8-4-89
Vol. 54 No. 149

federal register

Friday
August 4, 1989

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, DC 20402

OFFICIAL BUSINESS
Penalty for private use, $300

SECOND CLASS NEWSPAPER

Postage and Fees Paid
U.S. Government Printing Office
(ISSN 0097-6326)

8-4-89
Vol. 54 No. 149
Pages 32035-32332

federal register

Friday
August 4, 1989

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders and Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

The **Federal Register** will be furnished by mail to subscribers for $340 per year in paper form; $195 per year in microfiche form; or $37,500 per year for the magnetic tape. Six-month subscriptions are also available at one-half the annual rate. The charge for individual copies in paper or microfiche form is $1.50 for each issue, or $1.50 for each group of pages as actually bound, or $175.00 per magnetic tape. Remit check or money order, made payable to the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, or charge to your GPO Deposit Account or VISA or Mastercard.

How To Cite This Publication: Use the volume number and the page number. Example: 54 FR 12345.

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

Paper or fiche	202–783–3238
Magnetic tapes	275–3328
Problems with public subscriptions	275–3054

Single copies/back copies:

Paper or fiche	783–3238
Magnetic tapes	275–3328
Problems with public single copies	275–3050

FEDERAL AGENCIES

Subscriptions:

Paper or fiche	523–5240
Magnetic tapes	275–3328
Problems with Federal agency subscriptions	523–5240

For other telephone numbers, see the Reader Aids section at the end of this issue.

Contents

Federal Register

Vol. 54, No. 149

Friday, August 4, 1989

Separate Parts In This Issue

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

CFR PARTS AFFECTED IN THIS ISSUE

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

7 CFR
910 32035

12 CFR
229 32055

Proposed Rules
226 32089

17 CFR
270 32048
274 32048
275 32048
279 32048

Proposed Rules:
230 32226
239 32226
240 32226
249 32226
260 32226
269 32226

20 CFR

Proposed Rules
208 32163
220 32163
230 32163
260 32163

21 CFR
133 32050

Proposed Rules
133 32091

24 CFR
200 32059
206 32059

29 CFR
1600 32061
1601 32061
1610 32061
1611 32061
1620 32061
1626 32061
1691 32061

30 CFR
934 32063

Proposed Rules
250 32316
917 32093
925 32094
931 (2 documents) 32095, 32096
946 (2 documents) 32097, 32098

31 CFR
500 32064

33 CFR
100 32066

35 CFR

Proposed Rules
133 32099
135 32099

36 CFR
1202 32067
1250 32067
1254 32067

38 CFR
21 32070

39 CFR
111 32071

40 CFR
52 (2 documents) 32072, 32073
81 32078

Proposed Rules
52 32101
261 32320
302 32322

45 CFR
232 32284
301 32284
302 32284
303 32284
304 32284
306 32284
307 32284

48 CFR
203 32161
208 32161
209 32161
212 32161
213 32161
214 32161
215 32161
216 32161
217 32161
219 32161
222 32161
223 32161
226 32161
242 32161
245 32161
252 32161
253 32161
271 32161

50 CFR
17 32326
226 32085
227 32085

Rules and Regulations

Federal Register
Vol. 54, No. 149
Friday, August 4, 1989

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 910

[Lemon Regulation 677]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

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

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

FOR FURTHER INFORMATION CONTACT: Beatriz Rodriguez, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2523, South Building, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 475-3861.

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

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

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

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

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

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

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

List of Subjects in 7 CFR Part 910

Marketing agreements and orders, California, Arizona, Lemons.

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

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

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

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

2. Section 910.977 is revised to read as follows:

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

§ 910.977 Lemon Regulation 677.

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

Dated: August 2, 1989.

Charles R. Brader,

Director, Fruit and Vegetable Division.

[FR Doc. 89-18418 Filed 8-3-89; 8:45 am]
BILLING CODE 3410-02-M

FEDERAL RESERVE SYSTEM

12 CFR Part 229

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

RIN 7100-AB01

Availability of Funds and Collection of Checks

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board is publishing amendments to its Regulation CC,

Availability of Funds and Collection of Checks (12 CFR Part 229). The rule changes will alleviate the operational difficulties and additional risks associated with the acceptance for deposit of bank payable through checks.

EFFECTIVE DATE: The effective date for the amendments to § 229.38 of the regulation and commentary is February 1, 1990. The effective date for the amendments to § 229.36 of the regulation and commentary is February 1, 1991.

FOR FURTHER INFORMATION CONTACT: Louise L. Roseman, Assistant Director (202/452–3874), Gayle Thompson, Manager (202/452–3917), or Kathleen M. Connor, Senior Financial Services Analyst (202/452–3917), Division of Federal Reserve Bank Operations; Oliver Ireland, Associate General Counsel (202/452–3625), or Stephanie Martin, Attorney (202/452–3198), Legal Division; for the hearing impaired *only:* Telecommunications Device for the Deaf, Earnestine Hill or Dorothea Thompson (202/452–3544).

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

These amendments will become effective on February 1, 1991, and February 1, 1990, respectively.

Background

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

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

On July 28, 1988, the U.S. District Court for the District of Columbia ruled that under the language of the Act, payable through checks should be treated as local or nonlocal on the basis of the location of the credit union on which they are written rather than the location of the payable through bank. On August 18, 1988, the Board adopted interim amendments to Regulation CC to implement the court's decision and requested comment on the interim rule pending consideration of a longer term response to the court's interpretation of the Act (53 FR 31290, August 18, 1988). The interim rule applied the court's decision to all bank payable through checks rather than only those written on credit unions.

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

On November 2, 1988, the Board adopted the interim rule, with minor technical changes, as a final rule, and also published for comment proposed amendments to Regulation CC designed to alleviate the operational difficulties and increased risks resulting from the new rule. (53 FR 44324, 44335, November 2, 1988.) These proposed amendments were based on specific suggestions of the commenters on the interim rule and on subsequent discussions with industry representatives and the Industry Return Item Advisory Group, which includes representatives of commercial banks, savings and loan associations, and credit unions. The Board issued the proposals for comment to gain further information concerning whether the proposals were necessary to facilitate compliance with the revised regulation and to improve the check system by speeding the collection and return of payable through checks, and whether they would impose undue burdens on the banks on which bank payable through checks are written.

The four proposals for which the Board requested comment would:

(1) Require bank payable through checks to bear a routing number in the MICR (Magnetic Ink Character Recognition) line local to the bank on which the checks are written, and to be presentable locally;

(2) Require bank payable through checks to be conspicuously labeled with the name, location, and nine-digit routing number of the bank on which the check is written and the legend "payable through" followed by the name and location of the payable through bank;

---

[1] Regulation CC defines *bank* to include all depository institutions, including commercial banks, savings and loan associations, and credit unions. A *depositary bank* is defined as the first bank to which a check is transferred. A *paying bank* is the bank by which a check is payable for the purpose of determining whether a check is local or nonlocal for determining availability.

(3) Authorize direct presentment to the bank on which the payable through check is written; and

(4) Place the risk of loss for return of bank payable through checks being returned by a nonlocal payable through bank on the bank on which such checks are written, to the extent that the return from the nonlocal payable through bank took longer than would have been required if the check had been returned expeditiously by the bank on which it is written.

Discussion

The Board received a total of 763 comments from the public on the proposed amendments to Regulation CC.[2] The following table shows the comments received by category of respondent:

Commercial banks and bank holding companies	284
Savings and loan associations	7
Credit unions	451
Trade associations	23
Corporations	5
Government Agencies	3
Members of Congress	10

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

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

Other than the routing number of the bank on which the payable through checks are written, the information specified in this proposal is currently required by either existing law or Federal Reserve operating circular.[3] This proposal would clarify that this information is required and would apply to all bank payable through checks, including those checks collected outside the Federal Reserve. It would also require that such labeling be conspicuous, setting a minimum type size standard. In addition, through inclusion in the regulation, liability for noncompliance would be established.

The Board specifically requested comment on the cost savings and operational benefits to depository banks and the costs to banks using payable through checks that would result from adoption of this proposal. Of the 295 comment letters addressing this issue, 214 commenters supported this proposal and 81 opposed it.

The commenters in support of the conspicuous labeling requirement stated that identification would aid in compliance with the availability requirements of Regulation CC. They noted that the additional information could facilitate manual handling of payable through checks, although it would not permit their identification on an automated basis. The Bank Administration Institute stated, "While this proposal would not appreciably reduce risk, it would aid in compliance with Regulation CC hold rules. According to a recent Bank Administration Institute study, over 80 percent of financial institutions have adopted 'case-by-case' hold policies. Under such a policy, the depository bank applies holds in selected cases, rather than as a general rule. Under a case-by-case policy, the employee placing the hold must be able to identify local and nonlocal checks accurately by visual inspection. Conspicuous labeling as described in this proposal would aid in this process. Full identification of the payable through bank by name and location would also assist in resolving exceptions in interbank check clearings, such as misrouted items." The Independent Bankers Association of America indicated that community bankers would gain immediate operational benefits from this proposal.

A small number of commenters noted that this proposal would prove helpful when processing damaged checks. Wells Fargo Bank, San Francisco, California, stated, "The alternative of printing identifying information on the face of the check helps when dealing with checks where the MICR line is damaged or destroyed * * *." For example, the name and location of the payable through bank may be needed in those cases where the routing number on the check cannot be properly read.

The majority of commenters that supported the conspicuous labeling proposal indicated that they preferred adoption of the proposal to require payable through checks to bear a routing number in the MICR line local to the bank on which the checks are written. Marine Midland Bank, New York, New York, commented, "This alternative is better than no change in the form in which payable through drafts are issued, but it does nothing to reduce the unreasonably high operational costs of identifying bank payable through checks."

Some credit union commenters stated that this proposal was not objectionable provided they would be given a reasonable period of time to handle the reprinting of their share drafts. The Credit Union National Association generally supported a revised version of this proposal. CUNA commented that "only the first four digits of the credit union's routing number should be required. The additional digits will not facilitate identification of items as local or nonlocal; in fact, they will only further clutter the drawee area and complicate identification by consumers and bank tellers. Inclusion of all nine digits will also promote direct presentment of payable through share drafts to credit unions * * *." The

[2] This number does not include comment letters from Federal Reserve Banks and duplicate comment letters from the same bank.

[3] See U.C.C. § 3–120, *Engine Parts, Inc. v. Citizens Bank of Clovis*, 92 N.M. 37, 582 P.2d 809, 23 UCC Rep. Serv. 1248 (1978), and *Phelan v. University National Bank*, 85 Ill. App. 2d 56, 229 N.E.2d 374, 4 UCC Rep. Serv. 635 (1967). The Federal Reserve Operating Circular on the Collection of Cash Items and Returned Checks, as revised effective July 17, 1989, states that banks should not send to a Reserve Bank for forward collection a check that "does not set forth on its face the name of the paying bank and a city and state address of the bank that is located in (1) the same Reserve Bank check processing region as, and (2) a Reserve Bank availability zone that provides the same (or slower) availability than the address associated with the routing number in magnetic ink on the item."

Independent Bankers Association of America supported this proposal, but noted, "Most community bankers indicated that including another nine digit routing number on the face of the check could result in unnecessary confusion for the teller making the identification."

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

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

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

A few commenters suggested that the Board should specify where the required information is to be placed on the face of the check. The Board has provided in the commentary to § 229.36 that the required information is deemed conspicuous if it is located in the title plate [4] on the check.

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

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

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

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

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

The requirement that specified information be printed on the face of the check does not address the potential risks of bank payable through checks becoming attractive vehicles for fraud because it does not accelerate the collection of payable through checks. Under this proposal, the bank on which the payable through checks are written or its customers would incur costs to reissue its checks. Given an eighteen month lead time, the cost of reissuance should be minimal. This proposal would not require any bank to move its

[4] The title plate appears in the lower left quadrant on the face of the check, below the amount line and above the memo line, and generally includes the name and location of the paying bank.

payable through check processing to a different bank.

The Board is adopting an amendment to Regulation CC that would require bank payable through checks to be conspicuously labeled with the name, location, and first four digits of the routing number of the bank on which the check is written and the legend "payable through" followed by the name and location of the payable through bank. This rule becomes effective eighteen months after final adoption.

Place the risk of loss for return of bank payable through checks being returned by a nonlocal payable through bank on the bank on which such checks are written, to the extent that the return from the nonlocal payable through bank took longer than would have been required if the check had been returned expeditiously by the bank on which it is written. Commenters on the interim rule expressed concern regarding the potential risk of losses and increased exposure to fraud for depositary banks resulting from the revised rule. They indicated that checks considered local for determining availability should also be considered local for determining whether the checks are returned expeditiously so that the risks to depositary banks would not be increased by the revised rule. Two hundred eighty comment letters addressed this proposal. Two hundred twelve commenters supported this proposal and 68 commenters opposed the proposal.

The commenters in support of this proposal stated that it would assign risk in the payment system to the appropriate cause of that risk. The Alamo Savings & Loan Association, San Antonio, Texas, stated, "Even if none of the other proposed amendments are approved, this one must be, because it is inappropriate to allow issuers of 'payable through' checks to accrue the benefits of the definition of local checks from an availability standpoint, but not be responsible for liabilities inherent in the delayed return of unpaid checks from nonlocal 'payable through' banks." The Citizens and Southern Georgia Corporation, Atlanta, Georgia, commented, "It is reasonable and fair to place the risk of loss on the institution responsible for delaying the return process beyond the time normally required for local checks."

In an effort to determine the risks confronting a large regional bank due to the adoption of the rule establishing the bank on which a payable through check is written as the paying bank for determining funds availability, Sovran Financial Corporation, Norfolk, Virginia, conducted an extensive survey of payable through checks in June and July, 1988. Sovran explained, "From the survey, we determined that Sovran—in the states of Maryland, the District of Columbia, and Virginia would process nearly $1 billion a year of payable through items drawn on one of the two major national processors of such items. We projected the annual volume of these items to be 10.2 million. Visual inspection of these items disclosed that almost one half are issued by geographically local institutions. However, because the payable through bank—or the processing bank—has the opportunity to return the items to us in the Board's prescribed nonlocal time frame, the question of whether the issuing bank is geographically local is irrelevant. We applied the actual rate of dishonor for these items, which we had tracked over a two year period, to the dollar and volume data gathered. We determined that *at a minimum,* based on a one day delay (we make the funds available to the customer in three days, but we receive the return on the fourth day) our annual exposure from these items would be $9 million."

The majority of the bank commenters that supported the proposal shifting the risk of loss to the bank on which the payable through check is written recommended that this proposal should be adopted immediately as an interim measure until the proposal requiring a local routing number in the MICR line could be implemented. The Citywide Bank of Denver, Denver, Colorado, stated, "Until such time as (the proposal requiring a local routing number in the MICR line) can be fully implemented, our bank strongly recommends your (proposal shifting the risk of loss to the bank on which the payable through check is written) * * * be instituted for the protection of all depositary banks. There does not seem to be a time factor requirement to implement this approach and the cost factor on the norm, would be minimal."

Some bank commenters that supported this proposal expressed concern about the practice of claiming a loss under this proposal. The Chicago Clearinghouse Association commented, "We are in favor of assigning risk in the payment system to the appropriate cause of that risk, but are concerned about the practicality of claiming a loss under the current proposal. With so many schedules for availability and collection, proving responsibility for loss will be difficult. This makes it unlikely that any but large-dollar losses will be contested. We suggest that a method be developed within the normal return system for a depositary bank to claim a loss and receive compensation." Prime Bank, Grand Rapids, Michigan, stated, "The Federal Reserve should take measures to accommodate these banks who have suffered such liability and losses to easily recoup these losses from the payable bank."

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

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

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

Under the proposed rule to shift the risk of loss, the bank on which the check is written would only be responsible for losses that occurred between the time that the check would have been required to be returned if returned expeditiously by that bank and the actual time that it takes to return the check from the payable through bank. If the payable through bank complies with the current notice of nonpayment requirement for returned checks of $2,500 or more and the depositary bank takes action to minimize its risk upon receipt of the notice, no loss should occur that could be allocated to the bank on which the check is written. If the depositary bank takes no action upon receipt of the notice, it may be liable for losses incurred under the liability provisions of § 229.38(a). Thus, the Board does not believe it is necessary to modify the rule

to address CUNA's suggestion that liability should only apply to those checks that are less than $2,500 and thus not covered by the notice of nonpayment requirements.

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

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

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

Bank commenters opposed to the proposal shifting the risk of loss to the bank on which the payable through check is written stated that this proposal does not address the operational problem of identifying payable through checks. Eastover Bank for Savings, Jackson, Mississippi, stated, "Shifting the risk of loss is not enough. This will simply lead to many operational difficulties in identifying these checks and will not aid in reaching the goal of a more speedy check collection and return processing system." First Virginia Banks commented, "First Virginia does not favor this proposal, as it will only serve to increase Late Return Claims, litigation expenses, and does not allow for expedited processing of these items."

A number of credit union commenters that opposed the proposal expressed concern about its implementation. The Southern Nevada State Savings & Credit Union, Las Vegas, Nevada, described this proposal as complicated and unmanageable. It commented, "* * * strict time limits would have to be imposed on the receiving banks as well as a detailed record keeping, timed, system that would record the flow of the items. Otherwise, anytime there was A DISPUTE for a loss, we've never had one in 20 years, the receiving institution could simply claim a delayed prccessing schedule. A tracking mechanism would be required."

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

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

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

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

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

The commenters in support of the proposal to require a local routing number in the MICR line, predominantly banks, described it as the only practical solution to their operational problems and risk concerns. Several supporters also noted that the proposal would reduce confusion for the consumer. The American Bankers Association stated, "Currently, there is no practical or comprehensible way to describe to a consumer how to distinguish between

local and nonlocal checks and payable through checks except to advise them generally to inquire when they deposit a payable through check. The proposal will allow consumers simply to refer to the MICR line to ascertain whether a deposit is subject to a local or nonlocal check hold."

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

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

Commenters explained that the primary benefit of this proposal would be to eliminate problems in determining proper availability by allowing banks to rely on the routing number encoded in the MICR line. The Bank Administration Institute stated that this proposal is "the most comprehensive solution to the problem. It reduces risk by providing a local clearing and return mechanism for checks that must be treated as local for check holds. It also simplifies compliance because depository institutions would be able to rely on the routing number to identify the local check processing region, either by visual inspection or automated means." First Virginia Banks stated, "First Virginia favors this proposal as it allows for automated processing and expedites the check collection. It will eliminate as much human intervention as possible and allows payable through checks to be handled in mainstream processing and not as exception items."

Without the ability to rely on the routing number to determine whether a check is local or nonlocal and thus determine the appropriate holds, a bank must develop alternative procedures to identify payable through checks and place the appropriate holds on such checks. These procedures include (1) having the teller identify and outsort payable through checks as they are deposited so that holds can be manually applied; and (2) identifying the routing numbers of nonlocal payable through banks [5] and assigning local availability on an automated basis to all checks destined to these routing numbers.

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

Bank commenters stated that it was difficult to estimate the operational cost savings that would result if this proposal were adopted. AmSouth Bank, Birmingham, Alabama, estimated that its annual dollar cost in teller staffing to implement a manual inspection approach to payable through checks would be $6,607,500. Bank One stated, "There is a cost avoidance (through requiring a local routing number in the MICR line) of about $225,000 per year. This is the labor expense we would incur if we have to visually inspect all items deposited, and manually make float adjustments for share draft or payable through items." Citicorp, New York, New York, stated, "As for the costs associated with the proposal, it is practically impossible to provide meaningfully accurate figures; it is not unreasonable, however, to project some figures based on the check collection process itself. For the banking industry nationwide (not including credit unions and the processors), Citicorp estimates that it would take a teller approximately two/three seconds to determine whether or not an item is payable through draft and whether or not it is local based on an examination of the check itself. * * * Factoring in the number of tellers employed, their hours, salary, other benefits and the approximate total number of items processed by all banks in the course of a year, we would project a cost figure of five hundred million dollars * * * for the banking community to comply with the regulation as amended as a result of the *CUNA* suit—absent adoption of the proposed amendments."

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

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

[5] A survey by Board staff identified 65 routing numbers that are used on bank payable through checks.

through banks for local banks. The Board believes that a depositary bank can control these risks through its diligent application of the process it chooses to use in applying holds to assure that it grants local availability for payable through checks issued by local banks.

Commenters in support of the proposal requiring local routing numbers also indicated that they would receive faster availability and incur lower collection costs for payable through checks drawn on local banks under this proposal than they can receive when sending the checks to the nonlocal payable through bank for collection. Suntrust Service Corporation, Orlando, Florida, stated, "Current volume from Suntrust Service Corporation Florida Operations to just the New York and Minneapolis share draft processors is approximately 6,500,000 items per year at a cost over $20,000.00 per year for transportation expenses."

Some bank commenters noted that this proposal would limit delayed disbursement. These commenters indicated that the credit unions using nonlocal payable through banks have an unfair float advantage over other banks. The Litchville State Bank, Litchville, North Dakota, commented, "For the credit unions to have special treatment is to give the banks and savings and loans unfair treatment. Please make the laws the same for all." The president of the Citizens Bank of Oviedo, Oviedo, Florida, commented, "* * * I think it should be illegal for any financial institution to carry its clearing account on the other side of the country so they can take advantage of float."

Payable through banks have indicated that many collecting banks receive availability for payable through checks drawn on a nonlocal payable through bank equivalent to that for checks collected locally by sending the checks directly to the nonlocal payable through bank. The payable through banks indicated that these "direct send" arrangements can only be cost effective for the collecting banks when sufficient volumes are being delivered to one presentment point and that maintenance of the payable through system is necessary to achieve these critical volume levels.

The majority of the banks commented that the potential risk of loss and increased exposure to fraud is also difficult to quantify. Bank of America stated, "The greatest potential savings, however, would not be operational. It would result from the reduced exposure to fraud losses * * *. While we have not attempted to estimate the fraud potential, as the processor of an estimated $850 million per year in payable through share drafts, our exposure is evident." Florida National Bank, Jacksonville, Florida, commented, "* * * this proposal would eliminate the likelihood that these checks would become vehicles for check fraud. It would reduce the collection time, reduce overall float, as well as reduce the risk for depository banks."

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

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

Commenters expressed concern that local processors would not be able to provide the truncation services currently provided by the major payable through processors. They described the current truncation system as very cost efficient. H&E Telephone Federal Credit Union, Rochelle Park, New Jersey, noted that it previously used local banks to clear its checks but switched to a national processor that was superior. Problems with its local bank included: "(1) The return of actual checks to us which resulted in a mountain of paper and work to organize data; (2) poor reporting capabilities and longer time lags for information availability; and (3) more costly service charges."

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

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

members would triple if the credit union closed and they were forced to use local banks. A third credit union with 650 share draft accounts indicated that its per account cost would increase an estimated $41.41 annually as a result of this proposal. A credit union that uses the Travelers Express payable through draft processing service stated that its average per item cost is $.06 and the time required to receive and post accounts is less than one hour per day. This credit union estimated that this proposed amendment would require the purchase of additional equipment costing approximately $20,000 and the addition of one staff person at approximately $15,000 per year.

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

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

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

Other comments indicated that the competitive issues between commercial banks and credit unions are broader than the issues raised by these payable through check proposals. Bank commenters indicated that the credit unions' tax-free status and liberal common bond restrictions give the credit unions an unfair advantage in competing for customers, which is only exacerbated by the credit unions' ability to issue payable through checks.

Commenters also noted that this proposal would have an anti-competitive effect on consumers by limiting choice of bank. The majority of small credit unions that commented on this proposal indicated that they would have to discontinue their share draft programs if the proposal were adopted because they would be unable to finance the increased human and equipment resource requirements. They expressed concern that they would no longer be able to offer a low cost checking alternative to lower income customers. The Pennsylvania Mennonite Federal Credit Union, Scottdale, Pennsylvania, stated, "In this day when the U.S. Congress is considering 'lifeline banking' and providing basic financial services that ordinary people can afford, we find it incongruous for a major organization such as the Federal Reserve System to mandate regulations which will either increase the cost of these services to our members or result in their discontinuance altogether."

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

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

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

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

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

the only current use of the 8000 series is for travellers checks.

Under the NACS proposal, the first digit of the routing number would be the number 8, identifying the 8000 series. The second and third digits would identify the check processing region of the bank on which the check is drawn. These two digits could be the number 01 through 48, identifying one of the 48 Federal Reserve check processing regions. The fourth and fifth digits would identify the check processing region of the payable through bank. Again, the two digits could be 01 through 48 identifying a check processing region. The sixth, seventh, and eighth digits would identify the particular payable through bank(s) within each check processing region. The ninth digit would be the check digit.

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

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

Adoption of the NACS proposal would also require reissuance of all payable through checks. Because the Board is adopting the conspicuous labeling requirement at this time, later adoption of the NACS proposal would require banks issuing payable through checks to reissue their checks twice. Two reissuances would be costly and burdensome for these banks and their customers.

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

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

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

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

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

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

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

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

commenters supported the proposal and 465 commenters opposed it.

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

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

A small number of commenters suggested that the Federal Reserve should facilitate direct presentment. The United States League of Savings Institutions stated, "Having the Federal Reserve make direct presentments overcomes the cost prohibitiveness of having individual depositary banks making a presentment. Concentrating payable-through check volume at District Federal Reserve Banks makes this direct presentment alternative much more feasible." Continental Bank commented, "Our support for this option is also contingent on the Fed expanding its current fine-sort option to facilitate the direct presentment of payable through checks to the 'paying bank'. If this Fed expansion is not achieved, there would be no economical way to get the payable through checks presented directly to the individual credit unions."

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

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

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

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

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

A number of credit union commenters discussed the cost implications of direct presentment. The Billings Health Affiliated Federal Credit Union, Billings, Montana, stated, "I have 3 full time employee's (sic), including myself, who handle 2,500 members. We could not begin to do the direct presentments. Expenses involved would be a new safe which would run about $8,000 to $10,000.00. A new staff person at $12,000.00 per year and any expenses incurred through purchase of new electronic equipment. My net income YTD for 1988 is $20,699.04. I am sure you can see that to make the required staff increases and equipment purchases would just not be feasible. We would most definitely have to drop our program."

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

The majority of the credit union commenters stressed the same reasons for opposing the direct presentment proposal as they used in explaining their opposition to the proposal requiring a local routing number in the MICR line. These commenters cited the cost, lack of operational capability, and the potential dismantlement of the national payable through program if this proposal were adopted. These reasons are more fully articulated in the discussion of the proposal requiring bank payable through checks to bear a local routing number in the MICR line.

Bank commenters opposed to this proposal commented that this proposal does not facilitate the assignment of availability on an automated basis. The Maryland National Bank commented, "Although we conceptually support (the direct presentment proposal) * * * we could not support this option in terms of an actual implementation for the following reason: Again, this option would not permit the automated processing of the credit union drafts. We believe that any option which may require special nonautomated check handling will only weaken the check collection system." The Bank of Boston, Boston, Massachusetts, stated, "The Bank believes that this proposal is unworkable since it does not relieve depository institutions from the onerous task of manual identification of bank payable-through drafts."

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

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

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

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

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

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

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

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

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

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

A number of credit union commenters requested that the Board delay consideration of these proposals to

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

Final Regulatory Flexibility Analysis

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires an agency to publish a final regulatory flexibility analysis when it promulgates a final rule. Two of the requirements (5 U.S.C. 603(a) (1) and (2)) of a final regulatory flexibility analysis, (1) a succinct statement of the need for, and the objectives of, the rule and (2) a summary of the issues raised by the public comments in response to the initial regulatory flexibility analysis, a summary of the assessment of the agency of such issues, and a statement of any changes made in the proposed rule as a result of such comments are contained in the supplementary material above.

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

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

List of Subjects in 12 CFR Part 229

Banks, banking; Federal Reserve System.

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

PART 229—AVAILABILITY OF FUNDS AND COLLECTION OF CHECKS

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

Authority: Title VI of Pub. L. 100–86, 101 Stat. 552, 635, 12 U.S.C. 4001 et seq.

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

§ 229.36 Presentment and issuance of checks.

* * * * *

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

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

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

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

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

§ 229.38 Liability.

* * * * *

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

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

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

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

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

* * * * *

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

a. Section 229.36 is amended by revising the heading and adding a new paragraph (e).

Appendix E—Commentary

* * * * *

Section 229.36 Presentment and issuance of checks

* * * * *

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

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

b. Section 229.38 is amended by redesignating the first three paragraphs of paragraph (d) as paragraph (d)(1); by adding a new heading to paragraph (d); by adding a new paragraph (d)(2) to follow newly redesignated paragraph (d)(1); and by revising the last paragraph of paragraph (d) to read as follows:

Section 229.38 Liability

* * * * *

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

(2) *Responsibility for payable through checks.* This paragraph provides that the bank by which a payable through check is payable is liable for damages under paragraph (a) of this section to the extent that the check is not returned through the payable through bank as quickly as would have been necessary to meet the requirements of § 229.30(a)(1) (the 2-day/4-day test) had the bank by which it is payable received the check as paying bank on the day the payable through bank received it. The location of the bank by which a check is payable for purposes of the 2-day/4-day test may be determined from the location or the first four digits of the routing number of the bank by which the check is payable. This information should be stated on the check. (See § 229.36(e) and accompanying Commentary.) Responsibility under paragraph (d)(2) does not include responsibility for the time required for the forward collection of a check to the payable through bank.

Generally, liability under paragraph (d)(2) will be limited in amount. Under § 229.33(a), a paying bank that returns the amount of $2,500 or more is not returned through the payable through bank as quickly as would have been required had the check been received by the bank by which it is payable, the depositary bank should not suffer damages unless it has not received timely notice of nonpayment. Thus, ordinarily the bank by which a payable through check is payable would be liable under paragraph (a) only for checks in amounts up to $2,500, and the paying bank would be responsible for notice of nonpayment for checks in the amount of $2,500 or more.

Responsibility under paragraphs (d)(1) and (d)(2) is treated as negligence for comparative negligence purposes, and the contribution to damages under paragraphs (d)(1) and (d)(2) is treated in the same way as the degree of negligence under paragraph (c) of this section.

By order of the Board of Governors of the Federal Reserve System, July 28, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-18098 Filed 8-3-89; 8:45 am]

BILLING CODE 6210-01-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 270, 274, 275, and 279

[Release Nos. IC-17085; IA-1181; File No. S7-16-88]

RIN 3235-AD37

Forms for Filing by Accountants

AGENCY: Securities and Exchange Commission.

ACTION: Adoption of forms and amendments to related rules.

SUMMARY: The Commission is adopting three new forms to be used by accountants when filing examination certificates required under the Investment Company Act of 1940 and the Investment Advisers Act of 1940. The forms will make the examination certificates more accessible for inspection by the Commission staff and the public and will facilitate verification of compliance with examination requirements.

EFFECTIVE DATE: September 25, 1989.

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

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

Discussion

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

The forms being adopted today will serve as cover sheets for the examination certificates that Commission rules now require certain investment companies and investment advisers to have accountants file. Examination certificates are required after an accountant has verified by actual inspection (1) securities or similar investments of a management investment company that are placed in the custody of a member of a national securities exchange; [3] (2) securities and similar investments of a management investment company maintained in the custody of the company; [4] and (3) securities and funds of clients in the custody of an investment adviser.[5] The amendments to rules 17f-1, 17f-2, and 206(4)-2 being adopted today require that the appropriate form be attached as a cover sheet to all examination certificates filed with the Commission.

By providing an accurate means to identify the registrant on whose behalf a certificate is filed, the forms and rules will make the examination certificates more accessible for inspection by the staff and the public and will facilitate staff verification of compliance with examination requirements. Because the rules simply require the addition of a cover sheet to current required filings, they do not create any significant burden to investment companies, investment advisers, or their accountants.[6]

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 previously certified that the forms and amendments adopted today will not have a significant impact on a substantial number of small entities. No comments were received on that certification.

List of Subjects in 17 CFR Parts 270, 274, 275, and 279

Investment companies, Reporting and recordkeeping requirements, Securities, Investment advisers.

Text of Rule

Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

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

---

[1] Release Nos. IC-16511, IA-1133 (Aug. 2, 1988) (53 FR 29914 (Aug. 9, 1988)).

[2] The Board of Directors of NASAA endorsed the concept of these forms on April 30, 1989. The Commission anticipates that the forms will eventually be used for filings with both the Commission and state securities agencies.

[3] Rule 17f-1(b)(4) (17 CFR 270.17f-1(b)(4)).

[4] Rule 17f-2(f) (17 CFR 270.17f-2(f)).

[5] Rule 206(4)-2(a)(5) (17 CFR 275.206(4)-2(a)(5)).

[6] Less than one percent of investment companies are currently subject to the provisions of rule 17f-1, less than five percent of investment companies are subject to the provisions of rule 17f-2, and less than ten percent of all investment advisers are subject to the provisions of rule 206(4)-2.

Authority: Secs. 38, 40, 54 Stat. 841, 842, 15 U.S.C. 80a–37, 80a–39; The Investment Company Act of 1940, as amended, 15 U.S.C. 80a–1 *et seq.*, unless otherwise noted.

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

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

* * * * *

(b) * * *

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

* * * * *

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

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

* * * * *

(f) Such securities and similar investments shall be verified by actual examination by an independent public accountant retained by the investment company at least three times during each fiscal year, at least two of which shall be chosen by such accountant without prior notice to such company. A certificate of such accountant stating that an examination of such securities and investments has been made, and describing the nature and extent of the examination, shall be attached to a completed Form N–17f–2 (17 CFR 274.220) and transmitted to the Commission promptly after each examination.

PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940

4. The authority citation for Part 274 continues to read, in part, as follows:

Authority: The Investment Company Act of 1940, 15 U.S.C. 80a–1 *et seq.*, unless otherwise noted.

5. By adding § 274.219 to read as follows:

§ 274.219 Form N–17f–1, cover page for each certificate of accounting of securities and similar investments of a management investment company in the custody of a member of a national securities exchange, filed pursuant to rule 17f–1.

Text of Form N–17F–1

See Appendix A. Form N–17f–1 will not be codified in the Code of Federal Regulations.

6. By adding § 274.220 to read as follows:

§ 274.220 Form N–17f–2, cover page for each certificate of accounting of securities and similar investments in the custody of a registered management investment company, filed pursuant to rule 17f–2.

Text of Form N–17F–2

See Appendix B. Form N–17f–2 will not be codified in the Code of Federal Regulations.

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

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

Authority: Secs. 203, 54 Stat. 850, as amended, 15 U.S.C. 80b–3; sec. 204, 54 Stat. 852, as amended, 17 U.S.C. 80b–4; sec. 206A, 84 Stat. 1433, as added, 15 U.S.C. 80b–6A; sec. 211, 54 Stat. 855, as amended, 15 U.S.C. 80b–11, unless otherwise noted.

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

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

(a) * * *

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

* * * * *

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

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

Authority: The Investment Advisers Act of 1940, 15 U.S.C. 80b–1, *et seq.*

10. By adding § 279.8 to read as follows:

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

Text of Form ADV–E

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

By the Commission.

Dated: July 26, 1989.

Jonathan G. Katz,

Secretary.

FORM M–17f–1

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

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

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

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

AL	AK	AZ	AR	CA	CO
CT	DE	DC	FL	GA	HI
ID	IL	IN	IA	KS	KY
LA	ME	MD	MA	MI	MN
MS	MO	MT	NE	NV	NH
NJ	NM	NY	NC	ND	OH
OK	OR	PA	RI	SC	SD
TN	TX	UT	VT	VA	WA
WV	WI	WY	PR		
Other (specify):					

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

Instructions

This Form must be completed by investment companies that place or maintain securities or similar investments in the custody of a company that is a member of a national securities exchange.

