if a report or registration statement filed on this Form relates to convertible securities of a Form F-9-eligible issuer that would be eligible for registration under the Securities Act on Form F-9; or (b) (CN) $360 million or more in the case of all other reporting requirements; provided, however, that no market value threshold need be satisfied in connection with non-convertible securities eligible for registration on Form F-9; and (v) the aggregate market value of the public float of such equity shares is (CN) $75 million or more; provided, however, that no market value threshold need be satisfied in connection with non-convertible securities eligible for registration on Form F-9.

Instructions

1. For purposes of this Form, "foreign private issuer" shall be construed in accordance with Rule 405 under the Securities Act.

2. For purposes of this Form, the term "crown corporation" shall mean a corporation all of whose common shares or comparable equity is owned directly or indirectly by the government of Canada or a province or territory of Canada.

3. For purposes of this Form, the "public float" of specified securities shall mean only such securities held by persons other than affiliates of the issuer.

4. For purposes of this Form, "affiliate" shall mean any person who beneficially owns, directly or indirectly, or exercises control or direction over, more than 10 percent of the outstanding equity shares of the Registrant, or a change in accounting principles of the Regis- trant's principal executive offices)

5. For purposes of this Form, "equity shares" shall mean common shares, non-voting equity shares and subordinate or restricted voting equity shares, but shall not include preferred shares.

6. For purposes of this Form, the market value of the Registrant's outstanding equity shares (whether or not held by affiliates) shall be computed by use of the price at which the shares were sold, or the average of the bid and asked prices of such shares, in the principal market for such shares as of a date within 60 days prior to the date of filing.

(3) If the Registrant is a successor registrant subsisting after a business combination, it shall be deemed to meet the requirements of A.(2)(iii) above if: (1) the time the successor registrant has been subject to the continuous disclosure requirements of any securities commission or equivalent regulatory authority in Canada, when added separately to the time each predecessor had been subject to such requirements at the time of the business combination, in each case equals at least 36 calendar months, provided, however, that the reporting history of the successor registrant and any predecessor whose assets and income, respectively, would contribute less than 20 percent of the total assets and income from continuing operations before income taxes, extraordinary items and cumulative effect of a change in accounting principles of the successor registrant, as measured based on pro forma combination of the pre-combination companies' most recently completed fiscal years immediately prior to the business combination, need not be combined for purposes of satisfying such 36-month reporting requirement and (2) the successor registrant has been subject to such continuous disclosure requirements since the business combination, and is currently in compliance with its obligations thereunder.

(4) This Form shall not be used if the Registrant is registered or required to register under the Investment Company Act of 1940.

(5) An annual report on this Form or any amendment thereto shall be filed the same day the information included therein is due to be filed with the securities commission or equivalent regulatory authority of the jurisdiction of incorporation of the Registrant.

(6) Registrants registering securities on this Form, and Registrants filing annual reports on this Form who have not previously filed a Form F-X (17 CFR §§ 239.41, 239.50) in the class of securities in relation to which the obligation to file this report arises, shall file a Form F-X with the Commission together with this Form.

(7) 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.

B. Information To Be Filed on this Form

(1) Except as hereinafter noted, Registrants registering securities under Section 12 shall file with the Commission all information material to an investment decision that the Registrant, since the beginning of its last full fiscal year: (1) made
or was required to make public pursuant to the law of the jurisdiction of its domicile in which it is incorporated or organized, (ii) filed or was required to file with a stock exchange on which its securities are traded and which was not previously filed with the Commission, or (iii) distributed or was required to distribute to its securityholders. A list of all documents filed with the Commission as a part of the registration statement shall be set forth in or attached to this Form.

(2) Unless otherwise furnished in information provided pursuant to General Instruction B.1, all registration statements on this Form shall include a brief description of the securities to be registered based on the requirements of Item 202 of Regulation S-K under the Securities Act.

(3) Registrants reporting pursuant to Section 13(a) or 15(d) of the Exchange Act shall file under cover of this Form the annual information form required under Canadian law. All other information material to an investment decision that a Registrant (i) makes or is required to make public pursuant to the law of the jurisdiction of its domicile, (ii) files or is required to file with a stock exchange on which its securities are traded or (iii) distributes or is required to distribute to its securityholders shall be filed by Registrants under cover of Form 6-K.

(4) Registration statements and annual reports shall be in the English language. If any exhibit or any other paper or document filed with a registration statement or annual report is in a language other than English, it shall be accompanied by a summary, version or translation in the English language.

(5) If any report filed on this Form incorporates by reference any information not previously filed with the Commission, such information must be attached as an exhibit and filed with this Form.

C. Compliance with Auditor Independence and Reconciliation Requirements

(1) The Commission’s rules on auditor independence, as codified in Section 606 of the Codification of Financial Reporting, apply to auditor reports on all financial statements that are included in this registration statement, except that such rules do not apply with respect to periods prior to the most recent fiscal year for which financial statements are included in the registration statement under the Securities Act filed by the issuer on Form F-3, Form F-4 or Form F-10 or under the Exchange Act filed by the issuer on Form 40-F. Notwithstanding the exception in the previous sentence, such rules do apply with respect to any periods prior to the most recent fiscal year in which the issuer was required to file a report or registration statement containing an audit report on financial statements for such prior periods as to which the Commission’s rules on auditor independence applied.

(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 17 of Form 20-F under the Exchange Act (17 CFR § 240.220f) unless this Form is filed with respect to securities that would be eligible for registration under the Securities Act and in which no such financial statements are required, or unless this Form is filed with respect to a reporting obligation under Section 13(d) that arose solely as a result of a filing made on Form F-3, F-4 or Form F-10, in which case no such financial statements are required.

D. Application of General Rules and Regulations

(1) Rules 12b-2, 12b-5, 12b-10, 12b-11, 12b-12, 12b-13, 12b-14, 12b-21, 12b-22, 12b-23, 12b-25, 12b-33 and 12b-37 under the Exchange Act shall not apply to filings on this Form. The rules and regulations applicable in the home jurisdiction regarding the form and method of preparation of disclosure documents shall apply to filings on this Form. Exchange Act regulations other than Rules 12b-2, 12b-5, 12b-10, 12b-11, 12b-12, 12b-13, 12b-14, 12b-21, 12b-22, 12b-23, 12b-25, 12b-33 and 12b-37 shall apply to filings on this Form unless specifically superseded by Form A. A registration statement on this Form 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.

(2) A registration statement filed pursuant to Section 12 of the Exchange Act on this Form shall become effective in accordance with Section 12(d) and Rule 12g-3 of such Act, as applicable.

(3) In accordance with Rule 4-10 under the Exchange Act, at the time of filing a registration statement pursuant to Section 12 on this Form, the Registrant shall pay to the Commission in U.S. dollars a fee in the amount specified in Rule 12b-7 or Rule 13a-4 under the Exchange Act, as applicable.

(4) Rule 12b-20, which provides that in addition to the information expressly required to be included in a statement or report, 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, generally for use of the public, in accordance with Rule 12b-20, if that rule is applicable, and to a statement made by him, is named as having prepared or certified any part of the registration statement or annual report, or is named as having prepared or certified a report or valuation for use in connection with the registration statement or annual report, the written consent of such person shall be filed.

If any 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 or annual report, the written consent of such person also shall be filed unless the Commission dispenses with such filing as impracticable or as involving undue hardship.

Any other consent required by Rule 12b-36 also shall be filed. Every amendment relating to a certified financial statement shall include the consent of the certifying accountant to the use of such accountant’s certificate in connection with the amended financial statements in the registration statement or annual report, except if the amendment is to correct information that has been certified financial statements.

Note: The consents required by this item shall specifically indicate consent regarding the use of the report or valuation in the registration statement filed in the United States.

Undertaking and consent to service of process

1. Undertaking

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-3, the securities in relation to which the obligation to file an annual report on Form F-3 arises (unless the Registrant has previously filed Form F-X for such purposes); or transactions in said securities.

2. Consent to Service of Process

At the time of filing Form F-3, the Registrant shall 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 connection with:

(1) any investigation or administrative proceeding conducted by the Commission; and

(2) any civil suit or action brought against the Registrant or to the Registrant, or any officer or director of the Registrant, who 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 or of the District of Columbia or Puerto Rico where the investigation, proceeding or cause of action arises out of or relates to or concerns the securities registered pursuant to Form F-3 or transactions in said securities in relation to which the obligation to file an annual report on Form
Form F-X for such purpose, and stipulates that any 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, 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 Exchange Act, the Registrant certifies that it meets all of the requirements for filing on Form 40-F and has duly caused this registration statement [annual report] to be signed on its behalf by the undersigned, thereunto duly authorized.

Registrant:
By (Signature and Title) ________________________________

Instructions

A. The name and title of the officer who signs the registration statement shall be typed or printed beneath each person's signature. Any such person who occupies more than one position shall indicate each capacity in which the registration statement is signed.

B. 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 purchases or sales of any security registered pursuant to Form 40-F on the securities in relation to which the obligation to file an annual report on Form 40-F arises, or transactions in said securities, may be commenced against it in all courts and administrative tribunals to which the investigation, proceeding or cause of action arises out of or relates to or concerns any purchases or sales of such securities; (iii) 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 purchases or sales of any security registered pursuant to Form 40-F on the securities in relation to which the Filer acts as trustee under the Trust Indenture Act of 1939, the Filer 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 all courts and administrative tribunals to be as valid and binding as if due personal service thereof had been made.

Form F-X

OMB Approval
OMB Number: 3235-0379
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Estimated average burden hours per response: 2.0

Appointment of Agent for Service of Process by Issuers Registering Securities on Forms F-7, F-8, F-9 or F-10, or Registering Securities on Filing Annual Reports on Form 40-F, or by Any Person Filing Tender Offer Documents on Schedules 13E-4F, 14D-1F or 14D-9F, or by Any Trustee for Which an Exemption Pursuant to Rule 4d-1 Under the Trust Indenture Act of 1939 has Been Applied

General Instructions

1. Form F-X shall be filed with the Commission: (a) by any issuer registering securities on Form F-7, F-8, F-9 or F-10 under the Securities Act of 1933; (b) by any issuer registering securities on Form 40-F under the Securities Exchange Act of 1934; (c) by any issuer filing an annual report on Form 40-F, if it has not previously filed a Form F-X in connection with the class of securities in relation to which the obligation to file a report on Form 40-F arises; (d) 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; and (e) by any trustee for which an exemption from the requirements of Section 310(a)(1) of the Trust Indenture Act of 1939 has been applied pursuant to Rule 4d-1 thereunder.

2. Form F-X shall be filed in duplicate original.

Instructions

1. The name of issuer or person filing (Form F-X): ________________________________

2. This is [ ] an original filing for the Filer [ ] an amended filing for the Filer

3. The Filer is incorporated or organized under the laws of [Name of the jurisdiction under whose laws the Filer is organized or incorporated] and has its principal place of business at [Address in full and telephone number]

4. The Filer designates and appoints (Name of United States person serving as agent) [Agent] located at [Address in full in the United States and telephone number]

as the agent of the Filer upon whom may be served any process, pleadings, subpoenas, or other papers in

(a) any investigation or administrative proceeding conducted by the Commission; and

(b) any civil suit or action brought against the Filer or to which the Filer 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 or of the District of Columbia or Puerto Rico by service of said subpoena or process upon the Registrant's designated agent.

U.S. Securities and Exchange Commission
Washington, D.C. 20549

Form F-X

OMB Approval
OMB Number: 3235-0379
Expires: Approval Pending
Estimated average burden hours per response: 2.0

Appointment of Agent for Service of Process

Form T-5

Application for Exemption Pursuant to Rule 4d-1 Under the Trust Indenture Act of 1939

(Name of Applicant)

[(Translation of Applicant's name into English if applicable)]

[(Jurisdiction of incorporation)]

[(Address and telephone number of Applicant's principal executive offices)]

[(Name, address (including zip code) and telephone number (including area code) of Applicant's agent for service)]

[(Exact name of Trustee as specified in its charter)]

[(Translation of Trustee's name into English if applicable)]

[(Jurisdiction of Incorporation)]
(Address and telephone number of Trustee's principal executive offices)

[Name, address (including zip code) and telephone number (including area code) of Trustee's 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 § 260.4d-1], except those filed pursuant to subparagraph (b) of Rule 4d-2 [17 CFR § 260.4d-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 §§ 260.4d-1 through 260.4d-6].

3. Incorporation by Reference. Attention is directed to Rules 7a-28 through 7a-32 [17 CFR §§ 260.7a-28 through 260.7a-32], inclusive, regarding incorporation by reference. In addition to matters which may be incorporated by reference pursuant to Rules 7a-28 [17 CFR § 260.7a-28] and 7a-29 [17 CFR § 260.7a-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 what the applicant expects to issue the securities that are the subject of this application within two years from the date of the application. 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 the date of maturity or, if the issue matures serially, a brief indication of the serial maturities, such as “maturing 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: 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 § 260.4d-4].

Item 5: 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 6: 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 7: 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 § 260.4d-5].

Item 8: Listing of Exhibits. List below all exhibits filed as a part of this application.

Undertaking and Consent to Service of Process

1. Undertaking.

The undersigned applicant undertakes that, if any indenture trustee is substituted for the indenture trustee identified in this application, such substitute trustee shall (i) have the same powers and duties, if any, as the indenture trustee identified in this application, (ii) be authorized under such laws to exercise corporate trust powers; and (iii) be subject to supervision and examination by governmental authority; and

2. Consent to Service of Process.

At the time of filing Form T-5, any trustee for which an exemption pursuant to Rule 4d-1 under the Trust Indenture Act of 1939 is being applied for by virtue of filing this Form shall furnish to the Commission on Form T-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 connection with

(a) any investigation or administrative proceeding conducted by the Commission; and

(b) 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, or of the District of Columbia or Puerto Rico, where the investigation, proceeding or cause of action arises out of or relates to or concerns the securities in connection with which the trustee acts as trustee pursuant to an exemption under Rule 4d-1 under the Trust Indenture Act of 1939 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 such personal service thereof had been made.

Signature

The applicant, ______________________________, a business or professional firm, has duly caused this application to be signed on its behalf by the undersigned, thereunto duly authorized. Be sure to name and address (including zip code) and telephone number of Principal Executive Offices) on the day of __________, ________:

[Name and Title By] ______________________________

Instruction as to Signature: The name of each person signing the application shall be typed or printed beneath the signature.

Exhibits

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 as 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 any, of the trustee published pursuant to law or the requirements of its supervising or examining authority.

7. The consent of the trustee and power of attorney required by Rule 4d-6 [17 CFR § 260.4d-6].

Appendix B—Securities and Exchange Commission Regulatory Flexibility Act Certification

I, Richard C. Breeden, Chairman of the Securities and Exchange Commission, hereby certify pursuant to 5 U.S.C. 605(b) that:

1. Proposed forms F-7, F-8, F-9 and F-10 under the Securities Act of 1933 (the “Securities Act”); proposed Form 40-F and proposed Schedules 14D-1F, 14D-9F and 13E-4F under...
item 302, 402 and 404 under Regulation S-K, the proposed rules, forms and schedules are summarized in the proposed amendments to rules and forms are summarized in the proposed Commission rulemaking to be evaluated in terms of its impact on small entities, the effect of any Canadian securities regulatory authority's proposals should not be taken into account.

An expected result of adoption of the proposed rules, forms and schedules is that offerings by Canadian companies would be made in the United States in situations where hitherto investors in the United States would have been excluded due to the time and expense of compliance with the regulatory requirements of more than one jurisdiction. The resulting increase in U.S.-registered offerings is expected to increase ease of investment for small United States entities acting as investors. In addition, small U.S. entities who act as financial intermediaries, such as investment banks, can be expected to be affected by the increased number of offerings being made in the United States. Small U.S. entities are not more likely than large U.S. entities, however, to be affected by the greater ease of investment in offerings of Canadian issuers; nor are small entities who act as intermediaries more likely than large entities who act in that capacity to be affected by the increase in U.S.-registered offerings. These effects, in any case, are not expected to be significant for a substantial number of small entities in the United States.

With respect to tender offers, exchange offers and business combinations, the proposed rules, forms and schedules generally facilitate such offers in the United States when less than 20 percent of the class of the securities involved are held of record by U.S. persons other than U.S. affiliates of the issuer. Since U.S. holdings are relatively small, the likelihood of such increased offerings in the U.S. significantly affecting a substantial number of small U.S. entities is minimized.

With respect to shelf offerings, a clarifying change to Rule 434 has been made in connection with the Canadian MJDS in order to ensure that U.S. issuers taking a tranche off the shelf, even if selling only in Canada, would file a Rule 424 prospectus with the Commission. Such revision may have a minimal effect on small U.S. entities.

Nevertheless, since the amendment is more in the nature of a clarification and most U.S. issuers using the MJDS would be substantially in size, it is not likely that the effect on small U.S. entities would be significant.

The proposed new rules, forms and schedules and the proposed amendments to rules and forms are summarized in the attached memorandum. That their primary effect is on Canadian entities is apparent from such document.


Richard C. Breeden,
Chairman.

[FR Doc. 90–25460 Filed 11–1–90; 8:45 am]

BILLING CODE 8010–01–M

*Note: The above-referenced memorandum is not included in this release.
Part III

Environmental Protection Agency

40 CFR Parts 261, 271 and 302
Hazardous Waste Management Systems: Identification and Listing of Hazardous Waste; Final Rule
ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 261, 271, and 302
[FRL-3807-1]

RIN 2050-AB70

Hazardous Waste Management Systems: Identification and Listing of Hazardous Waste; CERCLA Hazardous Substance Designation—Petroleum Refinery Primary and Secondary Oil/Water/Solids Separation Sludge Listings (F037 and F038)

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is today promulgating regulations under the Resource Conservation and Recovery Act (RCRA) to add two wastes to the list of hazardous wastes under 40 CFR 261.31. Through 266.27 and 271.23, designated F037 and F038, are generated in the separation of oil/water/solids from petroleum refinery process wastewaters and oily cooling wastewaters. EPA is also amending Appendix VII of 40 CFR 261 to add the organic and inorganic constituents for which these wastes are listed. In addition, EPA is adding these wastes to the list of hazardous substances under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and setting their reportable quantities at the statutory level of one pound.

EPA is taking this action because these wastes, when improperly treated, stored, transported, disposed of, or otherwise managed, are potentially capable of posing a substantial hazard to human health or the environment. Today’s rulemaking will extend RCRA and CERCLA coverage to all oil/water/solids separation sludges generated in the petroleum refining industry.

SUPPLEMENTARY INFORMATION:

Outline
I. Background
II. Summary of Today’s Rule
   A. Industry Overview
      1. Industry Description
      2. Petroleum Refining Wastewater Treatment
   B. Scope of the Listings
      C. Basis of Listing
         1. Toxic Nature of the Constituents
         2. Concentration of Toxic Constituents in Wastes
         3. Fate and Transport of Toxic Constituents in the Environment
      4. Potential for Bioaccumulation
      5. Types of Mismanagement
      6. Quantities of Waste Generated
      7. Severity of Damage
      8. Other Environmental Regulations
      9. Other Factors
      10. Conclusion
   III. Interaction With Other Regulations
      A. Characteristics of Hazardous Wastes
      B. Minimum Technology Requirements for Surface Impoundments
      C. Land Disposal Restrictions
      D. “Mixture” and “Derived From” Rules
   IV. Response to Comments
      A. Scope of the Listings
      1. Incidental versus Intentional Generation
      2. Applicability to Stormwater Retention Basins
      3. Alternative Definitions
      B. Data Adequacy
      1. Sampling Protocols
      2. Data Variability and Class Representativeness
      C. Demonstration of Hazard
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I. Background

With the promulgation of today’s listings, the EPA reaches the last stage in a ten-year Agency commitment to list as hazardous waste under section 3001 of the Resource Conservation and Recovery Act (RCRA), as amended, all sludges generated in the primary treatment of process wastewaters and oily cooling wastewaters in the petroleum refining industry. The objective of this protracted dialogue with the public and regulated community has been to ensure...
equivalent regulatory treatment for all sludges of similar composition. As EPA has explained from the beginning of this process, the sludges proposed for listing as hazardous are those generated from primary, oil separators and secondary wastewater treatment. The search for language to express this intention and the effort to dispel confusion about the scope of the listings, however, has proved a challenging exercise for the Agency.

Today's decision to list primary treatment sludges does not constitute a decision not to list wastes from secondary wastewater treatment. The Agency maintains that secondary biological sludges were not within the scope of the proposed listings. Such sludge may warrant listing, but EPA has not fully studied it nor provided notice of any intended listings of the secondary (biological) sludges. The limited data (noted in 53 FR 12162) and engineering knowledge available to the Agency suggest that there are differences in the composition and level of constituents in secondary (biological) sludges, when compared to primary treatment sludges.

On May 19, 1980, as part of its final and interim final regulations implementing section 3001 of RCRA, EPA published a list of hazardous wastes (40 CFR 261.32 Subpart D), which included five wastes generated by the petroleum refining industry (see 45 FR 33123). Among these were the following: "Disolved Air Flotation (DAF) Float from the Petroleum Refining Industry" (K046); and "API Separator Sludge from the Petroleum Refining Industry" (K051). The other three petroleum refining wastes included slop oil emulsion solids (K049), heat exchanger bundle cleaning sludge (K050), and heated tank bottoms (K062). These five listings were promulgated in final form on November 12, 1980 (45 FR 74884).

The K048 and K051 wastes are generated in units used for the primary treatment of process wastewater and oily cooling wastewaters at petroleum refineries. Petroleum refining industry wastewater is treated in two phases: primary treatment and secondary (biological) treatment. Primary treatment is distinguished by the physical and/or chemical separation of oil, water, and solids from the wastewater stream. Primary treatment is conducted in two stages: (1) Primary (gravitational) oil/water/solids separation and (2) secondary (emulsified) oil/water/solids separation.

Secondary biological treatment follows primary treatment. Secondary treatment relies on microorganisms to digest and degrade dissolved oil and soluble biodegradable wastewater pollutants to levels suitable for reuse or discharge. While there may be some incidental biological degradation during primary treatment, secondary treatment is distinguished from primary treatment by active measures to promote and increase naturally occurring biological activity. Active biological treatment requires agitation of the wastewater to ensure an oxygen-rich environment for efficient microbial degradation of pollutants. Biological units include activated sludge units, trickling filters, rotating biological contactors and other units employing active measure to increase biological processes.

Subsequent to the May 19, 1980, proposed listings of the petroleum refining wastes, the Agency received a petition from Envirex, Inc., requesting that the Agency amend the K046 and K051 listings because they were underinclusive and specific to particular types of equipment, i.e., the DAF and API separators. Envirex asked that EPA amend the listings to list as hazardous all those petroleum refining sludges resulting from primary or secondary oil/water/solids separation regardless of the equipment or process used in the separation step because all such sludges would be similar in composition.

Envirex cited EPA's Effluent Guidelines Development Document for the petroleum refining category as support for the contention that other processes and equipment produced a similar solids residue. After evaluating the rulemaking petition, the Agency proposed (on November 2, 1980, at 45 FR 74893) that the K051 and K048 listings be amended to read, respectively: "Primary oil/water/solids separation sludge in the petroleum refining industry"; and "Secondary (emulsified) oil/water/solids separation sludge in the petroleum refining industry." EPA tentatively concluded that the K051 and K048 listings were too narrow and that they omitted other petroleum wastes.

Secondary (emulsified) oil/water/solids separation sludge is a more specific description of the sludge generated in processes and equipment other than API separators and DAF equipment, with composition similar to the listed wastes. Consequently, the Agency proposed to amend the listings to reflect the hazardous character of the wastes and to include all oily separation sludges generated in the physical or chemical treatment of petroleum refinery wastewaters, regardless of the specific type of separation unit or process used.

Commenters on the 1980 proposal raised a number of concerns emphasizing two major issues. First, they believed the proposed amendment to the K048 listing was unclear and, as a result, the proposal could be read to apply equally to secondary (biological) treatment sludges, and not just to primary treatment systems using primary and secondary oil/water/solids separation equipment and processes. Second, commenters believed that the Agency had not demonstrated that the various categories of units potentially subject to the expanded listing contained lead and chromium—the hazardous constituents on which the listings were based—at levels of concern.

To address these issues, the Agency embarked on a comprehensive review of petroleum refining wastewater treatment processes and a waste characterization effort to further substantiate the bases for the expansion of the listings. For example, EPA gathered data on the levels of toxic inorganic and organic hazardous constituents that would be found in the wastes subject to the proposed listing. As part of this effort, the Agency also conducted extensive work to improve the precision and accuracy of methods for the analysis of organic constituents in oily wastes.

On November 8, 1984, the Hazardous and Solid Waste Amendments of 1984 (HSWA) were enacted. Section 3001(e)(2), one of the many provisions added by HSWA, directed EPA to make a decision on whether to list as hazardous, several wastes, including refining wastes. HSWA also prohibits the land disposal of certain hazardous wastes that have not been treated to specified levels. It requires the Agency to set levels or methods of treatment that substantially diminish the toxicity of the waste or substantially reduce the likelihood of migration of hazardous constituents from the waste so that threats to human health and the environment are minimized. Hazardous wastes that meet the treatment standards are not prohibited and may be disposed in a land disposal facility.
meeting the requirements of subtitle C of RCRA. Under EPA regulations, the treatment standards are based on the performance of the best demonstrated available technologies (BDAT) to treat the waste. For a waste identified or listed after HSWA was enacted, HSWA provides that the Agency has 6 months to determine whether to prohibit the waste from one or more methods of disposal and promulgate BDAT standards simultaneously with any prohibitions. RCRA 3004(g)(4), 3004(m)(1).

Based on the Agency’s data gathering effort, a Notice of Data Availability was published in the Federal Register on February 11, 1985 (50 FR 5637), presenting data collected from 1981 to 1984 from petroleum refining wastewater treatment systems. The compositional data identified the types and concentrations of organic and metal constituents detected in sludges and floats from the following types of units and sources:

- storm runoff ponds
- primary settling ponds
- flocculation tanks
- sumps
- emulsion tanks
- induced air flotation tanks
- evaporation ponds
- equalization ponds
- primary clarifiers
- cleaning chemical pits
- ponds with an oil skimmer

The data showed that sludges from these various sources contain lead and chromium at levels similar to the levels found in sludges from DAF units (K048) and API separators (K051). In addition, benzene and toluene were detected in the sludges at concentrations as high as 4,600 and 11,000 ppm, respectively (dry weight basis). Specific polynuclear aromatic hydrocarbons (PAHs), such as benz(a)pyrene, chrysene, and pyrene were also detected at maximum concentrations ranging between 600 and 1,700 ppm (dry weight basis).

Commenters were uncertain about the scope of the listing description “secondary (emulsified) oil/water/solids separation sludge” and indicated confusion about its applicability to secondary (biological) treatment sludges. The Agency also reaffirmed that the scope of any final listings EPA explained that the final listings would apply only to wastes from primary wastewater treatment processes (which include both primary and secondary oil/water/solids separation units), and not to wastes from secondary (i.e., biological) wastewater treatment processes, such as biological oxidation sludges. In addition, EPA identified activated sludge and trickling filters as specific examples of biological wastewater treatment processes that generate sludges that were not proposed for listing. The notice also solicited comments on the replacement of the K048 and K051 listings with a single, consolidated listing of “sludge from primary wastewater treatment in the petroleum refining industry.”

The Agency received comments on the 1985 Notice of Data Availability stating that the scope of the listing continued to be unclear and controversial. Much of the debate centered on the inclusion of “incidentally” generated sludge in the listing. These comments reflect the challenges the Agency has faced in crafting the final listings definitions finalized today so as to distinguish clearly the second step of primary wastewater treatment from secondary treatment. Specifically, many refineries use a series of settling/oil separation ponds in their wastewater treatment system. Whether these ponds are primary wastewater treatment units performing secondary oil/water/solids separation or are secondary (biological) treatment units, depends on (a) the efficiency of the primary treatment units preceding the ponds, and (b) the refinery’s effectiveness in keeping suspended and emulsified oil out of the units.

As a result of the comments received in the 1985 Notice, the Agency conducted additional sampling and analysis in order to characterize the differences between settling/oil separation ponds used for secondary oil/water/solids separation and those performing secondary (biological) treatment. EPA sought to identify an indicator parameter to correlate the wastewater treatment system’s transition from oil/water/solids separation to predominantly biological treatment. Such an indicator would clearly distinguish biological—and therefore non-listed—secondary treatment sludge.

Today’s preamble contains references to “intentionally” and “incidentally” generated sludges. Commenters have recommended terms to distinguish sludges that were deposited in a device designed to remove oil and solid wastes “intentionally” (the commenters cited an API separator in this regard) from those sludges that were deposited “incidentally” in devices designed for another function (the commenters cited sump and flow equalization sludges as examples). At this preamble makes clear, the Agency services the distinction as irrelevant for purposes of the listing because of the absence of any demonstration that sludge composition is different.

The American Petroleum Institute (API), whose membership includes a significant number of petroleum refineries likely to be affected by today’s action, expressed considerable interest in this approach to resolving confusion over the scope of the listing. At the Agency’s request, API provided information on phenolic removal efficiencies (percent removal of total phenolic compounds in the wastewater) achieved in different types of wastewater treatment units.

Specifically, API provided data that suggested that a total phenolic removal efficiency of 60 percent or higher for a given unit would indicate that biological treatment of the wastewater occurred. Because only minimal levels of biological treatment occur in primary treatment units, API believed this test would offer a clear indication of when secondary (biological) treatment had commenced in a particular system. Thus, API suggested that EPA distinguish listed primary separation wastes from secondary biological sludges by phenolic removal efficiency.

Believing that the API proposal had merit, the Agency initiated another sampling program in the fall of 1987 to validate the phenolic removal efficiency data provided by API. As part of that sampling effort, the Agency also collected information on the oil, water, and solids contents of the sludges. The Agency published a Notice of Data Availability on April 13, 1988, describing the data collected (53 FR 12182). The 1988 Notice also restated the Agency’s definitions of primary oil/water/solids and secondary oil/water/solids separation sludges and of segregated stormwater units. EPA again sought to explain the scope of the proposed listings by restating its intention in the proposed listings to extend regulatory coverage to all primary wastes with composition similar to wastes generated from processes and equipment other than API separators and DAF equipment.
(K051 and K048), the Agency also reaffirmed that only sludges and floats generated in the primary and secondary oil/water/solids separation stage of primary wastewater treatment were subject to the proposed listings. The Agency recognized that some of the commenters in certain cases still had difficulty differentiating the language of its proposed listings in distinguishing secondary separation sludge units from secondary (biological) units. The Agency explained that it had not itemized the factors distinguishing the two because the distinction was clear at most refineries. In the case of inadequate primary treatment, primary treatment might be prolonged so as to make it difficult to pinpoint clearly those units in which biological treatment was taking place.

Failure to remove oils and emulsions prolongs the primary treatment process since the presence of significant quantities of oil in the wastewaters inhibits bacterial growth and delays the onset of biological treatment. As a consequence, multiple units covering many acres may be used for primary treatment. Past and present data demonstrate that regardless of the number of acres and/or units dedicated to primary treatment, all units will continue to generate sludges which are similarly composed to the currently listed wastes. Because only the primary treatment units are covered by the original proposal, it is critical that individual refineries have a clear picture of where biological treatment is critical that individual refineries have a clear picture of where biological treatment is necessary. The Agency recognized that some of the commenters in certain cases still had difficulty differentiating the language of its proposed listings in distinguishing secondary separation sludge units from secondary (biological) units. The Agency explained that it had not itemized the factors distinguishing the two because the distinction was clear at most refineries. In the case of inadequate primary treatment, primary treatment might be prolonged so as to make it difficult to pinpoint clearly those units in which biological treatment was taking place.

The Agency did identify units that were expressed intention to ensure equal treatment for all primary treatment units and processes generating sludges of the same composition. Therefore, the Agency has abandoned the phenolic removal efficiency approach as a means to distinguish secondary oil/water/solids separation sludges from secondary (biological) treatment units. The Agency also explained its concern that the use of activated carbon and oxidizing agents in clearly primary treatment units would boost phenolic removal to the level of the suggested approach. This might result in a unit that clearly generated primary sludge escaping regulation.

Most of the refineries responding to the 1986 Notice of Data Availability favored the phenolic removal efficiency approach to distinguish secondary oil/water/solids separation sludges from secondary (biological) treatment sludges, provided the Agency used a specific value (e.g., <70 percent) for establishing a phenolic removal efficiency test as an indicator parameter in the listing definition.

The Agency received other comments, however, that identified several problems with the phenolic removal efficiency approach. In particular, the phenolic removal efficiency approach could inappropriately identify intermittent flow basins as secondary (biological) wastewater treatment units. This approach could also encourage the use of larger primary surface impoundments so that the initial treatment step would attain the criteria for biologically treated wastewaters. Phenolic pretreatment could also be used in the production area to drop phenolic levels to below the detection limit in order to circumvent the intent of the listing. Thus, facilities could escape listing while generating sludges and floats with the same constituents as those proposed for regulation, a result clearly at odds with the EPA's expressed intention to ensure equal treatment for all primary treatment units and processes generating sludges of the same composition. Therefore, the Agency has decided to adopt comprehensive listing descriptions for primary wastewater treatment sludges in order to respond to the commenters' clearly expressed desire for listings that clearly differentiate primary from secondary (biological) sludges.

The second approach considered in defining the scope of the listing (based on the percent oil content of the sludge) also received extenuative comment. A number of commenters supported the use of this approach to differentiate between primary treatment sludges and secondary (biological) treatment sludges, provided that the Agency modify the baseline oil level determination (the Agency proposed using the lowest percent oil content of K051 sludges generated at each facility as a baseline). In particular, these commenters suggested that the average oil content of K051 sludges at each refinery be used as a baseline. Other commenters believed the approach to be workable but pointed out that certain refinery specific waste generation practices may result in the misclassification of secondary (biological) treatment sludges as primary treatment sludges. For example, the sludges from an API separator receiving largely surface runoff from the process area may have very low oil content because most of the solids are surface dirt that will release free oil to the separator surface, and then settle to form a low oil content sludge. Thus, with the low oil content sludge of this hypothetical API separator as the basis for comparison, secondary (biological) sludges may be misclassified as listed primary treatment sludges. Many of the commenters also expressed concern about the precision and accuracy of the analytical methods required for the percent oil content approach. But, the commenters offered no data to substantiate their concerns and did not suggest alternate methods for determining the percent oil content of sludge.

As a result of comments on the precision and accuracy of the proposed analytical methods, the Agency reanalyzed the noticed data. The findings of this effort, which are presented in the rulemaking docket for the 1986 Notice (See ADDRESSES), suggest that method variability is outside of the acceptance criteria established in EPA publication SW-846, 3rd Edition, November 1986. Therefore, a definition based on percent oil content of the sludge was not considered implementable at this time. Because analytical tests proved unreliable indicators for distinguishing secondary separation sludges and floats from biological treatment sludges, the Agency has decided not to adopt such an approach. The Agency has decided instead to adopt comprehensive listing descriptions for primary wastewater treatment sludges in order to respond to the commenters' clearly expressed desire for listings that clearly differentiate primary from secondary (biological) sludges. Consequently, the listings first indicate the treatment process (whether primary gravitational or secondary [emulsified] separation) generating the listed sludges, then identifies specific units generating the sludges without limiting the listing to sludges from such units. Finally, the listings identify those sludges not included in the listings and identify units or processes that would not generate the listed sludges. Only sludges and floats from units using aggressive biological treatment methods are not included in

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The Agency did identify units that were clearly recognized as performing biological treatment. These were advanced (activated sludge systems, trickling filters, and bioreactors). 52 FR 12165. These same systems were explained in the Development Document that Envirox had referenced in its original petition to expand the K048 and K051 listings. See Development Document, p. 156.
today's listings. This ensures that sludges generated in systems with passive, incidental biological activity that are, in fact, relying on gravity separation for oil/water/solids, that generate a sludge similar in composition to other primary wastewater treatment sludges, do not escape regulation.

In order to address commenters' concern that the listings should clearly identify factors distinguishing secondary separation from biological oxidation, the listing defines the unlisted secondary (biological) sludges as those generated in "aggressive biological treatment units." The listings identify aggressive biological treatment units (and hence units not generating the listed sludge) as units employing one of four treatment methods: activated sludge, trickling filter, rotating biological contactor (RBC), or high rate aeration. Both the 1985 and 1988 Notices had earlier identified activated sludge, trickling filters and RBCs as units performing a clearly biological function (50 FR 5338, 53 FR 12164, 12166).

The fourth category, high-rate aeration, is a general description of other secondary treatment processes that promote biological activity by introducing additional oxygen to the treatment system through mechanical aeration. (53 FR 12165) The Agency has adopted the definitions of RCRA section 3005(j)(12)(A) for clarifying the implication of the listings to secondary (biological) treatment sludges. Thus, the Agency defines high-rate aeration as a system of impoundments or tanks in which intense mechanical aeration is used to completely mix the waste in order to enhance biological activity. In order to clarify that only true biological systems fall outside the listings, the listing describes "high-rate aeration" in terms of a required level of mechanical aeration and the total retention time in the tank or impoundment. This guarantees against primary wastewater treatment systems purporting to be secondary systems based on minimal aeration. Thus, the requirement for a horsepower aeration per million gallons of treatment capacity ensures that a refinery could not escape the listings through such minimal aeration.

In addition to the comments discussed above, the Agency received a number of other comments on the 1988 Notice of Data Availability. These comments, all other comments on previous notices, and comments on the original proposal have been reviewed by the Agency. All comments identified by the Agency as major comments are discussed in section IV of this Preamble; the remaining comments are addressed in the Response to Comment Background Document, which is available in the EPA RCRA Docket supporting today's rule.

In summary, after a careful review and analysis of the available information, the Agency is today promulgating two new listings, identified as F037 and F038, for wastes generated from the treatment of petroleum refining wastewaters. The Agency is listing the following wastes as hazardous under 40 CFR 261.31:

- **F037 Petroleum refinery primary oil/water/solids separation sludge**—Any sludge generated from the gravitational separation of oil/water/solids during the storage or treatment of process wastewaters and oily cooling wastewaters from petroleum refineries. Such sludges include, but are not limited to, those generated in: oil/water/solids separators; tanks and impoundments; ditches and other conveyances; sumps; and stormwater units receiving dry weather flow. Sludges generated in stormwater units that do not receive dry weather flow, sludges generated in aggressive biological treatment units as defined in § 261.31(b)(2) (including sludges generated in one or more additional units after wastewaters have been treated in aggressive biological treatment units) and K051 wastes are not included in this listing.

- **F038 Petroleum refinery secondary (emulsified) oil/water/solids separation sludge**—Any sludge and/or float generated from the physical and/or chemical separation of oil/water/solids in process wastewaters and oily cooling wastewaters from petroleum refineries. Such wastes include, but are not limited to, sludges and floats generated in: induced air flotation (IAF) units, tanks and impoundments, and all sludges generated in DAF processes generated in stormwater units that do not receive dry weather flow, sludges generated in aggressive biological treatment units as defined in § 261.31(b), and F037, K048 and K051 wastes are not included in this listing.

In addition, for the F037 and F038 listings, the Agency is providing the following listing specific definitions under 40 CFR 261.31(b):

(b) Listing Specific Definitions and Requirements.

(1) For the purposes of the F037 and F038 listings, oil/water/solids is defined as oil and/or water and/or solids.

(2)(i) For the purposes of the F037 and F038 listings, aggressive biological treatment units are defined as units which employ one of the following four treatment methods: activated sludge; trickling filter; rotating biological contactor for the continuous accelerated biological oxidation of wastewaters; or high-rate aeration. High-rate aeration is a system of surface impoundments or tanks, in which intense mechanical aeration is used to completely mix the wastes, enhance biological activity, and (A) the unit employs a minimum of 6 hp per million gallons of treatment volume; and either (B) the hydraulic detention time of the unit is no longer than 5 days; or (C) the hydraulic detention time is no longer than 30 days and the unit does not generate a sludge that is a hazardous waste by the Toxicity Characteristic.

(ii) Generators and treatment, storage and disposal facilities have the burden of proving that their sludges are not included in the listing as F037 and F038 wastes under this definition. Generators and treatment, storage and disposal facilities must maintain, in their operating or other onsite records, documents and data sufficient to prove that: (A) the unit is an aggressive biological treatment unit as defined in this subsection; and (B) the sludges were actually generated in the aggressive biological treatment unit.

(3)(i) For the purposes of the F037 listing, sludges are considered to be generated at the moment of deposition in the unit, where deposition is defined as at least a temporary cessation of lateral particle movement, and
At the beginning of 1989, there were 204 operating refineries in the U.S. (excluding U.S. territories) with a total crude oil distillation capacity of 15.7 million barrels per calendar day. Petroleum refineries are located across the country with at least one installation in each of 35 states. Three states—Texas with 34, California with 32, and Louisiana with 22—dominate the distribution, with a combined total of 43 percent of all refineries and 57 percent of U.S. capacity. Another 12 states had six or more refineries within their borders.

The refineries were owned by 106 companies. Of these companies, nine possessed over half (57 percent) of the crude distillation capacity, and another 21 companies controlled an additional 30 percent. The remaining 75 companies accounted for only 9 percent of the total U.S. capacity. Of these 75 companies, most had less than 50,000 barrels per calendar day capacity and generally owned only one refinery, although one company owned three. In addition, these 75 companies were generally non-integrated. That is, they did not produce their own crude oil but purchased it from other companies, or that they did not market their products but sold their products to other companies for distribution to the public. In contrast, the 31 largest companies were mainly integrated companies with the largest 24 being exclusively integrated companies. These 24 companies represent some of the largest corporations in the nation.

A petroleum refinery can be characterized according to the refining processes employed by the facility. Refineries may be categorized as follows:

<table>
<thead>
<tr>
<th>Refinery Type</th>
<th>Processes</th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>Crude Topping Primarily Crude Distillation Units.</td>
</tr>
<tr>
<td>B</td>
<td>Topping and Cracking.</td>
</tr>
<tr>
<td>C</td>
<td>Topping, Cracking, and Petrochemicals.</td>
</tr>
<tr>
<td>D</td>
<td>Topping, Cracking, and Lubricating Oil Processing.</td>
</tr>
<tr>
<td>E</td>
<td>Topping, Cracking, Lubricating Oil Processing, and Petrochemicals.</td>
</tr>
</tbody>
</table>

This characterization is based on ascending process complexity and has been used as a basis for subsequent characterization of waste generation. Petroleum refining may involve several manufacturing operations and processes, including crude desalting, atmospheric and vacuum distillation, hydrotreating, catalytic cracking, thermal processing and residual upgrading, light hydrocarbon processing, hydrocracking, catalytic reforming, extraction, isomerization, lubricating oil processing, sulfur removal and recovery, and product blending and inventory. A spectrum of products is manufactured from petroleum refining including hydrogen, fuel gas, sulfur, liquefied petroleum gas, butane, aromatic feedstocks, leaded and unleaded motor gasoline, jet fuel, kerosene, diesel, heating oil, fuel oil, asphalt, and coke.

2. Petroleum Refining Wastewater Treatment

Petroleum refining operations generate large amounts of wastewater that require treatment in order to reduce wastewater pollutants and produce effluents that meet discharge requirements specified under Clean Water Act (CWA) programs. In general, these wastewaters are either treated in an on-site wastewater treatment facility and discharged to surface waters or are pretreated on site and discharged to an off-site wastewater treatment facility, e.g., a Publicly Owned Treatment Works (POTW). Discharges to surface waters are controlled under the National Pollutant Discharge Elimination System (NPDES) and require an NPDES permit, while discharges to a POTW are subject to State and national pretreatment standards.

Treatment systems must be designed to accommodate wastewaters from a variety of sources. Wastewaters may be generally classified as process, oily cooling, oil-free, and sanitary wastewaters. Sanitary wastewaters generated from locker rooms and lavatories throughout the plant generally are managed in a refinery sewage plant or sent to a municipal sewage system. The other three types of wastewaters are treated in wastewater treatment systems. Sludges generated from the treatment of completely segregated oil-free and sanitary wastewaters are not affected by today's listings.

Wastewater treatment systems at petroleum refineries generally consist of the following elements: (1) A drainage and collection system to collect and carry wastewaters to treatment units, (2) a primary treatment system to separate oil/water/solids (o/w/s), and (3) a secondary (biological) treatment system to remove soluble biodegradable wastewater pollutants. Figures 1 and 2 present flow diagrams for two generalized wastewater treatment systems. Figure 1 represents a treatment system that would be impacted only
minimally by today's rule. Figure 2 represents a system that would be more significantly impacted by today's rule. While the Agency understands that there is no typical refinery wastewater treatment system, discussion of the differences between these two generalized treatment systems will help clarify the scope of today's listings.

BILLING CODE 6660-50-M
FIGURE 1

MINIMALLY IMPACTED REFINERY WASTEWATER TREATMENT SYSTEM

Primary CVW/S separation
Secondary O/W/S separation
Secondary (biological) treatment

* Specifically excluded from the listing definitions of F037 and F038.
SIGNIFICANTLY IMPACTED REFINERY WASTEWATER TREATMENT SYSTEM

FIGURE 2
Wastewater drainage and collection systems may be segregated to allow for treatment by waste class, or may be nonsegregated, routing all wastewaters to common wastewater treatment. A facility as depicted in Figure 1 will segregate oil-free wastewaters from process wastewaters and oily cooling wastewaters to the fullest extent possible. Such facilities will also minimize the generation of emulsions in the drainage and collection system by avoiding turbulent flow and mixing, and will minimize accumulation of sludges in the drainage and collection system by incorporating properly slopped collection systems. Sludges deposited from process wastewaters and oily cooling wastewaters in drainage and collection systems are listed under today’s rule as hazardous waste F037.

Using a segregated collection system, stormwater, the largest contributor to the oil-free wastewater stream, is handled in segregated stormwater ponds that receive flow only during storm events. Waters routed to these ponds during storm events either are discharged under an NPDES permit when the effluent quality is high enough or are returned to the wastewater treatment system. In cases where stormwater cannot be collected in storm sewers (e.g., process sewers are used to collect stormwater), stormwater ponds are used to receive surge flow from the process sewers during storm events. Such facilities will route only wet weather flow (mixed process and stormwater) to these segregated ponds. Sludges generated from segregated stormwater ponds that do not receive dry weather flow (i.e., any process wastewaters or oily cooling wastewaters) are not included in today’s listings.

On the other hand, a facility (as depicted in Figure 2) may route process wastewaters and oily cooling wastewaters to stormwater ponds during dry weather. Nonsegregated stormwater ponds that receive dry weather flow of process wastewaters and oily cooling wastewaters generate sludges that meet the listing description of F037.

Primary treatment may be divided into two stages: primary oil/water/solids separation, which is based on gravitational separation, and secondary oil/water/solids separation, which uses other physical or chemical processes to separate the emulsified oil/water/solids that are not amenable to gravitational separation. Primary (gravitational) oil/water/solids separation for process wastewaters and oily cooling wastewaters is necessary in almost all cases to meet effluent standards and to recover oil for reprocessing. The extent to which secondary oil/water/solids separation (separation of emulsified solids) is required depends on the amount of emulsified oils in the wastewater.

Primary oil/water/solids separation is conducted in gravitational separators designed to allow sufficient time under low turbulence conditions for oil to rise to the top and coalesce for removal by skimming, and for solids to settle to the bottom. Properly designed primary oil/water/solids separators provide for the removal of the majority of the nonemulsified oil and settleable solids. Separators used at earlier points (i.e., regional separators) may be employed to treat individual waste streams prior to commingling at the main wastewater treatment system. While the API separator is most widely used, there exist other types of effective primary oil/water/solids separators (for example, corrugated plate interceptor (CPI) separators and separators of circular design). API separator sludge currently is regulated as hazardous waste K051. Gravitational separation sludges generated in all other primary oil/water/solids separators meet the F037 listing description.

Secondary oil/water/solids separation uses physical or chemical methods to separate emulsified oils from refinery wastewaters. Where such treatment is used, many facilities utilize systems for secondary oil/water/solids separation that involve air flotation. Air flotation achieves separation of emulsified oils and suspended solids from wastewater by introducing air into the bottom of a unit. As this air passes up through the wastewater it agglomerates oil and suspended solids to form an intimate mixture of gas (air) and particulates that is lighter than water. This mixture floats to the top of the unit where it is skimmed as surface float for treatment and disposal. The two types of air flotation units are dissolved air flotation (DAF) and induced air flotation (IAF), which differ in the means by which air is introduced in the unit. In each case, chemicals may be added to the wastewater to improve emulsion breaking and removal and agglomeration of particulates. Float generated from DAF units is currently regulated as hazardous waste K048. In addition, under today’s listing, all sludges and other fluids generated from induced air flotation (IAF) are defined as those sludges generated from aggressive biological treatment. The four types of treatment considered aggressive biological treatment by the Agency in this rule are described below. All sludges (except for K048 and K051) that are generated in treatment units prior to aggressive biological treatment of wastewater and that are not primary oil/water/solids separation (gravitational) sludges (F037) are considered to meet the listing definition for F038.

To meet effluent discharge limitations, refinery wastewaters (primarily process wastewater streams) require biological treatment to reduce soluble (organic) wastewater pollutants. Aggressive biological treatment allows a facility to minimize the size of required treatment units while maximizing treatment efficiency. For purposes of today’s listings, the Agency recognizes the following four types of treatment as aggressive biological treatment: activated sludge, trickling filter, rotating biological contactor units, and high-rate aeration. These technologies, described below in further detail, facilitate the detoxification and digestion of organic chemicals in wastewaters.

The Agency has reviewed the wastewater treatment systems for the majority of the U.S. refineries and is unaware of any other biological treatment processes that achieve equivalent levels of organic chemical removal and thus qualify as aggressive biological treatment. Solids generated following the aggressive biological treatment of process wastewaters and oily cooling
wastewaters are “true” biological sludges because they contain acclimatized bacteria and dead biomass. However, if a facility believes it has a treatment process that should be considered as aggressive biological treatment, the facility may submit a rulemaking petition under 40 CFR 260.20. Facilities may also petition the Agency to delist specific wastes under 40 CFR 260.22.

The activated sludge process is a biological treatment technique primarily used for removal of organic materials from wastewater. This process is characterized by a suspension of aerobic and facultative microorganisms maintained in a relatively homogenous condition by mechanical mixing or by the turbulence induced by mechanical aeration in an aerator basin. These microorganisms oxidize soluble organic materials and agglomerate colloidal and particulate solids in the presence of dissolved oxygen. The aeration step is followed by clarification to separate biological sludge from the treated wastewater. Most of the biological mass is recycled to the aerator basin to be combined with incoming wastewater while the remaining sludge is routed to a sludge treatment and disposal facility.

The trickling filter operates by passing wastewater over a stationary bed of microorganisms. The filter consists of a suitable containment structure packed with a medium (usually rock, wood, or plastic) on which a biological mass (slime) is grown. Wastewater is distributed over the packing and biomass by a spray system. As wastewater flows over the slime, organic compounds are degraded to CO₂ and water, and suspended particulate and colloidal materials are removed by sorption processes. The sorbed material is oxidized by microorganisms in the presence of oxygen. Oxygen is provided to the trickling filter by convection of air through the unit. A thin film of water is transferred to the microorganism mass on the disk. Organics in the wastewater are assimilated and oxidized by the biomass during their life cycle. Excess microorganisms and solids are removed continuously from the disk by shearing forces created by rotation of the disk in the water.

High-rate aeration usually occurs in an aerator basin, which is maintained in a relatively homogenous condition by mechanical mixing or by the turbulence induced by mechanical aeration in the aerator basin. These microorganisms oxidize soluble organic materials and agglomerate colloidal and particulate solids in the presence of dissolved oxygen. The aeration step is followed by clarification to separate biological sludge from the treated wastewater. Most of the biological mass is recycled to the aerator basin to be combined with incoming wastewater while the remaining sludge is routed to a sludge treatment and disposal facility.

The rotating biological contactor passes a thin film of wastewater over a biological mass growing on a medium that is dipped into the wastewater stream. The contactor consists of a disk of suitable material mounted on a horizontal shaft that is supported so that the disk is approximately 50 percent immersed in the wastewater stream. The disk slowly rotates so that the water forms a thin film across the biomass. Oxygen from the air is easily absorbed by the water film and is rapidly transferred to the microorganism mass on the disk. Organics in the wastewater are assimilated and oxidized by the biomass during their life cycle. Excess microorganisms and solids are removed continuously from the disk by shearing forces created by rotation of the disk in the water.

Facilities may also petition the Agency to delist specific wastes under 40 CFR 260.22. Today’s listings for primary oil/water/solids separation (gravitational) sludges (F037) and secondary oil/water/solids separation (emulsified) sludges (F038) effectively regulate as hazardous waste all sludge generated from offshore process wastewaters and oily cooling wastewaters that are not already regulated as either API separator sludge (K051) or DAF float (K048). These wastes are being added to the list of wastewaters from nonspecific sources in 40 CFR 261.31 in order to regulate sludges generated at wastewater treatment facilities on site at petroleum refineries as well as sludges generated at off-site wastewater treatment facilities.*

Today’s listings are not limited to the following:

1. Desalter water;
2. Tank emulsion and water draw-offs;
3. Condensate from steam stripping operations;
4. Pump gland cooling water;
5. Barometric condenser water containing emulsions;
6. Intermediate and product treating plant wash water;
7. Other wastewaters containing emissions, heavy oils, or tar.

Oily cooling wastewaters are not limited to the following:

1. Once through cooling water from: C₆ (six-carbon) hydrocarbons and heavier operations;
2. Blowdown from cooling towers servicing C₆ and heavier operations;
3. Uncontrolled oily storm water from refinery processing and tankage areas; and
4. Controlled oily storm water released from diked areas or surge ponds.

* It should be noted that units not included in today’s rule could be regulated under other RCRA provisions either because they are generating or receiving characteristically hazardous wastes or sludges.
* It should be noted that if wastewaters generated at petroleum refineries are discharged to a POTW and such wastewaters are mixed with domestic sewage from nonindustrial sources, the sludges generated in the POTW are covered under the domestic sewage exclusion and are not included in today’s listings.
Sludges subject to today's listing may be generated in units that are designed to perform primary treatment (e.g., CFI separator or IAF unit) or may be generated incidentally in sumps, conveyances, equalization units, nonaggressive biological treatment units, or other wastewater treatment units prior to aggressive biological treatment. The intent of today's listings is to capture all primary treatment (separation) sludges, including gravitational and emulsified sludges wherever they are generated.

The Agency has defined those sludges that it believes are clearly biological treatment sludges—and not included in today's listings—as sludges generated from aggressive biological treatment units. In addition, sludges generated in units downstream of aggressive biological treatment units that do not receive any process wastewaters or oily cooling wastewaters that have not undergone aggressive biological treatment are also not included in today's listings.

Data collected and noticed in 1988 by the Agency and supplemented by data provided by commenters indicate that sludges generated in stormwater units that only receive rain water or storm flow during storm events do not generate sludges similar in composition to those generated in primary treatment units. Thus, sludges that are generated in stormwater units that do not receive dry weather flow are also not being included in today's listings. Sludges generated in stormwater units that do receive dry weather flow, however, meet the listing definition for F037.

While the Agency is unaware of any facilities that currently utilize spray irrigation as a disposal technique for petroleum refining wastewaters, such disposal of petroleum wastewaters prior to aggressive biological treatment would result in the generation of one of today's listed hazardous wastes. Wastewater solids forming a residual layer on the soil surface and the underlying soil layer following spray irrigation of wastewaters would also become or contain listed wastes under today's rulemaking.

C. Basis of Listing

Many commenters questioned the Agency's basis for listing these wastewaters as hazardous. This section summarizes the basis of listing today's wastes as hazardous, and section IV addresses the major concerns raised by commenters; all other comments are addressed in the Response to Comments Background Document that is available in the docket to this rulemaking.

Section 300(a)(a) requires the Agency to promulgate criteria for identifying the characteristics of hazardous wastes and for listing certain hazardous wastes. 42 U.S.C. 6921(a). The criteria promulgated by EPA for listing a waste as hazardous are presented in 40 CFR 261.11, which states in part:

(a) The Administrator shall list a solid waste as a hazardous waste only upon determining that the solid waste meets one of the following criteria:

(1) It contains any of the toxic constituents listed in Appendix VIII as the basis of listing these wastes. Table A summarizes the range and average concentrations for these five constituents. While some of these sludges may contain low or non-detectable amounts of certain of the hazardous constituents, these sludges almost always contain one or more of the hazardous constituents at levels that may pose risk to human health and the environment.

In order to evaluate the criteria for listing these wastes as hazardous, the Agency considered each of the factors specified in CFR 261.11(a)(3) [1] through [xi] to determine if these wastes were indeed capable of posing a substantial threat to human health and the environment. The results of this evaluation are presented below.

### Table A—Primary Treatment Sludge Constituents of Concern and Range of Measured Concentrations

**[All Values in PPM; Wet Weight Basis]**

<table>
<thead>
<tr>
<th>Constituent</th>
<th>F037</th>
<th>F038</th>
</tr>
</thead>
<tbody>
<tr>
<td>Benzene</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Benz[a]pyrene</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Chrysene</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Lead</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Chromium</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>No. of samples analyzed</th>
<th>No. of samples with detectable levels</th>
<th>Range*</th>
<th>Average*</th>
<th>No. of samples analyzed</th>
<th>No. of samples with detectable levels</th>
<th>Range*</th>
<th>Average*</th>
</tr>
</thead>
<tbody>
<tr>
<td>Benzene</td>
<td>20</td>
<td>18</td>
<td>ND-200</td>
<td>30</td>
<td>15</td>
<td>8</td>
<td>ND-90</td>
</tr>
<tr>
<td>Benz[a]pyrene</td>
<td>20</td>
<td>15</td>
<td>ND-83</td>
<td>49</td>
<td>24</td>
<td>18</td>
<td>ND-66</td>
</tr>
<tr>
<td>Chrysene</td>
<td>20</td>
<td>16</td>
<td>ND-138</td>
<td>28</td>
<td>24</td>
<td>19</td>
<td>ND-125</td>
</tr>
<tr>
<td>Lead</td>
<td>8</td>
<td>9</td>
<td>3-4570</td>
<td>552</td>
<td>6</td>
<td>8</td>
<td>1-3900</td>
</tr>
<tr>
<td>Chromium</td>
<td>14</td>
<td>14</td>
<td>3-2290</td>
<td>702</td>
<td>14</td>
<td>14</td>
<td>15-1950</td>
</tr>
</tbody>
</table>

*ND—Not detected

* Arithmetic averages are based on ¼ the practical quantitation limit for constituents detected below quantitation limits and for constituents not detected.

1 Toxic Nature of the Constituents

Each of the constituents presented in Table A is highly toxic. For these constituents, EPA has developed chronic toxicity reference levels and/or, in some cases, cancer potency factors for two human exposure routes (inhalation and oral). For the purpose of listing wastes as hazardous under RCRA, the Agency customarily uses three basic types of toxicity data from animal studies and epidemiological studies when analyzing the toxic potential of a constituent: (1) Maximum Contaminant Levels (MCLs); (2) Risk Specific Doses (RSDs); and (3) Reference Doses (RFD's). Based on different criteria, each of these types of data estimate the maximum doses or...
acceptable human exposure levels. Exposure to chemicals below these levels is not likely to cause detectable health effects, but exposure to chemicals above these concentrations can be toxic or detrimental and may pose significant risk to human health. The criteria for establishing the toxicity levels are outlined below.

MCLs are final Drinking Water Standards under section 1412 of the Safe Drinking Water Act of 1974, as amended in 1996 for both carcinogenic and noncarcinogenic compounds. In setting MCLs, EPA considers a range of pertinent factors cited in 52 FR 25697–25698, July 8, 1987.

For certain carcinogenic compounds, the Agency has not promulgated MCLs but has developed RSDs. The RSD is a dose that corresponds to a specific level of risk to an individual of contracting cancer over a 70-year lifetime because of the intake of contaminated drinking water. Modeling procedures are used to extrapolate low-exposure levels to levels expected from human contact with the carcinogen in the environment. The slope of the line from this extrapolation is used to develop a cancer potency factor for the carcinogen. The cancer potency factor is used with a specific risk level to develop a dose that corresponds to a specific level of risk to an individual of contracting cancer over a 70-year lifetime because of the intake of contaminated drinking water. Modeling procedures are used to extrapolate low-exposure levels to levels expected from human contact with the carcinogen in the environment. The slope of the line from this extrapolation is used to develop a cancer potency factor for the carcinogen. The cancer potency factor is used with a specific risk level to develop an RSD. The oral and inhalation RSDs for carcinogenic agents are established at the 10⁻⁶ risk level, which means that one in one million people could develop cancer if exposed to the carcinogen at the specified dosage for a lifetime. This approach is consistent with the risk levels used to delist specific waste streams as part of the RCRA delisting process. Based on the quality and adequacy of epidemiological data and experimental animal data demonstrating carcinogenic responses, constituents are assigned to five classes via a weight-of-evidence system developed by the Agency.

With respect to the "weight-of-evidence" system, the Agency promulgated guidelines for carcinogenic risk assessment (see 51 FR 32656, September 24, 1986), which incorporate an assessment of the quality of experimental data for the overall hazard assessment for carcinogens. These guidelines specify the following five classifications:

Class A: Human carcinogen (sufficient evidence from epidemiologic studies)
Class B: Probable human carcinogen
Class C: Possible human carcinogen (limited evidence of carcinogenicity in humans)
Class D: Not classifiable as to human carcinogenicity (inadequate human and animal evidence of carcinogenicity or no data available)
Class E: Evidence of noncarcinogenicity for humans (no evidence of carcinogenicity in at least two adequate animal tests in different species or both in adequate epidemiologic and animal studies).

The Agency regards constituents classified in Class A or B as suitable for quantitative risk assessment. The suitability of Class C constituents for quantitative risk assessment requires a case-by-case review because some Class C constituents do not have a data base of sufficient quality or quantity to perform a quantitative carcinogenicity risk assessment. The weight-of-evidence basis was used to eliminate Group D and E constituents from further consideration as carcinogens.

Based on these guidelines, four of the five constituents are "carcinogenic to humans" or are considered to be probable human carcinogens. The carcinogenic constituents of concern that are present in F037 and F038 for which there are no MCLs are either known (Class A) or probable human carcinogens (Class B) and B2. Table A identifies the cancer potency factors for carcinogens present in these waste streams. EPA’s Carcinogen Risk Assessment Group (CAVE) has determined that there is sufficient evidence to suggest that benzene, and chromium (VI) are carcinogens (Class A), and that benzo(a)pyrene (BaP), chrysene, and lead are probable carcinogens (Class B2).

### Table A — Constituents of Concern and Corresponding Toxicity Values (Cancer Potency Factors)

<table>
<thead>
<tr>
<th>Hazardous Constituents</th>
<th>CAG* Cancer Potency Factors</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Oral (mg/kg/day)¹</td>
</tr>
<tr>
<td>Inorganic</td>
<td></td>
</tr>
<tr>
<td>Chromium VI</td>
<td>N.A.</td>
</tr>
<tr>
<td>Organic</td>
<td></td>
</tr>
<tr>
<td>Benzene</td>
<td>2.9 x 10⁻⁵</td>
</tr>
<tr>
<td>Benzo(a)pyrene</td>
<td>11.5</td>
</tr>
<tr>
<td>Benzo(e)pyrene</td>
<td>N.A.</td>
</tr>
<tr>
<td>Chrysene</td>
<td>N.A.</td>
</tr>
</tbody>
</table>

* Carcinogen Assessment Group.

For benzene, the Agency has not promulgated MCLs but has developed an RSD of 2.9 x 10⁻⁵ mg/kg/day for Inhalation. For benzo(a)pyrene, the Agency has not promulgated MCLs but has developed an RSD of 11.5 mg/kg/day for Inhalation and 6.1 mg/kg/day for Oral.

### Oral and Inhalation RSD’s

When oral and inhalation RSD’s, on the other hand, are established for noncarcinogens (systemic toxicants), an RSD is an estimate of daily exposure of the human population (including sensitive subgroups such as children) to a substance that would not represent an appreciable risk of deleterious effects during a lifetime. If frequent exposures that exceed the RSD occur, the probability that adverse effects may be observed increases. The method for estimating the RSD endpoints for noncarcinogenic constituents was described in the proposal for the Toxicity Characteristic rule (51 FR 21648, June 13, 1986).

Constituents exhibiting carcinogenic or other chronic systemic effects on humans or laboratory animals have been determined to be present in today’s wastes. These toxicants are present in sufficiently high concentrations (i.e., concentrations greater than the EPA established RDS, RSDs, or MCLs) to pose a substantial threat to human health and the environment under plausible management scenarios. A brief summary of the toxicity of these constituents is presented below. For additional information on the toxicity of the hazardous constituents, see the Health and Environmental Effects Profiles (HEEPs) (available at the EPA Headquarters and EPA Regional Libraries).

**Benzen**e is a Class A carcinogen. Benzene is carcinogenic in rats following exposure through gavage and in mice following inhalation exposure (IARC, 1982). An epidemiological study that correlated benzene exposure with the incidence of leukemia provided sufficient evidence to demonstrate that benzene is carcinogenic in humans (NTP, 65-002).

Benz[a]pyrene (BaP) is a Class B carcinogen. BaP is perhaps one of the most potent, known animal carcinogens. Microgram quantities have been shown to induce tumors in a number of experimental animal species through various routes of exposure, including oral, inhalation, and dermal application (IARC, 1973). The types of tumors seen after exposure to BaP include mammary tumors in rats (IARC, 1973); squamous cell papillomas and/or carcinomas of the forestomach in mice (Rigdon and Neal, 1968); and skin tumors in mice (Poel, 1963). BaP can also act as a transplacental carcinogen in mice (Bulay and Wattenberg, 1971).

In addition to their ability to act as carcinogens, several of the PAH compounds (e.g., chrysene, plus others (e.g., dibenz(a,h)anthracene) that display no carcinogenicity on their own, have been found to act as co-carcinogenic agents (initiators or promoters) causing skin tumors in mice following dermal exposure. This indicates that health-
based numbers developed for certain PAHs are extremely conservative estimates of the toxicity of these compounds but, that when present in the wastes as mixtures of PAHs containing both carcinogens and cocarcinogens, these mixtures may collectively induce tumor formation at lower concentrations.

Benzene and BaP have also been shown to be embryotoxic and/or teratogenic in experimental animals [IARC, 1982 and Shum et al., 1979].

Chrysene is classified a Class B carcinogen, however sufficient data are not available to make a quantitative estimate of cancer potency. The Agency has established cancer potency factors for selected PAHs (benzo(a)pyrene) only. The conservative approach that the Agency follows for assessing health risks for exposure to the PAHs belonging to Class B or C carcinogens is to use the cancer potency factor for benzo(a)pyrene, and to assign an order of magnitude less risk to the estimate.

Among the inorganic constituents of concern, hexavalent chromium has been classified as a known human carcinogen (Class A) by the inhalation route. EPA developed an inhalation cancer potency factor for hexavalent chromium based on an incidence of lung cancer in workers exposed to chromium over a 30-year period and followed for approximately 40 years.16 EPA derived an oral RfD of 5 X 10^-4 mg/kg/day for hexavalent chromium based on a study by MacKenzie et al. [1958] in which no observable adverse effects were observed in rats exposed to less than 2.4 mg/kg/day of hexavalent chromium in drinking water for 1 year.17 Rats


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### TABLE C: BASIS FOR LISTING: HEALTH EFFECTS OF THE CONSTITUENTS OF CONCERN IN F037

<table>
<thead>
<tr>
<th>Hazardous constituent</th>
<th>Average measured waste concentration (ppm)</th>
<th>Water concentration limits (ppm)</th>
<th>Basis</th>
<th>Estimated drinking well concentrations (ppm)</th>
<th>Estimated well concentration to health-based level ratio (ppm)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>MCL (Class A)</td>
<td></td>
<td>DA 100</td>
<td>DA 1,000</td>
</tr>
<tr>
<td>Benzene</td>
<td>39</td>
<td>5.0 X 10^-2</td>
<td></td>
<td>0.39</td>
<td>0.039</td>
</tr>
<tr>
<td>Benzo[a]pyrene</td>
<td>14</td>
<td>3.0 X 10^-3</td>
<td>RfD (Class B)</td>
<td>0.14</td>
<td>0.014</td>
</tr>
<tr>
<td>Chrysene</td>
<td>28</td>
<td>3.0 X 10^-3</td>
<td>RfD (Class B)</td>
<td>0.14</td>
<td>0.014</td>
</tr>
<tr>
<td>Lead</td>
<td>552</td>
<td>5.0 X 10^-2</td>
<td>MCL (Class B)</td>
<td>5.52</td>
<td>0.552</td>
</tr>
<tr>
<td>Chromium</td>
<td>702</td>
<td>7.0 X 10^-2</td>
<td>MCL (Class A)</td>
<td>7.02</td>
<td>0.702</td>
</tr>
</tbody>
</table>

* Calculated for three dilution/attenuation (DA) factors of 100, 1,000, and 10,000.

* Ratio obtained by dividing estimated drinking well concentration column by water concentration limit column, for all three dilution/attenuation (DA) levels.

* Reference Dose (RfD), Risk Specific Dose (RSD), and Maximum Contaminant Level (MCL) are explained elsewhere in the preamble, as are the classes of RfD. Benzo(a)pyrene is based on an exposure limit at a 10^-3 risk level. Chrysene, a Class B, carcinogen, is based on an exposure limit at a 10^-4 risk level, and the health limit is assumed to be that of benzo(a)pyrene based on structure activity relationships.

* Concentration limits are for total chromium only.
As shown in the last three columns of Tables C and D, the concentrations of constituents of concern in F037 and F038 are at least four orders of magnitude greater than the corresponding health-based limits. If mismanaged, therefore, given the potential for migration and persistence discussed below, the Agency believes that the constituents of concern are present in these wastes at levels clearly capable of posing a threat to human health and the environment.

The Agency has also evaluated potential environmental damages for API and DAF sludges based on data submitted by refiners as part of their delisting petition applications. The Agency, using this industry data and a variety of ground-water transport models (including the Organic Leaching Model (OLM), Vertical and Horizontal Spread (VHS) dispersion model, and the Land Treatment Model (LTM)), has concluded that concentrations of the constituents of concern in wastes (K048 and K051) are capable of migrating to the receptor points. The concentrations of the constituents of concern in the drinking water wells at receptor points exceed the corresponding drinking water standards. This is one of the reasons the Agency decided to deny many of the delisting petitions submitted by the petroleum refiners. Since the wastes listed today are similar to the previously listed wastes, the Agency believes that the constituents of concern in the wastes listed today could potentially reach receptor points and can pose risks to human health. A summary of the Federal Register notices announcing the Agency's action on each of the delisting petitions has been placed in the Regulatory Docket supporting this rule.

3. Fate and Transport of Toxic Constituents in the Environment

The Agency evaluated the mobility and persistence of the F037 and F038 constituents of concern in the environment. To assess mobility, the Agency considered the physical and chemical characteristics of the constituents of concern. The factors considered include the physical state of the sludges, their water solubility, the octanol-water partition coefficient ($K_{ow}$), and the soil-sorption coefficient ($K_s$).

Table E summarizes these quantitative measures of mobility for each of the organic constituents, as well as a qualitative assessment of these data in terms of each constituent's potential for migration and persistence in the event of waste mismanagement. Compared to other constituents in the sludges, some of these constituents (e.g., benzene) are more degradable than others. Chemical and biological degradation may occur in soil, if physical (e.g., soil temperature, humidity and moisture, particle size, and water holding capacity of soil), chemical (e.g., soil pH), and biological (e.g., types of microorganisms) characteristics are conducive to facilitate degradation of chemical constituents. However, as evidenced by the contamination of soil and ground water, typically degradation is insufficient to prevent environmental damage if the wastes are mismanaged.

<table>
<thead>
<tr>
<th>Constituents of concern</th>
<th>Water concentration (health-based) limits (ppm)</th>
<th>Water solubility (ppm)</th>
<th>$\text{Log}<em>{10}K</em>{ow}$</th>
<th>$K_s$</th>
<th>Mobility</th>
<th>Persistence</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>($10^{-3}$)</td>
<td>($10^{-3}$)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Benzene</td>
<td>5.0x10^{-3}</td>
<td>1.75x10^{-3}</td>
<td>2.13</td>
<td>83</td>
<td>moderate</td>
<td>low</td>
</tr>
<tr>
<td>Benzo(a)pyrene</td>
<td>3.6x10^{-3}</td>
<td>3.8x10^{-3}</td>
<td>6.25</td>
<td>5,500,000</td>
<td>high</td>
<td>high</td>
</tr>
<tr>
<td>Chrysene</td>
<td>3.0x10^{-3}</td>
<td>2.0x10^{-3}</td>
<td>5.61</td>
<td>200,000</td>
<td>not known</td>
<td>not known</td>
</tr>
</tbody>
</table>

*Qualitative relative evaluation of mobility and persistence, based on water solubility, $\text{Log}_{10}K_{ow}$, and $K_s$. For more details, see the Background Document.

* $K_{ow}$ = Octanol-water partition coefficient; see Background Document for data sources.

* $K_s$ = Soil-sorption coefficient; see Background Document for data sources.

* Slightly contaminated medium represents a mismanagement scenario where release of hazardous constituents does not result in saturation of the underlying soil by organic hazardous constituents.

* Highly contaminated medium represents a mismanagement scenario where release of hazardous constituents results in saturation of the underlying soil by organic hazardous constituents.
easily soluble in water but is soluble in octanol, it is slightly mobile in soil. Table E gives the logarithm of the octanol-water partition coefficient (log \text{K}_{ow}) for the constituents of concern. A log \text{K}_{ow} of 2.13 for benzene indicates that it is moderately soluble in water and, hence, moderately mobile in soil. On the other hand, all the PAHs found in F037 and F038 have high log \text{K}_{ow} values suggesting that they would be relatively immobile (i.e., less mobile than benzene) in the soil. However, evidence exists that these constituents may move more readily in soil with low organic content or if co-disposed with other solvents or oils. Because wastes listed today typically contain high concentrations of oils, the mobility of the PAHs is expected to be quite high due to cosolvent effects. Therefore, it is reasonable to assume that wastes containing these constituents could pose a significant threat to human health via ground-water contamination if mismanaged.

In order to conduct a more qualitative evaluation of fate and transport of F037 and F038, the Agency evaluated potential risks to human health posed by exposure to a drinking water/waste mixture. EPA examined hypothetical ground-water attenuations by assuming that, through subsurface transport, dilution and attenuation processes will reduce the concentrations of the hazardous constituents of concern by a given factor. The Agency calculated three DA factors for these concentrations: 1.02, 1.000, and 0.01 percent of the contaminant's original concentration in the waste. Each of the DA factors used in this analysis are intended to encompass a broad range of possibilities. While the DA factors were not selected to represent any particular environmental condition or range of environmental conditions, they represent assumptions varying from a moderate amount of dilution and attenuation to a high degree of dilution and attenuation. As shown in Tables C and D, the wastes examined pose a potential threat to human health and the environment across this wide range of assumptions. The Agency believes that the DA factors used in assessing the potential migration of the constituents of concern in petroleum separation sludges are not unrealistic. To assess the effectiveness of the hypothetical attenuations (by assuming a set of three DA factors) in representing the real-life leaching and migration processes, the Agency compared average concentrations of certain constituents (chromium, fluoranthene, pyrene, anthracene, and naphthalene) in wood preserving wastes and ground-water contamination data from the damage cases related to the wood preserving industry. The Agency assumed that, in the past, wood preserving wastes containing high concentrations (higher than averages calculated for the rulemaking activity) were disposed of on land, which resulted in contaminated ground water as evidenced by the damage cases. The comparison provided the Agency with a mechanism to determine the potential migration of toxic and hazardous constituents from oily wastes in soil.

The results of the comparison suggested that metals such as chromium and semivolatile compounds such as anthracene, fluoranthene, chrysene, and pyrene are released from the oily wastes and, hence, are capable of contaminating ground water. The calculated DA factors for these semivolatile compounds in oily waste range from 10 to 100,000. Based on this preliminary comparison, the Agency concludes that the constituents of concern in oily wastes can be carried over to receptor points as aqueous leachates at concentrations ranging from 10 to 0.001 percent and 1 to 0.01 percent of the original concentration of semivolatile compounds and metals respectively, in the oily wastes. As shown in Tables C and D, for each of the organic constituents, the ratio of drinking-water well concentrations to health-based levels is greater than 1 in all cases except for the DA factor of 10,000 for benzene, the most mobile of the organic constituents. For F037 sludges, the ratios range from a low of about 0.78 (benzene at 10,000 DA) to a high of over 46,000 (B[a]P at 100 DA), and for F038, these values range from 0.24 (benzene at 10,000 DA) to over 33,000 (B[a]P at 100 DA). The Agency, therefore, believes that the potential for human exposure is significant and provides a basis for listing these wastes as hazardous. These DA factor-derived estimates of potential significant human exposure are further substantiated by Agency-collected data from petroleum refining sites. For example, the Agency has information for down-gradient ground-water contamination from a petroleum refinery suggesting that the constituents of concern identified in F037 and F038 wastes have been released from a sludge pile and have reached ground water at concentrations that exceed the health-based numbers. The Agency believes that the data are convincing and support its conclusion that the current disposal practices used at this refinery are not acceptable and given the contaminants, may not represent management of waste consistent with protection of human health and the environment. There are numerous instances of ground-water contamination at petroleum refineries; and in some cases the contamination is of such magnitude that oil is recovered from the aquifer. Environmental damage at refineries is extensive and is generally attributable to the following contaminant sources (or combinations thereof): crude oil spills, refined product spills, and waste management. The Agency reviewed 21 refinery sites in Region VI and found at 17 of the facilities that groundwater contamination could not be traced solely to waste management. However, the Agency expects that waste management in unlined surface impoundments significantly contributed to the environmental damage based on our modeling. At the remaining four facilities, clear evidence of groundwater damage as a result of waste management was detected. This provides additional evidence of the mobility of oily materials and wastes. Additional instances of environmental damage resulting from mismanagement are presented in Appendix I of the Background Document supporting this rule. The data demonstrate that the hazardous constituents in these wastes are sufficiently mobile and persistent to pose a threat to human health and the environment when the wastes are mismanaged.

4. Potential for Bioaccumulation

Under the Clean Water Act, the Agency has established a biocoverage factor (BCF) that may be used to estimate the concentration of the chemical in biological tissue following exposure to a contaminated medium (i.e., food or water). This list of 50 chemicals includes the three organic constituents of concern present in the F037 and F038 wastes. To protect human health from the consumption of contaminated fresh water and salt water species, the Agency has also established chronic water quality criteria for a large number of chemicals including all five of the constituents of concern for F037 and
F038 wastes. Table F presents BCFs and the chronic water quality criteria for the primary constituents of concern for today's listings. The BCF of a chemical represents the potential for its bioaccumulation in tissue, and the degree of its metabolism and biotransformation; and is balanced by the excretion of the chemical. The higher the BCF value, the more readily the chemical will be taken up and stored, and not degraded or excreted.

### Table F. - EPA-Established Values for Potential Bioconcentration in Aquatic Species

<table>
<thead>
<tr>
<th>Constituents</th>
<th>BCF</th>
<th>Fresh water (µg/L)</th>
<th>Salt water (µg/L)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Benzene</td>
<td>5.2</td>
<td>N/A</td>
<td>700</td>
</tr>
<tr>
<td>Benzenafluorobenzene</td>
<td>29,900</td>
<td>N/A</td>
<td>*300</td>
</tr>
<tr>
<td>Chrysene</td>
<td>11,700</td>
<td>N/A</td>
<td>*300</td>
</tr>
<tr>
<td>Lead</td>
<td>N/D</td>
<td>3.2</td>
<td>5.6</td>
</tr>
<tr>
<td>Chromium VI</td>
<td>N/D</td>
<td>11</td>
<td>50</td>
</tr>
</tbody>
</table>

* For all PAHs, only one acute water quality criteria is established.

The BCF is estimated as the concentration of the chemical in biological tissue following exposure to contaminated food and/or water divided by concentration of the chemical in the exposure medium. For example, chrysene has a BCF value of 11,700 indicating that if the concentration in salt water were 3 µg/L (one-hundredth of the chronic water quality criteria value), it would be likely that salt water organisms would show chrysene concentrations of 35.100 µg/kg (35.1 ppm) in the tissues of their bodies. A BCF of 1000 indicates a potential for bioaccumulation, and both chrysene and benzo(a)pyrene are an order of magnitude or more higher than a value of 1.000, which is indicative of bioaccumulation in fish tissue.

Animal toxicity data available in the literature also shows that the constituents of concern, especially metals, remain in the edible animal tissue. The National Academy of Sciences (NAS) has established mineral tolerance levels for domestic animals. These levels are referred to as maximum tolerable levels (defined as the dietary level that, when fed for a limited period, will not impair animal performance and should not produce unsafe residues in human food derived from the animal).

The limits were established following the evaluation of the literature relating to 35 dietary minerals of both essential and "toxic" nature. Information such as the form of element, length of study, criteria for response, and species of test animals were taken into consideration. In establishing these limits, the adverse health affects to the domestic animals were also considered as the primary criteria for response.

The NAS limits are recommended for use during formulation of diet for domestic animals used as supplemental food in addition to forages, a primary food source for grazing animals.

Dietary mineral levels for selected metals such as cadmium, lead, and mercury were also based on human food considerations (i.e., their potential for bioaccumulation in edible tissue used for human consumption). For example, cadmium accumulates in the liver and kidney tissue where it has a very long biological half-life, i.e., is retained without any significant degradation. Domestic animals grazing on forage grown on soil contaminated with high levels of constituents of concern in petroleum wastes may be toxic to animals and may in turn accumulate in animal tissue levels higher than those acceptable for human consumption.

These data, obtained from fish studies and animal tissue analyses, suggest that all the primary constituents present in F037 and F038 could pose significant risks to human health and environment via bioaccumulation.

### 5. Types of Mismangement

Management practices for F037 and F038 sludges include storage in wastewater treatment lagoons, impoundments, and final disposal in land disposal units including subtitle D landfills and land farms. However, sludges may remain in surface impoundments for very long periods. Only about 30 percent of the refineries have conducted periodic clean-out of at least some of their sludge generating ponds as of 1983. During wastewater treatment (i.e., settling, sedimentation, and gravity separation), solids deposit at the bottom of settling ponds, surface impoundments, or treatment lagoons. Many of these units are in locations where the soil is highly permeable and the ground-water table is relatively high. The solids present in these units pose a significant risk to human health and the environment because (1) the settled solids typically contain significant levels of PAHs, benzene, lead, chromium, and other hazardous constituents; (2) these constituents have demonstrated mobility in the environment; and (3) these limits are not fitted with leachate control measures. The site specific data collected by the Agency indicate that toxic constituents in the deposited solids have been transported from the source and have reached and contaminated ground water (see Response to Comments Background Document in the docket for this rulemaking).

### 6. Quantities of Waste Generated

EPA estimates that approximately 406,000 metric tons of F037 and F038 sludge are generated annually by the 204 petroleum refineries in the United States. Of this amount EPA estimates that between 250,000 and 300,000 metric tons per year are not covered by the Toxicity Characteristic. The original listings for K048 and K051, captured approximately 610,000 MT/yr of sludges (310,000 and 300,000 MT/yr, respectively).

### 7. Severity of Damage

The data available to the Agency indicate that the mismanagement of separation sludges has resulted in damage to the environment. Detailed damage information is presented in Appendix I in the Background Document Supporting today's rule. The damage incidents have shown ground-water contamination at levels in excess of health-based limits, soil migration and contamination of surface waters, and mortality of wildlife attracted to treatment lagoons.

### 8. Other Environmental Regulations

During the development of the F037 and F038 listings, the Agency evaluated the potential for other environmental regulations to provide protection for human health and the environment from mismanagement of petroleum refining primary treatment sludges. The Toxicity Characteristic, which was being developed at the same time as the expanded listings, was identified as having potential to identify the primary treatment sludges as hazardous and thus provide such protection. Specifically, a number of commenters to the April 13, 1988 Notice of Data Availability (53 FR 12182) expressed their belief that the TC rule would provide adequate protection from these wastes.

The Agency analyzed wastewater treatment sludges collected during the waste characterization effort for the expanded listings to determine the extent to which the TC would regulate primary treatment sludges. The results of these analyses were published in the April 13, 1988 Notice of Data Availability. The Agency has identified...
two major problems in relying on the TC to identify primary treatment sludges as hazardous. The first is that there exist
significant levels of hazardous constituents not covered by the TC. Specifically, neither benzene nor chrysene, both constituents which form the
basis of listing for today's F037 and F038 listings, are covered by the TC.
Second, Agency studies have shown that the EP test, as well as the newly
developed TCLP, tends to underestimate the leachability of hazardous
constituents from oily wastes.
For these reasons, the EPA has decided that no other existing
regulations would protect human health and the environment from the
mismanagement of primary treatment sludges from the petroleum refining
industry to the extent of today's listings for F037 and F038. The Agency
previously developed regulations (listing of K048 and K051 wastes) to control
hazardous wastes generated from the primary treatment of petroleum refinery
wastewaters. Today's action will extend RCRA and CERCLA coverage to all
similar wastes, providing a significant increase in controls on petroleum
refinery waste management practices and further protection of human health
and the environment.
9. Other Factors
The Agency is unaware of any other factors which would rebut the
presumption that these wastes are hazardous.
10. Conclusion
In summary, after evaluating the criteria specified in 40 CFR 261.11(e)(3),
the Agency has determined that the wastes are capable of posing a
substantial present or potential hazard to human health and the environment
when improperly managed. The Agency concludes that F037 and F038
sludges should be added to the list of hazardous wastes at 40 CFR 262.31
because these wastes typically and frequently contain high concentrations of
Appendix VIII constituents and after considering the factors specified in 40
CFR 261.11(a)(3) (i)-(xi), the Agency has reason to believe that these wastes are
capable of posing a substantial present or potential hazard to human health or
the environment when mismanaged.

III. Interaction with Other Regulations
A. Characteristics of Hazardous Waste
As one of the mandates of HSWA, the Agency revised the Toxicity
metals and several of the constituents added to the TC rule are likely to be
found in the wastes listed today. Some of the wastes listed today may fail the
EP or the revised TC due to the presence of TC-listed constituents, or may exhibit
the characteristic of ignitability and, therefore, may already be regulated as
characteristic hazardous wastes. After the effective date of today's rule, as
discussed below, these wastes will be regulated as listed hazardous wastes in
addition to being regulated as characteristic wastes in some cases.
Furthermore, characteristically hazardous sludges that meet today's
listing and that were previously not considered solid wastes when reclaimed
(under the exclusion for reclaimed materials of 40 CFR 261.2(c)(3)) will
become RCRA-regulated hazardous wastes by virtue of this listing.
Consequently, generators conducting oil reclamation from any newly listed
wastes that were previously characteristically hazardous may now
require a permit for storage of these materials prior to processing the
sludges.
Today's rule will regulate certain wastes generated from petroleum
refinery wastewaters as listed hazardous wastes. Wastes that were
already hazardous by virtue of exhibiting any of the characteristics of
hazardous waste, including the revised TC, will continue to be regulated as
characteristic wastes after the effective date of this listing. However, after the
effective date, these wastes will require a new hazardous waste number to
reflect the fact that they are listed hazardous wastes.
B. Minimum Technology Requirements for Surface Impoundments
RCRA section 3004(o)(1)(A) specifies minimum technology requirements
(MTRs) for new, replacement, or lateral expansions of surface impoundments
that contain hazardous wastes. RCRA section 3005(j)(1) requires surface
impoundments that are in existence and that qualified for interim status on
the date of enactment of HSWA (November 8, 1984) cease receiving,
storing, or treating hazardous waste or comply with the minimum technology
requirements of section 3004(o)(1)(A) within four years of the date of
enactment, i.e., November 8, 1988. RCRA section 3005(j)(6)(A) also provides that
surface impoundments that become eligible for interim status after November 8, 1984, as a result of receiving wastes that are hazardous due
to additional listings or characteristics authorized by section 3001, must either comply with MTRs of section
3004(o)(1)(A) within 4 years of promulgation of the new listing or
characteristic, or must cease receiving hazardous wastes no later than that
date (see discussion in next section on the effective dates for land disposal
restrictions). Requirements for closure of impoundments that cease to receive
hazardous wastes are set forth in 40 CFR 264.113 and 265.113 (see 54 FR
33376, August 14, 1989).
C. Land Disposal Restrictions
HSWA mandated that the Agency promulgate land disposal prohibition
determinations for wastes identified prior to the enactment of HSWA under a
specific schedule (RCRA section 3004(g)(4), 42 U.S.C. 6924(g)(4)). If the
Agency failed to promulgate land disposal restrictions by the dates
specified in section 3004(g)(4), the wastes are prohibited from land
disposal after May 8, 1990. HSWA also requires the Agency to make a land
disposal prohibition determination for any hazardous waste that is newly
identified or listed in 40 CFR 261 after November 8, 1984, within 6 months of
the date promulgating the new listing (RCRA section 3004(g)(4), 42 U.S.C.
6924(g)(4)). However, the statute does not provide for automatic restriction or
prohibition of the land disposal of such wastes if EPA fails to meet this
deadline.

DAF float and API separator sludge from the petroleum refining industry
(K048 and K051) were evaluated as part of the First Third land disposal prohibition determination, and
treatment standards for these wastes on August 17, 1986 (see
51 FR 31138). However, in the Third

Third final rule (published in the Federal
Register on June 1, 1990, 55 FR 22520),
the Agency rescheduled these wastes to the
third third of the schedule and
established revised treatment standards. In
addition, the Agency granted these
wastes a six-month national capacity
elevation from the effective date of the
Although the wastes covered by
today's notice are being listed because of the presence of hazardous
constituents at levels similar to those
found in K048 and K051, F037 and F038
are newly listed wastes, and therefore,
the treatment standards for K048 and
K051 do not apply to today's newly

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listed wastes. The Agency has not yet completed treatability and capacity analyses for these newly listed wastes. For this reason, the Agency will address land disposal restrictions for the wastes listed today at a later date. Until that time, these wastes are not subject to 40 CFR 266, unless they exhibit one or more of the characteristics of hazardous waste, namely the unit, ignitability, reactivity, corrosivity, or EP toxicity. Wastes that exhibit the newly promulgated Toxicity Characteristic are considered newly identified as hazardous and are not covered by the LDR (unless also EP Toxic) (see the Third Third Land Disposal Restrictions Rule, June 1, 1990, 55 FR 22520). The following discussion of requirements that may be imposed under the land disposal restrictions is provided to assist facilities managing the wastes listed today in preparing for requirements that may become applicable in the future. The Agency recommends that facility owner/operators begin taking the actions necessary to come into compliance with these requirements in anticipation of future effective dates.

The Land Disposal Restrictions program may restrict the management of the wastes listed today in various ways, depending on the timing and substance of a number of future regulatory actions. It should be noted that because the statute does not provide for automatic restriction or prohibition of land disposal of newly identified wastes until such restrictions are promulgated, land disposal of these wastes will not be restricted or prohibited until the Agency promulgates land disposal restrictions (unless the wastes exhibit one of the restricted hazardous characteristics or are subject to other land disposal restrictions).

Finally, it should be noted that several other RCRA rulemaking actions may affect the regulatory status of units managing the wastes listed today: including the Toxicity Characteristic (55 FR 11798), the Third Third land disposal restrictions rule (55 FR 22520), and promulgation of land disposal restrictions for TC hazardous wastes. The net effect of these regulations for any specific unit will be determined by the wastes managed in the unit, whether the wastes are hazardous due to being listed or exhibiting a characteristic, the effective dates of rules that cause each waste to be regulated as hazardous, and the treatment levels and effective dates promulgated for each hazardous waste managed in the unit. Each facility owner/operator must evaluate the applicable current and future regulations for each unit to determine the appropriate regulatory and technical actions for that unit. 21

D. "Mixture" and "Derived From" Rules

The mixture rule (40 CFR 261.3(c)) states that any waste derived from the treatment, storage, or disposal of a listed hazardous waste is itself a hazardous waste. Often water from dewatering of wastewater treatment sludges is recycled to process operation or returned to the treatment system. It is the Agency's position that such a wastewater is not a "derived from" hazardous waste if it can be demonstrated that the water removed from the sludge is no more contaminated than the original influent to the treatment unit from which the sludge was removed for dewatering.

E. Corrective Action

Under sections 3008(h) and 3004(u) of RCRA, all solid waste management units that are located at facilities subject to interim status or permitting are subject to RCRA corrective action requirements for releases of hazardous waste or constituents to the environment. It should be noted that regulated hazardous waste management units are also solid waste management units. Under these provisions, units that managed sludges that would have met today's listings in the past but that cease managing these wastes prior to the effective date of today's listings are solid waste management units and, if located at facilities subject to interim status or permitting under subtithe C of RCRA, are subject to the corrective action provisions. Wastewater treatment units that are exempt from the standards of 40 CFR 264 and 265 are also solid waste management units and, if they are located at facilities subject to interim status or permitting under subtitle C of RCRA, are also subject to the corrective action provisions.

IV. Response to Comments

The Agency is responding in this preamble to all major comments received in response to the original proposal and subsequent notices. The major issues raised by the commenters that are addressed in this section are:

- Scope of the listing
- Data adequacy
- Demonstration of hazard
- Implementation issues.

Other comments received by the Agency are addressed in the Response to Comments Background Document that is available in the docket associated with this rulemaking.

A. Scope of the Listings

Since the Agency originally proposed these listings, numerous comments have been received regarding the types of wastewater treatment units that would be subject to the listing. 22 Comments on the scope of the oil/water/solids separation sludge listings that are being finalized today have been subdivided into three major categories:

- Incidental versus Intentional Generation
- Applicability to Stormwater Basins
- Alternative Definitions.

The Agency's responses to these comments are presented below.

1. Incidental versus Intentional Generation

Many commenters suggested that the Agency restrict applicability of the listing to units that were designed and

21 Particularly, it is possible that wastewaters from which the wastes listed today are generated will be identified as hazardous waste prior to the effective date of this rule through the revised Toxicity Characteristic (see 55 FR 11798, March 20, 1990). Thus, the applicability of unit-specific requirements such as the technical standards of 40 CFR 294 and 295, the MTR retrofitting requirements, and the requirements imposed by land disposal restrictions to units managing both the wastes listed today, and wastewaters that exhibit the Toxicity Characteristic, will be driven by requirements associated with TC wastes as well as those associated with the wastes listed today. As previously noted, any inconsistencies that may arise among these requirements will be addressed in future rulemakings which concern these issues.

22 As discussed in section II.A of this preamble, the Agency differentiates between primary wastewater treatment sludges (oil/water/solids separation sludge) and secondary wastewater treatment sludges (sludges generated in agressive biological treatment units) as follows:

- Oil/water/solids separation sludges are generated during primary physical and/or chemical treatment of wastewaters to separate oil, water, and solids. These sludges typically come either from gravitational units (e.g., API separators) generating primary oil/water/solids separation sludges or emulsion breaking units (e.g., DAF units) generating secondary oil/water/solids separation sludges. Oil/water/solids separation sludges also includes sludges generated "incidentally" in units such as sumps, sewers, and oil skimmers that are upstream of aggressive biological treatment units. All of these sludges are with the scope of today's new listings.

- Biological sludges or digested biomass solids are sludges generated in aggressive biological treatment units.
Commenters believed intentional generation of waste (i.e., generation in units functionally similar to API separators and DAFs) was the premise of the original Envirex petition and that the Agency should limit the listing to these types of primary sludge-generating devices. Several commenters responding to the 1985 and 1988 Notices of Data Availability maintained that the Agency, until the 1985 notice, had not provided any indication that units (located upstream of the secondary biological treatment unit) that accumulated sludge incidentally (i.e., deposition in devices that were intended to transport or store wastewater rather than deposit sludge) were to be covered by the listing. The Agency, thus, had not provided an opportunity for comment on the full scope of the listing. However, some of the same commenters had expressed concern in their comments on the original listing proposal of 1980 that the original listing proposal could potentially apply to incidentally generated sludges. One commenter maintained that the 1985 clarification was essential to ensuring consistent application of the original proposal.

The Agency disagrees with the commenters' contention that the original intent of the listing was to capture only those primary sludge separator units that were functionally equivalent to API separators and DAF units. The following quote from the preamble to the 1980 proposal (see 45 FR 74893) illustrate that the Agency's intent on the scope of the primary sludge listings has been consistent:

"...any petroleum refinery sludge resulting from primary and secondary oil/water/solids separation will be comparably composed regardless of the type of equipment used in the separation step.

Likewise, the API separator is only one of the many equipment types which function as a primary oil/water/solids separator (other processes producing similar sludges include..."

...the Agency agrees that the listings must be modified to reflect the hazardous character of the wastes themselves, rather than the type of equipment or processes generating the waste.

Based on comments received since the 1980 and subsequent proposals, it appears that some commenters' understanding of a listed hazardous waste is generated and becomes subject to regulation has changed. Originally, some commenters failed to realize that the Agency considers sludge generation to occur when oily wastewater is treated by physical and/or chemical processes to segregate oil and solids from the wastewater. The solids formed at the bottom of a sludge-generating unit are wastes potentially subject to the RCRA regulations. As a consequence of the misinterpretation, some commenters erroneously concluded that the original proposal did not include sump sludges and other incidentally deposited sludges. A commenter responding to the 1986 notice acknowledged that EPA has provided a satisfactory clarification of which sludge-generating units would be covered by the proposed rule.

Commenters identified a number of "incidental" accumulators of primary oil/water/solids separation sludge that the commenters believed were inappropriately included in the listing scope. These included sumps, concrete sewers, pits, pipes and pipelines, emulsion tanks and impoundments, gravity separators, ditches, storm-water basins, flow equalization basins, chemical cleaning pits, and oil skimmers as well as oil retention units not used for the emergency spill control. The Agency has collected samples from all major incidental accumulator units at a variety of refineries and compiled analytical results on the sampled sludges. Analyses of these samples demonstrate that these sludges are similar to oil/water/solids separation sludges from API separators and/or DAFs at the same refinery (see document number F-88-PTSA-S0005 included in the regulatory docket for the analytical results). This outcome is not surprising, inasmuch as the sludges are generated from the treatment of similarly composed wastewaters through gravity sedimentation. While commenters expressed the belief that units operated for different purposes would produce sludges of different characteristics and that the Agency should require and conduct specific analyses of unintentionally (i.e., incidentally) generated sludges before regulating such sludges as hazardous, they failed to provide data to substantiate their claims. Furthermore, no valid theoretical basis has been put forth in support of the claims that the API separator sludge and the sludges generated in the incidental units are dissimilar.

A comparison of the data generated by the Agency for the sludges from the incidental units and the API separator sludge indicates that both types of sludges are similar in composition and contain hazardous constituents at significant concentrations (see document number F-88-PTSA-S0005 included in the regulatory docket). The Agency, therefore, disagrees with the commenters and is applying these listings to the sludge-generating units with sludge deposits that are incidental to the primary wastewater treatment system regardless of the location of these units. In the Agency's opinion all the incidental units identified earlier in this section and intentional units such as API separators and DAFs used to separate oil, water, and solids from process wastewaters and oily cooling wastewaters physically and/or chemically are covered by today's rule.

The Agency, therefore, is finalizing the proposed listings for F037 and F038 wastes that capture sludges generated in both the incidental and intentional sludge-generating units. The F037 listing definition includes the sludges generated from gravitational separation during storage or treatment of process wastewaters and oily cooling wastewaters from petroleum refineries. Such sludges include, at a minimum, those generated in oil/water/solids separators, tanks and impoundments, ditches and other conveyances, sumps, and stormwater units receiving dry weather flow. The F038 listing definition includes, at a minimum, sludges generated in secondary oil/water/solids separation units, such as IAF units, and tanks or impoundments not covered in the definition of either F037, K045, or K051.

The F037 and F038 listing definitions, however, do not include the following sludges:

- The sludges included in the hazardous waste listings K045 and K051;
- The sludges generated in stormwater units that do not receive dry weather flow; and
- The sludges generated in the aggressive biological treatment units and units that do not receive any process wastewaters or oily cooling wastewaters that have not undergone aggressive biological treatment.

The Agency believes that today's listings and the previous listings of K045 and K051 cover all types of oil/water/solids separation sludges generated using either primary or secondary separation in primary treatment units. In other words, the petroleum refinery sludges not covered either in today's listings or the previous listings are not included in the intended scope of the original listings because they are not similar in composition to the listed wastes and are not generated in the primary or secondary oil/water/solids separation processes (i.e., physical and chemical separation).

The Agency believes that the scope of today's listing definitions provides an incentive to refiners to use and properly maintain a well-designed wastewater treatment system, thus minimizing the
in basins for treatment and possible operations. The stormwater is retained clear. Refineries generally collect the units used for primary treatment is less generated in stormwater retention units refinery. The similarity between sludges weather flows were similar to other sludges from units that received dry February 11, 1985 (see 50 FR 5637) and in the course of its data collection compositional information, provided some additional confirmation for the Agency's view that units that are used for process and/or oily cooling water flow equalization in addition to stormwater retention will be significant accumulators of sludge, and that those sludges will be similar in composition to other primary treatment sludges generated at the refinery. The Agency, therefore, has concluded that sludge generated in stormwater collection devices that receive dry weather flows (i.e., units used for wastewater flow equalization) are within the scope of the listing. Those devices not receiving dry weather flow and used exclusively for stormwater retention are not included in today's listings.

2. Applicability to Stormwater Retention Basins

Numerous commenters expressed concern that stormwater retention basins generally handle a high volume of storm or rain water run-off and a relatively low volume of contaminated wastewaters. These commenters believed that these units should be distinguished from other primary treatment units. Commenters expressed the belief that the sludges generated in these units would be different from those in units which typically and frequently receive oily process wastewaters and/or oily cooling wastewaters. Commenters indicated that the use of oil skimmers in association with these units is necessitated by Spill Prevention Control and Countermeasures (SPCC) plans instituted by many refineries and does not necessarily reflect an expectation that the stormwater retention basin will receive an oily wastewater influent. One commenter submitted TCLP data that, according to the commenters, substantiated differences between primary oil/water/solids separation sludges and stormwater retention basin sludge.

The Agency examined a number of stormwater and flow equalization units in the course of its data collection efforts. These data were noticed on February 11, 1985 (see 50 FR 5637) and April 13, 1986 (see 53 FR 12162). The compositional data demonstrated that sludges from units that received dry weather flows were similar to other primary treatment sludges at the refinery. The similarity between sludges generated in stormwater retention units used exclusively for stormwater flow equalization and sludges generated in units used for primary treatment is less clear. Refineries generally collect the stormwater that falls on and runs off the surface of process areas of their operations. The stormwater is retained in basins for treatment and possible discharge. Some refineries collect stormwater in the process sewer system during storm events and thus may send some process wastewater along with their stormwater to stormwater retention basins. The Agency agrees with the commenters that stormwater units that receive process wastewaters in this manner, and do not receive any process wastewaters or oily cooling wastewaters during dry weather flow, do not routinely generate sludges that are similar in composition to the primary treatment sludges subject to today's listings. Thus, for the purposes of these listings, any stormwater unit that receives process or oily cooling wastewaters during non-storm events (i.e., dry weather flow) will be considered to be generating a listed sludge.

One commenter submitted TCLP data that, while lacking important total waste compositional information, provided some additional confirmation for the Agency's view that units that are used for process and/or oily cooling water flow equalization in addition to stormwater retention will be significant accumulators of sludge, and that those sludges will be similar in composition to other primary treatment sludges generated at the refinery. The Agency, therefore, has concluded that sludge generated in stormwater collection devices that receive dry weather flows (i.e., units used for wastewater flow equalization) are within the scope of the listing. Those devices not receiving dry weather flow and used exclusively for stormwater retention are not included in today's listings.

3. Alternative Definitions

In the 1988 proposal to list oil/water/solid separation sludges as hazardous, the Agency discussed the potential use of phenolic removal efficiency and percent oil content as criteria to differentiate between the sludges from primary and secondary oil/water/solids separation and sludges generated from biological treatment of wastewaters. Several commenters supported the use of phenolic removal efficiency as an indicator of when sludges are biological treatment sludges. A few commenters also supported the use of percent oil content in combination with phenolic removal efficiency as an appropriate indicator to differentiate between primary and secondary oil/water/solids separation sludges and secondary (biological) treatment sludges. After a careful review of the Agency-collected data and the public comments, the Agency concluded that it is not feasible to define the scope of the sludge listing based on chemical differences between the primary and secondary (biological) treatment sludges. The Agency believes that the available data are not adequate to apply either of these parametric tests to differentiate between secondary oil/water/solids separation and secondary (biological) treatment sludges. Specifically, these tests yielded both false negative and false positive results at a frequency unacceptable for regulatory decision-making (see section I, Background above). The Agency believes that the final listing definitions clearly identify affected units and are more easily implementable and enforceable because they do not impose additional testing and data interpretation requirements for the regulated community.

B. Data Adequacy

This section covers two major issues raised by commenters: (1) Sampling protocols, and (2) data variability and representativeness of the samples. Commenters raised questions concerning the adequacy of the Agency's sampling procedures. They also maintained that sludges included in the previous listings and those proposed for the new listings are not comparable and equivalent in terms of constituents and their concentrations; hence, these sludges are not similar to K048 and K051 wastes and cannot be classified as K048 and K051 wastes. Each of these issues is discussed further below.

1. Sampling Protocols

Commenters raised a number of questions regarding the sampling and analytical procedures used to collect sludge data in support of today's listing. The major comment on sampling protocols relates to the appropriateness of the Agency's use of grab samples to characterize wastewater treatment sludges. Commenters expressed concern that the concentration of sludge constituents would vary temporally and spatially within a sludge-generating unit (particularly impoundments and conveyances). Commenters felt that the Agency's sludge sampling activity did not reflect and adhere to the SW-846 sampling protocols.

The Agency disagrees with these commenters. For example, when sampling surface impoundments, the sampling teams typically probed the unit to determine the extent of sludge accumulation prior to taking a set of samples. The sludges sampled generally reflected long-term (longer than one year) deposition and, thus, were temporally significant, that is, reflective of long-term concentrations. Also,
samples were obtained from predetermined sampling locations (i.e., grid approach) within the impoundment to ensure spatial representativeness, thus, the Agency considered the potential for both spatial and temporal variability of sludge within the unit and designed the sampling approach to ensure that representative samples were obtained. Aliquotting of subsamples, when necessary, was performed in accordance with the SW-846 protocols. When surface impoundments were sampled from the banks of the unit (usually because the refinery refused to allow the sampling team on the impoundment), grab samples were collected around the perimeter of the unit.

Great care also was taken to sample incidental sludge-generating units, both those units that serviced small portions of the refinery and those that centrally serviced the refinery's wastewater treatment. Ditches where sludges accumulated incidentally were sampled to compare with sludges intentionally generated in separators. Surge basins that performed varying degrees of stormwater retention versus flow equalization also were sampled. The result of this extensive sampling program was the collection of samples from the entire spectrum of wastes potentially subject to the listings.

In a small number of cases, grab samples were collected from a single operating cycle of units that generated sludges on a continuous basis. However, when the hazardous constituent levels of these wastes were examined on a dry basis, the observed values were well within the concentration ranges for similar classes of sludge-generating units and for other units at the refinery. Therefore, the Agency believes that it was successful in obtaining samples that are representative of the long-term waste-generation practices of sludges from the treatment of petroleum refining wastewaters.

2. Data Variability and Class Representativeness

Numerous commenters responding to the 1980 and 1985 Federal Register notices expressed concern that the Agency had not provided data on large classes of units that were subject to the listing (e.g., stormwater and flow equalization basins and the other sources specifically mentioned in the February 11, 1985, notice). To address the commenters’ concerns, the Agency had included in the 1986 notice docket the relevant data (see docket number F-88-PTSA-S0005 included in the regulatory docket). Commenters responding to the April 13, 1988, notice expressed concerns regarding the adequacy of the Agency’s data collection effort. Commenters also raised several new concerns. Among the commenters’ concerns with the data noticed in 1988 were:

- Variability of constituent levels within a given unit throughout the class of wastes,
- Whether the data established quantitatively the equivalency of the proposed sludges to K048 and/or K051 waste listings, and
- Whether the hazardous chromium levels were of concern in any refinery sludges.

These comments are discussed below.

a. Constituent Level Variability.

The response to the above comments about the extent of sampling and adherence to the SW-846 sampling protocols explain the rationale for the Agency’s conclusion that collected samples were representative and that a comprehensive sample collection activity was undertaken. Similarly, the Agency stresses that an extensive sampling effort was completed to illustrate the similarity between the F037 and F038 sludges, and the API separator sludge (K051) and the DAF float (K048). Care was taken to obtain samples from possible sludge-generating units servicing small portions of the refinery as well as those centrally servicing the refinery’s wastewater treatment needs. For example, ditches that incidentally accumulated sludges were sampled for comparison with sludges intentionally generated in separators. Surge basins that performed varying degrees of stormwater retention versus flow equalization were also sampled. The result of this extensive sampling program was the collection of samples from the entire spectrum of wastes potentially subject to the listings.

Considering the diverse population of sludge-generating units and operating conditions, it was not unexpected that lead and chromium concentrations varied over three orders of magnitude. Similar variations in inorganic contents were seen in the analytical values used as the basis for the original API separator sludge listing. Likewise, API separators sampled at different refineries over the past several years also exhibited three orders of magnitude variation in metals concentrations. Despite this apparent inter- and intra-facility disparity, a one-to-one comparison of API separator sludge and primary oil/water/solids separation sludge concentrations showed consistent and strong similarity in terms of the sample means, concentration ranges, and variances (see document number F-88-PTSA-S0005 included in the regulatory docket). Data obtained during the development of Land Disposal Restrictions for K048 and K051 shows similar variability. Despite this variability, most samples analyzed by the Agency showed high concentrations of one or more toxic constituents.

The Agency views the strong similarities among the characterization results for the sludges generated in these many types of units with varying degrees of sludge-generating capacities as clear support for the premise that a similar class of units is being addressed in today’s listings. Similarity of organic hazardous constituent levels in the sampled sludges further supports the Agency’s contention that all of these sludges belong to the same category of primary wastewater sludges.

b. Equivalency to K048 and K051 Listings.

In 1980, Envirex petitioned the Agency to extend the K048 and K051 listings to all similarly composed sludges, regardless of the unit type in which the sludges were generated. When the Agency proposed to list primary and secondary oil/water/solids separation sludges on November 12, 1980 (see 45 FR 74693), it did so to ensure that all primary treatment sludges would be regulated in similar fashion. As discussed in the previous section, the Agency believes that the data noticed in 1988 clearly validate the premise of the original Envirex petition. The Agency compared the lead and chromium levels found in the API separator sludges and DAF floats with those levels in wastes listed today and concludes that the two sets of compositional data are equivalent with over 99 percent confidence based on the use of a standard “t” test on the log-normally distributed data (see document number F-88-PTSA-S0005 included in the regulatory docket).

c. Changes in Lead and Chromium Levels.

Several commenters responding to the proposed rule expressed the opinion that lead and chromium levels have decreased in API separator sludges since the original rulemaking. Commenters reasoned that these changes have resulted from the phase-out of lead in gasoline and from the reduced usage of chromium in cooling water. Commenters concluded that the Agency should reexamine the need for the existing listings rather than adding new ones.

In response, the Agency evaluated all of the data noticed to date on API
separator sludges. Three groups of analytical data were considered: the original data collected in the mid-1970's in support of the K051 listing, data on API separator sludges collected in the early 1980's and noticed in the February 11, 1985 Federal Register, and additional data collected from units sampled in 1987 and noticed in 1988. The Agency believes that these data offer an opportunity to examine the chronological changes in sludge composition over a period of 15 years.

First, it should be noted that the Agency does not believe that the lead in gasoline is the major contributor to the lead observed in wastewater treatment sludges. As can be seen from Table G, average lead values have not decreased with time in API separator sludge (K051), rather, they have increased by at least three fold since 1985, and by more than eight fold since the mid-1970's. The Agency is uncertain as to the precise cause of this phenomena but based on the data the Agency concludes that the concentrations of lead in the sludges is not a strong function of gasoline lead concentrations.

### Table G — API Separator Sludge Composition Data

<table>
<thead>
<tr>
<th>Constituent</th>
<th>Average concentration (mg/kg)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Mid-1970</td>
</tr>
<tr>
<td>Lead</td>
<td>26</td>
</tr>
<tr>
<td>Chromium</td>
<td>190</td>
</tr>
</tbody>
</table>

The chromium values presented in Table G, on the other hand, suggest that recently sampled and analyzed sludges contain lower chromium levels than those analyzed in the early 1980's. However, the average 1987 chromium levels (197 mg/kg) are virtually identical to those measured in the mid-1970's (190 mg/kg) that warranted the original listing of the API separator sludge. Whatever the variability in the chromium values, the data show the levels remain high. Therefore, the Agency believes that both lead and chromium continue to be present in API separator sludges at levels of concern, and API separator sludges will continue to be listed as hazardous wastes.

### C. Demonstration of Hazard

Commenters from the regulated community generally opposed the expansion of the K048 and K051 listings, while the environmental and regulatory community uniformly favored the expansion "to reflect the hazardous character of the wastes themselves." Opposition to the expansion of the listings was based on a variety of factors that generally reflect a concern that the Agency has not adequately demonstrated that the wastes pose a hazard to human health or the environment. The commenters, however, neglected the fact that the Agency had already made such a determination of hazard as required by 40 CFR 261.11 in its original decision to list API separator sludge (K051) and DAF float (K048) (see 46 FR 4618, January 16, 1981). Furthermore, the importance of regulating the primary wastewater treatment sludges as hazardous is increased by the fact that these wastes may be generated in surface impoundments and land-based conveyances, posing a threat to human health and the environment if these land-based units are not properly designed or operated. This section discusses the following four issues:

1. Hazard of currently listed wastes
2. Differences in management practices
3. Inadequate ground-water data for hazard assessment
4. Establishment of pass/fail criteria

#### 1. Hazard of Currently Listed Wastes

Several commenters believe that the extraction procedure (EP) toxicity characteristic data specific to the currently listed wastes (i.e., K048 and K051) suggest that the wastes do not pose a hazard to human health or the environment. In addition, commenters reasoned that because the wastes only occasionally exhibited a hazardous (EP toxic) characteristic and because the delisting process is complex and resource intensive, the Agency should promulgate a "properly designed" unit as the criterion for listing of wastes.

The Agency disagrees with the commenters' contentions that the currently listed wastes do not pose a hazard. In 1980, the Agency finalized the listing of K051 and K048 without challenge to the original bases for listing. Since 1980, the data collected by the Agency have demonstrated not only that lead and chromium levels are high and have remained at similar levels, but that the wastes also contain significant levels of hazardous organic constituents including benzene, benzo(a)pyrene, and chrysene. Commenters, on the other hand, have provided no new waste composition information that would refute the original determination or the more recent proposals. To the contrary, the only compositional information provided to the Agency has come by way of delisting petitions submitted under 40 CFR 260.20 and 260.22 and data submitted in response to the Land Disposal Restrictions for K048 and K051. In every instance the data show that untreated wastes contain high levels of toxic constituents. To date, none of the K048 or K051 delisting petitions for untreated wastes (which consist of more than 35 petitions) submitted by refineries have met the delisting criteria because they contain significant levels of the Appendix VIII constituents.

In addition, the commenters claim that leaching data do not suggest any potential hazard to human health and the environment. These commenters overlooked several points relevant to the mobility of oily wastes in the environment. The Agency developed 40 CFR 261.21 through 261.24 characteristics to identify those wastes that clearly pose a significant threat to human health and the environment. The Agency has always maintained that wastes that do not exhibit any of the promulgated characteristics may still be hazardous for other reasons (e.g., mismanagement scenarios unaccounted for in the TC). The Agency's leaching test (as described in 40 CFR 261.24) models constituent mobility in a slightly acidic (pH at or below 5.0) aqueous leaching environment. Agency studies have shown that the EP test, as well as the newly developed TCLP test, tends to underestimate the leachability of hazardous constituents from oily wastes. The potential shortcomings of the existing tests for oily wastes and the presence of significant levels of hazardous constituents not covered by the TC are major reasons why the Agency cannot rely solely on the characteristics to identify primary treatment sludges as hazardous. (EPA is continuing to investigate, however, whether the existing tests may be adjusted to more accurately reflect the leaching potential of oily wastes. For instance, in the context of its used oil lising decision, EPA will soon notice for public comment data on the characteristics of oily wastes using a modified TC protocol.)

Several commenters expressed interest in the Agency's perspective on the significance of leaching data for releases of metals from oily wastes. The Agency did develop an oily waste extraction procedure (OWEP) to evaluate the EP toxic metals in petitioned oily wastes. In response to the commenters, the Agency reviewed industry-submitted OWEP data on API separator sludge (K051) and included a

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The Agency believes that its approach to regulating chromium-bearing wastes is sound. While the Agency acknowledges that trivalent chromium is less toxic than hexavalent chromium, trivalent chromium can be converted to the hexavalent form under certain plausible mismanagement conditions. Recent evidence suggests that the trivalent to hexavalent chromium conversion may occur in a number of environmental situations (see 51 FR 26420, July 23, 1986). For example, chromium has been found to oxidize readily in the presence of catalyst such as manganese dioxide found in many field soils and sediments. Moreover, it has been shown that process-water treatment involving chlorination (not an uncommon practice in the refining industry to reduce phenol levels) will effectively transform trivalent chromium to its hexavalent form. Also, the normal presence of residual oxidizing capacity in treated water throughout municipal water treatment systems is capable of maintaining dissolved chromium in the higher valence state (see 50 FR 46966, November 13, 1985). Thus, if trivalent chromium is present in high concentrations in well water, chlorination can result in correspondingly high concentrations of hexavalent chromium, and the Agency's misrepresentation of the hazards associated with exposure to sludges containing 1.000 mg/kg of trivalent chromium, were all reasons for the Agency to reconsider the basis for the original listings of K048 and K051.

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consider these factors as a basis for making a determination that the sludges, even though generated, would not be regulated until they were removed from the sludge-generating units.

As discussed previously, the Agency has considered all factors specified under 40 CFR 261.11(a)(3) and has also considered these factors as part of the original K048 and K051 listing decisions. Contrary to the commenters' contention, the Agency believes that the sludges do pose an appreciable risk to human health and the environment.

The first issue raised by the commenters was whether or not the Agency has realistically identified total quantities of sludges requiring disposal and plausible types of mismanagement practices for the waste of interest. Some commenters expressed the opinion that the sludges have always been managed in the ponds where they were generated and that the sludges accordingly, should be evaluated under different mismanagement scenarios than those used for K048 and K051.

The Agency disagrees with the commenters. The 1982 survey of refinery waste management practices conducted for the API, which is included in the 1985 Notice of Data Availability docket, and RCRA section 3007 questionnaire responses to the petroleum refinery survey conducted by EPA clearly indicate that primary oil/water/solids separation sludges are generated in significant volumes. EPA estimates that approximately 408,000 MT/yr of F037 and F038 are generated annually from the petroleum refining industry. Much of this waste remains in surface impoundments in the refinery wastewater treatment system. On-site landfarming and off-site land disposal are the predominant methods of disposal for these wastes when they are removed from the wastewater treatment units. The Agency, therefore, believes that it is entirely reasonable to consider the types of waste management practices to which the primary separation sludges are currently subjected and as "plausible types of mismanagement" to which these sludges might be subjected if they were not listed.

Turning to the question of an exemption for surface impoundments that manage wastes listed in today's rule and that are used for in situ treatment, the Agency sees no basis for making this distinction. The Geraghty and Miller report cited by the commenters and included in the regulatory docket as document number F-89-PTSA-00009 concludes, among other things, that "The ratings of the ten refinery sites . . . show a moderately high ground water contamination potential from many sites. . . ." Furthermore, the sites were uniformly found to have inadequate ground-water monitoring systems. Also, the report states that many refinery impoundments have been constructed in highly permeable alluvial zone or fill materials. In some regions of the country (e.g., the Western Alluvial Basin), the report concludes that leachate will move downward without much attenuation and that "major endangerment problems could arise because of the dependence of much of the [Western] region on the ground water resources." The Agency has concluded that the commenter-cited report provides no decisive evidence that would lead the Agency to reconsider its assessment that the storage and in situ treatment of hazardous wastes in unlined surface impoundments may pose a significant risk to human health and the environment. To the contrary, the report's findings confirm the Agency's previous findings and substantiate its assessment that these wastes are likely to be mismanaged if not listed.

3. Inadequate Ground Water Data for Hazard Assessment

Commenters argued that the noticed data did not establish that the wastes posed a health hazard due to the presence of contaminated ground water in wells downstream from the units. Commenters asserted that the Agency should not move forward with the listing until data were presented for comment that substantiated impoundment releases and corresponding contamination of ground water at levels that posed a risk to human health and the environment.

The Agency disagrees with the commenters about the need to prove that active, health-threatening ground-water contamination is occurring before deciding to list a waste as hazardous. To the contrary, the criteria specified in 40 CFR 261.11(a)(3) require only that the Agency assess potential for health-threatening ground-water contamination. The Agency must evaluate the presence of hazardous constituents in a waste and consider specified factors such as type of waste management, waste quantities, and generic hydrogeologic characteristics. The ground-water data included in the 1988 Notice of Data Availability docket illustrate the highly mobile nature of organic hazardous constituents associated with the oily waste matrix. These data also indicate the presence of persistent metals such as lead and chromium in the oily waste matrix. The Agency also has collected additional data (see Appendix I of the Background Document in the docket supporting today's rule) demonstrating that the wastes pose a threat to human health and the environment. This reaffirms the Agency's determination that these wastes are hazardous.

4. Establishment of Pass/Fail Criteria

Several commenters maintained that the Agency had not established criteria for what constituted a hazard for any of the constituents in the subject wastes. Commenters expressed an opinion that specification of pass/fail criteria was essential to the evaluation of the class of refinery wastes because hazardous constituent concentrations in several of the wastes were below the levels that lead the Agency to list the wastes in the first place.

The Agency disagrees with the commenters on the need to establish pass/fail criteria as part of the listing process. The Agency promulgated its listing criteria in 1980 at 40 CFR 261.11. These criteria are based on the requirements of section 3001 of the statute. Using these RCRA listing criteria, the data presented by the Agency clearly demonstrate that the hazardous constituents are routinely and typically present in the wastes at levels well in excess of the health-based levels. The RCRA statute allows the Agency to list wastes as hazardous even if only one hazardous constituent is demonstrated to be present at a significant concentration (i.e., a level "many times" greater than health-based level) in a waste. If a refinery believes that his waste is not hazardous (i.e., contains low concentration of hazardous constituents) he may petition the Agency through the procedures specified in 40 CFR 260.22).

D. Implementation Issues

Commenters raised a number of concerns regarding the timing of various regulatory requirements that would be imposed as a consequence of listing primary treatment sludges and the industry's ability to comply with these regulations. Central to the arguments of several commenters is the premise that continuous operation of the refinery is only possible with continued use of primary treatment surface impoundments for wastewater treatment for a 4- to 6-year period. The commenters further indicated that any disruption in the wastewater treatment systems (e.g., retrofitting of primary treatment surface impoundments to comply with MTRs specified on July 15, 1985) would result in shutdown of the operation. They requested that the
Therefore the Agency believes that biological treatment technologies have a potential to pose a hazard to human health and the environment. Therefore the Agency believes that resources expended in ensuring the proper closure of these units under Subtitle C provide a necessary step towards mitigating future impacts on human health and the environment.

A second concern of the commenters was that refineries choosing to continue operation of affected surface impoundments that contain the wastes listed today may not be able to retrofit impoundments within the 4-year period specified for the compliance with MTRs. These commenters requested that the Agency consider delaying the effective date as a means of deferring the imposition of the MTRs. The 4-year compliance deadline for the MTRs is a statutory requirement and is beyond the Agency's power to change. Regardless of this point, however, the Agency disagrees with the commenters about the impact of a 4-year MTR compliance period. The Agency believes that refineries could retrofit their wastewater treatment systems by selecting one or more of the following options:

- Operating properly designed flow equalization tanks and segregated stormwater units.
- Using properly maintained primary oil/water/solids separation systems.
- Converting to a more aggressive form of biological treatment to eliminate future generation of the listed wastes.
- Removing both the wastes in the sludge-generating units and the underlying contaminated soils (if present), thus, eliminating the need for MTR compliance.

Following the application of the first two retrofitting options, all the sludges would be generated and deposited upstream of affected ponds. The selection of the third option would totally eliminate the need for future storage or treatment ponds/impoundments. Similarly, under the last option, one-time removal of the preexisting sludges and contaminated soils would allow refineries to avoid the MTR compliance costs and to perform closure under the less-costly Subtitle D requirements. If none of these options appear to be feasible, then refineries must retrofit units within the 4-year compliance period. For further discussion of MTR compliance requirements, see also section V.D.4., Impact of Land Disposal Restrictions Determinations.

2. Water Quality Impacts

Three commenters expressed concern that the listing of primary separation sludge would leave some refineries with no option but to shut down affected impoundments. These commenters were concerned that the listing could force refineries into NPDES noncompliance and result in surface water deterioration. As stated earlier in this preamble, the Agency does not believe that surface impoundment closure will necessarily lead to increases in water pollutant discharges. Rather, the Agency believes that conscientious upgrading and use of a well-operated and maintained wastewater treatment system will eliminate the potential generation of hazardous wastes in incidental and downstream units. The listings will, consequently, provide an incentive to the industry to improve the ability of primary wastewater treatment systems and secondary biological treatment units to treat the wastewaters with improved efficiencies. Therefore, the Agency believes that the impact of the listing will be to improve surface water quality.

3. New versus Amended Listings

Numerous commenters requested that the Agency consider wastes subject to the listings to be newly listed wastes, rather than amending the existing listings of DAF float (K048) and API separator sludge (K051). Commenters' concerns were also related to the many additional requirements for hazardous waste management imposed by the HSWA. Commenters reasoned that the subject wastes were not generally managed as hazardous at the present time and, therefore, consolidation of the listings could be erroneously construed to imply retroactive application of the listings. At a minimum, commenters were concerned that the situation would be a confusing one.

EPA agrees, in part, with the commenters. Inasmuch as the listing adopted today is a listing promulgated pursuant to section 300 of RCRA and offered in satisfaction of the requirements of section 3001(e)(2), the Agency clearly will consider it to be a new listing and is assigning the proposed wastes new RCRA hazardous waste numbers. This distinction between existing wastes and newly listed wastes eliminates confusion and will facilitate RCRA listing compliance.

4. Impact of Land Disposal Restrictions Determinations

Commenters responding to the proposed rulemaking repeatedly expressed concern about the potential impact of land disposal restrictions determinations that follow the promulgation of a new listing. HSWA requires that the Agency make a land disposal prohibition determination for newly listed hazardous wastes within 6 months of the date of listing (RCRA...
The commenters reasoned that: (1) The Federal Register units. Consistent with the K048 restrictions only prohibit placement of a impoundment and (2) the land disposal removed from the bottom of the and K051 listings, these wastes are deposited wastes did not meet the impoundments because the sludges had not actually been placed upon the land. The Agency has always maintained that sludges are generated at generating units. These commenters maintained that the Agency does not consider the sludges to be generated until they are removed from the unit and disposed on the land. The Agency disagrees with the commenters. The Agency has always maintained that sludges are generated at the moment of their deposition at the bottom of a unit. The commenters have apparently misunderstood the exclusion from certain regulations for hazardous sludges generated in product storage tanks (40 CFR 261.4(c)), which does not apply either to other waste management units or to surface impoundments used in any manner. Furthermore, the commenter’s belief that 40 CFR 261.4(c) states that the sludges are not generated is in error; 40 CFR 261.4(c) states that sludges are not subject to regulation until removed from the product storage tanks. Second, the commenters requested that the Agency verify that the land disposal restrictions would not apply to sludges at the time of generation in impoundments because the sludges had not actually been placed upon the land. The commenters reasoned that: (1) The deposited wastes did not meet the criteria for listing until they were removed from the bottom of the impoundment and (2) the land disposal restrictions only prohibit placement of a hazardous waste on the land, not its formation on the land or in land-based units. The Agency disagrees with the commenters and again notes that the wastes listed today are generated through gravitational separation and/or chemical or physical deemulsification of oil/water/solids from refinery wastewaters. Commentant with the K048 and K051 listings, these wastes are considered to be generated at the moment of deposition in the unit. Note that deposition is defined as a condition where there has been at least a temporary cessation of lateral particle movement (OSW Policy Directive 9441.29 (85)). When land disposal restrictions are promulgated for these newly identified hazardous wastes, surface impoundments in which these newly identified wastes are generated must either comply with the MTRs of 3004(c)(1)(A) within four years of promulgation of the new listing or characteristic or must cease receiving hazardous waste no later than that date. Additional requirements imposed by the land disposal restrictions will be addressed when land disposal restrictions are promulgated for these newly listed wastes.

The third point raised by the commenters relates to imposition of MTRs on surface impoundments storing listed hazardous wastes subject to the LDRs. Commenters stated that the 6-month compliance deadline for imposition of the MTRs would necessitate an immediate shutdown of the impoundments and, as a consequence of CWA regulations, closure of the refinery. Commenters expressed the opinion that shutdowns should be unnecessary, especially because a 6-month timetable for imposition of the MTRs would be in direct conflict with Congressional intent (suggested by section 3005(j)(6) of RCRA, which allows 4 years for impoundment retrofitting). The Agency believes that it is unlikely that refinery closures would result from a 6-month timetable for imposition of the MTRs. As stated previously, many refineries will require only minor modifications to their wastewater treatment systems to prevent future generation of today’s wastes in any large impoundment or in incidental sludge-generating units. Most other refineries will have a broad range of options available that could be implemented in this time frame to avoid impoundment retrofitting and refinery closure. For example, petroleum refineries typically have huge volumes of tank storage capacity. Refineries that are unable to complete primary wastewater treatment in an existing treatment system could temporarily convert a large tank capacity to storage of wastewater awaiting further treatment until the wastewater treatment system upgrade is completed or until surface impoundments have been retrofitted to comply with MTRs.

Review of RCRA section 3007 questionnaire responses suggests that no refinery would have to convert more than 10 percent of its crude and product storage capacity to handle the surface impoundment-based primary wastewater treatment operation at a given site. Given that refineries typically maintain a large excess of tank capacity over daily needs, negligible impact on production capacity would be expected to result from temporary conversion of tank capacity.

Regardless of the compliance strategies ultimately adopted by the various refineries, it is important to keep in mind that today’s notice does not in any way set land disposal restrictions for these wastes. Consequently, the potential statutory conflict referred to by commenters does not yet exist (i.e., there is not conflict between the statutory deadlines imposed by land disposal restrictions and minimum technology requirements until the Agency develops land disposal restrictions for the wastes). Therefore, the Agency notes the commenter’s concern and will address the issue in the proposed determination on the land disposal restrictions.

V. Compliance and Implementation

A. State Authority

1. 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. Following authorization, EPA retains enforcement authority under RCRA sections 3008, 3013, and 7003, although authorized States have primary enforcement responsibility. The standards and requirements for authorization are found in 40 CFR 271.

Prior to HSWA, a State with final authorization administered its hazardous waste program 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 that the State was authorized to permit. When new, more-stringent Federal requirements were promulgated or enacted, the State was obliged to enact equivalent requirements 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 RCRA section 3006(g) (42 U.S.C. § 6906(g)), new requirements and prohibitions imposed by HSWA take effect in authorized States at the same time that they take effect in unauthorized States. EPA directed to carry out these requirements and prohibitions in authorized States, including the issuance of permits, until the State is granted interim or final
authorization to do so. While States must still adopt HSWA-related provisions as State law to retain final authorization, HSWA applies in authorized States as the interim. Today’s rule is promulgated pursuant to section 3001 of RCRA (42 U.S.C. 6921). Therefore, this rule has been added to Table I in 40 CFR 271.1(l), which identifies the Federal program requirements that are promulgated pursuant to HSWA and take effect in all States, regardless of their authorization status. States may apply for either interim or final authorization for the HSWA provisions in Table I, as discussed in the following section.

2. Effect on State Authorizations
   As noted above, EPA will implement today’s rule in authorized States until their programs are modified to adopt these rules and the modification is approved by EPA. Because the rule is promulgated pursuant to HSWA, a State submitting a program modification may apply to receive either interim or final authorization under RCRA section 3006(g)(2) or 3006(b), respectively, on the basis of requirements that are substantially equivalent or equivalent to EPA’s. The procedures and schedule for State program modifications for either interim or final authorization are described in 40 CFR 271.21. It should be noted that HSWA interim authorization will expire on January 1, 1993 (see § 271.24(e)).

   40 CFR 271.21(e)(2) requires States that have final authorization to modify their programs to reflect Federal program changes and, subsequently, to submit the modification to EPA for approval. State program modifications must be made by July 1, 1992, if only regulatory changes are necessary or July 1, 1993, if statutory changes are necessary. These deadlines can be extended in exceptional cases (see 40 CFR 271.21(e)(3)).

   States with authorized RCRA programs may have requirements similar to those in today’s rule. These State regulations have not been assessed against the Federal regulations being promulgated today to determine whether they meet the tests for authorization. Thus, a State is not authorized to implement these requirements in lieu of EPA until the State program modification is approved. Of course, States that have existing mandatory standards may continue to administer and enforce their standards as a matter of State law. In implementing the Federal program, EPA will work with States under cooperative agreements to minimize duplication of efforts. In many cases EPA will be able to defer to the States in their efforts to implement their programs rather than take separate actions under Federal authority.

   States that submit official applications for final authorization less than 12 months after the effective date of these regulations are not required to include standards equivalent to these standards in their applications. However, the State must modify its program by the deadlines set forth in 40 CFR 271.21(e). States that submit official applications for final authorization 12 months after the effective date of these standards must include standards equivalent to these standards in their application. 40 CFR 271.3 sets forth the requirements a State must meet when submitting its final authorization application.