Investment company

1. All items must be completed by the investment company.

2. Give this Form to the independent public account who, in compliance with Rule 17f–1 under the Act and applicable state law, examines securities and similar investments in the custody of a company that is a member of a national securities exchange.

Accountant

3. Submit this Form to the Securities and Exchange Commission and appropriate state securities administrators when filing the certificate of accounting required by Rule 17f–1 under the Act and applicable state law.

File the original and one copy with the Securities and Exchange Commission's principal office in Washington, D.C., one copy with the regional office for the region in which the investment company's principal business operations are conducted, and one copy with the appropriate state administrator(s), if applicable.

This Form Must Be Given to Your Independent Public Accountant

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

Form M-17f-2

Certificate of Accounting of Securities and Similar Investments in the Custody of Management Investment Companies

Appendix B

OMB Approval
OMB Number: 3235-0360
Expires: July 31, 1991
Estimated average burden hours per response: 0.05

Pursuant to Rule 17f-2 [17 CFR 270.17f-2]

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

AL	AK	AZ	AR	CA	CO
CT	DE	DC	FL	GA	WI
ID	IL	IN	IA	KS	KY
LA	ME	MD	MA	MI	MN
MS	MO	MT	NE	NV	NH
NJ	NM	NY	NC	ND	OH
OK	OR	PA	RI	SC	SD
TN	TX	UT	VT	VA	WA
WV	WI	WY	PR		
Other (specify):					

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

Instructions

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

Investment Company

1. All items must be completed by the investment company.

2. Give this Form to the independent public accountant who, in compliance with Rule 17f-2 under the Act and applicable state law, examines securities and similar investment in the custody of the investment company.

Accountant

3. Submit this Form to the Securities and Exchange Commission and appropriate state securities administrators when filing the certificate of accounting required by Rule 17f-2 under the Act and applicable state law. File the original and one copy with the Securities and Exchange Commission's principal office in Washington, D.C., one copy with the regional office for the region in which the investment company's principal business operations are conducted, and one copy with the appropriate state administrator(s), if applicable.

This Form Must be Given to Your Independent Public Accountant

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

Appendix C

Form ADV-E

Certificate of Accounting of Client Securities and Funds in the Possession or Custody of an Investment Adviser

OMB APPROVAL
OMB Number: 3235-0361
Expires: July 31, 1991
Estimated average burden hours per response: 0.05

Pursuant to Rule 206(4)-2 [17 CFR 275.206(4)-2]

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

AL	AK	AZ	AR	CA	CO
CT	DE	DC	FL	GA	HI
ID	IL	IN	IA	KS	KY
LA	ME	MD	MA	MI	MN
MS	MO	MT	NE	NV	NH
NJ	NM	NY	NC	ND	OH
OK	OR	PA	RI	SC	SD
TN	TX	UT	VT	VA	WA
WV	WI	WY	PR		
Other (specify):					

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

Instructions

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

Investment Adviser

1. All items must be completed by the investment adviser.

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

Accountant

3. Submit this Form to the Securities and Exchange Commission and appropriate state securities administrators when filing the certificate of accounting required by Rule 206(4)-2(a)(5) under the Act and applicable state law. File the original and one copy with the Securities and Exchange Commission's principal office in Washington, DC, one copy with the regional office for the region in which the investment adviser's principal business operations are conducted, and one copy with the appropriate state administrator(s), if applicable.

This Form Must Be Given to Your Independent Public Accountant

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

[FR Doc. 89-18182 Filed 8-3-89; 8:45 am]
BILLING CODE 3010-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 133

[Docket No. 85P-0584]

Cheeses: Amendment of Standards of Identity to Permit Use of Antimycotics on the Exterior of Bulk Cheeses During Curing and Aging and to Update the Formats of Several Standards

AGENCY: Food and Drug Administration.

ACTION: Final rule.

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

DATES: Effective October 3, 1989; written objections and requests for a hearing by September 5, 1989.

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

FOR FURTHER INFORMATION CONTACT: Karen L. Carson, Center for Food Safety and Applied Nutrition (HFF–414), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–485–0110.

SUPPLEMENTARY INFORMATION:

I. The Proposal

In the **Federal Register** of September 21, 1987 (52 FR 35426). FDA published a proposal that was based on a petition submitted by the National Cheese Institute (NCI), a trade association representing U.S. cheese manufacturers. In that document, FDA proposed to amend the standards of identity for brick cheese (21 CFR 133.108), brick cheese for manufacturing (21 CFR 133.109), washed curd and soaked curd cheese (21 CFR 133.136), washed curd cheese for manufacturing (21 CFR 133.137), edam cheese (21 CFR 133.138), granular and stirred curd cheese (21 CFR 133.144), granular cheese for manufacturing (21 CFR 133.145), monterey cheese and monterey jack cheese (21 CFR 133.153), muenster and munster cheese (21 CFR 133.160), muenster and munster cheese for manufacturing (21 CFR 133.161), and, by cross-reference, gouda cheese (21 CFR 133.142) and high-moisture jack cheese (21 CFR 133.154) to permit the expanded use of safe and suitable antimycotics (currently permitted on cuts and slices in consumer-sized packages for a number of standardized cheeses) on the exterior of bulk cheeses during curing and aging and on the exterior of cheeses for manufacturing.

FDA also proposed, as requested by NCI, to amend the standards of identity for brick cheese (§ 133.108), washed curd and soaked curd cheese (§ 133.136), granular and stirred curd cheese (§ 133.144), monterey cheese and monterey jack cheese (§ 133.153), and muenster and munster cheese (§ 133.160) to make the format and language of those standards consistent with the format and language of the standards for nine natural cheeses that FDA revised to conform more closely to the Codex international standards for those foods (see 48 FR 2736; January 21, 1983). On its own initiative, FDA proposed to similarly update the format and language of the standards of identity for cook cheese, koch kaese (21 CFR 133.127), cream cheese (21 CFR 133.133), cream cheese with other foods (21 CFR 133.134), gammelost cheese (21 CFR 133.140), gorgonzola cheese (21 CFR 133.141), grated cheeses (21 CFR 133.146), neufchatel cheese (21 CFR 133.162), nuworld cheese (21 CFR 133.164), roquefort cheese, sheep's milk blue-mold, and blue-mold cheese from sheep's milk (21 CFR 133.184), sap sago cheese (21 CFR 133.186), spiced cheeses (21 CFR 133.190) and, by cross-reference, part-skim spiced cheeses (21 CFR 133.191).

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

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

II. Comments

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

Several comments suggested substantive amendments that require the promulgation of a separate proposal so that interested persons would have the opportunity to comment. One such comment noted that the agency had failed to list the amended version of two cheese standards (edam and gouda) in the proposed regulation, even though the preamble to the proposal clearly indicated that the agency intended to include these two standards among those being amended. Two other comments requested FDA to expand the proposal by permitting the use of antimycotics on swiss and emmentaler cheese and on swiss cheese for manufacturing. Elsewhere in this issue of the **Federal Register**, FDA is addressing all of these comments by proposing to amend the standards of identity for edam cheese (21 CFR 133.138) and, by cross-reference, gouda cheese (21 CFR 133.142), swiss and emmentaler cheese (21 CFR 133.195), and swiss cheese for manufacturing (21 CFR 133.196) to permit the use of antimycotics in the same manner as provided by the amendments set forth in this document.

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

The agency does not believe that the concern expressed by the comment is warranted. The provision for "safe and suitable" ingredients governs the use of all optional ingredients in these cheeses, including antimycotics. Thus, any antimycotics used in or on these standardized cheeses must conform to the definition of "safe and suitable" in 21 CFR 130.3(d). That definition requires that the antimycotic: (1) Perform an appropriate function in the food; (2) be used at a level no higher than necessary to achieve its intended purpose; and (3) be generally recognized as safe (GRAS), prior sanctioned, or the subject of a food additive regulation. In light of these requirements, specific qualitative or quantitative restrictions on the use of antimycotics in these standardized cheeses is unnecessary. The agency also notes that label declaration is required for all optional ingredients, including antimycotics, so that consumers will have a means of avoiding these substances if they so choose.

The same comment raised the issues of economic impact related to health concerns and of environmental impact from increased use of antimycotics. As discussed in the previous paragraph, the agency does not believe that the "safe and suitable" use of antimycotics raises any health concerns and, accordingly, finds no basis for assuming there will be any increased costs as a result of health problems. The agency also notes that amendment of a food standard is categorically excluded from preparation of an environmental assessment (21 CFR 20.24(b)(1)).

Accordingly, after consideration of all comments, the agency is amending the standards of identity for brick cheese (§ 133.108), brick cheese for manufacturing (§ 133.109), washed curd and soaked curd cheese (§ 133.136), washed curd cheese for manufacturing (§ 133.137), granular and stirred curd cheese (§ 133.144), granular cheese for manufacturing (§ 133.145), monterey cheese and monterey jack cheese (§ 133.153), muenster and munster cheese (§ 133.160), muenster and munster cheese for manufacturing (§ 133.161), and, by cross-reference, high-moisture jack cheese (§ 133.154) to permit the use of safe and suitable antimycotics on the exterior of bulk cheeses during curing and aging, and on the exterior of those cheeses for manufacturing. The agency is also amending the standards of identity for brick cheese (§ 133.108), cook cheese, koch kaese (§ 133.127), cream cheese (§ 133.133), cream cheese with other foods (§ 133.134), washed curd and soaked curd cheese (§ 133.136), gammelost cheese (§ 133.140), gorgonzola cheese (§ 133.141), granular and stirred curd cheese (§ 133.144), grated cheeses (§ 133.146), monterey cheese and monterey jack cheese (§ 133.153), muenster and munster cheese (§ 133.60), neufchatel cheese (§ 133.162), nuworld cheese (§ 133.164), roquefort cheese, sheep's milk blue-mold, and blue-mold cheese from sheep's milk (§ 133.184), sap sago cheese (§ 133.186), spiced cheeses (§ 133.190) and, by cross-reference, part-skim spiced cheeses (§ 133.191) to update the formats and language of these standards, as set forth below. The agency is also amending the standard of identity for blue cheese (§ 133.106) by removing paragraph (a)(2) which established a maximum phenol equivalent value when unpasteurized dairy ingredients are used in the manufacture of the cheese.

III. Economic Impact

In the preamble to the proposal (52 FR 35426), the impact of the proposed amendment on small entities, including small businesses, was reviewed in accordance with the Regulatory Flexibility Act (Pub. L. 96–354) (5 U.S.C. 601). No comments were received on the review presented. FDA has concluded that this action will not result in a significant economic impact on a substantial number of small entities. Therefore, FDA certifies, in accordance with section 605b) of the Regulatory Flexibility Act, that no significant economic impact on a substantial number of small entities will derive from this action.

IV. Objections

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

List of Subjects in 21 CFR Part 133

Cheese, Food grades and standards.

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

PART 133—CHEESES AND RELATED CHEESE PRODUCTS

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

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

§ 133.106 [Amended]

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

3. Section 133.108 is revised to read as follows:

§ 133.108 Brick cheese.

(a) *Description.* (1) Brick cheese is the food prepared from dairy ingredients and other ingredients specified in this section by the procedure set forth in paragraph (a)(3) of this section, or by any other procedure which produces a finished cheese having the same physical and chemical properties. The minimum milkfat content is 50 percent by weight of the solids and the maximum moisture content is 44 percent by weight, as determined by the methods described in § 133.5. If the dairy ingredients used are not pasteurized, the cheese is cured at a temperature of not less than 35 °F for at least 60 days.

(2) If pasteurized dairy ingredients are used, the phenol equivalent value of 0.25 gram of brick cheese is not more than 5 micrograms as determined by the method described in § 133.5.

(3) One or more of the dairy ingredients specified in paragraph (b)(1) of this section is brought to a temperature of about 88 °F and subjected to the action of a lactic acid-producing bacterial culutre. One or more of the clotting enzymes specified in paragraph (b)(2) of this section is added to set the dairy ingredients to a semisolid mass. The mass is cut into cubes with sides approximately ⅜ inch long, and stirred and heated so that the temperature rises slowly to about 96 °F. The stirring is continued until the curd is sufficiently firm. Part of the whey is then removed, and the mixture diluted with water or salt brine to control the acidity. The curd is transferred to forms, and drained. During drainage it is pressed and turned. After drainage the curd is salted, and the biological curing agents characteristic of brick cheese are applied to the surface. The cheese is then cured to develop the characteristics of brick cheese. One or more of the other optional ingredients specified in paragraph (b)(3) of this section may be added during the procedure.

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

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

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

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

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

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

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

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

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

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

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

4. Section 133.109 is revised to read as follows:

§ 133.109 Brick cheese for manufacturing.

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

5. Section 133.127 is revised to read as follows:

§ 133.127 Cook cheese, koch kaese.

(a) *Description.* (1) Cook cheese, koch kaese, is the food prepared by the procedure set forth in paragraph (a)(3) of this section or by any other procedure which produces a finished cheese having the same physical and chemical properties. The maximum moisture content is 60 percent by weight, as determined by the method described in § 133.5. The dairy ingredients used may be pasteurized.

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

(3) One or more of the dairy ingredients specified in paragraph (b)(1) of this section may be warmed and is subjected to the action of a lactic acid-producing bacterial culture. One or more of the clotting enzymes specified in paragraph (b)(2) of this section is added to set the dairy ingredients to a semisolid mass. The mass is cut, stirred, and heated with continued stirring, so as to separate the curd and whey. The whey is drained from the curd and the curd is cured for 2 or 3 days. It is then heated to a temperature of not less than 180 °F until the hot curd will drop from a ladle with a consistency like that of honey. The hot cheese is filled into packages and cooled. One or more of the other optional ingredients specified in paragraph (b)(3) of this section may be added during the procedure.

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

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

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

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

(ii) Culture of white mold.

(iii) Pasteurized cream.

(iv) Caraway seed.

(v) Salt.

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

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

6. Section 133.133 is revised to read as follows:

§ 133.133 Cream cheese.

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

(2) One or more of the dairy ingredients specified in paragraph (b)(1) of this section may be homogenized and is subjected to the action of lactic acid-producing bacterial culture. One or more of the clotting enzymes specified in paragraph (b)(2) of this section is added to coagulate the dairy ingredients. The coagulated mass may be warmed and stirred and it is drained. The moisture content may be adjusted with one or more of the optional ingredients specified in paragraph (b)(3)(ii) of this section. The curd may be pressed, chilled, and worked and it may be heated until it becomes fluid. It may then be homogenized or otherwise mixed. One or more of the optional dairy ingredients specified in paragraph (b)(1) and the other optional ingredients specified in paragraph (b)(3) of this section may be added during the procedure.

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

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

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

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

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

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

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

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

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

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

7. Section 133.134 is revised to read as follows:

§ 133.134 Cream cheese with other foods.

(a) *Description.* Cream cheese with other foods is the class of foods prepared by mixing, with or without the aid of heat, cream cheese with one or a mixture of two or more types of foods (except other cheeses) listed in paragraph (b)(1) of this section, in an amount sufficient to differentiate the mixture from cream cheese. One or more of the other optional ingredients in paragraph (b)(2) of this section may be used. The maximum moisture content of

the mixture is 60 percent by weight. The minimum milkfat is 33 percent by weight of the cream cheese and in no case less than 27 percent of the finished food. The moisture and fat contents will be determined by the methods described in § 133.5, except that the method for determination of fat content is not applicable when the added food contains fat.

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

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

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

(ii) Coloring.

(c) *Nomenclature.* The name of the food is "cream cheese with _____" or, alternatively, "cream cheese and _____", the blank being filled in with the name of the foods used in order of predominance by weight.

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

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

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

8. Section 133.136 is revised to read as follows:

§ 133.136 Washed curd and soaked curd cheese.

(a) *Description.* (1) Washed curd, soaked curd cheese is the food prepared by the procedure set forth in paragraph (a)(3) of this section or by any other procedure which produces a finished cheese having the same physical and chemical properties. The minimum milkfat content is 50 percent by weight of the solids and the maximum moisture content is 42 percent by weight, as determined by the methods described in § 133.5. If the dairy ingredients used are not pasteurized, the cheese is cured at a temperature of not less than 35 °F for at least 60 days.

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

(3) One or more of the dairy ingredients specified in paragraph (b)(1) of this section may be warmed, treated with hydrogen peroxide/catalase, and is subjected to the action of a lactic acid-producing bacterial culture. One or more of the clotting enzymes specified in paragraph (b)(2) of this section is added to set the dairy ingredients to a semisolid mass. The mass is so cut, stirred, and heated with continued stirring, as to promote and regulate the separation of whey and curd. The whey is drained off, and the curd is matted into a cohesive mass. The mass is cut into slabs, which are so piled and handled as to promote the drainage of whey and the development of acidity. The slabs are then cut into pieces, cooled in water, and soaked therein until the whey is partly extracted and water is absorbed. The curd is drained, salted, stirred, and pressed into forms. One or more of the other optional ingredients specified in paragraph (b)(3) of this section may be added during the procedure.

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

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

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

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

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

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

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

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

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

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

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

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

9. Section 133.137 is revised to read as follows:

§ 133.137 Washed curd cheese for manufacturing.

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

10. Section 133.140 is revised to read as follows:

§ 133.140 Gammelost cheese.

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

(2) The dairy ingredients are subjected to the action of a lactic acid-producing bacterial culture. The development of acidity is continued until the dairy ingredients coagulate to a semisolid mass. The mass is stirred and heated until a temperature of about 145 °F is reached, and is held at that temperature for at least 30 minutes. The whey is drained off and the curd removed and placed in forms and pressed. The shaped curd is placed in whey and heated for 3 or 4 hours, and may again be pressed. It is then stored under conditions suitable for curing.

(b) *Nomenclature.* The name of the food is "gammelost cheese".

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

11. Section 133.141 is revised to read as follows:

§ 133.141 Gorgonzola cheese.

(a) *Description.* (1) Gorgonzola cheese is the food prepared by the procedure set forth in paragraph (a)(2) of this section or by any other procedure which produces a finished cheese having the same physical and chemical properties. It is characterized by the presence of bluish-green mold, *Penicillium*

roquefortii, throughout the cheese. The minimum milkfat content is 50 percent by weight of the solids and the maximum moisture content is 42 percent by weight, as determined by the methods described in § 133.5. The dairy ingredients used may be pasteurized. Gorgonzola cheese is at least 90 days old.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 133.144 is revised to read as follows:

§ 133.144 Granular and stirred curd cheese.

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

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

(3) One or more of the dairy ingredients specified in paragraph (b)(1) of this section may be warmed, treated with hydrogen peroxide/catalase, and is subjected to the action of a lactic acid-producing bacterial culture. One or more of the clotting enzymes specified in paragraph (b)(2) of this section is added to set the dairy ingredients to a semisolid mass. The mass is so cut, stirred, and heated with continued stirring, as to promote and regulate the separation of whey and curd. A part of the whey is drained off. The curd is then alternately stirred and drained to prevent matting and to remove whey from curd. The curd is then salted, stirred, drained, and pressed into forms. One or more of the other optional ingredients specified in paragraph (b)(3) of this section may be added during the procedure.

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

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

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

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

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

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

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

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

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

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

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

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

13. Section 133.145 is revised to read as follows:

§ 133.145 Granular cheese for manufacturing.

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

14. Section 133.146 is revised to read as follows:

§ 133.146 Grated cheeses.

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

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

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

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

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

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

(1) Antimycotics.

(2) Anticaking agents.

(3) Spices.

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

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

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

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

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

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

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

(iv) If a mixture of cheese varieties in which one or more varieties (not including parmesan or romano) are each present at a level of not less than 25 percent by weight of the finished food, and one or more other varieties (which may include parmesan and romano cheese) are each present at a level of not less than 2 percent but in the aggregate not more than 10 percent of the weight of the finished food, the name of the food is "grated _____ cheese with other grated cheese" or "grated _____ cheese with other grated cheeses", as appropriate, the blank being filled in with the name or names of those cheese varieties present at levels of not less than 25 percent by weight of the finished food in order of predominance, in letters not more than twice as high as the letters in the phrase "with other grated cheese(s)".

(4) The following terms may be used in place of "grated" to describe alternative forms of cheese:

(i) "Shredded", if the particles of cheese are in the form of cylinders, shreds, or strings."

(ii) "Chipped" or "chopped", if the particles of cheese are in the form of chips.

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

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

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

15. Section 133.153 is revised to read as follows:

§ 133.153 Monterey cheese and monterey jack cheese.

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

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

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

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

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

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

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

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

(iii) Salt.

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

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

(c) *Nomenclature.* The name of the food is "monterey cheese" or alternatively, "monterey jack cheese".

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

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

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

16. Section 133.160 is revised to read as follows:

§ 133.160 Muenster and munster cheese

(a) *Description.* (1) Muenster cheese, munster cheese, is the food prepared by the procedure set forth in paragraph (a)(3) of this section or by any other procedure which produces a finished cheese having the same physical and chemical properties. The minimum milkfat content is 50 percent by weight of the solids and the maximum moisture content is 46 percent by weight, as determined by the methods decribed in § 133.5. The diary ingredients used are pasteurized.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17. Section 133.161 is revised to read as follows:

§ 133.161 Muenster and munster cheese for manufacturing.

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

18. Section 133.162 is revised to read as follows:

§ 133.162 Neufchatel cheese.

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

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

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

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

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

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

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

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

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

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

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

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

19. Section 133.164 is revised to read as follows:

§ 133.164 Nuworld cheese.

(a) *Description.* (1) Nuworld cheese is the food prepared by the procedure set forth in paragraph (a)(2) of this section or by any other procedure which produces a finished cheese having the same physical and chemical properties. It is characterized by the presence of creamy-white mold, a white mutant of *Penicillium roquefortii,* throughout the cheese. The minimum milkfat content is 50 percent by weight of the solids and the maximum moisture content is 46 percent by weight, as determined by the methods described in § 133.5. The dairy ingredients used may be pasteurized. Nuworld cheese is at least 60 days old.

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

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

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

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

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

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

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

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

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

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

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

20. Section 133.184 is revised to read as follows:

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

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

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

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

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

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

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

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

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

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

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

21. Section 133.186 is revised to read as follows:

§ 133.186 Sap sago cheese.

(a) *Description.* (1) Sap sago cheese is the food prepared by the procedure set forth in paragraph (a)(2) of this section or by any other procedure which produces a finished cheese having the same physical and chemical properties. The cheese is pale green in color and has the shape of a truncated cone. The maximum moisture content is 38 percent by weight, as determined by the method described in § 133.5. Sap sago cheese is not less than 5 months old.

(2) One or more of the dairy ingredients specified in paragraph (b)(1) of this section is allowed to become sour, and is heated to boiling

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

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

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

(2) *Other optional ingredients.* Buttermilk.

(c) *Nonmenclature.* The name of the food is "sap sago cheese".

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

22. Section 133.190 is revised to read as follows:

§ 133.190 Spiced cheeses.

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

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

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

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

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

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

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

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

(iii) Salt.

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

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

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

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

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

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

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

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

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

Dated: July 24, 1989.

Ronald G. Chesemore,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 89-18225 Filed 8-3-89; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Parts 200 and 206

[Docket No. R-89-1415; FR-2481]

RIN 2501-AA67

Home Equity Conversion Mortgage Insurance; Corrections

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule; corrections.

SUMMARY: The purpose of this document is to make technical corrections to a recently published final rule that implemented section 417 of the Housing and Community Development Act of 1987 (Pub. L. 100-242) which added a new section 255 to the National Housing Act (Act). Section 255 authorized the Secretary to carry out a program for insuring mortgages on the homes of elderly homeowners, enabling the homeowners to convert the equity in their homes into cash.

FOR FURTHER INFORMATION CONTACT: Judith V. May, Office of Economic Affairs, Room 8218, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: On June 9, 1989 (54 FR 24822), the Department published a final rule that added a new part 206 to title 24, chapter II of the Code of Federal Regulations. Part 206 implemented section 417 of the Housing and Community Development Act of 1987 (Pub. L. 100-242), which added a new section 255 to the National Housing Act (Act). Section 255 authorizes the Secretary to carry out a program for insuring mortgages on the homes of elderly homeowners, enabling the homeowners to convert the equity in their homes to cash.

The purpose of this document is to make technical corrections and correct typographical errors to that final rule.

Three of the errors found in the rule would affect the substantive rights of borrowers, lenders, and HUD, if not changed before reverse mortgages begin to be insured. First, § 206.25(b)(1)(ii) did not include the reference to servicing charges that was included in the final

rule approved by the Secretary; second, § 206.113(a) stated that the late charge on monthly MIP is "* * * one percent of the amount paid." (Both the proposed rule and the final rule approved by the Secretary stated that the late charge actually is four percent); Third, § 206.205(b) as published did not include the servicing charge set aside in the calculation to determine if sufficient funds exist to pay taxes.

In addition, § 206.21(d) as published incorrectly stated that the lender must provide at least 25 days notice to the borrower before any adjustment to the "interest rate." The intent of the rule was correctly stated in the preamble, which provided that HUD would apply its regular ARM policy requiring 25-day notice of interest rate adjustments. The regular ARM policy at § 203.49(g) (see 54 FR 111, Jan. 4, 1989), provides that such notice be given 25 days before any adjustment to the borrower's "monthly Payments." In the reverse mortgage program, a borrower does not make monthly payments, and the payments he or she receives would not adjust as a result of the change in interest rate. However, a change in interest rate would affect the rate at which interest accrues on the outstanding mortgage balance. Therefore, under a reverse mortgage, the date that the new interest rate is applied to the outstanding balance is analogous to the date that the monthly payment adjusts under a forward mortgage. The date that the interest rate is applied to the balance is not the same as the date the interest rate changes. In order that the reverse mortgage rule actually apply the regular ARMs policy, the words "interest rate" at § 206.21(d) are being corrected to substitute the words "mortgage balance".

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

PART 200—[AMENDED]

§ 200.810 [Corrected]

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

PART 206—[AMENDED]

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

§ 206.3 [Corrected]

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

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

§ 206.9 [Corrected]

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

§ 206.15 [Corrected]

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

§ 206.21 [Corrected]

7. In § 206.21(b)(1), on page 24835, correct references to "§ 206.49(a), (c) and (e)" and "§ 203.43(e)(1)" to read "§ 203.49(a), (c) and (e)" and "§ 203.49(e)(1)", respectively.

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

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

§ 206.23 [Corrected]

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

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

§ 206.25 [Corrected]

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

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

§ 206.26 [Corrected]

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

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

§ 206.27 [Corrected]

16. In § 206.27(b)(8), on page 24837, correct the third sentence by removing the word "property" and inserting in its place, "mortgage".

§ 206.31 [Corrected]

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

§ 206.113 [Corrected]

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

§ 206.121 [Corrected]

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

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

§ 206.125 [Corrected]

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

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

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

§ 206.129 [Corrected]

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

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

§ 206.131 [Corrected]

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

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

§ 206.205 [Corrected]

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

29. In § 206.205(d), on page 24843, correct "§ 206.107(c)(1)" to read "§ 206.107(a)(1)", and correct "§ 206.121(b)" to read "§ 206.121(a)".

Dated: July 31, 1989.

Grady J. Norris,

Assistant General Counsel for Regulations.

[FR Doc. 89-18252 Filed 8-3-89; 8:45 am]

BILLING CODE 4210-32-M

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

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

Headquarters Office; Address Change and Updated List of Field Offices

AGENCY: Equal Employment Opportunity Commission.

ACTION: Final rule.

SUMMARY: The Equal Employment Opportunity Commission is amending its regulations to reflect the change of its Headquarters office address from 2401 E Street NW., Washington, DC 20507 to 1801 L Street NW., Washington, DC 20507, and the change of its Washington, DC field office from the Washington Area Office to the Washington Field Office. Included in the amendments is an updated list of all the field offices, as found in 29 CFR 1610.4(c).

EFFECTIVE DATE: August 4, 1989.

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

For the Commission.

Clarence Thomas,

Chairman.

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

PART 1600—EMPLOYEE RESPONSIBILITIES AND CONDUCT

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

Authority: E.O. 11222, 30 FR 6469, 3 CFR 1965 Supp.; 5 CFR 735.101 et seq.

§ 1600.735-401 [Amended]

2. Section 1600.735-401(b)(4) is amended as follows:

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

PART 1601—PROCEDURAL REGULATIONS

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

Authority: 42 U.S.C. 2000e to 2000e-17.

4. Part 1601 is amended as follows:

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

Sec.
1601.5
1601.10
1601.14(b)
1601.16(a)(3)
1601.19(g)
1601.20(a)
1601.21(d)
1601.23 (a) and (b)
1601.24(b)
1601.25
1601.28 (a)(2), (a)(3), and (c)

§ 1601.3 [Amended]

5. Section 1601.3(a) is amended as follows:

After "designated representatives;" insert " "Washington Field Office" shall mean the Commission's primary non-Headquarters office serving the District of Columbia and surrounding Maryland and Virginia suburban counties and jurisdictions; the term "field office" shall mean any of the Commission's District Offices, Area Offices and Local Offices, and its Washington Field Office;".

§ 1601.5 [Amended]

6. Section 1601.5 is amended as follows:

After "in each district." insert "The term "Washington Field Office Director" shall refer to that person designated as the Commission's chief officer in the Washington Field Office. Any authority of, or delegation of authority to, District Directors shall be deemed to include the Director of the Washington Field Office."

After "Each district office" insert "and the Washington Field Office".

§ 1601.6 [Amended]

7. Section 1601.6(a) is amended as follows:

Remove "District Office" and insert "field office".

§ 1601.8 [Amended]

8. Section 1601.8 is amended as follows:

After "Washington, DC, or any of its" insert "field offices" and remove "district, area or local offices".

§ 1601.16 [Amended]

9. Section 1601.16(b)(1) is amended as follows:

After "Petitions to the General Counsel shall be mailed to" delete "2401 E Street NW., Washington, DC 20507" and insert "1801 L Street, NW., Washington, DC 20507".

§ 1601.19 [Amended]

10. Section 1601.19(a) is amended as follows:

After "Equal Employment Opportunity Commission," remove "2401 E Street NW., Washington, DC 20507" and insert "1801 L Street NW., Washington, DC 20507".

§ 1601.30 [Amended]

11. Section 1601.30(a) is amended as follows:

After "The Equal Employment Opportunity Commission," remove "2401 E Street NW., Washington, DC 20506" and insert "1801 L Street NW., Washington, DC 20507"

§ 1601.35 [Amended]

13. Section 1601.35 is amended as follows:

After "Equal Employment Opportunity Commission," remove "2401 E Street NW., Washington, DC 20506" and insert "1801 L Street NW., Washington, DC 20507".

§ 1601.75 [Amended]

14. Section 1601.75(b)(2) is amended as follows:

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

PART 1610—AVAILABILITY OF RECORDS

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

Authority: Sec. 713(a), 78 Stat. 265, 42 U.S.C. 2000e-12(a), 5 U.S.C. 552, as amended by Pub. L. 93-502 and Pub. L. 99-570; for § 1610.15, nonsearch or copy portions are issued under 31 U.S.C. 483a.

§ 1610.4 [Amended]

16. Section 1610.4(a) is amended as follows:

After "Commission's library at" remove "2401 E Street NW., Washington, DC 20506" and insert "1801 L Street, NW., Washington, DC 20507".

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

After "Each" insert "of the Commission's field offices" and remove "district, area and local offices".

After "listed in paragraph (c) of this section" insert ", including the District Offices, the Washington Field Office, the Area Offices and the Local Offices,".

§ 1610.4 [Amended]

18. Section 1610.4(c) is amended as follows:

Insert "The addresses of the Commission field offices are:" and remove "The Commission's District, Area and Local Offices are:".

Insert the following list, and remove the existing list.

Albuquerque Area Office (Phoenix District), 505 Marquette, NW., Suite 1105, Albuquerque, NM 87102, 2189.

Atlanta District Office, 75 Piedmont Avenue, NE., Suite 1100, Atlanta, GA 30335.

Baltimore District Office, 109 Market Place, Suite 4000, Baltimore, MD 21202.

Birmingham District Office, 2121 Eighth Avenue, North, Suite 824, Birmingham, AL 35203.

Boston Area Office (New York District), JFK Federal Building, Room 409–B, Boston, MA 02203.

Buffalo Local Office (New York, District), 28 Church Street, Room 301, Buffalo, NY 14202.

Charlotte District Office, 5500 Central Avenue, Charlotte, NC 28212.

Chicago District Office, 536 South Clark Street, Room 930–A, Chicago, IL 60605.

Cincinnati Area Office (Cleveland District), 550 Main Street, Room 7015, Cincinnati, OH 45202.

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

Dallas District Office, 8303 Elmbrook Drive, Dallas, TX 75247.

Denver District Office, 1845 Sherman Street, 2nd Floor, Denver, CO 80203.

Detroit District Office, 477 Michigan Avenue, Room 1540, Detroit, MI 48226.

El Paso Area Office (San Antonio District), 700 East San Antonio Street, Room B–406, El Paso, TX 79901.

Fresno Local Office (San Francisco District), 1313 P Street, Suite 103, Fresno, CA 93721.

Greensboro Local Office (Charlotte District), 324 West Market Street, Room B–27, P.O. Box 3363, Greensboro, NC 27401.

Greenville Local Office (Charlotte District), 300 East Washington Street, Federal Building B–41, Greenville, SC 29601.

Honolulu Local Office (San Francisco District), 300 Ala Moana Boulevard, Room 3316–A, P.O. Box 50082, Honolulu, HI 96850.

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

Indianapolis District Office, 46 East Ohio Street, Room 456, Indianapolis, IN 46204.

Jackson Area Office (Birmingham District), 100 West Capitol Street, Suite 721, Jackson, MI 39269.

Kansas City Area Office (St. Louis District), 911 Walnut, 10th Floor, Kansas City, MO 64106.

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

Los Angeles District Office, 3660 Wilshire Boulevard, 5th Floor, Los Angeles, CA 90010.

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

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

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

Milwaukee District Office, 310 West Wisconsin Avenue, Suite 800, Milwaukee, WI 53203.

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

Nashville Area Office (Memphis District), 404 James Robertson Parkway, Suite 1100, Nashville, TN 37219–1588.

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

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

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

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

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

Oklahoma City Area Office (Dallas District), 200 N.W. 5th Street, Room 703, Oklahoma City, OK 73102.

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

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

Pittsburgh Area Office (Philadelphia District), 1000 Liberty Avenue, Room 2038–A, Pittsburgh, PA 15222.

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

Richmond Area Office (Baltimore District), 400 North 8th Street, Room 7026, Richmond, VA 23240.

San Antonio District Office, 5410 Fredericksburg Rd., Suite 200, San Antonio, TX 78229.

San Diego Local Office (Los Angeles District), 880 Front Street, Room 4S–21, San Diego, CA 92188.

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

San Jose Local Office (San Francisco District), 280 South First Street, Room 4150, San Jose, CA 95113.

Savannah Local Office (Atlanta District), 10 Whitaker Street, Suite B, Savannah, GA 31410.

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

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

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

Washington Field Office, 1400 L Street NW., Suite 200, Washington, DC 20005.

§ 1610.7 [Amended]

19. Section 1610.7(a) is amended as follows:

After "for the appropriate district, area or local" insert "office".