B. Effective Date
   The effective date of today’s rule is May 2, 1991. As discussed above, since today’s rule is issued pursuant to HSWA authority, EPA will regulate the management of F037 and F038 until States are authorized to regulate these wastes. Thus, EPA will apply Federal regulations to these wastes and to their management in both authorized and unauthorized States.

C. Section 3010 Notification
   Pursuant to RCRA section 3010, the Administrator may require all persons who handle hazardous wastes to notify EPA of their hazardous waste management activities within 90 days after the wastes are identified or listed as hazardous. This requirement may be applied even to those generators, transporters, and treatment, storage, and disposal facilities (TSDFs) that have previously notified EPA with respect to the management of other hazardous wastes. The Agency has decided to waive this notification requirement for persons who handle wastes that are covered by today’s listings and have already (1) notified EPA that they manage other hazardous wastes; and (2) received an EPA identification number. The Agency has waived the notification requirement in this case because it believes that most, if not all, persons who manage these wastes have already notified EPA and received an EPA identification number. However, any person who generates, transports, treats, stores, or disposes of these wastes and has not previously received an EPA identification number, must obtain an identification number pursuant to 40 CFR 262.12 to generate, transport, treat, store, or dispose of these hazardous wastes by January 31, 1991.

D. Generators and Transporters
   Persons that generate F037 and F038 wastes may be required to obtain an EPA identification number, if they do not already have one (as discussed in section V.C, above). In order to be able to generate or transport these wastes after the effective date of this rule, generators of the wastes listed today will be subject to the generator requirements set forth in 40 CFR 262. These requirements include standards for hazardous waste determination (40 CFR 262.11), compliance with the manifest (40 CFR 262.20 to 262.23), pretransport procedures (40 CFR 262.30 to 262.34), generator accumulation (40 CFR 262.34), recordkeeping and reporting (40 CFR 262.40 to 262.44), and import/export procedures (40 CFR 262.50 to 262.60). It should be noted that the generator accumulation provisions of 40 CFR 262.34 allow generators to accumulate hazardous wastes without obtaining interim status or a permit only in units that are container storage units or tank systems; the regulations also place a limit on the maximum amount of time that wastes can be accumulated in these units. If these wastes are managed in surface impoundments or other units that are not tank systems or containers, these units are subject to the permitting requirements of 40 CFR 264 and 265, and the generator is required to obtain interim status and seek a permit (or modify interim status or a permit, as appropriate). Persons who transport F037 and F038 wastes will be required to obtain an EPA identification number as described above and will be subject to the transporter requirements set forth in 40 CFR 263.

E. Facilities Subject to Permitting
   1. Facilities Newly Subject to RCRA Permit Requirements
      Facilities that treat, store, or dispose of F037 and F038, but have not received a permit pursuant to section 3005 of RCRA and are not currently operating pursuant to interim status, might be eligible for interim status under HSWA (see section 3006(e)(1)(i) and (ii) of RCRA, as amended). In order to operate pursuant to interim status, eligible facilities will be required to provide any required notice under section 3010 by, and to submit a Part A permit application not later than May 2, 1991. Such facilities are subject to regulation under 40 CFR 265 until a permit is issued.

      In addition, under section 3005(e)(3), not later than May 4, 1992 land disposal facilities qualifying for interim status under section 3005(e)(1)(i) and (ii) also must
submit a Part B permit application and certify that the facility is in compliance with all applicable ground-water monitoring and financial responsibility requirements. If the facility fails to submit these certifications and a permit application, interim status will terminate on May 4, 1992.

2. Interim Status Facilities

Pursuant to 40 CFR 270.72(a)(1), all existing hazardous waste management facilities (as defined in 40 CFR 270.2) that treat, store, or dispose of F037 and F038 and are currently operating pursuant to interim status under section 3005(e) of RCRA must file an amended Part A permit application with EPA no later than May 2, 1991. By doing this, the facility may continue managing the newly listed wastes. If the facility fails to file an amended Part A application by May 2, 1991, the facility will not receive interim status for management of the newly listed wastes, and may not manage F037 or F038 until the facility receives either a permit or a change in interim status allowing such activity (40 CFR 270.10(g)).

3. Permitted Facilities

Under regulations promulgated by EPA on September 28, 1988, (see 53 FR 37912), a hazardous waste management facility that has received a permit pursuant to section 3005 of RCRA and is "in existence" as a hazardous waste facility for the newly listed wastes, may be eligible to continue managing the new wastes under 40 CFR 270.42(g) while steps necessary to obtain a permit modification to allow the facility to manage the wastes are taken. To continue to manage the newly listed F037 and F038 wastes, eligible facilities must be in compliance with 40 CFR 265 requirements with respect to management of the newly listed wastes and submit a Class I modification request no later than May 2, 1991. This modification is essentially a notification to the Agency that the facility is handling the waste. As part of the procedure, the permittee must also notify the public within 90 days of submittal to the Agency. The permittee must then submit a Class 2 or 3 permit modification to the Agency by 180 days after the effective date of the listing. A Class 2 modification is required if the newly listed wastes will be managed in existing permitted units or in newly regulated tank or container units and will not require additional or different management practices than those authorized in the permit. A Class 2 modification requires public notice by the facility owner of the modification request, a 60 day public comment period, and an informal meeting between the owner and the public within the 60 day period. The Class 2 process includes a "default provision," which provides that if the Agency does not reach a decision within 120 days, the modification is automatically authorized for 180 days. If the Agency does not reach a decision by the end of that period, the modification is permanently authorized.

A Class 3 modification is required if management of the newly listed wastes requires additional or different management practices than those authorized in the permit or if newly regulated land-based units are involved. The initial public notification and public meeting requirements are the same as for Class 2 modifications. However, after the end of the 60 day public comment period, the Agency will develop a draft permit modification, open a public comment period of 45 days, and hold a public hearing if requested. There is no default provision for Class 3 modifications.

Under 40 CFR 270.42(g)(1)(v), for newly regulated land disposal units, permitted facilities must certify that the facility is in compliance with all applicable 40 CFR 265 ground-water monitoring and financial responsibility requirements no later than May 4, 1992. If the facility fails to submit these certifications, authority to manage the newly listed wastes under 40 CFR 270.42(g) will terminate on that date.

F. Compliance Options for Specific Units

Facilities that treat, store, or dispose of F037 and F038 wastes will have several options for complying with the RCRA regulatory requirements. Facilities may alter existing wastewater treatment systems to limit the units in which these wastes will be generated and managed and, thereby, may control which units will be subject to RCRA Subtitle C regulation. For example, wastewater treatment surface impoundments, which are subject to RCRA Subtitle C regulation, could be replaced with wastewater treatment tanks, which are excluded from regulation (such as surface impoundments) prior to the effective date of today's rule in order to avoid the application of RCRA permitting standards. These options are discussed in more detail in the following sections.

1. Tank Systems

Because the wastes listed today are generated from the treatment of wastewaters, it is likely that in the future, much of the waste will be generated in tanks that are part of a wastewater treatment system. Under 40 CFR 264.1(g)(6) and 265.1(c)(10), tanks and tank systems that meet the definition of wastewater treatment unit in 40 CFR 260.10 are not subject to the permitting and interim status requirements of 40 CFR 264 and 265. The wastewater treatment unit definition includes devices that (1) are part of a wastewater treatment facility that is subject to section 402 or 307(b) of the Clean Water Act; and (2) treat or store an influent wastewater that is a hazardous waste, or that generate and accumulate a wastewater treatment sludge that is a hazardous waste, or that treat or store a wastewater treatment sludge which is a hazardous waste; (3) meet the definition of tank or tank system in 40 CFR 260.10 (see 50 FR 34079). Therefore, all tanks and tank systems that meet the wastewater treatment unit definition, and in which the newly listed wastes are generated, accumulated, treated, or stored, are exempt from the regulatory requirements of 40 CFR 264 and 265. Because the definition of tank system includes all connected ancillary equipment as defined in 40 CFR 260.10, which includes piping, fittings, flanges, valves, and pumps, any such equipment that is part of an exempt wastewater treatment unit in which the newly listed wastes are generated, accumulated, treated, or stored is also excluded from the requirements of 40 CFR 264 and 265. (See 53 FR 34079 for further discussion of the scope of the exemption.) However, the listed sludges, once removed from the excluded units in which they are generated, are subject to all applicable Subtitle C regulations.

It should also be noted that wastes being generated at treatment, storage, or disposal facilities may qualify for the permit exemption under 40 CFR 262.34 (see discussion in section C.1 above). This exemption applies only to tank and container units for specified periods of time.

Any tanks or tank systems that manage the newly listed wastes but that do not meet the wastewater treatment unit definition or other permit exemption will be subject to the applicable requirements of 40 CFR 264 and 265, including requirements for secondary containment and leak detection, as well as closure and financial responsibility.
2. Surface Impoundments

Because the wastes listed today are generated from the treatment of wastewaters, it is likely that those sludges not generated in exempt wastewater treatment units will be generated in surface impoundments that are part of wastewater treatment systems. Because surface impoundments are not excluded from regulation under the wastewater treatment unit exemption, and in addition are "land disposal" units for purposes of the land disposal regulations, the plan is to manage these units for permitting purposes on or after the effective date, and which cease to receive hazardous wastes after the effective date. If (1) any sludge or waste that meets the description of F037 or F038 remains in the surface impoundment on the effective date of today's listings, and (2) the unit does not receive or generate any other hazardous wastes on or after the effective date, and (3) the impoundment is the final disposal site for the wastes, then the impoundment is not subject to RCRA Subtitle C. The Agency does not view one time removal of waste as part of a closure as changing the status of the unit, as long as there has not been ongoing management of the waste in the impoundment. Removal of waste in the context of a closure provides human health and environmental benefits since it eliminates potential sources of ground water pollution. This approach is consistent with current operational procedures for landfills under identical circumstances with respect to newly regulated TC wastes. A unit not receiving hazardous wastes may, however, generate hazardous wastes. For example, even if the unit containing the newly listed sludge is not considered to be actively managing the sludge, if any influent to the unit, including that which is nonhazardous, causes that sludge to be scoured from the unit, any effluent from the unit would be considered hazardous, because the "mixture rule" would be applicable. Thus, any surface impoundment receiving that hazardous effluent would be subject to the Subtitle C management standards and would need to be under interim status or obtain a permit. Facilities with units in which F037 and F038 wastes are generated and/or managed after the effective date of today's listing may continue to use these units to manage F037 and F038 wastes if all applicable RCRA Subtitle C requirements are satisfied. These facilities will be required to obtain interim status and apply for a permit (or modify interim status or a permit, if appropriate) in accordance with the compliance dates discussed in section IV.B, above. The units will be subject to the applicable requirements of 40 CFR 264 and 265 as of the effective date of the listing. With regard to the land disposal restrictions (LDR), treatment or storage in a land based unit is considered land disposal and potentially subject to LDR prohibitions. The key to LDR applicability is whether there has been placement of the hazardous waste into a land-based unit after the effective date of the LDR regulations.

3. Other Units

Units in which F037 and F038 are generated or managed will be subject to all applicable requirements of 40 CFR 264 and 265, unless the unit is excluded from such permitting by other provisions such as the wastewater treatment tank exclusions (40 CFR 264.1(g)(6) and 265.1(c)(10)), and the product storage tank exclusion (40 CFR 261.4(c)). Examples of units to which these exclusions could never apply include landfills, treatment units, waste piles, incinerators, and any other miscellaneous units in which these wastes may be generated or managed.

4. Closure

All units in which F037 and F038 wastes are treated, stored, or disposed after the effective date of this regulation that are not excluded from the requirements of 40 CFR 264 and 265 are subject to both the general closure and post-closure requirements of Subpart G and the unit-specific closure requirements set forth in the applicable unit technical standards Subpart of 40 CFR 264 or 265. Additionally, EPA recently promulgated a final rule that allows, under limited circumstances, regulated landfills, surface impoundments, or land treatment units to cease managing hazardous waste but to delay Subtitle C closure to allow the unit to continue to manage nonhazardous waste for a period of time prior to closure of the unit (see 54 FR 33376, August 14, 1989). Units for which closure is delayed continue to be subject to all applicable 40 CFR 264 and 265 requirements. Dates and procedures for submittal of necessary demonstrations, permit applications, and revised applications are detailed in 40 CFR 264.113(c) through (e) and 265.113 (c) through (e).

VI. Regulatory Impact Analysis

Pursuant to Executive Order 12291, the Agency has determined that today's rule may constitute a "major regulation" since it could result in an annual cost to the economy in excess of $100 million. Consequently, the Agency has conducted a regulatory impact analysis.
(RIA) in support of today's rule. The complete RIA document, Regulatory Impact Analysis for the Listing of Primary and Secondary Oil/Water/Solids Separation Sludges from the Treatment of Petroleum Refinery Wastewaters (hereafter, "RIA Document"), is available for review in the public docket for today's rule, and also was submitted to the Office of Management and Budget for review as required by E.O. 12291, EPA's response to OMB's views is available in the docket supporting today's rule.

This section of the preamble summarizes the RIA in three parts. The first part provides an overview of the U.S. petroleum refining industry and identifies and profiles the affected management practices, estimated sludge quantities, number of refineries, and expected subtitle C compliance scenarios for affected refineries. The second part provides an overview of estimated compliance costs, including general methods employed, expected national economic impacts, and direct industry impacts. The third part illustrates the types of human health and ecological hazards likely to be associated with these separation sludges under baseline management practices and typical petroleum refinery environmental settings. It also provides results from EPA's effort to quantify the major baseline damages and regulatory benefits.

A. Industry Overview and Profile of Affected Facilities

1. The U.S. Petroleum Refining Industry

At the beginning of 1989 (the base year for this analysis), there were 204 operating petroleum refineries in the United States with a combined capacity of 15.7 million barrels per calendar day (BCPD) of crude oil distillation capacity. Following a 5-year period of contraction from an historical peak of 324 refineries and 18.6 million BCPD of capacity at the end of 1980, the industry has been relatively stable, with moderately increasing capacity since 1985. As an industry, petroleum refining is distributed widely across the country, with at least one installation in each of 35 states, and 12 states having six or more refineries. The top three states—Louisiana with 22, California with 32, and Texas with 34—dominate, representing 43 percent of all refineries and 57 percent of U.S. capacity.

2. Profile of Affected Refineries

As discussed, today's rule would require all primary and secondary oil/water/solids separation sludges generated in treatment of process wastewaters and oily cooling wastewaters from petroleum refineries to be managed as hazardous waste under RCRA Subtitle C regulations. As background for rule development as well as for the regulatory impact analysis, the Agency conducted a detailed evaluation of refinery wastewater treatment practices, unit processes, and system configurations to develop an understanding of pond types and sizes, sludge characteristics and generation rates, and current baseline sludge management practices. The principal source of empirical information for these evaluations was the Agency's 1984 (and subsequent follow-up) mail survey of the refining industry which provided 1983 data on a total of 182 refineries. Using current U.S. Department of Energy data, individual refining capacities were updated and closed facilities were deleted from the original data base. After these changes, the Agency had data on 167 refineries, which represents 82 percent of the operating refineries and over 94 percent of operating crude distillation capacity as of the beginning of 1989.

Based on this data and evaluation of individual refinery wastewater system flowsheets, the Agency estimates that almost 90 percent of the 204 operating U.S. refineries, or 182 refineries, generated at least some oil/water/solids separation sludge from primary wastewater treatment in 1989. These affected refineries vary enormously in size and complexity, from less than 5,000 to more than 50,000 BCPD of crude oil processing capacity.

Many of the sludges subject to today's rule, however, are also hazardous wastes under the Toxicity Characteristics (TC) rule which was promulgated on March 29, 1990. In addition to the sludges, oily wastewaters at a majority of petroleum refineries are also expected to be TC hazardous wastes due to benzene concentrations. Refineries where either the sludge or wastewater or both would be captured by the TC rule will need to modify their wastewater treatment systems to achieve compliance with RCRA. These modifications, which typically include constructing additional wastewater treatment tanks and bringing surface impoundments into compliance, are very similar to modifications that would otherwise be needed for today's rule. Therefore, the prior promulgation of the TC rule substantially reduces the impact attributable to today's rule.

Based on EPA Toxicity Characteristics Leaching Procedure (TCLP) data for petroleum refinery wastewaters, the Agency estimates that about 84 percent of refineries (about 150, termed "Group A") have wastewaters and/or sludges that exceed the new TC regulatory level for benzene. The remaining 16 percent of refineries (28 refineries, termed "Group B") that generate oil/water/solids separation sludges are estimated to be unaffected by the TC rule. Similar to the compliance response for the TC rule, these Group B facilities will need to modify their wastewater treatment systems by bringing surface impoundments into compliance and constructing wastewater treatment tanks. Extrapolating from the mail survey data, EPA estimates that these 28 refineries generate about 40,000 metric tons per year of primary treatment sludge, utilizing approximately 65 unlined surface impoundments with a combined surface area of 225 acres nationwide, subject to today's listing. These impoundments are also estimated to contain 430,000 metric tons of accumulated sludges.

Although the TC rule accounts for most of the compliance activities at Group A facilities, these refineries may still generate, after completion of wastewater treatment system modifications, non-TC sludges that are subject to today's rule. Although the wastewaters are characteristic hazardous wastes under the TC rule, a substantial but highly uncertain portion of the oily sludges generated from these waste waters may not test TC hazardous using the standard TCLP laboratory procedures for reasons discussed above. Because the Agency does not have adequate data on the amount of sludge that would be captured by the TC rule after TC rule compliance modifications at the 153 Group A refineries, EPA bounded the impact estimates by assuming two scenarios: (1) 30 percent of the sludges are not captured by TC, and (2) 70 percent of these sludges are not captured by TC. This results in a range of 108,000 to 252,000 metric tons at Group A refineries estimated to be affected by today's listing. Adding the 40,000 metric tons from Group B facilities gives a combined range of sludge quantities affected by today's rule of 156,000 metric tons for the 30 percent scenario and 300,000 metric tons for the 70 percent scenario.

Sludges subject to today's listing can be deposited at virtually any point in the oily wastewater collection and oil/water/solids separation system upstream or prior to aggressive biological treatment units. However, the principal sources of such sludge generation and accumulation will include a variety of small or large ponds and, to a lesser extent, flow equalization basins or non-regulated primary treatment tanks located at various points in typical refinery wastewater flow system configurations.

Characteristic pond types include:
- Stormwater runoff retention ponds that are also used for primary treatment;
- Flow equalization ponds upstream of primary treatment units (API separator or dissolved air flotation (DAF) units); and
- Wastewater treatment ponds downstream of, or used instead of, secondary oil/water/solids separation, but before biological treatment, or before offsite discharge in the absence of biological treatment.

Current Sludge Management Practices.

The bulk of the sludges subject to today's listing have historically been deposited and stored in unlined ponds. According to the EPA survey data, about 30 percent of the refineries had conducted periodic clean-out of at least some of their sludge generating ponds as of 1983. However, most of the ponds in the survey had not been dredged up to 1983, and thus were serving as indefinite sludge accumulation and storage impoundments. As these ponds continue to accumulate solids, it is likely that many more would eventually require sludge clean-out in order to operate adequately in a primary wastewater treatment capacity. Historically, dredged primary sludge has been disposed in landfill or land treatment units, either on-site or off-site, primarily under unregulated or State-regulated Subtitle D conditions. A few states, such as California, may be treating some of these sludges as Subtitle C hazardous wastes when removed from primary treatment ponds, although this was not accounted for in the present cost assessment due to lack of specific data.

Regulatory compliance scenarios. Under Subtitle C of RCRA, oil/water/solids separation sludges can no longer be generated or managed in unlined surface impoundments. As a result, refineries with non-compliance sludge ponds would be required to alter current waste generation and management practices in two manners:

1. To reconfigure oily wastewater treatment systems to eliminate the use of unlined surface impoundments for primary or secondary oil/water/solids separation; and
2. To retrofit, close, or otherwise convert existing primary sludge impoundments to other uses, under various possible options.

For regulatory compliance purposes, the Agency assumes that oily wastewater treatment systems at affected refineries will be redesigned to capture all oil/water/solids separation sludges in tank or basin units, including the possible use of additional mechanical separation equipment. Although some small ponds may be excavated and retrofitted as settling basins with liners meeting Subtitle C specifications, this will probably be the exception.

Therefore, for cost estimating purposes, the Agency assumed the refinery wastewater redesign strategy will typically involve: (1) Construction of flow equalization tanks or basins to improve the performance of existing mechanical sludge separation equipment; (2) The construction of new DAF flotation devices for oil removal; and (3) The separation of stormwater runoff ponds from oily wastewater sources to eliminate their use as primary oily-sludge settling ponds. This engineering design approach was applied systematically to a sample of 24 Group B refineries in EPA's refinery database assumed not affected by the TC rule to determine equipment needs and sizing as a basis for estimating the capital and operating costs of wastewater treatment system modifications.

In addition to wastewater treatment system modifications and new sludge management requirements, compliance with Subtitle C also will require that existing impoundments containing these sludges be closed or otherwise brought into compliance with current regulations to prevent or control hazardous releases. For purposes of estimating compliance costs the Agency assumed that, by the effective date of this listing, all refineries will have responded in one of three ways as possible strategy options for managing existing oil/water/solids separation ponds:

1. Dredging sludge deposits from pond storage areas prior to the effective date of the rule and disposing them as Subtitle D wastes. Pond sites would then be converted to another use or left idle. This is the minimum cost compliance option considered in this regulatory impact assessment.
2. Closing the pond as a Subtitle C land unit. Pond sludge is first solidified in situ with fly ash. The impoundment is then filled to grade with native soil, and an EPA-recommended cover, consisting of a drainage system, a synthetic membrane, and two feet of compacted clay, is added. Groundwater monitoring and post-closure care are provided. This is an intermediate cost option.

3. "Clean closure," in which the sludge and two feet of underlying soil are dredged and disposed as a Subtitle C hazardous waste. The Agency assumed, for present purposes, that this disposal would occur prior to implementation of land disposal restrictions for this sludge. Soil analysis and groundwater monitoring are provided during the closure period. Closed pond areas are convertible to other impoundment uses or other nonwater system uses. This is the high cost option for purposes of this assessment.

The Agency estimated compliance costs for all three options, recognizing that individual site conditions and company compliance policies will underlie choices at individual refineries. However, it should be noted that Option 1 (dredge and dispose as Subtitle D waste prior to effective date of listing) could engender future removal or disposal cost liabilities. The Agency site-specific off-site, where local disposal conditions allow contaminant migration. Possible additional costs of this type have not been included under Option 1.

Oil/water/solid separation sludges generated after wastewater system modifications, both in response to this rule and the TC rule, will be subject to today's listing if not captured by the TC rule. For present cost estimation purposes, EPA is expecting the listed sludge to be subject to the same land disposal restrictions as other refinery sludges under EPA's "First Thirds Rule" (53 FR 31138) and "Third Thirds Rule" (55 FR 22520). Sludge incineration and solvent extraction in Subtitle C permitted units are the standard "best demonstrated available technologies" (BDAT) under these restrictions. Although incineration was investigated in most detail, due to the recent promulgation of solvent extraction as an acceptable option, the Agency also conducted a less extensive evaluation of solvent extraction and oil recovery as the more likely choice by industry. Other state-of-the-art recycling and waste minimization technologies as alternatives to Subtitle C incineration were also investigated but not specifically costed. The results of this analysis are summarized in the RIA document.
B. Economic Costs and Impacts

Based on individual refinery wastewater system flowsheets and EPA engineering cost functions for basic unit processes, the Agency estimated baseline and Subtitle C regulatory compliance costs for 24 randomly-chosen refineries in the EPA Survey database likely to be subject to this sludge listing but not to the TC rule (Group B refineries). Three compliance scenarios, following the descriptions outlined in the previous section, were simulated to account for possible variations in company decisions regarding initial impoundment closure or conversion options. Capital costs were calculated for wastewater treatment system modifications, pond closure (including sludge clean-out, landfill closure or clean closure), and (for Options 1 and 3 only) disposal of initial cleanout sludge. Operating and maintenance costs for the new wastewater treatment system installations and annual cost of sludge removal, treatment, and disposal for future sludge generation were the other principal costs estimated. Engineering assumptions for waste management involved on-site sludge dewatering and solvent extraction followed by cement stabilization of sludge residues as the principal treatment technology, followed by off-site land disposal in Subtitle C commercial facilities. On-site sludge treatment and off-site disposal was sized on the basis of total refinery sludge generation including previously listed TC, and newly listed Subtitle C sludges.

In addition to total compliance costs for the Group B refineries, EPA also estimated treatment and disposal costs for the 30 to 70 percent of non-TC sludges generated at a large sample of over 100 Group A (TC-affected) refineries, using the same BDAT waste management assumptions as for Group B.

All costs were extrapolated from the EPA data-base to the total universe of operating U.S. refineries using relative refinery capacity as the basis for extrapolation.

1. Nationwide Economic Costs

Table H summarizes the total national costs of today’s sludge listing for the three alternative impoundment closure options studied by the Agency. National costs were extrapolated upwards from the Agency’s sample data base of individual facility cost estimates, based on the data base coverage of 94% of total U.S. refinery capacity. Compliance costs in Table H represent total resource or social costs of this regulation, measured before any business expense tax write offs available to affected companies. Capital investment costs are annualized here over a 20-year lifetime at a real discount rate of 3.0 percent.

As seen in Table H, the Agency estimates compliance costs for initial investment at Group B refineries to range between $42 and $407 million, and total annualized costs for all refineries to be in the range of $57 to $191 million per year, depending on company decisions relating to pond closure options and percent of affected future sludge at Group A refineries attributed to this listing rule rather than the TC rule. Pond closure options have the dominant influence on total initial investment costs. The total annual cost estimates, however, are more influenced by the amount of future sludge which is or is not captured by the TC rule.

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<th>Table H.—Total National Compliance Costs, by Pond Closure Option</th>
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<td><strong>Capital Costs (Dollars in millions)</strong></td>
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For “Group B” refineries unaffected by the TC Rule. Capital costs annualized over 20 years at 3 percent.

Includes non-TC sludges at refineries both unaffected and affected by the TC Rule.

Other Waste Management Options.

The costs presented here for annual future sludge disposal are based on the assumption that companies will choose to meet land disposal restrictions by treating the newly listed wastes by solvent extraction instead of incineration. Generally, the Agency’s cost evaluations indicate that incineration would be a slightly higher cost option. Solvent extraction recycles recovered oil back to the refinery for reprocessing at an estimated rate of about one barrel of oil per metric ton of sludge. Other waste minimization or recycling options, not addressed in this analysis due to the site specific nature of these options, could also reduce the cost of the rule. Examples of such options might include reducing oily waste inflow to the oily wastewater treatment system by waste segregation, using efficient over design to manage process upsets, incorporating better operating practices such as spill prevention and proper materials handling, and recycling sludge to the coking oven (potentially available at about one quarter of the refineries).
Potential Corrective Action Costs.
The Agency did not include potential corrective action costs for on-site solid waste management units (under Section 3004(u) of RCRA) within the scope of the RIA for today's rule. The Corrective Action Rule itself is still under development and methods and assumptions for assessing costs are highly uncertain. The Agency's best present estimate is that, as an upper bound, approximately 9 to 12 refineries would likely become subject to corrective action as a direct consequence of this listing rule, with a combined total annual cost of about $4 million to $22 million per year.

This estimate is based on the observation that 60 to 70 percent of U.S. refineries are already subject to corrective action based on current Subtitle C on-site management permitting data, and assumes that only "Group B" refineries could be newly subject to corrective action, as a consequence of this listing rule. It also assumes that all 9 to 12 refineries would choose to manage the newly listed sludge on-site (requiring a new permit and hence triggering Section 3004(u)). Unit costs of facility-wide corrective action of $400 thousand to $1.8 million per year per refinery (a provisional estimate from the draft Corrective Action RIA) would be used to derive the $4 to $22 million per year total national cost estimate for the 9 to 12 refineries.

2. Industry Impacts

As a principal measure of this rule's impact on individual refinery competitiveness, the Agency compared annual incremental compliance costs to annual product revenue for each of the 149 refineries in EPA's database that generate sludges of the type subject to today's rule. Product revenue was calculated using individual facility product line proportions from the 1983 survey, together with 1986 reported U.S. average refinery-level product prices, and scaling each refinery's total production to a normalized 1986 refinery utilization rate of 86 percent of its reported crude oil refining capacity.

For purposes of evaluating annual compliance costs as a percent of annual sales (cost/sales ratio), the Agency recomputed compliance costs on an after-tax basis, recognizing that private company cost savings attributable to corporate tax deductions for pollution control capital depreciation and operating expenses. In reformulating private costs of compliance, EPA used a private sector discount rate for analyzing capital costs of 10.6 percent, based on recent estimates of the real cost of capital for petroleum industry investment.

Based on an analysis of private compliance cost-to-sales ratios, the impact on the refining industry is assessed to be modest, although not necessarily insignificant. A small number of refineries in the EPA database showed cost/sales ratios exceeding one or two percent, a level which has often been taken as a first stage indicator of significant adverse impact in EPA regulatory analyses. Comparing the low and high TC affected sludge scenarios, 4 to 8 refineries show ratios greater than one percent of sales; but only three refineries exceed two percent, even under the highest cost scenario. Conversely, nine out of ten affected refineries in the highest cost scenario fall below 0.5 percent, and over three-quarters fall below 0.25 percent according to the Agency's calculations.

For the small number of refineries that might become competitively vulnerable based on the cost/sales ratio criterion, the Agency also evaluated the type of vertical integration of the companies owning the potentially vulnerable refineries. The assumption here is that fully or partially integrated companies (i.e., those with ownership of crude oil production, petrochemical, and/or product marketing interests) would be in a position to absorb refinery compliance costs more readily than companies operating only at the refining stage. Of the potentially vulnerable refineries with cost/sales ratios greater than one percent under the highest cost scenario, as many as seven refineries are operated by non-integrated petroleum companies and could therefore be considered possibly more vulnerable than the others in this group.

The Agency was not able to conduct a more extensive analysis of potential facility closures or possible direct employment effects because of a lack of plant-specific information on costs, cash flows, and balance sheet items that would be required for such an evaluation. However, based on the analysis performed for Group B, the Agency projects only small overall impacts on the U.S. refining industry with a few facilities possibly incurring substantial adverse financial impacts to the point of closure.

3. Product Prices

The Agency does not believe that today's rule will have any measurable impact on consumer-level product prices for products including gasoline, diesel fuels, heating oils, or petrochemicals. For those refineries most affected by this rule (Group B), the average after-tax compliance cost is barely 0.2 percent of total refinery sales revenue. For Group A facilities (the majority), average costs attributable to today's rule will be much less; and it appears that many refineries (at least 1 percent or more) will not be directly affected by this rule because of prior commitment to closed system wastewater management and recycling of oily sludges. As a result of both of these factors, plus the presence of some foreign competition in refined products, it seems unlikely that companies incurring compliance costs would be able under existing competitive conditions to pass these costs forward to final product prices to any significant degree. However, even if all costs were to be passed through, equivalent price increases at retail would be about 0.05 percent.

4. International Trade

Although in principal a domestic cost increase will tend to favor foreign refinery competition, the Agency does not anticipate a measurable impact from this rule on international trade flows or the U.S. balance of payments. Since 1984, net refined petroleum product imports have been relatively constant at about 1.4 million barrels per day, or about 9 percent of domestic U.S. refined product supply. Under the conditions described above, with many U.S. refineries unaffected by this listing regulation and the most affected group of refineries (Group B) incurring an average compliance cost of only 0.2 percent of sales revenue under the high cost scenario, a measurable cost increase to the refined product market to foreign competition due to this regulation is unlikely.

C. Benefits of Primary Sludge Listing

The Agency used a two-stage approach to estimate the total national benefits attributable to today's rule. First, EPA conducted a general assessment of a number of factors relating to primary wastewater treatment sludge characteristics, management practices, and the environmental settings typical of petroleum refinery locations in the United States. The Agency then conducted limited quantitative modeling in order to estimate the magnitude of potential damages associated with baseline sludge management practices.

Based on this general assessment and modeling study, the Agency concluded that there is a high probability that
of these five hazardous constituents and seven other toxic constituents at levels warranting further evaluation from a hazardous waste perspective.20

In particular, lead, chromium, benzene, benzo(a)pyrene, and chrysene, as well as arsenic, nickel, toluene, benzo(a)anthracene, dibenz(ah)anthracene, were commonly tested at concentrations that are tens to thousands of times higher than standard EPA health-based and ecological protection reference levels. These levels strongly indicate potentials for damages to human health, aquatic ecosystems, and ground-water quality under a variety of plausible mismanagement scenarios.

Baseline Management Practices and Release Potential. Given implementation of the Toxicity Characteristics Rule as a baseline assumption, sludge subject to today’s rule would be generated in wastewater treatment tanks or cement-lined basins at all Group A refineries, or in unlined ponds at a smaller number of Group B refineries. As discussed above, many oily wastewaters and wastewater treatment sludges at petroleum refineries are hazardous wastes under the TC rule, and the Agency has assumed for purposes of this RIA that refineries currently using unlined primary settling ponds would modify their wastewater treatment systems (i.e., construct wastewater treatment tanks) to comply with design and operating requirements under the TC rule.

Based on these assumed wastewater treatment system modifications and assumptions about the amount of sludge subject to today’s regulation that will not exhibit the toxicity characteristic, EPA estimates that approximately 53 to 114 refineries would generate non-characteristic sludge subject to today’s rule in tanks and approximately 22 refineries would generate non-TC-Characteristic sludge subject to today’s rule in unlined impoundments. EPA assumes that the refineries with wastewater treatment tanks would generate an average of up to 2,600 metric tons of non-characteristic, affected sludge in tanks each year, and the refineries with unlined impoundments would generate an average of 2,200 metric tons of sludge per year in ponds averaging about 10 acres in total area per facility.

EPA estimates that the entire quantity of sludge generated in tanks and a portion of that generated in ponds, an average of 2,600 metric tons per year at approximately 63 to 124 refineries, would be removed periodically from the wastewater treatment units and disposed in landfills or land farms under typical Subtitle D conditions in the absence of today’s rule.

Wastewater treatment tanks in which sludge is generated are typically concrete-lined and do not accumulate and store large quantities of sludge over long periods of time. Although the Agency has not investigated potential releases of sludge constituents from these tanks in detail, EPA believes these units pose a relatively small hazard because of their engineered containment and relatively small accumulated sludge quantities. In contrast, the traditional unlined settling ponds and land disposal units that accumulate the majority of the sludge affected by today’s listing are generally not equipped with protective liners, caps, leachate or groundwater monitoring systems, or other protective measures during their operating or post-closure periods. To the extent these ponds and land disposal units lack protective controls during operating or post-closure periods, they may be subject to toxic constituent releases in a variety of possible forms. These could include leaching into ground water, migration from groundwater into surface water, direct erosion or surface runoff from storm events, or volatile emissions from pond or landfill surfaces. Migration and transport pathways could thus involve ground water to water-supply wells or to surface waters, land surface to surface waters, or air transport directly to human receptors or other environmental media or points in the food chain.

EPA’s damage assessment focused principally on the groundwater pathway, and in this respect the leachability of sludge constituents from unlined ponds or land management units is of particular importance. Although subject to scientific debate regarding specific predictive processes, there is substantial evidence that considerable quantities of toxic constituents from oily wastes can and do leach through containing walls or bottoms of unlined land storage or disposal facilities. For example, recent EPA column leachate studies have documented substantial release potentials for several oily wastes similar to the sludges affected by today’s rule, including API separator
production wastes, EPA described several damage cases involving the migration of hydrocarbons from unlined waste pits into ground water. In one case in New Mexico, hydrocarbons were detected in ground water 50 meters downgradient from unlined produced water pits. Sand above the water table was found to be stained with oil, and a black, oily film was discovered on the water itself.

In a separate study of petroleum refinery wastewater treatment sludges, EPA found concentrations of PAHs (phenanthrene, pyrene, and chrysene) of up to 2,000 parts per million (ppm) in a well located 200 meters downgradient from primary wastewater treatment units. At a coal-tar waste site in Minnesota, municipal wells drilled 1,000 meters away were found to be contaminated with several organic compounds, including several of the PAHs commonly present in oil/water/solids separation sludge. The coal-tar waste was oily in composition and most of the compounds detected downgradient from this site were slightly more concentrated in an oily phase. These and other documented cases of oily phase migration substantiate the Agency’s concern about potential for sludge constituents to be released into and migrate through the environment.

Environmental settings. Several factors relating to the environmental settings of petroleum refineries contribute to the general potential for damages from toxic sludges, as borne out by EPA survey and file data, as well as research by the American Petroleum Institute.

First, refineries and their impoundments tend to overlie relatively shallow aquifers. An EPA mapping study of 20 refinery locations, using available hydrogeologic maps, showed 90 percent of the sites with ground-water tables 20 meters or less from the land surface and 75 percent with water tables that are less than 7 meters deep. Similar, more precise field data from thirteen EPA site visits have documented the distance between the bottoms of surface impoundments and the ground-water table. Over half of the impoundments at these refineries extended either into or within 15 meters of the water table, and the water table was within 6 meters (20 feet) of the base of all the ponds at 12 of 13 refineries in the sample.

The American Petroleum Institute (API) also found that the water table underling petroleum refinery wastewater treatment impoundments was very shallow at a sample of 10 refineries and, more generally, in several regions where refineries tend to be concentrated. In addition, API found that these refineries and regions generally are underlain by unconsolidated soil that has a high permeability. Short distances to ground water and high subgrade permeability enhance migration potential for leachate and thus enhance the probability of ground-water contamination and other damages.

Distances to typical receptors are also important locational considerations, affecting both time of travel and extent of dilution or attenuation of toxic constituents between points of release and points of exposure. The EPA site visits referenced above also measured distances from impoundments to surface waters at 31 refineries. Seventy-five percent had distances under 1,200 meters, and 50 percent were within 250 meters. These distances are all generally within the range at which various toxic constituents can be transported by ground water, in either an aqueous or oily phase, at concentrations that can be damaging to natural resources and human health.

Little data are readily available on distances from refineries to active drinking water wells, a principal indicator of direct human health threats. However, the Agency reviewed U.S. Geological Survey (USGS) maps for a sample of 40 representative refinery sites to identify the presence and location of downgradient residences that appear to be outside the range of public water systems (PWSs). Residences outside of PWS service areas are likely to have private wells. For the same sample of 40 sites, the Agency also used the USGS maps along with data from the Federal Reporting Data System (FRDS) to identify the location of PWS wells. At 18 of the 40 refineries mapped (45 percent), residences that are expected to have private wells were present within 1,000 meters (1 mile), and at 9 of 40 refineries (22 percent), residences that...
are expected to have private wells were within 400 meters. Four of the 40 refineries (10 percent) have a public well within 1,600 meters downgradient. Using current census data on the average number of people per residence (2.6) and data from FRDS on the total population dependent on potentially affected FWSS, and extrapolating the sample results across the universe of affected refineries, EPA estimates that from 9,500 to 60,000 people could be exposed to the sludge contaminants via either private or public wells within 1,600 meters downgradient of 38 to 71 refineries. Although certainly not conclusive, these data suggest the potential for drinking water contamination at a substantial proportion of refineries and the potential for a large number of people to be exposed.

Overall, of the 40 refinery sites evaluated by mapping, 90 percent showed either private or public wells that may have drinking water wells, or surface waters, or both within 1,200 meters.

Conclusions from General Assessment. Based on (1) the substantial quantities of primary and secondary oil/water/solids separation sludge in unlined impoundments and land disposal units, (2) the high concentrations of several toxic constituents in the raw sludge, (3) the demonstrated capability of these sludge constituents to migrate out of containment units, (4) the shallow ground-water tables and high soil permeabilities beneath most refineries, and (5) the relatively short distances to surface waters and/or drinking water wells at a substantial proportion of locations, the Agency concludes that there is a high probability that these sludges are contributing substantially to environmental degradation and possible human health damage under current management practices at a significant number of U.S. petroleum refineries.

2. Quantitative Damage Estimates

In an effort to quantify the benefits from this regulation, the Agency undertook a modeling study of the ground-water damage pathway to estimate baseline toxic constituent concentrations at receptor points and to evaluate potential damages associated with this contamination.

Approach and Methods. The approach uses sample data for representative refineries to estimate typical damage potentials for all refineries producing primary wastewater treatment sludge. The principal data included: (1) Sludge quantity estimates for 149 refineries; (2) field data on toxic constituents in sludges sampled at 44 waste management units at 11 refineries; (3) downgradient distance to surface water for 31 representative refineries; (4) downgradient distance to nearest residence (as a proxy for drinking water wells) for 40 representative refineries, and (5) total population potentially exposed to ground-water contamination via private and public water supply wells located within one mile downgradient of 40 representative refineries.

To develop modeling inputs from the data on toxic constituent concentrations in the sludge, the Agency estimated leachate concentrations using all available sludge sampling data and accounting for the oily nature of the sludge. The Agency did not use toxicity characteristic leaching procedure (TCLP) direct data in this analysis because only limited sample data were available and the TCLP may underestimate constituent concentrations due to the oily nature of the sludges. Instead, the Agency estimated leachate concentrations for all 44 sludge samples using available EPA methods that account for the oily character of these sludges.

The estimated leachate concentrations are many times higher than leachate concentrations that would be expected from the TCLP. However, while this approach may appear to be conservative (i.e., may overstate the potential for leaching from the sludge), it is designed to more realistically account for leaching from a mobile oily phase, which is not well simulated by the TCLP.

Because the sludge that is affected by today's rule only includes that which does not exhibit the TC, the Agency based this analysis only on samples that the Agency considered likely to pass TC regulatory levels using standard laboratory test procedure. By comparing measured TCLP concentrations to estimated leachate concentrations from

...
(2) Concentration of toxic constituents entering surface water bodies, through ground water, based on distances to surface water, for those constituents that are damaging to fresh and saline water ecosystems.

The estimated health risks may be over estimated because they are calculated on the assumption that exposed populations would drink untreated water even though it might exceed taste and odor thresholds for oil and various constituents, and because PWSs may routinely treat water to meet drinking water standards. These issues are discussed below, together with estimates of costs for providing alternate drinking water supplies.

Ground-Water Resource Damages. An upper bound dollar value of the cost of avoiding the health effects described above can be obtained by estimating the cost of replacing drinking water that comes from affected down-gradient wells. Ground-water resource damages were defined in this analysis by exceedences of maximum contaminant levels (MCL's) defined by primary drinking water standards established under the Safe Drinking Water Act for five potential contaminants, including three metals (arsenic, chromium, and lead) and two organic compounds (benzene and toluene). Contaminant concentrations were estimated at fixed distances between 200 and 1,200 meters from sludge management units. All told, 70 to 80 percent of the refineries that manage affected sludge in landfills or land farms showed exceedences for at least one contaminant, even at the 1,200 meter distance, with the figure rising to 90 to 95 percent having exceedences at 200 meters. For refineries managing sludges in impoundments, 85 percent showed exceedences for at least one contaminant at 1,200 meters, and all showed exceedences at 200 meters. This translates into about 70 to 130 refinery sites producing damages to ground water at 200 meters and 60 to 110 sites showing damages at 1,200 meters. The total area of ground water contaminated above MCL's at these refineries is estimated to be 13 to 25 square miles. Multiple MCL exceedences (up to four contaminants) were typical for a majority of cases at all distances up to 1,200 meters.

The predicted magnitudes of the MCL exceedences were also substantial for a large percentage of refineries. For example, for 60 percent of landfill and land farm sites and for 95 percent of the impoundment sites, MCL exceedences were greater than a factor of 10 at 200 meters. At 1,200 meters, the proportion of sites with MCL exceedences greater than a factor of 10 declined to 25 to 40 percent of landfill/land farm sites and 75 percent of impoundment sites. MCL exceedences at 200 meters were greater than a factor of 100 for at least one contaminant at 10 to 20 percent of landfill/land farm sites and at 60 percent of impoundment sites. MCL exceedences at 1,200 meters were greater than a factor of 100 for 30 percent of refineries that have impoundments containing affected sludge.

In general, chromium accounted for the largest number of MCL exceedences across all refineries and produced the greatest absolute MCL exceedence levels—up to 2,500 times the threshold—at more than 90 percent of the affected refineries that dispose of sludge in landfills and land farms and all 22 refineries that accumulate the sludge in impoundments. Lead exceedences were predicted for 70 to 80 percent of the facilities with landfills and land farms and all 22 refineries with impoundments containing the affected sludge. Benzene exceedences were predicted at 10 to 50 percent of the affected refineries, depending on distance. Only toluene among the five constituents did not result in an exceedence of the MCL at any sites within the 200 to 1,200 meter range of distances modeled.

In addition to the ground-water damage estimates from modeled exceedence of MCLs, current sludge management may also contaminate ground water with levels of oil that can be tasted, smelled, or even seen. In this analysis, the Agency has assumed that sludge constituents are released, in part, in an oil phase that migrates in ground water. Given the assumption of a mobile oil phase, it is likely that ground water downgradient of sludge management units will not be usable because oil concentrations in the ground water will be well above taste and odor thresholds.

Human Health Damages. To quantify potential human health damages, the Agency modeled cancer risk levels for carcinogenic (lead and chromium) and noncarcinogenic (arsenic, benzene, and various PAHs [benzo(a)pyrene, benzo(g,h,i)perylene, dibenzo(a,h)anthracene, and chrysene]) contaminant concentrations. TheAgency modeled concentrations only out to 1,200 meters. Therefore, results for the remainder of refineries (55 percent with the nearest downgradient residence beyond 1,200 meters or beyond an intervening surface water body) were either inconclusive or assumed to yield low risks.

EPA's carcinogenic risk modeling results for the sludges affected by today's listing predicted MEI risks greater than 10^-4 for all refineries with residences within 1,200 meters (45 percent of all refineries), and greater than 10^-2 for 40 percent of all affected refineries. For up to 25 percent of affected refineries with the greatest predicted risks—i.e., those with higher carcinogenic constituent concentrations, larger sludge volumes, and closer distances to wells—EPA predicted MEI lifetime risks equal to or greater than 10^-2 (one case in 100 similar lifetime exposures) for these wastewater sludges under current management practices and distances to existing residences. Multiplying the median individual lifetime cancer risk estimates at three downgradient distances by the total population potentially exposed via downgradient drinking water wells at those distances, the Agency predicts that baseline sludge management practices could cause anywhere from one to three cancer cases per year.

Neurotoxological damage to sensitive persons (infants or pregnant women) can occur at threshold concentration levels of lead greater than 0.02 ppm in drinking water. Levels exceeding two times this amount are predicted by the EPA modeling results at up to 30 percent of refineries that manage sludge in landfills or land farms and 40 percent of refineries managing affected sludge in impoundments. Levels exceeding 100 times this concentration are predicted at up to 5 percent of refineries with landfills and land farms and 15 percent of refineries with impoundments. Kidney and/or liver damage from chromium ingestion can occur at drinking water concentrations...
of chromium greater than 0.18 ppm. The EPA model results for all refineries suggest that this threshold may be reached at 25 to 30 percent of refineries that manage sludge in landfills or land farms and 40 percent of refineries managing affected sludge in impoundments. According to the modeling results, this threshold would be exceeded by 100 times at about 10 percent of all refineries managing affected sludges in impoundments. Overall, the model results indicate that up to $6.4 million to $2.0 million people could be exposed to drinking water concentrations of lead and/or chromium in excess of their respective health effect thresholds as described above.

**Taste and odor.** In cases where taste and odor thresholds in tap water are exceeded, households or public water systems may take a variety of actions to avoid exposure to contaminated supplies and thus avoid any health effects. Our analysis has shown that benzene and toulene are sometimes in this range where taste or odor threshold exceedences could tend to preclude use of water. Highly sensitive persons can detect toluene (the more critical of the two constituents) in water at 0.024 mg/L, and our ground-water modeling results indicate that this concentration level could be reached at the MEI risk locations [nearest residential user] at about 20 percent of refineries with current downgradient private residences. However, for less sensitive persons at MEI residences and/or for other [non-MEI] residences further downgradient, taste and odor for toulene could be much less a factor in forestalling health risks for private well users. In addition, if the oil phase is mobile and reaches exposure points (as is assumed in estimating health effects), it is possible that oil could be tasted and smelled in drinking water at any of the facilities where the Agency estimated cancer risk or lead or chromium threshold exceedences. However, since the oily phase of the contaminant plume is generally expected to occur at the surface of the contaminated aquifer, wells would have to be withdrawn from the aquifer surface for users to detect the oil itself.

**Replacement Costs For Contaminated Water Supplies.** As an alternate measure of damages, the Agency estimated the costs of replacing ground water that is currently used as drinking water supply and that may be contaminated by baseline sludge management practices. We estimated these costs using a standardized resource damage model, along with our estimates of potentially exposed populations and the frequency of exceedences of MCLs in downgradient ground water.

Based on the Agency's projections, the nationwide annualized cost of replacing contaminated ground water that is currently used at downgradient locations ranges from $4.2 to $7.8 million, depending on the proximity of alternative water sources and the number of refineries affected by today's rule. The estimated total number of people placed on alternative water supplies ranges from 7,600 to 14,000. These replacement costs are based on the assumption that ground water, from either nearby or distant locations, will provide the replacement water supply. If surface water is used as the replacement supply, the annualized replacement costs would be from 8 to 23 percent higher than presented above. Similarly, if the Agency considered the replacement of ground water contaminated above taste and odor thresholds rather than MCLs the annualized replacement costs could also be slightly higher than presented above. In addition, these estimates only include replacement costs for current water demand and do not include replacement or treatment costs for future growth in demand.

**Surface Water Pollution.** The EPA modeling effort estimated concentration levels of toxic constituents predicted to reach nearby rivers, lakes, estuaries, or coastal water bodies through ground water. As noted above, EPA estimates that 75 percent of refineries are within 1,100 meters, and 50 percent within 250 meters, of a surface water body. In addition, 25 percent are within 600 meters of other wetland areas (swamps or bogs). Results from modeling predict that constituent concentrations reaching these surface waters may be substantially higher than standard water quality criteria for ecological protection (i.e., acute ambient water quality criteria and criteria developed from toxicity test results presented in EPA water quality criteria documents). Although the results are not conclusive because they do not provide quantitative estimates on the mass flows of pollutants, they provide an indication of the potential for ecological harm. In addition, it may be noted that several of these sludge constituents, particularly lead, chromium, the PAHs, and [to a lesser extent] nickel and arsenic, could tend to bioaccumulate in aquatic organisms or, under certain circumstances, deposit in benthic sediments. Damages to surface water through ground-water transport were not estimated in terms of total acreage or number of stream miles damaged.

### 3. Regulatory Benefits

Regulatory benefits from today's rule can be measured in terms of reductions in current damages [or prevention of increased future damages] to ground-water resources, human health risks (potential mortality or illnesses due to cancer and other organ dysfunctions), and ecological damage avoided through reduced pollutant loadings to fresh and saline surface waters or other wetlands near refineries or near off-site sludge disposal areas.

Basically, Subtitle C regulations will require that current sludge management units be closed (generally in a manner that will reduce future constituent releases) and that future sludge generation be managed either by incineration, solvent extraction, or by other means that precludes the migration of toxic pollutants into ground waters or surface waters. No new unlined primary oily sludge treatment or storage ponds would be constructed, either at existing or future new refineries, and no future oil/water/solids separation sludge would be disposed of under uncontrolled conditions in land management units. Instead, the sludge would accumulate and be stored in tanks or basins in accord with containment controls, and final disposal would occur under best demonstrated available technology (BDAT) specifications.

As an example of the damage reductions to be expected, the analysis has estimated future health risks from carcinogens and metals. The Agency has estimated that damages to human health via contaminated drinking water may be occurring presently at up to 52 percent of U.S. refineries currently generating these sludges, or at between 30 and 71 locations. If the 22 refineries with impoundments adopt either of the two more likely Subtitle C closure scenarios for existing surface impoundments (closure in place or clean closure), toxic
releases will either be essentially eliminated or future monitoring and corrective actions should substantially protect against future off-site migration at all of these 22 locations. Future oil/water/solids separation sludge management at all sites will be regulated according to BDE—i.e., solvent extraction or incineration under Subtitle C, Subpart 0 conditions. This typically results in hazardous organic constituents being recycled, destroyed, or removed at levels greater than 99.995 percent. In addition, cement stabilization of solvent extraction treatment residuals and proposed metals emission regulations are designed to control carcinogenic MEI risks below \(10^{-4}\) levels, and noncarcinogenic metals risks to levels below MEI health effect threshold levels. Thus, the Agency anticipates that MEI health risks due to cancer would be reduced from present levels, ranging from \(10^{-4}\) to \(10^{-6}\) at 35 to 60 locations, down to a maximum of \(10^{-8}\) (most likely substantially below \(10^{-5}\)) under expected regulated conditions. An estimated one to three cancer cases per year would be avoided. Noncarcinogenic effect levels would be similarly controlled, under BDE regulations, to levels below health risk thresholds. The number of people potentially exposed to lead and chromium concentrations above noncarcinogenic effect thresholds in drinking water, as a result of contaminant migration from the sludge, would be reduced by 8,400 to 32,000.

An alternative measure of benefits is the reduction of costs of treating or replacing contaminated ground water from private and public wells. These replacement costs would be reduced or prevented at almost all of the estimated 75 to 136 affected petroleum refineries as a result of this regulation. This would result in an annual savings of more than $4.2 to $7.8 million per year that would otherwise have to be spent to replace existing drinking water supplies.

An additional benefit, not quantified in this RIA, is that pollutant loadings to surface waters and wetlands through groundwater migration and transport at 56 to 102 refineries (about 75 percent of sludge generators) should also be substantially reduced or eliminated as a result of this rule.

D. Summary of Analytical Limitations and Qualifications

As described above, the benefit assessment has estimated benefits alternatively in terms of reduced health risks/damages and water supply cost savings. Many uncertainties and assumptions made in developing the quantitative estimates could lead to over- or underestimates. Specific factors noted in the analysis are summarized below. Paragraphs or factors in this section marked with * relate to health risk factors that would be precluded or obviated by groundwater source supply replacement or public system drinking water treatment.

1. Factors That Tend To Overestimate Benefits

Simplified VHS Model used in groundwater transport. The VHS model is a steady state model that projects long-term equilibrium groundwater plume contaminant levels based on the assumption that contaminant releases are continuous (i.e., the site acts as an infinite source). Although steady state modeling is efficient, it ignores many important temporal factors and can tend to overestimate the geographical extent, duration, and maximum contaminant levels. In addition, the VHS model, by failing to address specific retardation factors and dilution in an unsaturated zone, can tend to substantially overestimate contaminant levels for certain chemicals in the aqueous phase of the oil/water plume.

Agency dose-response functions. * The Agency's procedures for estimating dose-response relationships, upon which the health benefit estimates are based, result in an upper limit of health risks. Carcinogenic potency factors are conservative, tending to overstate risk. Furthermore, with respect to the carcinogenic potency of PAHs the Agency used the potency factor for benzene(e)pyrene (the PAH for which there is a potency assessment, albeit a relatively high potency among carcinogenic PAHs) for all the analyzed carcinogenic PAHs in the sludge data base. Similarly, the reference level used for lead represents a level that could result in neurotoxicological damage to sensitive persons (infants or pregnant women), not an average population. The estimates also assume that individuals in the exposed populations drink 2 liters of untreated contaminated ground water per day over 70 years. To the extent that the average person consumes less water and/or obtains liquids from other sources over a lifetime, actual risks will be lower. Thus the benefits do not represent the "most likely" or "best" estimates of risk in this respect.

Assumed hydraulic connection with drinking water wells. The Agency's health benefit estimates are based on the assumption that downgradient drinking water wells withdraw water from a geologic zone that can be contaminated by waste ponds, landfills, or land treatment units at petroleum refineries. Moreover, the estimates assume that wells are located along the downgradient centerline of a contaminant plume and that they draw water from the surface layer of the plume, which would have higher contaminant concentrations than locations on either side of the centerline or deeper in the aquifer. Downgradient drinking water wells may actually be protected from contamination by impervious geologic strata and/or may be located in less concentrated areas of a contaminant plume.

Other intervening regulations. * EPA's health benefit estimates do not take into account contemporaneous or future regulatory actions initiated by other regulatory authorities, including other EPA offices. In particular EPA's Office of Drinking Water has promulgated or proposed major rules that require the installation of treatment technologies at public water systems. The health risks that are estimated to be avoided in this rulemaking may be already substantially prevented for the populations of public water users as a result of these or future regulatory actions. There still can be risks, however, for private well users, not protected under the Safe Drinking Water Act. In addition, some constituents may not yet be covered by the current regulations.

Taste and odor. * In cases where taste and odor thresholds in contaminated tap water are exceeded, households or public water systems may take a variety of actions to avoid exposures to contaminated supplies and thus preclude any health effects. Our analysis has shown that benzene and toluene are sometimes in this range where taste or odor threshold exceedances could tend to preclude use of water. Highly sensitive persons can detect toluene (the more critical of the two constituents in the present analysis) in water at 0.024 mg/l, and our groundwater modeling results indicate that this threshold concentration level could be exceeded at the MEI risk location (nearest residential user) at about 20 percent of refiners with estimated MEI risks. However, for persons of more average taste and odor sensitivity at MEI residences and/or for other (non-MEI) residences further downgradient, taste and odor for individual constituents like toluene or benzene rapidly diminish as factors protecting against consumption of contaminated drinking water. For residences using private wells where taste and odor thresholds are not exceeded, substantial health risks can still be present, either for other constituents like lead or arsenic where
taste and odor are not a factor, or for constituents like benzene, for example, where the taste and odor threshold even for the most sensitive persons averages 0.07 mg/L, about 14 times higher than the benzene MCL (0.005). For oil itself, the taste and odor threshold for the most sensitive persons averages very near the surface of the contaminant plume, households withdrawing from the surface of the contaminated aquifer may thus detect the plume at substantial distances and avoid using contaminated water.

2. Factors That May Underestimate Benefits

Toxic constituents not included in the analysis. The risk modeling was based on a limited list of constituent chemicals expected to be present. Additional chemicals may be present that were not analyzed or for which health-risk factors have not yet been developed. For example, there is very recent evidence that dioxins are present in some refinery sludges at levels that could pose health risks. In addition, lead has recently been listed as a Class B–2 carcinogen, but was not so treated in the risk assessment.

Background response not included in the analysis. The health risk analysis did not account for segments of the population exposed to background doses of carcinogenic or noncarcinogenic toxicants from work place or other sources. Segments of the population already subject to significant background doses of either carcinogens or noncarcinogenic toxicants from work place or other exposures were not included in the analysis.

Pathways not explored or quantified. The risk assessment did not attempt to quantify any health risk pathways other than groundwater resource pathways. Other health risk pathways would include: dermal absorption and inhalation via water supply (showering, for example); inhalation of volatiles or dust particles from landfarming of sludges; food chain ingestion via crops grown on contaminated land surfaces; food chain via contaminated surface waters (fish and shellfish). Ecological damages not quantified. Damages to natural ecosystems—either through overland flows during flooding or erosion via groundwater contamination and seepage to land or surface waters—were not quantified in this study. It was shown however, that surface waters exist downgradient within 1200 meters at 75 percent of refineries and that other wetlands (swamps, bogs, etc.) are equally nearby at over 25 percent of refineries. Modeling results indicated that contaminants could migrate over these distances and several chemicals present in the sludge are known to bioaccumulate and/or concentrate in the benthic layer which is critical to the invertebrate elements of the food chain. Fractioned flow systems. The VHS model assumes a homogeneous isotropic subsurface. Certain sites are subject to fractures or are particularly porous, leading to exceptionally rapid transport and less dilution than predicted by the model.

Risk/damages related to future population growth or regional development were not counted. The Agency has only attempted to estimate health risks or groundwater resource damages for existing populations and water use patterns. No account has been made for possible future residential development or other future growth in water resource demands upon aquifers presently contaminated or subject to future contamination by these petroleum refinery sludges.

Only benefits within one mile are quantified. Due to data limitations and modeling constraints, the Agency only considered the health risks and resource damages prevented within one mile downgradient from refineries. The Agency acknowledges, however, that contamination from the sludge could extend for greater distances, making the overall benefits from this rulemaking greater than estimated.

VII. Regulatory Flexibility Act Screening Assessment

The Regulatory Flexibility Act (RFA) of 1980 (Pub. L. 96–35), which amends the Administrative Procedures Act, requires Federal regulatory agencies to consider “small entities” throughout the regulatory process. The RFA requires, in section 603, an initial screening analysis to be performed to determine whether a substantial number of small entities will be significantly affected by a regulation. If so, regulatory alternatives that eliminate or mitigate the impacts must be considered.

According to EPA’s guidelines and criteria for conducting regulatory flexibility analyses, if over 20 percent of the population of small businesses is likely to experience financial adversity based on the costs of a rule, then the Agency is required to consider that the rule will have a significant economic effect on a substantial number of entities and to perform a formal RFA assessment. The Agency has conducted an initial screening analysis to evaluate the potential economic effect of today’s final rule on small entities and has concluded that the rule will not have a significant adverse effect on a substantial number of small petroleum refining companies.

A. Definition of Affected Small Entities

EPA has identified the enterprises directly affected by this rule as petroleum refineries that use primary settling ponds or other non-regulated structures for oil/water/solids sludge separation from oily wastewaters. The Agency has estimated in the Regulatory Impact Analysis (RIA) for this regulation that about 162 out of 234 U.S. refineries produced such sludges at the beginning of 1989, primarily under unregulated conditions, and could therefore incur costs for new regulatory controls under Subtitle C of RCRA. However, as noted, a substantial portion of these sludges—possibly the major part—would come under the recently promulgated Toxicity Characteristic Rule (55 FR 11798) and would therefore be subject to regulation prior to the effective date of today’s regulation.

According to current U.S. Department of Energy (DOE) records, these 204 U.S. refineries are owned and operated by 106 identifiable business entities, primarily U.S. corporations (Petroleum Supply Annual, 1989). These 106 companies vary widely in size and general character. The largest 25 companies are either fully integrated petroleum companies or broadly based natural resource or other conglomerates ranking high among the nation’s top 100 or 500 largest corporations. The majority are smaller, nonintegrated companies that typically operate only one petroleum refinery.

For purposes of this regulatory analysis, the Agency has chosen to define affected small entities as those small petroleum refining companies that control company-level crude oil refining capacity of under 50,000 barrels per day (BPD). This definition of small company was chosen for the following reasons:

(1) A capacity level of 50,000 BPD represents 60 percent of the total number of companies (64 out of 106), but these 64 companies together control only 8 percent of capacity.

(2) Companies operating at less than 50,000 capacity BPD are predominantly nonintegrated, independent companies that operate only one refinery each.

(3) The 50,000 BPD cutoff is consistent with one of the Small Business Administration’s (SBA) criteria for defining small businesses in the petroleum refining industry (SIC Code 2911), as published in SBA’s Small Business Size Regulations (13 CFR 121).

The Agency has chosen not to use SBA’s second criterion, which would define a small business as one that has less than 1,500 employees, because (a) very few refineries employ more than

...
1,500 employees, and (b) data on the number of employees per facility/ refinery are much less readily available than are production capacity data. It may be noted that the concept of a small entity as applied to petroleum refining companies is a strictly relative concept. For example, the 50,000 BPD companies currently used as a cutoff criterion would, under current market conditions, generate an average annual sales revenue of about $350 million per year. This revenue level would rank such a company well above 95 percent of all U.S. corporations in annual sales. A company with 5,000 BPD capacity would generate about $35 million in annual sales.

B. Impact Screening Analysis

In conducting the RIA for this rule, the Agency used a data file that included 197 of the 204 operable refineries in the United States. Compliance costs and annual sales were estimated for all facilities in this data base, including 40 refineries operated by 40 companies meeting the Agency's criterion as small petroleum refining companies with under 50,000 BPD of crude oil refining capacity. The Agency has based its screening analysis for small business impacts on a review of the compliance cost and sales estimates for these 40 companies, which comprise 63 percent of all small refining companies.

Using a criterion of annual compliance costs greater than 1 percent of annual sales as the measure of "substantial" adverse impact, the Agency estimates that no more than 13 or so small refining companies (32%) would experience substantial impacts from today's rule even under the highest cost set of costing assumptions used in the RIA. Conversely, using lower cost assumptions from the RIA, the number of firms with compliance cost-to-sales ratios greater than one percent approaches zero. Given unexploited potentials for waste minimization and recycling as a preferred option to incineration for sludge disposal, the Agency's best estimate is that less than six (10%) of the small (less than 50,000 BPD) refining companies would be adversely affected at the one percent of sales criterion level.

Based on this screening analysis and the criteria presented, the Agency has concluded that this regulation will not have a substantial adverse impact on a significant proportion of small companies in the petroleum refining industry. The Agency has not, therefore, conducted a formal Regulatory Flexibility Analysis for this rule.

VIII. CerCLA Designation and Reportable Quantities

All hazardous wastes listed in 40 CFR 261.31 through 261.33, as well as any solid waste that meets one or more of the characteristics of a RCRA hazardous waste (as defined at 40 CFR 261.21 through 261.24), are hazardous substances under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended, pursuant to CERCLA section 101(14). Therefore, the waste streams listed as hazardous in today's notice will, on the effective date of the final rule, automatically become hazardous substances. CERCLA hazardous substances are listed in Table 302.4 at 40 CFR 302.4 along with their reportable quantities (RQs). CERCLA section 103(a) requires that the person in charge of a vessel or facility from which a hazardous substance has been released in a quantity that is equal to or exceeds its RQ shall immediately notify the National Response Center of the release. In addition, section 304 of the Superfund Amendments and Reauthorization Act of 1986 (SARA) requires the owner or operator of a facility to report the release of a CERCLA hazardous substance or a SARA Title III extremely hazardous substance to the appropriate state emergency response commission (SERC) and local emergency planning committee (LEPC) when the amount released equals or exceeds the RQ for the substance (or one pound where no RQ has been set).

The release of a hazardous waste to the environment must be reported when the amount released equals or exceeds the RQ for the waste, unless the concentrations of the constituents of the waste are known (40 FR 23566, May 25, 1983). If the concentrations of the constituents of the waste are known, then the mixture rule may be applied. According to the "mixture rule" used in notification under CERCLA and SARA (40 CFR 302.6(b)), the release of mixtures and solutions containing hazardous waste would need to be reported to the NRC, and to the appropriate LEPC and SERC, when the RQ of any of its component hazardous substances is equalled or exceeded. RQs of different hazardous substances are not additive under the mixture rule (except for radionuclides, see 54 FR 22536, May 24, 1989), so that spilling a mixture containing half an RQ of one hazardous substance and half an RQ of another hazardous substance does not require a report.