After "listed in § 1610.4(c)" insert ", or, in the case of the Washington Field Office, shall be submitted to the regional attorney in the Baltimore District Office, at the address listed in § 1610.4(c)"

20. Section 1610.7(a)(1) is amended as follows:

After "employees of the" insert "field office" and remove "district, area or local office".

21. Section 1610.7(a)(2) is amended as follows:

After "relating to the case processing of the" insert "field office" and remove "district, area or local office".

22. Section 1610.7(a)(3) is amended as follows:

After "under the jurisdiction of" insert "field office" and remove "district, area or local office".

23. Section 1610.7(a)(4) is amended as follows:

After "materials in" insert "field" and remove "district or area".

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

After "Equal Employment Opportunity Commission," remove "2401 E Street, NW., Washington, DC 20506" and insert "1801 L Street, NW., Washington, DC 20507".

25. Section 1610.7(d) is amended as follows:

After "actually received by the" insert "appropriate official" and remove "Deputy Legal Counsel or the appropriate regional attorney".

§ 1610.11 [Amended]

26. Section 1610.11(a) is amended as follows:

After "Equal Employment Opportunity Commission," remove "2401 E Street, NW., Washington, DC 20507" and insert "1801 L Street, NW., Washington, DC 20507".

27. Section 1610.14(b) is amended as follows:

After "District" insert "directors, the Washington Field Office Director,".

Before "area directors" remove "and".

After "area directors" insert ",".

After "in accordance with § 1610.4(b). District" insert "directors, the Washington Field Office Director,".

Before "area director" remove "and".

After "area director" insert ",".

PART 1611—PRIVACY ACT REGULATIONS

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

Authority: 5 U.S.C. 552a.

§ 1611.3 [Amended]

29. Section 1611.3(b) is amended as follows:

After "Director, Personnel Management Services," remove "Washington, DC 20506" and insert "Equal Employment Opportunity Commission, 1801 L Street, NW., Washington, DC 20507".

After "Office of Legal Counsel," remove "EEOC, Washington, DC 20506" and insert "Equal Employment Opportunity Commission, 1801 L Street, NW., Washington, DC 20507".

30. Section 1611.3(b)(1) is amended as follows:

Remove paragraph (b)(1).

31. Section 1611.3(b)(2) is amended as follows:

Redesignate paragraph (b)(2) as (b)(1).

After "For all" remove "other".

After "Director, Personnel Management Services," remove "Washington, DC 20506" and insert "Equal Employment Opportunity Commission, 1801 L Street, NW., Washington, DC 20507".

32. Section 1611.3(b)(3) is amended as follows:

Redesignate paragraph (b)(3) as (b)(2).

§ 1611.5 [Amended]

33. Section 1611.5(c) is amended as follows:

After "Chairman" insert ",".

After "Equal Employment Opportunity Commission," remove "Washington, DC 20506" and insert "1801 L Street, NW., Washington, DC 20507".

§ 1611.9 [Amended]

34. Section 1611.9(a) is amended as follows:

After "Equal Employment Opportunity Commission," remove "Washington, DC 20506" and insert "1801 L Street, NW., Washington, DC 20507".

PART 1620—THE EQUAL PAY ACT

35. The authority citation for part 1620 continues to read:

Authority: Sec. 1–19, 52 Stat. 1060, as amended; sec. 10, 61 Stat. 84; Pub. L. 88–38, 77 Stat. 56 (29 U.S.C. 201 et seq.); sec. 1, Reorg. Plan No. 1 of 1978, 43 FR 19807; E.O. 12144, 44 FR 37193.

§ 1620.30 [Amended]

36. Section 1620.30(b) is amended as follows:

After "District Directors," insert "Washington Field Office Director,".

PART 1626—PROCEDURES—AGE DISCRIMINATION IN EMPLOYMENT ACT

37. The authority citation for Part 1626 continues to read:

Authority: Sec. 9, 81 Stat. 605, 29 U.S.C. 628; Sec. 2, Reorg. Plan No. 1 of 1978, 3 CFR 321 (1979).

§ 1626.5 [Amended]

38. Section 1626.5 is amended as follows:

After "local Offices of the Commission," insert "or to the Washington Field Office,".

§ 1626.15 [Amended]

39. Section 1626.15(e) is amended as follows:

After "The District Directors" insert ", the Washington Field Office Director,".

§ 1626.16 [Amended]

40. Section 1626.16(b) is amended as follows:

After "the District Directors," insert "the Washington Field Office Director,".

§ 1626.17 [Amended]

41. Section 1626.17(a) is amended as follows:

After "Equal Employment Opportunity Commission," remove "2401 E Street, NW., Washington, DC 20506" and insert "1801 L Street, NW., Washington, DC 20507".

PART 1691—PROCEDURES FOR COMPLAINTS OF EMPLOYMENT DISCRIMINATION FILED AGAINST RECIPIENTS OF FEDERAL FINANCIAL ASSISTANCE.

42. The authority citation for part 1691 continues to read:

Authority: E.O. 12250, 45 FR 72995 (November 4, 1980) and E.O. 12067, 43 FR 28967 (June 30, 1978).

§ 1691.13 [Amended]

43. Section 1691.13(d) is amended as follows:

After "any of its District Offices" insert "and its Washington Field Office".

[FR Doc. 89–18056 Filed 8–3–89; 8:45 am]
BILLING CODE 6570–06–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 934

North Dakota Permanent Regulatory Program

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

ACTION: Final rule; approval of amendment.

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

EFFECTIVE DATE: August 4, 1989.

FOR FURTHER INFORMATION CONTACT: Jerry R. Ennis, Director, Office of Surface Mining Reclamation and Enforcement, Casper Field Office, Federal Building, 100 East B Street, Room 2128, Casper, Wyoming 82601–1918; Telephone (307) 261–5776.

SUPPLEMENTARY INFORMATION:

I. Background on the North Dakota Program

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

II. Submission of Amendment

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

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

III. Director's Findings

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

Two-Acre Exemption

As originally codified, NDCC section 38–14.1–37 excluded coal extraction operations affecting two acres or less from regulation. Similarly, as originally enacted, section 528(2) of SMCRA, 30 U.S.C. Section 1278, exempted from the requirements of SMCRA, all coal extraction opertions affecting two acres or less. However, on May 7, 1987 the President signed Public Law (Pub. L.) 100–34, which repealed the section 528 (2) exemption and preempted any acreage-based exemptions included in State laws or regulations. The amendment under consideration in this rulemaking removes the language of NDCC section 38.14.1–37 preempted by Public Law 100–34. Therefore, the Director finds NDCC 38–14.1–37, as revised by this amendment, to be no less stringent than section 528 of SMCRA. Removal of the acreage exemption from the NDCC will avoid confusion on the part of the public which may not be aware of the Federal preemption.

Surface Mining and Reclamation Fund

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

Section 509 of SMCRA, 30 U.S.C. 1259, establishes the need for performance bonds in order to conduct surface coal mining and reclamation operations. While it does not specifically discuss how bond monies are to be processed in the event of bond forfeiture, the Director finds that North Dakota's revisions to NDCC section 38–14.1–39 are not inconsistent with and are no less stringent than Section 509 of SMCRA.

IV. Summary and Disposition of Comments

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

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

V. Director's Decision

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

VI. Procedural Determinations

Compliance With the National Environmental Policy Act

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

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

On July 12, 1984, the Office of Management and Budget (OMB) granted OSMRE an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, for this action, OSMRE is exempt from regulatory review by OMB and the requirements to prepare a regulatory impact analysis.

The Department of the Interior has determined that this rule will not have a significant effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

Paperwork Reduction Act

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

List of Subjects in 30 CFR 934

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

Dated: July 25, 1989.

Raymond L. Lowrie,

Assistant Director, Western Field Operations.

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

PART 934—NORTH DAKOTA

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

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

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

934.15 Approval of regulatory program amendments.

* * * * *

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

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

BILLING CODE 4310–05–M

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 500

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

AGENCY: Office of Foreign Assets Control, Treasury.

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

SUMMARY: This notice provides the names of firms that have been added to

the list of Specially Designated Nationals under the Treasury Department's Foreign Assets Control Regulations (31 CFR part 500).

EFFECTIVE DATE: August 4, 1989.

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

FOR FURTHER INFORMATION CONTACT: Richard J. Hollas, Chief, Enforcement Division, Office of Foreign Assets Control, Tel: (202) 376–0400.

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

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

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

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

Please take notice that section 16 of the Trading with the Enemy Act (the "Act"), as amended, provides in part that whoever willfully violates any provision of the Act or any license, rule or regulation issued thereunder:

"Shall, upon conviction, be fined not more than $50,000, or, if a natural person, imprisoned for not more than ten years, or both; and the officer, director, or agent of any corporation who knowingly participates in such violation shall be punished by a like fine, imprisonment, or both, and any property, funds, securities, papers, or other articles or documents, or any vessel, together with her tackle, apparel, furniture, and equipment, concerned in such violation shall be forfeited to the United States."

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

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

Specially Designated Nationals of North Korea

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

Korea Foreign Insurance Company (a.k.a. Chosunbohom),
123, rue des Tennerolles, 92210 Saint-Cloud, Paris, France
1080 Berlin Glinkastrasse 5, German Democratic Republic
Unt. Batterieweg 35, CH–4008 Basel, Switzerland

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

Specially Designated Nationals of Vietnam

Canada Kwimex Corp., 713 Somerset Street, West, Ottawa, Ontario, KIR–6C8 Canada

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

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

Indovina International Ltd., Hong Kong

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

Mediaveka Inc., 1448 Beaudry Street, Montreal, H2L–3E5 Canada

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

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

Que Viet Tours, 1700 Berri, Suite 27, Montreal, H2L–4E4 Canada

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

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

UGVG (see Union Generale des Vietnamiens au Canada)

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

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

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

Union des Vietnamiens du Canada (see Union Generale des Vietnamiens au Canada)
Union Generale des Vietnamiens (see Union Generale des Vietnamiens au Canada)
Union Generale des Vietnamiens au Canada, 1448 Beaudry Street, Montreal, H2L–3E5 Canada
Vietcan Import-Export, P.O. Box 1285, Station B, Montreal, H313–3K9 Canada
Vietimex Inc., 1450 Beaudry Street, Montreal, H2L–3E5 Canada
Vietsing Co., Hong Kong
Vinamedic Inc., 1444A–1450 Beaudry Street, Montreal, H2L–3E5 Canada

Dated: July 10, 1989.

R. Richard Newcomb,

Director, Office of Foreign Assets Control.

Approved: July 19, 1989.

Salvatore R. Martoche,

Assistant Secretary (Enforcement).

[FR Doc. 89–18438 Filed 8–2–89; 4:25 pm]

BILLING CODE 4810–25–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD1 89–025]

Freeport Grand Prix, Long Beach, NY

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

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

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

FOR FURTHER INFORMATION CONTACT: Captain Ronald L. Blake, (617) 223–8310.

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

Drafting Information

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

Discussion of Regulations

The Freeport Grand Prix is a high performance Indy 500 type powerboat race around an eight (8) mile rectangular course situated approximately one and one quarter (1¼ miles south on Long Beach, Long Island, New York. There will be up to 50 vessels participating. The sponsoring organization will provide eight to 12 patrol boats along with turning and finishing mark boats. The regulation will close a portion of the coastal Atlantic waters south of Long Beach, Long Island, New York to all traffic except law enforcement vessels, regatta participants, and official regatta patrol vessels. No vessels other than race participants and patrol craft will be allowed to enter the regulated area which is describe below. The regulated area and immediately adjacent waters will be patrolled by several Coast Guard and Coast Guard Auxiliary vessels which will be assisted by local law enforcement authorities and the sponsor provided patrol boats.

Economic Assessment and Certification

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

Federalism Assessment

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

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Regulations

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

PART 100—[AMENDED]

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

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

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

§ 100.106 Freeport Grand Prix, Long Beach, NY.

(a) *Regulated area.* The regulated area is a trapezoidal area on the coastal Atlantic waters of Long Island to the south of Long Beach, New York. The regulated area is one and one quarter (1¼) miles south of Long Beach and three and one quarter (3¼) miles north of the northern boundary of Ambrose Channel and is specifically bounded as follows:

(1) *Northeast Corner.* approximately one and one quarter miles southwest of Jones Inlet breakwater at coordinates 40–33–42 North; 073–35–43 West.

(2) *Southeast Corner.* southwest of Jones Inlet Approch Buoy (R "2"; Light List Number 685) at coordinates 40–31–45 North; 073–36–19 West.

(3) *Southwest Corner.* east of East Rockaway Approach Buoy (R "4"; Light List Number 690) at coorindates 40–31–31 North; 073–42–21 West.

(4) *Northwest Corner.* 40–33–30 North; 073–40–57 West.

(b) *Special local regulations.* Vessels not participating in, or operating as a safety/rescue patrol shall:

(1) Not operate within the regulated area.

(2) Immediately follow any specific instructions given by Coast Guard patrol craft.

(3) Exercise extreme caution when operating near the regulated area.

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

Dated: July 19, 1989.

R.I. Rybacki,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. 89-18237 Filed 8-3-89; 8:45 am]

BILLING CODE 4910-14-M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Parts 1202, 1250, and 1254

RIN 3095-AA34

Freedom of Information Act and Privacy Act of 1974 Access Procedures

AGENCY: National Archives and Records Administration.

ACTION: Final rule.

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

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

EFFECTIVE DATE: August 4, 1989.

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

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

Analysis of Comments Received

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

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

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

Other Changes Made by This Regulation

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

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

List of Subjects

36 CFR Part 1202

Privacy.

36 CFR Part 1250

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

36 CFR Part 1254

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

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

PART 1202—REGULATIONS IMPLEMENTING THE PRIVACY ACT OF 1974

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

Authority: 44 U.S.C. 2104(a); 5 U.S.C. 552a.

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

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

§ 1202.4 Definitions.

* * * * *

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

* * * * *

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

§ 1202.46 Denials of access.

* * * * *

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

* * * * *

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

§ 1202.48 Appeals of denial of access within NARA.

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

(1) Appeals involving records for which the Inspector General is the

system manager should be addressed to NARA Privacy Act Appeal Official (N), National Archives and Records Administration, Washington, DC 20408.

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

* * * * *

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

§ 1202.66 Denial of requests to amend.

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

* * * * *

7. Section 1202.68 is revised to read as follows:

§ 1202.68 Agreement to alternative amendments.

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

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

§ 1202.70 Appeal of denial of request to amend a record.

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

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

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

(3) If the requester is an employee of NARA and the denial to amend involves a record maintained in the employee's Official Personnel Folder, as described in Chapter 293 of the Federal Personnel Manual, the appeal should be addressed to the Assistant Director, Workforce Information Office, Compliance and Investigations Group, Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415.

* * * * *

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

9. The authority citation for Part 1250 is revised to read as follows:

Authority: 44 U.S.C. 2104(a); 5 U.S.C. 552; E.O. 12600.

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

§ 1250.58 Appeal within NARA.

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

* * * * *

§ 1250.60 [Amended]

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

Subpart G—[Redesignated as Subpart H]

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

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

Subpart G—Predisclosure Notification Procedures for Commercial Information.

§ 1250.75 Predisclosure notification procedures for commercial information.

(a) *General.* Commercial information provided to NARA shall not be disclosed to the public except in accordance with this subpart.

(b) *Definitions.*

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

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

(c) *Designation of potentially confidential commercial information.* Submitters of commercial information may designate the information as commercially confidential. The designation must:

(1) Be made by the submitter when the information is submitted to NARA or within 30 workdays thereafter;

(2) Specify precisely which information is claimed as commercially confidential;

(3) Be made in good faith;

(4) Be supported by a certification by the submitter that the information has not been published or previously officially disclosed to the public.

(d) *Notice of receipt of a request to release information.* (1) NARA shall give the submitter prompt written notice of receipt of a FOIA request for the submitter's potentially confidential commercial information when:

(i) The submitter, in good faith, has designated the material as commercially confidential in accordance with paragraph (c) of this section; and

(ii) The FOIA request is received within 10 years of the date of submission.

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

(3) When notice is given to a submitter pursuant to this section, NARA shall inform the requester that:

(i) The notice has been sent to the submitter;

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

(iii) That the delay may be considered a denial of access to records and the requester may seek judicial review. However, the requester shall be invited

to agree to a voluntary extension of time so that NARA may consider any claims of confidentiality by the submitter.

(e) *Opportunity to object to disclosure.* (1) Through the notice described in paragraph (d) of this section, NARA shall afford a submitter a reasonable amount of time to provide NARA:

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

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

(2) The statement provided pursuant to this subsection may itself be subject to disclosure under the FOIA

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

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

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

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

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

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

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

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

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

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

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

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

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

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

PART 1254—AVAILABILITY OF RECORDS AND DONATED HISTORICAL MATERIALS

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

Authority: 44 U.S.C. 2101–2118, 5 U.S.C. 552, and E.O. 12600.

15. Section 1254.30 is revised to read as follows:

§ 1254.30 Archives.

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

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

§ 1254.38 Freedom of Information Act requests.

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

(b) *Definitions.*

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

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

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

(d) *Processing time.* NARA shall inform requesters of the availability of records within 10 workdays after receiving a request, except when precluded from doing so by conditions as described in 5 U.S.C. 552a(6)(B), or by the need to consult with a submitter, as set forth in § 1254.39.

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

(f) *Appeals.* (1) A requester whose request is denied in whole or in part may appeal that decision within NARA. The requester should direct a written appeal to the Deputy Archivist of the United States (ND), Washington, DC 20408.

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

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

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

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

in the initial stage or solely in the appellate stage, or divided between them.

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

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

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

§ 1254.39 Requests for commercial information.

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

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

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

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

(5) NARA shall inform the requester that:

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

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

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

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

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

(3) The statement shall contain a certification that the information has not been published or officially released to the public.

(4) The statement provided pursuant to this subsection may itself be subject to disclosure under the FOIA under § 1250.75.

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

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

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

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

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

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

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

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

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

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

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

§ 1254.44 [Amended]

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

Dated: July 18, 1989.

Claudine J. Weiher,

Acting Archivist of the United States.

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

BILLING CODE 7515-01

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 21

RIN 2900-AC46

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

AGENCY: Department of Veterans Affairs.

ACTION: Final regulatory amendment.

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

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

FOR FURTHER INFORMATION CONTACT: Morris Triestman, Rehabilitation Consultant, Policy and Program Development, Vocational Rehabilitation and Education Service, Veterans Benefits Administration, (226), 810 Vermont Avenue NW., Washington, DC 20420, (202) 233-2886.

SUPPLEMENTARY INFORMATION: VA is required to provide an initial evaluation for each service-disabled veteran requesting assistance under the

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

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

VA finds that good cause exists for making the amended regulation final without prior publication for public notice and comment, and for making these amendments effective on the date of publication. The changes contained in these amendments concern internal VA management rules by which VA arranges for counseling services, and the method under which VA arranges to provide these services for veterans not residing in a State. These benefits and the type or level of services are not affected by these changes. The amendments should result in greater convenience for the veteran and savings to the government. Prior publication of this change for public participation is therefore considered unnecessary and not in the interest of either the veteran or the government.

The regulations contained herein will better acquaint eligible veterans, vocational training and rehabilitation facilities, and the public at large with the way these provisions will be implemented.

These amendments do not meet the criteria for major rules as contained in Executive Order 12291. The change will not have a $100 million annual effect on the economy, will not cause a major increase in costs or prices, and will not have any other significant adverse effect on the economy.

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

(The Catalog of Federal Domestic Assistance Number is 64.116)

List of Subjects in 38 CFR Part 21

Civil rights, Claims, Education, Grant programs, Loan programs, Reporting and recordkeeping requirements, Schools, Veterans, Vocational education, Vocational rehaiblitation.

Approved: July 6, 1989.

Edward J. Derwinski,

Secretary of Veterans Affairs.

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

PART 21—[AMENDED]

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

§ 21.100 Counseling.

* * * * *

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

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

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

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

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

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

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

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

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

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

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

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

BILLING CODE 8320-01-M

POSTAL SERVICE

39 CFR Part 111

Exclusion of "Plus" Issues from Second-Class Mail

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: This gives notice that, by operation of law, section 428.227 of the Domestic Mail Manual, dealing with certain "Plus" issues of second-class publications, became ineffective on July 23, 1989.

EFFECTIVE DATE: July 23, 1989.

FOR FURTHER INFORMATION CONTACT: Grayson M. Poats, (202) 268–2981.

SUPPLEMENTARY INFORMATION: On June 17, 1988, pursuant to 39 U.S.C. 3623, the United States Postal Service filed a request with the Postal Rate Commission for a change in section 200.0123 of the Domestic Mail Classification Schedule concerning the

mailing of "Plus" issues of second-class publications. Pursuant to 39 U.S.C. 3641(e), the Postal Service implemented the proposed classification change, on a temporary basis, on October 9, 1988. At the same time, after notice-and-comment rulemaking, the Postal Service added an implementing regulation to the Domestic Mail Manual. 53 FR 38006 (September 29, 1988). This implementing regulation, Domestic Mail Manual section 425.227, subsequently renumbered 428.227 incident to a complete revision of chapter 4 of the Domestic Mail Manual, 54 FR 9210 (March 6, 1989), reads as follows:

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

a. The issue is published on a day different from a regular issue of the same publication, but more frequently than once each month, and

b. At least 10 percent of the total number of copies of the issue is distributed on a regular basis, to recipients who do not subscribe to it or request it, and

c. The number of copies of the issue distributed to nonsubscribers or nonrequesters is more than twice the number of copies of any other regular issue distributed to nonsubscribers or nonrequesters during the same period.

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

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

Fred Eggleston,

Assistant General Counsel, Legislative Division.

[FR Doc. 89-18304 Filed 8-3-89; 8:45 am]

BILLING CODE 7710-12-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3624-4]

Approval and Promulgation of Implementation Plans; Illinois

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Final rulemaking.

SUMMARY: In a November 16, 1988, (53 FR 46093) notice of proposed rulemaking, USEPA proposed to disapprove a site-specific revision to the Illinois State Implementation Plan (SIP) for ozone. The revision would provide for an alternative compliance plan schedule (compliance data extension) for the Printpack, Incorporated (Printpack) paper coating operation, which is located in Elgin, Illinois.

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

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

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

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

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

A copy of today's revision to the Illinois SIP is available for inspection at: Environmental Protection Agency, Public Information Reference Unit, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Uylaine E. McMahan, Air and Radiation Branch (5AR-26), U.S. Environmental Protection Agency, Region V, Chicago, Illinois 60604, (312) 886-6031.

SUPPLEMENTARY INFORMATION: On November 21, 1983, the Illinois Environmental Protection Agency (IEPA) submitted a proposed revision to its ozone SIP for Printpack. This SIP revision is in the form of a February 5, 1981, Opinion and Order of the Illinois Pollution Control Board (IPCB) PCB 80-148. It grants a variance from the existing SIP requirements until December 31, 1985, and provides a legally enforceable compliance schedule.

I. Emission Limit

Under the existing federally approved SIP, Printpack's paper coating operation is subject to the 2.9 pounds of VOC per gallon emission limitation contained in the IPCB Rule 205(n)(1)(C) of Chapter 2: Air Pollution of the IPCB Rules and Regulations. Final compliance is required by December 31, 1982.

In lieu of the compliance data contained in the federally approved SIP, the State requested an extended compliance date of December 31, 1985 for Printpack. The request would allow Printpack additional time to reformulate to low-solvent adhesive for its adhesive laminating equipment. Printpack is located in Elgin, Kane County, Illinois.

II. SIP Deficiency—Kane County

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

III. Compliance Data Extension Policy

USEPA's August 7, 1986, memorandum, "Policy on SIP Revisions Requesting Compliance Date Extensions for VOC Sources", from J. Craig Potter, then Assistant Administrator for Air and Radiation, states that a compliance date extension must be as expeditious as practicable in order to be approved.

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

IV. Proposed SIP Revision

In a November 16, 1988, (53 FR 46093) notice of proposed rulemaking, USEPA proposed to disapprove the Printpack compliance date extension as a revision to the Illinois SIP for ozone. USEPA found that the State had not shown that the requested compliance date was as expeditious as practicable nor had the State adequately demonstrated that the extension would not interfere with timely attainment of the ozone standard and RFP in the interim. During the public comment period USEPA received no comments.

V. Conclusion

USEPA is disapproving this SIP revision for Printpack because its compliance date extension is inconsistent with relevant portions of the Clean Air Act and USEPA's policy.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 3, 1989. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

This action has been classified as a Table 2 action by the Regional

Administrator under the procedures published in the **Federal Register** on January 19, 1989, (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of two years.

List of Subjects in 40 CFR Part 52

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

Dated: July 20, 1989.

Frank M. Covington,

Acting Regional Administrator.

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

BILLING CODE 6560–50–M

---

40 CFR Part 52

[FRL–3624–8]

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

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

ACTION: Notice of final rulemaking.

SUMMARY: USEPA is approving declarations by Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin that recent revisions to USEPA's stack height regulations do not necessitate revisions to the State Implementation Plans (SIPs) for certain sources in these States. Under section 406 of the Clean Air Act, each State was required to review its SIP for consistency with the stack height regulations within 9 months of final promulgation. The intent of this action is to formally document that these States have satisfied this obligation for certain sources. (For other sources, as listed in Tables 1 and 2 of this notice, the States are submitting new plans or the sources are affected by a court remand of three elements in the stack height rules. USEPA will rulemake on plans for these sources in future notices.)

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

DATE: This action is effective October 3, 1989 unless notice is received by September 5, 1989 that someone wishes to submit adverse or critical comments. If the effective date is delayed, timely notice will be published in the **Federal Register**.

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

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

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

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

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

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

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

Wisconsin Department of Natural Resources, Bureau of Air Management, P.O. Box 7921, 101 South Webster, Madison, WI 53707.

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

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

FOR FURTHER INFORMATION CONTACT: Robert Miller, (312) 353–0396.

SUPPLEMENTARY INFORMATION:

I. Background

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

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

Revisions to the stack height regulations were proposed on November 9, 1984 (49 FR 44878), and finalized on July 8, 1985 (50 FR 27892). The revisions redefine a number of specific terms including "excessive concentrations," "dispersion techniques," "nearby," and other important concepts, and modified some of the bases for determining good engineering practice (GEP) stack height.

The stack height regulations were challenged in *NRDC* v. *Thomas*, 838 F.2d 1224 (D.C. Cir. 1988). On January 22, 1988, the U.S. Court of Appeals for the D.C. Circuit issued its decision affirming the regulations in large part, but remanding three provisions to the EPA for reconsideration. These are:

1. Grandfathering pre-October 11, 1983 within-formula stack height increases from demonstration requirements [40 CFR 51.100 (kk)(2)];
2. Dispersion credit for sources orginally designed and constructed with merged or multiflue stacks [40 CFR 51.100(hh)(2)(ii)(A)]; and
3. Grandfathering pre-1979 use of the refined H + 1.5L formula [40 CFR 51.100(ii)(2)].

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

This notice evaluates the reviews performed by Illinos, Indiana, Michigan, Minnesota, Ohio and Wisconsin. The Illinois review was submitted on April 8, 1986, July 17, 1986, May 21, 1987, June 17, 1987, and October 27, 1987; the Indiana

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

II. SIP Review

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

• *Illinois*—On September 22, 1980 (45 FR 62806), USEPA approved a provision as part of Illinois' SIP entitled "Dispersion Enhancement Techniques." This provision is consistent with USEPA's stack height regulations; therefore, USEPA has determined that no additional revision to the SIP is necessary. In its April 8, 1986, and May 21, 1987, submittals, Illinois committed that all future sources which are subject to the Act's New Source Review (NSR) and Prevention of Significant Deterioration (PSD) provisions will comply with the provisions of USEPA's stack height regulations. These commitments apply to all new sources and modifications in Illinois as required in 40 CFR 51.164 as well as existing sources as required in 40 CFR 51.118. This means that these commitments apply to all sources that were or are constructed, reconstructed or modified subsequent to December 31, 1970. USEPA has reviewed these commitments and has determined that they are consistent with USEPA's requirements for GEP stack height and dispersion techniques as revised on July 8, 1985. USEPA is approving these commitments.

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

• *Michigan*—Michigan has no federally approved stack height rules. However, on April 11, 1986, Michigan stated its intention to develop and submit a stack height rule. This rule is not required, because the State also committed, in its April 11, 1986, submittal and a submittal of April 22, 1987, to comply with USEPA's stack height regulations in its review of sources subject to NSR and PSD. These commitments apply to all new sources and modifications in Michigan as required in 40 CFR 51.164 as well as existing sources as required in 40 CFR 51.118. This means that these commitments apply to all sources that were or are constructed, reconstructed or modified subsequent to December 31, 1970. USEPA has reviewed these commitments and has determined that they are consistent with USEPA's requirements for GEP stack height and dispersion techniques as revised on July 8, 1985. USEPA is approving these commitments.

• *Minnesota*—Minnesota has no federally approved stack height rules. However, on October 1, 1986, and on January 14, 1987, Minnesota committed that it would conform with USEPA's stack height regulations in issuing permits for all new or modified sources. Furthermore, the State noted that it would rely on USEPA's interpretations in cases where the regulations are not clear. These commitments apply to all new sources and modifications in Minnesota as required in 40 CFR 51.164 as well as existing sources as required in 40 CFR 51.118. This means that these commitments apply to all sources that were or are constructed, reconstructed or modified subsequent to December 31, 1970. USEPA has reviewed these commitments and has determined that they are consistent with USEPA's requirements for GEP stack height and dispersion techniques as revised on July 8, 1985. USEPA is approving these commitments.

• *Ohio*—On March 3, 1986, Ohio submitted a stack height regulation to USEPA. This regulation has been addressed in a separate rulemaking notice. (Note, on August 25, 1988, USEPA approved in final Ohio's rule—53 FR 32392.) On July 3, 1986, the State committed to review new sources subject to NSR and PSD to ensure compliance with USEPA's stack height regulations. This commitment applies to all new sources and modifications in Ohio as required in 40 CFR 51.164 as well as existing sources as required in 40 CFR 51.118. This means that this commitment applies to all sources that were or are constructed, reconstructed or modified subsequent to December 31, 1970. USEPA has reviewed this commitment and has determined that it is consistent with USEPA's requirements for GEP stack height and dispersion techniques as revised on July 8, 1985. USEPA is approving this commitment.

• *Wisconsin*—Wisconsin has no federally approved stack height rules. However, on November 6, 1985, the State committed to conform with USEPA's stack height regulations in its review of new and modified sources subject to NSR and PSD. This commitment applies to all new sources and modifications in Wisconsin as required in 40 CFR 51.164 as well as existing sources as required in 40 CFR 51.118. This means that this commitment applies to all sources that were or are constructed, reconstructed or modified subsequent to December 31, 1970. USEPA has reviewed this commitment and has determined that it is consistent with USEPA's requirements for GEP stack height and dispersion techniques as revised on July 8, 1985. USEPA is approving this commitment.

USEPA's approval of the State's stack height regulations/commitments is given with the understanding that, should USEPA promulgate revisions to the Stack Height Regulations, the States have agreed to modify their regulations/commitments accordingly.

III. Review of Emission Limitations

Each State was required to review existing SIP emission limitations to determine whether any of these limitations were affected by stack height credits above GEP or by any other dispersion technique. States were asked

to develop an inventory of sources with stack heights greater than 65 meters (m), and sources whose allowable sulfur dioxide (SO_2) emissions exceed 5,000 tons per year (TPY). These cutpoints correspond to the *de minimis* stack height exemption and the *de minimis* SO_2 emissions exemption provided in USEPA's regulations. At a December 5, 1985, workshop, USEPA Region V provided to the States detailed guidance memoranda and a workshop notebook on performing this review. The notebook contained sample forms for documenting the review for each source. The results of USEPA's review of each State are described below.

It should be noted that the modeling techniques used by the States in the attainment demonstrations are based on the modeling guidelines in place at the time the analyses were performed (i.e., either the "Guideline on Air Quality Models", April 1978, and "Regional Workshops on Air Quality Modeling: A Summary Report", April 1981, or "Guideline on Air Quality Models (Revised)", July 1986). Since that time, USEPA has promulgated revisions to its modeling guidelines [i.e., July 1986 revision and July 1987 "Supplement A to the Guideline on Air Quality Models (Revised)"]. Because the modeling was completed and submitted to USEPA prior to the latest revisions, USEPA accepts the analyses for the purposes of today's rulemaking. Summaries of the modeling analyses are available for inspection at the regional office.

USEPA is not acting on the sources identified in Table 2 because they currently receive credit under one of the provisions remanded to the USEPA in *NRDC* v. *Thomas*, 838 F.2d 1224 (D.C. Cir. 1988). The States and USEPA will review these sources for compliance with any revised requirements when the USEPA completes rulemaking to respond to the *NRDC* remand.

Illinois

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

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

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

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

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

(4) Two stacks serve source(s) that do not emit SO_2. The remaining stacks (three at EEI Joppa and two at Com Ed-Collins) are affected by the recent Court remand [i.e., Joppa: grandfathering pre-1983 within formula stack height increases from demonstration requirements (40 CFR 51.100(ii)(2)), and Collins: original design and construction exemption (40 CFR 51.100(hh)(ii)(A) for merged stacks.]

Dispersion Techniques—Illinois identified 64 facilities with allowable SO_2 emissions greater than 5,000 TPY. The only dispersion technique identified by Illinois was stack merging (after 1970). Illinois determined that:

(1) Two facilities implemented stack merging prior to December 31, 1970 (CIPS Coffeen and CWLP Lakeside),

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

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

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

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

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

Indiana

On January 19, 1988, USEPA approved the Indiana SO_2 SIP for 77 counties. The State's review of source emission limits showed that no limitations were affected by stack height credits above GEP or any other dispersion techniques for sources in these 77 counties. Three sources (AE Staley, NIPSCo Schafer, and IMEC Rockport) are affected by the recent Court remand. (Note: USEPA has dealt with the stack height issues for sources in the remaining 15 counties (see Table 1) in separate rulemaking actions on the emission limits for these counties.) Documentation was submitted on forms suggested by USEPA. Further details on the review are provided below:

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

For one stack, Indiana performed a reference dispersion modeling analysis (New Energy Co. of Indiana) at the creditable GEP height. This analysis demonstrated attainment of the SO_2 NAAQS at the current emission limitation and creditable GEP height. The remaining seven stacks are affected by the recent Court remand (i.e., IMEC-Rockport, both grandfathering credit for the refined GEP formula height [40 CFR 51.100(ii)(2)], and the original design and construction exemption [40 CFR 51.100(hh)(2)(ii)(A)] for merged stacks; AE Staley, original design and construction exemption; and NIPSCo-Schahfer, original design and construction exemption).

Dispersion Techniques—Indiana identified 16 facilities with allowable SO_2 emissions greater than 5,000 TPY. The only dispersion technique discovered by Indiana was stack merging (after 1970). Indiana determined that:

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

(2) Seven facilities have only one stack per unit.

The remaining three sources are affected by the court remand as noted

above (i.e., IMEC Rockport, AE Staley, NIPSCo-Schahfer)

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

Michigan

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

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

Michigan performed a reference dispersion modeling analysis for three stacks (one at Michigan State University, and two at Detroit Edison—Belle River) at the creditable GEP height. These analyses demonstrated attainment of the SO_2 NAAQS at the current emission limitation limitation and creditable GEP height.

The remaining 15 stacks are affected by the Court remand (i.e., National Gypsum-Cement Division, Grand Haven-Sims, CP-Cobb, Dow Midland, UP-Presque Isle, Marquette BWL-Shiras, LBWLP-Eckert/Moore's Park: grandfathering pre-1983 within a formula stack height increases from demonstration requirements [40 CFR 51.100(ii)(2)], and UP-Presque Isle: original design and construction exemption [40 CFR 51.100(hh)(2)(ii)(A)] for merged stacks.)

Dispersion Technique—Michigan identified 30 facilities with allowable SO_2 emissions greater than 5,000 TPY. The only dispersion technique discovered by Michigan was stack merging (after 1970). Michigan determined that:

(1) One facility implemented stack merging prior to December 31, 1970,

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

(3) Four facilities have only one stack per unit.

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

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

Minnesota

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

Stack Height—Minnesota identified 37 stacks greater than 65m. (Four stacks at Koch and Ashland are not included in this notice, see Table 1.) The State determined based on its GEP survey form that 21 stacks were in existence before December 31, 1970; and are, thus, "grandfathered" (including the stack for Boiler 8 at NSP Riverside which was not in operation but for which NSP had made a contractual commitment).

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

Minnesota performed a reference dispersion modeling analysis for one stack (University of Minnesota-Southeast Steam Plant) at the creditable GEP height. These analyses demonstrated attainment of the SO_2 NAAQS at the current emission limitation and creditable GEP height. The remaining six stacks are affected by the Court remand (i.e., NSP-Black Dog, NSP-High Bridge, MP-Boswell: grandfathering pre-1983 within formula stack height increases from demonstration requirements [40 CFR 51.100(a)(2)] and NSP-Sherco: original design and construction exemption [40 CFR 51.100(hh)(ii)(A)] for merged stacks).

Dispersion Technique—Minnesota identified 35 facilities with allowable SO_2 emissions greater than 5,000 TPY. The only dispersion technique discovered by Minnesota was stack merging (after 1970). Minnesota determined that:

(1) One facility was never modeled before,

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

(3) Two facilities have only one stack per unit.

The State performed a reference dispersion modeling analysis for one facility (Waldorf Corporation) without merged stack credit. This analysis demonstrated attainment of the SO_2 NAAQS at the current emission limitation and creditable GEP height.

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

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

Ohio

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

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

(1) Five stacks (Cargill, Mead, University of Cincinnati, Ashland Petroleum boiler Armco) are less than, or equal to, the GEP formula height (i.e., H+1.5L or, if the stack was in existence on or before January 12, 1979, and the

source can show reliance, 2.5H). (Note, reliance on the 2.5H formula was shown for eight stacks, given that the actual stack height does not exceed 2.5H, or the 2.5H height was used in the attainment demonstration),

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

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

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

Ohio performed a reference dispersion modeling analysis for three stacks (LTV-Warren, Champion Papers, and Shelby Municipal) at the creditable GEP height. These analyses demonstrated attainment of the SO_2 NAAQS at the current emission limitation and creditable GEP height.

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

(Note, USEPA will publish a separate rulemaking action addressing the negative declaration for CEI-Eastlake and CEI-Avon Lake)

Dispersion Techniques—Ohio identified 69 facilities with allowable SO_2 emissions greater than 5,000 TPY. Five sources (ALCOA, CSP-Conesville, CEI-Eastlake, CEI-Avon Lake, and CGE-Miami Fort) are not included in this notice, see Table 1. The only dispersion technique discovered by Ohio was stack merging (after 1970). Ohio determined that:

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

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

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

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

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

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

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

(8) One facility has merged stacks which do not emit SO_2 (Portsmouth Gaseous), and

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

The State performed an up-to-date reference dispersion modeling analysis for one facility (Shelby Municipal) without merged stack credit. This analysis demonstrated attainment of the SO_2 NAAQS at the current emission limitation and creditable GEP height.

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

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

Wisconsin

The review of source emission limits will be discussed in a separate rulemaking notice.

IV. Technical Support and Additional Information

USEPA's detailed review and approval of the technical support submitted by each State is contained in a series of Technical Support Documents. These documents are available for public inspection at the USEPA Regional Office listed in the **ADDRESSES** section of this notice.

SUMMARY OF ACTIONS: USEPA is approving declarations by Illinois, Indiana, Michigan, Minnesota, and Ohio that recent revisions to USEPA's stack height regulations do not necessitate SIP revisions in those States, with the possible exception of those sources listed in Table 1, and Table 2.

Because USEPA considers today's action noncontroversial and routine, we are approving it today without prior proposal. The action will become effective on October 3, 1989. However, if we receive notice by September 5, 1989 that someone wishes to submit critical comments, then USEPA will publish: (1) A notice that withdraws the action for the specific sources affected by the comment, and (2) a notice that begins a new rulemaking by proposing the action for those sources and establishing a comment period.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 3, 1989. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

Under 5 U.S.C. 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.)

The Office of Management and Budget has exempted this rule from the requirements of section 3 of EO 12291.

List of Subjects in 40 CFR Part 52

Air pollution control, Environmental Protection, Intergovernmental relations, Sulfur oxides.

Authority: 42 U.S.C. 7401–7642.

Dated: July 26, 1989.

Valdas V. Adamkus,

Regional Administrator.

TABLE 1.—SOURCES NOT INCLUDED IN THIS NEGATIVE DECLARATION

[Sources Addressed in Separate Rulemaking]

Illinois	Indiana (county)	Wisconsin	Michigan	Minnesota	Ohio
(none).....	Lake, Gibson, Porter, Dearborn, Vermillion, Posey, LaPorte, Marion, Vigo, Jeffarson, Sullivan, Wayne, Floyd, Morgan, Warrick.	Entire State.	(none).....	Koch Refining, Ashland Petroleum...	CSP-Conseville, CG&E-Miami Fort, ALCOA, CEI-Eastlake, CEI-Avon Lake.

TABLE 2.—SOURCES NOT INCLUDED IN THIS NEGATIVE DECLARATION

[Sources Affected by Recent Court Remand]

State	Source
IL.....	EEI-Joppa, Com Ed-Collins.
IN.....	NIPSCo-Schahfer, IMEC-Rockport, AE Staley.
MI.....	CP-Cobb, National Gypsum-Cement Division, UP-Presque Isle, Marquette BWL-Shiras, LBWLP-Eckert/Moores Park, Dow-Midland, Grand Haven-Sims.
MN.....	NSP High Bridge, NSP Black Dog, MP Clay Boswell, NSP Sherco.
OH.....	CSP-Conesvile, CSP-Poston, Columbus Municipal, DPL-Killen, OP-Gavin, Sun Refining-Toledo, GMAD, OP-Cardinal, Elkem Metals, TE-Bay Shore.

[FR Doc. 89-18274 Filed 8-3-89; 8:45 am]
BILLING CODE 6560-50-M

40 CFR Part 81

[FRL-3525-8]

Designation of Areas for Air Quality Planning Purposes; Illinois

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Final rulemaking.

SUMMARY: USEPA is denying the State of Illinois' request to redesignate Kane and DuPage Counties from nonattainment to attainment for ozone. The intent of this notice is (1) to discuss the results of USEPA's review of the State's redesignation request and the public comments received regarding USEPA's proposed action, (2) to respond to the public comments received, and (3) to announce final rulemaking denying this redesignation request.

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

ADDRESSES: Copies of the redesignation request, technical support documents supporting air quality data, and comments are available at the following address:

U.S. Environmental Protection Agency, Region V, Air Programs Branch (5AR-26), 230 S. Dearborn Street, Chicago, Illinois 60604.

Copies of the supporting material are also available at:

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

FOR FURTHER INFORMATION CONTACT: Randolph O. Cano (5AR-26), (312) 886-6036.

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

On January 27, 1983, the Illinois Environmental Protection Agency (IEPA) submitted a request for Kane and DuPage Counties to be redesignated as attaining the ozone NAAQS. This request was based on a lack of monitored ozone standard violations. USEPA's June 12, 1984 (48 FR 46082), final rulemaking rejected the State's request to redesignate Kane and DuPage Counties. IEPA and the Illinois State Chamber of Commerce disagreed with USEPA's final rulemaking action and jointly petitioned for review of USEPA's action before the Seventh Circuit of the United States Court of Appeals. In its November 4, 1985, decision, *Illinois State Chamber of Commerce* v. *USEPA*, 775 F.2d 1141 (7th Cir. 1985), the Court remanded the rulemaking to USEPA, calling for a clarification of USEPA's ozone designation policy and the rationale for its application to the attainment status for Kane and DuPage Counties.

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

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

Public Comments

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

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

This interpretation is consistent within the context of the 1977 amendments, which introduced the concept of nonattainment areas to the Act. See, generally, *Chevron U.S.A.* v. *Natural Resources Defense Council*, 467 U.S. 837, 847-848. Sections 107 (d)(1) and (d)(2) were part of an expeditious schedule designed by Congress to address the perceived failures of the pre-1977 Act. The States had 120 days to initially designate each air quality control region, and USEPA had 60 days to promulgate the States' list with whatever modifications USEPA deemed necessary. This tight time frame was essential if the States were to comply with the Act's new requirement that all nonattainment areas submit a revised State Implementation Plan (SIP) by January 1, 1979. (See 42 U.S.C. 7502.) Once this initial planning was

completed, the need for expedited action diminished.

In this context, USEPA does not have a duty to respond to a State's redesignation request within 60 days. Moreover, even if USEPA had such a duty, the passage of 60 days since submittal of the redesignation request would not have precluded USEPA from acting now on the request.

Comment No. 2. USEPA still has not developed any coherent rationale which addresses the Court's mandate. USEPA continues to rely on two separate theories which the court found internally inconsistent and concluded that "until USEPA has done one or the other, its action will appear to be arbitrary and rational review by this court will be impossible." See *Illinois State Chamber of Commerce* v. *USEPA*, 775 F.2d 1141, 1147 (7th Cir. 1985).

Response. In concluding that review was impossible, the Seventh Circuit concluded that USEPA had either changed its policy without giving a reasoned analysis to support the change or if no policy change were involved, USEPA had failed to explain how disapproval was consistent with past policy. In its proper context, the language quoted by the commentor was used by the court to require USEPA to explain either why the policy was changed or how current policy was consistent with past policy. The court stated:

> If it has changed its policy, it must explain how and why; if it has not, it must articulate an explanation that will account for both the earlier and most recent actions it has taken. Until it has done one or the other, its actions will appear arbitrary, and rational review in this court will be impossible.

Id. at 1147. In the December 29, 1988, **Federal Register** notice (53 FR 52727), USEPA explained in great detail how the proposed disapproval of the Kane and DuPage Counties redesignation request was consistent with past actions. Therefore, USEPA has complied with the Seventh Circuit's mandate.

Comment No. 3. USEPA relies upon two mutually inconsistent nonattainment designation theories. First, USEPA states that a nonattainment area must include all of the sources that contribute to pollution in that area. Second, the USEPA states that an urban ozone nonattainment area must include the entire urbanized area. USEPA must choose between one or the other theory.

USEPA's designation theory is internally inconsistent because no attempt was made to draw up the nonattainment boundaries for the Chicago area in such a way as to track the movement of the ozone away from the precursor sources (nor has this been done for New York, Los Angeles, Philadelphia, Detroit, San Francisco, Boston, or Washington, DC). Moreover the controls available to the USEPA from nonattainment designations could be applied to areas that suffer from but do not produce the pollution. The leverage from such controls should only be available where it will be useful.

USEPA's designation theory is also irrational because USEPA has not identified how the attainment status of an urban area is to be changed and where the monitoring for evaluating the attainment status will take place, nor has USEPA explained why it has chosen to use urban area as defined by the census.

Response. USEPA does not rely upon two mutually exclusive designation theories, but as articulated in the December 29, 1988 notice, relies upon a single, internally consistent, nonattainment designation theory. USEPA's approach is predicated upon the initial nonattainment designation decision being only the first step in the ozone control process; the important subsequent step is the implementation of planning and control obligations upon nonattainment areas in order to achieve attainment. Nevertheless, the nonattainment designation is crucial; it determines what sort of planning or control obligations an area will have. Obviously the control obligations implemented by the state for a nonattainment area will differ according to the area's ozone contribution. Thus, a nonattainment area emitting substantial ozone precursors would normally have more strict controls placed upon it than a nonattainment area emitting fewer precursors. The nonattainment designation is the threshold decision to control an area's ozone emissions in order to successfully achieve compliance with the standard.

As an initial starting point in the nonattainment designation process, all areas—urban or rural—experiencing ozone exceedances, are, by definition, nonattainment areas. If an area does not have clean air, then it probably needs controls to bring it into attainment or to prevent further violations downwind; thus, it should be labelled nonattainment.

If violations occur within an urbanized area (as defined by the Bureau of the Census), then the entire urbanized area is designated as "nonattainment." This is done because of the simple fact that an ozone exceedance cannot generally be attributed to any particular source, and instead results from emissions from numerous stationary, mobile, and area sources. USEPA will then examine the areas immediately surrounding the urbanized area experiencing the violations. If adjacent areas have significant ozone precursor sources because of population, growth potential, or significant existing stationary sources, then these "fringe" areas will also be designated as nonattainment because of their current and/or future contribution to the ozone problem in and near the urbanized areas experiencing the violations.

Rural areas may also experience ozone violations because they are downwind of an area emitting ozone precursors or they, themselves, have significant precursor emissions. If violations have occurred in an isolated rural area due either to the downwind drift of ozone from another area or locally generated ozone, then it too must be designated as nonattainment because controls may be necessary to reduce the ozone in this area or to prevent the propagation of ozone violations further downwind.

The manner in which the areas surrounding the violations of the ozone standard have been divided has been left to the individual States. Of course one State may not include another State's territory within its nonattainment areas. Many States, like Illinois, chose to identify the nonattainment and attainment areas on a county by county basis. Because USEPA did not draw the States' nonattainment boundaries, it could not draw them specifically to track the movement of ozone precursors. Nevertheless in designating the polluted and fringe areas as nonattainment, USEPA has identified those areas that are emitting ozone precursors or experiencing violations, and thus has performed the functional equivalent of defining the boundaries to track ozone precursors. USEPA has utilized the same designation theory for all areas across the country.

In this particular case, USEPA has continued to use its nonattainment designation approach in a consistent manner. Illinois chose to break the Chicago area into counties for ozone designation purposes. Since the Chicago urbanized area experiences ozone violations, the fringe areas surrounding Chicago must also be designated as nonattainment because of their contribution to the ozone problem. Because Kane and DuPage counties qualify as fringe areas,[1] they must retain

[1] Portions of DuPage County are within the Chicago and Aurora Urbanized Areas and portions

Continued

their nonattainment designation despite the lack of monitored ozone exceedances. The downwind areas in Wisconsin experiencing violations of the ozone standard have also been labelled nonattainment. Thus while it may make sense to group all of these areas together for planning purposes, the designation of these areas was performed on a State-by-State basis utilizing the articulated designation theory.

The concern that leverage be applied where it is needed is precisely the reason USEPA includes fringe areas of development within the designated nonattainment area. If USEPA designated the fringe areas as attainment, then these areas could not be required to control their ozone precursors as stringently as if they had been designated nonattainment and would continue to add to the nearby area's ozone problem. Similarly, as explained further in response to Comment Number 16, if downwind areas experiencing violations do not control their emissions, the ozone problems will be exacerbated and ozone will continue to move and form downwind. The concerns about sanctions placed upon an area, however, are planning and control, not designation, issues. The designation decision is based upon whether an area is violating the standard or contributing to ozone exceedances. Any USEPA decision on the adequacy of a State or Federal plan to solve an area's ozone problem would be subject to a public rulemaking process (and ultimately judicial review) to insure that the controls imposed are not arbitrary or capricious.

The comments directed at how the attainment status of an area is changed and why the USEPA uses the urbanized area are addressed elsewhere in the responses. Also, the comments on why USEPA has chosen to use urban areas as defined by the Bureau of the Census is addressed in the response to Comment No. 17.

Comment No. 4. USEPA's procedure in making the proposal available for public comment is objectionable. In particular, USEPA relied upon unpublished memoranda and used only selected references on the ozone transport issue. USEPA has failed to include in the record the unpublished memoranda and the references on ozone transport. The official "record" of the Chamber case listed some documents that USEPA did not list in the December 29, 1988 Notice of Proposed Rulemaking.

Response. USEPA is not required to publish all of its policy statements in the Federal Register, as this commentor apparently suggests. To do so is not only unnecessary under the Administrative Procedure Act, but would also impose a huge paperwork burden on the Agency and general public. Contrary to the commentor's contention, all of these memoranda are listed in the May 23, 1986, technical support document and are a part of the record of this rulemaking.

The commentor correctly notes that USEPA has not included every study of the ozone transport issue. The Agency has listed only those studies upon which it relied on in deciding to disapprove the Kane and DuPage redesignation request. The Agency is not obligated to include every scintilla of information regardless of whether or not the Agency relied upon it. During the public comment period, the public is free to submit additional information for the Agency's consideration. In this case, the commentor has submitted some additional information which the Agency has evaluated and is responding to elsewhere in this rulemaking.

Finally, the commentor contends that the certified record supporting the June 12, 1984, denial of redesignation refers to documents which are not included in the present record. USEPA believes that its May 23, 1986, TSD does include all relevant policy documents. Additionally, the TSD refers to all ozone transport studies which USEPA relied upon in the instant rulemaking. Assuming that there are discrepancies, the commentor has not explained why any such discrepancies are significant. Moreover, the Agency is not bound to the 1984 record.

Comment No. 5. Significant economic sanctions can be imposed by the USEPA on areas classified as nonattainment for an air quality standard. The growth sanctions included in the Clean Air Act are directed at stationary sources. Illinois, however, has already imposed reasonably available control technology requirements (RACT) on stationary facilities. The USEPA cannot assume that such sources are causing or contributing to exceedances of the ambient air quality standard.

Designating Kane and DuPage Counties as nonattainment for ozone will impose a ban on construction of new or modified VOC sources in these counties. This will either have an adverse effect upon the Chicago area in terms of impeding economic efficiency or by causing stationary sources to locate further to the west or to the south of the Chicago area. If the latter growth indeed occurs, it will increase vehicular traffic to allow workers to reach the new "greenfield" locations.

USEPA should consider the practical effect that can result from its decision as to what constitutes a "non attainment area." Improved highways may be necessary to avoid over-burdened highway systems in Kane and DuPage counties, and discouraging improved inland highway systems could have the effect of increasing traffic load in the central Chicago and Cook County area. Since the urban Chicago traffic source is most often the cause of the ozone exeedance, the USEPA's decision to keep Kane and DuPage counties as nonattainment may worsen the Chicago area's ozone problem.

Response. All of the comments made are planning and control concerns, not designation concerns. The nonattainment designation, as discussed earlier, is determined by an area's role in ozone exceedances. If an area is important in bringing ozone levels under control, then the area must be designated nonattainment. In this case Kane and DuPage counties are critical in addressing the Chicago area ozone problem, and, for this reason alone, Kane and DuPage counties are designated as nonattainment. In short, these control concerns are irrelevant to the designation determination. Notwithstanding their irrelevance, USEPA will address the commentor's concerns.

Although the State of Illinois has imposed RACT requirements on certain stationary sources in Kane and DuPage Counties (or elsewhere in the Chicago nonattainment area), these sources may still be emitting VOC's and contributing to downwind ozone impacts. The controls applied are not 100 percent effective at eliminating emissions. Therefore, the stationary sources, though under RACT requirements, might require additional controls, and these controls will further lower area VOC emissions.

Several points concerning the construction ban concern should be discussed. First, the effectiveness of a construction ban is irrelevant to its imposition. Congress has chosen to statutorily require a construction ban in nonattainment areas if the State has failed to produce an adequate plan.

---

of Kane County are within the Elgin and Aurora Urbanized Areas. Both counties contain significant populations (Kane County—299,000, DuPage County—716,000) and emissions (Kane County—97.5 tons of VOC per day (TPD), DuPage County—189.2 TPD). Emissions from both counties have an impact on or are within the Chicago area. (Population Source—1985 estimate, Bureau of the Census data, Emissions Source—Summary of VOC Emissions, 1988, Table 1–A, Appendix A, Emissions Inventory Documentation for Chicago Area Federal Implementation Plan (FIP)—Draft Report)

Therefore, the simple act of designating Kane and DuPage Counties as nonattainment for ozone does not automatically result in the imposition of a ban on the construction of new or modified sources of VOCs. The supposed economic effects of a construction ban are purely speculative on the part of the commentor.

With regard to the argument on the potential for increased vehicular traffic (and thus more ozone pollution), several points should be discussed. Ozone control plans must address the potential for the increase in emissions from all source categories including those from mobile sources. If a significant increase in mobile source emissions is expected, additional emission controls will have to be found for either mobile sources or stationary sources within the Chicago ozone demonstration area, which includes all of the Chicago ozone nonattainment area. Like the effectiveness of the construction ban; the asserted potential increase of mobile emissions due to a nonattainment designation is purely speculative.

Because USEPA has disapproved Illinois' 1982 ozone plan the existing ban on major new VOC source growth in Kane and DuPage Counties and other portions of the Chicago nonattainment area will continue in effect until the State submits an adequate ozone SIP for the entire area. However, the ban does not prohibit all growth. Rather, new major sources in a nonattainment area would need to meet more stringent emission requirements than in an attainment area. The new source growth ban is statutorily mandated in areas that have disapproved Part D SIPs and is intended to prevent unrestrained source growth and exacerbation of the present ozone nonattainment problem while the SIP is revised or a Federal Implementation Plan (FIP) is prepared (the USEPA is presently pursuing the latter as the result of a January 18, 1989, Court order issued in *State of Wisconsin* v. *United States Environmental Protection Agency*, No. 87–C–395, (E.D. Wisc.).

USEPA is aware of the potential for ozone impacts within a nonattainment area due to precursor emissions originating outside of the nonattainment area. Major sources locating in such areas must be addressed in new source reviews which must include an assessment of their air quality impacts on downwind areas, including the nonattainment area.[2]

Comment No. 6. Air parcel trajectories performed for the year 1985 (air parcel trajectories for 1985 were included in the commentor's set of comments) confirm the observation that sources located in Western DuPage County and Kane County cannot be associated with any ozone standard exceedances.

Response. The referenced trajectory analysis for 1985 was reviewed. The analysis is apparently based on ground level wind data and/or pressure gradients for a single height (the documentation lacked specificity with regard to the actual nature and source(s) of the input data), and only considers horizontal transport. By failing to account for three dimensional pollutant/parcel transport and pollutant dispersion, the study's analysis has a significant shortcoming; thus its conclusions are incorrect.

Ozone concentrations are measured over 1 hour averaging periods. During such periods, air parcels covering a range of trajectories and representing varied histories of vertical and horizontal transport (the gusty nature of wind represents this variety of air parcel trajectories and transport histories) arrive at a given monitoring site. Single line trajectories (isolated straight-line trajectories), in the study of air pollution transport are of limited use and are misleading, particularly when pollutant transport occurs over longer time periods, as in the case of ozone formation and transport. If one were to account approximately for pollutant dispersion and varied air parcel trajectories in a backward trajectory analysis, one would predict an ever broadening source areas as one moves back through time. Over the period of time apparently involved in ozone formation in the Chicago area (because most exceedance peaks do not generally occur until early afternoon and can occur as late as the early evening hours, transport times of 6 or more hours are likely in the Chicago area), the source area would take on the dimensions of the urban area.

Even if one were to consider the single line trajectories submitted by the commentor, it should be noted that several of the straight line trajectories presented by the commentor pass near if not over Kane and DuPage Counties particularly prior to 8 a.m. Given the effects of varied air parcel trajectories and pollutant dispersion, emissions (and the resultant ozone) from Kane and DuPage Counties could arrive at the high ozone sites on the days discussed for 1985.

Comment No. 7. While the proposed rulemaking discusses general wind directions in many instances, USEPA does not actually attempt to correlate emissions from Kane or DuPage Counties with any exceedance of the ozone standard in the Chicago area. This lack of any causal connection made by USEPA between emissions from Kane and DuPage Counties and monitored exceedances is not surprising; trajectory analyses for 1985 as well as studies cited by USEPA, including those being relied upon by USEPA to deny the redesignation suggest that an inland source from Kane County will not become involved in the "lake breeze phenomenon" and, hence, will not contribute to ozone exceedances in the Chicago region. While the rationale in support of the proposed rulemaking relies upon wind direction, it does so only in the most generalized manner. No attempt is made to relate wind direction on days of ozone exceedances to Kane and DuPage emissions. Further, the notice mentions the "lake breeze" phenomenon, but does not relate that phenomenon to inland sources, such as VOCs emitted from Kane and DuPage Counties.

The lack of any such association is disturbing in light of the technical literature cited by USEPA. That literature shows a pronounced lake breeze effect, and boundaries of various lake breeze phenomenon. For example, Lyons and Cole (1976) reviewed air parcel trajectories. This paper indicated that an emission from an inland source, apparently in Kane County, could not enter into the lake breeze phenomenon and, therefore, could not be part of the urban Chicago area contributing to "high" ozone levels along the lake shore in Illinois or Wisconsin.

Response. A number of points are appropriate in response to this comment. First, a recent ozone standard violation at the DesPlaines monitor does imply that emissions from Kane and DuPage County may contribute to ozone standard violations in the Chicago area. The DesPlaines monitor, located in the northwestern portion of Cook County, is generally downwind of the sources in DuPage and Kane Counties. (DesPlaines

[2] USEPA proposed on June 6, 1988 (53 FR 20722), to expand ozone nonattainment areas to include all of the areas within Metropolitan Statistical Areas (MSAs) or, where such exist, Consolidated Metropolitan Statistical Areas (CMSAs). If that rulemaking is finalized, as proposed, it would add Will, Kendall, Grundy, and McHenry Counties in Illinois and Kenosha County in Wisconsin to the Chicago urban nonattainment area. Under USEPA's proposed post–1987 ozone attainment policy, future ozone attainment demonstration analyses would include the emissions from major sources located within 25 miles of the MSAs or CMSAs. (Analyses of emissions for the Chicago area Federal Implementation Plan cover the Chicago CMSA and neighboring major sources.) These proposals reflect USEPA's growing concern (in part based on recent long range ozone transport studies) over the impacts of emissions occurring or expected outside of existing ozone nonattainment areas.

is located near the northeast corner of DuPage County.) The location of DesPlaines relative to these Counties is such that high ozone concentration impacts from Kane and DuPage emissions could be found here (the presence of local VOC and oxides of nitrogen emissions near DesPlaines would act to push peak ozone impacts even further downwind).

Second, none of the studies cited by USEPA suggests that Kane and DuPage County emissions cannot contribute to the ozone precursor concentrations carried in the "lake breeze" transport often found associated with high ozone concentrations observed near Lake Michigan downwind of Chicago. The very Lyons and Cole article cited by the commentor was reviewed as part of the May 23, 1986, TSD. This article presented possible two dimensional trajectories but made no attempt to present specific subarea culpability with respect to downwind ozone impacts. The article did not state that emissions from Kane and DuPage Counties could not contribute to high downwind ozone concentrations. In fact, the article stated that the Chicago urban area (which includes DuPage County) is the logical source for the high ozone concentrations observed in southeastern Wisconsin. The article did not differentiate the impacts from the various portions of the Chicago area.

Third, the Lyons and Cole article cited by the commenter, as well as other articles and publications, described mechanisms by which emissions from throughout the urban area, including emissions from Kane and DuPage Counties, can be included in the lake breeze transport process. The Lyons and Cole paper implies that prior to the onset of lake breeze fronts, which usually occurs between 8 a.m. and 9 a.m. or later, emissions from throughout the urban area can be advected in the surface mixing layer out over Lake Michigan. These pollutants above Lake Michigan may then participate in ozone formation in the lake breeze transport process. A second mechanism is shown in a paper by Lyons and Keen (Lyons, W.A. and Keen, C.S., 1978: "Lake/Land Breeze Circulations on the Western Shore of Lake Michigan", Journal of Applied Meteorology, 17(12), 1843–1855). In this mechanism, emissions from the urban area are transported above the subsidence inversion at the top of the lake breeze circulation cell. At the furthest offshore extent of the lake breeze cell, the pollutants transported above subsidence inversion can be entrained into the downward flow within the lake breeze cell and returned to the lake shore.

Fourth, the May 23, 1986, TSD document did reference and consider a prior study of resultant wind directions (effective wind directions vectorially added during the hours of peak ozone formation and transport) and high ozone days in the Chicago and southeastern Wisconsin areas. The study found that high downwind ozone concentrations were predominately associated with resultant winds ranging from east-southeast through west-southwest. Considering the time of the peak ozone concentrations (generally in the late afternoon in southeastern Wisconsin), one could conclude that emissions from most of the Chicago urban area were responsible for the observed high ozone concentrations.

Finally, even if the commenter were correct in the assertion that Kane County emissions were physically prevented from interacting with emissions from other portions of the Chicago urban area, it should be noted that the existing ozone monitoring system would not be well suited for detecting the peak ozone impacts of the emissions from Kane County. There are few "inland" monitors north or near-northeast of Kane County. Most downwind ozone monitors are concentrated near Lake Michigan. Past ozone formation and transport observations made by USEPA in other than urban areas would imply that significant, non-monitored ozone impacts could be occurring downwind of Kane County.

Comment No. 8. The proposal is not based on any modeling conducted for the area or on any trajectory analyses.

Response. It is true that USEPA has not relied on modeling for its proposed rulemaking. As noted in responses to other comments herein, however, the USEPA has based its proposed rulemaking on prior observations in the Chicago area and in other urban areas with high ozone concentrations. These observations indicate that emissions from throughout urban areas may contribute to high ozone concentrations observed downwind. The observations support a policy which requires that an entire urban area and its fringe areas of development and or significant precursor sources, at a minimum, be included in an urban ozone nonattainment area. DuPage County includes a portion of the Chicago urban area and fringe areas of development, and Kane County contains a significant fringe area of development.

Furthermore, none of the commentors has applied conclusive modeling data to prove that DuPage and Kane County emissions do not contribute to ozone standard violations in the Chicago area and its downwind environs.

Comment No. 9. USEPA's proposed rulemaking cannot be defended based on the language of the statute, which requires that the attainment status of an area be based upon monitoring.

Response. Section 171(2) of the Act defines the term "nonattainment area" as "* * * for any air pollutant an area which is shown by monitored data on which is calculated by air quality modeling (or other methods determined by the Administrator to be reliable) to exceed any national ambient air quality standard (NAAQS) for such pollutant." The Act, thus, explicitly authorizes the Administrator to use monitoring, modeling or other reliable methods in determining an area's attainment status. In this case, the Administrator relies on monitored exceedance within the Chicago urban area. USEPA believes that sections 107 and 171 provide it with the authority to deny the Kane and DuPage redesignation request, based upon monitored exceedances within the Chicago urban area, even though there were no monitored exceedances in Kane and DuPage Counties.

The Seventh Circuit did not rule out the designation of an area as nonattainment if the area produces but does not suffer from ozone pollution. *Illinois State Chamber of Commerce* v. *USEPA*, 775 F.2d 1141, 1150 (7th Cir. 1985). In addition two other Circuit Courts have explicitly endorsed such an approach. The Sixth Circuit stated that the Administrator may "deny redesignation with respect to a component of a nonattainment area which produces a substantial portion of the area's pollutant even though the air within that component tests at an acceptable level." *State of Ohio* v. *Ruckelshaus*, 776 F.2d 1333, 1340 (6th Cir. 1985). Likewise, the Administrator may designate downwind portions of an area as nonattainment even though the air within that portion satisfies the NAAQS. *Western Oil and Gas Association* v. *USEPA*, 767 F.2d 603 (9th Cir. 1985).

USEPA has based its denial of the Kane and DuPage redesignation request on (a) monitored exceedances in the Chicago urban area; (b) the observation of ozone formation and transport processes in a number of urban areas; (c) the desire to require ozone precursor emission controls in the areas where they will be most effective in reducing local and downwind ozone violations; and (d) the desire to prevent further propagation of ozone standard

violations in locations other than the monitored sites. The ozone designation policy discussed in the proposed rulemaking (53 FR 51730), in the May 23, 1986, TSD, and in the policy memoranda discussed in the proposed rulemaking and TSD supports USEPA's denial of this redesignation request.

Comment No. 10. The proposed rulemaking is not based upon monitoring data taken from within Kane and DuPage Counties. While USEPA notes the DesPlaines ozone monitor which recorded a recent ozone standard violation is located in Cook County near the northeastern corner of DuPage County, it does not apply the same rationale to the Elgin monitor in Kane County. Application of USEPA's rationale to the Elgin monitor would indicate that Kane County is not associated with any monitored standard violations.

Response. The ozone standard violation at the DesPlaines monitor was discussed in USEPA's rationale to show that existing data imply that DuPage County might be experiencing a violation of the ozone standard. The DesPlaines monitor violation, however, is also significant because it supports USEPA's main argument for retaining the nonattainment designation for DuPage County. USEPA continues to assert that DuPage County should retain its nonattainment designation because it is reasonable to conclude that through its ozone precursor emissions, DuPage County, as both a portion of the Chicago Urbanized area and a fringe area adjacent to the Chicago urban area, contributes to the ozone standard violations monitored in the Chicago area and its downwind environs. The DesPlaines monitor violation substantiates the theory that the areas outside of the Chicago urbanized area have significant ozone precursors which are contributing to the entire area's ozone problem. The DesPlaines monitor violation is certainly not necessary to the logic of retaining Kane and DuPage Counties as nonattainment areas because if DesPlaines had no monitored violation, Kane and DuPage Counties would nevertheless be considered fringe areas of development (or a portion of the Chicago Urbanized Area) and subject to the nonattainment designation. Thus, USEPA is applying the same logic to both Kane and DuPage Counties with regard to the monitoring that is taking place at DesPlaines and Elgin.

Comment No. 11. Has silo dust been considered for its role in ozone formation?

Response. Silo dust is not considered to be a VOC and, therefore, has not been considered in the ozone formation process. Silo dust may be a source of nitrogen dioxide, but USEPA's current Illinois emission inventories do not include nitrogen dioxide emissions from this source category. This omission shows how insignificant this source category is of ozone precursor emissions relative to other source categories.

Comment No. 12. Is it possible to consider the impact of jet engine emissions at O'Hare International Airport in the study of the ozone problem in the Chicago area?

Response. VOC emissions from jet engines at the airports in the Chicago area have been considered in the ozone control plans for the Chicago area.

Comment No. 13. USEPA's criteria for determining air quality planning/nonattainment boundaries are neither rational nor internally consistent. The current criteria approach the arbitrary and capricious level by affording the USEPA too much discretion in drawing boundaries. The following are examples of the arbitrary manner in which USEPA can establish boundaries:

(a) USEPA can treat a downwind area experiencing monitored ozone standard violations as its own isolated area for the purpose of developing an attainment demonstration;

(b) USEPA can assign the downwind area to the upwind nonattainment area;

(c) USEPA can assign the downwind area to a different, neighboring urban nonattainment area; and

(d) USEPA can designate a nonattainment area to include the urbanized area and its adjacent fringe areas of development containing significant precursor sources.

USEPA has not adequately clarified the basis for selecting one of the above options for any given nonattainment area and, therefore, has not responded to the Order of the Court.