Under section 102(b) of CERCLA, all hazardous wastes newly designated under RCRA will have a statutory RQ of one pound unless and until the RQ is adjusted by regulation under CERCLA. In order to coordinate the RCRA and CERCLA rulemakings with respect to new waste listings, the Agency today is adding the wastes F037 and F038 to 40 CFR 302.4, the codified list of CERCLA hazardous substances, and listing their statutory RQs of one pound. In a Notice of Proposed Rulemaking published elsewhere in today's Federal Register, the Agency proposes to adjust the statutory RQs for waste streams F037 and F038 to one pound pursuant to section 102(a) of CERCLA.

IX. Paperwork Reduction Act

This rule does not contain any information collection requirements subject to OMB review under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq.

List of Subjects
40 CFR Part 261
Hazardous wastes, hazardous constituents, recycling.

40 CFR Part 271
Administrative practice and procedure, Hazardous materials transportation, Hazardous waste, Reporting and recordkeeping requirements, Water pollution control, Water supply, Interim and final State authorizations.

40 CFR Part 302
Air pollution control, Chemicals, Hazardous materials, Hazardous substances, Intergovernmental relations, Natural resources, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

F. Henry Habicht, II,
Deputy Administrator.

For the reasons set out in the preamble, title 40 of the Code of Federal Regulations is amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6012(a), and 6922.

2. Section 261.31 is amended by adding in alphanumeric order the following hazardous waste listings:

§ 261.31 Hazardous wastes from non-specific sources.

* * * * *
3. Section 261.31 is amended by designating the introductory text and the table as paragraph (a) and by adding paragraph (b) to read as follows:

§ 261.31 Hazardous wastes from non-specific sources.

(b) Listing Specific Definitions: (1) For the purposes of the F037 and F038 listings, oil/water/solids is defined as oil and/or water and/or solids.

(2) (i) For the purposes of the F037 and F038 listings, aggressive biological treatment units are defined as units which employ one of the following four treatment methods: activated sludge; trickling filter; rotating biological contactor for the continuous accelerated biological oxidation of wastewaters; or high-rate aeration. High-rate aeration is a system of surface impoundments or tanks, in which intense mechanical aeration is used to completely mix the wastes, enhance biological activity, and (A) the units employs a minimum of 6 hp per million gallons of treatment volume; and either (B) the hydraulic retention time of the unit is no longer than 5 days; or (C) the hydraulic retention time is no longer than 90 days and the unit does not generate a sludge that is a hazardous waste by the Toxicity Characteristic.

(ii) Generators and treatment, storage and disposal facilities have the burden of proving that their sludges are exempt from listing as F037 and F038 wastes under this definition. Generators and treatment, storage and disposal facilities must maintain, in their operating or other onsite records, documents and data sufficient to prove that: (A) the unit is an aggressive biological treatment unit as defined in this subsection; and (B) the sludges sought to be exempted from the definitions of F037 and/or F038 were actually treated in the aggressive biological treatment unit.

(3) (i) For the purposes of the F037 listing, sludges are considered to be generated at the moment of deposition of lateral particle movement. (ii) For the purposes of the F038 listing, (A) sludges are considered to be generated at the moment of deposition in the unit, where deposition is defined as at least a temporary cessation of lateral particle movement and (B) floats are considered to be generated at the moment they are formed in the top of the unit.

4. Section 261 is amended by adding Section 271.1(j) to read as follows:

APPENDIX VII.—BASIS FOR LISTING HAZARDOUS WASTE

EPA hazardous waste No. Hazardous constituents for which listed.

<table>
<thead>
<tr>
<th>EPA hazardous waste No.</th>
<th>Hazardous constituents for which listed.</th>
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<tbody>
<tr>
<td>F037</td>
<td>Benzene, benzo(a)pyrene, chrysene, lead, chromium.</td>
</tr>
<tr>
<td>F038</td>
<td>Benzene, benzo(a)pyrene, chrysene, lead, chromium.</td>
</tr>
</tbody>
</table>

PART 271—REQUIREMENT FOR AUTHORIZATION OF STATE HAZARDOUS WASTE PROGRAMS

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

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

6. Section 271.1(j) is amended by adding at the end the following entry to Table 1.

TABLE 1.—REGULATIONS IMPLEMENTING THE HAZARDOUS AND SOLID WASTE AMENDMENTS OF 1984

<table>
<thead>
<tr>
<th>Promulgation date</th>
<th>Title of regulation</th>
<th>Federal Register reference</th>
<th>Effective date</th>
</tr>
</thead>
</table>

PART 302—DESIGNATION, REPORTABLE QUANTITIES, AND NOTIFICATION

7. The authority citation for part 302 continues to read as follows:


8. Section 302.4 is amended by adding in alphanumeric order the waste streams F037 and F038 to Table 302.4. The appropriate footnotes to Table 302.4 are republished without change.
### Table 302.4.—List of Hazardous Substances and Reportable Quantities

<table>
<thead>
<tr>
<th>Hazardous substance</th>
<th>CASRN</th>
<th>Regulatory synonyms</th>
<th>Statutory</th>
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<td></td>
<td></td>
<td></td>
<td>RQ Code</td>
<td>RCRA waste No.</td>
</tr>
<tr>
<td>F037</td>
<td></td>
<td></td>
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<td>Petroleum refinery primary oil/water/solids separation sludge—Any sludge generated from the gravitational separation of oil/water/solids during the storage or treatment of process wastewaters and oily cooling wastewaters from petroleum refineries. Such sludges include, but are not limited to, those generated in: oil/water/solids separators; tanks and impoundments; ditches and other conveyances; sumps; and stormwater units receiving dry weather flow. Sludges generated in stormwater units that do not receive dry weather flow, sludges generated in aggressive biological treatment units as defined in § 261.31(b)(2) (including sludges generated in one or more additional units after wastewaters have been treated in aggressive biological treatment units) and K051 wastes are exempted from this listing.</td>
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<td>Petroleum refinery secondary (emulsified) oil/water/solids separation sludge—Any sludge and/or float generated from the physical and/or chemical separation of oil/water/solids in process wastewaters and oily cooling wastewaters from petroleum refineries. Such wastes include, but are not limited to, all sludges and floats generated in: induced air flotation (IAF) units, tanks and impoundments, and all sludges generated in DAF units. Sludges generated in stormwater units that do not receive dry weather flow, sludges generated in aggressive biological treatment units as defined in § 261.31(b)(2) (including sludges generated in one or more additional units after wastewaters have been treated in aggressive biological treatment units) and F037, K048, and K051 wastes are exempted from this listing.</td>
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* Indicates the statutory source as defined by 4 below.

* Indicates that the statutory source for designation of this hazardous substance under CERCLA is RCRA section 3001.

* Indicates that the 1-pound RQ is a CERCLA statutory RQ.

[FR Doc. 90-25637 Filed 11-1-90; 8:45 am]

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Friday
November 2, 1990

Part IV

Department of Labor

Mine Safety and Health Administration

Hazard Communication; Proposed Rule
DEPARTMENT OF LABOR
Mine Safety and Health Administration
30 CFR Parts 46, 56, 57, and 77
RIN 1219-AA47
Hazard Communication

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Proposed rule.

SUMMARY: This proposed rule would establish a Mine Safety and Health Administration (MSHA) standard entitled “Hazard Communication” (30 CFR part 46). The standard would require mine operators to assess the hazards of chemicals they produce or use, and provide information to their employees concerning chemical hazards by means of a written hazard communication program, labeling containers of hazardous chemicals, access to material safety data sheets (MSDSs), and employee training.

DATES: Written comments and requests for public hearings on the proposed rule must be received on or before February 1, 1991.

ADDRESSES: Send comments to the Office of Standards, Regulations, and Variances; MSHA; room 631; Ballston Tower No. 3; 4015 Wilson Boulevard; Arlington, Virginia 22209.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey; Director, Office of Standards, Regulations, and Variances; MSHA; (703) 235-1910.

SUPPLEMENTARY INFORMATION:

I. Background

Although the Occupational Safety and Health Administration (OSHA) has established a hazard communication standard (HCS) for the manufacturing and nonmanufacturing sectors, no similar comprehensive standard exists for the mining industry. The United Mine Workers of America and the United Steelworkers of America jointly petitioned MSHA on November 2, 1987, to propose the OSHA HCS and adapt the rule to both coal and metal/nonmetal mines. Subsequently, MSHA issued an advance notice of proposed rulemaking (ANPRM) on hazard communication on March 30, 1988 (53 FR 10258). In the ANPRM, MSHA indicated it would use the OSHA HCS as a basis for a MSHA standard, and specific comments were requested on a number of related issues.

The OSHA HCS was promulgated on November 25, 1983 (48 FR 53280). At that time, the rule only applied to OSHA regulated chemical manufacturers, importers, and employers in the manufacturing sector, that is, Standard Industrial Classification (SIC) Codes 20 through 49.

On August 24, 1987, (52 FR 31852) OSHA revised its HCS to expand the scope of the industries covered by the rule to all industries regulated by OSHA where employees are exposed to hazardous chemicals. OSHA has been enforcing all provisions of its standard in all industries under its jurisdiction since March 17, 1989. OSHA also issued a notice on August 8, 1988, (53 FR 29622) proposing to modify its final rule based upon public comment, including a determination by the Office of Management and Budget (OMB) under the Paperwork Reduction Act regarding the information collection requirements of the final rule. MSHA has considered the merits of these proposed modifications in developing this proposal and will be closely observing further developments in OSHA’s standard.

The comment period on MSHA’s ANPRM was extended twice (53 FR 10314 and 53 FR 23280) and closed on July 31, 1988. MSHA received a total of 50 comments in response to the ANPRM. However, several were from industry associations representing a large number of individual operators, and several were received from major labor organizations.

This proposal is based on considerations of the comments received in response to the ANPRM, MSHA’s experience in the mining industry, applicable MSHA legislation and standards, and the applicability of the OSHA HCS. MSHA solicits comments on each of the proposed provisions of this standard.

II. Discussion of Proposed Rule

A. Scope and Application

Evidence collected by MSHA indicates that exposure to chemicals occurs in every type of mine (although every employee may not be exposed). MSHA’s experience suggests that many mine operators and employees are not sufficiently aware of the presence and nature of hazardous chemicals in their workplaces. This lack of knowledge increases the risk of contracting occupationally-related chemical source illnesses and injuries, since appropriate protective measures can only be used when the presence of a hazard is known. MSHA believes that the development of a single mining HCS, applicable to both coal and metal/nonmetal mines, is the best method to ensure that the necessary information is provided.

Although the need for apprising workers of the hazards of the chemicals they work with has long been recognized by occupational safety and health professionals, as well as representatives of industry, labor, academia, and the Government, the difficulties encountered in attempting to define hazards in mining and determining the appropriate means of communication have delayed implementation of a systematic approach. In the interim, a number of existing MSHA regulations address informing miners of specific hazards, and State HCSs have been developed and enforced in the mining industry in some areas of the country. Some of the State HCSs are quite comprehensive, while others incorporate a cursory approach to the problem. It should be noted, however, that to MSHA’s knowledge the effectiveness of these programs in reducing injuries and illnesses has not been evaluated.

Under this proposed standard, each employee in the mining industry who is exposed to hazardous chemicals at levels that would involve a safety or health risk would receive information about them through a comprehensive hazard communication program. Operators would be required to determine the hazards of chemicals produced and used on mine property, obtain MSDSs on those chemicals imported onto their property, and transmit this information to employees by means of labels on containers, access to MSDSs, and appropriate training.

The standard is designed to ensure that all operators obtain the information they need to inform their employees properly and to design and implement employee protection programs. It would also ensure that operators provide necessary hazard information to employees so that the employees can better understand the protective measures instituted in their workplaces and where appropriate, assist in their proper use and operation.

Communicating this information to employees is intended to reduce the incidence of chemical source illnesses and injuries in the mining industry by changing the workplace behavior of employees to reduce the risk of harmful exposures. In order to achieve this goal, a balance must be attained between transmitting too little information and too much information. MSHA is interested in all comments and information that will assist in drafting a final rule that effectively brings about safer work practices in the mining industry.
Some commenters responding to MSHA’s ANPRM suggested that small mining operations should not be required to comply with an HCS. MSHA has the authority to exempt small mines from overall compliance with this standard; however, the performance-oriented nature of this standard would enable small operators to design their hazard communication program to suit their particular needs. This approach, along with other Agency policies to assist small mine operators, will aid them in complying with the standard.

Other commenters indicated that the degree of risk in their particular industry warranted either an exemption or limited coverage. Several commenters questioned the benefit of including certain minerals, such as limestone and coal, under the rule’s coverage because the hazards of these minerals are common knowledge and are well known to employees. Additionally, they indicated that employees are currently informed of the hazards of these minerals during training conducted under 30 CFR part 48.

MSHA solicits further comments regarding specific exemptions to certain metals. Based upon comments received in response to its ANPRM, MSHA is considering exempting from this rule all the minerals containing less than 5% silica and no other hazardous chemicals, and certain common minerals, such as coal, sand, and gravel aggregates, crushed stone aggregates, and clay. In evaluating such an exemption, MSHA does not intend to disregard or ignore any potential health risk, such as pneumoconiosis, that exposure to respirable silica or coal in these minerals could pose. If such an exemption were adopted, MSHA would continue to require miner training on the health hazards of these minerals under its existing part 48 regulations.

If MSHA were to adopt an exemption for such common minerals, it could develop MSDSs and other information on the potential hazards of these minerals and provide them upon request to operators and to employees in general industry receiving these minerals. Additionally, MSHA could develop an outreach program to communicate the hazards of these common minerals to the mining industry and to the employees in general industry using these products. Such a program could include the distribution by MSHA of written and audio/visual materials explaining the potential hazards of these common minerals to workers not already aware of their hazards.

MSHA believes that giving the limited number of these minerals such an exemption would address and the amount of information already on the hazards of these minerals, it could readily develop and provide any needed information regarding their hazards.

MSHA’s proposal on this standard is such as to ensure that this information, if not already provided, is communicated to mine operators and employees.

MSHA also believes that the risk posed to employees in general industry by these minerals is lower than that experienced in mining due to the way these minerals are handled and used by downstream employers. Also, many of these minerals either have a naturally large particle size, or are washed or screened, eliminating many of the finer particulates that might pose an airborne hazard. In addition, these minerals are often shipped or used wet, which would reduce any respirable dust hazard they might pose.

Due to their higher degree of risk, MSHA is not considering including silica flour or certain industrial sands among the minerals exempted. Silica flour and some industrial sands are sized, ground, and processed to a high degree of purity with respect to silica content and to a small particle size. They can be used in a wide range of applications, such as sandblasting, glass and ceramic manufacturing, fillers in paint and other products, and foundry operations. These minerals can pose a significant respiratory hazard to those exposed, as opposed to the less refined sands that are used primarily as aggregates in construction. Should the exemption for certain minerals be adopted by MSHA, a potential difficulty could arise in distinguishing between different types of industrial sands and deciding which would warrant coverage under the rule. Consequently, MSHA requests input regarding appropriate criteria for making such a determination.

Minerals such as coal, sand and gravel aggregates, crushed stone aggregates, and clay comprise over 90% of the chemicals produced by mine operators. Typically, operators producing these minerals produce no other hazardous chemical. Additionally, the majority of these operators employ fewer than 20 workers. Excluding such minerals from coverage under this rule could significantly lessen the regulatory burden of this rule on these operators.

MSHA acknowledges that the time and expense on mine operators to develop and distribute hazard information on such common minerals may be better directed at addressing more serious or less recognized chemical hazards. In considering an exemption for these minerals, MSHA requests specific information on the degree to which mine employees are aware of the hazards of these minerals, the level of silica in such minerals necessary before the mineral would be considered hazardous, how the minerals are used and handled by downstream employers including any relative exposure data, and how MSHA could best publicize and provide hazard information on these substances to employers and employees in mining and general industry.

The OSHA HCS only partially applies to laboratories. OSHA’s standard requires that labels on incoming containers of hazardous chemicals used in laboratories not be removed or defaced, that MSDSs received with the chemicals be maintained and made accessible to employees, and that employees be trained on the chemical’s hazards. In OSHA’s 1988 proposed rule, this limited application was initially intended to apply only to chemicals being developed and used in research laboratories. However, a number of commenters indicated to OSHA that laboratories in the chemical manufacturing industry are generally supervised by highly trained, technically qualified individuals. Additionally, on January 31, 1990, OSHA issued a final rule entitled “Occupational Exposure to Toxic Substances in Laboratories,” which comprehensively covers laboratories.

MSHA believes that laboratories found in the mining industry differ in several respects from those common to general industry, such as research facilities. Although there may be a few large-scale laboratories in the mining industry where trained chemists may be employed, it is MSHA’s experience that most laboratories in mining are small-scale operations devoted to quality control or process control. Additionally, relatively few laboratory workers in mining are highly trained chemists; many merely receive on-the-job training regarding their tasks. Compared to research facilities or laboratories in the chemical manufacturing industry, laboratories in the mining industry use relatively few chemicals and analytical methods. MSHA has not proposed developing a separate standard to comprehensively address laboratory hazards. At this state of the rulemaking, MSHA believes that laboratories in mining should be subject to the full scope of the standard, with no specific exemptions. Comments are requested on this issue.

OSHA’s HCS does not require labeling of portable containers into which hazardous chemicals are
transferred from labeled containers and which are intended only for the immediate use of the employee who performs the transfer. MSHA proposes to do likewise.

For hazardous chemicals in sealed containers which are not opened under normal conditions of use, such as those found in marine cargo warehousing and retail sales, OSHA limits the coverage of its rule to requiring that labels on these containers not be removed or defaced, obtaining and maintaining MSDSs for the hazardous chemicals in these containers, and providing employee access to MSDSs. MSHA has not included this provision in this proposal because the Agency is not aware of any mine that handles sealed containers of hazardous chemicals in this manner.

The MSHA HCS would not require operators to label containers of the raw material being mined or milled while it is on mine property. MSHA believes that labeling containers of the ore itself is both impractical and of little benefit to employees on mine property. Operators would, however, be required to provide labeling information with the initial shipment of a raw material sent to a downstream employer, to the extent that the raw material is a hazardous chemical under this standard. This issue is discussed in detail in the labeling section.

The Agency intends to exempt the following chemicals from the standard’s labeling requirements which, except as noted, are consistent with the OSHA HCS:

1. Pesticides which are labeled in accordance with the requirements of the Environmental Protection Agency (EPA).

2. Foods, food additives or color additives which are labeled in accordance with the requirements of the Food and Drug Administration or Department of Agriculture. The exemption found in the OSHA HCS for drugs, cosmetics, and medical or veterinary devices, including materials intended for use as ingredients in such products (for example, flavors and fragrances), has not been included in MSHA’s proposal because the Agency is not aware of their occurrence on mine properties.

3. Consumer products and hazardous substances which are subject to consumer product safety standards or labeling requirements of the Consumer Product Safety Commission.

MSHA has not included the labeling exemption found in the OSHA HCS on distilled spirits (beverage alcohols), wine and malt beverages. MSHA believes that most operators expressly prohibit the use of these substances in their workplace; and, in addition, their labeling would not be required under the exemption on substances intended for personal consumption by employees. Existing regulations of the Bureau of Alcohol, Tobacco and Firearms prohibit intoxicating beverages from in and around mines (30 CFR 56.20001 and 57.20001).

The applicable definitions of the substances addressed in these exemptions are those provided by the governing statutes and regulations. In providing exemptions from the labeling requirements of this standard for these substances, MSHA is mindful of the fact that most are already being labeled under the authorities of other Federal agencies. In the case of pesticides, the purpose of such labeling is mainly the protection of workers exposed to the pesticide. In the case of other substances, the purpose of the labels is more general consumer protection. Nevertheless, the required labels generally provide for the listing of chemical identities and, in some cases, hazard warnings as well. Because of the nature of the substances, they are regulated by the other Federal agencies to ensure that they are safe for consumer use, and to the extent that workers are exposed to the substances in a manner comparable to that of ordinary consumers, MSHA does not believe there is a need for additional labeling requirements.

MSHA recognizes, however, that there may be situations where employee exposure is significantly greater than that of consumers and that, under these circumstances, substances which are safe for contemplated consumer use may pose unique hazards in the workplace. For this reason, the standard’s exclusion is limited in such cases to labeling. It does not exempt operators from the MSDS and training requirements of the standard with respect to these substances, provided of course that the substance otherwise meets the standard’s definition of hazardous chemical. Moreover, it should be stressed that these labeling exclusions are only for the listed substances. To the extent that an operator uses chemicals, such as in the manufacture or processing of these substances, they are fully subject to the requirements of this standard.

MSHA proposes to exempt from both the labeling and MSDS requirements, any “hazardous waste” as the term is defined by the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6901 et seq.) (Solid Waste Disposal Act), when subject to regulations issued under that Act by the Environmental Protection Agency. Under EPA regulations, a waste analysis is required as part of the permit to burn or dispose of hazardous waste. However, EPA does not require the waste analysis to specify the chemicals’ hazards or provide that it be made available to employees. A number of mine operators have EPA permits to burn hazardous waste in their kilns as supplemental fuel sources, or they dispose of hazardous waste in tailings. MSHA is requesting comments on the appropriateness of exempting other hazardous waste not regulated by EPA from the labeling and MSDS requirements of this rule.

OSHA has excluded hazardous waste regulated by EPA from coverage under its rule. MSHA’s proposal is not exempt such hazardous waste from the labeling and MSDS requirements because the chemical components of waste often vary from shipment to shipment and new labels and MSDSs would be needed with many shipments. Given the variability of the components in the waste and the large number of such chemicals, MSHA believes at this time that chemical-specific MSDSs would not be practical or necessary. Instead, miners need general training about the hazards associated with this waste and, unlike OSHA’s HCS, MSHA’s proposal would require operators to train employees on the hazards of such waste. MSHA believes that, although EPA requires training of personnel at a hazardous waste facility, this training appears to be directed primarily at ensuring that the facility is run in compliance with EPA regulations and that personnel are able to respond effectively in emergencies to limit environmental impact. MSHA believes that EPA’s regulations on hazardous waste, together with MSHA’s proposed training requirement for hazardous waste would provide adequate hazard notification to employees on mine property.

Although OSHA’s HCS excludes coverage of hazardous waste regulated by EPA, OSHA has other specific regulations directed to hazardous waste operations (29 CFR 1910.120). OSHA was required to issue these regulations by section 162, title 1 of the Superfund Amendments and Reauthorization Act of 1986 (as amended) (SARA) (29 U.S.C. 635 note). MSHA does not have similar statutory requirements or standards regarding hazardous waste operations. MSHA requests specific comments on the appropriateness of requiring training under its HCS for those employees who
are exposed to EPA regulated hazardous waste.

The proposed standard provides complete exclusion for the following categories of substances:

1. Wood or wood products which do not release or otherwise result in exposure to a hazardous chemical under normal conditions of use.
2. Articles (as defined in proposed § 46(2).
3. Foods, drinks, drugs, cosmetics, and tobacco or tobacco products intended for personal consumption or use by employees while in the workplace.
4. Consumer products or hazardous substances that are used in the workplace in the same manner as normal consumer use, and such results in a duration and frequency of exposure that is no greater than exposures experienced by consumers.
5. Nuisance particulates that do not pose any covered physical or health hazard.
6. Ionizing or nonionizing radiation.
7. Biological hazards.

Consistent with OSHA's standard, MSHA proposes to exclude the majority of consumer products found in non-manufacturing workplaces from coverage under its rule. However, the Office of Management and Budget (OMB), in a letter to the Department of Labor, published December 4, 1987 (52 FR 46075), made several comments regarding the specific language of OSHA's consumer products exclusion. OMB stated that this exemption is limited to consumer products that are used under certain circumstances, and hence the HCS would continue to apply to numerous consumer products present in workplaces.

OMB also stated that this exemption would continue to place under the HCS large numbers of consumer products for which MSDSs would have little practical utility, and for which the burden of compliance would be substantial. MSHA requests comments on its provision exempting consumer products and the concerns raised by OMB with the identical provision in OSHA's rule. The OMB letter cited the three following concerns with OSHA's exclusion on consumer products:

Consumer product labeling already provides information to identify significant hazards that may result from use of the product and to enable users to avoid those hazards. For the overwhelming majority of consumer products that would remain subject to the standard, there is no evidence in the record that the MSDSs would have practical utility beyond the information already included on the label.

The exemption imposes a burden on the employer to "demonstrate" that exposures for each substance are the same as a "normal consumer use," a burden that may be difficult to meet. More importantly, such a trigger would not exclude many situations where risks are very low. For example, an employee who cleans and waxes floors once a week using a supermarket product exposed at the same duration and frequency as consumers? If not, should the employee be trained in the hazards of floor wax? Under OSHA's language, the employee may well be treated exactly like a worker on a chemical production line.

The exemption does not allow upstream suppliers to determine which products are exempted, because they do not know how downstream employers will use them. In fact upstream suppliers who want to ensure compliance will have no practical alternative but to assume that downstream employers are covered, and therefore ship MSDSs and labels along with all consumer products. Thus, upstream suppliers will continue to bear all of the costs and downstream employers will continue to receive all of the hazard information for all consumer product. This is exactly where the consumer product exemption should be designed to avoid. The number of MSDSs involved is very large. The National Paint and Coatings Association calculated that paint manufacturers would be required to supply 7,000,000 MSDSs initially to downstream establishments.

OMB therefore disapproved effective May 23, 1988, (52 FR 46075), coverage under OSHA's HCS of any consumer product excluded by Congress from the definition of "hazardous chemical" under section 311(e)(3) of the Superfund Amendments and Reauthorization Act of 1986 (SARA). "Any substance to the extent it is used for personal, family for household purposes, or is present in the same form and concentration as a product packaged for distribution and use by the general public." This language would exempt any substance packaged in the same form and concentration as a consumer product whether or not it is used for the same purpose as the consumer product. EPA concluded in its final rule on sections 311 and 312 of SARA (52 FR 38344) that this exemption is appropriate for household or consumer products in commercial and industrial as well as household use because "the public is generally familiar with such substances, their hazards and their likely locations [hence], the disclosure of such substances is unnecessary for right-to-know purposes."

OMB stated that this alternative consumer product exemption would address the concern that OSHA's HCS imposes unnecessary paperwork in many situations in which exposures and risks are trivial, and would reduce and simplify the paperwork requirements. OSHA stayed the enforcement of its consumer products provision after receiving OMB's letter (52 FR 46075) stating their concerns and their disapproval of the paperwork requirements regarding this provision. However, due to subsequent court and administrative actions, OSHA issued a technical amendment to its rule on February 15, 1989, (54 FR 6880), indicating that it would enforce its consumer products provisions as written in 1987 final rule. The language in MSHA's proposal is identical.

OMB also stated that using the same exemption in both OSHA and EPA right-to-know paperwork requirements, which are closely linked, would make them mutually consistent. It would avoid the situation in which employers must separate the paperwork for their "consumer products" into two groups: an OSHA "consumer product" and an EPA "consumer product."

OMB also believed that it would establish objective criteria that would enable upstream and downstream employers to determine what is and what is not covered. Upstream suppliers would not be forced to speculate about the identity of the final user (consumer or employer) in determining whether the product is subject to the HCS. The flow of MSDSs and labels would be restricted to uncompaged substances or substances packaged for industrial or commercial use, for which detailed hazard information would be expected to have practical utility.

MSHA requests comments on the need to exclude from coverage any consumer product excluded by Congress from the definition of "hazardous chemical" under section 311(e)(3) of SARA. The exclusion of "articles" in MSHA's proposal, and the definition of "article," are consistent with OSHA's HCS. MSHA has not adopted OSHA's 1988 proposed revision to this definition. MSHA believes the definition of "article" in OSHA's existing rule provides a better assessment of the environment in the mining community.
MSHA seeks comment on its proposed definition. With respect to the exclusions from coverage of nuisance particulates, ionizing or nonionizing radiation and biological hazards, MSHA's provisions would be consistent with those proposed by OSHA in its August 1988 proposed rule. OSHA takes the position that nuisance particulates, ionizing and nonionizing radiation, and biological hazards are not covered under its existing HCS and is proposing to add these specific exemptions primarily to clarify this point.

MSHA's existing metal/nonmetal air quality standards, 30 CFR 50.5001 and 57.5001, establish exposure limits for nuisance particulates through incorporation by reference of the 1973 American Conference of Governmental Industrial Hygienists (ACGIH), "Threshold Limit Values" (TLVs). Page 53, appendix E of the 1973 TLVs specifically lists a number of substances which are nuisance particulates. The current edition of the ACGIH TLVs does not specifically list those substances which are nuisance particulates. Under MSHA's August 24, 1988, proposed revision to its air quality standards (54 FR 33780), nuisance particulates would be regulated by a 5 mg/m^3 respirable dust limit which would apply to all nonspecific dusts including currently regulated nuisance particulates. In this HCS proposal MSHA would exclude nuisance particulates that do not pose any covered physical or health hazard. MSHA also would not consider nonspecific respirable mine dust as a hazardous chemical for hazard communication purposes. MSHA requests comments on whether nuisance particulates and nonspecific respirable mine dust should be specifically excluded from coverage under the Agency's HCS and, if so, how should MSHA identify those chemicals that are nuisance particulates posing little or no health hazards to exposed employees. Additionally, MSHA requests comment on the utility of such a provision and whether MSHA should exempt common minerals including those that contain less than 5% silica and no other hazardous chemical.

OSHA has also proposed to exempt radiation and biological hazards from coverage under its rule. In response to MSHA's ANPRM, the National Institute for Occupational Safety and Health (NIOSH) commented that MSHA should require operators to provide MSDSs to their employees for all hazardous substances found on the property (naturally occurring or imported) and to others receiving hazardous substances from the property. MSHA was asked to expand the MSDSs to include information concerning physical agents and safety hazards, including noise, radiation, vibration, and hot environments. At this time however, consistent with the OSHA 1988 proposed rule, MSHA does not propose to cover such hazards under this rulemaking and would consider the appropriateness of hazard communication provisions when developing or revising standards covering these specific hazards. Many of MSHA's existing safety regulations include employee notification provisions, such as warning signs and posting.

MSHA's proposed exclusion of nuisance particulates would be consistent with those made under OSHA's HCS, OSHA's definitions of physical and health hazard include physical hazards which describe the validity of the evidence needed in determining these hazards. MSHA has not included such language because it is unlikely that most operators would have the technical knowledge needed to assess the "scientific validity" or "statistical significance" of the data they would review in determining a hazard.

MSHA's hazard determination procedures are based primarily on information contained in an MSDS received with a chemical. For chemicals produced by the operator, an operator could determine if they are health hazard by simply seeing if the chemical is listed in Table 1 under the hazard determination section of the preamble to this proposed rule. This table lists the chemicals found in the four sources referenced in the standard's hazard determination procedures. MSHA would periodically update the table as chemicals are added to or deleted from these sources.

MSHA's hazard determination procedure requires much less judgment for operators in making a hazard determination than is required of a chemical manufacturer under the OSHA HCS. Unlike chemical manufacturers, few, if any, operators are involved in creating new or unique chemicals that would not be listed in the table. Therefore, MSHA believes that, given the types of chemicals produced on mine property, the results of determinations made under MSHA's proposal would be consistent with those made under OSHA's standard. MSHA requests specific comments on its definitions of the terms "health hazard" and "physical hazard."

"Produce" means to manufacture, process, formulate, or repackage. "Use" means to package, handle, react, or transfer. These definitions are intentionally broad to include any situation where a chemical is present in such a way that employees may be exposed. The Agency also requests comments on the utility of defining these terms as well as on the contents of the terms.

The standard would also apply to any chemical known to be present in such a manner that employees may be exposed under normal conditions of use or in a foreseeable emergency. A "chemical" is broadly defined as any element, chemical compound, or mixture of these. The definition of "employee" is similar to that found in OSHA's HCS. An "employee" is defined as any individual
working in a mine who may be exposed to a hazardous chemical under normal operating condition or in foreseeable emergencies. Individuals such as office workers who encounter hazardous chemicals only in non-routine, isolated instances would not be covered.

Consistent with OSHA's definition, "exposed" means that an employee is subjected to, or potentially subjected to, a hazardous chemical through any route of entry during normal operating conditions or in a foreseeable emergency. The definition includes current and potential (accidental and possible) exposures and exposures through any route of entry, such as inhalation, ingestion, skin contact, or absorption. A "foreseeable emergency" is one which operators would normally plan for as a presumed potential occurrence, determined by the nature of the operation, such as equipment failure, rupture or spill of containers, or failure of control equipment which could result in an uncontrolled release of hazardous chemicals into the workplace.

"Articles" are excluded under the scope of the standard from being covered as a chemical. MSHA's definition of "article" is similar to the existing OSHA definition. MSHA would define an "article" to be a manufactured item other than a fluid or a particle—

(i) That is formed to a specific shape or design during manufacture;
(ii) That has end-use functions dependent upon its shape or design; and,
(iii) That under normal conditions of use releases no more than very small quantities (that is, minute or trace amounts) of a hazardous chemical and does not pose a physical or health risk to employees.

This definition is also similar to that used by EPA for purposes of excluding articles from certain reporting requirements under the Toxic Substances Control Act in 40 CFR 704.95(c)(1). It is intended to exclude those items that pose no or only trivial risks to employees under normal conditions of use. An example of an article would be a piece of equipment or furniture. These obviously do not meet the common conception of a chemical and are not appropriate objects for an HCS directed at chemical hazards.

C. Hazard Determination

Because the majority of the provisions in the standard are applicable only to those chemicals found to be "hazardous," the hazard determination process is critical to the successful implementation of an effective hazard communication program.

MSHA recognizes that under the OSHA HCS, a great number of chemicals have been evaluated by chemical manufacturers, importers, and professional occupational health groups, such as the American Conference of Governmental Industrial Hygienists (ACGIH). Under the OSHA HCS, operators receiving hazardous chemicals from either the chemical manufacturer or the supplier of chemicals would receive an MSDS with the initial shipment of the chemical. Operators would be required to rely upon the evaluation performed by the chemical manufacturer or by the supplier of chemicals in determining the chemicals hazards. Information on the specific health hazards of chemicals received by the operator will be listed on the MSDS accompanying these chemicals in
requirements.
Under this proposal, when a chemical is received without an MSDS or label indicating a hazard, the operator can assume that it is not hazardous. An exception would be for hazardous waste received by an operator. MSHA's HCS does not require employers to distribute MSDSs or container labels to downstream users for hazardous waste regulated by the Environmental Protection Agency. MSHA would require operators to evaluate such hazardous waste in accordance with proposed § 46.3, hazard determination, if an MSDS was not voluntarily provided by the supplier of the waste.

Under this proposal, operators would also have to determine the hazards of chemicals which they produce. Operators making this hazard determination would be required to base their determination on the available evidence concerning the chemicals' physical hazards. In establishing that a chemical is a health hazard, a carcinogen, or a potential carcinogen for hazard communication purposes, the operators would rely on the following sources:

1. MSHA standards in 30 CFR parts 56, 57, 70, 71, and 75.
2. The American Conference of Governmental Industrial Hygienists' (ACGIH), "Threshold Limit Values and Biological Exposure Indices" (latest edition).
4. The International Agency for Research on Cancer's (IARC), Supplemental 7, "Overall Evaluations of Carcinogenicity—An Updating of IARC Monographs Volumes 1 to 42"; and any subsequent IARC Monographs or Supplements.

These sources are basically identical to those listed in the OSHA HCS with the exception that MSHA standards may use exposure limits and use of hazardous substances are referenced instead of OSHA's standards. Currently, applicable MSHA standards are found in 30 CFR parts 56, 57, 70, 71, 75 and 77. However, in August 1989, MSHA issued a proposal (54 FR 35760) that would recodify the Agency's air quality standards into parts 56 and 72. MSHA anticipates that when the proposed air quality standards are finalized, they will be referenced in MSHA's hazard communication standard.

A major difference between MSHA's proposal and the OSHA HCS is that operators would not have to look beyond these sources to determine if the chemical is a health hazard or a carcinogen or potential carcinogen. This would modify the OSHA approach, which, in addition to requiring that specified lists be consulted, also requires employers to consider all available evidence, even if based on only one valid study, in determining whether the chemical is hazardous. Several commenters objected to this one study criterion.

MSHA believes that its hazard determination approach would achieve essentially the same degree of safety at our nation's mines as the requirements in OSHA's standard, with reduced burden on operators. MSHA requests specific information relating to any chemical found on mine property for which the results of MSHA's hazard determination procedures might yield results significantly different from those arrived at under OSHA's standard.

While an Agency goal is to develop a rule which is consistent with OSHA's, MSHA recognizes that the primary community affected by this rule is smaller, and with respect to hazard communication, more homogeneous than the industries regulated by OSHA. While mining conditions vary enormously within a mine, from mine to mine, and from commodity to commodity, the number and variety of chemicals used on mine properties are nowhere as vast or as novel as those which OSHA must be concerned with in general industry.

In addition, many mines are small operations having fewer than ten employees. It could pose a significant burden on these operators to research each potentially hazardous chemical mined or produced on mine property to determine if there exists some scientific study which would necessitate the development of a MSDS for that chemical. Many operators are located in remote, sparsely populated areas of the country where literature on chemical health hazards may be limited. Additionally, many operators could not be expected to have the professional expertise for reviewing and determining the "statistical significance" of such data. MSHA believes that specifying source lists of chemicals that would be considered health hazards and specifically listing the chemicals found in these sources will greatly assist such operators and have no adverse impact on employee safety and health.

In addition, MSHA's proposed revision to its air quality standards would expand the number of chemicals currently addressed by MSHA, while the other three sources (ACGIH, NTP, and IARC) referenced in MSHA's hazard determination procedures would address additional chemicals.

The following table (Table 1) lists the chemicals found in the four sources referenced in the hazard determination section (§ 46.3) of the proposed rule. MSHA believes this listing will aid operators in determining which chemicals are health hazards. Operators may use this table rather than refer to the four sources listed in the standard. Many operators may not have access to copies of the ACGIH TLVs, NTP Annual Reports, or IARC Monographs and Supplements and would have difficulty keeping apprised of changes to them. MSHA inspectors would also use this listing to identify hazardous chemicals on mine property and enforce the requirements of this standard. MSHA would periodically update this table as chemicals are added to or deleted from the four sources and make it available to the mining community.

The chemicals found in Table 1 of MSHA's proposed rule on Air Quality, Chemical Substances, and Respiratory Protection Standards (54 FR 35760) are listed in Table 1 of this HCS proposal rather than those chemicals found in existing MSHA air quality standards. MSHA's proposed air quality standards are likely to be finalized before MSHA's HCS. However, Table 1 will be modified to reflect the MSHA air quality standards in place at the time the HCS is finalized.

All chemicals listed in Table 1 are considered health hazards for hazard communication purposes. The table identifies those chemicals considered by the four sources to be carcinogens or potential carcinogens, and which are to be regarded as such for purposes of this standard. Excluded from the table are occupational exposures and production processes in which no specific chemical is identified as being hazardous or carcinogenic. Non-specific "respirable mine dust," which is listed in MSHA's proposed revision to its air quality standards, and "welding fumes—not otherwise classified" which is listed in the TLV booklet and MSHA's proposed air quality standards are also excluded from the table. Additionally, MSHA has excluded chemicals that are not produced or used in mining, such as grain dust, cotton dust, and therapeutic substances, such as estrogens and steroids. Additionally, nuisance particulates, and chemicals intended for personal consumption or use by employees, such as tobacco and saccharin, are excluded from the table because they are expressly excluded from coverage under § 46.1 of the proposed standard. An explanation of the notations under each of the four columns in Table 1 is listed under key notes at the end of the table.
<table>
<thead>
<tr>
<th>Substance IARC</th>
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<td>5-Methyl-3-heptanone, see Ethyl methyl ketone</td>
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<td>Nitrogen (yellow)</td>
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<tr>
<td>Phenylethylene, see Styrene, monomer</td>
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<tr>
<td>Phenyl ether vapor</td>
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<td>2-Pentanone, see Methyl propyl ketone</td>
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<td>Petroleum distillates, see Gasoline; Stoddard solvent; VM&amp;P naphtha</td>
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<td>Phenylhydrazine, see Styrene, monomer</td>
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### TABLE 1—HAZARD COMMUNICATION CHEMICALS—Continued

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<td>A2</td>
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<td>p-Toluidine</td>
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<td>o-Toluidine hydrochloride</td>
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<td>Toluol, see Toluene</td>
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<td>Tributyl phosphate</td>
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<td>X</td>
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<tr>
<td>1,2,4-Trichlorobenzene</td>
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<td>1,1,1-Trichloroethane, see Methyl chloroform</td>
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<td>Triplast, see Silica—Crystalline</td>
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<td>Tr-P(103-Amino-1,4-dimethyl-5H-pyrido[4,3-b]indole</td>
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<td>Vinyl benzene, see Styrene</td>
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<td>Warfarin</td>
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<td>Wood dust: Hard wood</td>
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<td>Soft wood</td>
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1. Air Quality Proposal
2. 1990-1991 Threshold Limit Values
3. 1989 Summary
4. Supplement No. 7 (only IARC groups 1, 2A, and 2B are listed)

Key Codes: C—Carcinogenic, A1—Confirmed human carcinogen, A2—Suspected human carcinogen, K—Known to be carcinogenic, A—Anticipated to be carcinogenic, 1—The agent is carcinogenic to humans, 2A—The agent is probably carcinogenic to humans, 2B—The agent is possibly carcinogenic to humans.
For operators evaluating chemicals, MSHA proposes that chemicals be considered carcinogenic for hazard communication purposes if they are identified by the NTP as "known to be carcinogenic" or "reasonably anticipated to be carcinogenic" or identified in the ACGIH TLV's as "confirmed" or "suspected" human carcinogens. IARC and NTP evaluate the carcinogenic potential of chemicals, manufacturing processes, and occupational exposures. For the purpose of hazard communication, only their findings on specific chemicals need be considered. For example, NTP does not identify a specific chemical as being a causative factor in its finding that underground hematite mining is carcinogenic, therefore that finding would not fall under the scope of this rule.

The individual IARC monographs contain evaluations of specific chemicals and processes. At the conclusion of each evaluation, IARC provides a summary evaluation for the individual chemical. Periodically, IARC publishes supplements in which chemicals that have already been evaluated in previous monographs are reevaluated. In cases where a chemical has been reevaluated, it is proposed that the operator must incorporate the most recent IARC evaluations within three months of publication. In their Supplement 7, IARC provides a summary of the chemicals which have been evaluated by IARC in Volumes 1-42. Table 1 of Supplement 7 provides a summary evaluation of all chemicals for which there was some human and animal data considered. Table 1 of Supplement 7 also provides the following classification of a chemical's carcinogenic risk:

- Group 1—The agent is carcinogenic to humans.
- Group 2A—The agent is probably carcinogenic to humans.
- Group 2B—The agent is possibly carcinogenic to humans.
- Group 3—The agent is not classifiable as to its carcinogenicity to humans.
- Group 4—The agent is probably not carcinogenic to humans.

Under this proposal, all IARC listed chemicals in Groups 1, 2A, and 2B would be considered carcinogenic for the purposes of this standard. The inclusion of these lists of chemicals identified as being carcinogenic is intended to inform employees exposed to such chemicals that they may pose some degree of carcinogenic risk. Documents such as the IARC Supplement and Monographs, or the NTP Annual Report on Carcinogens, do not attempt to quantify the degree of risk. Their findings summarize large numbers of studies and include conclusions made by groups that peer review the data submitted as evidence about a chemical's carcinogenic risk. MSHA feels that the findings of these groups provide sufficient evidence to warrant informing employees of the hazard, even though in some cases the data may not be sufficient to support further regulatory action, such as establishing specific exposure levels and control technology.

Although some commenters suggested that MSHA or NIOSH make the hazard determination for the chemicals produced or used on mine property, other commenters strongly opposed this. Some commenters suggested that MSHA limit hazardous chemicals to those listed in MSHA's standards or to those posing a significant risk. They objected to the classification of a chemical as carcinogenic based on the "one study" criterion found in OSHA's HCS. A number of commenters, who currently comply with the OSHA HCS or with similar State HCSes, favored an approach consistent with OSHA's standard. The Agency is aware of the importance of fashioning a rule which is as consistent with the OSHA HCS as possible and is attempting to do so.

Several commenters suggested that MSHA base the hazard determination criteria on a finding of significant risk. One of the greatest difficulties in developing this rule has been in attempting to distinguish between those chemicals that pose a significant health risk and those that are innocuous or of low risk. As discussed under the scope and application section of this preamble, MSHA is considering exempting some common minerals believed to pose a low degree of risk and for which the hazards are common knowledge. MSHA requests specific comments concerning possible criteria for expanding this consideration of risk to other chemicals (for example, tests that might be performed to determine if a chemical is hazardous, tests that indicate that the potentially hazardous component in mixtures of common minerals are not releasable in sufficient quantities to be hazardous to miners or downstream employers, studies that downstream employees face no risk from exposures to common minerals, etc.) and how such criteria might apply to the specific chemicals produced in the mining industry. In considering the risk posed by a chemical, the general intent of hazard communication under OSHA's standard and MSHA's proposal is to warn employees of potential hazards from exposure to chemicals as opposed to limiting exposure and requiring control technology. It is hoped that such a warming would reduce the risks involved. It is possible that chemicals which pose a low risk due to the way they are currently being used, or are intended to be used, could pose a significant risk if misused or improperly handled by an employee not adequately informed or trained as to the hazardous properties of that chemical.

On May 17, 1990, OSHA published a notice in the Federal Register (55 FR 20580) requesting information and comment on a number of issues relating to improving the presentation and quality of hazard information transmitted under its HCS. Among these issues, OSHA solicited comment on whether de minimis considerations should be established for hazardous chemical exposure in general. De minimis or trivial risks are those below the threshold of regulatory concern. MSHA also requests comments on this issue, including specifically:

1. Should MSHA's HCS have a de minimis threshold to define what level of exposure to a hazardous chemical would trigger a need for MSDSs and labels?
2. Should MSHA set a de minimis level for chemicals that have an MSHA PEL or ACGIH TLV?
3. What criteria should MSHA use to set de minimis thresholds for chemicals for which specific regulated levels have not been established?
4. If MSHA does not set a de minimis level should operators be allowed to do this?
5. What criteria could operators use to set de minimis thresholds where specific regulated levels have not been established?
6. Do operators that currently implement a hazard communication program apply it to chemicals which pose little or no risk to employees?
7. Is there sufficient information on labels and MSDSs for operators to adequately distinguish between high-risk and low-risk chemicals?
8. Is it sufficient for the preparer to state on the labels and MSDSs only that a hazard exists?
9. Should the MSDS and label provide specific information on exposure levels at which the chemical poses a risk?
10. What would you recommend as a safe level of risk for a chemical to be exempt from the HCS?
would be required to consider available evidence in determining if a chemical is a physical hazard. Although this implies an open-ended research obligation on the part of operators, MSHA believes that information on physical hazards is generally more commonly known and available than is information on the health hazards of chemicals and should not pose as difficult a research burden.

OSHA requires that employers describe, in writing, the procedures they use to determine the hazards of chemicals they evaluate. MSHA has not proposed a similar requirement because MSHA's proposed hazard determination procedures are more clearly defined and less judgmental than OSHA's. For health hazards, hazard determination would be based simply on determining if a chemical is listed on a table (Table 1). This table is in the hazard determination section of the preamble to this rule and will be updated periodically by MSHA and made available to the mining community.

The proposal also addresses the coverage of hazardous chemicals which are mixtures, consistent with the provisions addressing mixtures in OSHA's HCS. Mixture coverage would be applicable in several circumstances. First of all, if the operator has objective test data on the mixture, that data would be used to determine the hazards. If such data are unavailable for the health hazard determination, the operator must consider the mixture to have the health hazards of components which comprise one percent or more of the total composition. If any of the components are carcinogens, the mixture would be considered to be carcinogenic if the component is present in concentrations of 0.1 percent or more. However, if the operator has evidence to indicate that a component which comprises less than 1 percent of a mixture, or less than 0.1 percent in the case of carcinogens, could be released in concentrations which exceed an established MSHA permissible exposure limit or ACGIH Threshold Limit Value, or could present a health hazard to employees in those concentrations, the mixture would have to be assumed to present the same hazard.

If the operator has reason to believe that the component could be released in quantities hazardous to the health of employees, it would have to be identified, even though present in quantities less than 1 percent of the total weight or volume, or less than 0.1 percent in the case of a carcinogen.

Lastly, if the mixture has not been evaluated to determine its physical hazard potential, the operator would use whatever information is available to assess the potential hazards.

**D. Written Hazard Communication Program**

The written hazard communication program provisions of this proposed standard are essentially the same as those in the OSHA HCS. A majority of the commenters who responded to the ANFRM favored this approach. However, it should be noted that MSHA, in an effort to ensure uniformity and consolidation of related subject matter, has reorganized a few of the provisions found in this section of OSHA's standard. MSHA would move the OSHA written program requirement, which describes the methods to inform employees of chemicals in the workplace. At a minimum, the written program would have to include a description of how the operator met the requirements specified in § 46.3 (hazard determination), § 46.5 (labels and other forms of warning), § 46.6 (material safety data sheets), and § 46.7 (employee training). In addition, the written program would have to include a list of hazardous chemicals known to be present in the mine and the procedures used to inform and coordinate hazard information such as MSDSs and labeling procedures with other operators working at the mine. "Other operators" would include independent contractors, service companies, etc. who may have employees exposed to hazardous chemicals on mine property.

The standard is performance oriented, and operators would have considerable flexibility in the development and implementation of the written program. The written program would not have to be lengthy or complicated but would have to address each required component. A number of commenters suggested that MSHA publish compliance guidelines or a written generic program to assist operators in establishing a written program. Various organizations have developed guidance such as this for the general industry in complying with the OSHA HCS. Because of the similarity between OSHA's standard and MSHA's proposed rule, operators may find much of this information to be applicable and helpful in developing their program. Additionally, Appendix C of this proposal provides general guidance to operators on the development of written programs.

The hazardous chemical list that would be required by § 46.4(a) could be a master list covering hazardous chemicals used throughout the mine, or it may be a separate list for individual work areas. With either type of list, the chemicals would have to be identified in a manner that allows easy cross-referencing with the appropriate MSDS and label for each chemical. In other words, if a chemical is identified by a trade name on an MSDS, the hazardous chemical list would have to be indexed and identified using the same trade name. The inventory must be kept current. Operators may also find it helpful to identify the location and quantity of the hazardous chemical on the inventory, since § 45.7 (employee training) requires operators to provide employees with information on any operations or locations in their work area where hazardous chemicals are present.

The intent of the multioperator provision in § 46.4(b) is to ensure that employees are provided with information on hazardous chemicals produced or used by other operators that may be working at the mine. An example of this would be where employees of an independent contractor performing services or construction at a mine are exposed to a hazardous chemical produced or used by the mine owner, or conversely, employees of the mine owner being exposed to hazardous chemicals produced or used by the independent contractor. In multioperator workplaces, each operator's written program would have to include the methods to be used to coordinate the exchange of hazardous chemical information with other operators working at the mine. At a minimum, they would have to address procedures for sharing precautionary information and the information on MSDSs and labels. This exchange of information would be limited only to those situations where one operator's employees are exposed to the chemicals that another operator produces or uses.

MSHA's provisions on multioperator workplaces are similar to those found in OSHA's standard. OMB had questioned the practicality of these provisions in OSHA's standard and had suggested as an acceptable option that OSHA require employers at multiemployer workplaces to keep labels intact on any containers they bring onto the worksite, provide
MSDSs to other employers upon request, and train their employees regarding: The hazards of chemicals with which they work directly; the need to observe the requirement of hazard labels on containers at the worksite; and the need to request MSDSs when further information is required (See OMB letter to the Department of Labor, published December 4, 1987 [52 FR 46075]; and the substantive contents of OSHA's 1988 proposed rule. MSHA seeks comments on the merits of each approach to multiproductor workplaces.

As in the OSHA HCS, MSHA's proposal requires operators to provide access to the written hazard communication program to employees, their designated representatives, and to authorized representatives of the Secretary of Labor and Secretary of Health and Human Services. Under MSHA's proposal, operators would have to retain a written program as long as a chemical is known to be present in the workplace in such a manner that employees are exposed. Given the broad scope of this proposed rule and the extent of chemical usage in the mining industry, MSHA believes that practically all operators would need to have a written program.

E. Labels and Other Forms of Warning

This section would require operators to label containers of hazardous chemicals in the workplace. The label is required to list the "identity" of the hazardous chemical and a "hazard warning." The term "container" does not include pipes or piping systems, conveyors, and fuels, tanks, or other operating systems or parts in a vehicle. A room or an open area is also not to be considered a container and therefore a hazardous chemical such as silica flour on the floor of a mill, or a stockpile of coal or sand, would not have to be labeled under this standard.

The purpose of labels under this standard would be to serve as an immediate visual warning and as a reminder of the more detailed information provided on the MSDS. The label is not intended to be either the sole, or the most complete, source of information regarding the nature or identity of the hazardous chemical in the workplace.

The labeling provisions are written in broad, performance-oriented language so that many of the existing labeling systems could continue to be used. These labels that meet the minimal informational requirements established could continue to be used regardless of their formats.

The proposal requires that the identity of the hazardous chemical be listed on the label. The identity could be any term the operator wishes to use, as long as it also appears on the chemical inventory list and permits cross-references with the MSDS. Under this plan, the operator can use common terms, familiar to employees, while more extensive information, including the specific chemical identity, could be found on the MSDS.

A "hazard warning" is also required to be listed on the label. This warning can be any words, pictures, or symbols which convey to the employee the specific physical or health hazard of the chemical, such as "causes lung damage," "flammable," or "suspected human carcinogen."

The MSDS addresses essentially everything that is known about the chemical. It is not necessary to warn on the label about every hazard listed in the MSDS. The selection of hazards to be highlighted on the label will involve some assessment of the weight of the evidence regarding each hazard reported on the data sheet. However, this does not mean that only acute hazards are to be covered on the label or that well-substantiated hazards can be left off the label because they appear on the data sheet.

Phrases such as "caution," "danger," or "harmful if inhaled" are precautionary statements, not hazards. The definition of "hazard warning" states that the warning must convey the hazard of the chemical and is intended to include the target organ effects, if such information is available. If, when inhaled, the chemical causes lung damage, then that is the appropriate warning. Lung damage is the hazard, not inhalation. There are some situations where the specific target organ effect is not known. Where this is the case, the more general warning statement would be permitted. For example, if the only information available is an LC50 test result, "harmful if inhaled" may be appropriate.

Appendix A and B of this proposed rule include additional information and reference sources for determining hazard information to be conveyed on the label.

MSHA is also proposing to require that operators provide labeling information with the initial shipment of a hazardous chemical to a downstream employer. The label information transmitted to a downstream employer would have to include the chemical's identity, a hazard warning, and the operator's name and address or the name and address of a responsible party who can provide additional information on the hazardous chemical. This labeling information may be included with the chemical's shipping papers rather than posted on the hazardous chemical's container.

MSHA recognizes that many operators may already be providing labels on containers of hazardous chemicals they produce and distribute in commerce, either due to applicable state hazard communication laws or due to pressure from the buyers of their products. Several commenters indicated that hazardous chemicals shipped from a mine be covered consistent with the OSHA HCS. There were, however, a number of commenters that objected to any requirements covering chemicals shipped off mine property. MSHA believes that the proposed requirements are within its authority and contribute to an effective Federal hazard communication program covering all industries. MSHA requests further comments regarding the issue of whether MSHA should require labeling information with only the initial shipment of a hazardous chemical shipped to a downstream employer, or whether every container of a hazardous chemical shipped to a downstream employer should be labeled, consistent with the OSHA HCS.

MSHA also recognizes the existence of the numerous labeling systems that are currently used in industry. Many of the systems rely on a numerical and/or alphabetic code to convey the hazards. Although these labeling systems may not convey the target organ effects, the intent of the standard is to permit the use of these systems as long as the entire hazard communication program is effective. An effective program is one that ensures that employees are aware of the hazardous effects (including target organ effects) of the chemicals they are exposed to, as well as meets the other basic requirements of the standard.

Although a rating system is acceptable for labeling within an operator's workplace, it would not be acceptable on the labeling information sent to downstream users unless additional information is included indicating the specific hazards in a narrative form.

The information required to be listed on a label under MSHA's proposed rule is identical to that required in the OSHA HCS. Therefore, operators receiving hazardous chemicals already labeled by general industry in accordance with the OSHA HCS would not have to modify the label. Operators would not be held responsible for inaccurate information on labels which they did not prepare and which they had accepted in good faith from the chemical manufacturer or...
supplier. However, if the operator were aware that such information is inaccurate or incomplete, the responsible party identified on the label should be contacted to obtain a corrected copy. MSHA anticipates developing procedures whereby the Agency could refer to OSHA any cases that operators report to MSHA regarding chemical manufacturers or suppliers failing to provide accurate or complete labels.

Also, consistent with the OSHA HCS, MSHA's proposal requires that operators not remove or deface existing labels on incoming containers of hazardous chemicals unless the container is immediately marked with the required information. Additionally, the operator is required to ensure that labels or other forms of warning are legible, in English, and are prominently displayed on the container or are readily available in the work area throughout each work shift. Operators who have employees who cannot read English may add information in the language of the employees to the material presented on the label as long as the information is also listed in English.

The standard's intent would be met as long as the placement of the label permits it to be seen before employees are potentially exposed to the hazardous chemical. If, for instance, the product were flammable or shock sensitive, then the label warnings would have to be visible before handling so that special care, if necessary, can be taken. On the other hand, for a product that only presents a toxicity hazard when a bag is opened, then a label that is visible when the bag is opened for opening would be acceptable.

The proper placement of labels is dependent on product characteristics and the ways and means employees may be exposed to them. Labeling, therefore, must be considered on a case-by-case basis. Obviously, however, the more visible a label, the better the chance that it will be effective.

Several commenters objected to MSHA's proposing any labeling requirement beyond that found in existing MSHA standards [30 CFR 56.10004, 57.10004, 56.20012, 57.20012, and 77.208(c)]. Although these existing MSHA standards require labeling, they do not define the terms "hazardous materials" or "toxic materials" used in them. Additionally, these standards do not provide any exemptions from their labeling requirements, nor do they provide for the use of other forms of warning. MSHA is proposing to revoke § 56.20012 and 57.20012 in this rulemaking and revise §§ 56.20004, 57.20004 and 77.208(c) to remove the labeling requirements from these standards. These deletions are discussed further below.

Other commenters indicated they were already complying with OSHA’s labeling provisions regarding hazardous chemicals and the MSHA’s labeling requirements should be consistent with OSHA’s. In reviewing and considering these comments, MSHA believes that labeling provisions generally consistent with the OSHA HCS are appropriate for this rulemaking.

This proposed rule lists several exemptions from the container labeling requirements. Operators may use signs, placards, process sheets, batch tickets, operating procedures, or other such written materials instead of affixing labels to individual stationary process containers, as long as such materials include the information that would have otherwise been required on the label. The operators would also have to provide employees with immediate access to these written materials while in their work area throughout each work shift.

Such written materials would have to be in a prominent location within the employees' immediate area and readily accessible to them. In addition to including information that would have otherwise been required on the label, such materials would have to identify clearly the container holding the hazardous chemical. Particular emphasis should be placed in the employees' training on the location and availability of this written material.

An MSDS could possibly be used to convey this information to employees; however, the MSDS would have to be kept with the container of the hazardous chemical and be posted in a readily accessible location in the work area where the chemical is used. When used in this manner, it would not be acceptable to keep the MSDS in a central location outside of the employees' immediate work area.

The proposal would also provide access to any written materials used instead of labels to the employees' designated representatives and to authorized representatives of the Secretary of Labor and Secretary of Health and Human Services. "Access" as defined in this proposal means the right to examine and copy records. The proposal would require operators to provide, without cost, a copy of any written materials used instead of labels, when requested by employees and their designated representatives.

The proposal would not require operators to label containers of the raw material being mined or milled while on mine property, regardless of its hazards. "Raw material" is defined in the rule as a mineral, or combination of minerals, that is extracted from natural deposits by mining or is upgraded through milling. The term applies to the ore and valuable minerals extracted, as well as to the worthless material, gangue, or overburden removed during the mining or milling process. However, the container would be required to be labeled if a hazardous chemical were added to the raw material. For example, if a solution of hydrochloric acid were added to a process container of sand to remove iron impurities, then the container would have to be labeled to identify the hazardous mixture and to provide an appropriate hazard warning.

MSHA is proposing a labeling requirement for containers of the raw material mined also recognizes that it would be exceedingly difficult to maintain labels in a legible condition on such containers as ore cars, haulage trucks, chutes, bins, or hoppers that are subject to the often severe use conditions found in mines. If such labels were required they would quickly be covered with dust or debris from the mining process, or worn away, making them illegible to employees.

MSHA agrees with these commenters to the extent that employees working at a mine can readily identify those containers in the mine which hold raw material, and that labeling of these would serve little practical benefit. However, although employees can readily identify containers of the raw material, they may not be as aware of its hazards. Therefore, MSHA proposes to exempt containers of the raw material mined or milled from the labeling requirements while on mine property, but would require that the hazards of the raw material be determined in accordance with § 46.3. If the material were found to be hazardous, MSHA would require an operator to develop an MSDS and conduct employee training on the hazards.

Although this proposal would not require labeling of the raw material while on mine property, it would require
that labeling information be provided to the downstream user with the initial shipment of any raw material that is determined to be hazardous. MSHA proposes a number of exemptions, consistent with the OSHA HCS, to avoid duplicative coverage on products which are already labeled under rules of another Federal agency. It should be emphasized that these exemptions only apply to the labeling requirements—all other provisions of the rule are applicable.

Consistent with the OSHA HCS, MSHA proposes exemptions on consumer products and hazardous substances labeled under regulations issued by the Consumer Products Safety Commission (CPSC) and pesticides labeled under EPA regulations. These specific exemptions are listed both in §46.1, scope and application, and §46.5, labels and other forms of warnings. With regard to the exemption from the labeling requirements for consumer products and hazardous substances already labeled under CPSC regulations, MSHA believes that protection of workers would be served by allowing the CPSC labels to suffice but requiring that MSDSs be obtained and training conducted as for any other hazardous chemicals. These requirements would apply to the extent these products were used in a manner that resulted in a duration and frequency of exposure greater than that experienced by consumers; otherwise they would be excluded from coverage under §46.1(d)(4) of this proposal. (See discussion of this exclusion under the scope and application section of this preamble).

There appears to be some misconception that by virtue of being permitted to be marketed to consumers, consumer products are inherently safe and do not require that any additional information be given to workers using them. MSHA does not believe this is the case. Consumer product labels generally do not include the type of specific hazard information MSHA would require on the labels of containers of hazardous chemicals which operators produce. Although some consideration is given to chronic hazards, the basic emphasis is on acute effects. In addition, the labels focus on precautionary statements and routes of exposure rather than informing the user of the specific hazards. For example, a label for lead solder purchased in a hardware store may indicate that it is “fatal if swallowed” and “causes severe burns,” but may give no indication of the fact that overexposure can result in not only lead poisoning but also severe effects on a number of body systems, including damage to blood-forming, nervous, and reproductive systems. Furthermore, the primary route of entry for occupational exposure to lead would normally be inhalation—the consumer label may not indicate that inhalation of the soldering fumes generated is of concern. Conversely, an MSDS for the same material will indicate the full range of health effects, the appropriate protective measures, the fact that there is an exposure limit for the material, and other useful information for both the operator and the employee being exposed.

MSHA nevertheless is proposing that the CPSC labels would suffice so as not to disrupt the extensive labeling conducted in accordance with their regulations. MSHA believes that this is justified on the basis that some information is provided on the labels that would be useful to workers and that MSDSs would provide information necessary to supplement the labels. This additional information ensures that training can be properly conducted and that adequate protective measures are used in the workplace.

The OSHA HCS also exempts from their labeling requirements any food, food additive, color additive, drug, cosmetic, or medical or veterinary device or product that is subject to Food and Drug Administration (FDA) or the Department of Agriculture (DOA) labeling requirements. MSHA proposes to modify this exemption to exempt only foods, food additives, and color additives labeled under FDA or DOA regulations. MSHA is not aware of any operators that produce or use drugs, cosmetics, or medical or veterinary devices. MSHA does have jurisdiction over operations at several salt mines where salt is processed and packaged for consumer sale and subsequently may be subject to the FDA labeling regulations. MSHA requests specific comments on this exemption and the use and occurrence of such products in mining.

MSHA has not proposed the specific labeling exemptions found in the OSHA HCS on distilled spirits, wine or malt beverages intended for nonindustrial use. MSHA believes that most operators expressly prohibit the use of these substances in their workplace. In addition, labeling them would not be required under the exemption on substances intended for personal consumption by employees. Existing regulations for metal/nonmetal mines also prohibit intoxicating beverages from use in and around mines (30 CFR 56.20001 and 57.20001). An exemption from the labeling requirements is also proposed for portable containers into which hazardous chemicals are transferred from labeled containers and which are intended only for immediate use of the employee who performs the transfer. This exemption is consistent with that found in OSHA’s rule. In addition, a number of commenters specifically requested that MSHA include such an exemption in the standard.

As discussed earlier, MSHA proposes that the container labeling requirements of this rule not apply to any hazardous waste as such term is defined by the Solid Waste Disposal Act, when subject to regulations issued under that Act by EPA.

F. Material Safety Data Sheets

In the proposal, an MSDS would serve as the primary vehicle for transmitting detailed hazard information to operators and employees. An MSDS is essentially a technical bulletin, generally two to four pages in length, which conveys information about a hazardous chemical, such as its chemical composition, chemical and physical characteristics, health and safety hazards, and precautions for safe handling and use.

As a result of the OSHA HCS, the use and availability of MSDSs have become widespread in general industry. Consequently, many operators voluntarily obtain and use MSDSs. Additionally, some States, that have their own hazard communication regulations requiring MSDSs, apply their standards to mining operations within that State. These State laws are often identical to the OSHA HCS and require the use and distribution of MSDSs. Many operators are currently supplying MSDSs with their product to downstream employers as a good business practice, or in response to demands from the buyers of their products, rather than in response to legal requirements.

A number of comments were received in response to MSHA’s ANPRM indicating that the Agency should adopt MSDSs requirements identical to OSHA’s. This appeared to be one of the least controversial issues in MSHA’s ANPRM. Consequently, MSHA’s provisions on MSDSs are substantially similar to those in OSHA’s standard. A few commenters questioned the utility of MSDSs, stating that much of the technical information in MSDSs would be of little benefit to employees. MSHA believes that MSDSs are beneficial, particularly to operators in developing their employee training programs and in addressing the hazards of chemicals with which they are not familiar.

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 Properly completed MSDSs can serve as excellent, concise sources of information regarding the hazard of a chemical. Several commenters endorsed their use as a primary component of a hazard communication program and indicated they were currently using them in their employee training.