Response. For the purpose of emissions control strategy selection and ozone standard attainment demonstrations, USEPA's policy allows for various types of assignment of downwind monitored nonattainment areas to upwind, associated urban precursor source areas. The assignment is done on a case-by-case basis, based on such factors as the general wind direction on the days of the monitored ozone standard violations, the timing of the ozone standard exceedances, the distribution of precursor emissions (current and future), and USEPA's overall understanding of the ozone formation and transport process (based on data from many urban areas). For a downwind area experiencing ozone standard violations, USEPA could recommend or choose any one of options (a) through (c) above. Only one of the options would be selected for a given area. As long as the option selected is appropriate to the situation, it is not arbitrary or capricious. The fact that the selection process has multiple options is indicative of the complexity of the ozone formation/transport process and the selection of the most effective emissions control strategies, particularly in areas affected by multiple source areas and the assignment of precursor emission control requirements.

As discussed in USEPA's proposal, USEPA policy has long held that, regardless of the source area responsible for a monitored downwind violation, the area in which a violation is recorded should itself be designated as nonattainment for ozone. It is appropriate to apply some emission controls in this area to prevent propagation of the ozone problem further downwind. The decision among options (a) through (c) has no relevance to whether upwind areas contributing to the violations in the downwind area should themselves be designated nonattainment for the purpose of addressing that contribution. As discussed earlier, planning and control decisions are distinct and separate from the nonattainment designation decision.

It should be noted that the comment is not relevant to the case at hand. The USEPA has not argued that Kane and DuPage Counties are downwind of the Chicago source area, but rather are part of the source area.

Comment No. 14. The USEPA did not show in 1985 that emissions from Kane and DuPage Counties actually contributed to ozone problems in the urbanized Chicago area or downwind. The USEPA states that it has not conducted area specific modeling to determine the impacts of precursor emissions that impact these downwind areas.

Response. As documented in the May 23, 1986, TSD for the proposed rulemaking, the USEPA has reviewed a number of ozone monitoring studies in the vicinities of major urban areas and has developed a view of the ozone formation and transport process for major urban areas. The available data indicate that high ozone concentrations result from ozone precursor (VOC and oxides of nitrogen—NO_x) emissions from large source areas. It is difficult, if not impossible, to distinguish which subarea(s) are culpable for high ozone concentrations occurring hours later downwind. The use of photochemical dispersion models for a finite set of days at best provides a rudimentary and incomplete picture of subarea

culpability. Without considering all possible meteorological and input data scenarios (an approach which is technically infeasible), the use of photochemical models cannot provide a complete picture of high ozone concentration in an urban area. In light of this and the available ozone data, USEPA has adopted the policy that all of an urbanized area and its adjacent fringe areas of development (and hence significant precursor sources) should be considered to be nonattainment for ozone when ozone standard violations are monitored in or downwind of the area. Kane and DuPage Counties are part of the Chicago urbanized area and its adjacent areas of development. It should be noted that USEPA did evaluate surface level wind directions for high ozone days and found that the Chicago source area, which includes Kane and DuPage Counties, was generally upwind of the worst-case ozone monitoring sites on the high ozone days. The study concluded that the Chicago source area was the likely precursor source area for the high ozone concentrations observed in northeastern Illinois and in Kenosha and Racine Counties, Wisconsin.

As noted in the May 23, 1986, TSD, a monitor in DesPlaines, which is generally downwind of DuPage on high ozone days and is close to the DuPage County border, recorded a recent ozone standard violation. These monitoring data support the continued nonattainment designation for DuPage County.

Finally, the State of Illinois and commentors have not provided data (modeling or monitoring) to refute USEPA's view of the ozone formation and transport process for the Chicago area and the probable culpability of the Kane and DuPage County emissions in the formation of high downwind ozone concentrations. USEPA sees no reason to reverse its prior opinions on these issues.

Comment No. 15. The USEPA must stipulate how attainment status can be obtained at the same time USEPA rules on the boundaries for a nonattainment area. This policy specification was ordered by the court in the remand of the Kane and DuPage County redesignation rulemaking. USEPA has not stipulated which monitoring data will be decisive in determining the future attainment status.

Response. No part of this area, including Kane and DuPage Counties, could be redesignated to attainment until, at a minimum: (1) Illinois and Indiana have fully approved ozone plans for this area (so as to insure that any improvements in air quality in the area are the result of permanent, enforceable emission reductions and not temporary reductions), and (2) all ozone monitors in the area and its downwind environs show no violations of the ozone standard over the most current 3 years of available data.

It should be noted that the Administrator disapproved the Illinois ozone SIP for the Chicago area on October 17, 1988 (53 FR 40415), and the Indiana ozone SIP for Northwest Indiana (the Indiana portion of the Chicago area) on November 18, 1989 (53 FR 46608). Further, as a result of a suit filed by the State of Wisconsin in the United States District Court for the Eastern District of Wisconsin (*State of Wisconsin* v. *United States Environmental Protection Agency*, No. 87–C–0395 (E.D. Wisc.), the court ordered the Administrator, on January 18, 1989, to promulgate a Federal ozone implementation plan for the Chicago area (including Northwestern Indiana) within 14 months. The Federal ozone implementation plan is currently under development and has not been adopted as of yet.

Comment No. 16. USEPA proposes to treat some downwind areas as isolated nonattainment areas for the purpose of developing ozone attainment demonstrations. An isolated downwind area would have no authority to plan for and implement emission control measures in an upwind pollution-causing area. Therefore, the isolated downwind area would never be able to achieve attainment of the ozone standard through its own efforts. This isolated area could be sanctioned for failing to achieve the ozone standard despite the fact that it had no means to bring itself into attainment.

Response. The States containing the nonattainment areas will have the overall responsibility of adopting and implementing the emissions control strategy for their nonattainment areas. As part of this process, each State will have to establish the source emissions responsible for the observed ozone standard exceedances. Although under USEPA policy no attainment demonstration is required for isolated rural nonattainment areas, the State may demonstrate, based on wind direction, wind speed, times of peak ozone concentration, back trajectory calculations (including the consideration of pollutant dispersion), etc., that a separate upwind source area is responsible for the ozone standard violation in the isolated rural area. It will then be necessary for the State to adopt an emissions control strategy for the upwind source area which assures attainment of the ozone standard in the isolated downwind area. If the upwind area is located in a different State, the upwind State will be responsible for the necessary pollution controls. This does not eliminate the need for emission controls in the isolated area. Emission controls are needed there to assist in reducing the local ozone concentrations and to prevent the further propagation of the ozone nonattainment problem downwind. As discussed above, however, the degree of controls necessary in any isolated downwind area, and the planning area for which it is assigned, is irrelevant to the decision whether the upwind contributing areas being designated as nonattainment.

Comment No. 17. The proposed rulemaking has done nothing to support USEPA's use of the Census Bureau's defined urbanized area populations or urban area definitions as appropriate support for air quality considerations. The rulemaking purports to use city areas and populations of sample high-ozone areas as somehow being relevant to all of Kane County and all of its population. There is nothing in the record to show what makes Kane County and DuPage County a significant VOC source area.

Response. The population of an urban area is directly related to some significant area source VOC emissions, such as consumer solvent emissions, automobile refinishing, architectural surface coating, residential fuel combustion, etc., and indirectly to mobile source emissions. Therefore, the higher the population, the higher these emission contributions will be and the greater the potential for downwind ozone impacts. The May 23, 1986, TSD compared the populations and VOC emissions of Kane and DuPage Counties with those of smaller urban areas with observed ozone standard exceedances or significant downwind ozone concentration impacts. The populations and VOC emissions of Kane and DuPage Counties were shown to be similar to, or greater than, those of the comparison urban areas with observed significant ozone impacts. The combination of the Census Bureau's identification of certain areas in DuPage and Kane as "urbanized areas" adjacent to the Chicago urbanized area, and the high population of those counties and their proximity as fringe areas of development (and hence emissions) warrants the conclusion that they have a similarly significant impact on ozone formation in the Chicago area.

Although the USEPA has not conducted photochemical dispersion modeling to prove the culpability of Kane and DuPage County emissions, the

weight of the data collected from other ozone emission studies indicate that emissions from Kane and DuPage Counties can contribute significantly to high ozone concentrations observed in the Chicago area and its downwind environs. It should be noted that the commentor has not provided photochemical dispersion modeling results or other adequate data to prove otherwise.

Comment No. 18. A commentor submitted comments previously filed with respect to USEPA's June 6, 1988 (53 FR 20722), nationwide ozone designation proposal. The commentor requested that these comments also be considered in the proposed rulemaking on Kane and DuPage Counties.

Response. Review of these comments shows that those relevant to Kane and DuPage Counties were addressed in response to other comments directed specifically at the December 29, 1988, proposed rulemaking. The other comments should be addressed when USEPA finalizes the rulemaking proposed on June 6, 1988.

Final Rulemaking Action

Review of public comments shows that USEPA's policy and technical basis for disapproving the redesignation of Kane and DuPage Counties to attainment for ozone are sound. Therefore, USEPA disapproves the State's request to redesignate Kane and DuPage Counties to attainment of the ozone NAAQS.

Under Executive Order 12291, today's action is not "Major". It has been submitted to the Office of Management and Budget (OMB) for review.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 3, 1989. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2)).

List of Subjects in 40 CFR Part 81

Air pollution control, Environmental protection, National parks, Wilderness areas.

Authority: 42 U.S.C. 7401–7642.

Dated: July 31, 1989.

William K. Reilly,

Administrator.

[FR Doc. 89–18341 Filed 8–3–89; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 90778–9178]

50 CFR Part 226 and 227

Endangered and Threatened Species; Critical Habitat; Winter-run Chinook Salmon

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

ACTION: Emergency interim rule.

SUMMARY: NMFS is taking emergency action to list the winter-run chinook salmon as threatened under the Endangered Species Act (ESA) and to designate portions of the Sacramento River as critical habitat.

Since the fall of 1985, NMFS has been monitoring the status of the winter-run chinook salmon population in the Sacramento River, California, to determine if it qualified for addition to the list of threatened and endangered species under the provisions of the ESA. Between 1967 and 1985 the run declined from a 3-year (1967–1969) mean run size of nearly 84,000 fish to a 3-year (1983–1985) mean run size of 2,962 fish. However, the California Department of Fish and Game (CDFG) has estimated the 1989 return of winter-run chinook salmon to the Sacramento River at about 500 fish. This is a decline of over 75 percent below a consistent run size of 2,000 to 3,000 fish in recent years. NMFS believes this is a precariously low run size, and that the protection afforded by the Endangered Species Act, particularly the section 7 consultation process, is needed immediately to ensure that the spawning and rearing habitat is maintained to maximize production from the fish that spawn in 1989 and to ensure that Federal fishery management programs are providing protection to the population.

Also, NMFS is designating as critical habitat the portion of the Sacramento River from Red Bluff Diversion Dam, Tehama County (River Mile 243) to Keswick Dam, Shasta County (River Mile 302) including the adjacent riparian zones, the water in the river, and the river bottom for the winter-run. This section includes the portion of the river in which suitable conditions can be maintained for spawning, incubating eggs, and rearing juvenile fish.

During the 240 days this emergency rule is in effect, NMFS will publish a proposed and final rule (with comment periods) to add winter-run chinook salmon to the list of threatened species and designate critical habitat.

EFFECTIVE DATE: Winter-run chinook salmon in the Sacramento River are listed as threatened under the ESA and critical habitat is designated effective April 2, 1990.

FOR FURTHER INFORMATION CONTACT: James H. Lecky, NOAA Fisheries, Southwest Region, Protected Species Management Branch, 300 South Ferry Street, Los Angeles, CA 90731, 213–514–6664, or Margaret Lorenz, NMFS, Office of Protected Resources, 1335 East-West Highway, Silver Spring, MD 20910, 301–427–2322.

SUPPLEMENTARY INFORMATION:

Background

Winter-run chinook salmon are distinguishable from the other runs of chinook salmon in the Sacramento River based on the timing of their upstream migration and spawning season. They return to the river almost exclusively as 3-year-old fish, thus the population is composed of essentially 3-year classes which are monitored by the California Department of Fish and Game (CDFG) as they migrate through the fish ladders at Red Bluff Diversion Dam.

On November 7, 1985, NMFS received a petition from the American Fisheries Society (AFS) to list the winter-run of chinook salmon in the Sacramento River as a threatened species under the ESA. NMFS reviewed the petition and determined that it contained substantial information indicating that the petitioned action might be warranted. On February 13, 1986, NMFS announced (51 FR 5391) its intention to conduct a review of the status of the run to determine whether listing was appropriate.

The status review was based on a consideration of available information on the run relative to the five criteria specified in section 4(a)(1) of the ESA and a consideration of the conservation efforts of the State of California and Federal resource management agencies to restore the run, as required by section 4(b)(1)(A) of the ESA. Information was provided by the petitioner, the State, Federal agencies that affect the run or its habitat, and the public. The results of the status review, along with the Notice of Determination, were published on February 27, 1987 (52 FR 6041).

In the Notice of Determination, NMFS concluded that the Sacramento River winter-run chinook was a species in the context of the ESA, recognized that the run had declined over a period of less than two decades, and was approaching a level below which genetic diversity might diminish. The primary reasons for this decline were the construction and

operation of Red Bluff Diversion Dam and other human activities that had degraded spawning and rearing habitat in the Sacramento River to a point where productivity of the run declined.

Based on its assessment that restoration and conservation efforts being implemented or planned by State and Federal resource management agencies adequately provided for the rebuilding of the population, NOAA Fisheries decided not to list winter-run chinook in the Sacramento River as a threatened species. Subsequent to this determination, these restoration actions were incorporated in a Ten-point Winter-run Restoration Plan and implemented through a Cooperative Agreement signed by the CDFG, the Bureau of Reclamation (BR) in the Department of the Interior (DOI), the Fish and Wildlife Service (FWS) in DOI, and NMFS. The Restoration Plan is reviewed in NOAA Fisheries' original decision not to list the run (52 FR 6041) and again after a reconsideration of that decision (53 FR 49722).

The tasks expected to be of most immediate benefit to winter-run are raising the gates at Red Bluff Diversion Dam from December 1 through April 1 to allow free passage of winter-run to suitable spawning habitat and maintaining water temperatures at levels below lethal limits in the reach of river above Red Bluff Diversion Dam used for spawning.

In the spring of 1988, prevailing weather patterns indicated that the drought conditions that had developed in the spring and summer of 1987 would persist through 1988. These conditions caused concern among the resource agencies that the conservation measures in place to enhance the run might not be adequate to address the adverse effects of anticipated drought conditions. Specifically, water forecasts indicated that river temperatures might reach levels lethal to some developing winter-run eggs. Therefore, NMFS decided to reconsider its decision not to list the run and to re-evaluate the adequacy of the Restoration Plan for protecting the run during drought conditions. On June 2, 1988, NMFS announced this decision and requested comments to ensure that all information on the status of the run and factors affecting it was available for the reconsideration (53 FR 20155).

NMFS reviewed the available information and found that the status of the winter-run population had not changed since the original determination not to list the run as threatened. None of the comments received during the reconsideration provided substantial new information indicating listing was necessary. Also, the Ten Point Winter-run Restoration Plan was being implemented, and unprecedented actions were being carried out to minimize the adverse effects of the drought.

On December 9, 1988, NMFS published its determination that the actions of State and Federal agencies to restore the winter-run chinook salmon population and its habitat adequately addressed the threats to the population and that the population was not likely to become in danger of extinction throughout all or a significant portion of its range in the foreseeable future (53 FR 49722).

At the time of NMFS' review of the status of the winter-run population, the CDFG was conducting an independent review pursuant to a petition for listing the run under the State's Endangered Species Act. The CDFG concluded its review in February 1989, and recommended to the California Fish and Game Commission that the run not be listed because the restoration actions underway or planned for the future had a high probability of restoring the run.

For the water year beginning in October 1988, precipitation and runoff were again below normal, and, in February 1989, the Bureau of Reclamation (BR) announced cuts of up to 50 percent in water supply for central valley water contractors. However, heavy precipitation in March 1989 in the northern Sacramento River drainage basin restored Lake Shasta storage equal to the storage in October 1987. As a result of the heavy March rains, the BR was able to increase water supplies to contractors and maintain sufficient storage to manage water temperatures in the river. The BR was also able to leave the gates at Red Bluff Diversion Dam out of the water two weeks beyond the April 1 deadline agreed to in the Cooperative Agreement.

Although this provided an additional two weeks of unrestricted access to suitable spawning habitat, lower than expected returns of winter-run were in the river to benefit. For undetermined reasons, the 1989 run returned at much lower levels than expected. The CDFG estimated the size of the 1989 run at about 500 fish * * * roughly 75 percent below the expected run size. Since 1982, the run has varied at about a mean run size of 2,382 fish, and resource agencies expected the 1989 run to be near that level.

Reasons for Emergency Determination

Based on the low return of fish in 1989 and because the U.S. Fish and Wildlife Service's hatchery program (a task in the Ten-point Winter-run Restoration Plan) for augmenting natural production is developmental and not likely to produce substantial numbers of juvenile fish for several years, the CDFG reversed its position and recommended at the May 1989 meeting of the California Fish and Game Commission that the Commission list the winter-run as a threatened species under the California Endangered Species Act. After considering the recommendation of the CDFG, the Commission voted to list the run as endangered under State law. The State's administrative procedures for adding the run to the list will be completed in August 1989.

NMFS believes the 1989 run size is dangerously low since it has estimated that a run size between 400 and 1,000 fish is necessary to maintain genetic diversity in the winter-run population (52 FR 6041). If the returns for the remaining 2 year classes in the population are as low, NMFS believes the population will begin losing genetic diversity through genetic drift and inbreeding. Further, a small population is vulnerable to major losses from random environmental events such as droughts and other climatic episodes. However, because the 1987 and 1988 year classes, which are currently in the ocean, are expected to benefit from the Ten-point Winter-run Restoration Plan, NMFS does not believe that the winter-run currently is in danger of extinction. Nevertheless, the run is likely to become endangered if immediate action is not taken to ensure that conditions are maintained in the river for maximum production from the fish that successfully spawn in 1989. Therefore, NOAA Fisheries believes that it is necessary to take this emergency action to list winter-run chinook salmon in the Sacramento River as a threatened species.

Available Conservation Measures

Conservation measures provided to species that are listed as threatened under the ESA include recognition, recovery actions, implementation of certain protective measures, and designation and protection of critical habitat. One of the most useful protective measures is the section 7 consultation process which requires all Federal agencies to conduct conservation programs for threatened and endangered species and to consult with NMFS concerning the potential effects of their actions on species under NMFS' jurisdiction.

As soon as this rule becomes effective, NMFS will initiate section 7 consultations with the Federal agencies whose actions may affect the continued existence of the winter-run or adversely

modify or destroy its critical habitat. Those agencies include the Bureau of Reclamation regarding temperature control measures throughout the rearing phase of this year's class of winter-run, the Army Corps of Engineers on the effects of gravel mining operations, and the Pacific Fishery Management Council on the effects of sport and commercial fishing.

Also, NMFS will continue to coordinate management of this run and its habitat with the State of California. The State's Endangered Species Act contains a provision for interagency consultation among State agencies similar to section 7 of the Federal ESA. The CDFG will review impacts of State actions on the winter-run to see if there are actions beyond the Ten-point Restoration Plan that can be taken, and they will review the State's water project for opportunities for improved water conservation. In addition, they will review their own sport and commercial fishing regulations to ensure that those fisheries do not jeopardize the continued existence of the winter-run.

NMFS will also participate in the State's review of sport and commercial fishing regulations. NMFS is charged with implementing the Magnuson Fisheries Conservation and Management Act (MFCMA) and publishes and administers regulations to implement fishery management plans developed by Regional Fishery Management Councils. Generally, inter-jurisdictional fisheries or fisheries that occur primarily in Federal waters are candidates for management under the MFCMA. The Pacific salmon fisheries are such fisheries. The Pacific Fishery Management Council manages salmon fisheries off the coasts of Washington, Oregon, and California. Generally, the Council strives to manage the fishery by consensus among the Federal and state fishery management agencies so that state regulations in state waters are consistent with Federal regulations in Federal waters.

NMFS expects consultations under the respective State and Federal laws to produce a State/Federal regulatory regime that will ensure the winter-run population is not adversely affected by sport or commercial fishing. Therefore, it is exempting fishermen, who incidentally take winter-run chinook salmon and who are fishing lawfully under State law or regulation or Federal regulations under the MFCMA, from the prohibition on taking winter-run chinook salmon. The incidental take of winter-run chinook in recreational and commercial fisheries is not believed to be a primary cause of their decline.

However, NMFS retains its right and responsibility to exert Federal authority in State waters in the event the State develops fishing regulations that are less protective than is commensurate with the designation as a threatened species under the Federal ESA.

Critical Habitat

Section 4(a)(3)(A) of the ESA includes the requirement that critical habitat be designated concurrently with the determination that a species is an endangered species or is a threatened species. Therefore, as part of this emergency rule, NOAA Fisheries is designating the portion of the Sacramento River between Red Bluff Diversion Dam, Tehama County (River Mile 243) and Keswick Dam, Shasta County (River Mile 302) including the adjacent riparian zones, the water in the river, and the river bottom as critical habitat for the winter-run of chinook salmon. This portion of the river contains almost all of the habitat in which winter-run can spawn successfully, if water management strategies for maintaining suitable temperatures are implemented, and habitat in which most juvenile winter-run will rear.

Section 4(b)(2) requires that economic impacts of specifying an area as critical habitat be considered in the process of designating critical habitat. NMFS is designating only that portion of the river that is necessary to ensure the survival and development of spawned eggs and successful rearing of juveniles during the 240 days the emergency rule is in effect. This is the minimum amount of habitat that is necessary to ensure the continued existence of the species. During the development of the proposed rule, other alternatives for critical habitat designation will be considered including habitat in which winter-run has spawned successfully during exceptionally good water years.

Only two Federal agencies, the Bureau of Reclamation and the Corps of Engineers, are expected to experience a direct economic impact from this 240-day emergency designation. However, individual customers of the BR may eventually be charged higher rates for power if water used to generate power is lost to maintain a certain water temperature in the area designated as critical habitat. During the time the emergency rule is in effect, the amount of water that can be made available for irrigation is not expected to be reduced. If additional water is needed to maintain a certain temperature in the critical habitat area, it will be recovered downstream.

Effects of Designating Critical Habitat

Federal agencies conducting, authorizing, or funding actions will incur additional administrative costs in evaluating the effects of their actions on critical habitat. This expense will be minimal since these agencies will be reviewing these same actions to assess their effects on the continued existence of the species.

The BR will be required to ensure that suitable water temperatures are maintained in the portion of the critical habitat where spawning, egg development, and growth of juvenile fish are expected to occur. During the 1987–1988 drought, the BR maintained, under the Cooperative Agreement, suitable water temperatures between Keswick Dam and Cottonwood Creek (approximately 14 river miles above Bend Bridge). Generally, about 80 percent of the run spawns above Cottonwood Creek. The major action implemented by the BR was using the low level outlet for releasing water from Shasta Lake. This was done for the first time in 1987 and again in 1988. Because the low level outlet is below the outlet that runs water to the powerhouse, it releases cold deep water during periods of the year when the powerhouse outlet is draining warmer water nearer the surface. While the low level outlet releases cold water to the benefit of the winter-run, the water bypasses the powerhouse, and power can not be generated from the release of that water. Between July 21 and September 17, 1988, the BR released almost 400,000 acre-feet of water through the low level outlet at the expense of $3.65 million in foregone power revenues. However, this cost should not be attributed to the designation of critical habitat because it would be incurred under the Ten-Point Winter-run Restoration Plan and the Conservation Agreement to which the BR has already agreed.

Since storage in Shasta Lake in March was equivalent to the level at the beginning of the 1988 water year, NMFS expects the Bureau to use the low level outlet again in 1989 to maintain suitable temperatures for development of eggs and fry throughout the stretch of the river designated as critical habitat. The 1988 cost provides an estimate of the expense that the BR will incur in 1989 as a result of foregone power revenues. However, this cost should not be attributed to the designation of critical habitat because it would be incurred under the Ten-point Winter-run Restoration Plan and the Cooperative Agreement which the Bureau of Reclamation has agreed to.

The BR is expected to raise the gates in the Red Bluff Diversion Dam on December 1, 1989, and keep them raised through April 1, 1990, consistent with past performance under the Cooperative Agreement implementing the Ten-point Winter-run Restoration Plan. This will facilitate passage of juvenile fish downstream in December and provide access for adults to critical habitat. Because this activity occurs during the non-irrigation season, it is not expected to affect agricultural operations that depend on water diverted at the Red Bluff Diversion Dam.

Because the BR has been cooperating in the conservation of habitat by raising the gates at Red Bluff Diversion Dam and by maintaining suitable temperatures and because failure to conduct these actions could adversely modify critical habitat, NMFS has determined that the economic impact of these actions to the BR does not outweigh the benefits to be derived from implementing measures to conserve the winter-run's spawning habitat during the 240 days the emergency rule is in effect.

Due to the emergency brought on by the low return of spawning adults in 1989, there has not been an opportunity to complete a more detailed economic analysis. Other Federal actions, such as consideration of the City of Redding's Federal Energy Commission applications, are not likely to progress to the point that resources will be irreversibly or irretrievably committed during the 240 days this emergency rule is in effect. Therefore, these actions were not considered in this brief economic assessment.

A complete economic analysis of the impact of designating critical habitat will be included in the proposed rule for listing this population as threatened.

Classification

Since the Assistant Administrator for Fisheries, NOAA, (Assistant Administrator) has determined that the present situation poses a significant risk to the well-being of the Sacramento River winter-run chinook salmon, emergency regulations can be issued under 16 U.S.C. 1533(b)(7).

The Assistant Administrator finds that reasons justifying promulgation of this rule on an emergency basis make it impracticable and contrary to the public interest to provide notice and opportunity for prior comment or to delay for 30 days its effective date under section 553(b) and (d) of the Administrative Procedure Act.

This emergency rule is exempt from the normal review procedures of Executive Order 12291 as provided in section 8(a)(1) of that order. This rule is being reported to the Director of the Office of Management and Budget with an explanation of why it is not possible to follow the usual procedures of that order.

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

The Regulatory Flexibility Act does not apply to this rule, because as an emergency rule, it is issued without opportunity for prior public comment. Since notice and opportunity for comment are not required to be given under section 553 of the Administrative Procedure Act, and since no other law requires that notice and opportunity for comment be given for this rule, under sections 603(a) and 604(a) of the Regulatory Flexibility Act, no initial or final regulatory flexibility analysis has been or will be prepared.

National Environmental Policy Act

The National Oceanic and Atmospheric Administration (NOAA) has determined that certain categories of its activities do not normally have the potential for a significant effect on the human environment and are, therefore, exempt from the requirement for preparation of either an environmental assessment or an environmental impact statement (NOAA Directives Manual 02–10 5c(3)). Listing actions under section 4(a) of the ESA and designation of critical habitat are among those actions NOAA has determined are exempted (NOAA Directives Manual 02–l0 5c(3)(h)). The main environmental impact from this emergency rule will be modification of water temperatures in the area designated as critical habitat for the benefit of incubating winter-run eggs and developing young. This is not expected to produce a significant impact to the human environment.

List of Subjects in 50 CFR Parts 226 and 227

Designated critical habitat and threatened fish and wildlife.

Dated: July 31, 1989.

James E. Douglas, Jr.,

Deputy Assistant Administrator for Fisheries.

Accordingly, Parts 226 and 227 of Chapter II of Title 50 of the Code of Federal Regulations are amended as follows:

PART 226—[AMENDED]

1. The authority citation for Part 226 continues to read as follows:

Authority: 16 U.S.C. 1533.

2. The title of Subpart C under Part 226 is revised to read as follows:

Subpart C—Critical Habitat for Marine and Anadromous Fish

3. Section 226.21 is added to Subpart C to read as follows:

§ 226.21 Sacramento River winter-run chinook salmon (Oncorhynchus tshawytscha).

The Sacramento River, California, between Red Bluff Diversion Dam, Tehama County (River Mile 243) and Keswick Dam, Shasta County (River Mile 302) including the adjacent riparian zone, the water, and the river bottom.

PART 227—[AMENDED]

1. The authority citation for Part 227 continues to read as follows:

Authority: 16 U.S.C. 1533.

2. Section 227.4 under Subpart A is amended by adding a new paragraph (e) to read as follows:

§ 227.4 Enumeration of threatened species.

* * * * *

(e) Sacramento River winter-run chinook salmon (*Oncorhynchus tshawytscha*).

3. The title of Subpart C under Part 227 is revised to read as follows:

Subpart C—Threatened Marine and Anadromous Fish

4. Section 227.21 is added to Subpart C to read as follows:

§ 227.21 Sacramento River winter-run chinook salmon.

(a) *Prohibitions.* The prohibitions of section 9 of the Act (16 U.S.C. 1538) relating to endangered species apply to the Sacramento River winter-run chinook salmon for the 240-day period the emergency rule is in effect.

(b) *Exceptions.* Excepted from the prohibitions are any acts involving winter-run chinook salmon which were taken lawfully under a State of California fishing law or regulation, or which were taken lawfully under a fishing regulation under the Magnuson Fishery Conservation and Management Act. There will be a rebuttable presumption that the winter-run chinook involved in any acts are not entitled to the exemption contained in this subsection.

[FR Doc. 89–18302 Filed 8–3–89; 8:45 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 54, No. 149
Friday, August 4, 1989

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

FEDERAL RESERVE SYSTEM

12 CFR Part 226

[Reg. Z; Doc. No. R-0672]

Truth in Lending; Intent To Make Determination of Effect on State Law; Wisconsin

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice of intent to make preemption determination.

SUMMARY: The Board is publishing for comment a proposed determination that certain provisions in the law of Wisconsin dealing with disclosures and adjustment notices for variable-rate transactions are not inconsistent with the Truth in Lending Act and Regulation Z.

DATE: Comments must be received on or before October 11, 1989.

ADDRESSES: Comments should refer to Docket No. R-0672 and be mailed to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551. They may be delivered to Room B-2222 of the Eccles Building between 8:45 a.m. and 5:15 p.m. weekdays or delivered to the guard station in the Eccles Building Courtyard on 20th Street NW. (between Constitution Avenue and C Street NW.) any time. All comments received at the above address will be available for inspection and copying by any member of the public in the Freedom of Information Office, Room B-1122 of the Eccles Building between 9:00 a.m. and 5:00 p.m. weekdays.

FOR FURTHER INFORMATION CONTACT: Sharon Bowman or Mary Jane Seebach, Staff Attorneys, Division of Consumer and Community Affairs, at (202) 452-3667. For the hearing impaired only, contact Earnestine Hill or Dorothea Thompson, Telecommunications Device for the Deaf (TDD), at (202) 452-3544. Board of Governors of the Federal Reserve System, Washington, DC 20551.

SUPPLEMENTARY INFORMATION:

(1) General

The Board has received a request for a determination that certain provisions of Wisconsin law are inconsistent with the Truth in Lending Act or Regulation Z, and therefore preempted. Section 111(a)(1) of the Truth in Lending Act authorizes the Board to determine whether any inconsistency exists between chapters 1, 2, and 3 of the federal act or the implementing provisions of the regulation and any state law relating to the disclosure of information in connection with consumer credit transactions. These proposed preemption determinations are issued under authority delegated to the Director of the Division of Consumer and Community Affairs, as set forth in the Board's Rules Regarding Delegation of Authority (12 CFR 265.2(h)(3)).

The procedure for requesting a determination and the general procedures followed in making a determination are contained in Appendix A to 12 CFR Part 226.

Section 226.28(a)(1) of Regulation Z, which implements section 111(a)(1) of the Truth in Lending Act, provides that state requirements are inconsistent with, and therefore preempted by, the federal provisions if the state law requires a creditor to make disclosures or take actions that contradict the federal law. Under § 226.28(a)(10, a state law is contradictory, for example, if it requires the use of the same term for a different amount or a different meaning than the federal law, or if it requires the use of a different term than the federal law to describe the same item.

In previous preemption determinations (48 FR 4454, February 1, 1983) the Board developed principles to be applied in making preemption determinations. Such guiding principles require that preemption should occur only in those transactions in which an actual inconsistency exists between the state and federal law. In addition, a state law is not inconsistent merely because it requires more information than federal law or requires disclosure in transactions where federal law requires none.

Preemption determinations are generally limited to those provisions of state law identified in the request for a determination. At the Board's discretion, however, other state provisions that may be affected by the federal law will also be addressed.

(2) Discussion of Specific Request and Proposed Determination

The Board has been asked to determine whether specific provisions of the Wisconsin Statutes requiring disclosures and adjustment notices for certain variable-rate transactions are inconsistent with amendments to Regulation Z (12 CFR 226.18(f)(1), 226.19(b)(2), and 226.20(c)) which regulate disclosure of variable-rate transactions. The requesting party asks whether Wisconsin Statutes sections 138.056(4) and (6) requiring creditors to provide consumers with notice of a change in the interest rate and disclosures, respectively, in the case of certain variable-rate transactions are preempted by §§ 226.18(f)(1), 226.19(b) and 226.20(c). The requesting party also questions whether Wisconsin Statutes section 422.421(5), part of the Wisconsin Consumer Act, is preempted by § 226.20(c) of Regulation Z.

A preliminary issue is whether there is an inconsistency between the state and federal definitions of variable-rate transaction. There does not appear to be any substantive difference in the definitions. Furthermore, the term is relevant only with regard to coverage of the respective rules and is not itself a disclosed term. Therefore, there is no basis for preempting the state law definition.

Content of Disclosures Under Wisconsin Statutes Section 138.056(6) and Section 226.19(b) of Regulation Z

The requesting party asked for a determination as to possible inconsistency between the state and federal requirements for early disclosures of variable rate transactions. Section 226.19(b) of Regulation Z applies to transactions secured by the consumer's principal dwelling with a term greater than one year if the annual percentage rate may increase after consummation. Section 226.19(b) requires that specific disclosures be provided at the time an application form is provided or before the consumer pays a non-refundable fee. Wisconsin Statutes section 138.056 applied to variable rate loans secured by first-lien mortgages on principal residences and requires creditors to make certain disclosures before making a variable rate loan.

The state law requires a disclosure that the loan contains a variable interest rate provision; § 226.19(b)(2)(i) requires a disclosure that the interest rate, as well as the payment or term of the loan can change. The state disclosure does not contradict federal law since a creditor could comply with both the state and federal provisions.

The state law requires an identification of the index used in the loan contract as well as the current base of the index; § 226.19(b)(2)(ii) requires identification of the index or formula used, as well as a source of information about the index or formula. The state disclosure does not contradict federal law since a creditor could comply with both provisions. The state law requirement of additional or different information does not by itself make the provision inconsistent with federal law.

The state law requires disclosure of the borrower's prepayment rights on receiving notice of a change in the interest rate; § 226.19(b) has no counterpart. Again, a state law provision is not inconsistent merely because it requires more information than federal law.

The state law requires disclosure that a notice of any interest rate increase must be given to the borrower; § 226.19(b)(2)(xii) requires disclosure of the type of information that will be contained in adjustment notices (including information about the index, interest rate, payment amount, and loan balance) as well as the timing of such notices. The state disclosure does not contradict federal law since a creditor could comply with both provisions.

As there is no requirement that the disclosures required by § 226.19(b) be segregated, creditors could comply with both the state and federal requirements by combining the disclosures in one form. It should be noted, however, that Wisconsin Statutes section 138.056(6) does not specify a precise time for providing disclosures. If a creditor combines the state and federal disclosures, it must provide them at the time specified by § 226.19(b) of Regulation Z (that is, when an application is provided or before the consumer pays a non-refundable fee).

As the provisions of Wisconsin Statutes section 138.056(6) do not contradict federal law, the Board proposes to determine these provisions are not preempted.

Content of Disclosures Under Wisconsin Statutes Section 138.056(6) and Section 226.18(f)(1) of Regulation Z

The requesting party also questioned whether Wisconsin Statutes section 138.056(6) conflicts with § 226.18(f)(1) of Regulation Z, which applies to variable-rate transactions not secured by the principal dwelling with a term of one year or less. Section 226.18(f)(1) requires disclosures of (1) circumstances under which the rate may increase; (2) any limitations on the increase in rate; (3) the effect of a rate increase; and (4) an example of the payment terms that would result from an increase. Disclosures pursuant to § 226.18(f)(1) must be provided to the consumer with the other Truth in Lending disclosures before consummation of the transaction. As discussed above, state law requires disclosure of the variable rate feature, the index and its current value, prepayment rights, and that an adjustment notice must be given. These state disclosures do not contradict federal law since a creditor could comply with both provisions. Moreover, the state law requirement of additional or different information (for example, prepayment rights) does not by itself make the provision inconsistent with federal law. Creditors should note that the § 226.18(f)(1) disclosures (with the exception of the example in section 18(f)(1)(iv)) are required to be segregated from other information pursuant to § 226.17(a)(1). Therefore, a creditor could not combine the state disclosures with those required under § 226.18(f)(1) (i)–(iii). However, if the creditor chooses to place the example in § 226.18(f)(1)(iv) apart from the other segregated federal disclosures, it may be combined with the state disclosures.

The Board proposes to determine these state law provisions are not preempted by the federal law.

Content of Notices Under Wisconsin Statutes Section 138.056(4) and Section 226.20(c) of Regulation Z

The requesting party also asked the Board to determine if the content of the disclosures required under Wisconsin Statutes section 138.056(4) is inconsistent with that of § 226.20(c) of Regulation Z. Section 138.056(4) requires a notice to be sent to the borrower when a change in the interest rate occurs and affects the loan terms. Section 226.20(c) requires a creditor to provide disclosures where an adjustment to the interest rate is made in a variable-rate transaction subject to § 226.19(b). Section 226.20(c) has two timing rules depending on whether payment changes accompany interest rate changes.

State law requires a disclosure of the effective date of the rate change; § 226.20(c) has no counterpart. A state law provision is not inconsistent merely because it requires more information than federal law.

State law requires disclosure of the amount of the rate change. Section 226.20(c)(1) requires disclosure of the current interest rate, as well as prior interest rates. The state disclosure does not contradict federal law since a creditor could comply with both provisions.

State law requires disclosure of changes in the index that resulted in the rate change; § 226.20(c)(2) requires disclosure of the index values upon which both the current and prior rates are based. Again it appears that creditors can comply with both provisions.

State law requires disclosure of the amount of the monthly interest and principal changes resulting from the rate change; § 226.20(c)(4) requires a broader disclosure of the contractual effects of the adjustment, including the new payment due, any change in the term or maturity, and a statement of the loan balance. This state disclosure does not contradict federal law since a creditor could comply with both provisions.

State law requires a disclosure of the borrower's prepayment rights; federal law has no counterpart under § 226.20(c). A state law provision is not considered inconsistent for requiring more information than federal law.

As the provisions of Wisconsin Statutes section 138.056(4) do not contradict federal law, the Board proposes to determine these provisions are not preempted.

Timing Requirements for Notices Under Wisconsin Statutes Section 138.056(4) and Section 226.20(c) of Regulation Z

The requesting party asked the Board to determine whether the timing requirements for notices under Wisconsin Statutes section 138.056(4) make them inconsistent with federal law. Under state law, if the rate change results in an increase in the payments (other than the final payment), the notice must be delivered at least 30 days before the rate change. Notice of a rate change must also be given no later than 15 days after any other rate change not involving an increase in the payments. Section 226.20(c) of Regulation Z requires notice at least once a year if the interest rate has changed, and at least 25, but no more than 120 days, before a payment at a new level is due. This applies to both increases and decreases in the payment.

Although the state timing requirement differs from that in the federal law, it does not contradict it since a creditor could comply with both state and federal provisions. In addition, the state and federal notice requirements could, in most cases, be combined as there is

no requirement for segregated disclosures, and both timing requirements could be met. However, since the federal notice is triggered by a change in payment (and specifies an outer time limit for notification of 120 days), and the state notice is triggered by a change in rate, there may be cases when a combined federal and state notice would not meet both timing requirments. For example, if the consumer makes payments only once a year on July 15th, it appears Wisconsin law would require disclosure by the middle of December (30 days before the rate went into effect). This would be more than 120 days before the new payment is due (July 15th) and thus would not comply with the requirements of § 226.20(c). In such a case, two notices would be required.

As the timing of the notice requirements of Wisconsin Statutes section 138.056(4) does not contradict federal law, the Board proposes to determine these provisions are not preempted.

Timing Requirements for Notices Under Wisconsin Statutes Section 422.421(5) and Section 226.20(c) of Regulation Z

The requesting party also asked the Board to determine whether the timing requirements for notices under Wisconsin Statutes section 422.421(5) make them inconsistent with federal law. This section of Wisconsin law applies to consumer transactions where the amount financed is $25,000 or less and the loan is not secured by a first-lien mortgage. The state law requires a notice of rate changes to be sent in certain circumstances.

Under state law, if the rate adjustment changes the amount of a payment (other than the final payment), notice must be sent to the consumer at least 15 days before the effective date of the rate adjustment. If the rate adjustment is not implemented through a payment change, the notice must be sent to the consumer not later than 30 days after the effective date of the rate adjustment.

This provision of Wisconsin law does not contradict federal law since a Wisconsin creditor could comply with both provisions. As discussed above in conjunction with timing requirements for section 138.056(4) of Wisconsin Statutes, the state and federal notices could, in most cases, be combined as there is no requirement of segregated disclosures, and both timing requirements could be met. However, since the federal notice is triggered by a change in payment (and specifies an outer time limit for notification of 120 days) and the state notice is triggered by a rate change, there may be cases when a combined federal and state notice would not meet both timing requirements. (See the example above.)

As the timing of the notice requirements under Wisconsin Statutes section 422.421(5) does not contradict federal law, the Board proposes to determine these provisions are not preempted.

(3) Comment requested

The Board requests comment on the consistency or inconsistency with the federal law of the provisions in the Wisconsin statutes discussed above. After the close of the comment period and analysis of the comments received, notice of final action on the proposal will be published in the **Federal Register**.

Lists of Subjects in 12 CFR Part 226

Advertising, Banks, Banking, Consumer protection, Credit, Federal Reserve System, Finance, Penalties, Truth in lending.

Board of Governors of the Federal Reserve System, July 31, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-18213 Filed 8-3-89; 8:45 am]

BILLING CODE 8210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 133

[Docket No. 88N-0437]

Cheeses; Amendment of Standards of Identity to Permit Use of Antimycotics on the Exterior of Bulk Cheeses During Curing and Aging and to Update the Formats of Several Standards

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend the standards of identity for edam cheese (and by cross-reference, gouda cheese), swiss and emmentaler cheese, and swiss cheese for manufacturing to permit the use of antimycotics on the exterior of those bulk cheeses during curing and aging and on the exterior of the cheese for manufacturing. This action responds to a comment on a September 21, 1987, proposal to, among other things, permit similar use of antimycotics on a number of other standardized cheeses. The proposed amendment will reduce waste in cheese manufacturing and will promote honesty and fair dealing in the interest of consumers. Elsewhere in this issue of the **Federal Register**, FDA is amending the standards of identity for several other cheeses to: (1) Permit the use of antimycotics on the exterior of those bulk cheeses, (2) update the formats and language of the standards of identity to make them more consistent with the nine natural cheese standards that FDA revised in 1983 (48 FR 2736; January 21, 1983), (3) provide for safe and suitable functional ingredient categories, and (4) provide for optional ingredient labeling requirements.

DATES: Comments by October 3, 1989. The agency proposes that any final rule that may be issued based upon this proposal shall become effective 60 days after date of publication of the final rule in the **Federal Register**.

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

FOR FURTHER INFORMATION CONTACT: James F. Lin, Center for Food Safety and Applied Nutrition (HFF-414), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-485-0122.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of September 21, 1987 (52 FR 35426), FDA published a proposal that was based on a petition from the National Cheese Institute (NCI), a trade association representing U.S. cheese manufacturers. In that document, FDA proposed to amend the standards of identity for brick cheese (21 CFR 133.108), brick cheese for manufacturing (21 CFR 133.109), washed curd and soaked curd cheese (21 CFR 133.136), washed curd cheese for manufacturing (21 CFR 133.137), granular and stirred curd cheese (21 CFR 133.144), granular cheese for manufacturing (21 CFR 133.145), monterey cheese and monterey jack cheese (21 CFR 133.153), muenster and munster cheese (21 CFR 133.160), muenster and munster cheese for manufacturing (21 CFR 133.161), and high moisture jack cheese (21 CFR 133.154) to permit the expanded use of safe and suitable antimycotics (currently permitted on cuts and slices in consumer-sized packages for a number of standardized cheeses) on the exterior of bulk cheeses during curing and aging and on the exterior of cheeses for manufacturing.

FDA also proposed to amend several standards to update their format and language to make the standards more consistent with the nine natural cheese standards that FDA had revised to

conform more closely with the Codex international standards for these foods (48 FR 2736), to provide for functional group designations of safe and suitable optional ingredients, and to provide for optional ingredient labeling requirements. The final rule for the proposed amendments is published elsewhere in this issue of the Federal Register.

However, several comments responding to the September 21, 1987, proposal suggested substantive amendments which require the issuance of a separate proposal so that interested persons will have an opportunity to comment. This proposal is in response to those comments.

One comment noted that the agency had failed to list the amended version of the standard of identity for edam cheese in the proposed regulation even though its intended inclusion was clearly indicated in the preamble. Two other comments requested that FDA expand the proposal by permitting the use of antimycotics on swiss and emmentaler cheese and swiss cheese for manufacturing. The latter comments cited cheese losses of 1.5 percent which they attributed to mold growth during curing and aging.

The agency acknowledges that amendment of the standard of identity for edam cheese was inadvertently left out of the proposed regulation and proposes to correct that oversight in this document. FDA also agrees, for the reasons given in the September 21, 1987, proposal, that it is reasonable, and would be in the interest of consumers, to amend the standards of identity for swiss and emmentaler cheese and swiss cheese for manufacturing to permit the optional use of antimycotics. Accordingly, FDA is proposing to amend the standards of identity for edam cheese (21 CFR 133.138) (and by cross-reference, gouda cheese (21 CFR 133.142)), swiss and emmentaler cheese (21 CFR 133.195), and swiss cheese for manufacturing (21 CFR 133.196) to provide for the optional use of antimycotics on the exterior of the bulk cheeses. The agency notes that the provision for "safe and suitable" ingredients governs the use of all optional ingredients used in these cheeses, including antimycotics. Thus, any antimycotics to be used in or on these standardized cheeses must conform to the definition of safe and suitable in 21 CFR 130.3(d) which requires that the antimycotics: (1) Perform an appropriate function in the food, (2) be used at a level no higher than necessary to achieve its intended purpose, and (3) be generally recognized as safe (GRAS), prior sanctioned, or the subject of a food additive regulation.

The agency notes that label declaration is required for all optional ingredients used in these cheeses, including antimycotics, so that consumers will have a means of avoiding these substances if they so choose. Only one optional ingredient is exempted from label declaration and that is artificial coloring. It is specifically exempted by section 403(k) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 343(k)). In addition, the ingredient declaration requirement may not apply to salt in those cheeses for which the use of this ingredient is required by the standard of identity. However, the agency urges manufacturers to declare both the presence of artificial coloring, when used, and salt.

I. Economic Impact

In accordance with the Regulatory Flexibility Act (Pub. L. 96–354; 5 U.S.C. 601), FDA has reviewed this proposal to determine its impact on small businesses. This proposal will provide for the expanded use of antimycotics on the exterior of bulk cheeses, i.e., of edam cheese, gouda cheese, and swiss and emmentaler cheese during curing and aging and on the exterior of swiss cheese for manufacturing. The National Milk Producers Federation has stated that approximately 3.4 million pounds of the 223 million pounds (1.5 percent) of the total 1985 U.S. swiss cheese production was lost through spoilage caused by mold growth during aging. Such loss of swiss cheese is proportionately higher than that of other cheeses (0.83 percent of the 3.5 billion pounds of semihard and semisoft cheeses produced in the United States are lost through spoilage) because of the proportionately larger surface area that is the result of eye formation in the swiss cheese block. The expanded optional use of antimycotics is likely to reduce monetary losses caused by product spoilage.

Therefore, FDA has concluded that this action will not result in a significant economic impact on a substantial number of small entities. Therefore, FDA certifies, in accordance with section 605(b) of the Regulatory Flexibility Act, that no significant economic impact on a substantial number of small entities will derive from this proposed action.

II. Environmental Impact

The agency has determined under 21 CFR 25.24(b)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

III. Comments

Interested persons may, on or before October 3, 1989, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 133

Cheese, Food grades and standards.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, it is proposed that Part 133 be amended as follows:

PART 133—CHEESES AND RELATED CHEESE PRODUCTS

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

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

2. Section 133.138 is amended by revising paragraph (b)(3)(iv) to read as follows:

§ 133.138 Edam cheese.

* * * * *

(b) * * *

(3) * * *

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

* * * * *

3. Section 133.195 is amended by revising paragraph (b)(3)(iv) to read as follows:

§ 133.195 Swiss and emmentaler cheese.

* * * * *

(b) * * *

(3) * * *

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

* * * * *

4. Section 133.196 is revised to read as follows:

§ 133.196 Swiss cheese for manufacturing.

Swiss cheese for manufacturing conforms to the definition and standard of identity prescribed for swiss cheese by § 133.195, except that the holes, or eyes, have not developed throughout the entire cheese.

Dated: March 21, 1989.

Richard J. Ronk,

Deputy Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 89-18226 Filed 8-3-89; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 917

Kentucky Permanent Regulatory Program; Cultural and Historic Resources

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

ACTION: Proposed rule, reopening of public comment period.

SUMMARY: OSMRE is announcing the receipt of a proposed program amendment to the Kentucky permanent regulatory program (hereinafter referred to as the Kentucky program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment consists of regulations on cultural and historic resources and a Memorandum of Agreement between the State Historic Preservation Officer (SHPO) and the Natural Resources and Environmental Protection Cabinet (NREPC).

This notice sets forth the times and locations that the Kentucky program and the proposed amendment are available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendment, and the procedures that will be followed regarding a public hearing, if one is requested.

DATES: Written comments must be received on or before 4:00 p.m. on September 5, 1989. If requested, a public hearing on the proposed amendment will be held at 10:00 a.m. on August 29, 1989. Requests to present oral testimony at the hearing must be received on or before 4:00 p.m. on August 21, 1989.

ADDRESSES: Written comments and requests for a hearing should be mailed or hand delivered to: W. Hord Tipton, Director, Lexington Field Office, Office of Surface Mining Reclamation and Enforcement, 340 Legion Drive, Suite 28, Lexington, Kentucky 40504. Copies of the Kentucky program, the proposed amendment, and all written comments received in response to this notice will be available for review at the addresses listed below, Monday through Friday, 9:00 a.m. to 4:00 p.m., excluding holidays. Each requestor may receive, free of charge, one copy of the proposed amendment by contacting OSMRE's Lexington Field Office.

Office of Surface Mining Reclamation and Enforcement, Lexington Field Office, 340 Legion Drive, Suite 28, Lexington, Kentucky 40504, Telephone: (606) 233-7327

Office of Surface Mining Reclamation and Enforcement, 1100 "L" Street, NW., Room 5131, Washington, DC 20240, Telephone: (202) 343-5492

Office of Surface Mining Reclamation and Enforcement, Eastern Field Operations, Ten Parkway Center, Pittsburgh, Pennsylvania 15220, Telephone: (412) 937-2828

Department for Surface Mining Reclamation and Enforcement, No. 2 Hudson Hollow Complex, Frankfort, Kentucky 40601, Telephone: (502) 564-6940

If a public hearing is held, its location will be: The Harley Hotel, 2143 North Broadway, Lexington, Kentucky 40505.

FOR FURTHER INFORMATION CONTACT: W. Hord Tipton, Director, Lexington Field Office, Telephone (606) 233-7327.

SUPPLEMENTARY INFORMATION:

I. Background

On May 18, 1982, the Secretary of the Interior conditionally approved the Kentucky program. Information pertinent to the general background, revisions, modifications, and amendments to the proposed permanent program submission, as well as the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval can be found in the May 18, 1982, Federal Register (47 FR 21404-21435). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 917.11, 917.15, 917.16, and 917.17.

II. Discussion of Amendment

By letter dated June 9, 1987, OSMRE notified Kentucky of State regulations that must be amended to be consistent with revised Federal regulations. OSMRE's letter, pursuant to 30 CFR 732.17, identified 5 changes needed in the Kentucky regulatory program for cultural and historic resources.

In responses to the OSMRE letter Kentucky submitted on December 21, 1988, (Administrative Record No. KY-841) proposed program amendments to the cultural and historic resource regulations contained in the Kentucky program. On January 24, 1989, (54 FR 3493), OSMRE announced receipt of the proposed amendment and the procedures for public comment period and a public hearing. No public hearing was requested and none was held. On February 28, 1989, the comment period was closed.

By letter dated July 5, 1989, (Administrative Record No. KY-903), Kentucky re-submitted to OSMRE a proposed amendment on cultural and historic resources. This amendment supersedes the December 21, 1988, proposed amendment submittal.

The proposed amendments modify portions of the Kentucky Administrative Regulations (KAR) Title 405 Chapters 8 and 24. Specifically, the proposed amendments revise 405 KAR 8:010 by including information on the nature and location of archaeological resources on public and Indian lands as confidential information, and by adding a requirement for a new written findings by the Cabinet relating to properties listed or eligible for listing on the National Register of Historic Places. The proposed amendments revise 405 KAR 8:020 to require the inclusion of information on cultural, historic, and known archaeological resources in the narrative description of each exploration and reclamation operations plan. The proposed amendments revise the permits requirements at 405 KAR 8:030 and 405 KAR 8:040 to specify that Kentucky may require the applicant to identify and evaluate important historic and archaeological resources. In addition, the proposed regulations require that each plan contain a description of measures to be used to prevent adverse impacts to public parks or places listed on the National Register of Historic Places and allows the Cabinet to require the applicant to utilize appropriate mitigation and treatment measures. The proposed amendments also revise the Kentucky Regulations at 405 KAR 24:040 to permit the relocation of cemeteries if authorized by applicable State law or regulations. Also, the amendment contains pursuant to 30 CFR 731.14(g)(17) a Memorandum of Agreement (MOA) between the SHPO and NREPC. The MOA establishes procedures for consulting with the SHPO and for making decisions regarding cultural and historic resources.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSMRE is now seeking comment on whether the amendment proposed by Kentucky satisfy the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Kentucky program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commentor's recommendations. Comments received after the time indicated under "**DATES**" or at locations other than the Lexington Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under "**FOR FURTHER INFORMATION CONTACT**" by 4:00 p.m. on August 21, 1989. If no one requests an opportunity to comment at a public hearing, the hearing will not be held. Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSMRE officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment, and who wish to do so, will be heard following those secheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

Public Meeting

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSMRE representatives to discuss the proposed amendments may request a meeting at the OSMRE, Lexington Field Office listed under "**ADDRESSES**" by contacting the person listed under "**FOR FURTHER INFORMATION CONTACT.**" All such meetings will be open to the public and, if possible, notices of meetings will be posted in advance at the locations listed under "**ADDRESSES.**" A written summary of each meeting will be made a part of the Administrative Record.

VI. Procedural Determinations

1. Compliance With the National Environmental Policy Act

The Secretary had determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. Executive Order 12291 and the Regulatory Flexibility Act.

On July 12, 1984, the Office of Management and Budget (OMB) granted OSMRE and exemption from sections 3, 4, 7 and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

3. Paperwork Reduction Act

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

List of Subject in 30 CFR Part 917

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

Dated: July 21, 1989.

Carl C. Close,

Assistant Director, Eastern Field Operations.

[FR Doc. 89-18244 Filed 8-3-89; 8:45 am]

BILLING CODE 4310-05-M

---

30 CFR Part 925

Missouri Permanent Regulatory Program

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

ACTION: Proposed rule; reopening and extension of comment period.

SUMMARY: OSMRE is announcing receipt of additional explanatory information pertaining to a previously proposed amendment to the Missouri permanent regulatory program (hereinafter, the "Missouri program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). This additional information pertains to coal waste disposal and bonding. The amendment is intended to revise the State program to be consistent with the corresponding Federal standards, and to incorporate the additional flexibility afforded by the revised Federal regulations.

This notice sets forth the times and locations that the Missouri program and proposed amendment to that program are available for public inspection, and the reopened comment period during which interested persons may submit written comments on the proposed amendment.

DATES: Written comments must be received on or before 4:00 p.m., c.d.t., August 21, 1989.

ADDRESSES: Written comments should be mailed or hand delivered to Mr. William J. Kovacic at the address listed below.

Copies of the Missouri program, the proposed amendment, and all written comments received in response to this notice will be available for public review at the address listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSMRE's Kansas City Field Office.

Mr. William J. Kovacic, Director, Kansas City Field Office, Office of Surface Mining Reclamation and Enforcement, 1103 Grand Avenue, Room 502, Kansas City, MO 64106, Telephone: (816) 374-6405

Missouri Department of Natural Resources, Land Reclamation Program, 205 Jefferson Street, P.O. Box 176, Jefferson City, MO 65102, Telephone: (314) 751-4041

FOR FURTHER INFORMATION CONTACT: Mr. William J. Kovacic, Director, Kansas City Field Office (816) 374-6405.

SUPPLEMENTARY INFORMATION:

I. Background on the Missouri Program

On November 21, 1980, the Secretary of Interior conditionally approved the Missouri program. General background information on the Missouri program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Missouri program can be found in the November 21, 1980, **Federal Register** (45 FR 77017). Subsequent actions concerning Missouri's program and program amendments can be found at 30 CFR 925.12, 925.15, and 925.16.

II. Proposed Amendment

By letter dated January 12, 1989, (Administrative Record No. MO-410) Missouri submitted a proposed

amendment to its program pursuant to SMCRA. Missouri submitted the proposed revisions (1) in response to a June 11, 1986, and a January 30, 1986, letter that OSMRE sent in accordance with 30 CFR 732.17 (c), (2) to satisfy a required program amendment at 30 CFR 925.16(1)1, (3) to satisfy deficiencies noted in a July 18, 1988, letter from OSMRE, and (4) at its own initiative.

The regulations that Missouri proposes to amend are: 10 CSR 40–2.110(1)(B)3, Prime Farmland Applicability; 10 CSR 40–3.040(1)(B), (3)(G), (4)(B)3, (6)(B), (6)(H), (6)(T), (7), (10)(A), (10)(E), (10)(G), (10)(I), (10)(J), (13)(A)1, and (13)(B)1.C, and 40–3.200(1)(B), (3)(H), (4)(B)3, (6)(B), (6)(H), (6)(T), (7), (10)(A), (10)(E), (10)(G), (10)(I), (10)(J), (12)(A)1, and (12)(B)1.C, Surface and Underground Requirements for Protection of the Hydrologic Balance; 10 CSR 40–3.060(1)(B), (1)(F), (1)(H), and (1)(K), and 40–3.220(1)(B), (1)(F), (1)(H), and (1)(K), Surface and Underground Requirements for the Disposal of Excess Spoil; 10 CSR 40–3.080(1)(C), (2)(A), (4)(A), (4)(D)3, (10)(B), and (11)(D), and 40–3.230(1)(C), (2)(A), (4)(A), (4)(D)3, (10)(B), and (11)(D), Requirements for the Disposal of Coal Processing Waste; 10 CSR 40–3.100(2), Requirements for the Protection of Fish, Wildlife, and Related Environemntal Values and Protection Against Slides and Other Related Damage; 10 CSR 40–3.110(6), Regarding or Stabilizing Rills and Gullies; 10 CSR 40–3.120(6)(A), (6)(B)2, and (8)(D), and 40–3.270(6)(A) and (6)(B)2, Surface and Underground Revegetation Requirements; 10 CSR 40–3.280(1)(C), General Requirements for Subsidence Control; 10 CSR 40–5.010(2)(C), (2)(E), and (3)(B)2, Prohibitions and Limitations on Mining in Certain Areas; 10 CSR 40–5.020(4)(B)1, (4)(B)2, (4)(B)4, (4)(B)6, (4)(C)1, (4)(C)3, and (4)(C)5, State Designation of Areas Unsuitable for Mining; 10 CSR 40–6.060(4)(A)3, Prime Farmland Applicability; 10 CSR 40–7.011, Bond Requirements; 10 CSR 40–7.021, Duration and Release of Reclamation Liability; 10 CSR 40–7.031; Permit Suspension or Revocation, Bond Forfeiture, and Authorization to Expend Reclamation Fund Monies; 10 CSR 40–7.041, Form and Administration of the Coal Mine Land Reclamation Fund; and 10 CSR 40–8.010(1)(A)59 and (A)79, Definitions.

OSMRE published a notice in the February 10, 1989, **Federal Register** (54 FR 6423) announcing receipt of the amendment and inviting public comment on the adequacy of the proposed amendment (Administrative Record No. MO–447). The public comment period ended March 13, 1989.

During its review of the amendment, OSMRE identified concerns relating to 10 CSR 40–3.040(4)(B)3 and 40–3.200(4)(B)3, Permanent and Temporary Impoundments; 10 CSR 40–3.040(6)(T) and 40–3.200(6)(T), Sedimentation Ponds; 10 CSR 40–3.040(10)(G) and 40–3.200(10)(G), Permanent and Temporary Impoundments; 10 CSR 40–3.040 (10)(I) and 40–3.200(10)(I), Permanent and Temporary Impoundments; 10 CSR 40–3.060(1)(H) and 40–3.220(1)(H), Disposal of Excess Spoil; 10 CSR 40–3.080(10)(B) and 40–3.230(10)(B), Disposal or coal Processing Waste; 10 CSR 40–3.100(2), Endangered and Threatened Species; 10 CSR 40–3.120(6)(B)2.A,B,C,D,E, and F and 40–3.270(6)(B)1.A,B,C,D,E, and F, Revegetation Requirements; 10 CSR 40–7.011(5)(D)2.D(I), Self-Bonding; 10 CSR 40–7.011(5)(D)5.A and B, Self-Bonding; 10 CSR 40–7.011(5)(D)8, Self-bonding; 10 CSR 40–7.021(2)(A), Criteria and Schedule for Release of Reclamation Liability; 10 CSR 40–7.021(2)(B)4 and (C), Criteria and Schedule for Release of Reclamation Liability; 10 CSR 40–7, Bonding. OSMRE notified Missouri of the concerns by letter dated June 5, 1989 (Administrative Record No. MO–441). Missouri responded in a letter dated July 19, 1989, (Administrative Record No. MO–448) and at a meeting with OSMRE on July 25, 1989, (Administrative Record No. MO–449) by submitting additional explanatory information.

III. Public Comment Procedures

OSMRE is reopening the comment period on the proposed Missouri program amendment to provide the public an opportunity to reconsider the adequacy of the amendment in light of the additional materials submitted. In accordance with the provisions of 30 CFR 732.17(h), OSMRE is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Missouri program.

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "**DATES**" or at locations other than the Kansas City Field Office will not necessarily be considered in the final rulemaking or included in the administrative record.

List of Subjects in 30 CFR Part 925

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

Dated: July 27, 1989.

Raymond L. Lowrie,

Assistant Director, Western Field Operations.

[FR Doc. 89–18245 Filed 8–3–89; 8:45 am]

BILLING CODE 4310–05–M

---

30 CFR Part 931

New Mexico Permanent Regulatory Program

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

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: OSMRE is announcing the receipt of a proposed amendment to the New Mexico permanent regulatory program (hereinafter, the "New Mexico program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment pertains to water treatment facilities, siltation structures, and impoundments. The amendment is intended to revise the State program to be consistent with the corresponding Federal standards.

This notice sets forth the times and locations that the New Mexico program and proposed amendment to that program are available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendment, and the procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments must be received by 4:00 p.m., m.d.t. September 5, 1989. If requested, a public hearing on the proposed amendment will be held on August 29, 1989. Requests to present oral testimony at the hearing must be received by 4:00 p.m., m.d.t. on August 21, 1989.

ADDRESSES: Written comments should be mailed or hand delivered to Mr. Robert H. Hagen at the address listed below.

Copies of the New Mexico program, the proposed amendment, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSMRE's Albuquerque Field Office.

Mr. Robert H. Hagen, Director, Albuquerque Field Office, Office of Surface Mining Reclamation and Enforcement, 625 Silver Avenue, SW.,

Suite 310, Albuquerque, New Mexico 87102, Telephone: (505) 766–1486
New Mexico Energy and Minerals Department, Mining and Minerals Division, 525 Camino de los Marquez, Santa Fe, NM 87503, Telephone: (505) 827–5970

FOR FURTHER INFORMATION CONTACT: Mr. Robert H. Hagen, Director, Albuquerque Field Office, (505) 766–1486.

SUPPLEMENTARY INFORMATION:

I. Background on the New Mexico Program

On December 31, 1980, the Secretary of the Interior conditionally approved the New Mexico program. General background information on the New Mexico program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the New Mexico program can be found in the December 31, 1980, **Federal Register** (45 FR 86459). Subsequent actions concerning New Mexico's program and program amendments can be found at 30 CFR 931.12, 931.13, 931.15, 931.16 and 931.30.

II. Proposed Amendment

By letter dated July 12, 1989 (Administrative Record No. NM–521), New Mexico submitted a proposed amendment to its program pursuant to SMCRA. New Mexico submitted the proposed amendment in response to an August 14, 1986, letter that OSMRE sent in accordance with 30 CFR 732.17(c). New Mexico proposes to amend the following sections to the Coal Surface Mining Commission (CSMC) Rules:

CSMC Rule 80–1–1–5

New Mexico proposes to add a new definition for water treatment facilities.

CSMC Rule 80–1–20–41

New Mexico proposes to add a new subsection (f) addressing other treatment facilities (sediment control measures).

CSMC Rule 80–1–20–46

New Mexico proposes to revise the entire section concerning sedimentation ponds (siltation structures).

CSMC Rule 80–1–20–49

New Mexico proposes to revise the entire section concerning permanent and temporary impoundments.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSMRE is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the New Mexico program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "DATES" or at locations other than the Albuquerque Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to testify at the public hearing should contact the person listed under **"FOR FURTHER INFORMATION CONTACT"** by 4:00 p.m., m.d.t. on August 21, 1989. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to testify at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSMRE officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to testify have been heard. Persons in the audience who have not been scheduled to testify, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to testify and persons present in the audience who wish to testify have been heard.

Public Meeting

If only one person requests an opportunity to testify at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSMRE representatives to discuss the proposed amendment may request a meeting by contacting the person listed under **"FOR FURTHER INFORMATION CONTACT."** All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under **"ADDRESSES."** A written summary of each meeting will be made a part of the Administrative Record.

List of Subjects in 30 CFR Part 931

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

Dated: July 25, 1989.

Raymond L. Lowrie,

Assistant Director, Western Field Operaitons.

[FR Doc. 89–18246 Filed 8–3–89; 8:45 am]

BILLING CODE 4310–05–M

---

30 CFR Part 931

New Mexico Permanent Regulatory Program

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

ACTION: Proposed rule; withdrawal.

SUMMARY: OSMRE is announcing the withdrawal of a proposed amendment to the New Mexico Permanent Regulatory Program. The proposed amendment consisted of inspection and enforcement, experimental practices, the use of explosives, prime farmland, backfilling and grading, stream buffer zones and fish and wildlife, excess spoil, revegetation, coal exploration, areas unsuitable for mining, hydrology, coal mine waste, permitting, operation plans, coal processing plants, and topsoil. New Mexico is withdrawing this amendment because it intends to revise it and submit another formal amendment at a future date.

DATE: This withdrawal is effective August 4, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. Robert H. Hagen, Director, Albuquerque Field Office, Office of Surface Mining Reclamation and Enforcement, 625 Silver Avenue, SW., Suite 310, Albuquerque, New Mexico 87102; Telephone: (505) 766–1486.

SUPPLEMENTARY INFORMATION: By letter dated May 18, 1989 (Administrative Record No. NM–497), New Mexico submitted the proposed amendment to its program pursuant to SMCRA. The proposed amendment consisted of modifications to New Mexico's regulations governing inspection and enforcement, experimental practices, the use of explosives, prime farmland, backfilling and grading, stream buffer zones and fish and wildlife, excess spoil, revegetation, coal exploration, areas unsuitable for mining, hydrology, coal mine waste, permitting, operation plans, coals processing plants, and topsoil. On June 16, 1989, OSMRE announced receipt and solicited public comment on the program amendment (54 FR 25589). The comment period closed on July 17, 1989. By letter dated July 18, 1989 (Administrative Record No. NM-522), New Mexico notified OSMRE that the proposed program amendment is

withdrawn. Therefore, the proposed amendment announced in the June 16, 1989, **Federal Register** is withdrawn, and Part 931 Title 30 of the Code of Federal Regulations is not amended.

List of Subjects in 30 CFR Part 931

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

Dated: July 26, 1989.

Raymond L. Lowrie,

Assistant Director, Western Field Operations.

[FR Doc. 89-18247 Filed 8-3-89; 8:45 am]

BILLING CODE 4310-05-M

---

30 CFR Part 946

Virginia Regulatory Program; Bonding

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

ACTION: Proposed rule.

SUMMARY: OSMRE is announcing receipt of a proposed amendment to the Virginia permanent regulatory program (hereinafter, the Virginia program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment pertains to changes in Virginia's Coal Surface Mining Reclamation Fund (hereinafter, Pool Bond Fund). The amendment is intended to strengthen the Pool Bond Fund.

This notice sets forth the times and locations that the Virginia program and proposed amendment to the program are available for public inspection, the comment period during which interested parties may submit written comments on the proposed amendment, and the procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments must be received on or before 4:00 pm on September 5, 1989. If requested, a public hearing on the proposed amendment will be held on August 29, 1989; requests to present testimony in the hearing must be received on or before 4:00 pm August 21, 1989.

ADDRESSES: Written comments and requests to testify at the hearing should be mailed or hand delivered to Mr. W. Russell Campbell, Acting Director, Big Stone Gap Field Office at the first address listed below. If a hearing is requested, it will be held at the same address.

Copies of the Virginia program, proposed amendment and all written comments received in response to this notice will be available for review at the locations listed below during normal business hours Monday through Friday, excluding holidays.

Each requestor may receive, free of charge, one single copy of the proposed amendment by contacting the OSMRE Big Stone Gap Field Office.

Office of Surface Mining Reclamation and Enforcement, Big Stone Gap Field Office, P.O. Box 626, Powell Valley Square Shopping Center, Room 220, Route 23, Big Stone Gap, Virginia 24219, Telephone (703) 523-4303.

Office of Surface Mining Reclamation and Enforcement, Administrative Record Office, Room 5315, 1100 L Street NW., Washington, DC 20240, Telephone (202) 343-5492.