Under MSHA's proposal, the Agency would require operators to maintain a copy of MSDSs received with each hazardous chemical that enters mine property. If an operator does not have an MSDS for a chemical that has been labeled as hazardous, the operator would have to request one from the chemical manufacturer or supplier prior to using the chemical. If there are no hazards indicated on the label, the operator can assume the product is not hazardous and a data sheet would not have to be requested. MSHA believes that it is appropriate to require that operators request an MSDS when one is not received with a chemical labeled as hazardous because in some situations, such as operators receiving chemicals from retail distributors, the retail distributor under the OSHA HCS is only required to provide an MSDS upon request. In its 1988 proposed rule, OSHA proposed that if an operator does not have a commercial account with a retail distributor, that the retail distributor only be required to provide, upon request, the name, address, and telephone number of the chemical supplier from which the MSDS can be obtained. Commenters indicated that it is common practice for operators to request and receive MSDSs from chemical manufacturers and producers.

Under MSHA's proposal, operators would not be responsible for the accuracy of MSDSs they receive with shipments of hazardous chemicals. However, if MSDSs are received which are obviously inaccurate or incomplete, they should bring this to the attention of the party responsible for preparing the MSDSs.

MSHA expects operators to contact the Agency for assistance in obtaining accurate and complete MSDSs, if not provided by the chemical manufacturer or supplier when requested. MSHA anticipates referring such cases to OSHA to ensure that requested MSDSs are provided to operators.

OSHA's standard places the primary responsibility for preparing an MSDS on the manufacturer of the hazardous chemical. Consistent with this approach, MSHA's proposal requires operators to develop MSDSs on hazardous chemicals which they produce. The rationale for this is that the chemical manufacturer or operator is most likely to have the best access to information about the product, and thus should be responsible for disseminating this information to users of the material.

Completed data sheets for various chemicals are available from a number of informational services. Operators using data sheets obtained from such sources, rather than developing them, still retain responsibility for their accuracy and completeness.

For operators developing MSDSs, specific requirements are included in the proposal for the information to be provided on the MSDS. Such information would have to be in English, and include the chemical's identity, as well as chemical and common names for the hazardous chemical if it is a single substance. Operators who have employees who cannot read English might also want to provide MSDSs in their language. However, a copy must be available in English as well.

Special provisions apply to the listing of ingredients for hazardous chemicals which are mixtures. For mixtures which have been tested as a whole, the operator would have to list the chemical and common names of those ingredients which contribute to known hazards, and the mixture's common name. For the chemicals not tested as a whole, the operator would have to list each component which comprises 1% or more, and which is itself a health hazard. Any chemical determined to be a carcinogen would have to be listed, if present in quantities of 0.1% or greater. Operators would also have to list ingredients present in concentrations of less than 1% (0.1% for carcinogens) if there is evidence that the permissible exposure limit may be exceeded, or if it could present a health hazard in those concentrations. Also, the chemical and common names of all ingredients which have been determined to present a physical hazard must be listed.

If the operator assumes the mixture has the same hazard as its hazardous components, such as when there is no test data on the mixture as a whole, the data sheets for the components would satisfy the requirement of the standard for a data sheet for the mixture. These MSDSs should be physically attached to one another and identified in a manner where they can be cross-referenced with the label.

If a hazardous chemical is present in the mixture in reportable quantities (0.1 percent for carcinogens, and 1 percent for other health hazards), it would have to be reported on the MSDS unless the mixture has been tested as a whole or unless the material is bound in such a way that employees cannot be exposed. If there really is no exposure (and the standard defines exposure as including potential as well as measurable exposure), either under normal conditions of use or in a foreseeable emergency, then the chemical would not be covered by the standard. In the case of mixtures that are liquid, this provision has to be considered very carefully. For example, if silica is present in a wet mixture it is impossible that if the mixture dries upon application, there is a potential for the silica to become airborne, and thus a potential for exposure. The presence of silica must be indicated on the MSDS for the liquid mixture in this situation. MSHA requests comments concerning the appropriateness of de minimis exemptions for mixtures that release only small amounts of hazardous chemicals.

In some situations, operators may have a mixture of chemicals in which the hazards and chemical ingredients are basically the same but the percentage of composition varies from mixture to mixture, for example coal with varying percentages of silica. In such cases, operators could prepare one MSDS to apply to all of these similar mixtures.

In addition to chemical identity information, the operator would have to provide the following information on the MSDS: information specified on the physical and chemical characteristics of the hazardous chemical; known acute and chronic health effects, and related health information; information concerning exposure limits; whether the chemical is considered to be a carcinogen by NTP, IARC, ACGIH, or MSHA; precautionary measures; applicable control measures; emergency and first aid procedures; the date the MSDS was prepared or last changed; and the name, address and telephone number of the party responsible for preparing the MSDS.

Operators would be free to develop MSDS in any format they wish (as long as it contains the required information) because the standard is performance-oriented. The MSDS format would not have to include spaces for listing information that does not apply to the chemicals for which it is being used. OSHA has developed a voluntary MSDS form (form number OSHA-174), that operators may wish to use. MSHA requests specific comment on whether the Agency should make OSHA's form available to operators or develop a similar one of MSHA's own.

In completing an MSDS, if an operator could not find enough specific information to complete a specified category, then the MSDS would have to be marked to indicate that no
The proposal would require operators to ensure that MSDSs which they develop accurately reflect the scientific evidence which formed the basis for the determination that the chemical in question is hazardous. Appendix B provides sources of information that operators could use in researching the health hazards of chemicals they produce and in finding the required information to accurately complete an MSDS. An inaccurate MSDS can be worse than no MSDS at all. The MSDS is the cornerstone to the entire standard. The labeling, employee training, and the written hazard communication program all reflect the information provided in the MSDS.

MSHA would also require that operators provide a copy of the MSDS, upon request, to downstream employers receiving hazardous chemicals produced by the operator. MSHA received a number of comments indicating that operators are already either voluntarily providing copies of MSDSs upon request to downstream employers or are doing so under state administered hazard communication laws. MSHA also proposes that labeling information be provided with the initial shipment of a hazardous chemical from an operator to a downstream employer. This labeling information would indicate to the downstream employer that the chemical is hazardous. The downstream employer could then request the MSDS if desired.

OSHA's standard requires that MSDS be provided with the initial shipment to a downstream employer rather than upon request. MSHA is considering this as an alternative to providing MSDSs only upon request and seeks specific comment on this issue. MSHA also requests comments on the utility of developing and providing MSDS on minerals such as sand and gravel, crushed stone, or coal that are the only hazardous chemicals produced by many operators under MSHA's jurisdiction. Comment is also requested on whether MSHA should develop MSDSs for such common minerals and provide them on request to all interested parties as an alternative to operators providing this information.

Consistent with the OSHA, HCS, MSHA would require operators to provide employees with access, during each workshift while they are in their work areas, to the MSDSs maintained by the operator for hazardous chemicals to which the employees are exposed. In order for the MSDS to serve as a source of detailed information on hazards, it must be located close to workers and readily available to them during each workshift. OSHA provides the following exception to this requirement in their standard:

Where employees must travel between workplaces during a workshift, i.e., their work is carried out at more than one geographical location, the material safety data sheets may be kept at a central location at the primary workplace facility. In this situation, the employer shall ensure that employees can immediately obtain the required information in an emergency.

Although this provision does provide some flexibility in locating the MSDS, it only applies when employees must travel between different geographically located workplaces during their workshift. MSHA received several comments that this approach was not flexible enough for the mining industry where environmental conditions might make it exceedingly difficult and impractical to maintain a copy of the MSDS in the employees' immediate work area, such as at the face in a coal mine or in work areas within a quarry or pit where there is no office or facility to keep the MSDS. One commenter suggested that an MSHA standard should require that MSDSs be readily accessible and the worker be trained on how to access the MSDSs rather than mandate a uniform location on mine property because of the unique conditions in a mine. Another commenter stated that they currently obtain MSDSs from chemical manufacturers before placing a purchase order for such chemicals; thereafter, the MSDSs are placed in catalogs which are indexed using a computer program by product name, manufacturer name, stock number and assigned MSDS number. MSDS catalogs are then made available for employee use at the warehouse issue window, the safety office, environmental office and purchasing department. The information is updated periodically (usually at a frequency of at least every 3 months) and pertains to both direct order and warehouse stock items.

In response to commenters, MSHA proposes to allow an operator, in areas where it is not practical to maintain the MSDS in the employee's work area, to keep them at a central location provided employees have access to them at some time during their workshift and the operator can ensure that employees can obtain required information immediately in an emergency. MSHA believes that this provision is practical, yet still effective in providing employees the hazard information they need. Specific comments are requested on this issue.

Under this proposal, operators would also be required to provide access to MSDSs to employees' designated representatives and to authorized representatives of the Secretary of Labor and the Secretary of Health and Human Services. Upon request, operators would also be required to provide, without cost, a copy of the MSDS to the employee and the employee's designated representative. These provisions are consistent with the access provisions in OSHA's standard and are supported by several commenters responding to MSHA's ANPRM.

Employers under OSHA are required to maintain MSDSs for at least 30 years, in accordance with OSHA's medical records access standard (29 CFR 1910.20). However, OSHA's access standard does offer the alternative of not retaining MSDSs for any specified period as long as some record of the chemicals' identity, where it was used and when it was used, is retained for at least 30 years. MSHA proposes that operators retain each MSDS required by the standard only as long as the chemical is present in the workplace. At least 3 months prior to the disposal of any required MSDS, operators would have to notify employees of their right to access the MSDS and of their plans to eliminate the chemical from their workplace and dispose of the MSDS. MSHA believes this will provide employees ample opportunity to obtain information on the hazardous chemical while relieving the operator from maintaining, for 30 years, a record of the identity of the chemical and the location of use.

As discussed earlier, MSHA proposes that the MSDS requirements of this rule not apply to any hazardous waste as such term is defined by the Solid Waste Disposal Act, when subject to regulations issued under that Act by EPA.

G. Employee Training

MSHA believes that employee training is critical to an effective hazard communication program—it is the forum in which hazard information can best be presented to result in workers taking protective action and thus decrease the possibility of occupationally related chemical source illnesses and injuries. Commenters expressed considerable support for the concept of employee training on hazardous chemicals and endorsed the need to include such
requirements in this standard. However, commenters differ in their opinions as to how this can best be accomplished.

The majority of commenters suggested that hazard communication training be incorporated into existing MSHA training programs under 30 CFR part 48 (Training and Retraining of Miners). A significant number of commenters suggested that the training not be limited to part 48 in order to allow flexibility in the HCS and to credit applicable part 48 training toward required training under part 46 (Hazard Communication). There were a few commenters who believe that current MSHA training regulations are adequate and new standards are not necessary.

Among the related training provisions in existing part 48 are ones requiring training on hazard recognition and avoidance, health and safety aspects of the tasks to which new miners will be assigned, health standards pertinent to such tasks, and warning labels. Annual retraining is also required under part 48 on the health provisions of the Mine Act and warning labels. The OSHA HCS, used as the basis for this rule, has more specific training requirements regarding hazardous chemicals, in addition to defining what a hazardous chemical is. MSHA anticipates that under the proposed HCS, the number and types of hazardous chemicals included in the training will increase beyond those which may currently be addressed under part 48. Current part 48 training programs would in most cases require revision and additional training if they are to be credited toward complying with the more specific hazard communication training requirements in this proposal. For example, part 48 does not currently require training for exposure to a new chemical hazard in the manner prescribed by the HCS, and this factor would have to be addressed. Nevertheless, the training in part 48 that involves hazard recognition and avoidance, health standards, and warning labels would be directly applicable to the hazard training that MSHA would require under part 46. Retraining would not be required if training under part 48 has already met the requirements of proposed HCS training.

After considering the comments received and the applicability of existing part 48 training requirements, MSHA believes that hazard communication can best be accomplished by establishing employee training requirements separate from part 43. This would allow operators the flexibility to either conduct their hazard communication training independent of part 48 or to modify their part 48 training by addressing the more specific hazard communication training requirements in this proposal.

Under this proposal, operators are required to train employees at the time they are initially assigned to work with a hazardous chemical. The intent of this provision to provide employees with information prior to exposure in order to prevent the occurrence of adverse health effects. This purpose cannot be met if training is delayed until a later date. Part 48 does not require such immediate training.

Additionally, training would have to be done whenever a new chemical hazard is introduced into the work area, not necessarily a new chemical. For example, if a new solvent is brought into the workplace and it has hazards similar to existing chemicals for which training has already been conducted, then no new training is required other than to inform the employees of the location or operation within their work area where the hazardous chemical will be used. The chemical's MSDS or container labeling would serve to identify the specific chemical hazards to the employee. If the newly introduced solvent is a suspected carcinogen, and there has never been a carcinogenic hazard in the workplace before, then new training for the particular carcinogen hazards would have to be conducted.

Specifically, under MSHA's proposal operators would be required to train employees on: (1) the requirements of the HCS; (2) operations or locations in the employees work areas where hazardous chemicals are present; (3) the location and availability of the written hazard communication program (including the required list of hazardous chemicals and the MSDSs); (4) the chemical hazards in the employees work areas associated with hazardous chemicals, unlabelled pipes and conveyors containing hazardous chemicals, and unlabelled containers of raw material mined or milling; (5) methods and observations for detecting the presence or release of hazardous chemicals in the work area; (6) the physical and health hazards associated with nonroutine tasks, unlabelled pipes and conveyors containing hazardous chemicals, and unlabelled containers of raw material mined or milling; (7) the measures employees can take to protect themselves from hazardous chemicals; and (8) details of the operator's hazard communication program. MSHA intends to credit appropriate training conducted under part 48 toward operator training requirements under the MSHA HCS, provided the training is expanded to cover these specific elements and requirements.

Appendix B of this part provides a listing of informational sources that operators could consult to determine the specific hazards of chemicals they produce. The hazards of chemicals received by operators will be described on the MSDS for the chemical.

Several commenters indicated that they are already implementing the OSHA HCS training requirements in their MSHA training programs. In such cases, MSHA expects that operators would have to make relatively few changes to their training programs in order to comply with the MSHA HCS. The only significant difference between the MSHA HCS training provisions and OSHA's is that MSHA would require certification that training had been conducted. This certification is consistent with the certification requirements found in 30 CFR part 48.

The following are some of the minor differences between OSHA's proposed training requirements and those in OSHA's HCS. OSHA's HCS separates the provisions for providing information to employees from those requiring employee training. MSHA believes that for the purpose of educating employees on the hazards of chemicals, there is not a clear distinction between informational and training requirements. In order to simplify the wording of the rule, MSHA proposes to combine these separate requirements under one heading entitled "employee training." Only the separate headings in OSHA's rule would be eliminated. The provisions in the OSHA HCS that provide employees with specific information would be included in MSHA's proposal under the broader heading of "employee training."

Under OSHA's written hazard communication program requirements, there is a provision requiring employers to describe the methods they will use to inform employees of the hazards of nonroutine tasks and the hazards associated with chemicals contained in unlabelled pipes in their work areas. However, OSHA's standard does not include a provision under its employee information and training section specifically requiring that employees be informed of these hazards. MSHA believes it would be more appropriate to include this requirement in proposed § 46.7, employee training, rather than in proposed § 48.4, Written Hazard Communication Program. Additionally, MSHA has expanded this provision to require that operators also train employees on the hazards associated with chemicals transported on conveyors and with unlabelled
containers of the raw material mined or milled.

Though it would not be required, MSHA strongly recommends that operators periodically review the information on hazardous chemicals with exposed employees. Additionally, due to the complexity and variety of the procedures for handling and using various hazardous chemicals, operators should review with employees the appropriate MSDSs for any hazardous chemical with which they have not had recent experience before working with that chemical.

Under MSHA's proposed HCS, operators would have to certify in writing that the required initial training has been conducted. Operators would have to list the names of employees trained, the date of the initial training, and the signature of the person responsible for conducting the initial training. The operator could choose to use MSHA Form 5000-23, required under part 48, to satisfy the certification requirement of this section.

It has been suggested that the operator certify that employees have been trained in all MSDSs accompanying chemicals newly introduced into the work area and in all updated MSDSs for chemicals already in use. MSHA has not chosen to require the frequent recertification of employee training that this suggestion would entail. MSHA requests comments concerning whether certification of training is necessary in these situations.

The certification would have to be maintained by the operator as long as the employee is exposed to the hazardous chemical. The certification would be available at the mine site for examination by the employee, the employee's designated representative, and by any authorized representative of the Secretary of Labor.

Certification is an aid to the operator in tracking completed training and upcoming training for employees. Additionally, MSHA's 15 years of experience with training in the mining industry have demonstrated that certification of industrial training is essential because it provides documentation for the operator, employee, and MSHA that training has been conducted. Section 110(f) of the Mine Act imposes severe penalties on anyone who knowingly makes a false certification in any document maintained pursuant to the Act.

Certification may be of particular concern to independent contractors working at both MSHA and OSHA regulated operations. For example, if an employee of an independent contractor is exposed to the same chemical hazards at both an OSHA and MSHA site, MSHA would credit training given the employee at the OSHA site as meeting MSHA's requirements. The credit would be provided if contractor certified that the training had been conducted and that the training has met all the specific requirements under proposed §48.7.

Training under the HCS is intended to be performance oriented. Its goal is to have employees know how to identify and protect themselves from hazards associated with chemicals in the workplace. If employees at a mine are exposed to a small number of hazardous chemicals, their training could be conducted specifically on each chemical. If employees at a mine are exposed to a large number of hazardous chemicals, training could be conducted by categories of hazards and by referring employees to the substance-specific information on the labels and MSDSs and the locations or operations within their work areas where such chemicals are used.

Giving an employee a data sheet to read would not satisfy the intent of the standard with regard to training. The training is to be a forum for explaining to employees not only the hazards of the chemicals in their work areas but also how to use the information generated in the operators hazard communication program. This could be accomplished in many ways (audiovisuals, classroom instruction and discussion, interactive video) and ideally should include an opportunity for employees to ask questions to ensure that they understand the information presented to them.

As a result of the OSHA HCS, various organizations have developed a variety of informational materials, training aids, and model training programs to assist industry in complying with the standard. Due to the similarity between the OSHA HCS and MSHA's proposal, operators should also be able to use much of this material to assist them in conducting their own employee training.

MSHA solicits comments on additional ways to simplify hazard communication training, especially for small operators and independent contractors, while retaining or improving the effectiveness of the training.

H. Trade Secrets

MSHA's proposal includes provisions that would permit employees and their designated representatives access to trade secrets. If a substance or mixture could be readily identified through reverse engineering, a trade secret claim would not be legitimate. MSHA believes that existence of laboratory evidence in this regard would be compelling. In addition, this proposal would permit health professionals such as physicians, occupational hygienists, and occupational health nurses access to trade secret information. The Agency specifically solicits comments concerning the appropriateness and effectiveness of this approach.

The Restatement of Torts § 757, comment b (1956), with modifications, was published by the American Law Institute (ALI) in 1939 as an "orderly statement of the general common law of the United States * * *." The Restatement indicates that there are at least six factors that are well accepted in common law as determining whether a trade secret claim is legitimate. The factors include:

1. The extent to which the information is known outside of the business;
2. The extent to which information is known by employees and others involved in the business;
3. The extent of measures taken by the business to guard the secrecy of the information;
4. The value of the information to the business and its competitors;
5. The amount of effort and money expended in developing the information; and
6. The ease or difficulty with which the information could be properly acquired or duplicated by others.

These factors would provide significant guidance to operators in order to comply with the standard and to MSHA personnel in determining the validity of trade secret claims. The discussion in the Restatement does not indicate that any one of these criteria is more important than the others.

Operators would have the responsibility of carefully considering the criteria in the Restatement before claiming that information is protected under the standard. The Agency requests comments on whether the Restatement should be made an appendix to the rule as OSHA has done in its HCS.

MSHA expects that there would be few trade secret claims under this rule; the Agency believes that most operators produce single substances and are marketing their products by specific name and not under some unidentified proprietary name. Operators involved in chemically treating or processing their products are more likely to claim that identities of chemicals used in their process are trade secrets. The proposal would not require that information be disclosed for hazardous chemicals in small concentrations (less than 1 percent for health hazards in general,
less than 0.1 percent for carcinogens). The standard also would not require disclosure of the specific percentage of various chemicals in a mixture or details of the industrial process in which it is used. Many trade secrets involve these types of process and percentage information, rather than just the specific chemical identity. Additionally, if a chemical in a mixture is not hazardous, its disclosure would not be required.

Currently operators provide such chemical information on a voluntary basis only. For the first time, operators would have to provide this information in response to Agency regulation. The requirements of the OSHA HCS, combined with the increased desire of customers to receive full information on a purchased product, have caused many employers to reevaluate and limit their trade secret claims.

The proposal would permit operators to withhold specific chemical identity information if it is a bona fide trade secret. However, the standard would also require this information to be disclosed to health professionals under certain conditions of need and confidentiality. In medical emergencies, a treating physician or nurse would be entitled to receive the information immediately. After the emergency is abated, the holder of the trade secret could require the treating physician or nurse to sign a written statement of need and a confidentiality agreement, but the determination would be left to the health professional as to whether an emergency exists that necessitates disclosure.

In nonemergency situations, a health professional providing medical or other occupational health service to exposed employees would be entitled to the trade secret information under certain conditions, in addition to physicians, industrial hygienists, toxicologists, and epidemiologists. The request for the disclosure of trade secret information would have to be submitted in writing to the holder of the trade secret, specifying the occupational health need for the information, explaining why disclosure of the specific chemical identity is necessary and why other information would not allow the health professional to provide the necessary services, and describing the procedures that would be used to maintain the confidentiality of the information. The requestor would have to agree to keep the information confidential.

MSHA proposes to allow designated representatives access to trade secret chemical identities under the same conditions as health professionals. Consequently, employees and their designated representatives would have to submit written requests establishing a need-to-know basis for the information and be willing to sign a confidentiality agreement. "Designated representative" is defined in the proposal as any individual or organization to whom an employee gives written authorization to exercise a right of access to records. A representative of miners, under 50 CFR part 40, automatically would be considered a designated representative under this definition. While miners representatives would be given access to trade secret information, nothing in the standard is meant to restrict employees, whether they are organized or not, from appointing representatives of their choice to secure their rights under the standard and to help them effectively use the information obtained. MSHA does not believe that the designated representative access provision will weaken trade secret protection.

I. Effective Dates

MSHA believes that all operators can be in compliance with the provisions of this part within one year of its publication. Operators purchasing hazardous chemicals from the general industry should already be receiving MSDSs and labels for them. As stated in the comments received on this rulemaking, many operators indicated that they are already complying with the OSHA HCS. Subsequently, due to the similarity between MSHA’s and OSHA’s standards, these operators could be in compliance with MSHA’s rule well before the effective date.

One year would allow time for operators to determine what hazardous chemicals are on mine property, request MSDSs and labels for hazardous chemicals received without these, label containers of hazardous chemicals on mine property, develop a written hazard communication program, and train employees exposed to the hazardous chemicals.

This time frame also recognizes that there is a variety of available reference materials, such as generic written hazard communication programs developed by numerous organizations subsequent to the OSHA HCS, which would also be applicable to MSHA’s standard and helpful to operators in complying with MSHA’s rule.

MSHA requests specific comments as to the appropriateness of this date.

J. Appendices

The proposed MSHA HCS contains four appendices. Appendices A and B are practically identical to those found in the OSHA HCS. Appendix C, although similar to that proposed by OSHA in its August 1988 proposal, has been revised to address the specific differences in MSHA’s rule.

Appendix A, which is mandatory, provides further definitions and explanations of the scope of health hazards covered by this part. It is intended to ensure that the appropriate health hazard information is conveyed to employees.

Advisory appendix B is intended to assist operators in determining the specific health and physical hazards of a particular chemical by providing a comprehensive list of sources that could be referred to find such information.

Advisory appendix C is included to provide additional guidance to operators complying with the HCS. This appendix suggests the steps an operator should follow to achieve compliance and provides some information regarding how MSHA will be enforcing the requirements of the HCS. This should assist operators in designing and implementing an effective program.

MSHA requests comments on the utility of the appendices in general and the utility of the appendices to small operators in particular.

K. Deletions.

MSHA is proposing to delete existing metal/nonmetal standards 30 CFR 56.20012 and 57.20012, which require that toxic materials used in conjunction with or discarded from mining or milling of a product be plainly marked or labeled so as to positively identify the nature of the hazard and the protective action required. MSHA believes that the proposed HCS addresses this issue in a more comprehensive and protective manner. Under the proposed standard, containers of hazardous chemicals are required to be labeled with the chemicals’ identity and an appropriate hazard warning. Although the hazard warning may not indicate the protective action required, the chemicals’ MSDS would include information on applicable precautions for safe handling and use and applicable control measures including appropriate personal protective equipment. Additionally, employees are required to receive training on such protective measures. Under the proposal, operators are also to ensure that employees can immediately obtain the information contained on MSDSs.

MSHA is also proposing to delete the labeling requirements from 30 CFR 56.18004 and 57.18004 (applicable to metal and nonmetal mines) and 30 CFR 77.208(c) (applicable to coal mines). These standards currently require that hazardous materials be stored in
are covered at some point by the OSHA work as construction of buildings on also occurs at sites other than mines, covered by the OSHA HCS. As most contractors and their employees are know laws. In addition, when MSHA estimated that about 25 percent employees of independent contractors these individual State employee right-to-
of the coal miners and 33 percent of the contained in the proposed MSHA rule.

The primary benefits of the proposed rule are the expected prevention, due to operators and employees following the provisions of the proposed rule, of employee fatalities, acute injuries and illnesses, chronic disabling illnesses, and cancer cases and deaths. This rule is expected to increase employee use of personal protective devices and other precautionary measures when handling hazardous substances as well as improve work practices. Improved hazard communication is expected to generate early treatment of chronic disease and reduce future health care costs.

As there is no definitive data source that directly provides the numbers of occupational fatalities, injuries, and illnesses due to exposures to hazardous chemicals, MSHA has estimated the number of these cases. For example, although the current number of acute injuries due to chemical sources can be reliably estimated from data required to be submitted to MSHA by operators under 30 CFR part 50, this data source likely underreports chronic occupational illnesses. In addition, OSHA suggested in its Hazard Communication RIA that chronic occupational illness may be underreported by as much as a factor of 50 because of variables such as latency periods which obscure the connection between occupational exposure and the onset of disability. MSHA similarly has adjusted the chemical source illness data to account for such uncertainty. Additionally, there is considerable scientific controversy over the specific fraction of cancers associated with occupational exposure to chemicals. Estimates of the percentage of cancers that are occupationally related range from 1 percent to 20 percent. In light of this controversy and because can be multiple casual agents of carcinogenicity, MSHA has used an estimate of 5 percent of all cancers as being occupationally related.

A second source of difficulty involves assessing the likely risk reduction benefits resulting from an improved flow of information as distinct from measuring the benefits of lowered exposures. With current information, it is simply not possible to estimate precise impact on risk, although the OSHA Hazard Communication RIA reported significant changes in various indicators of health improvement as a consequence of implementation of some component of a hazard communication program. MSHA has used the best available evidence to base its estimates of risk reduction.

OSHA had estimated that, in comparison with the minimal employee training and industry hazard communication programs then existing, 20 percent of the chemically related acute injuries and illnesses could be prevented by the proposed HCS, that the rate of chronic illness is expected to decrease by 1 percent for each year up to an annual average of 20 percent in the 20th year, and that the rate of cancer cases and deaths from cancer will decline by 2 percent per year starting at the 10th year to an annual average of 20 percent in the 20th year.

The current mining community situation, however, differs from the situation that existed in the industries regulated by OSHA when OSHA performed its analyses. Unlike OSHA, MSHA has existing training standards in its 30 CFR part 48 that require employees to be trained about the health hazards in mining, and many mines have established hazard communication programs. On that basis, MSHA estimates that the expected reduction in these illnesses and fatalities would be three-quarters of those expected by OSHA. That is, 15 percent of the chemically related acute injuries and illnesses and, in the 20th year, 15 percent of the chronic illnesses, cancer cases, and deaths from cancer are expected to be prevented by compliance with the proposed MSHA rule.

Finally, all of the assumptions and possible sources of data error have been carefully analyzed in terms of their influence on the benefit estimates. Chapter III of the PRIA contains a detailed description of the data limitations and the procedures used to estimate these potential benefits.

On that basis, MSHA estimated that compliance with the proposed rule is
expected to prevent about 75 annual acute injuries and illnesses of which 50 would be lost workday injuries and illnesses involving 1,750 lost workdays and 25 would be nonlost workday injuries. The proposed rule is also expected to prevent about 200 chronic disabling illnesses during the next 20 years and, starting in the 20th year, is expected to prevent about 15 chronic disabling illnesses. In addition, during the next 20 years the proposed rule is expected to prevent, as an upper-bound estimate, about 200 cancer cases of which about 100 would have resulted in death. Finally, starting in the 20th year, the proposed rule is expected to prevent, as an upper-bound estimate, about 40 annual cancer cases of which about 20 would have resulted in death. MSHA cautions that these are inexact estimates; the cancer estimates are particularly uncertain and, to the extent that cancer risks in mines have been reduced in recent years, may be overestimates.

C. Compliance Costs

The compliance costs are estimated from the baseline of current industry practices. These current industry practices include the expected costs for mining operations to comply with all State employee right-to-know laws that affect mining operations. On that basis, the five general areas of the proposed rule that would impose costs of compliance are: Preparation of a written hazard communication program (including a hazard determination of all chemicals); employee training; development, maintenance and distribution of MSDSs; container labeling; and provision of some trade secrets information. MSHA estimates that the total first-year compliance cost with the proposed MSHA rule will be about $32,561 million, of which $14,432 million will be spent by coal mines, $16,638 million will be spent by metal/nonmetal mines, and $78 in small metal/nonmetal mines.

D. Economic Impacts

Using the 1989 U.S. Industrial Outlook data, coal mining generated a total value of shipments of $21,355 billion and metal/nonmetal mining generated a total value of shipments of $29,200 billion in 1988. As approximately 25 percent of the coal mines and 33 percent of the metal/nonmetal mines are already partially affected by State and local employee right-to-know laws, the annualized cost of the proposed MSHA rule will be about 0.02 percent of the value of coal shipments and about 0.03 percent of the value of metal/nonmetal shipments. On the basis of these relatively small compliance costs in relation to revenue, MSHA believes that its proposed rule will have little economic impact on typical mining operations.

E. Regulatory Flexibility Certification

Under the Regulatory Flexibility Act of 1980, MSHA analyzed the impact of the proposal upon small mining operations. MSHA has preliminarily determined that the proposed HCS will not have a significant adverse impact upon a substantial number of small mining operations. Although the per-employee cost is higher in small mines than it is in large mines, the total cost per employee is not substantial. That lack of substantial cost per employee, in conjunction with the fact that similar hazards from chemicals exist in both large and small mining operations, indicates that regulatory relief is not warranted for small mining operations.

IV. Paperwork Reduction Act

This proposed rule contains no information collection requirements subject to the Paperwork Reduction Act of 1980.

List of Subjects in 30 CFR Parts 46, 56, 57, and 77

Mine safety and health, Hazard communication, Hazardous chemicals, Hazard determination, Labeling, Material safety data sheets, Employee training

Accordingly, it is proposed to amend chapter I of title 30, Code of Federal Regulations as set forth below.

Dated: October 26, 1990.

John B. Howerton,
Deputy Assistant Secretary for Mine Safety and Health.

PART 56—[AMENDED]

A. It is proposed to amend 30 CFR part 56 as follows:

1. The authority citation for part 56 continues to read as follows:


2. Section 56.16004 is revised to read as follows:

§ 56.16004 Containers for hazardous materials.

Hazardous materials shall be stored in containers of a type approved for such use by recognized agencies.

§ 56.20012 [Removed]

3. Section 56.20012 is removed.

PART 57—[AMENDED]

B. It is proposed to amend 30 CFR part 57 as follows:

1. The authority citation for part 57 continues to read as follows:


2. Section 57.16004 is revised to read as follows:

§ 57.16004 Containers for hazardous materials.

Hazardous materials shall be stored in containers of a type approved for such use by recognized agencies.

§ 57.20012 [Removed]

3. Section 57.20012 is removed.

PART 77—[AMENDED]

C. It is proposed to amend 30 CFR part 77 as follows:

1. The authority citation for part 77 continues to read as follows:
regardless of whether it is determined to
nulled while on mine property,
operators to label containers of the
emergency.

§ 46.7 Employee training.

Operators must establish a hazard
chemicals in their workplaces.

§ 46.5 Labels and other forms of warning.

Appendix A to section 46.2— Mandatory—Health Hazard Definitions

Appendix B to Section 46.3— Advisory— Information Sources

Appendix C— Advisory— Guidelines for Operator Compliance


Subpart A— General

§ 46.1 Scope and application.
(a) This part applies to all operators
produce or use hazardous
chemicals in their workplaces.

(b) This part applies to any chemical
which is known to be present in the
workplace in such a manner that
employees are exposed under normal
conditions of use or in a foreseeable
emergency.

(c) This part does not require
operators to label containers of the
following chemicals:
(1) The raw material being mined or
milled while on mine property,
regardless of whether it is determined to
be a hazardous chemical under this part.
Containers shall be labeled if they hold
a mixture of the raw material and
another hazardous chemical, and the
mixture is determined to be hazardous under § 46.3(c) of this part.
(2) Any pesticide as defined in the
Federal Insecticide, Fungicide, and
Rodenticide Act (7 U.S.C. 136), when
subject to the labeling requirements of
that Act and the labeling regulations
issued under that Act by the
Environmental Protection Agency.
(3) Any food, food additive, or color
additive as defined in the Federal Food,
Drug, and Cosmetic Act (21 U.S.C. 301)
and regulations issued under that Act,
when subject to the labeling requirements under that Act by the
Food and Drug Administration or the
Department of Agriculture.
(4) Any consumer product or
hazardous substance as defined in the
2051) and Federal Hazardous
Substances Act (15 U.S.C. 1261)
respectively, when subject to a
consumer product safety standard or
labeling requirement of those Acts, or
regulations issued under those Acts by
the Consumer Product Safety
Commission.

(5) Portable containers into which
hazardous chemicals are transferred
from labeled containers, and which are
intended only for the immediate use of
the employee who performs the transfer.

(d) This part does not require
operators to label containers of, or to
meet the MSDS requirements in § 46.8,
for any hazardous waste as such term is
defined by the Solid Waste Disposal
Act, as amended by the Resource
Conservation and Recovery Act of 1976,
as amended (42 U.S.C. 6901 et seq.),
when subject to regulations issued under
that Act by the Environmental
Protection Agency.

(e) This part does not apply to the
following:
(1) Wood or wood products which do
not release or otherwise result in
exposure to a hazardous chemical under
normal conditions or use.
(2) Articles.
(3) Foods, drinks, drugs, cosmetics,
tobacco or tobacco products intended
for personal consumption or use by
employees while in the workplace.
(4) Any consumer product or
hazardous substance, as defined in the
2051) and Federal Hazardous
Substance Act (15 U.S.C. 1261),
respectively, when subject to a
consumer product safety standard or
labeling requirement of those Acts, or
regulations issued under those Acts by
the Consumer Product Safety
Commission, where the operator
can demonstrate that it is used in the
workplace in the same manner as in
normal consumer use and the use results
in a duration and frequency of exposure
which is not greater than exposures
experienced by consumers.

(5) Nuisance particulates that do not
pose any covered physical or health
hazard.

(6) Ionizing or nonionizing radiation.
(7) Biological hazards.

§ 46.2 Definitions.
The following definitions apply in this
part.

Article. A manufactured item other
than a fluid or a particle that—

(a) Is formed to a specific shape or
design during manufacture;

(b) Has end-use functions dependent
upon its shape or design; and

(c) Under normal conditions of use,
releases no more than very small
quantities (that is, minute or trace
amounts) of a hazardous chemical and
does not pose a physical or health risk
to employees.

Access. The right to examine and
consult records.

Chemical. Any element, chemical
compound, or mixture of these.

Chemical name. The scientific
designation of a chemical in accordance
with the nomenclature system
developed by the International Union of
Pure and Applied Chemistry (IUPAC) or
the Chemical Abstracts Service (CAS)
rule of nomenclature, or a name that will
clearly identify the chemical for the
purpose of conducting a hazard
evaluation.

Combustible liquid. Liquids having a
flash point at or above 100 °F (37.8 °C).

They are divided into the following
classes:

(a) Class II liquids—those having flash
points at or above 100 °F (37.8 °C) and
below 140 °F (60 °C).

(b) Class III A liquids—those having
flash points at or above 140 °F (60 °C)
and below 200 °F (93.4 °C).

(c) Class III B liquids—those having
flash points at or above 200 °F (93.4 °C).

Common name. Any designation or
identification such as a code name, code
number, trade name, brand name, or
generic name used to identify a
chemical other than by its chemical
name.

Compressed gas. (a) A contained gas
or mixture of gases having an absolute
pressure exceeding—
(1) 40 psi at 70 °F (21.1 °C); or
(2) 104 psi at 130 °F (54.4 °C)
regardless of the pressure at 70 °F (21.1
°C).

(b) A liquid having a vapor pressure
exceeding 40 psi at 100 °F (37.8 °C) as
determined by ASTM D-323-72.
Container. Any bag, barrel, bottle, box, can, cylinder, drum, reaction vessel, storage tank, or the like that contains hazardous chemical. Pipes or piping systems, conveyors, and engines, fuel tanks, or other operating systems or parts in a vehicle are not considered to be containers.

Designated representatives. Any individual or organization to whom an employee gives written authorization to exercise a right of access to records, or a representative of miners under 30 CFR part 40.

Employee. Any individual working in a mine who may be exposed to a hazardous chemical. Individuals such as office workers who encounter hazardous chemicals only in non-routine instances are not covered.

Employer. A person engaged in a business where chemicals are either used, distributed, or are produced for use or distribution, including a contractor or subcontractor.

Explosive. A chemical that causes a sudden release of pressure, gas, and heat due to shock, pressure, or high temperature and is classified as an explosive in 49 CFR 173.53, 173.88, or 173.100, or as a blasting agent in 49 CFR 173.114(a).

Exposed. Being subjected, or potentially subjected, to a hazardous chemical in the course of employment through any route of entry, such as inhalation, ingestion, skin contact or absorption, during normal operating conditions or in a foreseeable emergency.

Flammable. A chemical that falls into one of the following categories:

(a) An aerosol that, when tested by the method described in 49 CFR 1900.45, yields a flame projection exceeding 18 inches at full valve opening, or a flashback (a flame extending back to the valve) at any degree of valve opening.

(b) A gas that will burn at ambient temperature and pressure in the normal concentration of oxygen in the air.

(c) A Class I liquid—liquid having a flash point below 100 °F (37.8 °C), a vapor pressure not exceeding 40 psi (absolute) at 100 °F (37.8 °C).

(d) A solid, other than a blasting agent or explosive as classified in 49 CFR 173.53, 173.88, 173.100 or 173.114(a), that is liable to cause fire through friction, absorption of moisture, spontaneous chemical change, or retained heat from manufacturing or processing, or which can be ignited readily and when ignited burns so vigorously and persistently as to create a serious hazard. A chemical shall be considered to be a flammable solid if, when tested by the method described in 16 CFR 1500.44, it ignites and burns with a self-sustained flame at a rate greater than one-tenth of an inch per second along its major axis.

Flash point. The minimum temperature at which a liquid gives off a vapor in sufficient concentration to form an ignitable mixture with air near the surface of the liquid.

Foreseeable emergency. Any potential occurrence for which operators would normally plan such as equipment failure, rupture or spill of containers, or failure of control equipment that could result in an uncontrolled release of a hazardous chemical into the workplace.

Hazardous chemical. Any chemical that is a physical hazard or a health hazard.

Hazardous waste. Any chemical regulated by the Environmental Protection Agency as a hazardous waste, as such term is defined by the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended [42 U.S.C. 6901 et seq.].

Hazard warning. Any words, pictures, or symbols appearing on a label or other appropriate form of warning, that convey the specific physical and health hazards of the chemical in the container, including target organ effects. (See the definitions for "physical hazard" and "health hazard" for examples of the hazards that must be conveyed.)

Health hazard. A chemical for which acute or chronic health effects may occur in exposed employees. The term "health hazard" includes chemicals which may be carcinogenic, toxic or highly toxic agents, reproductive toxins, irritants, corrosives, sensitzers, hepatotoxins, nephrotoxins, neurotoxins, agents which act on the hematopoietic system, and agents which damage the lungs, skin, eyes, or mucous membranes. Appendix A (Mandatory) provides further definitions and explanations of the scope of health hazards covered by this section. Appendix B (Advisory) describes various sources of information on the health hazards of chemicals.

Identity. A chemical's common or chemical name. The identity used must permit cross-references to be made among the required list of hazardous chemicals, the label, and the MSDS.

Immediate use. Use of a hazardous chemical during the work shift in which it was transferred from a labeled container, by the employee performing the transfer.

Label. Any written, printed, or graphic material, displayed on or affixed to containers of hazardous chemicals.

Material safety data sheet (MSDS). Written or printed material concerning a hazardous chemical which an operator prepares under the requirements in § 46.8 of this part, or which an employer subject to the Occupational Safety and Health Act prepares under the requirements of 29 CFR 1910.1200.

Mixture. Any combination of two or more chemicals which is not the result of a chemical reaction.

Operator. Any owner, lessee, or other person who operates or supervises a mine, or any independent contractor performing services or construction at a mine.


Oxidizer. A chemical other than a blasting agent or explosive as classified in 49 CFR 173.53, 173.88, 173.100 or 173.114(a), that initiates or promotes combustion in other materials, thereby causing fire either of itself or through the release of oxygen or other gases.

Physical hazard. A chemical which is a combustible liquid, a compressed gas, an explosive, flammable, an organic peroxide, an oxidizer, a pyrophoric, unstable (reactive) or water-reactive. Appendix B lists some information sources that can be used in determining whether a chemical is a physical hazard.

Product. To manufacture, process, formulate, or repackage.

Pyrophoric. A chemical that will ignite spontaneously in air at a temperature of 130 °F (54.4 °C) or below.

Raw material. A mineral, or combination of minerals, that is extracted from natural deposits by mining or is upgraded through milling. The term applies to the ore and valuable minerals extracted, as well as to the worthless material, gangue, or overburden removed during the mining or milling process.

Specific chemical identity. The chemical name, Chemical Abstracts Service [CAS] Registry Number, or any other information that reveals the precise chemical designation of the substance.

Trade secret. Any confidential formula, pattern, process, device, information, or compilation of information that is used by the operator and that gives the operator an advantage over competitors who do not know or use it.

Unstable (reactive). A chemical which in the pure state, or as produced or transported, will vigorously polymerize, decompose, condense, or become self-reactive under conditions of shock, pressure, or temperature.

Use. To package, handle, react, or transfer.
Water-reactive. A chemical that reacts with water to release a gas that is either flammable or a health hazard.

Work area. A room or defined space in a workplace where hazardous chemicals are produced or used and where employees are present.

Workplace. A mine, establishment, job site, or project at one geographical location containing one or more work areas.

Subpart B—Performance Requirements

§ 46.3 Hazard determination. (a) Operators who produce chemicals shall determine the chemicals' hazards based on—
(1) Available evidence concerning the chemicals’ physical hazards; and
(2) The following sources for establishing for hazard communication purposes, that a chemical listed in them is a health hazard:
(i) MSHA standards in 30 CFR parts 56, 57, 70, 71, and 75.
(ii) American Conference of Governmental Industrial Hygienists (ACGIH), "Threshold Limit Values and Biological Exposure Indices" (latest edition).
(iii) National Toxicology Program (NTP), Annual Report on Carcinogens (latest edition).
(iv) International Agency for Research on Cancer (IARC), Supplement 7, "Overall Evaluations of Carcinogenicity—An Updating of IARC Monographs Volumes 1 to 42." or in any subsequent IARC Monographs or Supplements.
(b) Operators who receive chemicals shall determine their hazards based on the chemicals' material safety data sheets and container labels, except that the procedures in paragraph (a) of this section shall be followed for hazardous waste received by operators when a material safety data sheet cannot be obtained.
(c) Operators evaluating chemicals shall determine the hazards of mixtures of chemicals as follows:
(1) From the results of testing the mixture as a whole.
(2) If not tested as a whole, the mixture shall be assumed to pose the same health hazards as the components that comprise 1 percent (by weight or volume) or greater of the mixture, except that the mixture shall be assumed to present a carcinogenic hazard if it contains a component, in concentrations of 0.1 percent or greater, that is considered to be carcinogenic under paragraph (a) of this section.
(3) If the operator has evidence to indicate that a component present in the mixture, in concentrations of less than 1 percent (or in the case of chemicals considered to be carcinogenic under paragraph (a) of this section, less than 0.1 percent), could be released in concentrations that would exceed an established MSHA permissible exposure limit or ACGIH Threshold Limit Value, or could present a health risk to employees in those concentrations, the mixture shall be assumed to present the same hazard.
(4) If not tested as a whole, the operator shall use whatever scientifically valid evidence is available to determine the mixture's physical hazard.

§ 46.4 Written hazard communication program. (a) Operators shall develop, implement, and maintain a written hazard communication program which describes how the requirements are met for § 46.3, hazard determination; § 46.5, labels and other forms of warning; § 46.6, material safety data sheets (MSDSs); and § 46.7, employee training. This program must also include, in writing, a list of the hazardous chemicals known to be present using an identity that permits cross-references to be made among a chemical's label and the MSDS. This list may be compiled for the mine as a whole or for individual work areas.
(b) When there is more than one operator at a mine—for example, where there are independent contractors performing services or construction at a mine—any operator who produces or uses hazardous chemicals in such a way that the employee of other operators on the mine property are exposed shall include the following information in the written hazard communication program:
(1) The methods that will be used to provide the other operators with access to MSDSs and information on hazardous chemicals to which their employees are exposed while working at the mine.
(2) The methods that will be used to inform the other operators of any precautionary measures that need to be taken to protect employees during the workplace's normal operating conditions and in foreseeable emergencies.
(3) The methods that will be used to inform the other operators of the labeling systems used on containers of hazardous chemicals to which their employees are exposed while working at the mine.
(c) Upon request, the operator shall provide access to the written hazard communication program to employees, their designated representatives, and authorized representatives of the Secretary of Labor and Secretary of Health and Human Services.
(d) Upon request, a copy of the written hazard communication program shall be provided without cost to employees and their designated representatives.
(e) The operator shall retain a written hazard communication program, as required by this section, as long as a hazardous chemical is known to be present in the workplace in a manner that employees are exposed under normal conditions of use or in a foreseeable emergency.

§ 46.5 Labels and other forms of warning. (a) Except as provided in paragraphs (b), (c), and (d) of this section, the operator shall ensure that each container of hazardous chemical in the workplace is labeled, tagged, or marked, with the following information:
(1) The identity of the hazardous chemical contained.
(2) Appropriate hazard warnings. Operators are not responsible for inaccurate information on a label which they did not prepare and have accepted in good faith from the chemical manufacturer or supplier.
(b)(1) The operator may use signs, placards, process sheets, batch tickets, operating procedures, or other such written materials instead of affixing labels to individual stationary process containers, provided—
(i) The written materials identify the containers to which such information applies and conveys the information required by this section;
(ii) Employees have immediate access to the written materials while in their work area throughout each work shift; and
(iii) The employee's designated representative and authorized representatives of the Secretary of Labor and the Secretary of Health and Human Services have access to this written material.
(2) Upon request, the operator shall provide a copy of the written materials, without cost, to employees and their designated representatives.
(c) Operators are not required to label containers of the following chemicals:
(1) The raw material being mined or milled, while on mine property, regardless of whether it is a hazardous chemical. However, containers shall be labeled in accordance with paragraph (a) or (b) of this section, if they hold a mixture of the raw material and another hazardous chemical, and the mixture is determined to be hazardous under § 46.3(c) of this part.
(2) Any pesticide as such term is defined in the Federal Insecticide,
Fungicide, and Rodenticide Act (7 U.S.C. 106), when subject to the labeling requirements of that Act and labeling regulations issued under that Act by the Environmental Protection Agency.

(3) Any food, food additive, or color additive, as such terms are defined in the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301) and regulations issued under that Act, when subject to the labeling requirements under that Act by the Food and Drug Administration or the Department of Agriculture.

(4) Any consumer product or hazardous substance, as those terms are defined in the Consumer Product Safety Act (15 U.S.C. 2051) and Federal Hazardous Substances Act (15 U.S.C. 1261), respectively, when subject to a consumer product safety standard or labeling requirement of those Acts, or regulations issued under those Acts by the Consumer Product Safety Commission.

(5) Hazardous chemicals that are in portable containers, having been transferred from labeled containers and intended only for the immediate use of the employee who performs the transfer.

(6) Any hazardous waste as such term is defined by the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 9001 et seq.), when subject to regulations issued under that Act by the Environmental Protection Agency.

(d) If the hazardous chemical is required to be labeled by MSHA in a substance-specific standard, the operator shall ensure that the label or other forms of warning are in accordance with the requirements of that standard.

(1) The operator shall not remove or deface existing labels on incoming containers of hazardous chemicals unless the container is immediately marked with the required information.

(i) If an operator becomes informed of any significant changes concerning the hazards of a chemical, this new information shall be incorporated as appropriate into a new label within three months and shall be provided with the next shipment of the chemical to the employer. Operators shall also provide their name and address or the name and address of a responsible party who can provide additional information on the hazardous chemical. This labeling information may be included with the chemical's shipping papers rather than posted on the hazardous chemical's container.

§ 46.6 Material safety data sheets (MSDSs).

(a) Operators shall maintain the MSDS received with each hazardous chemical brought onto mine property as long as the chemical is present in the workplace.

(b) If an operator does not receive an MSDS with a chemical that is labeled as being hazardous, the operator shall request one from the chemical manufacturer or supplier before the chemical is used.

(c) Operators shall develop an MSDS for each hazardous chemical they produce. Each MSDS developed by the operator shall be in English and include at least the following information:

(1) The identity used on the label, and, except as provided for in § 46.8 of this part on trade secrets—

(i) If the hazardous chemical is a single substance, its chemical and common name;

(ii) If the hazardous chemical is a mixture that has been tested as a whole to determine its hazards, the chemical and common names of the ingredients which contribute to known hazards, and the common name of the mixture; or,

(iii) If the hazardous chemical is a mixture that has not been tested as a whole;

(A) The chemical and common names of all ingredients that have been determined to be health hazards, and that comprise one percent or greater of the composition, except that carcinogens under § 46.3(a) of this part shall be listed if the concentrations are 0.1 percent or greater;

(B) The chemical and common names of all ingredients that have been determined to be health hazards, and which comprise less than one percent (0.1 percent for carcinogens under § 46.3(a) of this part) of the mixture, if there is evidence that the ingredients could be released from the mixture in concentrations that would exceed an established MSHA permissible exposure limit, ACGIH Threshold Limit Value, or could present a health hazard to employees; and,

(C) The chemical and common names of all ingredients which have been determined to present a physical hazard when present in the mixture.

(2) The physical and chemical characteristics of the hazardous chemical (such as vapor pressure, flash point, etc.).

(3) The physical hazards of the hazardous chemical, including the potential for fire, explosion, and reactivity.

(4) The health hazards of the hazardous chemical, including signs and symptoms of exposure, and any medical conditions which are generally recognized as being aggravated by exposure to the chemical.

(5) The primary routes of entry.

(6) The MSHA permissible exposure limit, ACGIH Threshold Limit Value, and any other exposure limit used or recommended by the preparer of the MSDS, where available.

(7) Whether the chemical is listed as a carcinogen or potential carcinogen in the sources specified in § 46.3(a) of this part.

(8) Applicable precautions for safe handling and use including appropriate hygienic practices, protective measures during repair and maintenance of contaminated equipment, and procedures for clean-up of spills and leaks.

(9) Applicable control measures, such as appropriate engineering controls, work practices, or personal protective equipment.

(10) Emergency and first aid procedures.

(11) The date of preparation of the MSDS or the last change to it.

(12) The name, address and telephone number of the operator or responsible party preparing the MSDS, who can provide additional information on the hazardous chemical and appropriate emergency procedures.

(d) If no applicable information is found for any given category on the MSDS, the operators preparing the MSDS shall mark it to indicate that no applicable information was found.

(e) Where complex mixtures have similar hazards and contents, such as the chemical ingredients are essentially the same but the specific composition varies from mixture to mixture, one MSDS may be prepared to apply to all of these similar mixtures.

(f) MSDSs may be kept in any form and may be designed to cover groups of hazardous chemicals in a work area where it may be more appropriate to address the hazards of a process rather
than individual hazardous chemicals. However, the operator shall ensure that in all cases the required information is provided for each hazardous chemical.

(g) Operators developing MSDSs shall ensure that the information recorded accurately reflects the chemicals' hazards. If the operator who developed an MSDS becomes aware of any new and significant information regarding the hazards of a chemical, or ways to protect against the hazards, this new information shall be added to the MSDS within three months.

(h) Operators shall provide employees, upon request, with a copy of the MSDS for each hazardous chemical they ship to an employer.

(i) Operators shall provide employees with access, while in their work area during each workshift, to MSDSs for the hazardous chemicals to which they are exposed.

(j) In areas or operations where it is not practical to maintain the MSDSs in the work area of the employees, the MSDSs may be kept at a central location at the mine, provided employees have access to them at some time during their workshift and the operator can ensure that employees can immediately obtain the required information in an emergency.

(k) The operator shall provide access to the MSDSs to designated representatives of employees and to authorized representatives of the Secretary of Labor and the Secretary of Health and Human Services.

(l) Upon request, the operator shall provide a copy of the MSDS, without cost, to employees and their designated representatives.

(m) At least 3 months prior to the disposal of any MSDS required by this section, operators shall notify employees of the right of access to the MSDSs and of their plans to dispose of these records.

(n) The requirements of this section (§ 46.6) do not apply to any hazardous waste as the term is defined by the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1978, as amended (42 U.S.C. 6901 et seq.), when subject to regulations issued under that Act by the Environmental Protection Agency.

§ 46.7 Employee training.

(a) Operators shall provide exposed employees with training on hazardous chemicals in their work area prior to their initial assignment to that area and whenever a new chemically related hazard is introduced into their work area. Employee training shall include the following:

(1) Information on the requirements of this part.

(2) Information on any operations or locations in the work area where hazardous chemicals are present.

(3) The location and availability of the written hazard communication program (including the required list of hazardous chemicals) and MSDSs required by this part.

(4) The chemical hazards in the employee's work area associated with nonroutine tasks (for example, the cleaning of a storage tank that had contained hazardous chemicals), unlabeled pipes and conveyors containing hazardous chemicals, and unlabeled containers of the raw material mined or milled.

(5) Methods and observations that may be used to detect the presence or release of a hazardous chemical in the work area, such as the results of monitoring conducted by the operator, the use of continuous monitoring devices, and the visual appearance or odor of hazardous chemicals when being released.

(6) The physical and health hazards of the hazardous chemicals in the work area.

(7) The measures employees can take to protect themselves from these hazardous, including specific procedures the operator has implemented to protect employees from exposure to hazardous chemicals, such as appropriate work practices, emergency procedures, and personal protective equipment to be used.

(8) The details of the hazard communication program developed by the operator, including an explanation of the labeling system and the MSDSs and how employees can obtain and use the appropriate hazard information.

(b) At the completion of any training required under this section, the operator shall certify the date and type of training given each employee. The certification shall be signed by the person responsible for conducting the training.

§ 46.8 Trade secrets.

(a) Operators may withhold the specific chemical identity, including the chemical name and other specific identification of a hazardous chemical, from the written hazard communication program, label, and MSDS, provided that—

(1) The claim can be supported that the information withheld is a trade secret;

(2) The chemical is given some identifier for reference purposes which will not disclose its specific chemical makeup;

(3) Information contained in the MSDS concerning the properties and effects of the hazardous chemical is disclosed;

(4) The MSDS indicates that the specific chemical identity is being withheld as a trade secret; and

(5) The specific chemical identity is made available to health professionals, employees, and designated representatives in accordance with the applicable provisions of this section.

(b) Where treating physician or nurse determines that a medical emergency exists and the specific chemical identity of a hazardous chemical is necessary for emergency or first-aid treatment, the operator shall immediately disclose the specific chemical identity of a trade secret chemical to that treating physician or nurse, regardless of the existence of a written statement of need of a confidentiality agreement. The operator may require a written statement of need and confidentiality agreement, in accordance with the provisions of paragraphs (c) and (d) of this section, as soon as circumstances permit.

(c) In nonemergency situations, upon request, an operator shall disclose a specific chemical identity, otherwise permitted to be withheld under paragraph (a) of this section, to a health professional (such as a physician, industrial hygienist, toxicologist, epidemiologist, or occupational health nurse) providing medical or other occupational health services to exposed employees, or their designated representatives, under the following conditions:

(1) The request is in writing.

(2) The request describes with reasonable detail one or more occupational health needs for the information, as follows:

(i) To assess the hazards of the chemicals to which employees will be exposed.

(ii) To conduct or assess sampling of the workplace atmosphere to determine employee exposure levels.

(iii) To conduct reassignment or periodic medical surveillance of exposed employees.

(iv) To provide medical treatment to exposed employees.
(v) To select or assess appropriate personal protective equipment for exposed employees.
(vi) To design or assess engineering controls or other protective measures for exposed employees.
(vii) To conduct studies to determine the health effects of exposure.

(3) The request explains in detail why the disclosure of the specific chemical identity is essential and that the disclosure of the following information to the health professional, employee, or designated representative would not satisfy the purposes described in paragraph (c)(2) of this section:
(i) The properties and effects of the chemical.
(ii) Measures for controlling employees’ exposure to the chemical.
(iii) Methods of monitoring and analyzing employee exposure to the chemical.
(iv) Methods of diagnosing and treating harmful exposures to the chemical.

(4) The request includes a description of the procedures to be used to maintain the confidentiality of the disclosed information.

(5) The health professional, the employer or contractor of the services of the health professional (such as a labor organization or an individual employee), employee, or designated representative enter a written confidentiality agreement that the health professional, employee, or designated representative will not use the trade secret information for any purpose other than the health needs asserted and agree not to release the information under any circumstances other than to MSHA as provided in paragraph (f) of this section, except as authorized by the terms of the agreement or by the operator.

(d) The confidentiality agreement authorized by paragraph (c)(4) of this section—
(1) May restrict the use of the information to the health purposes indicated in the written statement of need;
(2) May provide for appropriate legal remedies in the event of a breach of the agreement, including stipulation of a reasonable pre-estimate of likely damages; and,
(3) May not include requirements for the posting of a penalty bond.
(e) Nothing in this standard is meant to preclude the parties from pursuing noncontractual remedies to the extent permitted by law.
(f) If the health professional, employee, or designated representative receiving the trade secret information declares that there is a need to disclose it to MSHA, the operator who provided the information shall be informed by the health professional, employee, or designated representative prior to, or at the same time as, such disclosure.
(g) If the operator denies a written request for disclosure of a specific chemical identity, the denial must—
(1) Be provided to the health professional, employee, or designated representative, within 30 calendar days of the request;
(2) Be in writing;
(3) Include evidence to support the claim that the specific chemical identity is a trade secret;
(4) State the specific reasons why the request is being denied; and
(5) Explain in detail how alternative information may satisfy the specific medical or occupational health need without revealing the specific chemical identity.

(h)(1) The health professional, employee, or designated representative whose request for information is denied under paragraph (c) of this section may refer the request and the written denial of the request to MSHA for consideration.
(2) When a health professional, employee, or designated representative refers the denial to MSHA, MSHA shall consider the evidence to determine if—
(i) The operator has supported the claim that the specific chemical identity is a trade secret;
(ii) The health professional, employee, or designated representative has demonstrated adequate means to protect the confidentiality.
(i) If MSHA determines that the specific chemical identity requested under paragraph (c) of this section is not a bona fide trade secret, or that it is a trade secret, but the requesting health professional, employee, or designated representative has a legitimate medical or occupational health need for the information, has executed a written confidentiality agreement, and has shown adequate means to protect the confidentiality of the information, the operator shall be subject to citation by MSHA.
(2) If an operator demonstrates to MSHA that the execution of a confidentiality agreement would not provide sufficient protection against the potential harm from the unauthorized disclosure of a trade secret specific chemical identity, MSHA may issue such orders or impose such additional limitations or conditions upon the disclosures of the requested chemical information as may be appropriate to ensure that the occupational health services provided without an undue risk of harm to the operator.

(j) If a citation for a failure to release specific chemical identity information is contested by the operator, the matter will be adjudicated before the Mine Safety and Health Review Commission (Commission) in accordance with the Mine Act’s enforcement scheme and the applicable Commission rule of procedure. In accordance with the Commission rules, when an operator continues to withhold the information during the contest, the Administrative Law Judge may review the citation and supporting documentation in camera or issue appropriate orders to protect the confidentiality on such matters.

(k) Notwithstanding the existence of a trade secret claim, an operator shall, upon request, disclose to MSHA any information which this section requires the operator to make available. Where there is a trade secret claim, the claim shall be made no later than at the time the information is provided to MSHA so that suitable determinations of trade secret status can be made and the necessary protection can be implemented.

(l) Nothing in this paragraph shall be construed as requiring the disclosure under any circumstances of process or percentage of mixture information which is a trade secret.

§46.9 Effective date.

Operators shall be in compliance with the provisions of this part within 1 year of its publication.

Appendix A to Section 46.2—Mandatory—Health Hazard Definitions

Although safety hazards related to the physical characteristics of a chemical can be objectively defined in terms of testing requirements, such as flammability, health hazard definitions are less precise and more subjective. Health hazards may cause measurable changes in the body, such as decreased pulmonary function. These changes are generally indicated by the occurrence of signs and symptoms in the exposed employees, such as shortness of breath, which is a nonmeasurable, subjective feeling. Employees exposed to such hazards must be appraised of both the change in body function and the signs and symptoms that may occur to signal that change.

The determination of occupational health hazards is complicated by the fact that many of the effects or signs and symptoms occur commonly in nonoccupationally exposed populations. Therefore, effects of employee exposure are difficult to separate from normally occurring illnesses. Occasionally a substance causes an effect that is rarely seen in the population at large, such as black lung...
caused by exposure to respirable coal mine dust, thus making it easier to ascertain that the occupational exposure was the primary causal factor. More often, however, the effects are common, such as lung cancer. The situation is further complicated by the fact that most chemicals have not been tested adequately to determine their health hazard potential, and data do not exist to substantiate these effects.

There have been many attempts to categorize effects and to define them in various ways. Generally, the terms "acute" and "chronic" are used to delineate between effects on the basis of severity or duration. "Acute" effects usually occur rapidly as a result of short-term exposure and are of short duration. "Chronic" effects generally occur as a result of long-term exposure and are of long duration.

The acute effect is referred to most frequently by the American National Standards Institute (ANSI) standard for Precautionary Labelling of Hazardous Industrial Chemicals (Z129.1–1982) and 49 CFR part 173. The following is a listing of various health effects, excluding, for example, blood dyscrasias (such as anemia) chronic bronchitis, and liver atrophy.

The goal of defining precisely, in measurable terms, every possible health effect that may occur in the workplace as a result of chemical exposure cannot realistically be accomplished. This does not negate the need for employees to be informed of such effects and protected from them.

The following is a listing of various health hazards to be communicated to employees on a label's hazard warning, in a chemical's MSDS, and in employee training. A chemical's specific health hazards may be found in the literature sources listed in appendix B to § 46.3 of this part.

(a) Carcinogenic: A chemical considered to be carcinogenic by one of the following:
1. The International Agency for Research on Cancer (IARC) has evaluated and categorized it as being carcinogenic to humans, probably carcinogenic to humans, or possibly carcinogenic to humans.
2. The "Annual Report on Carcinogens" published by the National Toxicology Program (NTP) (latest edition) lists it as being carcinogenic, or reasonably anticipated to be carcinogenic.
3. The American Conference of Governmental Industrial Hygienists (ACGIH) identifies it as a confirmed or suspected human carcinogen in the "Threshold Limit Values and Biological Exposure Indices" (latest edition).

(b) MSHA regulates it as a carcinogen.
(c) Corrosive: It causes visible destruction of, or irreversible alterations in, living tissue by chemical action at the site of contact. For example, a chemical is considered to be corrosive if, when tested on the intact skin of albino rabbits by the method described by the U.S. Department of Transportation in appendix A to 49 CFR part 173, it destroys or changes irreversibly the structure of the tissue at the site of contact following an exposure period of 4 hours. This term does not refer to action on inanimate surfaces.

(e) Highly toxic: A chemical falling within any of the following categories:
1. A chemical that has a median lethal dose (LD50) of 50 milligrams or less per kilogram of body weight when administered orally to albino rats weighing between 200 and 300 grams each.
2. A chemical that has a median lethal dose (LD50) of 200 milligrams or less per kilogram of body weight when administered by continuous inhalation for 1 hour (or less if death occurs within 1 hour) to albino rats weighing between 200 and 300 grams each.
3. A chemical that has a median lethal concentration (LC50) in air or 200 parts per million by volume or less of gas or vapor, or 2 milligrams per liter or less of mist, fume, or dust, when administered by continuous inhalation for 1 hour (or less if death occurs within 1 hour) to albino rats weighing between 200 and 300 grams each.
4. Irritant: A chemical which is not corrosive but which causes a reversible deleterious effect on living tissue by chemical action at the site of contact. A chemical is a skin irritant if, when tested on the intact skin of albino rabbits by the methods of 16 CFR 1500.41 for 4 hours exposure or by other appropriate techniques, it results in an empirical score of 5 or more. A chemical is an eye irritant if, when tested on the intact skin of albino rabbits by the methods of 16 CFR 1500.41 for 4 hours exposure or by other appropriate techniques, it results in an empirical score of 5 or more. A chemical is an eye irritant if, when tested on the intact skin of albino rabbits by the methods of 16 CFR 1500.41 for 4 hours exposure or by other appropriate techniques, it results in an empirical score of 5 or more.
5. Sensitizer: A chemical that causes a substantial proportion of exposed people or animals to develop an allergic reaction in normal tissue after repeated exposure to the chemical.
6. Toxic: A chemical falling within any of the following categories:
1. A chemical that has a median lethal dose (LD50) of more than 500 milligrams per kilogram but not more than 500 milligrams per kilogram of body weight when administered orally to albino rats weighing between 200 and 300 grams each.
2. A chemical that has a median lethal dose (LD50) of more than 200 milligrams per kilogram but not more than 1,000 milligrams per kilogram of body weight when administered by continuous contact for 24 hours (or less if death occurs within 24 hours) with the bare skin of albino rabbits weighing between 2 and 3 kilograms each.
3. A chemical that has a median lethal concentration (LC50) in air or 200 parts per million by volume or less of gas or vapor, or 2 milligrams per liter or less of mist, fume, or dust, when administered by continuous inhalation for 1 hour (or less if death occurs within 1 hour) to albino rats weighing between 200 and 300 grams each.
4. Target organ effects: The following is a target organ categorization of effects that may occur, including examples of signs and symptoms and chemicals that have been found to cause such effects. These examples are presented to illustrate the range and diversity of effects and hazards found in the workplace and the broad scope operators must consider in this area but are not intended to be all-inclusive:
1. Hepatotoxic: Chemicals that produce liver damage.
2. Signs & Symptoms: Jaundice; liver enlargement.
3. Chemicals: Carbon tetrachloride; nitroamine.
4. Lung: Chemicals that produce kidney damage.
5. Signs & Symptoms: Edema; proteinuria.
7. Neurotoxic: Chemicals that produce their primary toxic effects on the nervous system.
8. Signs & Symptoms: Narcosis; behavioral changes; decrease in motor functions.
10. Agents that act on the blood or hematopoietic system: Decrease hemoglobin function; deprive the body tissues of oxygen.
11. Signs & Symptoms: Cyanosis; loss of consciousness.
12. Chemicals: Carbon monoxide; cyanides.
13. Agents that damage the lung: Chemicals that irritate or damage the pulmonary tissue.
14. Signs & Symptoms: Cough; tightness in chest; shortness of breath.
15. Chemicals: Silica; asbestos.
16. Reproductive toxins: Chemicals that affect the reproduction capabilities including chromosomal damage (mutations) and effects on fetuses (teratogenesis).
17. Signs & Symptoms: Birth Defects; sterility.
18. Chemicals: Lead; Gasoline; Ethyleneoxide.
19. Carcinogenic hazards: Chemicals that affect the dermal layer of the body.
20. Signs & Symptoms: Defatting of the skin; rashes; irritation.
21. Chemicals: Ketones; chlorinated compounds; and.
22. Eye hazards: Chemicals that affect the eye or visual capacity.
23. Signs & Symptoms: Conjunctivitis; corneal damage.
Appendix B to Section 46.3—Advisory—Information Sources

The following is a list of available data sources that the operator may wish to consult to evaluate the physical hazards of chemicals and determine the specific health effects:

—Any information in the operator's files, such as chemical analysis, toxicity testing results or illness experience of employees.
—Any information obtained from the chemical suppliers, such as MSDSs or product safety bulletins.
—Any pertinent information obtained from the following sources (latest editions should be used):


Registry of Toxic Effects of Chemical Substances, (RTECS), Chemical Rubber Company, 18901 Cranwood Park, Beachwood, OH 44122.