Virginia Division of Mined Land Reclamation, P.O. Drawer U, 622 Powell Avenue, Big Stone Gap, Virginia 24219, Telephone (703) 523-2925.

FOR FURTHER INFORMATION CONTACT: Mr. W. Russell Campbell, Acting Director, Big Stone Gap Field Office, Telephone (703) 523-4303.

SUPPLEMENTARY INFORMATION:

I. Background

The Secretary of the Interior approved the Virginia program on December 15, 1981. Information pertinent to the general background and revisions to the proposed permanent program submission, as well as the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval can be found in the December 15, 1981, **Federal Register** (46 FR 61085-61115). Subsequent actions concerning the conditions of approval and proposed amendments are identified at 30 CFR 946.12, 946.13, 946.15, and 946.16.

II. Discussion of Proposed Amendment

By letter dated July 5, 1989, (Administrative Record No. VA-729) Virginia submitted a proposed amendment to its program pursuant to SMCRA. The intent of the amendment is to strengthen the Pool Bond Fund's assets and reduce the Fund's liabilities. Virginia has already adopted the required changes at section 45.1-270.2 and 270.3 of the Code of Virginia. The effective date of the State legislation was July 1, 1989. OSMRE does not recognize these changes as part of the approved program until the proposed amendment is processed by OSMRE and a decision is rendered approving or disapproving the amendment. The proposed changes are discussed below.

a. Article 5, section 45.1-270.2(A) of The Code of Virginia will require all Fund applicants to demonstrate at least a consecutive three year history of compliance with the Virginia Act, with other comparable State Acts, or with the Federal Surface Mining Control and Reclamation Act (PL 95-87) in order to participate in the Pool Bond program.

b. Article 5, section 45.1-270.2(C) of The Code of Virginia will place distance limits on cumulative highwall lengths and backfilling of coal pits for surface mining operations. A cumulative limit of 1,500 linear feet has been set for all exposed highwalls. The width of an unbackfilled coal pit is limited to 500 feet or two mining cuts, whichever is less.

c. Article 5, section 45.1-270.2(D) of The Code of Virgina will provide exceptions outlined in subsection 45.1-270.2(C) above. Applicants with seven year histories of compliance with the requirements of Public Law 95-87 are exempt from the distance limits in subsection 45.1-270.2(C). Any qualified Fund participant with less than a seven year history of compliance may exceed the distance requirements of subsection C only by providing an additional bond for the areas exceeding the distance limits. The additional bond amount must be equal to the ratio of the extended distance to the standard distance prescribed in section 45.1-270.2(C) times an approved cost estimate of reclamation for the permit.

d. Article 5, section 45.1-270.3(A) of The Code of Virginia will require an entrance fee for admission into the Fund of $5,000 whenever the total Fund balance drops below $1,750,000 and will remain at that rate until the Fund balance again exceeds $2,000,000. The amount of entrance fees will return to $1,000 when the Fund balance exceeds $2,000,000. This subsection also requires a Fund renewal fee of $1,000.

III. Public Comments Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSMRE is now seeking comment on whether the amendment proposed by Virginia satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Virginia program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "DATES" or at locations other than the Big Stone Gap Field Office will not necessarily be

considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under "**FOR FURTHER INFORMATION CONTACT**" by close of business on August 21, 1989. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSMRE officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment, and who wish to do so, will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

Public Meeting

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public hearing, may be held.

Persons wishing to meet with OSMRE representatives to discuss the proposed amendment may request a meeting at the Big Stone Gap Field Office by contacting the person listed under "**FOR FURTHER INFORMATION CONTACT**". All such meetings will be open to the public and, if possible, notices of hearings will be posted in advance at the locations listed under "**ADDRESSES**". A written summary of each public meeting will be made part of the Administrative Record.

List of Subjects in 30 CFR Part 946

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

Dated: July 21, 1989.

Carl C. Close,

Assistant Director, Eastern Field Operations.

[FR Doc. 89-18248 Filed 8-3-89; 8:45]

BILLING CODE 4310-05-M

---

30 CFR Part 946

Virginia Regulatory Program; Revisions, Clarifications, and Corrections

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

ACTION: Proposed rule.

SUMMARY: OSMRE is announcing receipt and requesting public comments on proposed amendments to the Virginia permanent regulatory program (hereinafter, the Virginia program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendments pertain to certification of maps and plans, review of permit applications ("previously mined area" definition and fishing), fish and wildlife resources, individual civil penalties, subsidence control, two-acre exemption, designating areas unsuitable for mining, abandoned sites, mountaintop removal mining, and bond release notification. The amendment is intended to revise the State program to be consistent with the corresponding Federal standards, and to clarify and correct inconsistencies in Virginia's rules.

This notice sets forth the times and locations that the Virginia program and proposed amendment to the program are available for public inspection, the comment period during which interested parties may submit written comments on the proposed amendment, and the procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments must be received on or before 4:00 pm on September 5, 1989. If requested, a public hearing on the proposed amendment will be held on August 29, 1989; requests to present testimony in the hearing must be received on or before 4:00 pm August 21, 1989.

ADDRESSES: Written comments and requests to testify at the hearing should be mailed or hand delivered to Mr. W. Russell Campbell, Acting Director, Big Stone Gap Field Office at the first address listed below. If a hearing is requested, it will be held at the same address.

Copies of the Virginia program, proposed amendments and all written comments received in response to this notice will be available for review at the locations listed below during normal business hours Monday through Friday, excluding holidays.

Each requestor may receive, free of charge, one single copy of the proposed amendments by contacting the OSMRE Big Stone Gap Field Office:

Office of Surface Mining Reclamation and Enforcement, Big Stone Gap Field Office, P.O. Box 626, Powell Valley Square Shopping Center, Room 220, Route 23, Big Stone Gap, Virginia 24219, Telephone (703) 523-4303

Office of Surface Mining Reclamation and Enforcement, Administrative Record Office, Room 5315, 1100 L Street NW., Washington, DC 20240, Telephone (202) 343-5492

Virginia Division of Mined Land Reclamation, P.O. Drawer U, 622 Powell Avenue, Big Stone Gap, Virginia 24219, Telephone (703) 523-2925.

FOR FURTHER INFORMATION CONTACT: Mr. W. Russell Campbell, Acting Director, Big Stone Gap Field Office, Telephone (703) 523-4303.

SUPPLEMENTARY INFORMATION:

I. Background

The Secretary of the Interior approved the Virginia program on December 15, 1981. Information pertinent to the general background and revisions to the proposed permanent program submission, as well as the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval can be found in the December 15, 1981, **Federal Register** (46 FR 61085-61115). Subsequent actions concerning the conditions of approval and proposed amendments are identified at 30 CFR 946.12, 946.13, 946.15, and 946.16.

II. Discussion of Proposed Amendments

By letter dated June 30, 1989, (Administrative Record No. VA-728) Virginia submitted a proposed amendment to its program pursuant to SMCRA. Part of the proposed amendment was submitted in response to an October 28, 1988, letter from OSMRE (Administrative Record No. VA-711) in accordance with 30 CFR Part 732 requiring certain provisions of the State program to be updated for consistency with the Federal regulations promulgated through June 15, 1988. Additionally, Virginia has included as part of the proposed amendment clarifications to existing rules where difficulties have been experienced in their application. A brief description of the proposed changes are outlined below.

Virginia proposes to amend: Section 480-03-19.780.14(c), Operation Plan: Maps and Plans; section 480-03-19.773.15(c)(12), Review of Permit Applications; sections 480-03-19.779.19(b) and 783.19(b), Vegetation Information; sections 480-03-19.779.20(a), (b), (c)(1-3) and 783.20(a), (b), (c)(1-3), Fish and Wildlife Resources Information; Part 480-03-19.780.16 (entirety) and 784.21 (entirety), Fish and Wildlife Information; sections 480-03-19.816.97(b), (e)(4) and 817.97(b), (e)(4), Protection of Fish, Wildlife, and Related Environmental Values; Part 480-03-19.846, Individual Civil Penalties; section 480-03-19.846.2, Definitions; Sections

480-03-19.846.12(a), (b), When an Individual Civil Penalty May Be Assessed; sections 480-03.19.846.14(a)(1-3) and (b), Amount of Individual Civil Penalty; sections 480-03-19.846.17(a) and (b)(1-3), Assessment of an Individual Civil Penalty; sections 480-03-19.846.18(a), (b) and (c)(1-2), Penalty Payment; sections 480-03-19.784.20(b) and (d-h), Subsidence Control Plan; Sections 480-03-19.700.11(b) and (c), Applicability; sections 480-03-19.764.15(a)(1), (b)(2) and (b)(3), Initial Processing, Recordkeeping, and Notification Requirements; sections 480-03-19.840.11(g)(1-4) and (h)(1-2), Inspections by the Division, section 480-03-19.843.22, Enforcement Actions at Abandoned Sites; sections 480-03-19.785.14(c)(1)(iii)(G) and (c)(1)(iv), Mountaintop Removal Mining, and section 480-03-19.801.17(d)(4)(i), Bond Release Notification.

III. Public Comments Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSMRE is now seeking comment on whether the amendments proposed by Virginia satisfy the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Virginia program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "DATES" or at locations other than the Big Stone Gap Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under "**FOR FURTHER INFORMATION CONTACT**" by close of business on August 21, 1989. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSMRE officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment, and who wish to do so, will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

Public Meeting

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than public hearing, may be held.

Persons wishing to meet with OSMRE representatives to discuss the proposed amendment may request a meeting at the Big Stone Gap Field Office by contacting the person listed under "**FOR FURTHER INFORMATION CONTACT**". All such meetings will be open to the public and, if possible, notices of meetings will be posted in advance at the locations listed under "**ADDRESSES**". A written summary of each public meeting will be made part of the Administrative Record.

List of Subjects in 30 CFR Part 946

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

Dated: July 19, 1989.

Ronald C. Recker,

Acting Assistant Director, Eastern Field Operations.

[FR Doc. 89-18249 Filed 8-3-89; 8:45 am]

BILLING CODE 4310-05-M

PANAMA CANAL COMMISSION

35 CFR Parts 133 and 135

RIN 3207-AA04

Tolls for Use of Canal and Rules for Measurement of Vessels

AGENCY: Panama Canal Commission.

ACTION: Proposed rule; recommendation to the President.

SUMMARY: The Panama Canal Commission proposes an increase of approximately 9.8% in the rates of tolls to become effective October 1, 1989. The Commission anticipates that in fiscal year 1990 it will experience a significant deficit created by a trend of traffic growth revenue inadequate to absorb cost increases due to inflation and other factors. The proposed increase is necessary to comply with the requirements that tolls be set to produce revenues sufficient to cover all costs of maintenance and operation of the Panama Canal, including capital for plant replacement, expansion and improvements. In addition, certain revisions to the rules of measurement of vessels for use of the Panama Canal are also proposed in order to simplify the Commission's measurement procedures and bring them in line with industry standards. These revisions will have a minimal impact on the amount of tolls collected.

DATES: Proposed effective date: October 1, 1989.

FOR FURTHER INFORMATION CONTACT: Michael Rhode, Jr., Assistant to the Chairman and Secretary, Panama Canal Commission, 2000 L Street, NW., Suite 550, Washington, DC 20036-4996. Telephone: (202) 634-6441.

SUPPLEMENTARY INFORMATION: Section 1602(b) of the Panama Canal Act of 1979, as amended, 22 U.S.C. 3792(b), requires that Canal tolls be prescribed at rates calculated to produce revenues to cover, as nearly as practicable, all costs of maintaining and operating the Panama Canal and the facilities and appurtenances related thereto, and capital for plant replacement, expansion, and improvements. The rates of tolls for use of the Panama Canal were last increased on March 12, 1983 by 9.8%. The rates placed in effect at that time have proven adequate to provide, in the aggregate, sufficient revenues to cover all operating and capital costs of the Canal through 1988, but the Commission has recorded minor deficits in the last two fiscal years.

While the deficits have been minor, they point to a trend of traffic growth revenues inadequate to absorb cost increases due to inflation and other factors. Commission projections indicate that this trend will continue and, in fact, worsen despite management efforts to reduce costs and increase productivity to the maximum extent possible. This growing imbalance between inflation and traffic growth underlies the more serious loss projected for this year and the clear need for placing a toll rate increase in effect in fiscal year 1990.

In addition to the toll rate increase, certain revisions are recommended to the "Rules of Measurement of Vessels for the Panama Canal." These proposed changes are designed to simplify the Commission's measurement procedures and bring them in line with industry standards. These amendments would have a minimal impact on the amount of tolls collected.

The proposed changes would amend 35 CFR Parts 133 and 135 as follows:

(a) Amend § 135.285 to increase the size limitation from thirty to thirty-four inches on manholes serving water ballast spaces.

(b) Amend § 133.34 to eliminate the requirement that fuel carried not exceed 125% of the engine room for obtaining the ballast rate.

(c) Amend § 135.352 to eliminate the requirement to separately measure the

portion of engine room space dedicated to propulsion power for purposes of calculating the 125% factor above.

Section 1604 of the Panama Canal Act of 1979, as amended, 22 U.S.C. 3794, establishes the procedures that the Panama Canal Commission must follow in proposing a toll rate increase or changes in the rules for measurement of vessels. Those procedures have been supplemented by regulations in 35 CFR Part 70, which in addition, provide interested parties with instructions for participating in the process governing changes in the rates of tolls or rules of measurement.

Pursuant to the statute and regulations, on June 1, 1989, an advance notice of proposed rulemaking was published in the **Federal Register** (54 FR 23493) recommending changes in the rules of measurement and a 9.8% increase in the rates of Canal tolls, to become effective October 1, 1989. At that time, a written analysis showing the basis and justification for the proposed toll increase was made available to interested parties. The analysis stated that the increase was necessary because, by October 1, 1989, the Canal Commission would experience a significant deficit created by a trend of traffic growth revenue inadequate to absorb cost increases due to inflation and other factors.

Written comments were solicited and received from interested parties, and a public hearing was held in Washington, DC on July 6, 1989. The views presented by the interested parties, as well as other relevant information, were considered by the Supervisory Board of the Commission at its quarterly meeting of July 1989. On July 28, 1989, the Board voted to recommend to the President that the measurement changes and the proposed 9.8% increase be implemented on October 1, 1989. A complete record of the proceedings since initiation of the proposals, including the data, views and arguments submitted by interested parties, will be forwarded to the President with the Commission's recommendation. In considering the proposal, the President may approve, disapprove or modify the recommendation of the Commission. The final rule, approved and published by the President, will be effective no earlier than thirty days from the date of publication in the **Federal Register**.

This proposed rulemaking does not constitute a "major rule" as defined in section 1(b) of Executive Order 12291, dated February 17, 1981. Analysis of the proposed toll increase and of the measurement changes indicates that it will not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions, or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign based enterprises in domestic or export markets.

A review of the environmental effect of the proposed increase in the rates of tolls and the proposed measurement rule changes concludes that the proposals are not major Federal actions which will have a significant effect on the quality of the environment; therefore, pursuant to Executive Order 12114, dated January 4, 1979, an environmental analysis is not required. Furthermore, the Regulatory Flexibility Act is inapplicable, since this regulation is one relating to "rates" or "practices relating" thereto (5 U.S.C. 601 (2)).

List of Subjects in 35 CFR Parts 133 and 135

Panama Canal, Vessels.

Accordingly, it is proposed that 35 CFR Parts 133 and 135 be amended to read as follows.

PART 133—TOLLS FOR USE OF CANAL

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

Authority: Issued under authority of the President by 22 U.S.C. 3791; E.O. 12215, 45 FR 36043.

2. Section 133.1 is revised to read as follows:

§ 133.1 Rates of toll.

The following rates of toll shall be paid by vessels using the Panama Canal:

(a) On merchant vessels, yachts, army and navy transports, colliers, hospital ships, and supply ships, when carrying passengers of cargo, $2.01 per net vessel ton of 100 cubic feet each of actual earning capacity—that is, the net tonnage determined in accordance with Part 135 of this chapter.

(b) On vessels in ballast without passengers or cargo, $1.60 per net vessel ton.

(c) On other floating craft including warships, other than transports, colliers, hospital ships, and supply ships, $1.12 per ton of displacement.

3. Section 133.34 is revised to read as follows:

§ 133.34 Tolls for vessels in ballast.

In order for a vessel to secure the reduced rate of toll for vessels in ballast, it may not be carrying any passengers or cargo nor any fuel for its own consumption in a quantity which exceeds the spaces on the vessel which are available for the carriage of fuel (i.e., the actual volume of tanks or fixed compartments, including settling tanks, used for the storage of lubricating oil or fuel, which spaces cannot be used to stow cargo or stores and which have been certified by official marking to be spaces for the vessel's own fuel).

PART 135—RULES FOR MEASUREMENT OF VESSELS

4. The authority citation for Part 135 is revised to read as follows:

Authority: Issued under authority of the President by 22 U.S.C. 3791; E.O. 12215; 45 FR 36043.

5. Section 135.285 is revised to read as follows:

§ 135.285 Water ballast spaces, deducted.

(a) Water ballast spaces, other than spaces in the vessel's double bottom, shall be deducted if they are adapted and used only for water ballast, have for entrance only ordinary circular or oval manholes whose greatest diameter does not exceed thirty-four inches (864 mm), and are not available for the carriage of cargo, stores, or fuel. Spaces that would otherwise qualify as water ballast except that they are also sued for fuel for the vessel's own use shall be regarded as part of the vessel's fuel space as defined in § 135.390 of this part.

(b) Tonnage of tanks may be obtained by using liquid capacity times the conversion factor with one-sixth off for frames in case of peak tanks and one-twelfth off in case of wings or deep tanks when they cannot be readily measured.

6. Section 135.352 is revised to read as follows:

§ 135.352 Definition of phrase "space occupied by engine rooms".

The space occupied by engine rooms is defined as that occupied by the engine room itself and the boiler room, together with the spaces strictly required for the working of the engines and boilers. In addition to those, included are the spaces taken up by the shaft trunks in vessels with screw propellers, the spaces which enclose the funnels, and the casings necessary for the admission of light and air into the engine room to the extent that such spaces are located below the upper deck (as defined in §§ 135.61 through 135.63 of this part) or below a deck with openings. These are usually designated as tonnage openings, which may be so closed as to permit the

carriage of cargo or stores under the deck or a portion thereof. This definition also covers donkey-engine and boiler spaces when the donkey-engine and boiler are situated within the boundary of the main engine room, or of the light and air casing above it and when they are used in connection with the main machinery for propelling the vessel. When the shafts of screw propellers pass through open spaces not enclosed within tunnels, the spaces allowed in lieu of tunnels must be of reasonable dimensions suitable for the vessel in question. When a portion of the space within the boundary of the engine or boiler room is occupied by a tank or tanks for the storage of fresh water, lubricating oil, or fuel, including settling tanks, the space considered to be within the engine room shall be reduced by the space taken up by such tanks. Installations not strictly required for the working of the engines or boilers but that would otherwise qualify as a deduction under §§ 135.271 through 135.285 of this part may be left in and included in the engine room measurement.

Dated: July 27, 1989.

Michael Rhode, Jr.,

Assistant to the Chairman and Secretary.

[FR Doc. 89-18212 Filed 8-3-89; 8:45 am]

BILLING CODE 3640-04-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AL-025; FRL-3624-5]

Approval and Promulgation of Implementation Plans; Alabama State Regulation For Prevention of Significant Deterioration (PSD)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: In this action, EPA is proposing disapproval of a revision to the Alabama State Implementation Plan (SIP) which was submitted to EPA on June 29, 1988. Alabama's revision deletes part (2) of the definition of "Significant" in § 16.4.2(w) of Chapter 16. This deletion makes the definition inconsistent with the federal definition contained in 40 CFR 51.166(b)(23)(ii). Since such significance provisions are still contained in the Federal requirements, the deletion of § 16.4.2(w)(2) is not acceptable. Therefore, EPA is proposing to disapprove it.

DATES: To be considered, comments must reach us on or before September 5, 1989.

ADDRESSES: Written comments should be addressed to Rosalyn D. Hughes of EPA Region IV's Air Programs Branch (see EPA region IV address below). Copies of the documents relevant to this action are available for public inspection during normal business hours at the following locations:

EPA Region IV, Air Programs Branch, 345 Courtland Street, NE., Atlanta, Georgia 30365

Alabama Department of Environmental Management, 1751 Congressman William L. Dickinson Drive, Montgomery, Alabama 36130.

FOR FURTHER INFORMATION CONTACT: Rosalyn D. Hughes, Air Programs Branch, EPA Region IV, at the above address and telephone number (404) 347-2864 or FTS 257-2864.

SUPPLEMENTARY INFORMATION: On December 5, 1974, EPA published regulations for the prevention of significant deterioration of air quality (PSD) under the 1970 version of the Clean Air Act. These regulations established a program for protecting areas with air quality better than the National Ambient Air Quality Standards (NAAQS). The Clean Air Act Amendments of 1977 changed the 1970 Act and EPA's regulations in many respects, particularly with regard to PSD. In addition to mandating certain changes to EPA's PSD regulations immediately, the new Clean Air Act, in sections 160-169, contained comprehensive new PSD requirements. These new requirements were to be incorporated by states into their implementation plans.

On June 19, 1978 (43 FR 26380), and August 7, 1980 (45 FR 52676), EPA promulgated guidance to assist states in preparing State Implementation Plan (SIP) revisions meeting the new requirements. Alabama submitted such revisions on January 29, 1981, and EPA approved them on November 10, 1981 (46 FR 55517).

On June 29, 1988, the State of Alabama submitted to EPA a revision to its EPA-approved PSD regulations which was the subject of a public hearing on March 21, 1988. EPA had commented on the revision and found it to be deficient for the following reason:

Chapter 16, Rule 16.4.2(w)—EPA cannot allow the deletion of part (2) of the definition of "significant" in rule 16.4.2(w). Such deletion makes the definition inconsistent with the Federal definition contained in 40 CFR 51.166(b)(23)(ii). Since part (2) is intended to include other emission rates "subject to regulation under the Clean Air Act" that are "not listed in subparagraph (w)(1), "the deletion of part (2) would exclude these emission rates, making the definition incomplete.

Proposed Action: EPA has concluded that the revision to Alabama's regulation for prevention of significant deterioration does not meet the requirements of 40 CFR 51.166(b)(23)(ii). Therefore, EPA is proposing disapproval of the Alabama revision.

Under 5 U.S.C. Section 605(b), I certify that this disapproval action will not have a significant economic impact on a substantial number of small entities because it serves merely to make the State's PSD regulations consistent with existing federal requirements.

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214-2225). On January 6, 1989, the Office of Management and Budget waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of two years.

List of Subjects in 40 CFR Part 52

Air pollution control, Intergovernmental relations.

Dated: July 7, 1989.

Lee A. DeHihns III,

Acting Regional Administrator.

[FR Doc. 89-18257 Filed 8-3-89; 8:45 am]

BILLING CODE 6560-50-M

Notices

Federal Register
Vol. 54, No. 149
Friday, August 4, 1989

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.

DEPARTMENT OF COMMERCE

Bureau of the Census

1990 Census; Cutoff Dates for Recognition of Boundary Changes

AGENCY: Bureau of the Census, Commerce.

ACTION: Notice.

SUMMARY: On July 8, 1986, the Bureau of the Census, U.S. Department of Commerce, published in the **Federal Register**, Vol. 51, No. 130, cutoff dates for recognition of boundary changes received as a result of the 1990 Boundary and Annexation Survey. These dates reflect the timing of the 1990 Census of Population and Housing. In order to increase public awareness of these cutoff dates, the Bureau of the Census wishes to restate, without change, this information. The Bureau of the Census compiles information about the boundaries for American Indian and Alaska Native areas in other programs. It uses the same effective and reporting dates for these boundaries.

FOR FURTHER INFORMATION CONTACT: Robert W. Marx, Chief, Geography Division, Bureau of the Census, (301) 763–5636.

SUPPLEMENTARY INFORMATION: For the tabulation and publication of data from the 1990 Census of Population and Housing, the Bureau of the Census will recognize only those boundaries legally in effect on January 1, 1990 that have been reported officially to the Bureau of the Census no later than March 1, 1990. The Bureau of the Census enumerates respondents on the date of the decennial census as residing within the legal limits of municipalities, county subdivisions, counties, states, and equivalent areas as those limits exist on January 1, 1990.

For the purposes of the Boundary and Annexation Survey, the Bureau of the Census defines "municipalities" and "county subdivisions" to include the areas identified as incorporated places (such as cities and villages) and minor civil divisions (such as townships and magisterial districts). A more complete description appears on pages A1 and A2 of 1980 Census of Population, Volume 1, Chapter A.

The Bureau of the Census will not recognize changes in boundaries that become effective after January 1, 1990 in taking the 1990 Decennial Census; the Bureau of the Census will enumerate the residents of any area that are transferred to another jurisdiction after that date and report them for the 1990 census as residents of the area in which they resided on January 1, 1990. The Bureau of the Census will not recognize in the data tabulations prepared for the 1990 census changes occurring on or before January 1, 1990, but not submitted officially to the Bureau of the Census until after March 1, 1990 except as necessary to conduct decennial census operations.

(Sections 70.1, 70.2 and 70.3 of the Cutoff for Recognition of Boundary Changes for the 1990 Census (13 U.S.C. 4; 32 FR 15154); and Department of Commerce Organizational Order 35–2A (40 FR 42765).

Dated: August 1, 1989.

C. L. Kincannon,

Deputy Director, Bureau of the Census.

[FR Doc. 89–16272 Filed 8–3–89; 8:45 am]

BILLING CODE 3510–07–M

Foreign Trade Zones Board

[Docket 13–89]

Foreign-Trade Zone 68—El Paso, TX; Application for Subzone; Farah Apparel Plant

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the City of El Paso, Texas, grantee of FTZ 68, requesting special-purpose subzone status for the apparel processing plant of Farah Incorporated (Farah) located in El Paso, Texas, within the El Paso Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on July 21, 1989.

The Farah facility (25 acres) is located at 889 Gateway West within a 43-acre industrial park complex at Interstate 10 and Hawkins Boulevard in the City of El Paso. The plant employs some 200 persons and is used to design and cut mostly domestic fabric, and to receive and distribute foreign wearing apparel. The majority of the pieces cut at the plant are shipped to factories (twin-plants) in Mexico or Costa Rica to be sewn into finished garments. Upon return to the United States, the garments are subject to applicable duties and quotas.

The application indicates that Farah would only use zone procedures for the storage of finished apparel. Farah would make Customs entry for consumption on any foreign textiles or textile products prior to processing that would result in a transformation in the zone. This would preclude the cutting of foreign cloth under zone procedures.

Zone procedures would allow Farah to defer duty payments on foreign finished wearing apparel while the items are stored at the plant. Subzone status will also allow the company to take advantage of an exemption from state/local inventory tax. The application indicates that zone savings will improve the plant's international competitiveness.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of: John J. Da Ponte, Jr. (Chairman), Director, Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, DC 20230; Paul Rimmer, Deputy Assistant Regional Commissioner, U.S. Customs Service, Southwest Region, 5850 San Felipe Street, Houston, Texas 77057–3012; and, Lt. Colonel Steven M. Dougan, District Engineer, U.S. Army Engineer District Albuquerque, P.O. Box 1580, Albuquerque, New Mexico 87103–1580.

Comments concerning the proposed subzone are invited in writing from interested parties. They shall be addressed to the Board's Executive Secretary at the address below and postmarked on or before September 22, 1989.

A copy of the application is available for public inspection at each of following locations:

Office of the District Director, U.S. Customs Service, P.O. Box 9516, El Paso, TX 79985.

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 2835, 14th & Pennsylvania Ave., NW., Washington, DC 20230.

Dated: July 28, 1989.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 89-18186 Filed 8-3-89; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

[A-427-098]

Anhydrous Sodium Metasilicate From France Preliminary Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of Preliminary Results of Antidumping Duty Administrative Review.

SUMMARY: In response to a request by the respondent, the Department of Commerce has conducted an administrative review of the antidumping duty order on anhydrous sodium metasilicate from France. The review covers one exporter of this merchandise to the United States, Rhone Poulenc Chimie de Base ("Rhone Poulenc"), and the period January 1, 1988 through December 31, 1988. There were no known shipments of this merchandise to the United States by Rhone Poulenc during the period.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: August 4, 1989.

FOR FURTHER INFORMATION CONTACT: Marquita Steadman or Chip Hayes, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-1130.

SUPPLEMENTARY INFORMATION:

Background

On October 26, 1988, the Department of Commerce ("the Department") published in the **Federal Register** (53 FR 43251) the final results of its last administrative review of the antidumping duty order on anhydrous sodium metasilicate from France (46 FR 1667, January 7, 1981). The respondent, Rhone Poulenc Chimie de Base, requested in accordance with § 353.53a(a) of the Commerce Regualtions (1988) that we conduct an administrative review. We published a notice of initiation of the antidumping duty administrative review on March 8, 1989. The Department has now conducted that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the United States fully converted to the Harmonized Tariff Schedule ("HTS"), as provided for in section 1201 *et seq.* of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered, or withdrawn from warehouse, for consumption on or after that date is now classified solely according to the appropriate HTS item number(s).

Imports covered by the review are shipments of anhydrous sodium metasilicate, a crystalline silicate (Na_2SiO_3) which is alkaline and readily soluble in water. Applications include waste paper de-inking, ore-flotation, bleach stabilization, clay processing, medium or heavy duty cleaning, and compounding into other detergent formulations. During the review period such merchandise was classified under item number 421.3400 of the *Tariff Schedules of the United States Annotated.* This merchandise is currently classified under HTS item numbers 2839.11.00 and 2839.19.00. The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers one exporter of French anhydrous sodium metasilicate, Rhone Poulenc, and the period January 1, 1988 through December 31, 1988. There were no known shipments of this merchandise by Rhone Poulenc to the United States during the period and there are no known unliquidated entries.

Preliminary Results of the Review

Because there were no shipments during this review, we based our margin determination on the last margin found for Rhone Poulenc in this proceeding which was also the margin calculated in the less than fair value investigation, and we preliminarily determine that the following margin exists:

Manufacturer/exporter	Time period	Margin (percent)
Rhone Poulenc	1/88-12/88	[1] 60

[1] No shipments during the period.

Interested parties may request disclosure within 5 days of the date of publication of this notice, and may request a hearing within 10 days of the date of publication. Any hearing, if requested, will be held 44 days after the date of publication or the first workday thereafter. Prehearing briefs and/or written comments may be submitted not later than 30 days after the date of publication. Rebuttal briefs or rebuttals to written comments, limited to issues raised in those comments, may be filed not later than 37 days after the date of publication. The Department will publish the final results of the administrative review including the results of its analysis of any such comments or hearing.

As provided for by § 353.22(c)(10) of the Commerce Regulations published in the **Federal Register** on March 28, 1989 (54 FR 12742) to be codified at 19 CFR 353.22(c)(10), the Department shall require a cash deposit of estimated antidumping duties of 60 percent for Rhone Poulenc. For any future entries of this merchandise from a new exporter, not covered in this or prior administrative reviews, whose first shipments occurred after December 31, 1988 and who is unrelated to the reviewed firm, a cash deposit of 60 percent shall be required. These deposit requirements are effective for all shipments of French anhydrous sodium metasilicate entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.22 of the Commerce Regulations.

Dated: July 27, 1989.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 89-18187 Filed 8-3-89; 8:45 am]

BILLING CODE 3510-DS-M

[A-588-016]

Ferrite Cores (of the Type Used in Consumer Electronic Products) From Japan; Termination of Antidumping Duty Administrative Review

AGENCY: International Trade Administrative/Import Administration, Commerce.

ACTION: Notice of Termination of Antidumping Duty Administrative Review.

SUMMARY: On April 28, 1989, the Department of Commerce initiated an administrative review of the antidumping finding on ferrite cores (of the type used in consumer electronic

products) from Japan. The Department is now terminating that review.

Background: On April 28, 1989 the Department of Commerce published a notice of initiation of administrative review of the antidumping finding on ferrite cores (of the type used in consumer electronic products) form Japan (54 FR 18320). That notice stated that we would review Taiyo Yuden Co., Ltd. for the period March 1, 1988 through February 28, 1989.

Taiyo Yuden subsequently withdrew its request for review on June 27, 1989. As a result, the Department is terminating the review.

EFFECTIVE DATE: August 4, 1989.

FOR FURTHER INFORMATION CONTACT: Barbara Victor or Laurie A. Lucksinger, Office of Antidumping Duty Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC; telephone: (202) 377–5222/5253.

SUPPLEMENTARY INFORMATION: This notice is in accordance with section 751(a)(1) of the Tariff Act of 1930 (19 U.S.C. 1675 (a)(1)) and § 353.22 of the Commerce Department's regulations published in the **Federal Register** on March 28, 1989 (54 FR 12742) (to be codified at 19 CFR 353.22).

Dated: July 27, 1989

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 89–18188 Filed 8–3–89; 8:45 am]

BILLING CODE 3510–DS–M

[A–475–802]

Industrial Belts and Components and Parts Thereof, Whether Cured or Uncured, from Italy; Antidumping Duty Order of Sales at Less Than Fair Value; Correction

AGENCY: Import Administration/ International Trade Administration, Commerce.

ACTION: Notice of antidumping duty order of sales at less than fair value; correction.

On June 14, 1989, the Department of Commerce (the "Department") published in the **Federal Register** (54 FR 25313) the Antidumping Duty Order on industrial belts and components and parts thereof, whether cured or uncured, from Italy.

On page 23514, in the first column, at the end of the first complete paragraph, the following sentence was inadvertently excluded: "This investigation excludes conveyor belts and automotive belts as well as front engine drive belts found on equipment powered by internal combustion engines, including trucks, tractors, buses, and lift trucks."

EFFECTIVE DATE: June 14, 1989.

FOR FURTHER INFORMATION CONTACT: Louis Apple or Mark Wells, Office of Antidumping Investigations, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–1769, or 377–3798.

Dated: July 27, 1989.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 89–18189 Filed 8–3–89; 8:45 am]

BILLING CODE 3510–DS–M

[A–588–807]

Industrial Belts and Components and Parts Thereof, Whether Cured or Uncured, From Japan; Antidumping Duty Order of Sales at Less Than Fair Value; Correction

AGENCY: Import Administration/ International Trade Administration, Commerce.

ACTION: Notice of antidumping duty order of sales at less than fair value; correction.

On June 14, 1989, the Department of Commerce (the "Department") published in the **Federal Register** (54 FR 25314) the Antidumping Duty Order on industrial belts and components and parts thereof, whether cured or uncured, from Japan.

On page 25315, in the first column, at the end of the first complete paragraph, the following sentence was inadvertently excluded: "This investigation excludes conveyor belts and automotive belts as well as front engine drive belts found on equipment powered by internal combustion engines, including trucks, tractors, buses, and lift trucks."

EFFECTIVE DATE: June 14, 1989.

FOR FURTHER INFORMATION CONTACT: Louis Apple or Mark Wells, Office of Antidumping Investigations, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone (202) 377–1769, or 377–3798.

Dated: July 27, 1989.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 89–18190 Filed 8–3–89; 8:45 am]

BILLING CODE 3510–DS–M

[A–559–802]

Industrial Belts and Components and Parts Thereof, Whether Cured or Uncured, From Singapore; Antidumping Duty Order of Sales at Less Than Fair Value; Correction

AGENCY: Import Administration/ International Trade Administration, Commerce.

ACTION: Notice of antidumping duty order of sales at less than fair value; correction.