Clinical Toxicology of Commercial Chemicals, by Alice Hamilton and Harriet L. Hardy, Publishing Sciences Group, Inc., Action, MA.

Toxicology of the Eye, by W. Morton Grant, Charles C. Thomas, 301-327 East Lawrence Avenue, Springfield, IL


Chemical Hazards of the Workplace, Nick H. Proctor and James P. Hughes, J.P., Lipincott Company, 6 Winchester Terrace, Albany, NY 12210.

Industrial Hygiene and Toxicology, by F.A. Patty, John Wiley & Sons, Inc., New York, NY (Multivolume work).

Industrial Toxicology, by Alice Hamilton and Harriet L. Hardy, Publishing Sciences Group, Inc., Action, MA.

The Chemical Directory, Chemical Rubber Company, 135 West 50th Street, New York, NY 10020.

Bibliographic Data Bases—Continued

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<tr>
<td>SDC—Orbit, SDC Information Service, 2500 Colorado Avenue, Santa Monica, CA 90406.</td>
<td>CAS Files, Chemdex, 2, 3, NTIS.</td>
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<td>Hazardous Substances Data Bank (NSDB), Medicine files, Toxline files, Cancerlit, RTECS, Chemline.</td>
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<td>Laboratory Hazard Bulletin.</td>
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<td></td>
<td>CIC/ICL, Cancernet.</td>
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<td></td>
<td>Structure and Nomenclature Search System (SANSS), Acute Toxicity (RTECS), Clinical Toxicology of Commercial Products, Oil and Hazardous Materials Technical Assistance Data System, CRCIS, CESARS.</td>
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Appendix C—Advisory—Guidelines for Operator Compliance

The Hazard Communication Standard (HCS) is based on a simple concept—that employees have both a need and right to know the hazards and identities of the chemicals they are exposed to when working. They also need to know what protective measures are available to prevent adverse effects from occurring. The HCS is designed to provide employees with the information they need.

Knowledge acquired under the HCS will help operators provide a safer workplace for their employees. Where operators have information about the chemicals being used, they can take steps to reduce exposures, substitute less hazardous materials, and establish proper work practices. These efforts will help prevent the occurrence of work-related illnesses and injuries caused by chemicals.

The HCS addresses the issues of evaluating and communicating hazards to employees. Evaluation of chemical hazards involves a number of technical concepts and is a process that requires professional judgment and expertise. However, most chemicals used by operators are not produced by them, and the HCS does not require operators to evaluate chemicals that have already been evaluated by the chemical supplier or manufacturer.

This appendix is as a general guide for operators to help them determine what would be required under a final rule. It does not supplant or substitute for the regulatory provisions but rather would provide a simplified outline of the steps a typical operator would follow to meet the requirements.

(a) Becoming Familiar With the Rule

The standard is long, and some part of it are technical, but the basic concepts are simple. In fact, the requirements reflect what many operators have been doing for years. You may find that you are already largely in compliance with many of the provisions and will simply have to modify your existing program. If you are operating in a State which has an OSHA or EPA approved state plan agreement, you may have to comply with the State's hazard communication or right-to-know requirements, which may be very similar to those of MSHA's rule.

The HCS requires information to be prepared and transmitted to employees regarding hazardous chemicals to which they are exposed. The HCS covers both physical hazards (such as flammability) and health hazards (such as irritation, lung damage, and cancer). Most chemicals used in the
workplace have some hazard potential, and this is covered by the rule.

This rule is intended to be performance oriented, and it attempts to give you the flexibility to adapt the rule to the needs of your particular workplace, rather than having to follow specific, rigid requirements. It also means that you have to exercise more judgment to implement an appropriate and effective program.

The standard's design is simple. As an operator, you must evaluate the hazards of chemicals you produce or use. That information is then used in preparing required labels for containers, the written hazard communication program, material safety data sheets (MSDSs), and the employee training program.

Under the HCS promulgated by OSHA, chemical manufacturers, importers, and distributors of hazardous chemicals are all required to provide appropriate labels and MSDSs to downstream users when they ship the chemicals. Every container of a hazardous chemical you receive from these sources should be labeled, tagged, or marked with the required information. They should also send you an MSDS at the time of the first shipment and with the next shipment after the MSDS is updated with new and significant information about the hazards. Under the MSHA HCS, you are required to rely on the information received from the chemical supplier on the chemical's MSDS and container label. You are not responsible for inaccurate information on MSDSs that you receive with hazardous chemicals, and you have no independent duty under this standard to analyze chemicals you receive or to evaluate their hazards beyond considering the information that is contained on the chemical's MSDS and container label.

Operators that "use" hazardous chemicals must have a program to ensure the information is provided to exposed employees. "Use" means to package, handle, react, or transfer. This is an intentionally broad scope and includes any situation where a chemical is in such a way that employees may be exposed.

The requirements of the rule that deal specifically with the hazard communication program are found in the standard in § 46.5 (hazard communication program), § 46.6 (labels and other forms of warning), § 46.7 (material safety data sheets), and § 46.8 (employee training). The requirements of these sections should be the focus of your attention. Concentrate on becoming familiar with them, using § 46.1 (scope and application), § 46.2 (definitions), and this appendix for reference when needed to help explain the provisions.

(b) Identify Responsible Staff

Hazard communication will be a continuing program in your operation. In order to have a successful program, it will be necessary for you to assign responsibility for the initial and ongoing activities that have to be undertaken to comply with the rule. In some cases, these activities may already be part of current job assignments. For example, mine foremen or shift bosses are frequently responsible for on-the-job training sessions. Early identification of the responsible employees and involvement of them in the development of your plan of action will result in a more effective program design. Evaluation of the effectiveness of the program will also be enhanced by involvement of affected employees.

For any safety and health program, success depends on commitment at every level of the organization. The organization will benefit if employees are motivated by the people presenting the information to them.

(c) Identify Hazardous Chemicals in the Workplace

The standard requires a list of hazardous chemicals in the workplace as part of the written hazard communication program. Preparing the list should be the first step in preparing the rest of the program, since it will give you some idea of the scope of the program required for compliance at your mine. The best way to prepare a comprehensive list is to survey the workplace. Purchasing records may also help, and certainly operators should establish procedures to ensure that, in the future, purchasing procedures result in an MSDS being received before a material is used in the workplace.

The broadest possible perspective should be taken when doing the survey. Sometimes people think of "chemicals" as being only liquids in containers. The HCS covers chemicals in containers—liquids, solids, gases, vapors, fumes, and mists—whether or not they are "contained." The hazardous nature of the chemicals and the potential for exposure are the factors which determine whether a chemical is covered. If it's not hazardous, it is not covered. If there is no potential for exposure—for example, the chemical is inextricably bound and cannot be released—the rule does not cover the chemical.

Operators should examine their workplace and identify chemicals in containers, pipes, and on conveyors, as well as those generated in your work operations. For example, welding fumes, dusts, exhaust fumes, and blasting gases are all sources of chemical exposures. Read labels provide by suppliers for hazard information. Make a list of all chemicals in the workplace that are potentially hazardous. For use in informing and training the employee, you may also want to note on the list the locations of the chemicals within the workplace, the amount of the chemical, and an indication of the hazards as found on the label. This will help you as you prepare the rest of your program.

Section 46.1, scope and application, includes exemptions for various chemicals or workplace situations. After compiling the complete list of chemicals, you should review this section to determine if any of the items can be eliminated from the list because they are exempted materials. For example, food, drink, drugs, cosmetics, tobacco, and tobacco products intended for employee consumption or use are exempt. Consequently, rubbing alcohol in the first aid kit would not be covered.

Once you have compiled as complete a list as possible of the potentially hazardous chemicals in the workplace, the next step is to determine if you have received MSDSs for all of them. Check your files against the inventory you have just compiled. If any are missing, contact your supplier and request one. It is a good idea to document these requests either by copy of a letter or a note regarding telephone conversations. If you have HSDSs for chemicals that are not on your list, figure out why. Maybe you don't use the chemical anymore, or you may have missed it in your survey. Some suppliers do provide MSDSs for products that are not hazardous. These do not have to be maintained by you. You may wish to dispose of outdated chemicals or chemicals you no longer intend to use to lessen your obligations under this standard.

The standard does not allow employees to use any hazardous chemicals brought into your workplace for which you have not received or requested an MSDS. The MSDS provides information you need to ensure that proper protective measures are implemented prior to exposure.

(d) Preparing and Implementing a Written Hazard Communication Program

All workplaces where employees are exposed to hazardous chemicals must have a written program which describes how the standard will be implemented in that operation. Preparation of the program is not just a paper exercise—all of the elements must be implemented in the workplace in order to be in compliance with the rule. See § 46.4 of the standard for the specific requirements regarding written hazard communication programs.

The program does not have to be lengthy or complicated. It is intended to be a blueprint for implementation of your program as an assurance that all aspects of the requirements have been assessed. Under existing State and OSHA HCSs, many union, trade associations and other professional groups have developed sample programs and other assistance materials. Because of the similarity between the MSHA and OSHA rules, you may find the OSHA guidelines very helpful. Although you may wish to use such general guidance, you must remember that the written program has to reflect what you are doing in your workplace. Therefore, if you use a generic program, it must be adapted to address your specific operation. For example, the written program must list the chemicals present at your mine and where the required written materials will be made available to employees.

When MSHA inspectors visit your workplace for compliance with the HCS, MSHA inspectors may ask to see your written program at the outset of the inspection. The written program must describe how the requirements for labels and other forms of warning, MSDSs, and employee training, are going to be met in your facility. The following discussion provides the type of information MSHA inspectors would be looking for to decide whether these elements of the hazard communication program have been properly addressed.

(1) Labels and Other Forms of Warning
Containers of hazardous chemicals in the workplace must be labeled, tagged, or maintained with the identity of the chemical and appropriate hazard warnings. Sections 46.1 and 46.5 indicate containers and chemicals that are exempted from the labeling requirements. Operators purchasing chemicals may rely on the labels provided by their suppliers. If the hazardous chemical is subsequently transferred by the operator from a labeled container to another container, the operator will have to label that container, unless it is subject to the portable container exemption in §46.5. (See §46.5 for specific labeling requirements.)

The primary information to be obtained from a required label is an identity for the chemical and appropriate hazard warnings. The identity is any term which appears on the label, the MSDS, and the list of chemicals and thus links these three sources of information. The identity used on the label may be a common or trade name ("Black Magic Formula") or a chemical name (1,1,1,-trichloroformane). The hazard warning is a brief statement of the hazardous effects of the chemical. Generally, the data sheet contains the effects ("causes lung damage," "possibly carcinogenic to humans"). Labels frequently contain other information, such as precautionary measures ("do not use near open flame"). This information may be required by the rule, although it may be required under several other MSHA standards. For example, 30 CFR 50.410(b) requires readily visible signs prohibiting smoking and open flames to be posted where a fire or explosion hazard exists.

Labels must be legible, in English, and prominently displayed. There are no specific requirements for size, color, or any specified text. Operators having employees who do not read English should add information in their language to the material presented.

With these requirements in mind, the MSHA inspector will be looking for the following types of information to ensure that labeling is properly implemented at your operation:

(i) Designation of persons responsible for ensuring labeling of in-plant containers.
(ii) Designation of persons responsible for ensuring labeling of any received containers.
(iii) Description of labeling systems used.
(iv) Description of written alternatives to labeling of in-plant containers, if used.
(v) Procedures to review and update labeling information, when necessary.

Operators who are purchasing and using hazardous chemicals—rather than producing them—will probably be concerned with ensuring that every purchased container is labeled. If materials are transferred into other containers, the operator must ensure that these are labeled as well, unless they fall under the appropriate exemptions in §46.3. In terms of labeling systems, you can simply choose to use the labels provided by your suppliers on the containers. These will generally be verbal text labels and do not usually include numerical rating systems or symbols that require special training. The most important thing to remember is that it is a continuing duty to ensure that all in-plant containers of hazardous chemicals brought into your workplace are labeled. Therefore, it is important to designate someone to be responsible for ensuring that the labels are maintained as required on the containers in your operation and that newly purchased materials are checked for labels prior to use.

Operators are required to provide labeling information, indicating the chemical hazards, with the initial shipment of a hazardous chemical to a downstream employer. This information may be included with the chemicals shipping papers rather than posted on the chemical's container. The labeling information will serve to notify the downstream employer of the chemical's hazards and provide a name and address to contact for the chemical's MSDS.

(2) Materials Safety Data Sheets (MSDSs)

Operators are required to maintain MSDSs received with each hazardous chemical brought onto mine property and to develop MSDSs for chemicals they produce. Suppliers of hazardous chemicals, subject to the OSHA HCS, are responsible for ensuring that their customers are provided a copy of these MSDSs or informed of where they could obtain them. You are required to rely on the information provided by vendors from whom you purchase the chemicals. If you do not receive an MSDS with a shipment that has been labeled as a hazardous chemical, you are responsible for requesting one from them. If you receive one that is obviously inadequate—for example, one having blank spaces that are not completed—you should request an appropriately completed one. If your request for a data sheet does not produce the information you need to contact your local MSHA office for assistance in obtaining the MSDS.

There is no specified format for MSDSs under the rule, although there are specific information requirements. OSHA has developed a non-mandatory format. OSHA Form 174, which may be used by operators to comply with the rule. Similar forms are also sold by firms marketing generic hazard communication products. MSHA anticipates developing a non-mandatory form comparable to OSHA's to supply to operators upon request. The MSDS must be in English. If you have employees who do not read English you may provide them with MSDSs in their language as well. The specific requirements for developing MSDSs are in §46.5.

The role of MSDSs under the rule is to provide detailed information on each hazardous chemical, including its potential hazardous effects, its physical and chemical characteristics, and recommendations for appropriate protective measures. This information should be useful to you when designing protective programs, as well as to your employees. If you are not familiar with MSDSs and chemical terminology, you may need to learn to use them yourself. Generally speaking, most operators using hazardous chemicals primarily will be concerned with MSDS information regarding hazardous effects and recommended protective measures. Focus on the sections of the MSDSs that are applicable to your situation.

Under §46.6, operators must provide employees with access, while they are in their work areas during their workshift, to the MSDS received for each hazardous chemical to which they are exposed. This may be accomplished in many different ways. You must decide what is appropriate for your particular workplace. The operators may choose to keep the MSDSs in the employees' lunch area, at the foreman's work station, in a control room, or in some other location readily accessible to employees while in their work area. The MSDSs could even be entered on a computer, providing employees could have direct access to it and were given sufficient information to be able to retrieve the data.

When it is not practical for an operator to keep the MSDSs in the employees' work area, operators may keep it at a central location such as the mine office or where the employees clock-in, provided that employees can immediately obtain the information contained on the MSDS when needed and have access to it during their workshift.

In order to ensure that you have a current MSDS for each chemical received in the mine as required, and that employee access is provided, the MSHA inspector will be looking for the following types of information in your written program:

(i) Designation of persons responsible for obtaining and maintaining the required MSDSs.
(ii) How such sheets are to be maintained in the workplace, such as in notebooks in the work areas, and how employees can obtain access to them during their work shift.
(iii) Procedures to follow when the MSDS is not received at the time of the first shipment.
(iv) Description of alternatives to having the actual MSDSs in the work area, if used.
(v) Procedures to update MSDSs, for hazardous chemicals the operator produces, when new and significant health information is found.

For operators using hazardous chemicals, the most important aspect of the written program in terms of MSDSs is to ensure that someone is responsible for obtaining and maintaining the MSDSs for every hazardous chemical received in the workplace. The list of hazardous chemicals required to be maintained as part of the written program will serve as an inventory of hazardous chemicals that include hazardous chemicals produced at the mine. As new chemicals are purchased, the list should be updated. Operators may find it convenient to include on their purchase orders the name and address of the person designated at their operation to receive MSDSs.

(3) Employee Training

Section 46.7, Employee Training, requires operators to provide employees with training on hazardous chemicals in their work area prior to their initial assignment to that area and whenever a new chemically related hazard is introduced into their work area. These training requirements may be satisfied by training conducted in a properly designed 30 CFR part 48 training program which meets all the requirements under part 48. Training may be done either by individual chemical or by categories of hazards, if there are only few chemicals in the workplace. You may wish to discuss each one individually. Where there are large numbers of chemicals or the chemicals change frequently, you will probably want to train generally based on the
Training is a critical part of the hazard communication program. Through effective training, employees will learn to read and understand MSDSs. A properly conducted training program will ensure comprehension and understanding. It is not sufficient to merely read material to employees or simply hand them material to read. You want to create a climate where employees feel free to ask questions. This will help you to ensure that the information is understood. You must always remember that the underlying purpose of the HCS is to reduce the incidence of chemical source illnesses and injuries. This will be accomplished by modifying behavior through providing employees with training on hazards and protective measures. If your program works, you and your employees will better understand the chemical hazards within the workplace. The procedures you establish regarding, for example, purchasing storage, and handling of these chemicals will improve and thereby reduce the risks posed to employees exposed to the chemical hazards involved. Furthermore, your employees’ comprehension will also be increased, and proper work practices will be followed in your operation.

If you are going to do the training yourself, you will have to understand the material and be prepared to motivate the employees to learn. This is not always an easy task, but the benefits are worth the effort.

In reviewing your written hazard communication program with regard to training, the following items need to be considered:

(i) Designation of person responsible for conducting training.

(ii) The program format and training materials to be used, such as classroom instruction, or audiovisuals.

(iii) Elements of the training program (must be consistent with the elements in § 46.7).

(iv) Procedures to train employees prior to their initial assignment to work with a hazardous chemical and when a new chemical hazard is introduced into the workplace.

The written hazard communication program should include enough details about your plans in this area to assess whether or not a good faith effort is being made to train employees. MSHA does not expect that every employee will be able to recite all of the information about each chemical they are exposed to. In general, the most important aspects of training under the HCS are to ensure that employees are aware that they are exposed to hazardous chemicals, that they know how to read and use the required labels and MSDSs, and that, as a consequence of learning this information, they are following the appropriate protective measures established by the chemical manufacturer. MSHA inspectors will ask to review the operator’s certification that training has been done. MSHA inspectors will also be talking to employees to determine if they have received the required training, know the operations in their work area where hazardous chemicals are present, and know where to obtain substance-specific information on labels, MSDSs, and the written hazard communication program required under this standard.

If you already have a training program, you may simply have to supplement it with whatever additional information is required under the HCS. For example, operators that conduct employee training under part 48, would need to include in their existing training program only the information required under § 46.7. You can provide employee training through whatever means you desire. Although there may always have to be some training on-site, specific to your particular operation (such as informing employees of the location and availability of the written program and MSDSs), employee training could be satisfied in part by general training about the requirements of the HCS and about chemical hazards on the job which is provided by, for example, trade associations, unions, colleges, and professional schools. Regardless of the method relied upon, the operator is always ultimately responsible for ensuring that employees are adequately trained. If the MSHA inspector finds that the training is deficient, the operator will be cited for the deficiency regardless of who actually provided the training on behalf of the operator.

(4) Other Requirements

In addition to these specific items, MSHA inspectors will also be asking the following questions in assessing the adequacy of your hazard communication program:

(i) Has a list been developed of the hazardous chemicals known to be present in the workplace using the chemicals known to be present in the workplace using the chemicals identity?

(ii) Do employees have access to the list of the hazardous chemicals on mine property?

(iii) On multiproject worksites, are the methods described for providing other operators working at the mine, such as independent contractors, with information about the labeling systems, MSDSs, and information on your hazardous chemicals to which their employees may be exposed?

(iv) Do employees and their designated representatives have access to the written hazard communication program?

(c) Checklist for Compliance

The following checklist will help to ensure you are in compliance with the rule:

Prepared an inventory of chemicals

Ensured containers of hazardous chemicals brought onto mine property are labeled.

Obtained MSDSs for each hazardous chemical brought onto mine property.

Developed MSDSs for hazardous chemicals produced on the mine property.

Evaluated all chemicals produced or used to determine if they are hazardous.

Developed a written hazard communication program.

Made MSDSs and written hazard communication program available to employees.

Conducted training of employees

(f) Further Assistance

Operators having questions regarding compliance with the HCS will be able to contact their local MSHA office for assistance. It is anticipated that free consultation services will also be available through MSHA to assist operators, and information regarding these services will be made available through your local MSHA office and MSHA’s Office of Information and Public Affairs, located in Arlington, Virginia [FR Doc. 90-25023 Filed 11-1-90; 8:45 am]
Part V

Department of Energy

10 CFR Part 1021
National Environmental Policy Act Implementing Procedures; Proposed Rule
DEPARTMENT OF ENERGY
10 CFR Part 1021
National Environmental Policy Act
Implementing Procedures

AGENCY: Department of Energy.

ACTION: Proposed rule.

SUMMARY: The Department of Energy (DOE) proposes to revise the existing rule at 10 CFR part 1021, entitled “Compliance with the National Environmental Policy Act,” to incorporate revised provisions of DOE's Guidelines for Implementing the Procedural Provisions of the National Environmental Policy Act (NEPA). The DOE Guidelines were last published in full in the Federal Register on December 15, 1987 (52 FR 47662). The proposed new rule incorporates changes required by certain policy initiatives instituted by the Secretary of Energy to facilitate participation of the public and affected states in the NEPA process for proposed DOE actions, and to develop a revised and expanded list of typical classes of actions, including categorical exclusions. A categorical exclusion is a class of actions that normally do not require the preparation of either an environmental impact statement or an environmental assessment.

DATES: Written comments on the proposed rule (revising the DOE NEPA Guidelines) should be submitted on or before December 17, 1990, to ensure their consideration. A public hearing will be held on Wednesday, December 5, 1990, beginning at 9:30 a.m. local time at the address indicated below. Requests to speak at the hearing should be received by 4:30 p.m. local time on Monday, December 3, 1990. Later requests will be accommodated to the extent practicable.

ADDRESSES: Written comments on the proposed rule and requests to speak at the public hearing should be submitted to Carol M. Borgstrom, Director, Office of NEPA Oversight, EH-25, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585; or may be hand-delivered to the same address on workdays between the hours of 8 a.m. and 4:30 p.m. The public hearing will be held at the U.S. Department of Energy, room GJ-015, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585. Speakers are requested to bring two copies of their statement to the hearing. Copies of the transcript of the public hearing, and any additional public comments received, may be reviewed at the DOE Freedom of Information Reading Room, room 1E-190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585 (202) 586-6020.


SUPPLEMENTARY INFORMATION:

I. Background

DOE originally published its NEPA Guidelines on March 28, 1980 (45 FR 20694). These Guidelines implemented the procedural provisions of NEPA as required by the Council on Environmental Quality (CEQ) regulations (40 CFR parts 1500-1508). The Guidelines were subsequently revised a number of times and were republished in their entirety on December 15, 1987 (52 FR 47662). The Guidelines were further amended on March 27, 1989 (54 FR 12474) and on September 7, 1990 (55 FR 37174). DOE's existing regulations at 10 CFR part 1021 were published as a final rule on August 6, 1979 (44 FR 45918). They adopted then recently-promulgated CEQ Regulations (published on November 29, 1978 (43 FR 55978)) and revoked the NEPA regulations previously promulgated by DOE's predecessor agencies, because they were inconsistent with the CEQ Regulations.

On June 27, 1989, the Secretary of Energy announced a ten-point initiative to ensure that all DOE activities are carried out in full compliance with the letter and spirit of environmental statutes and regulations. In order to implement this initiative as it relates to NEPA, the Secretary issued Secretarial Notice of Energy Notices (SEN) 15-90 on February 5, 1990. SEN-15-90 directed significant changes in DOE policies and procedures for complying with NEPA, including revising provisions of the DOE NEPA Guidelines and publishing the revised provisions for public comment as proposed regulations. DOE published a memorandum-to-file, which DOE has used to document a determination (other than a categorical exclusion) that neither an EIS nor EA is required for a proposed action; and a revised and expanded list of categorical exclusions formulated to minimize the need for subjective judgment: the elimination of a DOE document generally referred to as a NEPA "memorandum-to-file," which DOE has used to document a determination (other than a categorical exclusion) that neither an EIS nor EA is required for a proposed action; and an approach to DOE hold public scoping meetings for all EIS and public hearings for all draft EISs.

II. Purpose

The purpose of the proposed rule is to revise the provisions of the DOE NEPA Guidelines to incorporate the changes directed by SEN-15-90 and other changes to provide more specificity and detail to the Guidelines; and to codify the results as regulations at 10 CFR part 1021. By issuing its NEPA Guidelines as regulations that will be published in the Code of Federal Regulations, DOE will ensure that its NEPA procedures are more accessible to the public.

The changes to the Guidelines directed by SEN-15-90 focus on improving the clarity and consistency of DOE NEPA policies and procedures, and on facilitating public participation, including that of affected states, in DOE's NEPA compliance activities. In particular, SEN-15-90 directed that the Guidelines be revised to include: a new agency policy for developing and updating site-wide NEPA documents (a site-wide NEPA document is defined in proposed § 1021.104(b) as a broad-scope environmental impact statement (EIS) or environmental assessment (EA) that identifies and assesses the individual and cumulative impacts of the continuing and reasonably foreseeable future actions at a DOE site); a revised and expanded list of categorical exclusions formulated to minimize the need for subjective judgment; the elimination of a DOE document generally referred to as a NEPA "memorandum-to-file," which DOE has used to document a determination (other than a categorical exclusion) that neither an EIS nor EA is required for a proposed action; and a requirement that DOE hold public scoping meetings for all EISs and public hearings for all draft EISs.

III. Discussion

This section briefly describes the contents of each subpart of the proposed rule, followed by a discussion of the major differences between the subpart and its counterpart in the DOE NEPA Guidelines and the existing regulations at 10 CFR part 1021.
Subpart A—General

Proposed subpart A states the purpose, policy, and applicability of the proposed regulations. It also adopts the CEQ Regulations and defines the terms and acronyms used in the proposed rule. Proposed subpart A corresponds to the “Purpose” sections of the Guidelines and of the existing regulations at 10 CFR part 1021.

Proposed § 1021.101 contains a policy statement in which DOE makes a commitment to follow the letter and the spirit of NEPA, to comply fully with the CEQ Regulations, and to apply NEPA early in the planning stages of proposed DOE actions. Proposed § 1021.102(b) limits the application of the proposed rule to DOE actions affecting the environment of the United States and its territories and possessions, and identifies those regulations and the Executive Orders that control actions having environmental effects outside the United States, its territories and possessions. Proposed § 1021.104 defines the terms, abbreviations, and acronyms used in the proposed rule, and incorporates the definitions used in the CEQ Regulations.

DOE is proposing to revise the existing regulations at 10 CFR part 1021 by striking the current text and replacing it with the proposed rule. The proposed rule does not incorporate the provisions of existing § 1021.1 that restate basic NEPA legislative policy or the provisions of the existing § 1021.3 that revokes the NEPA regulations of DOE’s predecessor agencies.

Subpart B—DOE Planning and Decisionmaking

Proposed subpart B establishes NEPA requirements for the planning stage of proposed DOE actions, and specifies how DOE will coordinate its NEPA review with respect to general and specific types of decisionmaking. The specific types of decisionmaking covered by this subpart are interim actions (40 CFR 1506.1); research, development, demonstration, and testing; rulemaking; adjudicatory proceedings; the applicant process; and procurements and financial assistance. Proposed Subpart B defines, with respect to each of these decisionmaking activities, the timing requirements for initiating the NEPA process and for completing an EIS or EA, if required, as well as requirements for including NEPA documentation in records of decisionmaking.

Proposed subpart B sets forth substantially the same requirements as are now found in section B and § A.1 (DOE Process) and § A.2 (Applicant Processes) of the Guidelines, which are combined into a single subpart and separated from the procedural requirements that are grouped in proposed subpart C.

Section 1021.211—Interim Actions

This proposed section contains requirements not present in the Guidelines. This section would prohibit any action being taken on a DOE proposal that is the subject of an EIS, before issuance of the record of decision (ROD), unless the action qualifies as an interim action under 40 CFR 1506.1. Further, this section prohibits the categorical exclusion of any action that is covered by, or is a part of, a DOE proposal that is the subject of an EIS unless such action qualifies as an interim action under 40 CFR 1506.1 or is otherwise covered by an existing EIS or EA.

Section 1021.215—Applicant Process; Section 1021.219—Procurement and Financial Assistance

These proposed sections would reorganize the requirements of the Guidelines to separate DOE regulatory actions from actions involving the transfer of funds. Proposed § 1021.215 includes the same requirements set forth in § B.5(c)(3) of the Guidelines regarding regulatory matters, while proposed § 1021.216 includes the same requirements set forth in § B.3(c)(2) of the Guidelines regarding “major system acquisition projects involving selection of sites and/or process by competitive procurements.” In addition, proposed § 1021.216 would apply these requirements to applications for financial assistance. Certain of the requirements would be applicable as well to sole and limited source procurements and noncompetitive awards of financial assistance.

Proposed § 1021.216 also introduces new terminology. The “environmental critique” referred to in proposed § 1021.216(d) is identical to the “environmental impact analysis” referred to in § B.3(c)(2)(iii) of the Guidelines, and the term “environmental synopsis” used in proposed § 1021.216(h) denotes the same document referred to in § B.3(c)(2)(iv) of the Guidelines as a “selection statement.”

Subpart C—Implementing Procedures

Proposed subpart C contains procedural requirements for compliance with NEPA. It details requirements for the public availability of documents and for public participation in the NEPA process; the preparation of EAs and findings of no significant impact; and the preparation of EISs, including requirements for scoping, implementation plans, mitigation plans, records of decisions, supplements to EISs, the programmatic and site-wide EISs. Proposed subpart C also describes procedures to be followed when classified or confidential information is present in NEPA documentation, and establishes standards for the coordination of NEPA compliance with other environmental review requirements and with other Federal agencies. Finally, proposed subpart C describes the circumstances under which variances from the proposed rule may be permitted, and the requirements associated with such variances.

Proposed subpart C contains provisions that are similar to § A.4 (Scoping) and section C of the Guidelines. In response to SEN-15-90, it omits the provisions in § A.3 of the Guidelines, under which a determination not to prepare an EIS or an EA for a proposed DOE action not categorically excluded could be documented by a NEPA memorandum-to-file. The Secretary of Energy announced in SEN-15-90 that the use of such memorandum-to-file would terminate on September 30, 1993. As a result of this directive, all proposed DOE actions that are not listed as categorical exclusions, and for which an EIS is not required, will be the subject of an EA.

One additional provision in section C of the Guidelines is not carried over into the proposed rule. § C.8 (Revisions to the Guidelines) has been eliminated because revision of the DOE NEPA Regulations will be governed by the Administrative Procedure Act.

Because of the number of significant additional procedural requirements proposed in subpart C, and other differences between the procedures proposed in subpart C and the Guidelines, each section of subpart C is discussed below, excluding only those sections that reflect no substantive changes.

Section 1021.300—General Requirements

Paragraph (b) of this proposed section contains a new provision that would permit the discretionary preparation of NEPA documents for any DOE action “to further the purposes of NEPA” and requires that such documents conform to the same standards as required NEPA documents.

Section 1021.301—Agency Review and Public Participation

This proposed section contains new provisions not present in the Guidelines. It would implement the CEQ Regulations
Section 1021.311—Notice of Intent and Scoping

This proposed section includes the following procedures not found in the Guidelines:

1. Publication, at DOE’s discretion, of an advance notice of intent (NOI) where there will be a lengthy delay between the time DOE decides to prepare an EIS and the beginning of the public scoping process.

2. A minimum comment period of 30 days following the publication of a NOI (The Guidelines provide that the comment period will “normally be 20 days.”).

3. At least one public scoping meeting for every EIS (excluding supplemental EISs).

4. Public notice if additional meetings are held or an announced public scoping meeting is changed; and

5. A provision making a public scoping process optional for a supplemental EIS but requiring that, when such a public scoping process is elected, it conform to the requirements of this section.

Section 1021.312—EIS Implementation Plan

The significant change proposed in this section is a requirement that EIS implementation plans be made available to the public and that, at DOE’s discretion, they be placed in public reading rooms. There are minor changes in the wording of the requirements for the content of implementation plans. For example, proposed § 1021.312 does not refer to the implementation plan as a “brief” document as do the Guidelines, and the proposed rule would require that the plan include the “planned scope and content of the EIS,” rather than a “detailed outline of the EIS,” as required by the Guidelines.

Section 1021.313—Public Review of Environmental Impact Statements

This proposed section has no counterpart in the Guidelines. It would implement 40 CFR 1506.10(c) by providing for a public comment period on a DOE draft EIS of not less than 45 days and implements the requirements of 40 CFR 1506.4 (Response to comments). It would require at least one public hearing for every draft DOE EIS after at least 15 days notice. It also would provide that, at DOE’s discretion, publication of notice of the availability of draft and final EISs and of public hearings on a draft EIS may be accomplished by other means in addition to those defined in this section.

Section 1021.314—Supplemental Environmental Impact Statements

This proposed section corresponds to § C.2 of the Guidelines. In addition to implementing the CEQ Regulations, proposed § 1021.314 would require that a determination regarding whether an EIS should be supplemented, as well as the Supplement Analysis supporting that decision, be made available to the public and, at DOE’s discretion, be placed in DOE public reading rooms. It authorizes the use of an optional scoping process for supplements to EISs. The CEQ Regulations do not require public scoping for EIS supplements.) Proposed § 1021.314(c) also would include DOE guidance on when a supplemental EIS would not be required.

Section 1021.315—Records of Decision

Procedures for records of decisions (RODs) are not included in the Guidelines. Proposed § 1021.315 tracks the procedures for RODs set forth in the CEQ Regulations and contains additional proposed requirements for the inclusion in the ROD of any necessary determinations required by 10 CFR part 1022 (Compliance with Floodplain/Wetlands Environmental Review Requirements) and publication of the ROD in the Federal Register.

Section 1021.321—Requirements for Environmental Assessments

This proposed section also covers procedures not included in the Guidelines, and adds to those set forth in the CEQ Regulations by providing that when appropriate, an EA will include assessments and analyses required to satisfy other environmental requirements; that DOE may consult with other agencies or interested parties regarding the scope of an EA; and that an EA must assess a no-action alternative even when the proposed action is required by law or court order.

Section 1021.322—Findings of No Significant Impact

The Guidelines do not include procedures for findings of no significant impact (FONSIs). Proposed § 1021.322 would provide more detailed requirements for the content of a FONSI than do the CEQ Regulations, and would make mandatory the inclusion in the FONSI of a summary of the supporting EA and information regarding any mitigation commitments.

Section 1021.330—Programmatic NEPA Documents

Programmatic NEPA documents are not addressed in the Guidelines. Proposed § 1021.330 would require the preparation of programmatic EISs when necessary to support a decision on connected actions, and would authorize the preparation of discretionary programmatic documents to further the purposes of NEPA. The section also states that DOE programmatic NEPA documents are subject to the same requirements as any other NEPA documents.

Section 1021.331—Site-Wide NEPA Documents

As indicated above, SEN-15-90 required the development of a new DOE policy for site-wide EISs. Site-wide EISs are not addressed in the Guidelines. Proposed § 1021.331 would require, as a matter of policy, the preparation of site-wide EISs for certain large, multiple-facility DOE sites and an evaluation of these EISs every five years to determine if they should be supplemented. The preparation of site-wide EISs for other DOE sites would be optional under this proposed section.

Section 1021.332—Mitigation Action Plans

This proposed section, which was developed in response to SEN-15-90, would require mitigation action plans for all EISs and for each EA that will result in a FONSI based in significant part on DOE’s commitment to take mitigation measures. Proposed § 1021.332 requires that a mitigation action plan be prepared, in the case of an EIS, prior to DOE taking any action that may have an adverse environmental impact, and, when required for a FONSI prior to the issuance of the FONSI. The proposed section would also require that a mitigation action plan address all mitigation commitments that are made...
in the ROD or that are necessary to support the issuance of a FONSI. There is no counterpart to this section in the Guidelines.

Section 1021.340—Classified, Confidential, or Otherwise Exempt Information

This proposed section differs from its counterpart in the Guidelines, § C.1, by requiring that interagency memorandums transmitting a federal agency's comments on the environmental impacts of a DOE proposal be disclosed even if exempted from mandatory disclosure by the Freedom of Information Act (5 U.S.C. 552). It would also require that NEPA documents withheld in their entirety because of the presence of classified, confidential, or other protected information otherwise conform to all the requirements of the CEQ and DOE NEPA Regulations.

Section 1021.342—Interagency Cooperation

This proposed section, which is a counterpart to § A.2(d) of the Guidelines, would express DOE's policy of cooperation with other agencies in complying with NEPA.

Section 1021.343—Variances

Paragraph (a) of this proposed section (Emergency Actions) would implement 40 CFR 1506.11 (Emergencies): emergencies are not covered in the Guidelines.

Paragraph (b) (Reduction of Time Periods) is significantly different from its counterpart provision in the Guidelines, § C.3, which authorizes the reduction of time periods established by the CEQ Regulations where necessary to comply with other specific statutory requirements. The proposed provision, on the other hand, would permit the reduction of only those time periods not established by the CEQ Regulations.

The procedure set forth in this proposed section for a permissible reduction in a time period is publication of a notice announcing the reduction in the Federal Register.

Proposed paragraph (c) of this section corresponds to the Purpose statement and § C.7 of the Guidelines, concerning the circumstances under which a variance from the provisions of DOE's NEPA procedures may be authorized. The Guidelines allow such deviations if DOE's Under Secretary determines them to be "soundly based." This section of the proposed rule would implement the directive of SEN-15-90 that deviations must be approved by the Secretary of Energy. This proposed section also would clarify the grounds for any deviations by requiring that they be "soundly based on the interests of national security or the public health, safety, or welfare." This section also makes clear that the Secretary may not approve a variance from any provision of the CEQ Regulations except as provided for in those regulations.

Subpart D—Typical Classes of Action

Proposed subpart D would provide requirements and guidance for determining the appropriate level of NEPA review for proposed DOE actions, and would establish criteria for determining the eligibility of specific actions for categorical exclusion. Four appendices to subpart D set forth the classes of actions that normally would be categorically excluded from preparation of an EIS or an EA (appendices A and B), actions that normally would require preparation of an EA but not necessarily an EIS (appendix C), and actions that normally would require preparation of an EIS (appendix D).

Subpart D and its appendices correspond to § A.3. (Whether to Prepare an Environmental Impact Statement) and section D (Typical Classes of Actions) of the Guidelines. There are major changes proposed in subpart D and its appendices. Most significant is the revision and expansion of the list of actions which would be categorically excluded.

In considering these revisions, commenters should bear in mind that the classes of actions listed in these appendices do not constitute a conclusive determination regarding the appropriate level of NEPA review. Rather, the listing creates a presumption that the defined level of review is appropriate for the listed actions. As indicated in proposed § 1021.400, that presumption can be overcome when "extraordinary circumstances related to the specific proposal (including issues raised in public comments or other information available to DOE) cause DOE to have a reasonable question as to whether the categorization is appropriate for the specific proposal."

Appendices A and B—Categorical Exclusions

As discussed above, SEN-15-90 mandates the elimination of the NEPA memorandum-to-file on September 30, 1990. A NEPA memorandum-to-file was previously used to document a determination that a proposed DOE action, not included in the list of categorical exclusions, would have clearly insignificant impacts, and therefore did not require either an EA or an EIS. The result of the elimination of the memorandum-to-file is that all proposed DOE actions not included in the list of categorical exclusions must be the subject of an EA or an EIS. Because the list of categorical exclusions in the Guidelines is relatively small, this situation could in turn result in DOE preparing EAs for actions that clearly have no potential for significant effects on the human environment.

Therefore, SEN-15-90 also mandated that a revised and expanded list of categorical exclusions be developed in part to retain efficiency of NEPA compliance for insignificant actions. Another reason for the requirement to develop a revised and expanded list, as expressed in SEN-15-90, is to formulate the lists of classes of actions in a manner that minimizes the need for subjective judgment. To further this purpose, SEN-15-90 immediately eliminated use of the Guidelines' so-called "catch-all" exclusion, which applied to:

Actions that are substantially the same as other actions for which the environmental impacts have already been assessed in a NEPA document and determined by DOE to be clearly insignificant and where such assessment is still valid.

In order to develop a list of categorical exclusions that would be sufficiently detailed to eliminate the preparation of clearly unnecessary EAs, and that would be sufficiently specific to eliminate the need for subjective judgment, DOE solicited the assistance of its program and field offices in identifying the types of actions that they routinely perform and the evaluation of which has consistently resulted in a determination that the actions do not individually or cumulatively have a significant effect on the human environment.

The lists of 121 actions set forth in proposed appendices A and B to subpart D are the result of that effort. Not only is the number of proposed excludable classes of actions much greater than that included in the Guidelines, but every effort has been made to define the actions with specificity. For example, the list of categorical exclusions in the Guidelines includes "Actions involving routine maintenance of DOE-owned or operated facilities." In the proposed rule (appendix A, 1.26), routine maintenance is defined and 20 examples of actions that fall within the definition are set forth. DOE believes that this approach will lead to a more objective determination of the application of the categorical exclusion for routine maintenance.

As another example, the Guidelines include General Plant Projects (defined by DOE as miscellaneous minor new
Appendix D—Classes of Actions that Normally Require EISs

The list in proposed appendix D includes all but one of the seven actions described in the corresponding list in section D of the Guidelines. The action that is not proposed to be retained is: DOE actions which cause energy conservation on a substantial scale including those where effects are primarily on the indoor environment (e.g., indoor air quality).

DOE’s experience indicates that NEPA review requirements for substantial energy conservation actions should be decided on a case-by-case basis; environmental assessments may be adequate for some large scale energy conservation projects. One of the retained items has been significantly changed. The action described in the Guidelines as, “DOE actions which are expected to result in the construction and operation of a large scale project,” has been revised in the proposed appendix D to read, “Major System Acquisitions, as designated by DOE Order 4240.1 ‘Designation of Major System Acquisitions and Major Projects.’” DOE has revised the description of this action because it believes that the phrase “large scale project” is too vague. On the other hand, “major system acquisitions” are designated as such on the basis of specific criteria set forth in DOE Order 4240.1.

Proposed appendix D lists 5 new actions, related to the siting, construction, and operation of major nuclear facilities, and facilities for storing and disposing of hazardous and radioactive wastes.

IV. Revocation of Existing Guidelines and Replacement of Regulations

If the proposed rule is issued as a final rule, DOE intends to revoke the existing DOE NEPA Guidelines, and to revise the existing regulations at 10 CFR part 1021 by striking the current text and replacing it with the proposed rule, effective on the date of publication of the final rule, which DOE intends also to be the effective date of the final rule. DOE believes that there is good cause for making the final rule immediately effective because prompt use of the new and expanded list of categorical exclusions will make DOE resources (time and money) that would otherwise be spent preparing unnecessary documentation available for more productive purposes. DOE invites the public to comment on this intention.

V. Environmental Review

The proposed rule consists of the revision and consolidation of the existing NEPA Guidelines and the existing part 1021. Its purpose is primarily to establish procedures without substantially changing their environmental effect. Thus, these revisions are not a major Federal action significantly affecting the quality of the human environment within the meaning of NEPA, but rather are categorically excluded under section D of the Guidelines. Consequently, neither an EIS nor an EA is required for the proposed rule.

VI. Review Under Executive Order 12291

The proposed rule has been reviewed in accordance with Executive Order 12291, which directs that all regulations achieve their intended goals without imposing unnecessary burdens on the economy, on individuals, or public or private organizations, or on state and local governments. The Executive Order also requires that a regulatory impact analysis be prepared for a “major rule.” The Executive Order defines “major rule” as any regulation 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, individual industries, Federal, State, and local government agencies, or geographic regions; or
3. Significant adverse effects 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.

The proposed rule would amend and codify already existing policies and procedures for compliance with NEPA. The proposed rule contains no substantive changes in the requirements imposed on applicants for a DOE license, financial assistance, permit, or other similar actions, which is the area where one might anticipate an economic effect. Therefore, DOE has determined that the incremental effect of today’s proposed rule, if finalized, will not have the magnitude of effects on the economy to bring the proposed rule within the definition of a “major rule.”

Pursuant to the Executive Order, the proposed rule was submitted to the Office of Management and Budget (OMB) for pre-publication regulatory review.

VII. Review Under Executive Order 12612

Executive Order 12612 requires that rules be reviewed for Federalism effects on the institutional interest of states and
local governments, and if the effects are sufficiently substantial, preparation of a Federalism assessment is required to assist senior policymakers. The rulemaking to revise DOE's NEPA Guidelines and 10 CFR part 1021 will not have any substantial direct effects on state and local governments within the meaning of the Executive Order; it will, however, allow states the opportunity to play a more significant role in DOE's NEPA process. The final rule will affect Federal NEPA compliance procedures, which are not subject to state regulation.

VIII. Regulatory Flexibility Act

The Regulatory Flexibility Act, Public Law 96-345 (5 U.S.C. 601-612), requires that an agency prepare an initial regulatory flexibility analysis to be published at the time the proposed rule is published. The requirement (which appears in section 603 of the Act) does not apply if the agency "certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities." This proposed rule would modify existing policies and procedural requirements for DOE compliance with NEPA. It makes no substantive changes to requirements imposed on applicants for DOE licenses, permits, financial assistance, and similar actions as related to NEPA compliance. Therefore, DOE certifies that this rule, if promulgated, would not have a "significant economic impact on a substantial number of small entities."

IX. Public Comment Procedures

Written Comment Procedures

Interested persons are invited to participate in this rulemaking by submitting information, views, or arguments with respect to the proposed regulations set forth in this Notice. Comments should be submitted to the address indicated in the ADDRESSES section of this Notice and should be identified on the outside of the envelope and on documents submitted to DOE with the designation "Comments on Proposed NEPA Rule." Two copies should be submitted, if possible. All comments received by the date indicated in the DATES section will be considered by DOE before final action is taken on the proposed rule. Late comments will be considered to the extent practicable.

DOE reserves the right to change the location, date, and procedures for this hearing. Such changes would be announced in the appropriate media, such as the Federal Register.

The entire record of the hearing, including a transcript, will be retained by DOE and made available for inspection at the DOE Freedom of Information Reading Room, 1E-190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-0620, between the hours of 8:30 a.m. and 4 p.m., Monday through Friday. Any person may make a copy of the transcript at the DOE Freedom of Information Reading Room or purchase a copy of the hearing transcript from the court reporter.

List of Subjects in 10 CFR Part 1021


Paul L. Ziemer,
Assistant Secretary, Environmental, Safety and Health.

For reasons set out in the preamble, it is proposed to revise 10 CFR part 1021 to read as set forth below:

PART 1021—NATIONAL ENVIRONMENTAL POLICY ACT IMPLEMENTATION PROCEDURES

Subpart A—General

Sec.
1021.100 Purpose.
1021.101 Policy.
1021.102 Applicability.
1021.103 Adoption of CEQ NEPA regulations.
1021.104 Definitions.
1021.105 Oversight of Agency NEPA activities.

Subpart B—DOE Planning and Decisionmaking

1021.200 DOE planning.
1021.210 DOE decisionmaking.
1021.211 Interim actions.
1021.212 Research, development, demonstration, and testing.
1021.213 Rulemaking.
1021.214 Adjudicatory proceedings.
1021.215 Applicant process.
1021.216 Procurement and financial assistance.

Subpart C—Implementing Procedures

1021.300 General requirements.
1021.301 Agency review and public participation.
1021.310 Environmental impact statements.
1021.311 Notice of intent and scoping.
1021.312 EIS implementation plan.
1021.313 Public review of environmental impact statements.
§ 1021.100 Purpose.

The purpose of this part is to establish procedures that the Department of Energy (DOE) shall use to comply with section 102(2) of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4332(2)) and the Council on Environmental Quality (CEQ) regulations for implementing the procedural provisions of NEPA (40 CFR parts 1500-1506). This part supplements, and is to be used in conjunction with, the CEQ Regulations.

§ 1021.101 Policy.

It is the Department of Energy’s policy to follow the letter and spirit of NEPA; comply fully with the CEQ Regulations; and apply the NEPA review process early in the planning stages for DOE proposals.

§ 1021.102 Applicability.

(a) This part applies to all organizational elements of DOE except the Federal Energy Regulatory Commission.

(b) This part applies to any DOE action affecting the environment of the United States, its territories or possessions. DOE actions having environmental effects outside the United States, its territories or possessions are subject to the provisions of Executive Order 12114, “Environmental Effects Abroad of Major Federal Actions” (3 CFR, 1979 Comp., p. 358; 44 FR 1957, Jan 4, 1979), DOE guidelines implementing that Executive Order (46 FR 1007, January 5, 1981) and the Department of State’s “Unified Procedures Applicable to Major Federal Actions Relating to Nuclear Activities Subject to Executive Order 12114” (44 FR 65560, November 13, 1979).

§ 1021.103 Adoption of CEQ NEPA Regulations.

The Department of Energy adopts the regulations for implementing NEPA published by the Council on Environmental Quality at 40 CFR parts 1500 through 1508.

§ 1021.104 Definitions.

(a) The definitions set forth in 40 CFR part 1508 are referenced and used in this part.

(b) In addition to the terms defined in 40 CFR part 1508, the following definitions apply to this part:

- **Action** means a DOE endeavor regarding a project, program, plan, or policy, as discussed at 40 CFR 1508.18.
- **Adjacent state** means a state that has a common boundary with a host state.
- **Advance NOI** means a formal public notice of DOE’s intent to prepare an EIS, which is published in advance of a NOI in order to facilitate public involvement in the NEPA process.
- **Categorical exclusion** means a category of actions, as defined at 40 CFR 1508.4 and listed in appendix A and B to subpart D of this part, for which neither an EA nor an EIS is normally required.
- **CEQ** means the Council on Environmental Quality as defined at 40 CFR 1508.5.
- **CEQ Regulations** means the regulations issued by CEQ (40 CFR parts 1500-1508) to implement the procedural provisions of NEPA.
- **Contaminant** means a substance identified within the definition of hazardous substances in section 101(14) of CERCLA (42 U.S.C. 9601(14)).
- **Construction action** means an action that is within the scope of an ongoing EIS and that DOE proposes to take before the ROD is issued, and that is permissible under 40 CFR 1506.1.
- **DOE** means the United States Department of Energy.
- **DOE decision** (or decision) means a final DOE determination to take a given course of action, as discussed at 40 CFR 1508.18; the action may commence as soon as a decision is issued.
- **DOE proposal** (or proposal) means a proposal, as discussed at 40 CFR 1508.23, for an action, as discussed at 40 CFR 1508.18 (whether initiated by DOE, another Federal agency, or an applicant), if the proposal requires a DOE decision.
- **Documentation** (of a categorical exclusion listed in appendixes A and B to subpart D of this part) means a record of DOE’s decision that a proposed action or group of proposed actions meet eligibility criteria for categorical exclusions and that a DOE categorical exclusion has been applied to a proposed action or group of proposed actions.
- **EA** means an environmental assessment as defined at 40 CFR 1508.9.
- **EIS** means an environmental impact statement as defined at 40 CFR 1508.11, or, unless this part specifically provides otherwise, a Supplemental EIS.
- **EIS Implementation Plan** means a document that explains and supports the scope and approach DOE will use to prepare an EIS.
- **Eligibility screening** means the process of comparing a proposed action or group of proposed actions to criteria that must be met before an action can be considered for a categorical exclusion; “eligibility criteria” refers to those criteria listed in § 1021.410 of this part.
- **EPA** means the United States Environmental Protection Agency.
- **FONSI** means a Finding of No Significant Impact as defined at 40 CFR 1506.13.
- **Host state** means a state within whose boundaries DOE proposes an action at an existing facility or construction or operation of a new facility.
- **Hazardous substance** means a substance identified within the definition of hazardous substances in section 101(14) of CERCLA (42 U.S.C. 9601(14)).
- **Interim action** means an action that is within the scope of an ongoing EIS and that DOE proposes to take before the ROD is issued, and that is permissible under 40 CFR 1506.1.
- **Mitigation Action Plan** means a document that describes the plan for implementing commitments made in a DOE EIS and its associated ROD, or, when appropriate, an EA or FONSI, to mitigate adverse environmental impacts associated with an action.
- **NEPA** means the National Environmental Policy Act of 1969 (42 U.S.C. 4231 et seq.).
- **NEPA document** means a DOE NOI, EIS, ROD, EA, FONSI, any documentation of a categorical exclusion, or any other document prepared pursuant to a requirement of NEPA or the CEQ Regulations.
- **NEPA review** means the process used to comply with section 102(2) of NEPA.
NOI means a Notice of Intent to prepare an EIS as defined at 40 CFR 1508.22.

Notice of Availability means a formal notice, published in the Federal Register, that announces the issuance and public availability of a draft or final EIS. The Environmental Protection Agency (EPA) Notice of Availability is the official notice used to provide information to the public.

Pollutant means a substance identified within the definition of pollutant in section 101(33) of CERCLA (42 U.S.C. 9601.101[33]).

Program means a sequence of connected or related DOE actions or projects as discussed at 40 CFR 1508.19(b)(3) and 1508.25(a).

Programmatic NEPA document means a broad-scope EIS or EA that identifies and assesses the environmental impacts of a DOE program; it may also refer to an associated NEPA document such as a NOI, ROD or FONSI.

Project means a specific DOE undertaking, which may include design, construction and operation of an individual facility; research, development, demonstration, and testing for a process or product; funding for a facility, process, or product; or similar activities, as discussed at 40 CFR 1508.19(b)(4).

ROD means a Record of Decision as described at 40 CFR 1505.2.

Scoping means the process described at 40 CFR 1501.7; "public scoping process" refers to that portion of the scoping process where the public is invited to participate, as described at 40 CFR 1501.7 (a)(1) and (b)(4).

Site-wide NEPA document means a broad-scope EIS or EA that identifies and assesses the individual and cumulative impacts of continuing and reasonably foreseeable future actions at a DOE site; it may also refer to an associated NEPA document such as a NOI, ROD or FONSI.

Supplement Analysis means a DOE document used to determine whether a supplemental EIS should be prepared pursuant to 40 CFR 1502.9(c), or to support a decision to prepare a new EIS or a revised ROD.

Supplemental EIS means an EIS prepared to supplement a prior EIS as provided at 40 CFR 1502.9(c).

The Secretary means the Secretary of Energy.

Subpart B—DOE Planning and Decisionmaking

§ 1021.200 DOE planning.

(a) DOE shall provide for adequate and timely NEPA review of DOE proposals, including those for any program, policy, project, regulation, or legislation, in accordance with 40 CFR 1501.2 and this section. In its planning for each proposal, DOE shall include adequate time and funding for proper NEPA review and for preparation of anticipated NEPA documents.

(b) DOE shall begin its NEPA review as soon as possible, in DOE’s judgment, after the time that DOE proposes an action or is presented with a proposal.

(c) DOE shall determine the level of NEPA review required for a proposal in accordance with § 1021.300 and subpart D of this part.

(d) During the development and consideration of a DOE proposal, DOE shall review any relevant planning and decisionmaking documents, whether prepared by DOE or another agency, to determine if the proposal or any of its alternatives are considered in a prior NEPA document. If so, DOE shall consider adopting the existing document, or any pertinent part thereof, in accordance with 40 CFR 1506.3.

§ 1021.210 DOE decisionmaking.

(a) For each DOE proposal, DOE shall coordinate its NEPA review with its decisionmaking. Sections 1021.211 through 1021.214 of this part specify how DOE will coordinate its NEPA review with decision points for certain types of proposals (40 CFR 1505.1(b)).

(b) For each DOE proposal, DOE shall complete its NEPA review before making a decision on the proposal, except as provided in 40 CFR 1506.1 and §§ 1021.211 and 1021.216 of this part.

(c) For each DOE proposal, during the decisionmaking process, DOE shall consider the relevant NEPA documents, public and agency comments (if any) on those documents, and DOE responses to those comments, as part of its consideration of the proposal (40 CFR 1505.1(d)).

(d) If any EIS or EA is prepared for a DOE proposal, DOE shall consider the alternatives analyzed in that EIS or EA before rendering a decision on that proposal; the decision on the proposal shall be within the range of alternatives analyzed in the EA or EIS (40 CFR 1505.1(e)).

(e) For each DOE proposal, DOE shall include the relevant NEPA documents, public and agency comments (if any) on those documents, and DOE responses to those comments as part of the ROD or other administrative record (40 CFR 1505.1(f)).

(f) When DOE uses a broad decision (such as one on a policy or program) as a basis for a subsequent narrower decision (such as one on a project or other site-specific proposal), DOE may use tiering (40 CFR 1502.20) and incorporation of material by reference (40 CFR 1502.21) in the NEPA review for the subsequent narrower proposal.

§ 1021.211 Interim actions.

While DOE is preparing an EIS that is required under § 1021.300(a) of this part, DOE shall take no action on the proposal, or any part thereof, that is the subject of the EIS before issuing a ROD (except as provided at 40 CFR 1506.1).

Actions that are covered by, or are a part of, a DOE proposal for which an EIS is being prepared shall not be categorically excluded from preparation of a EA or EIS under subpart D or this part unless they qualify as interim actions under 40 CFR 1506.1 or are covered by an existing EA or EIS.

§ 1021.212 Research, development, demonstration, and testing.

(a) This section applies to the adoption and application of programs that involve research, development, demonstration and testing for new technologies (40 CFR 1502.4(c)(3)). Adoption of such programs might also lead to commercialization or other broad-scale implementation by DOE or another entity.

(b) For any proposed program described in paragraph (a), DOE shall begin its NEPA review (if otherwise required by this part) as soon as, in DOE’s judgment, environmental effects can be meaningfully evaluated, and before DOE has reached the level of investment or commitment likely to determine subsequent development or restrict later alternatives, as discussed at 40 CFR 1502.4(c)(3). Normally, DOE will complete any relevant NEPA document in advance of, and for use in reaching, a decision to proceed with the detailed design, except as provided in 40 CFR 1506.1 and § 1021.211 of this part.

(c) For subsequent phases of a DOE development and application, DOE shall prepare one or more additional NEPA documents (if otherwise required by this part).
§ 1021.213 Rulemaking.

(a) This section applies to regulations promulgated by DOE.

(b) DOE shall begin its NEPA review of a proposed rule (if otherwise required by this part) while drafting the proposed regulation, and as soon as, in DOE's judgment, environmental effects can be meaningfully evaluated.

(c) DOE shall include any relevant NEPA documents, public or agency comments (if any) on those documents, and DOE responses to those comments, as part of the administrative record (40 CFR 1505.1(c)).

(d) If an EIS is required, DOE will normally publish the draft EIS at the time it publishes the proposed rule (40 CFR 1502.5(d)). DOE will normally combine any public hearings required for a proposed rule with the public hearings required on the draft EIS under § 1021.313 of this part. The draft EIS needs not accompany notices of inquiry or advance notices of proposed rulemaking that DOE may use to gather information during early stages of regulation development. When engaged in rulemaking for the purpose of protecting the public health and safety, DOE may issue the final rule simultaneously with publication of the EPA Notice of Availability of the final EIS in accordance with 40 CFR 1506.10(b).

(e) If an EA is required, DOE will normally complete the EA and issue any related FONSI prior to or simultaneously with issuance of the proposed rule; however, if the EA leads to preparation of an EIS, the provisions of paragraph (d) shall apply.

§ 1021.214 Adjudicatory proceedings.

(a) This section applies to DOE proposed actions that involve DOE adjudicatory proceedings, excluding judicial or administrative, civil or criminal enforcement actions.

(b) DOE shall begin its NEPA review (if otherwise required by this part) before rendering any final adjudicatory decision. If an EIS is required, the final EIS will normally be completed at the time of or before final staff recommendation, in accordance with 40 CFR 1502.5(c).

(c) For formal adjudicatory proceedings, DOE shall include any relevant NEPA documents, public or agency comments (if any) on those documents, and DOE responses to those comments, as part of the administrative record (40 CFR 1505.1(c)).

§ 1021.215 Applicant process.

(a) This section applies to actions that involve application to DOE for a permit, license, exemption or allocation, or other similar actions, unless the action is categorically excluded from preparation of an EA or EIS under subpart D of this part.

(b) An applicant described in paragraph (a) shall:

(1) Consult with DOE as early as possible in the planning process to obtain guidance with respect to the appropriate level and scope of any studies or environmental information that DOE may require to be submitted as part of, or in support of, the application;

(2) Conduct studies that DOE deems necessary and appropriate to determine the environmental impacts of the proposed action;

(3) Consult with appropriate Federal, state, regional and local agencies, Indian tribes, and other potentially interested parties during the preliminary planning stages of the proposed action to identify environmental factors and permitting requirements;

(4) Notify DOE as early as possible of other Federal, state, regional, local or Indian tribal actions required for project completion to allow DOE to coordinate the Federal environmental review, and fulfill the requirements of 40 CFR 1506.2 regarding elimination of duplication with state and local procedures, as appropriate;

(5) Notify DOE of private entities and organizations interested in the proposed undertaking, in order that DOE can consult, as appropriate, with these parties in accordance with 40 CFR 1506.5(b); and

(6) Notify DOE if, before completing the DOE environmental review and decisionmaking process, the applicant plans or is about to take an action in furtherance of an undertaking within DOE's jurisdiction that may have an adverse environmental impact or limit the choice of alternatives, in accordance with 40 CFR 1506.5(c).

(c) For major categories of DOE actions involving a large number of applicants, DOE may prepare generic guidelines describing the level and scope of environmental information expected from the applicant and will make such guidelines available to applicants upon request.

(d) DOE shall begin its NEPA review (if otherwise required by this part) as soon as possible after receiving an application described in paragraph (a), and shall independently evaluate and verify the accuracy of information received from an applicant in accordance with 40 CFR 1506.5(a). At DOE's option, an applicant may prepare an EA in accordance with 40 CFR 1506.5(b). If an EIS is prepared, the EIS shall be prepared by DOE or by a contractor that is selected by DOE and that may be funded by the applicant, in accordance with 40 CFR 1506.5(c). The contractor shall provide a disclosure statement in accordance with 40 CFR 1506.5(c), as discussed in § 1021.312(b)(4) of this part. DOE shall complete any NEPA documents (or evaluation of any EA prepared by the applicant) before rendering a final decision on the application and shall consider the NEPA document in reaching its decision, as provided in § 1021.210 of this part.

§ 1021.216 Procurement and Financial Assistance.

(a) This section applies to DOE competitive and limited-source procurements, and to awards of financial assistance by a competitive process, unless the action is categorically excluded from preparation of an EA or EIS under subpart D of this part. Paragraphs (b), (c), and (i) of this section apply as well to DOE sole source procurements of sites, systems, or processes, and to noncompetitive awards of financial assistance, unless the action is categorically excluded from preparation of an EA or EIS under subpart D of this part.

(b) Where relevant in DOE's judgment, DOE shall require that offerors submit environmental data and analyses as a discrete part of the offeror's proposal. DOE shall specify in its solicitation document the type of information and level of detail for environmental data and analyses so required. The data will be limited to those reasonably available to offerors.

(c) DOE shall independently evaluate and verify the accuracy of environmental data and analyses submitted by offerors.

(d) For offers in the competitive range, DOE shall prepare and consider an environmental critique before the selection.

(e) The environmental critique will be subject to the confidentiality requirements of the procurement process.

(f) The environmental critique will evaluate the environmental data and analyses submitted by offerors; it may also evaluate supplemental information developed by DOE as necessary for a reasoned decision.

(g) The environmental critique will focus on environmental issues that are pertinent to a decision on proposals and will include:

(1) A brief discussion of the purpose of the procurement and each offer, including any site, system, or process variations among the offers having environmental implications;
[2] A discussion of the salient characteristics of each offeror’s proposed site, system, or process as well as alternative sites, systems, or processes.

(3) A brief comparative evaluation of the potential environmental impacts of the offers, which will address direct and indirect effects, short-term and long-term effects, proposed mitigation measures, adverse effects that cannot be avoided, and the importance of important environmental information that is incomplete and unavailable, unresolved environmental issues, and practicable mitigating measures not included in the proposal; and

(4) To the extent known for each offer, a list of Federal, state, and local government permits, licenses, and approvals that have been obtained.

(b) DOE shall prepare a publicly available environmental synopsis, based on the environmental critique, to document the consideration given to environmental factors and to record that the relevant environmental consequences of reasonable alternatives have been evaluated in the selection process. The synopsis will not contain business, confidential, trade secret or other information that DOE otherwise would not disclose pursuant to 18 U.S.C. 1905, the confidentiality requirements of the competitive procurement process, 5 U.S.C. 552(b), or §1021.340 of this part. After a selection has been made, the environmental synopsis shall be filed with EPA, shall be made publicly available, and shall be incorporated in any NEPA document prepared under paragraph (i) of this section.

(i) If an EA or EIS is required, DOE shall prepare, consider and publish the EA or EIS in conformance with the CEQ Regulations and other provisions of this part before taking any action pursuant to the contract or award of financial assistance (except as provided at 40 CFR 1506.1 and §1021.211 of this part). The provisions of §1021.340 of this part shall apply to such NEPA documents. If the NEPA process is not completed before the award of the contract or financial assistance, then the contract or financial assistance shall be contingent on DOE’s determination to prepare an EA or EIS for the proposed action.

Subpart C—Implementing Procedures

§1021.200 General requirements.

(a) DOE shall determine, under the procedures in the CEQ Regulations and this part, whether any DOE proposal:

(1) Requires preparation of an EIS;

(2) Requires preparation of an EA; or

(3) Is categorically excluded from preparation of either an EIS or an EA.

(b) If there will be a lengthy delay between the decision to prepare an EIS and the time of actual preparation, DOE may defer publication of the NOI until a reasonable point in time before preparing the EIS, provided that DOE allows a reasonable opportunity for interested parties to participate in the EIS process. Through the NOI, DOE shall invite comments and suggestions on the scope of the EIS. DOE shall disseminate the NOI in accordance with 40 CFR 1506.8.

(c) Publication of the NOI in the Federal Register shall begin the public scoping process. The public scoping process for a DOE EIS shall allow a minimum of 30 days for the receipt of public comments.

(d) Except as provided in paragraph (g), DOE shall hold at least one public scoping meeting as part of the public scoping process for a DOE EIS. DOE shall announce the location, date and time of public scoping meetings in the NOI or by other appropriate means, such as additional notices in the Federal Register, news releases to the local media, or letters to affected parties. Public scoping meetings shall not be held until at least 15 days after public notification. Should DOE change the location, date or time of a public scoping meeting, or schedule additional public scoping meetings, DOE shall publicize these changes in the Federal Register or in other ways as appropriate.

(e) In determining the scope of the EIS, DOE shall consider all comments received during the announced comment period held as part of the public scoping process. At DOE’s discretion, DOE may choose to consider comments received after the close of the announced comment period.

§1021.310 Environmental impact statements.

DOE shall prepare and circulate EISs and related RODs in accordance with the requirements of the CEQ Regulations, as supplemented by this subpart.

§1021.311 Notice of intent and scoping.

(a) DOE shall publish a NOI in the Federal Register, in accordance with 40 CFR 1501.7, as soon as practicable. In DOE’s judgment, after a decision is made to prepare an EIS, except as provided in §1021.340 of this part. If there will be a lengthy period of time between its decision to prepare an EIS and the time of actual preparation, DOE may defer publication of the NOI until a reasonable point in time before preparing the EIS, provided that DOE allows a reasonable opportunity for interested parties to participate in the EIS process. Through the NOI, DOE shall invite comments and suggestions on the scope of the EIS. DOE shall disseminate the NOI in accordance with 40 CFR 1506.8.

(b) If there will be a lengthy delay between the time DOE has decided to prepare an EIS and the beginning of the public scoping process, at its discretion DOE may publish an Advance NOI in the Federal Register to provide an early opportunity to inform interested parties of the pending EIS or to solicit early public comments. This Advanced NOI does not serve as a substitute for the NOI provided for in paragraph (a).

(c) DOE shall hold at least one public scoping meeting as part of the public scoping process for a DOE EIS. DOE shall announce the location, date and time of public scoping meetings in the NOI or by other appropriate means, such as additional notices in the Federal Register, news releases to the local media, or letters to affected parties.

DOE shall prepare and circulate EISs and related RODs in accordance with the requirements of the CEQ Regulations, as supplemented by this subpart.
§ 1021.312 EIS implementation plan.

(a) DOE shall prepare an EIS Implementation Plan to provide guidance for the preparation of an EIS and record the results of the scoping process. DOE shall complete the EIS Implementation Plan as soon as possible after the close of the public scoping process; but in any event before issuing the draft EIS. At its option, DOE may amend the EIS Implementation Plan to incorporate changes in schedules, alternatives, or other content.

(b) The EIS Implementation Plan shall include:

(1) A statement of the planned scope and content of the EIS;

(2) The purpose and need for the proposed action;

(3) A description of the scoping process and the results (as needed to document DOE compliance with 40 CFR 1501.7), including a summary of comments received, and their disposition; and

(4) A disclosure statement executed by any contractor (or subcontractor) under contract with DOE to prepare the EIS document in accordance with 40 CFR 1506.8(c).

(c) A DOE’s option, the Implementation Plan may include target page limits and schedules for the EIS, planned work assignments, anticipated consultation with other agencies and organizations, or any other information to support the approach to be used in preparing the EIS.

(d) DOE shall make the EIS Implementation Plan and any formal revisions available to the public for information. Copies of these documents shall be provided upon written request; at its discretion, DOE may make copies available for inspection in DOE public reading rooms or other appropriate locations for a reasonable time.

§ 1021.313 Public review of environmental impact statements.

(a) The public review and comment period on a DOE draft EIS shall be no less than 45 days (40 CFR 1506.10(c)). The public comment period begins when EPA publishes a Notice of Availability of the document in the Federal Register.

(b) DOE shall hold at least one public hearing on DOE draft EISs. Such public hearings shall be announced at least 15 days in advance. The announcement shall identify the subject of the draft EIS, and include the location, date, and time of the public hearings.

(c) DOE shall prepare a final EIS following the public comment period and hearings on the draft EIS. The final EIS shall respond to oral and written comments received during public review of the draft EIS, as provided at 40 CFR 1503.4.

(d) In addition to the formal announcements provided for in paragraphs (a) and (b) of this section, at its discretion DOE shall publicize the availability of draft and final EISs, and the time and place for public hearings on a draft EIS, in other ways as appropriate, such as news releases to the local media.

§ 1021.314 Supplemental environmental impact statements.

(a) DOE shall supplement an EIS if there are substantial changes to the proposal or significant new information relevant to environmental concerns, as discussed in 40 CFR 1502.9(c)(1).

(b) DOE may supplement a draft EIS or final EIS at any time, to further the purposes of NEPA, in accordance with 40 CFR 1502.9(c)(2).

(c) A supplemental EIS is not required when:

(1) Changes to the proposed action, new information, or new circumstances would not result in significant changes to the environmental impacts analyzed in the EIS, and would not cause significant, reasonably foreseeable environmental impacts that were not considered in the EIS;

(2) After issuance of a ROD, DOE decides to proceed with an alternative that was fully evaluated in an EIS but not part of the initial decision; in such a case, a revised ROD shall be prepared and circulated in accordance with § 1021.315 of this part.

(d) Where it is unclear whether or not an EIS supplement is required, DOE shall prepare a Supplement Analysis. (1) The Supplement Analysis shall discuss the circumstances that might lead to the preparation of a supplemental EIS, pursuant to 40 CFR 1502.9(c).

(2) Supplement Analysis shall contain sufficient information for DOE to determine whether:

(i) An existing EIS should be supplemented;

(ii) A new EIS should be prepared;

(iii) An existing ROD should be revised; or

(iv) No further NEPA documentation is required.

(3) DOE shall make the determination, and the related Supplement Analysis available to the public for information. Copies of these document shall be provided upon written request; at its discretion, DOE may make copies available for inspection in DOE public reading rooms or other appropriate locations for a reasonable time.

(e) DOE shall prepare, circulate and file a supplement to a draft or final EIS in the same manner as any other draft and final EISs, except that scoping is optional for a supplement. If DOE decides to take action on a proposal covered by a supplemental EIS, DOE shall either prepare a new ROD or revise the existing ROD.

(f) When applicable, DOE will incorporate an EIS supplement, or the determination and supporting Supplement Analysis made under paragraph (d) of this section, into any related formal administrative record on the action that is the subject of the EIS supplement or determination (40 CFR 1502.9(c)(3)).

§ 1021.315 Records of decision.

(a) If DOE decides to take action on a proposal covered by an EIS, a ROD shall be prepared as provided at 40 CFR 1506.2 (except as provided at 40 CFR 1506.1 and § 1021.211 of this part).

(b) In addition to the requirements at 40 CFR 1506.2, a DOE ROD shall include any determination required by 10 CFR part 1023, “Compliance with Floodplain/Wetlands Environmental Review Requirements.”

(c) DOE RODs shall be published in the Federal Register and made available to the public as specified in 40 CFR 1506.6, except as provided in 40 CFR 1506.3(c) and § 1021.340 of this Part.

(d) For the purposes of 40 CFR 1506.1, the date of issuance of a ROD is the date of signature, rather than the date that the ROD is published in the Federal Register.

(e) Except as provided at 40 CFR 1506.1 and 1506.10(b) and § 1021.211 of this part, no decision may be made on a proposal during a 30-day “waiting period” following completion of the final EIS; this is not considered a public comment period. The 30-day period starts when the EPA Notice of Availability for the final EIS is published in the Federal Register.

(f) DOE may revise a ROD at any time, so long as the revised decision is supported by an existing EIS. A revised ROD is subject to the provisions of...
§ 1021.320 Environmental assessments.

DOE shall prepare and circulate EAs and related FONSIs in accordance with the requirements of the CEQ Regulations, as supplemented by this subpart.

§ 1021.321 Requirements for environmental assessments.

(a) When to prepare an EA. As required by 40 CFR 1501.4(b), DOE shall prepare an EA for a proposed DOE action that is described in the classes of actions listed in Appendix C to subpart D of this part, and for a proposed DOE action that is not described in any of the classes of actions listed in Appendices A, B, or D to subpart D, except that an EA is not required if DOE has decided to prepare an EIS. DOE may prepare an EA on any action at any time in order to assist agency planning and decisionmaking.

(b) Scope. A DOE EA shall focus on the environmental consequences necessary to determine whether to prepare an EIS or a FONSI. If appropriate, a DOE EA shall include any floodplain/wetlands assessment prepared under 10 CFR 1022.12; and may include analyses needed for other environmental determinations.

(c) Comment. A DOE EA shall comply with the requirements found at 40 CFR 1508.25(a); and may include information that is exempt from disclosure requirements as an appendix, other information that DOE otherwise exempt information.

§ 1021.322 Findings of no significant impact.

(a) DOE shall prepare a FONSI only if the finding can be supported by the analysis of environmental impacts in the related EA. If a required DOE EA cannot support a FONSI, DOE shall prepare an EIS and issue a ROD before taking action on the proposal addressed by the EA, except as permitted under 40 CFR 1508.6 and § 1021.211 of this part.

(b) In addition to the requirements found at 40 CFR 1506.13, a DOE FONSI shall include the following:

(1) A summary of the supporting EA, including a brief description of the proposed action and alternatives considered in the EA, and its associated ROD, and each EA

(2) Any mitigation commitments incorporated into a DOE decision to proceed with the proposed action.

(3) Reference to any Mitigation Action Plan prepared under § 1021.332 of this part;

(4) Any determination required by 10 CFR part 1022, “Compliance with Floodplain/Wetlands Environmental Review Requirements”;

(5) The date of issuance; and

(6) The signature of the DOE approving official.

(c) DOE shall make FONSIs available to the public as provided at 40 CFR 1501.4(e)(1) and 1506.6.

(d) DOE shall issue a proposed FONSI for public review and comment before making a final determination on the FONSI if required by 40 CFR 1501.4(e)(2); at its discretion, DOE may issue a proposed FONSI for public review and comment in other situations as well.

(e) Upon issuance of the FONSI, DOE may proceed with the proposed action subject to any mitigation commitments included in the FONSI.

(f) DOE may revise a FONSI at any time, so long as the revision is supported by an existing EA. A revised FONSI is subject to all provisions of paragraph (d) of this section.

§ 1021.330 Programmatic NEPA documents.

(a) When required to support a DOE decision on connected actions (40 CFR 1506.25(a)(1)), or, at DOE’s discretion, when the purposes of NEPA would be furthered, DOE shall prepare a programmatic EIS or EA (40 CFR 1502.4).

(b) A DOE programmatic NEPA document shall be prepared, issued, and circulated in accordance with the requirements for any other NEPA document, as established by the CEQ Regulations and this part.

§ 1021.331 Site-wide NEPA documents.

(a) As a matter of policy, to further the purposes of NEPA DOE will prepare site-wide EISs for certain large, multifacility DOE sites; DOE may prepare EISs or EAs for other sites to assess the impacts of all or selected functions at those sites.

(b) DOE will evaluate site-wide NEPA documents at least every five years by means of a Supplement Analysis, as provided in § 1021.314. Based on the Supplement Analysis, DOE will determine whether previous NEPA documents remain adequate, or whether to prepare a new site-wide EIS or EA, supplement the existing EIS or EA, or revise the ROD or FONSI as appropriate.

§ 1021.332 Mitigation action plans.

(a) Following completion of each EIS and its associated ROD, and each EA for which, in DOE’s judgment, the FONSI would be based, in significant part, on DOE’s commitment to take mitigative actions, DOE shall prepare a Mitigation Action Plan. The Mitigation Action Plan shall explain how measures designed to mitigate adverse environmental impacts associated with the proposed action will be planned and implemented.

(b) In the case of an EIS, the Mitigation Action Plan shall be prepared before DOE takes any action under the ROD that may have an adverse environmental effect. The Plan shall address all mitigation commitments expressed in the ROD.

(c) In the case of an EA described in paragraph (a), the Mitigation Action Plan shall be prepared before issuing, and shall be referenced in, the associated FONSI. The Plan shall address all mitigation commitments expressed in the FONSI that are necessary, in DOE’s judgment, to render the impacts of the proposed action not significant.

(d) Each Mitigation Action Plan shall be as complete as possible, commensurate with the information available regarding the proposed action. DOE may revise the Plan as more specific and detailed information becomes available.

§ 1021.340 Classified, confidential, or otherwise exempt information.

(a) Notwithstanding other sections of this part, DOE shall not disclose classified, confidential, restricted, or other information that DOE otherwise would not disclose pursuant to the Freedom of Information Act (FOIA) (5 U.S.C. 552), and 10 CFR 1004.10(b) of DOE’s regulations implementing FOIA (provided, however, that DOE shall disclose any interagency memoranda that transmit a Federal agency’s comments on the environmental impacts of a DOE proposal (40 CFR 1506.6(f))).

(b) Wherever possible, in DOE’s judgment, DOE shall prepare any information that is exempt from disclosure requirements as an appendix, or otherwise segregate the exempt information to allow public review of the remainder of a NEPA document.

(c) If exempt information cannot be segregated, or if segregation would leave essentially meaningless material, DOE shall withhold the entire NEPA document from the public; however, DOE shall prepare the NEPA document. In accordance with the CEQ Regulations and this part, and use it in DOE decisionmaking.
§ 1021.341 Coordination with other environmental review requirements.

(a) In accordance with 40 CFR 1502.25, DOE shall integrate the NEPA process and coordinate NEPA compliance with other environmental review requirements, to the fullest extent possible in DOE’s judgment.

(b) To the extent possible, DOE shall determine the applicability of other environmental requirements early in the planning process to ensure compliance and to avoid delays, and shall incorporate any such relevant requirements as early in the NEPA review process as possible in DOE’s judgment.

§ 1021.342 Interagency cooperation.

For DOE programs that involve another Federal agency or agencies in related decisions subject to NEPA, DOE shall cooperate with the other agencies in developing environmental information and in determining whether a proposal requires preparation of an EIS or EA, or can be categorically excluded from preparation of either. Where appropriate and acceptable to the other agencies, DOE shall develop or cooperate in the development of interagency agreements to facilitate coordination and to reduce delay and duplication.

§ 1021.343 Variances.

(a) Emergency actions. DOE may take emergency actions without observing all provisions of this part or the CEQ Regulations, in accordance with 40 CFR 1506.11, in extraordinary situations that demand immediate action. DOE shall consult with CEQ as soon as possible regarding emergency actions having significant environmental impacts. DOE shall document emergency actions covered by this paragraph within two weeks after such action occurs; this documentation shall identify any adverse impacts from the actions taken, further mitigation necessary, and any NEPA documents that may be required.

(b) Reduction of time periods. On a case-by-case basis, DOE may reduce time periods established in this part that are not required by the CEQ Regulations. If DOE determines that such reduction is necessary, DOE shall publish notice in the Federal Register specifying the revised time periods and the rationale for the reduction.

(c) Documentation. Any variance from the requirements of this part, other than under paragraphs (a) and (b) of this section, must be soundly based on the interests of national security or the public health, safety, or welfare and must have the advance written approval of the Secretary; however, the Secretary shall not waive or grant a variance from any provision of the CEQ Regulations (except as provided for in those regulations).

Subpart D—Typical Classes of Actions

§ 1021.400 Level of NEPA review.

(a) This subpart identifies DOE actions that normally:

(1) Do not require preparation of either an EIS or an EA (are categorically excluded from preparation of either document); (2) Require preparation of an EA, but not necessarily an EIS; or

(3) Require preparation of an EIS.

(b) If a DOE proposal has been adequately analyzed in an existing EIS or EA, and is covered by an existing ROD or FONSI, no additional NEPA documentation is needed.

(c) If a DOE proposal is encompassed within a class of actions listed in the appendices to this subpart D, DOE shall proceed with the level of NEPA review indicated for that class of actions, unless extraordinary circumstances related to the specific proposal (including issues raised in public comments or other information available to DOE) cause DOE to have a reasonable question as to whether the categorization is appropriate for the specific proposal.

(d) If a DOE proposal is not encompassed within the classes of action listed in the appendices to this subpart D, or if extraordinary circumstances raise a reasonable question as to the appropriateness of the categorization, before taking action on the proposal (except as provided at 40 CFR 1506.1 and § 1021.211 of these regulations) DOE shall either:

(1) Prepare an EA, and on the basis of that EA determine whether to prepare an EIS or a FONSI; or

(2) Prepare an EIS and ROD.

§ 1021.410 Application of categorical exclusions (classes of actions that normally do not require EAs or EISs).

(a) General. The actions listed in appendices A and B to this subpart D are classes of actions that normally do not require EAs or EISs (categorical exclusions). All categorical exclusions may be applied by any element of DOE. The sectional divisions in appendices A and B are only for purposes of organization of these Appendices.

(b) Eligibility criteria for categorical exclusions. (1) To be eligible for a categorical exclusion listed in appendix A or B, a proposed action must be one that:

(i) Would not threaten a violation of applicable statutory, regulatory, and permit requirements, including requirements of DOE Orders;

(ii) Would not require siting and construction or major expansion of waste disposal, recovery, or treatment facilities (including incinerators and facilities for treating wastewater, surface water, and groundwater); and

(iii) Would not adversely affect environmentally sensitive areas. An action may be categorically excluded if, although sensitive areas are present on a site, the action would not adversely affect those areas (e.g., construction of a building with its foundation well above a sole-source aquifer or upland surface soil removal on a site that has wetlands).

(2) For purposes of paragraph (b)(1)(iii), environmentally sensitive areas include:

(i) Property (e.g., sites, buildings, structures, objects) of historic, archaeological, or architectural significance designated by Federal, state, or local governments or property eligible for listing on the National Register of Historic Places;

(ii) Habitat (including critical habitat) of Federally-listed endangered, threatened, proposed, or candidate species, or of state-listed endangered and threatened species;

(iii) Floodplains and wetlands;

(iv) Natural areas such as Federally and state-designated wilderness areas, National Parks, National Natural Landmarks, Wild and Scenic Rivers, state and Federal wildlife refuges, and marine sanctuaries;

(v) Prime agricultural lands; and

(vi) Special sources of water (such as sole-source aquifers, wellhead protection areas and other water sources that are vital in a region).

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1. Categorical Exclusions Applicable to Facility Operation
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1.7 Administrative enforcement actions, including investigations, conferences, hearings, and notices of probable violations
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1.17 Actions consisting solely of document preparation (including, but not
limited to, conceptual design, feasibility, energy supply and demand, and other studies.

1.18 Information gathering (including, but not limited to, literature surveys, inventories, audit trails, if not limited to, document mailings, dissemination (including, but not limited to, document mailings, publication, and distribution).

1.19 Reports or recommendations on legislation or rulemaking that is not proposed by DOE.

1.20 Technical advice and planning assistance to international, national, state, and local organizations.

1.21 On-site training and informational programs.

1.22 Emergency preparedness planning activities.

1.23 Training exercises and simulations (including, but not limited to, firing-range training, emergency response training, fire-fighter and rescue training, and spill cleanup training).

1.24 Administrative, organizational, or procedural changes in inspection, surveillance, or maintenance requirements.

1.25 Support activities for the normal conduct of business (such as document copying and making identification badges).

1.26 Routine maintenance activities and custodial services for buildings, structures, and equipment. Routine maintenance activities, both corrective (that is, repair) and preventive, are required to maintain and preserve buildings, structures, or equipment in a condition suitable for a facility to be used for its designated purpose. Routine maintenance may result in replacement to the extent that the replacement is in kind and is not a substantial upgrade or improvement. Routine maintenance does not include replacement of a major component that significantly extends the originally intended useful life of a facility (for example, it does not include the replacement of a reactor vessel near the end of its useful life). Routine maintenance activities include, but are not limited to:

(a) Repair of facility equipment such as lathes, mills, pumps, and presses;
(b) Door and window repair or replacement;
(c) Wall or basement repair;
(d) Reroofing;
(e) Plumbing, electrical utility, and telephone service repair;
(f) Routine replacement of high efficiency particulate air filters;
(g) Inspection and treatment of currently installed wood utility poles;
(h) Repair of road embankments;
(i) Repair or replacement of fire protection sprinkler systems;
(j) Road and parking area resurfacing, including construction of temporary access to facilitate resurfacing;
(k) Erosion control and soil stabilization measures (such as reseeding and revegetation);
(l) Surveillance and maintenance of surplus facilities in accordance with DOE Order 5820.2A, "Radioactive Waste Management";
(m) Repair and maintenance of transmission facilities, including replacement of conductors of the same nominal voltage, poles, circuit breakers, transformers, crossarms, insulators, and downed transmission lines; and
(n) Removal and/or replacement of above- or below-ground tanks and piping if there is no evidence of leakage. This includes activities taken under 40 CFR part 280, subparts B, C, and D for underground storage tanks.

Custodial services are activities to preserve facility appearance, working conditions, and sanitation, and include, but are not limited to:
(a) Moving furniture;
(b) Window washing;
(c) Lawn mowing;
(d) Indoor and outdoor painting, including surface preparation; and
(f) Snow removal.

1.27 Siting, construction (and/or modification) or operation of a storage area for supplies and equipment for administrative services, and maintenance and repair activities.

1.28 Replacement of existing utility systems (for example, electrical, sewer, septic, water supply, fire suppression, communication, data processing) or extension of utility systems required as a result of actions categorically excluded in this subpart.

1.29 Installation or modification of air conditioning systems required for temperature control for operation of existing equipment.

1.30 Minor improvements to cooling water systems within an existing building or structure if the improvements would not:
(1) Create new sources of water or involve new receiving waters;
(2) adversely affect water withdrawals or the temperature of discharged water, or
(3) increase introductions of or involve new introductions of hazardous substances, pollutants, or contaminants.

1.31 Installation of, or improvements to, liquid retention tanks, small (normally, under 5 acres) basins, and piping. Installations and improvements include, but are not limited to, increasing retention capacity or installing liners or covers.

1.32 Acquisition, installation, and operation of communication systems, data processing equipment, and similar electronic equipment.

1.33 Modifications to screened water intake structures that result in intake velocities and volumes that are within existing permit limits.

1.34 Routine testing and calibration of facility components or subsystems (including, but not limited to, control valves, in-core monitoring devices, transformers, capacitors) within nationally recognized engineering code requirements and if testing would not release hazardous substances, pollutants, or contaminants.

1.35 Routine decontamination (radioactive and nonradioactive) of equipment, rooms, hot cells, or the surfaces (interior or exterior) of buildings, if the action is not part of a decommissioning project.

1.36 Airway safety markings and painting (but excluding lighting) of existing electrical transmission line and antenna structures in accordance with Federal Aviation Administration standards.

1.37 On-site storage at an existing facility (that is, no construction required) of activated material (including lead) or equipment used at that facility that is not waste to allow for radioactive decay.

1.38 Installation of fencing, including that for border marking, that will not adversely affect wildlife movements.

1.39 Actions to conserve energy that do not affect the exchange of indoor and outdoor air and do not increase the concentrations of potentially harmful substances (for example, programmed lowering of thermostat settings, placement of timers on hot water heaters, installation of solar hot water systems, installation of efficient lighting).

1.40 Detonation of high explosives in areas reserved for this purpose to avoid hazards of transportation and/or handling, if done within the requirements of any existing permit issued by the state or local authorities and in accordance with DOE Orders.

1.41 Acquisition or minor relocation of existing access roads serving existing facilities if the traffic they are to carry will not change substantially.

1.42 Routine transportation of nonhazardous materials and nonradioactive, nonwaste hazardous materials (hazardous materials as designated in 40 CFR 172.101).

1.43 Routine transportation to an existing storage, disposal facility of:
(a) Hazardous waste (as designated in 40 CFR part 261) that is nonradioactive;
(b) Low-level radioactive waste (LLW) that contains radioactive material and is not classified as high-level waste, transuranic (TRU) waste, spent nuclear fuel, or byproduct material as defined in 11(e)(2) of the Atomic Energy Act (AEA);
(c) Low-level radioactive mixed waste (LLW also containing hazardous waste as designated in 40 CFR part 261);
(d) Nonhazardous solid waste (as designated in 40 CFR 261.4(b); or
(e) Byproduct material as defined in AEA 11(e)(2).

1.44 Temporary shutdown (that is, for up to approximately two years) and subsequent restart of a facility (such as a nuclear reactor, chemical processing plant, electrical substation, or oil and gas well) for inventory or routine maintenance.

1.45 Temporary shutdown (that is, for up to approximately two years) of a nuclear reactor for refueling and subsequent restart.

1.46 Shutdown of an operating facility, including temporary shutdown (that is, for up to approximately two years) for safety and/or environmental improvements or in response to safety and/or environmental requirements. (See also appendix B. 1.8.)

2. Categorical Exclusions Applicable to Safety and Health

2.1 Modifications of an existing structure to enhance workplace habitability (that is, but not limited to, improvements to lighting, radiation shielding, or heating/ventilating/air conditioning and its instrumentation; noise reduction).

2.2 Installation of, or improvements to, building and equipment instrumentation (including, but not limited to, building monitors, remote control panels, remote
monitoring capability, alarm and surveillance systems, and control systems to provide automatic shutdown and fire protection and detection.

2.3 Establishment of, or improvements to, announcement and emergency warning systems, criticality and radiation monitors and alarms, safeguards and security equipment, and on-site evacuation routes.

2.4 Activities related to the promotion and maintenance of employee health, including installation of eye washes, safety showers, and radiation monitoring devices.

2.5 Development and implementation of Equipment Qualification Programs (under DOE Order 5480.6, “Safety of DOE-owned Nuclear Reactors”) to augment information on safety-related system components or to improve system reliability.

3. Categorical Exclusions Applicable to Site Characterization, Monitoring, and General Research

3.1 Site characterization and environmental monitoring, including siting, construction, operation, and dismantlement or decommissioning (abandonment) of characterization and monitoring devices, if the activities would not introduce or cause the inadvertent or uncontrolled movement of hazardous substances, pollutants, or contaminants, or non-native organisms. Activities covered include, but are not limited to:

(a) Geological and engineering surveys and mapping, including the establishment of survey marks;
(b) Installation and operation of field instruments, such as stream-gauging stations or flow-measuring devices, telemetry systems, geochemical monitoring tools, geophysical exploration tools, and drilling of slim core holes;
(c) Drilling of groundwater or vadose (unsaturated) zone sampling and monitoring wells;
(d) Well logging;
(e) Aquifer response testing;
(f) Installation and operation of water-level recording devices in wells;
(g) Installation and operation of ambient air monitoring (abandonment) of characterization and monitoring devices.

3.2 Geochemical surveys, geological mapping, and gravity, magnetic, electrical, seismological, radar and geophysical investigations for resource evaluation and site characterization.

3.3 Archaeological, historical, and cultural resource identification in compliance with 36 CFR part 800 performed by professionals who meet the qualifications set forth in 43 CFR 7.8(a)(11)-(14)

3.4 Aviation activities for survey, monitoring, or security purposes that comply with Federal Aviation Administration regulations.

3.5 Research, inventory, and information collection activities that are directly related to the conservation of fish and wildlife resources and that involve only negligible animal mortality or habitat destruction.

3.6 Drop, puncture, water-immersion, thermal, and fire tests of transport packaging for radioactive or hazardous materials to certify that designs meet the requirements of 49 CFR 173.411 and 173.412 and requirements of severe accident conditions as specified in 10 CFR 71.73.

3.7 Tank car tests under 49 CFR part 170 (including, but not limited to, tests of safety relief devices, pressure regulators, and thermal protection systems).

3.8 Indoor bench-scale research projects and conventional laboratory operation (for example, preparation of standards and sample analysis).

4. Categorical Exclusions Applicable to the Power Marketing Administrations and to all of DOE With Regard to Power Resources.

4.1 Establishment and implementation of contracts, marketing plans, policies, annual operating plans, or allocation plans for the short term (less than five years) or seasonal disposition, allocation, or acquisition of excess power, if transmission would occur over existing transmission systems.

4.2 Leasing of existing transmission facilities if the use would not involve any change in operation.

4.3 Export of electricity over existing transmission lines as provide by section 202(e) of the Federal Power Act.

4.4 Changes in rates for electric power, power transmission, and other products or services provided by a Power Marketing Administration that are based on a change in revenue requirements that does not exceed the change in the GNP fixed weight price index published by the Department of Commerce, during the period since the last rate adjustment for that product or service, or if the change does exceed the change in the GNP fixed weight price index, the rate change would have no potential for affecting the operation of power generation resources.

4.5 Power marketing services, including storage, load shaping, neuosional exchanges, or other similar activities if the operations of hydroelectric projects would remain within normal operating limits and would not alter the existing environmental conditions.

4.6 The acquisition of additional rights-of-way at existing transmission facilities to establish buffer areas.

4.7 Minor substation modifications and expansions, including minor realignments and modifications to approach-structures, that would not involve the construction of new transmission lines or the integration of a major new resource.

4.8 Temporary adjustments to river operations to accommodate day-to-day river fluctuations, power demand changes, fish and wildlife conservation program requirements, and other external events if the adjustments would result in only minor changes to reservoir levels or stream flows.

4.9 Additions, or modifications, to transmission facilities that would not affect the environment beyond the previously developed facility area, including tower modifications, changing insulators, and replacement of poles, circuit breakers, transformers, and crossarms.

4.10 Adding fiber optic cable to transmission structures or burying fiber optic cable in existing transmission line rights-of-way.

5. Categorical Exclusions Applicable to Fossil, Conservation, and Renewable Energy Activities

5.1 Modifications to oil, gas, and geothermal facility pump and piping configurations, manifolds, metering systems, and other equipment that would not change design process flow rates or affect permitted air emissions.

5.2 Modification (but not expansion) or abandonment (including plugging), which is not part of site closure, or crude oil storage access wells, bring injection wells, or geothermal wells.

5.3 Repair or replacement of sections of a crude oil, produced water, brine, or geothermal pipeline, if the actions are determined by the Army Corp of Engineers to be within the maintenance provisions of DOE's permit under section 404 of the Clean Water Act.

5.4 Removal of drilling fluids, produced waters, or other oil field wastes not subject to regulation under subtitle C of RCRA that are recovered in the course of routine facility operation, are not mixed with hazardous waste, and would be disposed of in a landfill-approved oil field waste disposal facility.

5.6 Categorical Exclusions Applicable to International Activities

5.6.1 Approval of technical exchange arrangements for information, data, or personnel with other countries or international organizations, including, but not limited to, assistance in identifying and acquiring another country's energy resources, needs and options.

5.6.2 Approval of DOE participation in international “umbrella” agreements for cooperation in energy research and development activities that (a) would not commit the U.S. to any specific projects or activities, or (b) would commit the U.S. only to specific projects or activities that fall within the classes of actions categorically excluded in this Subpart.

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5. Categorical exclusions applicable to fossil, conservation, and renewable energy activities, including activities authorized by the Natural Gas Act or the Powerplant and Industrial Fuel Use Act
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5.4 Import/export natural gas requiring short gas pipeline segments for cogeneration powerplant
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1. Categorical Exclusions Applicable to Facility Operation
1.1 Siting, construction (and/or modification), and operation of buildings and support structures (including butler buildings and trailers) on an existing DOE site and in accordance with any site development plan, for office purposes, parking, cafeterias, reception, computer and data processing services, education and training, visitor reception, computer and data processing services, employee recreation, maintenance, security (including security posts), and fire protection
1.2. Removal of contaminated material and equipment (other than fuel or special nuclear material in reactors, if the action is not part of a decommissioning project.
1.3 Removal of asbestos-containing materials from existing buildings in accordance with 40 CFR part 61 (National Emission Standards for Hazardous Air Pollutants), subpart M (National Emission Standard for Asbestos); 40 CFR part 763 (Asbestos); subpart G (Asbestos Abatement Projects); 29 CFR part 1910. subpart I (Personal Protective Equipment); § 1910.134 (Respiratory Protection); subpart Z (Toxic and Hazardous Substances). § 1910.1001 (Asbestos, tremolite, anthophyllite and actinolite); and 29 CFR part 1926 (Safety and Health Regulations for Construction), subpart D (Occupational Health and Environmental Controls), § 1926.101 (Asbestos, tremolite, anthophyllite, and actinolite), other appropriate Occupational Safety and Health Administration standards in title 29, chapter XVII of the CFR, and appropriate state and local requirements, including certification of removal contractors and technicians.
1.4 Removal of polychlorinated biphenyl (PCB)-containing items, such as transformers or capacitors, PCB-containing oils flushed from transformers, PCB-flushing solutions, and PCB-containing spill materials from buildings or other above-ground locations in accordance with 40 CFR part 701 (Polychlorinated Biphenyl Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions).
1.5 Construction and operation of additional water supply wells (or replacement wells) within an aquifer already accessed by operating wells, if there would be no drawdown other than in the immediate vicinity of the well, and no degradation of the freshwater aquifer as a result of the new or replacement wells.
1.6 Construction and operation of microwave and radio communication towers and associated facilities that may affect the exchange of indoor and outdoor air but do not increase the concentrations of potentially harmful substances. These actions may involve financial and technical assistance to individuals (such as builders, owners, consultants, designers), organizations (such as utilities), and state and local governments. Covered actions include, but are not limited to: Improvements in generator efficiencies and appliance efficiency ratings, development of energy-efficient manufacturing or industrial practices, and small-scale conservation and renewable energy research and development and pilot projects. The actions could involve building renovations or new structures in commercial, residential, agricultural, or industrial sectors. These actions do not include rulemakings, standard-settings, or proposed DOE legislation.
1.8 Small-scale activities undertaken to protect, restore or improve fish and wildlife habitat, fish passage facilities (such as fish ladders or minor diversion channels), or fisheries.
1.9 Restart of a facility (such as a nuclear reactor, chemical processing plant, electrical substation, or oil and gas well) after a temporary shutdown (that is, for up to approximately two years) to address energy needs.
1.10 Restart or shutdown of a facility (such as a nuclear reactor, chemical processing plant, electrical substation, or oil and gas well) after a temporary shutdown (that is, for up to approximately two years) to address energy needs.
2. Categorical Exclusions Applicable to Safety and Health
2.1 Improvement of a facility or replacement/upgrade of facility components
2.2 Improvement of a facility or replacement/upgrade of facility components
2.3 Improvement of a facility or replacement/upgrade of facility components
2.4 Improvement of a facility or replacement/upgrade of facility components
2.5 Improvement of a facility or replacement/upgrade of facility components
3.4 Demonstration actions proposed under the Clean Coal Technology Demonstration Program, if the actions would not increase the quantity or rate of air emissions. These demonstration actions include, but are not limited to:
(a) Test treatment of 20 percent or less of the throughput product (solid, liquid, or gas) generated at an existing and fully operational coal-fired power producing facility;
(b) addition or replacement of equipment for reduction or control of sulfur dioxide or oxides of nitrogen that require only minor modification to the existing structures at an existing coal-fired power producing facility for which the existing use remains unchanged;
(c) addition or replacement of equipment for reduction or control of sulfur dioxide or nitrogen that involves no permanent change in the quantity or quality of coal being burned and involves no permanent change in the capacity factor of the coal-fired power producing facility, other than for demonstration purposes of two years or less in duration.
3.5 Research and development and pilot- or scale-testing actions that (1) do not involve special nuclear materials, high-level or TRU waste, irradiated nuclear fuel, or highly toxic substances (substances that present an unreasonable risk of injury to health or the environment), (2) are conducted in an existing facility not requiring major structural modification, and (3) are conducted to verify in concept before demonstration actions. These actions include, but are not limited to:
(a) Fossil energy research and development activities for enhanced oil and unconventional gas recovery, coal liquefaction, advanced combustion, alternative fuels, and magnetohydrodynamics;
(b) Geothermal energy research and development activities;
(c) Routine tritium research and development activities for reactor fuel and target fabrication, irradiation, and extraction;
(d) Waste transmutation tests;
(e) Projects to improve the capability or efficiency of existing accelerators; and
(f) Projects using accelerators whose beams have insufficient energy to produce neutrons when impacting the intended targets.
3.6 Outdoor reliability, quality assurance, and developmental tests and experiments (including, but not limited to, burn tests, such as tests of electric cable fire resistance and weapons safety features; impact tests of weapon system components, such as pneumatic ejector tests using earthen embankments or concrete slabs) under controlled conditions and not involving radioactive materials.
4. Categorical Exclusions Applicable to Power Marketing Administrations and to all of DOE With Regard to Power Resources
4.1 New electricity transmission agreements and modifications to existing transmission arrangements (such as the use of a transmission facility of one system to transfer power of and for another system) if system operation would continue within normal operating limits, no new generation projects would be involved, and no physical changes in the transmission system would be made beyond the previously developed facility area.
4.2 Grant or denial of requests for multiple use of DOE transmission facility rights-of-way if DOE has ownership or jurisdiction, such as grazing permits and crossing agreements including electric lines, water lines, and drainage culverts.
4.3 Dismantling and/or removal of transmission lines and right-of-way abandonment.
4.4 Construction or modification of customer service substations (that is, power distribution substations for residential or industrial use) under 200 kV or lower voltage.
4.5 Construction of tap lines (less than 10 miles in length) that are not for the integration of major new sources of generation into DOE’s main transmission systems.
4.6 Minor relocations of existing transmission lines (less than 10 miles in length) made to enhance existing environmental and land use conditions. Such actions include relocations to avoid right-of-way encroachments, resolve conflict with property development, accommodate road/highway construction, allow for the construction of facilities such as canals and pipelines, or reduce existing impacts to environmentally sensitive areas.
4.7 Minor noise abatement measures, such as construction of noise barriers and installation of noise control materials.
5. Categorical Exclusions Applicable to Fossil, Conservation, and Renewable Energy Activities
5.1 Construction and subsequent operation of short offsite crude oil or geothermal pipeline segments between DOE and existing commercial crude oil transportation, storage, or refining facilities, or geothermal transportation or storage facilities, within a single industrial complex, if the pipeline segments are within existing rights-of-way.
5.2 Removal of oil and contaminated materials recovered in oil spills cleanup operations in accordance with the National Oil and Hazardous Substances Pollution Contingency Plan (NCP) and disposed of in accordance with Title IV of the NCP.
5.3 Approval of new authorization or amendment of existing authorization to import/export natural gas under section 3 of the Natural Gas Act that does not involve new construction and only requires operational changes, such as an increase in natural gas throughput, change in transportation, or change in storage operations.
5.4 Approval of new authorization or amendment of existing authorization to import/export natural gas under section 4 of the Natural Gas Act involving a new cogeneration powerplant (as defined in the Powerplant and Industrial Fuel Use Act) that will only require short gas pipeline segments within a single industrial complex, if the pipeline segments are within existing rights-of-way.
5.5 The grant or denial of any temporary exemption under the Powerplant and Industrial Fuel Use Act of 1978 for any electric powerplant or major fuel-burning installation.
5.6 The grant or denial of any permanent exemption under the Powerplant and Industrial Fuel Use Act of 1978 of any existing electric powerplant or major fuel-burning installation, other than an exemption (1) under section 312(c), relating to cogeneration; (2) under section 312(1), relating to scheduled equipment outages; (3) under section 312(b), relating to certain state or local requirements; and (4) under section 312(g), relating to certain intermediate load powerplants.
5.7 The grant or denial of a permanent exemption from the prohibitions of Title II of the Powerplant and Industrial Fuel Use Act of 1978 for any new electric powerplant or major fuel-burning installation to permit the use of certain fuel mixtures containing natural gas or petroleum.
5.8 The grant or denial of a permanent exemption from the prohibitions of Title II of the Powerplant and Industrial Fuel Use Act of 1978 for any new peak-load powerplant.
5.9 The grant or denial of a permanent exemption from the prohibitions of Title II of the Powerplant and Industrial Fuel Use Act of 1978 for any new electric powerplant or major fuel-burning installation to permit operation for emergency purposes only.
5.10 The grant or denial of a permanent exemption from the prohibitions of Titles II and III of the Powerplant and Industrial Fuel Use Act of 1978 for any new or existing major fuel-burning installation for purposes of meeting scheduled equipment outages not to exceed an average of 38 days per year over a three-year period.
1. Major Projects
2. Protection of fish and wildlife habitat
3. Rate increases more than inflation, not power marketing
4. Rate increases more than inflation, power marketing
§ 46463

§ 46463.10 Establishment and implementation of contracts, policies, marketing plans, or allocation plans for the long-term allocation (five years or longer) of power.

§ 46463.11 Approval or disapproval of an application for new, expanded, or converted natural gas utility system projects involving the construction of new long-term transmission lines or rights-of-way.

§ 46463.12 Siting, construction, operation, and decommissioning of waste incinerators (other than research and development, other than nonhazardous solid waste).

§ 46463.13 Major System Acquisitions, as designated by DOE Order 4240.1.

11. Siting, construction, operation, and decommissioning of waste disposal facilities in contaminated areas.

12. Siting, construction, operation, and decommissioning of waste disposal facilities in unpermitted areas.

13. Siting, construction, operation, and decommissioning of uranium enrichment facilities.

14. Siting, construction, operation, and decommissioning of power reactors, nuclear weapons material production reactors, and test and research reactors.

15. Siting, construction (or expansion), and decommissioning of waste incinerators.

16. Field demonstration projects for wetlands.

17. Approval and or disapproval of an application to import/export natural gas under Section 3 of the Natural Gas Act involving major new natural gas pipeline construction or related facilities, such as construction of new liquid natural gas (LNG) terminals, regasification or storage facilities, or a significant expansion of an existing pipeline or related facility, or LNG terminal, regasification, or storage facility.

18. Approval/disapproval of an application to import/export natural gas under Section 3 of the Natural Gas Act involving a significant operational change, such as major increases in the quantity of liquid natural gas imported or exported.

19. Siting, construction, operation, and decommissioning of major transmission facilities, storage, and/or disposal facilities for high-level waste and/or spent nuclear fuel, such as spent fuel storage facilities and geologic repositories.

20. Siting, construction (or expansion), and operation of a disposal facility for TRU waste and TRU mixed waste (TRU waste also containing hazardous waste as designated in 40 CFR part 261).


22. Byproduct material as defined in AEA section 11(e)(2).

Appendix D to Subpart D—Classes of Actions that Normally Require EISs

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1. Major System Acquisitions

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7. Import/export of natural gas, involving major new facilities.

8. Import/export of natural gas, involving significant change.

9. Siting/construction/operation of major high-level waste treatment, storage, disposal facilities.

10. Siting/construction/expansion of waste disposal facility for transuranic waste.

11. Siting/construction/expansion of waste disposal facility in uncontaminated area (not transuranic or high-level waste).

12. Siting/construction/expansion of waste incinerators (other than research and development, other than nonhazardous solid waste).

13. Major System Acquisitions, as designated by DOE Order 4240.1.

14. Siting, construction, operation, and decommissioning of nuclear fuel reprocessing facilities.

15. Siting, construction (or expansion), and decommissioning of waste incinerators.

16. Field demonstration projects for wetlands.

17. Approval and or disapproval of an application to import/export natural gas under Section 3 of the Natural Gas Act involving major new natural gas pipeline construction or related facilities, such as construction of new liquid natural gas (LNG) terminals, regasification or storage facilities, or a significant expansion of an existing pipeline or related facility, or LNG terminal, regasification, or storage facility.

18. Approval/disapproval of an application to import/export natural gas under Section 3 of the Natural Gas Act involving a significant operational change, such as major increases in the quantity of liquid natural gas imported or exported.

19. Siting, construction, operation, and decommissioning of major transmission facilities, storage, and/or disposal facilities for high-level waste and/or spent nuclear fuel, such as spent fuel storage facilities and geologic repositories.

20. Siting, construction (or expansion), and operation of a disposal facility for TRU waste and TRU mixed waste (TRU waste also containing hazardous waste as designated in 40 CFR part 261).

(e) Byproduct material as defined in AEA section 11(e)(2).

12. Siting, construction, operation of incinerators, other than research and development incinerators or incinerators for nonhazardous solid waste (as designated in 40 CFR 261.4(b)).
Part VI

Department of Labor

Employment Standards Administration, Wage and Hour Division

29 CFR Part 522
Employment of Learners; Final Rule
DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

29 CFR Part 522

Employment of Learners

AGENCY: Wage and Hour Division, Employment Standards Administration, Labor.

ACTION: Final rule.

SUMMARY: The Fair Labor Standards Act (FLSA) permits the employment of certain inexperienced workers (learners) at wage rates below the statutory minimum under certificates issued by the Department of Labor. Amendments to the FLSA were enacted in 1989 which, among other things, increased the statutory minimum wage from $3.35 an hour to $3.80 an hour effective April 1, 1990, and to $4.25 an hour effective April 1, 1991. It is necessary to increase the wage rates contained in the regulations to reflect the increases in the statutory minimum wage rate.

DEPARTMENT OF LABOR

Washington, DC 20210, (202) 523-8305.

FOR FURTHER INFORMATION CONTACT: Samuel D. Walker, Acting Administrator, Wage and Hour Division, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210, (202) 214-8305. This is a toll-free number.

SUPPLEMENTARY INFORMATION:

I. Background

Section 14(a) of the FLSA (29 U.S.C. 214(a)) authorizes the Secretary of Labor, to the extent necessary to prevent curtailment of opportunities for employment, to provide for the employment of learners at wage rates lower than the minimum wage applicable under section 6 of the FLSA. Such employment is permitted only under certificates which are issued pursuant to regulations or orders of the Secretary. These regulations, 29 CFR part 522, contain, among other provisions, those wage rates which are less than the applicable minimum contained in section 6 of the FLSA and at which learners in certain occupations in certain industries may be employed. These wage rates have historically varied from 15 to 2½ cents below the statutory minimum wage.

On November 17, 1989, the 1989 Amendments to FLSA (Pub. L. 101-157) were enacted. These Amendments provide, in part, that the statutory minimum wage required under section 6(a)(1) of FLSA increases to $3.80 an hour effective April 1, 1990, and to $4.25 an hour effective April 1, 1991. It is necessary to amend §§ 522.24, 522.35, 522.43, 522.65, and 522.85 of Regulations, 29 CFR part 522, to reflect the increase in the statutory minimum wage rate.

II. Paperwork Reduction Act

The rule imposes no reporting or recordkeeping requirements on the public.

III. Summary of Rule

The wage rates specified for certain occupations in certain industries contained in §§ 522.24, 522.35, 522.43, 522.65, and 522.85 of Regulations, 29 CFR part 522, are increased by 45 cents effective November 2, 1990, and by 45 cents effective April 1, 1991, to reflect increases in the statutory minimum wage contained in the 1989 Amendments to FLSA. These wage rates traditionally vary from 15 to 2½ cents below the statutory minimum wage.

Executive Order 12291

This rule is not classified as a "major rule" under Executive Order 12291 on Federal Regulations, because it is not 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, individual industries, Federal, State or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises in domestic or export markets. Therefore, no regulatory impact analysis is required.

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for the rule under 5 U.S.C. 553(b) the requirements of the Regulatory Flexibility Act, Public Law 96-354, 94 Stat. 1165, 5 U.S.C. 601 et seq., pertaining to regulatory flexibility analysis, do not apply to this rule. See 5 U.S.C. 601(2).

Administrative Procedure Act

The Secretary has determined that the public interest requires the immediate issuance of these regulations in order to reflect the 1989 Amendments, as these Amendments relate to the employment of learners under Regulations, 29 CFR part 522. Insufficient time existed between the enactment of the Amendments and the effective date of the first increase in the minimum wage rate of April 1, 1990, for the Department of Labor (the Department) to issue a proposal for comments, review the comments, and promulgate a final rule. Accordingly, the Secretary, for good cause, finds, pursuant to 5 U.S.C. 553(b)(3)(B), that prior notice and public comment are impracticable and contrary to the public interest.

The Secretary also for good cause finds, pursuant to 5 U.S.C. 553(d)(3), that this rule cannot be published 30 days before its effective date.

This document was prepared under the direction and control of Samuel D. Walker, Acting Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor.

List of Subjects in 29 CFR Part 522

Employment, Labor, Law enforcement, Learners.

For the reasons set forth above, 29 CFR part 522 is amended as set forth below.

Signed at Washington, DC, on this 30th day of October, 1990.

Samuel D. Walker,

Acting Administrator, Wage and Hour Division.

Accordingly, title 29 chapter V, subchapter A, of the Code of Federal Regulations is amended as follows:

PART 522—EMPLOYMENT OF LEARNERS

Part 522 is amended to read as follows:

1. The authority citation for part 522 is revised to read as set forth below and the authority citations following all of the sections in part 522 are removed.


§ 522.24 [Amended]

2. In § 522.24, paragraphs (a), (b), (c), and (d) are revised to read as follows:

(a) The special minimum wage rates of learners employed in occupations for which a 320-hour period is authorized under § 522.23(a) shall during that period be not less than $3.20 an hour through November 2, 1990; not less than $3.65 an hour through March 31, 1991; and not less than $4.10 an hour thereafter.

(b) The rates for experienced workers in any one of the occupations shown in § 522.23(a) for which a 320-hour learning period is authorized, who are being restrained under the terms of a learner certificate in any other occupation shown in that paragraph having such a 320-hour maximum period, shall not be less than $3.20 an hour for the first 160 hours and not less than $3.25 an hour for...
the remaining 160 hours through November 2, 1990; not less than $3.65 an hour for the first 160 hours and not less than $3.70 an hour for the remaining 150 hours through March 31, 1991; and not less than $3.70 an hour for the first 160 hours and not less than $4.15 an hour for the remaining 160 hours thereafter.

(c) The rates for learners employed in the occupation of final inspection of assembled garments under § 522.23(b) shall be not less than $3.25 and hour during the authorized 160-hour learning period through November 2, 1990; not less than $3.70 an hour through November 2, 1990; not less than $3.70 an hour through March 31, 1991; and not less than $4.15 an hour during such authorized learning period thereafter.

(d) The rates for learners employed in any occupation, other than final inspection of assembled garments, for which a 160-hour learning period is authorized in § 522.23 (a) or (b) shall be not less than $3.20 an hour through November 2, 1990; not less than $3.20 an hour through November 2, 1990; not less than $3.65 an hour through March 31, 1991; and, not less than $4.10 an hour thereafter.

§ 522.35 [Amended]
3. In § 522.35, paragraph (a) is revised to read as follows:
(a) The special minimum rate which may be authorized in special certificates issued in the knitted wear industry shall be not less than $3.25 and hour through November 2, 1990; not less than $3.70 an hour through November 2, 1990; and, not less than $4.15 an hour thereafter.

§ 522.43 [Amended]
4. In § 522.43, paragraphs (a) and (d) are revised to read as follows:
(a) A person who has had no previous experience in any of the following occupations in the hosiery industry may be employed as a learner in any of the occupations for the maximum number of hours and at the special rates set out in paragraphs (a) (1) through (9) of this section.
(1) In the seamless branch, knitting (transfer top only) and looping, for 960 hours, at not less than $3.20 an hour for the first 480 hours and at not less than $3.275 an hour for the remaining 480 hours through November 2, 1990; not less than $3.65 an hour for the first 480 hours and not less than $3.725 for the remaining 480 hours through November 2, 1990; not less than $3.65 an hour for the first 360 hours and not less than $3.725 an hour for the remaining 360 hours through November 2, 1990; not less than $3.65 an hour for the first 360 hours and not less than $3.725 an hour for the remaining 360 hours through November 2, 1990; and, not less than $3.70 an hour through March 31, 1991; and, not less than $4.15 an hour thereafter.

(d) A worker who has had full training in any authorized learner occupation may be transferred to any other learner occupation for a period not to exceed one-half of the learning period authorized for the occupation at not less than $3.275 an hour in the无缝 branch and at not less than $3.325 an hour in the full-fashioned branch through November 2, 1990; at not less than $3.725 an hour in the seamless branch and at not less than $3.775 an hour in the full-fashioned branch through March 31, 1991; and, at not less than $4.175 an hour in the seamless branch and at not less than $4.225 an hour in the full-fashioned branch thereafter. A worker who has partial training in any authorized learner occupation may be transferred to any other learner occupation for either: (1) A period not to exceed one-half of the learning period authorized for that occupation, at not less than $3.275 an hour in the seamless branch and at not less than $3.325 an hour in the full-fashioned branch through November 2, 1990; at not less than $3.725 an hour in the seamless branch and at not less than $3.775 an hour in the full-fashioned branch through March 31, 1991; and, at not less than $4.175 an hour in the seamless branch and at not less than $4.225 an hour in the full-fashioned branch thereafter; or, (2) the balance of the number of hours permitted as a learning period for the occupation to which the learner is being transferred, at the applicable special minimum rates set in paragraph (a) of this section: Provided, however, That (i) no worker may be employed as a learner at learner rates in more than two authorized occupations; (ii) no worker who has completed the authorized learning period in the occupation of pairing may be employed as a learner at learner rates in the occupation of folding or inspection; and, (iii) no worker who has completed the authorized learning period may be employed as a learner at learner rates when transferring from the seamless branch of the hosiery industry to the full-fashioned branch or from the full-fashioned branch to the seamless branch, if the worker is employed in the same occupation as that in which the worker has been previously employed.

§ 522.65 [Amended]
5. In § 522.65, paragraph (a) is revised to read as follows:

(d) A worker who has had full training in any authorized learner occupation may be transferred to any other learner occupation for a period not to exceed one-half of the learning period authorized for the occupation at not less than $3.275 an hour in the seamless branch and at not less than $3.325 an hour in the full-fashioned branch through November 2, 1990; at not less than $3.725 an hour in the seamless branch and at not less than $3.775 an hour in the full-fashioned branch through March 31, 1991; and, at not less than $4.175 an hour thereafter.

* * * * *

§ 522.35 [Amended]
3. In § 522.35, paragraph (a) is revised to read as follows:
(a) The special minimum rate which may be authorized in special certificates issued in the knitted wear industry shall be not less than $3.25 and hour through November 2, 1990; not less than $3.70 an hour through November 2, 1990; not less than $3.70 an hour through March 31, 1991; and, not less than $4.10 an hour thereafter.

§ 522.43 [Amended]
4. In § 522.43, paragraphs (a) and (d) are revised to read as follows:
(a) A person who has had no previous experience in any of the following occupations in the hosiery industry may be employed as a learner in any of the occupations for the maximum number of hours and at the special rates set out in paragraphs (a) (1) through (9) of this section.
(1) In the seamless branch, knitting (transfer top only) and looping, for 960 hours, at not less than $3.20 an hour for the first 480 hours and at not less than $3.275 an hour for the remaining 480 hours through November 2, 1990; not less than $3.65 an hour for the first 480 hours and not less than $3.725 for the remaining 480 hours through November 2, 1990; not less than $3.65 an hour for the first 360 hours and not less than $3.725 an hour for the remaining 360 hours through November 2, 1990; not less than $3.65 an hour for the first 360 hours and not less than $3.725 an hour for the remaining 360 hours through November 2, 1990; and, not less than $3.70 an hour through March 31, 1991; and, not less than $4.15 an hour thereafter.

(d) A worker who has had full training in any authorized learner occupation may be transferred to any other learner occupation for a period not to exceed one-half of the learning period authorized for the occupation at not less than $3.275 an hour in the seamless branch and at not less than $3.325 an hour in the full-fashioned branch through November 2, 1990; at not less than $3.725 an hour in the seamless branch and at not less than $3.775 an hour in the full-fashioned branch through March 31, 1991; and, at not less than $4.175 an hour in the seamless branch and at not less than $4.225 an hour in the full-fashioned branch thereafter. A worker who has partial training in any authorized learner occupation may be transferred to any other learner occupation for either: (1) A period not to exceed one-half of the learning period authorized for that occupation, at not less than $3.275 an hour in the seamless branch and at not less than $3.325 an hour in the full-fashioned branch through November 2, 1990; at not less than $3.725 an hour in the seamless branch and at not less than $3.775 an hour in the full-fashioned branch through March 31, 1991; and, at not less than $4.175 an hour in the seamless branch and at not less than $4.225 an hour in the full-fashioned branch thereafter; or, (2) the balance of the number of hours permitted as a learning period for the occupation to which the learner is being transferred, at the applicable special minimum rates set in paragraph (a) of this section: Provided, however, That (i) no worker may be employed as a learner at learner rates in more than two authorized occupations; (ii) no worker who has completed the authorized learning period in the occupation of pairing may be employed as a learner at learner rates in the occupation of folding or inspection; and, (iii) no worker who has completed the authorized learning period may be employed as a learner at learner rates when transferring from the seamless branch of the hosiery industry to the full-fashioned branch or from the full-fashioned branch to the seamless branch, if the worker is employed in the same occupation as that in which the worker has been previously employed.

§ 522.65 [Amended]
5. In § 522.65, paragraph (a) is revised to read as follows:
The special minimum wage rates which may be authorized in special certificates issued in the glove industry shall be as follows: (1) In the leather glove, woven or knit fabric glove, and knitted glove branches of the industry, not less than $3.20 an hour for the first 320 hours and at not less than $3.30 an hour for the remaining 160 hours through November 2, 1990; at not less than $3.65 an hour for the first 320 hours and at not less than $3.75 an hour for the remaining 160 hours through March 31, 1991; and, at not less than $4.10 an hour for the first 320 hours and not less than $4.15 an hour for the remaining 160 hours.

§ 522.85 [Amended]
6. In § 522.85, paragraph (a) is revised to read as follows:
(a) The special minimum wage rates which may be authorized in special certificates issued in the cigar industry shall be as follows: (1) In the occupations of cigar machine operating and cigar packing, not less than $3.20 an hour through November 2, 1990; not less than $3.65 an hour through March 31, 1991; and, not less than $4.10 an hour thereafter.
(2) In the work glove branch of the industry, not less than $3.20 an hour for the first 320 hours and not less than $3.25 an hour for the remaining 160 hours through November 2, 1990; at not less than $3.65 an hour for the first 320 hours and not less than $3.70 an hour for the remaining 160 hours through March 31, 1991; and, at not less than $4.10 an hour for the first 320 hours and not less than $4.15 an hour for the remaining 160 hours.

§ 522.85 [Amended]
6. In § 522.85, paragraph (a) is revised to read as follows:
(a) The special minimum wage rates which may be authorized in special certificates issued in the cigar industry shall be as follows: (1) In the occupations of cigar machine operating and cigar packing, not less than $3.20 an hour through November 2, 1990; not less than $3.65 an hour through March 31, 1991; and, not less than $4.10 an hour thereafter. (2) In the occupations of hand rolling and hand bunch making, not less than $3.20 an hour for the first 480 hours and $3.275 an hour for the second 480 hours through November 2, 1990; at not less than $3.65 an hour for the first 480 hours and $3.725 an hour for the second 480 hours through March 31, 1991; and, not less than $4.10 an hour thereafter. (3) In the occupation of hand making Italian Stogies, not less than $3.20 an hour for the first 320 hours and $3.275 an hour for the second 320 hours through November 2, 1990; not less than $3.65 an hour for the first 320 hours and $3.725 an hour for the second 320 hours through March 31, 1991; and, not less than $4.10 an hour for the first 320 hours and $4.175 an hour for the second 320 hours thereafter. (4) In the occupations of hand stripping and machine stripping, not less than $3.20 an hour through November 2, 1990; not less than $3.65 an hour through March 31, 1991; and, not less than $4.10 an hour thereafter.
Environmental Protection Agency

40 CFR Parts 22 and 761
Polychlorinated Biphenyls; Criteria and Procedures for Terminating Storage and Disposal Approvals; Proposed Rule
ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 22 and 761

POLYCHLORINATED BIPHENYLS; CRITERIA AND PROCEDURES FOR TERMINATING STORAGE AND DISPOSAL APPROVALS

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing amendments to its storage and disposal rules for polychlorinated biphenyls (PCBs) (40 CFR part 761, subpart D). EPA is also proposing amendments to its Consolidated Rules of Practice at 40 CFR part 22, which govern the conduct of formal adjudicatory proceedings arising out of enforcement actions under the Toxic Substances Control Act (TSCA). This document proposes criteria and procedures that will govern the suspension and revocation of PCB storage and disposal approvals. These criteria and procedures are proposed under authority of section 6(e)(1) of TSCA, 15 U.S.C. 2605(e), which authorizes EPA to promulgate rules prescribing methods of disposal for PCBs.

DATES: Written comments must be received by December 17, 1990. If persons request time for oral comment, EPA will hold an informal hearing in Washington, DC, on January 8, 1991. The exact time and location of the hearing can be obtained by telephoning the Environmental Assistance Division at the telephone number listed under FOR FURTHER INFORMATION CONTACT. Written requests to participate in the informal hearing must be received by the Environmental Assistance Division or postmarked not later than December 17, 1990.

ADDRESSES: Submit written comments, in triplicate, marked with the document control number OPTS 62065, by mail to: TSCA Docket Office, (TS-799), Rm. NE-G004, Office of Toxic Substances, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Information submitted in any comment concerning this proposed rule may be claimed confidential by marking any part or all of that information as “Confidential Business Information” (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. EPA does not anticipate that any persons will need to submit CBI to comment effectively on this proposed rule. All written comments, except for those claimed confidential, will be available for public inspection and copying in Rm. NE-G004, at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.


SUPPLEMENTARY INFORMATION:

I. Authority

This proposed rule is issued under the authority of section 6(e)(1) of TSCA. Section 6(e)(1)(A) gives EPA the authority to promulgate rules prescribing the methods for disposal of PCBs (15 U.S.C. 2605(e)(1)(A)). Consistent with this authority, EPA has promulgated rules at 40 CFR 761.60 et seq. requiring persons who own or operate disposal facilities to obtain approvals from EPA. EPA has also published rules requiring commercial storers of PCB wastes to obtain approvals for their storage activities. (See 54 FR 52716, Dec. 21, 1989.) EPA now proposes procedures for suspending and revoking these approvals and the criteria that will trigger such actions.

II. Background

A. Purpose of this Proposed Rule

The purpose of this proposed rule is to set out criteria and procedures for suspending and revoking PCB storage and disposal approvals. For purposes of this proposed rule, suspension refers to the immediate shutting down of a facility's PCB operations when EPA determines that further operation of the facility may present an immediate risk. Revocation refers to final termination of a facility's approval to operate. A person whose approval has been revoked by EPA must reapply for an approval to recommence operations.

Current EPA rules require persons operating PCB disposal facilities to obtain an approval for such activity. These rules do not, however, prescribe when or how such approvals may be suspended or revoked. EPA has also published rules at [54 FR 52716] which require commercial storers of PCB wastes to obtain approvals.

The purpose of this proposed rule is to announce the basic criteria and procedures which EPA's regional and Headquarters permitting offices will use when suspending and revoking PCB approvals they issue. EPA may also establish conditions in specific approvals that describe when suspension and revocation will occur, so long as these more specific conditions fall within the basic criteria set forth in this proposed rule.

EPA is proposing standard procedures for suspending or revoking PCB storage and disposal approvals to ensure consistency and clarity nationwide. For purposes of this rulemaking, the terms "licenses", "permits", and "approvals" are equivalent. The procedural and substantive standards proposed for suspension and revocation of approvals provide adequate notice and an opportunity to respond to EPA's actions and therefore comply with the applicable constitutional and administrative requirements.

This proposed rule is not intended to limit EPA's discretion in suspending or revoking approvals. Furthermore, EPA reserves no obligation to suspend or revoke approvals. EPA retains complete discretion in choosing whether to exercise its authority within the bounds of this rule. This rule is not intended to restrict EPA's authority or discretion to take any other enforcement action under sections 6, 7, 16, or 17 of TSCA.

B. Statutory Authority

Section 6(e)(1) of TSCA confers broad authority upon the EPA to issue rules that prescribe the methods for disposal of PCBs. EPA first exercised this authority for PCBs by issuing PCB storage, marking, and disposal requirements in a rule published in the Federal Register of February 17, 1978 (43 FR 7150). This rule, "The Disposal and Marking Rule," was amended in part and recodified in a rule which EPA issued in the Federal Register of May 31, 1979 (44 FR 33542).

The existing PCB disposal rules at 40 CFR 761.60 et seq. prescribe specific disposal options for defined classes of

The existing PCB disposal rules at 40 CFR 761.60 et seq. prescribe specific disposal options for defined classes of
PCB wastes contaminated with PCBs at a level of 50 parts per million (ppm) or greater. The PCB wastes regulated for disposal under TSCA must generally be disposed of in facilities approved by EPA for the disposal of PCBs. Provisions in the PCB disposal rules describe the administrative process by which persons may obtain approvals for various types of PCB disposal processes, including high-temperature incinerators, high-efficiency boilers, chemical waste landfills, and alternative methods of disposal. The current rules, however, provide no specific guidance on suspending or revoking these approvals. Also, under TSCA section 6(e)(1), EPA has published rules which require commercial storers of PCB wastes to obtain approvals from EPA (54 FR 52716, December 21, 1989). These requirements became effective February 5, 1990, and the procedures and criteria proposed in this rule apply to the suspension and revocation of these approvals as well.

III. Discussion of This Proposed Rule

A. Overview

This document proposes criteria for making decisions to suspend and revoke PCB storage and disposal approvals. This proposal defines the standards for:

1. Commencement of revocation proceedings and issuance of revocation orders after notice to the affected facility and an opportunity to correct the violations.

2. Immediate commencement of revocation proceedings and issuance of revocation orders under 40 CFR part 22 without notice and opportunity to correct violations prior to initiation of revocation proceedings.

3. Suspensions preceded by a pre-suspension review.

4. Immediate suspensions followed by a post-suspension review.

The following diagram is provided as an interpretation of the regulatory procedures to assist the reader in understanding this rule. It is not a substitute for the rule itself. In the event that the text of the rule differs from the diagram, the text will govern. After this rule is promulgated, permitting authorities would determine on a case-by-case basis whether to suspend or revoke an approval using the standards in this proposal.
REVOCATION AND SUSPENSION PROCEDURES

1. Any TSCA violation
   Notice of Intent to Revoke and opportunity to abate
   no abatement
   Complaint for revocation (30 days to answer)
   no answer
   automatic revocation
   Part 22 hearing

2. Prior Unabated Violations
   Pattern of violations
   Material false statement
   Unreasonable risk to health or environment
   no answer
   automatic revocation
   Part 22 hearing

3. Immediate risk
   Notice of Proposed Suspension
   Complaint for Revocation plus Notice of Proposed Suspension or Notice of Immediate Suspension
   no request
   suspension
   pre-suspension review

   Notice of Immediate Suspension
   operations continue (19 days from service to request review)
   no request
   suspension (indefinite)
   post-suspension review

Note: This diagram is intended merely as an overview of the procedures contained in this proposed rule and does not include all procedural mechanisms provided for in the text. Where this diagram differs from the text of this proposal, the text will govern.
1. Revocation actions. Under these rules, EPA would formally commence revocation proceedings by filing a Complaint for Revocation under 40 CFR part 22. The filing of such a complaint initiates the formal administrative process which may conclude with a final Agency decision to revoke a PCB storage or disposal approval. In the typical revocation action (see Unit III.B.1. of this preamble), EPA would provide the owner or operator of the facility with a written Notice of Intent to Revoke prior to commencing the formal revocation proceedings. The Notice of Intent to Revoke would include a written warning notice (with subsequent opportunity to demonstrate or achieve compliance) prior to the initiation of proceedings to revoke an approval. In exceptional circumstances, EPA would dispense with the Notice of Intent to Revoke and immediately file a Complaint for Revocation (see Unit III.B.2. of this preamble). When a revocation proceeding is commenced, the operations of the facility would not be curtailed, unless there is a concern for immediate risks, until after EPA has made a final decision on the record to revoke the facility’s approval.

2. Suspension actions. There may be situations where the continued operation of the facility during the revocation process may pose an immediate risk to health or the environment. In such cases, EPA may take immediate action to terminate a facility’s operations pending the conduct of the formal revocation proceedings. The circumstances under which EPA would take action to quickly shut down a facility’s operations are described in Unit III.C.1. of this preamble, which discusses the “immediate risks” which justify the suspension of operations. The suspension proceedings action would typically be used to supplement formal revocation procedures in those cases where, due to the imminence of the risk to health or the environment, the facility’s operations should not be allowed to continue pending the resolution of the formal hearing process pursuant to 40 CFR part 22.

B. Criteria for Revoking Approvals

EPA will initiate action to revoke PCB storage and disposal approvals when it has reason to believe that the permitted facility should no longer be in the business of storing or disposing of PCBs. EPA may reach this preliminary conclusion because of violations of TSCA or the PCB rules by the permitted party, violations of approval conditions, or other conditions at the facility which pose unreasonable risks, or material misrepresentations of fact in an application for approval. In most situations, EPA’s action to initiate revocation will be preceded by a warning notice and an opportunity to come into compliance. In other situations this will not be the case.

1. Violations justifying commencement of revocation proceedings following warning notice. EPA proposes that it have the option of issuing a Notice of Intent To Revoke prior to commencing revocation proceedings for any violation of TSCA, requirements of 40 CFR part 761, or an approval issued under the TSCA. EPA believes that persons who violate applicable requirements, or who are technically incapable of meeting those requirements, are not entitled to the privilege of operating a facility with an EPA approval. The notice would apprise the affected party of the intent to revoke and the violations that are the basis for the action. The permitted would then have an opportunity to remedy the violations prior to issuance of a complaint.

2. Expedited commencement of revocation proceedings under 40 CFR part 22. In certain cases, EPA proposes to commence revocation proceedings without giving advance notice to the affected facility or providing an opportunity for the facility to correct violations of the applicable requirements. EPA intends to use those expedited revocation procedures in cases where there are unabated violations, a material false statement in an application for approval, a pattern of violations, or other conditions at the facility that pose an unreasonable risk to health or the environment. In each case, the cited conduct is attended by an element of willfulness or an unreasonable risk to health or the environment, which justifies dispensing with a prior written warning. In these cases, the subsequent abatement of the violation need not cause EPA to withdraw a Complaint for Revocation, or prevent EPA from ultimately revoking the approval. Absent grounds for a suspension (Unit III.C. of this preamble), the facility may continue operating during the course of the revocation proceeding.

a. Prior unabated violations. A permittee who has previously received a Notice of Intent To Revoke and has failed to remedy the violations within the time allotted in the notice is presumed to be willfully violating the applicable requirements. Therefore, EPA may commence revocation proceedings under 40 CFR part 22 when the deadline in the notice for abatement of the violation has passed. A second warning is not required. In some cases, an unabated violation at a facility could also result in a situation that requires immediate action. For example, a facility which is storing wastes beyond the period authorized in the rules or continues to accept additional wastes for disposal without correcting the violation may constitute an immediate risk justifying issuance of a Notice of Proposed Suspension or a Notice of Immediate Suspension.

b. Material false statements. EPA proposes to commence a revocation proceeding under 40 CFR part 22 without advance notice when it finds that a permittee made a material false statement in the application for an approval. A false statement will be deemed material under the proposed rule if, for example, a truthful version of that statement would have warranted a denial of the original approval application. Making a material false statement in one’s application for approval is presumed to be a willful violation justifying issuance of a Complaint for Revocation without prior notice. In some cases, EPA may also find that a material misrepresentation is so serious that it results in an immediate risk to health or the environment, justifying issuance of a Notice of Proposed Suspension or a Notice of Immediate Suspension.

c. Pattern of violations. The proposed rule provides that when a pattern of violations is caused by the failure of the permittee to comply with applicable requirements, EPA may immediately commence revocation proceedings, without providing advance notice and an opportunity to correct the violations. When such a pattern exists, EPA will presume that the violations are willful.

The rule proposes that EPA may determine that a pattern of violations exists or has existed after considering the total circumstances, which include, but are not limited to, the citation on three or more occasions of violations of any requirement of TSCA, any requirements of part 761, or any approval conditions. At least one of these cited violations must be of a requirement in part 761. EPA may also consider any other evidence of a pattern of violations.

Examples of situations in which EPA may find a pattern of violations constituting grounds for immediate commencement of revocation proceedings under 40 CFR part 22
include, but are not limited to the following:

1. EPA performs several inspections of a facility holding a storage and disposal approval. On each inspection, EPA determines that the facility is storing wastes in excess of the 1-year limit. EPA may find a pattern of violations and proceed to revoke the approval under 40 CFR part 22, without issuing a prior warning.

2. EPA inspects a permitted TSCA landfill and finds that it is failing to monitor its leachate collection system. On the next inspection of the facility, EPA finds that the fence that is required to surround the facility has fallen down so that persons and animals have easy access to the facility. On the third inspection, the inspector discovers a worker placing ignitable wastes in the landfill. EPA may find a pattern of violations and proceed to revoke the approval under 40 CFR part 22.

3. A mobile incinerator fails on several different occasions to provide notice of commencement of operations as required by the terms of its approval. EPA may find a pattern of violations and proceed to revoke the approval under 40 CFR part 22.

In cases where the pattern of violations also constitutes an immediate risk, EPA may also issue a Notice of Proposed Suspension or a Notice of Immediate Suspension as appropriate; see the discussion at Unit III.D.3.a. and b. of this preamble.

d. Unreasonable risk to health or the environment. If EPA determines that the continued operation of a facility may pose an unreasonable risk to health or the environment, EPA may commence proceedings to revoke the approval without first conducting a 40 CFR part 22 hearing in cases in which an "immediate risk" exists. The rule proposes two mechanisms for such a suspension: the Notice of Proposed Suspension and the Notice of Immediate Suspension. In both cases an immediate risk must be present. The meaning of immediate risk is discussed in Unit III.C.1. of this preamble. The Notice of Proposed Suspension would provide a prompt, informed opportunity for the permittee to challenge the suspension prior to its taking effect. It may be issued when the injury caused by the risk is unlikely to occur before a pre-suspension review of the suspension is held. The Notice of Immediate Suspension would provide an opportunity to contest the suspension only after the suspension takes effect, but within 30 days of issuance of the suspension, and would be issued if the injury is likely to occur before a pre-suspension review can be held.

1. Immediate risk defined. EPA is proposing to suspend a facility's approval without first conducting a formal hearing in cases in which an "immediate risk" exists. "Immediate risk" is defined as any situation posed by any condition, practice, or violation of TSCA, or its regulations, or a condition of an approval issued under TSCA, which the Administrator determines presents a risk to health or the environment that is not likely to be adequately abated before the completion of revocation of the approval under 40 CFR parts 22 and 761.

The Agency will only seek suspension where a Complaint for Revocation has been, or is being simultaneously issued. A complaint for revocation will only be issued if one or more of the criteria in § 761.107 are met. Each of those criteria presupposes the existence of an unreasonable risk to health or the environment. Moreover, a suspension will be sought only where the risk to health or the environment is not likely to be adequately abated before the completion of the revocation proceedings.

2. Examples of immediate risk. Because there are countless combinations of circumstances which may constitute action and initial action, this term is defined broadly in this proposed rule. EPA provides the following examples to demonstrate, but not exhaust, the types of situations in which it may find an immediate risk:

a. A facility holds an EPA approval to store and dispose of PCB wastes. The facility accumulates large amounts of wastes and stores them in excess of the 1-year regulatory limit on storage. In addition, the facility continues to accept and store wastes from its customers in excess of its disposal capacity. EPA may find an immediate risk in such a case.

b. An inspector discovers that a facility is accepting and disposing of wastes which substantially exceed the maximum concentration of PCBs authorized in its approval. EPA may find an immediate risk in such a case.

c. An inspector finds that a facility is failing to properly dispose of wastes generated during disposal, for example, by dumping the wastes in a ditch behind the facility. EPA may find an immediate risk in such a case.

d. A facility submits as part of its approval application an impossible specifications regarding protective clothing for workers and a list of safety measures to be observed by workers in particular parts of the facility. An inspector finds a written notice posted by management at the site stating that employees can disregard certain of these requirements. The inspector determines that the employees are indeed disregarding these requirements. EPA may find an immediate risk in each case.

The above examples are by no means a complete list of cases in which EPA may find an immediate risk. They are merely illustrative of conditions and circumstances which could justify issuance of a Notice of Proposed Suspension or a Notice of Immediate Suspension based on a finding of immediate risk.

D. Discussion of Procedural Requirements

1. Procedures for revocation—in general. Many types of violations of the applicable requirements may cause EPA to initiate revocation proceedings against a permittee. In certain cases, there will be no "immediate risk" justifying issuance of a Notice of Proposed Suspension or a Notice of Immediate Suspension. Nor will there be grounds for immediate commencement of revocation proceedings. In such instances, the following procedures are proposed to govern the revocation

The proposed requirement that EPA state the remedial action required to abate the violation in the Notice of Intent To Revoke is intended to give notice to the permittee of the conditions which must be met before EPA would find that compliance has been achieved. EPA would not be required to prescribe specific actions the permittee must take to correct the violation. EPA need only set out the standard it will use to determine whether compliance has been achieved. A citation of the applicable regulations would fulfill this requirement.

iii. Termination of the notice where violations are remedied. To give the permittee a chance to prevent any revocation action by remedying the violation, this proposal provides that EPA would be required to withdraw a Notice of Intent To Revoke if in writing to the permittee when EPA determines that all violations listed in the Notice of Intent To Revoke have been abated. Issuance or withdrawal of this notice would not affect EPA's right to assess penalties or remedies for the violations described in this notice, or to commence revocation proceedings for violations not listed in the Notice of Intent To Revoke.

This proposal provides that EPA extend the time set for abatement if the failure to meet the time previously set was not caused by lack of diligence on the part of the permittee and the violation does not present an unreasonable risk of injury to health or the environment. Any such extension would be in writing.

The total time for abatement, including all extensions, would not exceed 90 days, unless the permittee can make a good faith showing that it is not feasible to abate the violation, using best efforts, within 90 days for reasons not within the permittee's control.

iv. Reservation of right to issue Notice of Proposed Suspension or Notice of Immediate Suspension. Circumstances which initially warrant issuance of a Notice of Intent To Revoke may worsen where violation is unabated. In such a case, EPA may wish to exercise its power to issue a Notice of Proposed Suspension or a Notice of Immediate Suspension. Therefore, this proposal provides that issuance of a Notice of Intent To Revoke would not limit EPA's right to issue a Notice of Immediate Suspension or Notice of Proposed Suspension, where the criteria for suspension are also satisfied.

b. Revocation under 40 CFR part 22 when violation is unabated. To ensure that the threat posed by the violation in question is remedied promptly, the proposed rule would set a limit on the time the permittee has to achieve compliance. This proposal provides that the total time for remedying the violations would not exceed 90 days, unless the facility can make a good faith showing that it is not feasible to meet this deadline, using best efforts, for reasons not within its control. Therefore, this proposal provides that when a Notice of Intent To Revoke has been issued and the affected facility fails to abate the violation within the abatement period fixed or subsequently extended by EPA, EPA could commence revocation proceedings under proposed subpart F (40 CFR part 761 subpart F) and part 22.

2. Procedures for revocation without advance notice to the permittee. Where a violation is willful or where a violation, practice, or condition of the permittee constitutes an unreasonable risk to public health or the environment, EPA would immediately commence a revocation proceeding by issuing a Complaint for Revocation under 40 CFR part 22, without providing the permittee with Notice of Intent To Revoke or an opportunity to correct the violation. Grounds for immediate commencement of revocation under 40 CFR part 22 are proposed in § 761.107.

Because EPA has already promulgated formal hearing procedures for assessment of civil penalties under TSCA at 40 CFR part 22, EPA has decided it would be appropriate to use these procedures for revocation proceedings as well. To make these procedures applicable to PCB approval revocations, the proposal would amend the part 22 revocation procedures as discussed later in this Unit.

a. Issuance of Complaint for Revocation. The proposed rule would amend part 22 by specifying the required contents of a Complaint for Revocation. The rule also would amend part 22 to add to the definition of "permit" an approval for PCB storage or disposal issued under section 6(e) of the TSCA. The proposal provides that such a Complaint for Revocation would be in writing, would be signed by the Administrator or a designee, and would set forth with reasonable specificity:

i. The nature of the violation or condition that is the basis for revoking the approval.

ii. A reasonable description of the portion of the facility's operation to which revocation applies.

iii. A warning that if the permittee fails to answer the Complaint for Revocation under this section within 30 days after receipt of the Complaint for Revocation, the approval shall be automatically revoked.
iv. Any provisions deemed necessary by EPA to govern the termination of activities under the approval.

b. Revocation where permittee fails to answer. The proposed rule would provide that unless a Complaint for Revocation is withdrawn by EPA, EPA would automatically revoke the approval 30 days after service of the Complaint for Revocation unless the permittee files an answer in a timely manner to the Complaint for Revocation. In such a case the proposal would require the permittee to comply with the provisions for termination of activities under the approval described in the Complaint for Revocation.

c. Withdrawal of Complaint for Revocation. EPA wishes to preserve its flexibility in negotiating a settlement with a facility which would allow the facility to remain in business once EPA has initiated a revocation action. The proposal thus provides that EPA may withdraw the complaint, or any part thereof, without prejudice one time before the answer has been filed. After one withdrawal before the filing of an answer, or after the filing of an answer, EPA may withdraw the complaint, or any part thereof, only upon motion granted by the judicial officer. In addition, if the violation or condition that is the basis for the Complaint for Revocation was not caused by lack of diligence on the part of the permittee, and the violation or condition could be mitigated through the imposition of modified approval conditions, EPA may, without prejudice and without consent of the judicial officer, issue a modified approval to require the permittee to take action to mitigate any unreasonable risk caused by the violation, condition, or practice. The modified approval may contain terms and conditions as determined by EPA to be necessary to ensure that the facility’s operations will not pose an unreasonable risk of injury to health or the environment. The Complaint for Revocation would be withdrawn by written notice to the permittee. Termination of the Complaint for Revocation would not affect EPA’s right to assess penalties or remedies for the violations in question.

EPA’s policy is to publicize enforcement actions. EPA would therefore publicize actions to revoke an approval at the time EPA issues a Complaint for Revocation. However, there is no requirement in the rule that EPA publicize revocation actions.

3. Procedures where an immediate risk justifies suspension prior to a formal hearing—a. Notice of Proposed Suspension. i. Issued only in conjunction with Complaint for Revocation. A situation serious enough to warrant suspension of operations under an approval (because an immediate risk is posed) will also warrant revocation of the approval. Therefore, the proposal requires that a Notice of Proposed Suspension would only be issued together with or after a Complaint for Revocation under proposed §§ 761.108 and 22.33. The revocation and suspension actions would proceed concurrently.

ii. Service of the notice. The proposed requirements for service are the same as those for a Notice of Intent To Revoke.

iii. Content of the notice. Because a Notice of Proposed Suspension would only be issued in cases involving immediate risks, it is particularly important that the notice require that the permittee remedy the violation to avoid an immediate risk to health or the environment. Therefore, the proposal provides that the Notice of Proposed Suspension be in writing, be signed by the Administrator or a designee, and set forth with reasonable specificity:

(1) The nature of the condition, practice, or violation that has caused the immediate risk.

(2) A reasonable description of the portion of the facility’s operation to which it applies.

(3) The remedial actions or affirmative obligations required for abatement of the immediate risk and actions to be taken to avoid the suspension.

(4) The schedule established for abatement of the immediate risk.

(5) Any steps which EPA deems necessary to secure the facility from any hazards which might arise during the period of cessation of operations, including steps necessary to close the facility or affected portion of operations, if closure requirements are not included in the facility’s approval.

(6) A statement that if the permittee requests a pre-suspension hearing in writing within 19 days after service of the Notice of Proposed Suspension, a representative of the appropriate EPA Office will conduct an expedited hearing under proposed § 761.112 solely on the question of whether an immediate risk exists. The statement would also state that if the permittee fails to submit a written request for review of the suspension within 19 days after service of the notice, the approval would be automatically suspended. The statement would also provide the name and address of the EPA official to contact to request review of the suspension.

The proposed requirement that EPA state the remedial action required to abate the violation in the Notice of Proposed Suspension is intended to give notice to the permittee of the conditions which must be met before EPA will find that compliance has been achieved. EPA would not be required to prescribe specific actions the permittee must take to correct the condition or violation. EPA need only set out the standard it will use to determine whether compliance has been achieved. A citation of the applicable regulations would fulfill this requirement.

iv. Suspension if no request for pre-suspension review. The proposal provides that unless the Notice of Proposed Suspension is terminated by the Administrator, the approval would be suspended automatically 20 days after service of the Notice of Proposed Suspension unless the permittee requests a pre-suspension review within 19 days after service of the Notice of Proposed Suspension. The proposal would require that the permittee comply with the provisions for suspension of activities described in the Notice of Proposed Suspension.

v. Termination of the notice. EPA may modify or terminate a Notice of Proposed Suspension by written notice to the permittee upon a determination that any or all conditions, practices, or violations listed in the Notice have been abated. Termination would not affect EPA’s right to revoke the approval and/or assess penalties or remedies for the conditions, practices, or violations in question.

vi. Pre-suspension review—(1) Scope of review. Because the pre-suspension review is intended to be an opportunity for the permittee to challenge the suspension, and not the ultimate revocation of the approval, the proposal provides that the scope of review of a Notice of Proposed Suspension would be limited to whether the criteria for suspension are met.

(2) Timeframe and location. The proposal provides that the appropriate EPA Office will give notice of the time, place and subject matter of the pre-suspension review to the permittee within 7 days of receipt of a request for such review. The pre-suspension review can be held either in the county where the permittee resides or conducts business which the hearing concerns, in a city where the relevant EPA Regional Office is located, or in Washington, DC. Upon a showing of good cause, the location can be changed to any other situs, to a site reasonably close to the facility if there is a need for a site visit to resolve any issues raised.

(3) Conduct of the review. If a hearing is conducted, it will not be a formal hearing under section 554 of Title 5 of the United States Code (5 U.S.C. 554). The proposal provides that the pre-suspension review would be conducted...
by a representative of the appropriate EPA Office. To ensure that the person presiding at the review is unbiased, the representative conducting the pre-suspension review would not be the individual who issued the Notice of Proposed Suspension and Complaint for Revocation. Oral or written comments and arguments may be presented at the hearing and will be included in the written record of the proceeding. A written transcript of the proceedings will be taken. Any written evidence EPA uses to support the suspension, along with any written evidence the permittee uses to defend against issuance of a suspension would be included in the record of the proceeding. A hearing and will be included in the written transcript of the proceedings. A written record of the proceeding. A hearing and will be included in the written record of the proceeding. A hearing and will be included in the

(4) Decision. The proposal provides that within 10 days after completion of the pre-suspension review, the appropriate EPA Office who conducted the review would render a written decision. If the appropriate EPA Office decides to issue a suspension, the decision would state the basis for this decision and would require termination of operations. The decision would be sent to:

(a) The permittee.
(b) The Administrator.
(c) Any State or local regulatory authority having jurisdiction over the affected facility.

(5) Effect of suspension. The proposal provides that if a suspension is issued, it would remain in effect pending completion of the revocation proceeding or until the immediate risk which resulted in the issuance of the suspension has been abated to the satisfaction of EPA as communicated to the permittee in writing.

(6) Waiver by the permittee of the pre-suspension review—(a) What constitutes waiver. The proposal provides that if the permittee fails to appear at the pre-suspension review and the Notice of Proposed Suspension was properly served, the permittee would be deemed to have waived the right to a hearing.

(b) Effect of waiver. The proposal provides that if the pre-suspension review is waived the suspension would automatically take effect. The suspension and revocation of the approval are two distinct actions. Therefore, the proposal provides that granting or waiver of the pre-suspension review would not affect the right of a permittee to a formal adjudication under 40 CFR part 22 with respect to a Complaint for Revocation. There are two exceptions to this provision:

(i) The permittee to whom the Notice of Proposed Suspension and Complaint for Revocation were issued could respond by submitting a signed and notarized statement to EPA waiving all rights to review of the Notice of Proposed Suspension and a hearing on the Complaint for Revocation, and consenting to the revocation of the facility’s approval, including compliance with conditions for the closure of the facility’s operations (or affected portion) as deemed necessary by EPA to close and secure the facility and abate any immediate health or environmental risks posed by the facility’s operations. The effect of such a statement would be a final revocation of the approval, except as permitted under the terms of the closure approval.

(ii) The permittee to whom the Notice of Proposed Suspension was issued could also respond to the notice by submitting to EPA a signed and notarized statement waiving all rights to review of the notice, and consenting to the indefinite suspension of the facility’s approval. The effect of such a statement would be to extend the term of the suspension indefinitely, pending a final decision on revocation.

(iii) Effect of failure to comply with the terms of the suspension. The proposal provides that failure to comply with the terms of any suspension would, under section 15(1) of TSCA, constitute a “prohibited act” since it would violate a rule promulgated under section 6(e) of TSCA. This would render the violator subject to actions under sections 16 and 17 of TSCA. In addition, if failure to comply with the suspension constitutes an imminent hazard under section 7 of TSCA, the violator could be subject to sanctions authorized by that section, including, but not limited to, injunctions and seizure.

b. Notice of Immediate Suspension—(i) Issued only in conjunction with a Complaint for Revocation. A Notice of Immediate Suspension could only be issued with or after a Complaint for Revocation under §§ 761.108 and 22.33. The suspension and revocation actions would proceed concurrently.

(ii) Service of the notice. Under the proposal, the same service requirements would apply to a Notice of Immediate Suspension and a Notice of Intent To Revoke.

(iii) Content of the notice. As in the case of a Notice of Proposed Suspension, a Notice of Immediate Suspension could only be issued in cases involving immediate risk to health or the environment. Again, it is important that the notice require that the permittee remedy the violation to avoid any immediate risks to health or the environment. The proposal, therefore, provides that a Notice of Immediate Suspension be in writing, be signed by the Administrator or a designee, and set forth with reasonable specificity:

(1) The nature of the condition, practice, or violation that has caused the immediate risk.

(2) A reasonable description of the portion of the facility’s operation to which the suspension applies.

(3) The remedial actions or affirmative obligations required for abatement of the immediate risk and actions to be taken to comply with the suspension.

(4) The time established for abatement of the immediate risk and actions to be taken to comply with the suspension.

(5) Any steps which EPA deems necessary to secure the facility from any hazards which might arise during the period of cessation of operations, including steps necessary to bring about the closure of the facility or affected portion of operations, where appropriate, if closure requirements are not included in the facility’s approval.

(6) A statement that if the permittee requests a post-suspension review in writing within 10 days after service of the Notice of Immediate Suspension, a representative of the appropriate EPA Office would conduct an expedited review solely on the question of whether an immediate risk exists. The statement would also advise that, if the permittee fails to submit a written request for review of the suspension within 19 days after service of the notice, the permittee would be deemed to have waived any right to review the suspension, and that the suspension would remain in effect pending revocation or withdrawal of the notice by EPA. The statement would also provide the name and address of the appropriate EPA official to contact to request the post-suspension review.

As in the case of the Notice of Proposed Suspension, the proposed requirement that EPA state the remedial action required to abate the violation in the Notice of Immediate Suspension is intended to give notice to the permittee of the conditions which must be met before EPA will find that compliance has been achieved. EPA would not be required to prescribe specific actions the permittee must take to correct the condition or violation. EPA need only set out the standard it will use to determine whether compliance has been achieved. A citation of the applicable regulations would fulfill this requirement.

iv. Effect of the notice—(1) Effective immediately. Under the proposal, a Notice of Immediate Suspension would be effective immediately upon service of the permittee. That is, all operations
affected by the notice must cease immediately. The immediate suspension may nevertheless warrant assessment of penalties or permanent revocation of the approval.

Thus, the proposal provides that the expiration of the Notice of Immediate Suspension would not affect a Complaint for Revocation or a complaint to assess penalties or remedies with respect to the violations, conditions, or practices cited in the notice.

vi. Post-suspension review—(1) No review if abatement or waiver. When the immediate risk which lead to the suspension is abated to EPA's satisfaction, and the suspension notice is terminated in writing, operations could resume. Therefore, under the proposal, a post-suspension review need not be held in such a case. Similarly, if the permittee waives the right to a post-suspension review, there would be no review.

(2) Scope of the review. The proposal provides that the post-suspension review of a Notice of Immediate Suspension would be limited to consideration of whether the criteria for suspension are met. Revocation proceedings are the proper forum to address all other issues regarding the approval.

(3) Timeframe and location. A hearing would be held after immediate suspension of a license or approval to review promptly the correctness of the suspension. The proposal requires that within 7 days of receipt of a request for a post-suspension review, the appropriate EPA Office would give notice of the time, place, and subject matter of the post-suspension review to the permittee. The post-suspension review can be held either in the county where the permittee resides or conducts business which the hearing concerns, in the city where the relevant EPA Regional Office is located, or in Washington, DC. Upon a showing of good cause the location can be changed to any other site, or to a site reasonably close to the facility if there is a need for a site visit to resolve any issues raised by the post-suspension review.

(4) Conduct of the review. The purpose of the post-suspension review is to provide a meaningful opportunity for the permittee to present its case to EPA promptly after the suspension takes effect, and thus reduce the chance that EPA will act without considering all the relevant facts and circumstances. There is no requirement that this proceeding be a formal hearing governed by APA requirements, since the affected party will have the opportunity to challenge the revocation of the approval in a formal hearing. Therefore, the proposal provides that section 554 of Title 5 of the United States Code (5 U.S.C. 554), regarding the requirements for formal adjudatory hearings, would not govern post-suspension reviews. The post-suspension review would be conducted by a representative of the appropriate EPA Office, who could accept oral or written arguments and any other relevant information from any person attending. To ensure fairness in the review, the proposal provides that the representative conducting the post-suspension review would not be the individual who issued the Notice of Immediate Suspension and Complaint for Revocation.

(5) Decision. The proposal provides that within 10 days after the close of the post-suspension review, the appropriate EPA Office who conducted the post-suspension review would affirm or vacate the Notice of Immediate Suspension in writing.

If the appropriate EPA Office who conducted the post-suspension review affirms the suspension, or affirms the suspension with modifications, the written decision would state briefly the basis for the decision. The decision would be sent to:

(a) The permittee.
(b) The Administrator.
(c) Any State or local regulatory authority having jurisdiction over the affected facility.

If the suspension is affirmed, the suspension would remain in effect pending completion of the revocation proceeding or until the immediate risk which resulted in the issuance of the suspension has been abated to the satisfaction of EPA as communicated to the permittee in writing.

If the representative who conducted the post-suspension review vacates the suspension, the written decision would state briefly the basis for the decision. The decision would state that the operations affected by the Notice of Immediate Suspension may resume immediately. The vacating of the suspension would not affect the revocation proceedings already underway.

(6) Waiver of post-suspension review—(a) What constitutes a waiver. The proposal provides that if a permittee fails to submit a written request for review of a suspension within 19 days after receipt of the Notice of Immediate Suspension, this would constitute waiver of any right to review of the suspension. In such a case, the suspension shall remain in effect pending revocation, or withdrawal of the notice by EPA.

(b) Effect of waiver. Because the suspension and revocation actions would be separate proceedings, the
granting or waiver of the post-
suspension review would not affect the
right of a violator to request formal
adjudication under 40 CFR part 22 with
respect to a Complaint for Revocation
with two exceptions as follows:
(i) The permittee to whom the Notice
of Immediate Suspension and Complaint
for Revocation were issued could submit
to EPA a signed and notarized statement
waiving all rights to review of the notice
and a hearing on the Complaint for
Revocation, and consenting to the
revocation of the facility’s approval.
Such waiver includes compliance with
all conditions for the closure of the
facility’s operations (or affected portion)
before suspending the facility and abate any
hazards posed by the facility’s previous
operations. The effect of such a statement
would be a final revocation of
the approval, except as permitted under
the terms of the closure approval.
(ii) The permittee to whom the Notice
of Immediate Suspension and Complaint
for Revocation were issued could respond by submitting to EPA a signed
and notarized statement waiving all
right to review of the notice and a
hearing on the Complaint for Revocation and consenting to the
indefinite suspension of the facility’s approval.
The effect of such a statement would be
to extend the term of the suspension
indefinitely, pending a final decision on
revocation, or withdrawal of the notice
of suspension by EPA.

(c) Effect of failure to comply with the
Notice of Immediate Suspension. Under
the proposal, failure to comply with the
terms of the Notice of Immediate
Suspension would be a violation of
TSCA section 15(1) as it would violate a rule under section 8(e) of TSCA. The
violator would be subject to the
appropriate sanctions under TSCA
sections 16 and 17. In addition, if failure
to comply with the suspension
constitutes an imminent hazard under section 7 of TSCA, the violator could
be subject to actions authorized by that
section, including, but not limited to,
injunctions and seizure.

4. Alternative procedures for
revocation proceedings. As an
alternative to using 40 CFR part 22 for
permit revocation procedures, which are
outlined in Unit III.D.1. and 2. of this
preamble, EPA is proposing two
additional procedures. EPA invites
comments on which of the three
proposed procedures is best suited for
permit revocation proceedings.
Following review of the comments
received, EPA will choose the
procedure it deems most appropriate.

a. Modified part 22 Procedure. The
first alternative procedure proposed to
revoke a permit is a modified part 22
hearing. Section 22.33 contains
supplemental rules of practice which
alter part 22 hearing procedures for
TSCA civil penalty assessments. For
the purpose of a permit revocation
proceeding, § 22.33 would be amended
to allow:

i. The Presiding Officer to be an
attorney who is an employee or
authorized representative of EPA, and
who has had no prior connection with
the case, including the performance of
any investigatory or prosecutorial
function.

ii. The Presiding Officer to schedule
any prehearing conference, pursuant to
§ 22.19(a), on a date not later than 21
days after the answer is filed.

iii. The parties to file any exchange of
witness lists and documents, pursuant to
§ 22.19(b), not later than 21 days after
the answer is filed.

iv. The Presiding Officer to schedule
any hearing, pursuant to § 22.21(b), on a
date not later than 45 days after the
answer is filed.

v. The Presiding Officer to issue and
file the initial decision, pursuant to
§ 22.27(a), within 30 days after the
period for filing reply briefs under
§ 22.26 has expired.

vi. The Administrator to issue a final
order on appeal, pursuant to § 22.31(a)
within 30 days after the filing of all
appellate briefs or oral argument,
whichever is later.

b. Using proposed suspension
procedures to revoke an approval. The
second alternative to using part 22
procedures in approval revocation
proceedings is to use the same procedures
now proposed for approval suspension
proceedings, which are outlined in Unit
III.D.3. of this preamble.

The three proposed revocation
procedures offer different mixes of
procedural requirements. The
“suspension procedure” option would
allow EPA to revoke an approval using a
relatively streamlined hearing process.
The “part 22 hearing” option would
require that all current part 22
procedural requirements be met before
an approval could be revoked. Finally,
the modified part 22 option would
amend current part 22 procedures with
respect to certain time limits and by
eliminating the requirement that the
presiding officer be an Administrative
Law Judge. If the modified part 22
procedures are adopted, EPA would
retain the option of using full part 22
procedures in circumstances where,
upon EPA’s discretion, permit
revocation and civil penalty actions are
brought at the same time.

IV. Official Rulemaking Record

EPA has not identified any documents
used in this rulemaking to include in the
official record. However, EPA is in the
process of establishing a rulemaking
record, and all public comments will be
included in the rulemaking record which
can be viewed in Rm. NE G004 at the
times and location stated earlier in this
proposal.

V. Other Regulatory Requirements

A. Executive Order 12291

Under Executive Order 12291, issued
February 17, 1981, EPA must judge
whether a rule is a “major rule” and,
therefore, subject to the requirement
that a Regulatory Impact Analysis be
prepared.

EPA has determined that this rule is
not a major rule as defined in section
1(b) of the Executive Order. The
proposed rule would not effect the
economy, because it imposes no
additional obligations upon the
regulated community. The purpose of
this rule is to clarify the circumstances
in which EPA may suspend or revoke
PCB approvals, and to set out
procedures by which this may be done.
EPA has authority to suspend or revoke
the approvals it issues even in the
absence of such a rule. Therefore, the
rule would have no economic
consequences and is not a major rule
under the Executive Order. A regulatory
impact analysis is therefore not
required. This rule was submitted to the
Office of Management and Budget
(OMB) under Executive Order 12291 for
review.

B. Regulatory Flexibility Act

Under section 605(b) of the Regulatory
Flexibility Act, 5 U.S.C. 605(b), EPA may
certify that a rule will not, if
promulgated, have a significant impact
on a substantial number of small entities
and, therefore, does not require a
regulatory flexibility analysis.

The effect of this rule, if promulgated,
will be to make public the criteria upon
which EPA will base its decisions to
suspend or revoke PCB disposal and
storage approvals, as well as the
procedures EPA will use to suspend or
revoke these approvals. Because EPA
already has authority to suspend and
revoke the approvals it issues, this rule
has no impact on small entities.

I certify that this proposed rule, if
promulgated, will not have a significant
economic impact on a substantial
number of small entities.
C. Paperwork Reduction Act

The Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq. authorizes the Director of the Office of Management and Budget (OMB) to review certain information collection requests by Federal agencies. There are no requirements in this rule that qualify as a “collection of information” as defined in 44 U.S.C. 3502(4).

List of Subjects in 40 CFR Parts 22 and 761

Administrative practice and procedure, Environmental protection, Hazardous chemicals, Hazardous substances, Hazardous waste, Labeling, Penalties, Polychlorinated biphenyls (PCBs), Reporting and recordkeeping requirements, Superfund.


William K. Reilly,
Administrator.

Therefore, 40 CFR chapter I is proposed to be amended as follows:

1. In part 22:

PART 22—[AMENDED]

a. By revising the authority for part 22 to read as follows:

Authority: 7 U.S.C. 136(l) and (m); 15 U.S.C. 2605, 2615, 33 U.S.C. 1361, 1319, 1415, and 1418; 42 U.S.C. 6901, 6928, 6901(e), 6992(d), 7548 and 7501 9609, and 10045.

b. In § 22.01 by revising paragraph (a)(5) to read as follows:

§ 22.01 Scope of these rules.

(a) * * *

(5) The assessment of any civil penalty conducted under section 10(a), or the revocation of any approval conducted under section 6(e), of the Toxic Substances Control Act (15 U.S.C. 2615(a) and 2605(e)).

c. In § 22.03, paragraph (a) by revising the definition for “permit,” and by adding a definition for “permittee” to read as follows:

§ 22.03 Definitions.

(a) * * *

Permit means a permit issued under section 102 of the Marine Protection, Research, and Sanctuaries Act or an approval for storage and/or disposal of PCBs and PCB waste issued under section 6(e) of the Toxic Substances Control Act.

Permittee means the person to whom a PCB approval was issued under part 761 of this chapter.

d. By revising § 22.33 to read as follows:

§ 22.33 Supplemental rules of practice under the Toxic Substances Control Act.

(a) Scope of these supplemental rules. These rules of practice shall govern, in conjunction with the consolidated rules of practice in §§ 22.01 through 22.32, all formal adjudications for the assessment of any civil penalty conducted under section 16(a) of the Toxic Substances Control Act (15 U.S.C. 2615(a)), and proceedings for the revocation of any approval issued under part 761 of this chapter. Where inconsistencies exist between provisions of this § 22.33 and the consolidated rules (§§ 22.01 through 22.32), the provisions of this § 22.33 shall apply.

(b) Assessment of civil penalties—(1) Subpoenas. (i) The attendance of witnesses or the production of documentary evidence may be required by subpoena. The Presiding Officer may grant a request for a subpoena upon a showing of (A) the grounds and necessity therefor, and (B) the materiality and relevancy of the evidence to be adduced. Requests for the production of documents shall describe the evidence sought as specifically as practicable.

(2) Subpoenas shall be served in accordance with § 22.05(b)(1).

(iii) Witnesses summoned before the Presiding Officer shall be paid the same fees and mileage that are paid witnesses in the courts of the United States. Fees shall be paid by the party at whose instance the witness appears. Where a witness appears pursuant to a request initiated by the Presiding Officer, fees shall be paid by EPA.

(c) Definitions. For purposes of revocation of an approval under this section, the term “Complaint for Revocation” shall mean the document used to initiate revocation of any approval for storage and disposal of PCBs and PCB waste under this section.

(d) Complaint for Revocation—(1) Issuance and content of Complaint for Revocation. A Complaint for Revocation issued under part 761 of this chapter and this section shall be in writing, shall be signed by the Administrator, and shall set forth with reasonable specificity:

(i) The nature of the violation or condition that is the basis for revoking the approval.

(ii) A reasonable description of the portion of the facility’s operation to which revocation applies.

(iii) A warning that if the permittee fails to answer in writing the Complaint for Revocation within 30 days after receipt of the Complaint for Revocation, the approval shall be automatically revoked.

(iv) Any provisions deemed necessary by the Administrator to govern the termination of activities under the approval.

(2) Automatic revocation. Unless a Complaint for Revocation is dismissed or withdrawn by the Agency under paragraph (d)(3) of this section, or unless the permittee timely answers the Complaint for Revocation, an approval shall be revoked automatically 31 days after service of the Complaint for Revocation. The permittee shall comply with the provisions for termination of activities under the approval described in the Complaint for Revocation.

(3) Withdrawal of Complaint for Revocation. (i) The Agency may in its discretion dismiss or withdraw a Complaint for Revocation and any resulting proceeding under this section without prejudice one time before the answer has been filed. After one withdrawal before the filing of an answer, or after the filing of an answer, the Agency may withdraw the complaint, or any part thereof, only upon motion granted by the judicial officer. If the violation or condition set forth as the basis for the Complaint for Revocation was not caused by lack of diligence on the part of the permittee, and the violation or condition could be mitigated through the imposition of modified approval conditions, the Agency may, without prejudice and without consent of the judicial officer, issue a modified approval to require the permittee to take action to mitigate any harm caused by the violation, condition, or practice. Such modified approval may contain additional terms and conditions as determined by the Agency to be necessary to ensure that the facility’s operations will not pose an unreasonable risk of injury to health or the environment.

(ii) The Agency shall withdraw a Complaint for Revocation by written notice to the permittee. Dismissal or withdrawal of the notice shall not affect the Agency’s right to assess penalties or remedies for violations of the Act under sections 16 and 17.

2. In part 761:

PART 761—[AMENDED]

a. The authority citation for part 761 continues to read as follows:


b. By adding new subpart F, consisting of §§ 761.110, 761.113, 761.115, 761.116, 761.117, 761.118, 761.119, 761.120, 761.121, 761.122, 761.123, 761.124, 761.125, and 761.126, to read as follows:
§ 761.100 General.
(a) This subpart F sets forth the criteria and procedures which govern the suspension or revocation of PCB storage and/or disposal approvals issued pursuant to §§ 761.60, 761.70, or 761.75 (or other such provision as is designated by rule). The procedural rules included herein supplement the rules of practice in part 22 of this chapter which govern adjudicatory proceedings for the assessment of civil penalties under section 16(a) of TSCA (15 U.S.C. 2615(a)) and the revocation of approvals issued under section 6(e) of TSCA (15 U.S.C. 2605(e)). Where inconsistencies exist between the provisions of this subpart F and part 22 of this chapter, the provisions of this subpart F shall apply, in addition to EPA's other rights and powers under sections 6, 7, 10, and 17 of TSCA.

(b) In cases where the permittee has met the criteria for revocation set forth in § 761.107, EPA will use formal hearing procedures to revoke the approval. The revocation hearing will determine whether the revocation criteria have been met and will be the forum for assessing civil penalties. Except as provided in § 761.107, EPA shall give the permittee prior notice of a revocation action and a chance to correct the conditions or violations warranting approval revocation. In emergency situations, EPA may suspend the approval, pending revocation, by giving the permittee a hearing before suspension, or suspending first and then providing an expedited post-suspension review. The revocation hearing will determine whether the suspension criteria are met.

§ 761.103 Definitions.
For the purposes of this subpart, the following definitions apply:

Administrator means: (1) The Administrator of the Environmental Protection Agency or a designee; or (2) The Regional Administrator who issued the permit which is the subject of the revocation or suspension action, if the permit was issued by the EPA regional office; or (3) The Assistant Administrator, Office of Pesticides and Toxic Substances, who issued the approval which is the subject of the revocation or suspension action, if the approval was issued by the Assistant Administrator, Office of Pesticides and Toxic Substances; or (4) The Director, Exposure Evaluation Division who issued the approval which is the subject of the revocation or suspension action, if the approval was issued by the Director, Exposure Evaluation Division.

Approval or facility approval mean PCB permits and approvals issued pursuant to §§ 761.60, 761.70, or 761.75 or other such provision as is designated by rule.

Approved facility means a PCB storage or disposal facility operating with a permit or approval issued pursuant to §§ 761.60, 761.70, or 761.75 or other such provision as is designated by rule.

EPA means the Environmental Protection Agency.

EPA Office means: The EPA Regional Administrator. the EPA Assistant Administrator for Pesticides and Toxic Substances. or the Director, Exposure Evaluation Division, depending on who issued the approval which is the subject of the suspension or revocation action.

Federally-authorized inspection means any inspection: (1) Authorized by EPA. (2) Authorized by a state pursuant to an agreement with or a grant from EPA for the purpose of conducting TSCA inspections. (3) By a state authorized to conduct inspections under section 3006 of the Solid Waste Disposal Act, (42 U.S.C. 6006).

Immediate risk means any situation posed by any condition, practice, or violation of TSCA or its regulations, or a condition of an approval issued under TSCA, which the Administrator determines presents a risk to health or the environment that is not likely to be adequately abated before the completion of revocation of the approval under this part 761 and part 22 of this chapter.

Permittee means the person to whom the PCB approval was issued, or transferred to with EPA approval. TSCA means the Toxic Substances Control Act (15 U.S.C. 2601 et seq.). Violation of TSCA means a failure to comply with any requirement under TSCA, or any requirement, provision or condition in an approval issued pursuant to this part 761.

§ 761.105 Criteria for issuance of Notice of Intent to Revoke.
The Administrator may issue a Notice of Intent to Revoke if the Administrator finds, on the basis of any federally-authorized inspection, a violation of TSCA.

§ 761.106 Notice of Intent to Revoke.
(a) A Notice of Intent to Revoke issued under this section shall be in writing, be signed by the Administrator, and include the following: (1) The nature of the violation. (2) A description of the portion of the operation to which the violation applies. (3) The remedial action required to abate the violation, which may include interim steps. (4) A schedule for the permittee to abate the violation. (5) A warning that if the permittee fails to abate the violation within the specified schedule, the Administrator may issue a Complaint for Revocation to revoke the facility’s approval under this part 761 and part 22 of this chapter. (6) A warning that if the Administrator discovers that the criteria in §§ 761.110 or 761.115 are met, the Administrator may issue either a Notice of Proposed Suspension or a Notice of Immediate Suspension to suspend the facility's approval.

(b) The Administrator may extend the time set for abatement in a notice under this section, if the failure to meet the time previously set was not caused by lack of diligence on the part of the permittee, and the violation does not present an immediate risk of injury to health or the environment. Any such extension shall be in writing. The total time for abatement, including all extensions, shall not exceed 90 days, unless the permittee makes a good faith showing that it cannot abate the violation within 90 days using its best efforts.

(c) The Administrator shall withdraw a Notice of Intent to Revoke in writing to the permittee when the Administrator determines that all violations listed in the Notice of Intent to Revoke have been abated within the stated period of time. Issuance of withdrawal of this notice shall not affect EPA's right to assess
penalties or remedies for the violations described in this notice under sections 16 and 17 of TSCA and part 22 of this chapter for the commencement of revocation proceedings for violations not listed in the Notice of Intent to Revoke under §761.108 and part 22 of this chapter.

(d) Issuance of a Notice of Intent to Revoke shall not limit EPA's right to issue a Notice of Immediate Suspension under §761.115 or a Notice of Proposed Suspension under §761.111.

(e) Service of a Notice of Intent to Revoke, together with a copy of this subpart F, shall be made personally or by certified mail, return receipt requested. Service shall be complete upon tender or mailing, and shall not be deemed incomplete because of refusal to accept.

(1) Service shall be made upon the permittee of the facility or his representative.

(2) A permittee, which is a domestic or foreign corporation or a partnership or other unincorporated association which is subject to suit under a common name, shall have service made to an officer, a partner, a managing or general agent, or any other person authorized by appointment or by Federal or State law to receive service of process.

(3) An officer or agency of the United States shall be served by delivering a copy of the notice to the officer or agency, or in any manner prescribed for service by applicable regulations. If the agency is a corporation, the notice shall be served as in §761.106(c)(2).

(4) Service upon a State or local unit of government, or a State or local officer, agency, department, corporation or other instrumentality shall be made by serving a copy of the complaint in the manner prescribed by the law of the state for the service of process of any such person.

§761.107 Criteria for commencement of revocation action and issuance of revocation order.

(a) Failure to obate violation. When a Notice of Intent to Revoke has been issued under §761.106 and the facility fails to abate the violation within the required prescribed abatement period, as confirmed by an inspection, the Administrator may commence revocation proceedings and issue a revocation order under this subpart F and part 22 of this chapter without issuing a second Notice of Intent to Revoke.

(b) Material false statements. Whenever the Administrator discovers that a permittee made a false statement in its application for approval, or in a supplemental statement required of the applicant, and the false statement is material to the Administrator's decision to grant the approval, the Administrator may commence revocation proceedings and issue a revocation order under this subpart F and part 22 of this chapter without issuing a Notice of Intent to Revoke.

(c) Pattern of violations. (1) If the Administrator determines that a pattern of violations of any requirements imposed under TSCA, any requirements in this part 761, or any conditions of an approval exists, or has existed, the Administrator may commence revocation proceedings and issue a revocation order under this subpart F and part 22 of this chapter without issuing a Notice of Intent to Revoke.

(2) The Administrator may determine that a pattern of violations exists or has existed after considering the total circumstances, which include, but are not limited to, the citation on three or more occasions of any requirement of TSCA, any requirements in part 761, or any approval condition. At least one of these cited violations must be of a requirement in part 761. EPA may also consider any other evidence of a pattern of violations.

(d) Unreasonable risk to health or the environment. If the Administrator determines that the continued operation of a facility poses an unreasonable risk to health or the environment, the Administrator may commence revocation proceedings and issue a revocation order under this subpart F and part 22 of this chapter without issuing a Notice of Intent to Revoke.

§761.108 Complaint for Revocation.

If any of the criteria set forth in §761.107 are met, the Administrator may initiate the revocation procedures set forth in part 22 of this chapter by issuing a Complaint for Revocation pursuant to §22.33 of this chapter.

§761.110 Criteria for issuance of Notice of Proposed Suspension and Suspension Order.

The Administrator may issue a Notice of Proposed Suspension of approved operations or the relevant portion of approved operations, and may issue a Suspension Order if the Administrator finds, on the basis of any federally authorized inspection, that an immediate risk exists, as defined in §761.103.

§761.111 Notice of Proposed Suspension.

(a) A Notice of Proposed Suspension may only be issued together with or after a Complaint for Revocation has been issued under §761.108 and §22.33 of this chapter.

(b) The Notice of Proposed Suspension shall be in writing and shall be signed by the Administrator, and shall set forth:

(1) The nature of the condition, practice, or violation that has caused the immediate risk.

(2) A reasonable description of the portion of the facility's operation to which it applies.

(3) The remedial actions or affirmative obligations required for abatement of the immediate risk and actions to be taken to avoid the suspension.

(4) The schedule established for abatement of the immediate risk.

(5) Any steps which the Administrator deems necessary to secure the facility from any immediate risks which might arise during the period of cessation of operations, including steps necessary to bring about the closure or sale of the facility or affected portion of operations.

(6) A statement advising the permittee that, if the permittee requests in writing a pre-suspension hearing within 19 days after service of the Notice of Proposed Suspension, a representative of the appropriate EPA Office shall conduct an expedited hearing under §761.112 solely on the question of whether an immediate risk exists. The statement shall also advise the permittee that if the permittee fails to submit a written request for review of the suspension within 19 days after service of the notice, the approval shall be automatically suspended. The statement shall also provide the name and address of the EPA official to contact to request review of the suspension under §761.112.

(c) Service of a Notice of Proposed Suspension, together with a copy of this subpart F, shall be made personally or by certified mail, return receipt requested. Service shall be complete upon tender or mailing, and shall not be deemed incomplete because of refusal to accept.

(1) Service shall be made upon the permittee of the facility or his representative.

(2) A permittee, which is a domestic or foreign unincorporated association which is subject to suit under a common name, shall have service made to an officer, a partner, a managing or general agent, or any other person authorized by Federal or State law to receive service of process.

(3) An officer or agency of the United States shall be served by delivering a copy of the notice to the officer or agency, or in any manner prescribed for service by applicable regulations. If the agency is a corporation, the notice shall be served as in §761.111(c)(2).

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Proposed Suspension. The permittee review, by serving a copy of the notice in the manner prescribed by the law of the state for the service of process of any such person.

(d) Unless a Notice of Proposed Suspension is terminated by the Administrator under paragraph (c) of this section, an approval shall be suspended automatically 20 days after service of the Notice of Proposed Suspension unless the permittee requests a review under § 761.112 within 19 days after service of the Notice of Proposed Suspension. The permittee shall comply with the provisions for suspension of activities described in the Notice of Proposed Suspension.

(e) The Administrator may modify or terminate a Notice of Proposed Suspension at any time by notifying the permittee in writing. The Administrator may modify or terminate a Notice of Proposed Suspension if the permittee abates to the Administrator's satisfaction, the condition, practice, or violation which caused the immediate risk. Termination shall not affect EPA's right to revoke the approval and/or assess penalties or remedies for those conditions, practices or violations pursuant to § 761.106 and part 22 of this chapter with respect to the permittee.

(f) Failure to comply with the terms of any suspension issued under this section shall constitute a violation of section 6(e) and 15 of TSCA, subject to the penalties and remedies of sections 16 and 17 of TSCA. If such failure to comply constitutes an imminent hazard under section 7 of TSCA, the violator may be subject to any penalties and remedies authorized by section 7, including, but not limited to, injunctions and seizures.

§ 761.112 Pre-suspension review.

(a) The pre-suspension review of a Notice of Proposed Suspension under § 761.111 shall be limited solely to whether the criteria for suspension under § 761.110 are met.

(b) Within 7 days of receipt of a written request for a pre-suspension review, the appropriate EPA Office shall give notice of the time, place, and subject matter of the pre-suspension review to the permittee.

(c) The pre-suspension review shall be held either in the county where the permittee resides or conducts the business which the hearing concerns, in the city where the relevant EPA Regional Office is located, or in Washington, D.C. Upon a showing of good cause, the location can be changed to any other site, or to a site reasonably close to the facility if there is a need for a site visit to resolve any issues raised.

(d) Section 554 of Title 5 of the United States Code [5 U.S.C. 554], regarding the requirements for formal adjudicatory hearings, shall not govern pre-suspension reviews conducted under this section. The pre-suspension review shall be conducted by a representative of the appropriate EPA Office. The representative conducting the pre-suspension review shall not be the individual who issued the Notice of Proposed Suspension and the Complaint for Revocation. Oral or written comments and arguments may be presented at the review and shall be included in the written record of the proceeding. If oral evidence is submitted, a written transcript of the proceedings shall be taken. Any written evidence submitted to support the suspension, along with any written evidence the permittee uses to defend against issuance of a suspension, shall be included in the record for the proceeding.

(e) If the permittee fails to appear at the hearing and the notice was properly served under § 761.111, the permittee shall be deemed to have waived the right to a hearing, and the suspension shall automatically take effect.

(f) Within 10 days after completion of the pre-suspension review, the appropriate EPA office shall render a written decision. If the EPA Office decides to issue a suspension, the decision shall state the basis for the suspension and shall require the suspension of operations. The decision shall be sent to:

1. The permittee.
2. The Administrator of EPA.
3. Any State or local regulatory authority having jurisdiction over the facility.

(g) If a suspension is issued, the suspension shall remain in effect pending completion of the revocation proceeding or until the immediate risk which resulted in the issuance of the suspension has been abated to the satisfaction of the Administrator as communicated to the permittee in writing.

(h) The Administrator may modify or terminate a suspension by written notice to the permittee when the Administrator determines that any or all conditions, practices, or violations listed in the Notice of Proposed Suspension have been abated. Termination shall not affect the right of EPA to revoke the approval and/or assess penalties or remedies for those conditions, practices or any other violation of TSCA pursuant to part 22 of this chapter and sections 16 and 17 of TSCA.

(i) The granting or waiver of the pre-suspension review under this section shall not affect the right of a permittee to a formal adjudication under part 22 of this chapter with respect to a Complaint for Revocation, except that:

1. The permittee to whom the Notice of Proposed Suspension and the Complaint for Revocation are issued may answer by submitting to the Administrator a signed and notarized statement waiving all rights to review of the Notice of Proposed Suspension and a hearing on the Complaint for Revocation, and consenting to the revocation of the facility's approval, including compliance with conditions for the closure of the facility's operations (or the portion thereof affected by the notice) as deemed necessary by the Administrator to close and secure the facility and abate any immediate risks to health or the environment by the facility's operations. The effect of such a statement shall be a final revocation of approval to conduct storage and/or disposal operations at the facility or the affected portion thereof, except as permitted under the terms of the closure approval.

2. The permittee to whom the Notice of Proposed Suspension is issued may answer the Notice of Proposed Suspension by submitting to the Administrator a signed and notarized statement waiving all rights to review the Notice of Proposed Suspension, and consenting to the indefinite suspension of the facility's approval. The effect of such a statement shall be to extend the term of the suspension indefinitely, pending revocation of the approval, or withdrawal by the Administrator of the Notice of Proposed Suspension.

(j) Failure to comply with the terms of any suspension issued under this section shall constitute a violation of sections 6(e) and 15 of TSCA, subject to the penalties and remedies of sections 16 and 17 of TSCA. If such failure to comply constitutes an imminent hazard under section 7 of TSCA, the violator may be subject to any penalties and remedies authorized by section 7, including, but not limited to, injunctions and seizures.

§ 761.114 Criteria for issuance of Notice of Immediate Suspension and Immediate Suspension Order.

The Administrator may issue a Notice of Immediate Suspension of approved operations or the relevant portion of approved operations, and issue an Immediate Suspension Order if the Administrator finds, on the basis of any federally-authorized inspection, that an immediate risk exists, as defined in § 761.103, and that the immediate risk
may occur and may not be adequately abated before a pre-suspension review under § 761.112 may be held.

§ 761.115 Notice of Immediate Suspension.

(a) A Notice of Immediate Suspension may only be issued together with or after a Complaint for Revocation has been issued under § 761.108 and § 22.33 of this chapter.

(b) A Notice of Immediate Suspension shall be effective immediately upon service of the permittee.

(c) A Notice of Immediate Suspension shall be in writing, shall be signed by the Administrator, and shall set forth:

(1) The nature of the condition, practice, or violation that has caused the immediate risk.

(2) A reasonable description of the portion of the facility's operation to which the suspension applies.

(3) The remedial actions or affirmative obligations required for abatement of the immediate risk and actions to be taken to avoid the suspension.

(4) The schedule established for abatement of the immediate risk and actions to be taken to avoid the suspension.

(5) Any steps which the Administrator deems necessary to secure the facility from any hazards which might arise during the period of cessation of operations, including steps necessary to bring about the closure of the facility or affected portions of operations.

(d) A statement advising the permittee that if the permittee requests in writing a post-suspension review within 19 days after service of the Notice of Immediate Suspension, a representative of the appropriate EPA Office shall conduct an expedited review under § 761.117 solely on the question of whether an immediate risk exists. The statement shall also advise that if the permittee fails to submit a written request for review of the suspension within 19 days after service of the Notice of Immediate Suspension, the permittee shall be deemed to have waived any right to review of the suspension and that the suspension shall remain in effect pending revocation or withdrawal of the Notice of Immediate Suspension by EPA. The statement shall also provide the name and address of the appropriate EPA Office to contact to request the post-suspension review under § 761.117.

(d) Service of a Notice of Immediate Suspension, together with a copy of this subpart F, shall be made personally or by certified mail, return receipt requested. Service shall be complete upon tender or mailing and shall not be deemed incomplete because of refusal to accept.

(1) Service shall be made upon the permittee of the facility or his representative.

(2) A permittee, which is a domestic or foreign corporation or a partnership or other unincorporated association which is subject to suit under a common name, shall have service made to an officer, partner, a managing or general agent, or any other person authorized by Federal or State law to receive service of process.

(3) An officer or agency of the United States shall be served by delivering a copy of the notice to the officer or agency, or in any manner prescribed for service by applicable regulations. If the agency is a corporation, the notice shall be served as in § 761.115(d)(2).

(4) Service upon a State or local unit of government, or a State or local officer, agency, department, corporation or other instrumentalities shall be made by serving a copy of the complaint in the manner prescribed by the law of the State for the service of process of any such person.

(e) The suspension shall remain in effect pending revocation or until the immediate risk which resulted in the issuance of the Notice of Immediate Suspension has been abated to the satisfaction of the Administrator as communicated to the permittee in writing, or until terminated in writing by the Administrator, or until the Notice of Immediate Suspension expires under § 761.115(f).

(f) Except as provided in paragraph (g) of this section or for good cause, a Notice of Immediate Suspension shall expire 30 days after it is served unless a post-suspension review under § 761.117 has been held within that time.

(g) A Notice of Immediate Suspension shall expire after a pre-suspension review if the permittee:

(1) Was properly served under this subpart F with a notice that contained the required statement concerning waiver of the right to a post-suspension review, and

(2) Fails to request a post-suspension review within 19 days after service.

(h) The expiration of the Notice of Immediate Suspension shall not affect a Complaint for Revocation or a complaint to assess penalties in accordance with proceedings commenced under § 761.108 and part 22 of this chapter with respect to the violations, conditions, or practices cited in the notice.

(i) No post-suspension review shall be held under § 761.117 where the immediate risk in question has been abated to the satisfaction of the Administrator, or where the post-suspension review has been waived.

(j) The Administrator may modify or terminate a Notice of Immediate Suspension in writing to the permittee when the Administrator determines that all conditions, practices, or violations listed in the Notice have been abated. Termination shall not affect the EPA's right to revoke the approval and/or assess penalties or remedies for those conditions, practices, or violations cited in the notice pursuant to § 761.108 and part 22 of this chapter, and sections 16 and 17 of TSCA.

(k) Failure to comply with the terms of the Notice of Immediate Suspension shall constitute a violation of sections 6(e) and 15 of TSCA, subject to the penalties and remedies of section 16 and 17 of TSCA. If such failure to comply constitutes an imminent hazard under section 7 of TSCA, the violator may be subject to any remedies authorized by section 7, including but not limited to injunctions and seizures.

§ 761.117 Post-suspension review.

(a) The post-suspension review of a Notice of Immediate Suspension under § 761.115 shall be limited to whether the criteria for suspension are met.

(b) Within 7 days of receipt of a request for a post-suspension review, the appropriate EPA Office shall give notice of the time, place, and subject matter of the post-suspension review to the permittee.

(c) The post-suspension review shall be held either in the county where the permittee resides or conducts business which the hearing concerns, in the city where the relevant EPA Regional Office is located, or in Washington, DC. Upon a showing of good cause the location can be changed to any other site, or to a site reasonably close to the facility if there is a need for a site visit to resolve any issues raised by the pre-suspension hearing.

(d) Section 554 of Title 5 of the United States Code (5 U.S.C. 554), regarding the requirements for formal adjudicatory hearings, shall not govern post-suspension reviews conducted under this section. The post-suspension review shall be conducted by a representative of the appropriate EPA Office. The representative conducting the post-suspension review shall not be the individual who issued the Notice of Immediate Suspension and the
Complaint for Revocation. Oral or written comments and arguments may be presented at the review and shall be included in the written record of the proceeding. A written transcript of the proceedings shall be taken. Any written evidence the Administrator uses to support the suspension, along with any written evidence the permittee uses to defend against issuance of a suspension, shall be included in the record for the proceeding.

(e) Within 10 days after the close of the post-suspension review, the appropriate EPA office shall affirm or vacate the Notice of Immediate Suspension in writing. If the EPA office affirms the suspension, or affirms the suspension with modifications, the decision shall state briefly the basis for the decision. The decision shall be sent to:

(1) The permittee.
(2) The Administrator.
(3) Any State or local regulatory authority having jurisdiction over the affected facility.

(f) If the suspension is affirmed, the suspension shall remain in effect pending completion of the revocation proceeding or until the immediate risk which resulted in the issuance of the suspension has been abated to the satisfaction of the Administrator as communicated to the permittee in writing.

(g) If the EPA office vacates the suspension, the decision shall state briefly the basis for the decision. The decision shall state that operations affected by the Notice of Immediate Suspension may resume immediately upon the vacating of the suspension. The vacating of the suspension shall not affect the revocation proceedings under § 761.108 and part 22 of this chapter.

(h) The Administrator may modify or terminate a suspension by written notice to the permittee when the Administrator determines that any or all conditions, practices, or violations listed in the Notice of Proposed Suspension have been abated. Termination shall not affect the right of EPA to revoke the approval and/or assess penalties or remedies for those conditions, practices or violations pursuant to part 22 of this chapter and sections 18 and 17 of TSCA.

(i) The granting or waiver of the post-suspension review under this section shall not affect the right of a permittee to a formal adjudication under part 22 of this chapter with respect to a Complaint for Revocation, except that:

(1) The permittee to whom the Notice of Immediate Suspension and the Complaint for Revocation were issued may answer by submitting to the Administrator a signed and notarized statement waiving all rights to review of the Notice of Immediate Suspension and the Complaint for Revocation, and consenting to the revocation of the facility's approval, including compliance with conditions for the closure of the facility's operations (or the portion thereof affected by the notice) as deemed necessary by the Administrator to close and secure the facility and abate any immediate risks to health or the environment posed by the facility's operations. The effect of such a statement shall be a final revocation of approval to conduct storage and/or disposal operations at the facility or the affected portion thereof, except as permitted under the terms of the closure approval.

(2) The permittee to whom the Notice of Immediate Suspension was issued may answer the Notice of Immediate Suspension by submitting to the Administrator a signed and notarized statement waiving all rights to review the Notice of Immediate Suspension, and consenting to the indefinite suspension of the facility's approval. The effect of such a statement shall be to extend the term of the suspension indefinitely, pending a final decision on revocation, or withdrawal by the Administrator of the Notice of Immediate Suspension.

(j) Failure to comply with the terms of any suspension issued under this section shall constitute a violation of sections 6(e) and 15 of TSCA, subject to the penalties and remedies of sections 16 and 17 of TSCA. If such failure to comply constitutes an imminent hazard under section 7 of TSCA, the violator may be subject to any remedies authorized by section 7, including, but not limited to, injunctions and seizure.
Part VIII

The President

Executive Order 12732—International Fund for Agricultural Development

Department of Education; Delegation of Authority

Memorandum of August 17, 1990
Executive Order 12732 of October 31, 1990

International Fund for Agricultural Development

By the authority vested in me as President by the Constitution and laws of the United States of America, including section 1 of the International Organizations Immunities Act (22 U.S.C. 288), and in order to facilitate participation in the International Fund for Agricultural Development, it is hereby ordered as follows:

Section 1. The International Fund for Agricultural Development, which was established by an agreement to which the United States is a party and which entered into force on November 30, 1977, is hereby designated as a public international organization entitled to enjoy the privileges, exemptions, and immunities conferred by the International Organizations Immunities Act. This designation is not intended to abridge in any respect the privileges, exemptions, or immunities that such organization has acquired by international agreement or by Act of Congress.

Sec. 2. This order shall be effective immediately.

THE WHITE HOUSE,
October 31, 1990.

[FR Doc. 90-26195
Filed 11-1-90; 11:12 am]
Billing code 3195-01-M
Memorandum of August 17, 1990

Memorandum for the Secretary of Education

By virtue of the authority vested in me as President by the Constitution and the laws of the United States of America, including section 208 of title 18 of the United States Code and section 301 of title 3 of the United States Code, I hereby delegate to the Secretary of Education my authority to make determinations under subsection (b) of section 208 of title 18, United States Code, for the members of the President's Board of Advisors on Historically Black Colleges and Universities, established pursuant to Executive Order 12677 of April 28, 1989.

This memorandum shall be published in the Federal Register.

[Presidential signature]
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S.J. Res. 270/Pub. L. 101-468

S.J. Res. 347/Public L. 101-470
Designating April 7 through 13, 1991, as "National County Government Week". (Oct. 30, 1990; 104 Stat. 1092; 1 page) Price: $1.00

S.J. Res. 351/Public L. 101-471
To designate the month of May, 1991 as "National Trauma Awareness Month". (Oct. 30, 1990; 104 Stat. 1093; 1 page) Price: $1.00

S.J. Res. 362/Public L. 101-472
To designate the period commencing on November 18, 1990, and ending on November 24, 1990, as "National Adoption Week". (Oct. 30, 1990; 104 Stat. 1094; 2 pages) Price: $1.00

S.J. Res. 366/Public L. 101-473

H.R. 4174/Public L. 101-474

H.R. 5573/Public L. 101-475
To amend section 28(w) of the Mineral Leasing Act, and for other purposes. (Oct. 30, 1990; 104 Stat. 1102; 1 page) Price: $1.00

S. 1824/Public L. 101-476

S. 2167/Public L. 101-477
To reauthorize the Tribally Controlled Community College Assistance Act of 1978 and the Navajo Community College Act. (Oct. 30, 1990; 104 Stat. 1152; 5 pages) Price: $1.00

S. 3091/Public L. 101-478
To amend the Act incorporating the American Legion so as to redefine eligibility for membership therein. (Oct. 30, 1990; 104 Stat. 1157; 1 page) Price: $1.00
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