On June 14, 1989, the Department of Commerce (the "Department") published inthe **Federal Register** (54 FR 25315) the Antidumping Duty Order on industrial belts and components and parts thereof, whether cured or uncured, from Singapore.

On page 25315, in the third column, at the end of the second paragraph under the heading Supplemental Information, the following sentence was inadvertently excluded: "This investigation excludes conveyor belts and automotive belts as well as front engine drive belts found on equipment powered by internal combustion engines, including trucks, tractors, buses, and lift trucks."

EFFECTIVE DATE: June 14, 1989.

FOR FURTHER INFORMATION CONTACT: Louis Apple or Mark Wells, Office of Antidumping Investigations, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–1769, or 377–3798.

Dated: July 27, 1989.

Eric I. Garfinkel,

Assistant Secretary for Import Administration

[FR Doc. 89–18191 Filed 8–3–89; 8:45 am]

BILLING CODE 3510–DS–M

[A–428–802]

Industrial Belts and Components and Parts Thereof, Whether Cured or Uncured, From the Federal Republic of Germany; Antidumping Duty Order of Sales at Less Than Fair Value; Correction

AGENCY: Import Administration/ International Trade Administration Commerce.

ACTION: Notice of antidumping duty order of sales at less than fair value; correction.

On June 14, 1989, the Department of Commerce (the "Department") published in the **Federal Register** (54 FR 25316) the Antidumping Duty Order on

industrial belts and components and parts thereof, whether cured or uncured, from the Federal Republic of Germany.

On page 25316, in the third column, at the end of the second paragraph under the heading Supplemental Information, the following sentence was inadvertently excluded: "This investigation excludes conveyor belts and automotive belts as well as front engine drive belts found on equipment powered by internal combustion engines, including trucks, tractors, buses, and lift trucks."

EFFECTIVE DATE: June 14, 1989.

FOR FURTHER INFORMATION CONTACT: Louis Apple or Mark Wells, Office of Antidumping Investigations, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–1769, or 377–3798.

Dated: July 27, 1989.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 89–18192 Filed 8–3–89; 8:45 am]

BILLING CODE 3510–DS–M

[C–357–002]

Wool from Argentina; Termination of Countervailing Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of Termination of Countervailing Duty Administrative Review.

SUMMARY: The Department of Commerce has terminated the countervailing duty administrative review of wool from Argentina initiated on May 24, 1989.

EFFECTIVE DATE: August 4, 1989.

FOR FURTHER INFORMATION CONTACT: Sylvia Chadwick or Ilene Hersher, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–4161.

SUPPLEMENTARY INFORMATION: On April 26, 1989, Hart, Incorporated, a wool importer and an interested party, requested a countervailing duty administrative review of wool from Argentina for the period January 1, 1988 through December 31, 1988. No other interested party requested the review.

On May 24, 1989, the Department of Commerce initiated the administrative review for that period (54 FR 22465). Hart, Incorporated withdrew its request for review on July 17, 1989. As a result, the Department has determined to terminate the review.

This notice is published in accordance with section 355.22(a)(3) of the Commerce Regulations published in the **Federal Register** on December 27, 1988 (53 FR 52354) (to be codified at 19 CFR 355.22).

Dated: July 28, 1989.

Richard W. Moreland,

Acting Deputy Assistant Secretary for Compliance.

[FR Doc. 89–18193 Filed 8–3–89; 8:45 am]

BILLING CODE 3510–DS–M

National Oceanic and Atmospheric Administration

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Pacific Fishery Management Council's Anchovy Plan Development Team will hold a public meeting on August 25, 1989, at 10 a.m., at the National Marine Fisheries Service, Southwest Fisheries Center, 8604 La Jolla Shores Drive, La Jolla, CA. The Team will begin developing a plan amendment to the Council's anchovy fishery management plan, which would provide for small reduction fishery under special conditions when it otherwise would be precluded by the plan.

For more information contact Lawrence D. Six, Executive Director, Pacific Fishery Management Council, 2000 SW. First Avenue, Portland, OR 97201; telephone: (503) 326–6352.

Dated: July 31, 1989.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 89–18238 Filed 8–3–89; 8:45 am]

BILLIND CODE 3510–22–M

South Atlantic Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The South Atlantic Fishery Management Council will hold a public meeting of the Snapper/Grouper Advisory Panel at the Council's headquarters (address below), beginning on August 21, 1989, at 1 p.m., and concluding on August 22, at noon. The advisory panel will be requested to offer input on items for inclusion in Amendment #2 to the fishery management plan for the snapper/grouper fishery of the South Atlantic region. Topics for discussion include use of fish traps, species to be examined, status of the resource, Special Management Zones, and potential management measures such as size limits, bag limits and quotas. A detailed agenda will be available to the public on or about August 4, 1989.

For more information contact Carrie R.F. Knight, Public Information Specialist, South Atlantic Fishery Management Council, one Southpark Circle, Suite 306, Charleston, SC 29407; telephone: (803) 571–4366.

Dated: July 31, 1989.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 89–18239 Filed 8–3–89; 8:45 am]

BILLIND CODE 3510–22–M

[Docket No. 90643–9143]

RIN 0648–AC34

King and Tanner Crab Fisheries in the Bering Sea/Aleutian Islands; Correction

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

ACTION: Notice of approval of a fishery management plan; correction.

SUMMARY: This document corrects an error in the notice of approval of the Fishery Management Plan for the King and Tanner Crab Fisheries in the Bering Sea/Aleutian Islands published July 11, 1989 (54 FR 29080).

EFFECTIVE DATE: June 2, 1989.

FOR FURTHER INFORMATION CONTACT: Raymond E. Baglin, 907–586–7229.

In rule document 89–10236 beginning on page 29080 in the issue of July 11, 1989, make the following correction:

On page 29081, third column, third complete paragraph beginning with the word "Restricting", line 2, "Council" should read "State".

Dated: July 28, 1989.

James E. Douglas, Jr.,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 89–18179 Filed 8–3–89; 8:45 am]

BILLING CODE 3510–22–M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1989 Additions

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

ACTION: Additions to Procurement List.

SUMMARY: This action adds to Procurement List 1989 a commodity to be produced and services to be provided by workshops for the blind or other severely handicapped.

EFFECTIVE DATE: September 5, 1989.

ADDRESSES: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202–3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557–1145.

SUPPLEMENTARY INFORMATION: On April 4, June 2 and 16, 1989, the Committee for Purchase from the Blind and Other Severely Handicapped published notices (54 FR 14130, 23684 and 25601) of proposed additions to Procurement List 1989, which was published on November 15, 1988 (53 FR 46018).

After consideration of the material presented to it concerning capability of qualified workshops to produce the commodity and provide the services at a fair market price and impact of the addition on the current or most recent contractors, the Committee has determined that the commodity and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.6.

I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

a. The actions will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The actions will not have a serious economic impact on any contractors for the commodity and services listed.

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

Accordingly, the following commodity and services are hereby added to Procurement List 1989:

Commodity

Pole, Folding Cot Insect Bar 7210–00–267–5641

Services

Janitorial/Custodial
Federal Supply Service Depot, 4100 West 76th Street, Chicago, Illinois.

Janitorial/Custodial
Building 891, Logistics Systems Operations Center, Hill Air Force Base, Utah.

Beverly L. Milkman,

Executive Director.

[FR Doc. 89–18270 Filed 8–3–89; 8:45 am]

BILLING CODE 6820–33–M

Procurement List 1989 Proposed Additions

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

ACTION: Proposed additions to procurement list.

SUMMARY: The Committee has received proposals to add to Procurement List 1989 services to be provided by workshops for the blind or other severely handicapped.

Comments must be received on or before: September 5, 1989.

ADDRESS: 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: 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.

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 1989, which was published on November 15, 1988 (53 FR 46018):

Commissary Shelf Stocking, U.S. Naval Academy, Annapolis, Maryland.

Janitorial/Custodial, Naval Propulsion Training Unit Complex (NPTU), Naval Weapons Station, Charleston, South Carolina.

Beverly L. Milkman,

Executive Director.

[FR Doc. 89–18271 Filed 8–3–89; 8:45 am]

BILLING CODE 6820–33–M

COMMODITY FUTURES TRADING COMMISSION

Chicago Mercantile Exchange Proposed Futures Contract

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of the terms and conditions of proposed commodity futures contract.

SUMMARY: The Chicago Mercantile Exchange ("CME") has applied for designation as a contract market in futures on One-Month LIBOR (London InterBank Offered Rate). The Director of the Division of Economic Analysis ("Division") of the Commission, acting pursuant to the authority delegated by Commission Regulation 140.96, has determined that publication of the proposal for comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

DATE: Comments must be received on or before September 5, 1989.

ADDRESS: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581.

References should be made to the CME's proposed One-Month LIBOR futures contract.

FOR FURTHER INFORMATION CONTACT: Stephen Sherrod, Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581, (202) 254–7227.

SUPPLEMENTARY INFORMATION: Most of the terms and conditions of the proposed contract are comparable to the CME's Three-Month Eurodollar futures contract. Copies of the terms and conditions of the proposed futures contract will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Copies of the terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 254–6314.

Other materials submitted by the CME in support of the application for contract market designation may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR part 145 (1987)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Acts Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views or argument on the terms and condition of the proposed futures contract, or with respect to other materials submitted by the CME in support of the application, should send such comments to Jean A. Webb,

Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581, by the specified date.

Issued in Washington, DC on July 31, 1989.

Steven Manaster,

Director, Division of Economic Analysis.

[FR Doc. 89-18303 Filed 8-3-89; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Retirement Board of Actuaries

AGENCY: Department of Defense Retirement Board of Actuaries.

ACTION: Notice of meeting.

SUMMARY: A meeting of the Retirement Board has been scheduled to implement the provisions of chapter 74, title 10, United States Code (10 U.S.C. 1461 et. seq.). The Board shall review DoD actuarial methods and assumptions to be used in the valuation of the military retirement system. Persons desiring to attend the DoD Retirement Board of Actuaries meeting must notify Ms. Dorothy Hemby at 696-6336 by August 24, 1989. Notice of this meeting is required under the Federal Advisory Committee Act.

DATE: August 29, 1989, 11:00 a.m.-1:00 p.m.

ADDRESS: Room 3E732, the Pentagon.

FOR FURTHER INFORMATION CONTACT: Benjamin Gottlieb, Executive Secretary, DoD Office of the Actuary, 4th Floor, 1600 Wilson Boulevard, Arlington, Virginia 22209-2593, (202) 696-5869.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

July 31, 1989.

[FR Doc. 89-18206 Filed 8-3-89; 8:45 am]

BILLING CODE 3810-01-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 September 5, 1989.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Jim Houser, Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., Room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Margaret B. Webster, Department of Education, 400 Maryland Avenue, SW., Room 5624, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Margaret B. Webster (202) 732-3915.

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 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 Margaret Webster at the address specified above.

Dated: July 31, 1989.

Carlos U. Rice,

Director, for Office of Information Resources Management.

Office of Postsecondary Education

Type of Review: Extension
Title: Perkins Loan Program
Frequency: On Occasion
Reporting Burden:
Responses: 1
Burden Hours: 68,502
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 11,929
Abstract: The records are maintained by institutions that administer the Perkins Loan Program. The recordkeeping and disclosure requirements are necessary to ensure that institutions have followed the prescribed regulatory procedures in administering the program and to increase the effectiveness of loan collection efforts.

[FR Doc. 89-18181 Filed 8-3-89; 8:45 am]

BILLING CODE 4000-1-M

DEPARTMENT OF ENERGY

Award of a Cooperative Agreement; Noncompetitive Financial Assistance; University of Utah Nuclear Engineering Department

AGENCY: Department of Energy (DOE), Nevada Operations Office.

ACTION: Notice of noncompetitive financial assistance.

SUMMARY: DOE announces that pursuant to the DOE Financial Assistance Rule, 10 CFR 600.14(e)(1), it intends to award a noncompetitive financial assistance cooperative agreement for the training of community monitoring station managers by the Nuclear Engineering Department of the University of Utah.

Since 1981, the Nevada Operations Office of the DOE has funded and supervised the Community Monitoring Program to improve public awareness of radiological-related activities at the Nevada Test Site. In 18 communities, special monitoring stations have been set up to monitor and record environmental radioactivity. Local residents, preferably science teachers, operate the stations. DOE provides training semiannually for these station managers and their alternates by utilizing the expertise of the University of Utah Nuclear Engineering Department. These station managers, in turn, provide the interface with these communities and DOE that enables rapid dissemination of information and feedback of public concerns regarding Nevada Test Site activities.

Description of activities To Be Supported: The University of Utah will prepare and present training sessions for the Community Radiation Monitoring Program station managers and alternate station managers. There will be two training sessions each year, one for five days and one for two days, during the period of this cooperative agreement at a time and location mutually acceptable to the University of Utah and the DOE.

The University of Utah will operate and maintain the radiation monitoring station in Salt Lake City, by daily assuring the proper operation of the equipment and sending environmental samples to Las Vegas, Nevada, for analysis. They will also attend and participate in community meetings within the State of Utah for the purpose of responding to questions regarding the technical aspects of the community monitoring program.

Eligibility for the award of this cooperative agreement is being limited to the University of Utah because of its radiological and nuclear engineering programs with personnel who are well qualified for this training purpose, its proximity to the Nevada Test Site, and the special concern of the people of Utah regarding the effects of nuclear testing in Nevada on the health and safety of Utah residents. The University of Utah has established a credibility with the community monitoring station managers over the eight years they have participated in the program and are in sufficiently close proximity to be able to participate in community meetings without excessive travel costs. They will also continue operating the community monitoring station in Salt Lake City.

The term of this cooperative agreement is for five years and will commence October 1, 1989, and will end September 30, 1994. The total estimated cost of this award is $150,000.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Nevada Operations Office, ATTN: JoAnne C. Burrows, P.O. Box 98518, Las Vegas, NV 89193–8518.

Issued in Las Vegas, Nevada, on July 18, 1989.

Nick C. Aquilina,

Manager.

[FR Doc. 89–18296 Filed 8–3–89; 8:45 am]

BILLING CODE 6450–01–M

Office of the Secretary

Public Hearings To Solicit Views From Public Officials and the General Public on the Development of a National Energy Strategy

AGENCY: Office of the Secretary, DOE.

ACTION: Notice of meetings to invite public officials and the general public to provide comments on the development of a National Energy Strategy.

SUMMARY: This is the second in a series of public hearings being conducted throughout the country by the Department of Energy soliciting comments from interested parties on a wide range of energy issues and recommended solutions.

DATES AND PROCEDURES: The public hearing is scheduled for August 8, 1989, from 10:00 a.m. to 12:00 Noon and 1:00 p.m. to 5:00 p.m., at the Aaronson Auditorium, Tulsa City-County Library, 400 Civic Center, (located at the corner of Fourth Street and Denver Avenue), Tulsa Oklahoma 74103. Persons wishing to submit testimony to DOE in conjunction with this hearing should forward written comments to Ruth L. Burns, Office of Policy, Planning and Analysis, Department of Energy, Forrestal Building, Room 7H–034, 1000 Independence Avenue, SW, Washington, DC 20585. Persons unable to testify may submit their comments for the record. All testimony received will be compiled and made available to the public.

Individuals interested in testifying at this hearing should contact Ruth L. Burns, Office of Policy, Planning and Analysis, Department of Energy at (202) 586–4767 no later than 4:00 p.m., Friday, August 4, 1989. The third hearing in this series has been scheduled for August 23, 1989, in Boise, Idaho. Additional hearings have been scheduled for Seattle, Washington on August 28, 1989, and Louisville, Kentucky on September 8, 1989. As soon as information is available regarding specific locations and times, it will be announced.

FURTHER INFORMATION CONTACT: For further information, please write or call Ruth L. Burns, Office of Policy, Planning and Analysis, Department of Energy, Forrestal Building, Room 7H–034, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586–4767.

Linda G. Stuntz,

Deputy Under Secretary, Office of Policy, Planning and Analysis, U.S. Department of Energy.

[FR Doc. 89–18449 Filed 8–2–89; 4:59 pm]

BILLING CODE: 6450–01–M

Energy Information Administration

Agency Information Collections Under Review by the Office of Management and Budget

AGENCY: Energy Information Administration, DOE.

ACTION: Notice of requests submitted for review by the Office of Management and Budget.

SUMMARY: The Energy Information Administration (EIA) has submitted the energy information collection(s) listed at the end of this notice to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act (Pub. L. 96–511, 44 U.S.C. 3501 et seq.).

The listing does not include information collection requirements contained in new or revised regulations which are to be submitted under section 3504(h) of the Paperwork Reduction Act, or management and procurement assistance requirements collected by the Department of Energy (DOE).

Each entry contains the following information: (1) The sponsor of the collection (the DOE component or Federal Energy Regulatory Commission (FERC)); (2) Collection number(s); (3) Current OMB docket number (if applicable); (4) Collection title; (5) Type of request, e.g., new, revision, or extension; (6) Frequency of collection; (7) Response obligation, i.e., mandatory, voluntary, or required to obtain or retain benefit; (8) Affected public; (9) An estimate of the number of respondents per report period; (10) An estimate of the number of responses annually; (11) An estimate of the average hours per response; (12) The estimated total annual respondent burden; and (13) A brief abstract describing the proposed collection and the respondents.

DATES: Comments must be filed on or before September 5, 1989.

ADDRESS: Address comments to the Department of Energy Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503. (Comments should also be addressed to the Office of Statistical Standards, at the address below.)

FOR FURTHER INFORMATION AND COPIES OF RELEVANT MATERIALS CONTACT: Jay Casselberry, Office of Statistical Standards (EI–73), Energy Information Administration, M.S. 1H–023, Forrestal Building, 1000 Independence Ave., SW., Washington, DC 20585, (202) 586–2171.

SUPPLEMENTARY INFORMATION: If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the OMB DOE Desk Officer of your intention to do so as soon as possible. The Desk Officer may be telephoned at (202) 395–3084. (Also, please notify the DOE contact listed above.)

The first energy information collection submitted to OMB for review was:

1. Federal Energy Regulatory Commission
2. FERC–590
3. 1902–0147
4. Wellhead Pricing: Pricing Investigations
5. Extension

6. On occasion
7. Mandatory
8. Businesses or other for-profit
30 respondents
10. 500 responses
11. 1 hour per response
12. 500 hours (total)
13. The FERC–590, Wellhead Pricing: Pricing Investigation, is a field audit/investigation of jurisdictional natural gas companies with sales or purchases of natural gas in any of eight general pricing categories of the NGPA.

The second energy information collection submitted to OMB for review was:

1. Federal Energy Regulatory Commission
2. FERC–542A
3. 1902–0129
4. Gas Pipeline Rates: Tracking and Recovery of Alaska Natural Gas Transportation System (ANGTS) Charges
5. Extension
6. On occasion
7. Mandatory
8. Businesses or other for-profit
9. 1 respondent
10. 1 response
11. 1 hour per response (standby status)
12. 1 hour (total)
13. Pursuant to section 9 of the ANGTA and sections 4, 5, and 16 of the NGA, the Commission requires these data to determine if the ANGTS' rates and charges complies with the requirements.

Authority: Sections 5(a), 5(b), 13(b), and 52, Public Law 93–275, Federal Energy Administration Act of 1974, 15 U.S.C. 764(a), 764(b), 772(b), and 790a.

Issued in Washington, DC, July 28, 1989.

Yvonne M. Bishop,

Director, Statistical Standards, Energy Information Administration.

[FR Doc. 89–18297 Filed 8–3–89; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket Nos. ER84–705–010, et al.]

Boston Edison Co., et al.; Electric rate, Small power production, and Interlocking Directorate Filings

July 31, 1989.

Take notice that the following filings have been made with the Commission:

1. Boston Edison Company

[Docket No. ER84–705–010]

Take notice that on July 19, 1989, Boston Edison Company tendered for filing its refund report in compliance with the Commission's orders issued on April 7, 1989, and June 5, 1989.

Comment date: August 15, 1989, in accordance with Standard paragraph E at the end of this notice.

2. Fort Howard Corporation

[Docket No. QF86–608–002]

On July 20, 1989, Fort Howard Corporation (Applicant), of 1919 South Broadway, Green Bay, Wisconsin 54304 submitted for filing an application for recertification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations.

The topping-cycle cogeneration facility is located at Applicant Fort Howard's Savannah River Mill paper manufacturing plant, in Effingham County, Georgia. The facility when completed will consist of two coal-fired circulating fluidized bed boilers, two 45 MW extraction/condensing steam turbine generators, two 25 MW gas/oil-fired combustion turbine generators, and two waste-heat recovery boilers. Thermal energy recovered from the facility will be used for process and space heating and cooling. The maximum electric power production capacity of the facility will be 113 MW. The primary energy source will be coal and natural gas or oil.

The original application was filed by Fort Howard Paper Company on March 18, 1986, and certification was granted on June 26, 1986, 35 FERC ¶ 62,556 (1986). The recertification is requested due to: 1) change in Applicant's name; 2) inclusion of a subsection located at the plant site; 3) decrease in the net electric power production capacity from 125.49 MW to 113 MW (the 31 MW extraction/non condensing turbine generator as proposed in the original applicaiton will not be installed).

Comment date: Thirty days from publication in the **Federal Register?** in accordance with Standard Paragraph E at the end of this notice.

3. Ocean State Power

[Docket No. ER89–564–000]

Take notice that on Ocean State Power (Ocean State I), on July 1, 1989, tendered for filing the following amendments to its rate schedules with the Federal Energy Regulatory Commission:

Supplement No. 9 to Rate Schedule FERC No. 1
Supplement No. 6 to Rate Schedule FERC No. 2
Supplement No. 4 to Rate Schedule FERC No. 3
Supplement No. 6 to Rate Schedule FERC No. 4

The supplements are amendments (Amendments) to the unit power agreements between Ocean State I and Boston Edison Company, New England Power Company, Montaup Electric Company, and Newport Electric Corporation. The Amendments are necessitated, for the most part, by the separation of ownership of the two units of the Ocean State Power Project. The Amendments do not constitute a rate increase.

Copies of the filing were served upon Boston Edison Company, New England Power Company, Montaup Electric Company, Newport Electric Corporation, the Massachusetts Department of Public Utilities, the Rhode Island Public Utilities Commission and TransCanada Pipelines Limited.

Comment date: August 15, 1989, in accordance with Standard paragraph E at the end of this notice.

4. U.S. Department of Energy, Bonneville Power Administration

[Docket Nos. EF89–2011–000 and EF 89–2021–000]

Take notice that the Bonneville Power Administration (BPA) on July 25, 1989, tendered for filing proposed rate extensions for its wholesale power and transmission rates pursuant to section 7(a)(2) of the Northwest Power Act, 16 U.S.C. 300.21, BPA seeks final confirmation of the proposed rates, effective October 1, 1989. In the alternative, BPA seeks interim approval effective October 1, 1989, pursuant to Commission regulation 300.20. Exceptions to these approval dates are hereafter noted.

BPA proposes to extend its 1987 wholesale power and transmission rates through fiscal year (1991) by readopting its 1987 rate schedules, with the exception of a modification to the Cost Recovery Adjustment Clause (CRAC). The Administrator has reviewed BPA's current wholesale power and transmission rate schedules and has determined that current rates will produce sufficient revenue for BPA to meet its statutory requirements.

The proposed 1989 rate schedule contain a Cost Recovery Adjustment Clause which differs from that contained in BPA's 1987 rate schedules. BPA proposes the change as enabling BPA to better assure cost recovery and realization of the BPA Administrator's financial goals. The modified CRAC will trigger if BPA net revenue (the difference between actual revenues and actual expenses) falls below zero. The amount recovered will equal the amount that the net revenue falls below zero up

to a maximum of $127.0 million in 1990 nine-month adjustment period and $138.4 million in a 1991 nine-month adjustment period. Each adjustment period is based on a 12-month evaluation period. Net revenue will be measured in FY 1989 and, if less than zero, CRAC may be implemented in the last 9 months of 1990. Similarly, net revenue will be measured in FY 1990, and if less than zero, CRAC may be implemented in the last 9 months of 1991. There will be no downward adjustment of rates if net revenue is greater than $0.

BPA requests approval effective October 1, 1989 through September 30, 1991 for the following proposed wholesale power rates and their associated General Rate Schedule Provisions: PF–89 Priority Firm Power Rate; IP–89 Industrial Firm Power Rate; SI–89 Special Industrial Firm Power Rate; CF–89 Firm Capacity Rate; CE–89 Emergency Capacity Rate; NR–89 New Resource Firm Power Rate; NF–89 Nonfirm Energy Rate; SS–89 Share-the-savings Energy Rate; RP–89 Reserve Power Rate. BPA requests approval of its proposed SP–89 Short Term Surplus Firm Power Rate (SP–89) effective October 1, 1989 through September 30, 1994.

BPA requests approval effective October 1, 1989 through September 30, 1991 for the following proposed transmission rate schedules and their associated general transmission rate schedule provisions: FPT–89.1 formula Power Transmission; IR–89 Integration of Resources; IS–89 Southern Intertie Transmission; IN–89 Northern Intertie Transmission; IE–89 Eastern Intertie Transmission; ET–89 Energy Transmission; MT–89 Market Transmission. BPA requests approval of the TGT–1 Townsend-Garrison Transmission and UFT–83 Use-of-Facilities Transmission schedules effective July 1, 1990 through September 30, 1991. Approval of the FPT–87.3 Formula Power Transmission schedule (to be renamed the FPT–89.3 on October 1, 1989) is requested for a one year period from October 1, 1990.

Comment date: August 18, 1989, in accordance with Standard Paragraph E at the end of this notice.

5. Ocean State Power II

[Docket No. ER89–563–000]

Take notice that on July 21, 1989, Ocean State Power II (Ocean State II) tendered for filing with the Federal Energy Regulatory Commission four initial rate schedules. The rate schedules consist of unit power agreements between Ocean State Power II and Boston Edison Company, New England Power Company, Montaup Electric Company and Newport Electric Corporation, respectively. The unit power agreements provide for the sale of the capacity and corresponding energy of a combined cycle unit to be constructed in Burrillville, Rhode Island and owned by Ocean State II.

Ocean State II has requested a waiver of notice requirements to permit filing of the rate schedule more than 120 days prior to its proposed effective date. Copies of the filing were served upon Boston Edison Company, New England Power Company, Montaup Electric Company, Newport Electric Corporation, the Massachusetts Department of Public Utilities and the Rhode Island Public Utilities Commission.

Comment date: August 15, 1989, in accordance with Standard Paragraph E at the end of this notice.

6. New England Power Company

[Docket No. ER89–556–000]

Take notice that New England Power Company (NEP), on July 18, 1989, tendered for filing a Letter Agreement between NEP and Boston Edison Company (BECO) that provides for the sale by NEP of twenty megawatts of capacity and related energy from NEP's purchase from New York State Electric and Gas Corporation for the period June 1, 1989 through June 30, 1989.

NEP requests an effective date of June 1, 1989 and waiver of the Commission's notice provision pursuant to § 35.11.

Comment date: August 14, 1989, in accordance with Standard Paragraph E at the end of this notice.

7. John Nelson

[Docket No. ID–2353–001]

Take notice that on July 21, 1989, John Nelson (Applicant) tendered for filing an application under section 305(b) of the Federal Power Act to hold the following positions:

Director—Ohio Edison Company
Director—The Lamson & Sessions Co.

Comment date: August 14, 1989, in accordance with Standard Paragraph E at the end of this notice.

8. Southern California Edison Company

[Docket No. ER89–454–001]

Take notice that on July 20, 1989, Southern California Edison Company (Edison) tendered for filing the withdrawal of Amendment No. 2 to the Edison-Azusa Interruptible Transmission Service Agreement (Amendment) designated Rate Schedule FERC No. 160, Docket No. ER89–454, which was filed with the Commission on May 23, 1989.

Withdrawal of Amendment No. 2 to the Edison-Azusa Interruptible Transmission Service Agreement.

It has come to our attention through discussions with the FERC staff that Edison's filing was not necessary.

Copies of this filing were served upon the Public Utilities Commission of the State of California and Azusa.

Comment date: August 14, 1989, in accordance with Standard Paragraph E at the end of this notice.

9. Green Mountain Power Corporation

[Docket No. ER89–569–000]

Take notice that on July 25, 1989, Green Mountain Power Corporation (GMP) tendered for filing a proposed Electric Service Agreement for wholesale electric service by GMP to the Northfield Electric Department, Town of Northfield, Vermont pursuant to Green Mountain's FERC Electric Tariff Power Rate W. GMP has requested waiver of the 60-day notice requirement set forth in Section 35.3 of the Commission's regulations in order to permit service under the Electric Service Agreement to commence on September 1, 1989.

Comment date: August 15, 1989, in accordance with Standard Paragraph E at the end of this notice.

10. Idaho Power Company

[Docket No. ER89–567–000]

Take notice that on July 24, 1989, Idaho Power Company (IPC) tendered for filing, pursuant to Section 205 of the Federal Power Act, a Transmission Services Agreement executed on June 6, 1989 between the United States Department of Energy acting by and through the BPA and Idaho Power Company. The term of the Agreement is from June 6, 1989 to December 31, 2002.

Comment date: August 15, 1989, in accordance with Standard Paragraph E at the end of this notice.

11. Public Service Company of Oklahoma

[Docket No. ER89–568–000]

Take notice that on July 24, 1989, Public Service Company of Oklahoma (PSO) tendered for filing an Interconnection and Interchange Agreement (the Agreement) betweeen Mid-Continent Power Company, Inc. (MCPC) and PSO. PSO proposes that the Agreement be made effective as of July 21, 1989 and accordingly seeks waiver of the Commission's notice requirements.

Copies of the filing have been sent to the Oklahoma Corporation Commission and to MCPC.

Comment date: August 15, 1989, in accordance with Standard Paragraph E at the end of this notice.

12. Florida Power & Light Company

[Docket No. ER89-566-000]

Take notice that Florida Power & Light Company (FPL), on July 24, 1989, tendered for filing the following documents: Amendment Number Two to Agreement for Full Requirements Electric Service by Florida Power & Light Company (Company) and Seminole Electric Cooperative, Inc. (Rate Schedule FR-2): Amendment Number Two to Aggregate Billing Partial Requirements Service Agreement between Florida Power and Light Company and Seminole Electric Cooperative, Inc. (Rate Schedule FERC No. 77) and Revised Sheet No. 24 of the Company's FERC Electric Tariff, Second revised Volume No. 1.

FPL states that under the above Amendments, FPL will terminate service under the Agreement for Full Requirement Electric Service for Brighton distribution delivery point; and initiate service to Brighton distribution delivery point under the Aggregate Billing Partial Requirements Service Agreement effective 12.01 AM on July 29, 1989.

FPL requests that waiver of § 35.3 of the Commission's Regulations be granted and that the proposed Amendment be made effective immediately.

FPL states that copies of the filing were served upon Seminole Electric Cooperative, Inc.

Comment date: August 15, 1989, in accordance with Standard Paragraph E at the end of this notice.

13. Montana Power Company

[Docket No. ER89-565-000]

Take notice that on July 24, 1989, the Montana Power Company (MPC) tendered for filing pursuant to section 205 of the Federal Power Act an agreement effective May 27, 1988 for the transmission of electrical power for the Bonneville Power Administration.

MPC has requested waiver of the notice provisions of § 35.3 of the Commission's regulations in order to permit the agreement to become effective on the date indicated above in accordance with its terms.

Comment date: August 15, 1989, in accordance with Standard Paragraph E at the end of this notice.

14. Commonwealth Edison Company

[Docket No. ER89-557-000]

Take notice that July 18, 1989, Commonwealth Edison Company (Edison) tendered for filing a Letter Agreement dated June 14, 1989, between Edison and Madison Gas and Electric Company (MG&E) and a Letter Agreement dated June 19, 1989, between Edison and Wisconsin Public Service Corporation (Wisconsin). The Edison-MG&E Letter Agreement provides for the sale of Short Term Power and General Purpose Energy to each other whenever mutually agreed upon. The Edison-Wisconsin Letter Agreement provides for the sale of Short Term Power and General Purpose Energy by Edison to Wisconsin whenever mutually agreed upon.

Edison requests expedited consideration of the filing and an effective date for each Letter Agreement coincident with the Commission's order accepting the rate schedules for filing. Accordingly, Edison requests waiver of the Commission's notice requirements, to the extent necessary.

Copies of this filing were served upon MG&E, Wisconsin, the Illinois Commerce Commission, and the Public Service Commission of Wisconsin.

Comment date: August 15, 1989, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commisssion's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestant as parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-18194 Filed 8-3-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ER89-465-000, et al.]

Green Mountain Power Corporation, et al.; Electric rate, Small Power Production, and Interlocking Directorate filings

Take notice that the following filings have been made with the Commission:

1. Green Mountain Power Corporation

[Docket No. ER89-465-000]

July 26, 1989.

Take notice that on July 21, 1989, Green Mountain Power Corporation (Green Mountain) tendered for filing, in response to a deficiency letter from the Commission, information concerning the value adjustment provision in the proposed Electric Service Agreement for wholesale electric service to the Hardwick Electric Department, Town of Hardwick, Vermont, filed by Green mountain on May 26, 1989.

Comment date: August 9, 1989, in accordance with Standard Paragraph E at the end of this notice.

2. Sunnyside Cogeneration Associates

[Docket No. QF86-556-001]

July 26, 1989.

On July 17, 1989, Sunnyside Cogeneration Associates (Applicant) of 2920 North Academy Boulevard, Suite 201, Colorado Springs, Colorado 80903 submitted for filing an application for recertification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Carbon County, Utah. The facility will consist of two circulating fluidized bed combustion boilers, two extraction steam turbine generators, and related auxiliary equipment. The net electric power production capacity will be 45 megawatts. The primary energy source will be bituminous coal refuse. Construction of the facility is expected to begin in September 1989.

The original application was filed on March 5, 1986 and certification was granted on April 20, 1987 (39 FERC ¶62,091). The recertification is requested due to a change in the use of thermal energy output from the facility. In the original application the thermal energy was proposed to be used by an affiliated entity in a coal drying operation. The Applicant now proposes to sell the thermal output to an unaffiliated entity for greenhouse space heating.

Comment date: Thirty days from publication in the **Federal Register** in

accordance with Standard Paragraph E at the end of this notice.

3. Entergy Services, Inc.

[Docket No. ER89-531-000]

July 26, 1989.

Take notice that on June 30, 1989, Entergy Services, Inc. submitted a letter for filing advising the Commission that effective May 22, 1989, MSU System Services, Inc., a subsidiary of Entergy Corporation (formerly Middle South Utilities, Inc.) changed its corporate name to Entergy Services, Inc. Entergy states that the purpose for changing the corporate name was primarily to be in parallel with the name of the parent company which became Entergy Corporation on May 19, 1989.

Comment date: August 9, 1989, in accordance with Standard Paragraph E at the end of this notice.

4. Pennsylvania Power & Light Company

[Docket No. ER89-452-000]

July 26, 1989.

Take notice that Pennsylvania Power & Light Company (PP&L) on July 10, 1989 tendered for filing, as a supplement to its Rate Schedule FERC No. 84, the Fourth Supplement to the Capacity and Energy Sales Agreement, dated as of June 26, 1989, between PP&L and Jersey Central Power & Light Company (JC).

The Fourth Supplement to the Capacity and Energy Sales Agreement specifies the updated cost of decommissioning the Susquehanna Steam Electric Station determined using the annuity method.

PP&L requests waiver of the notice requirements of Section 205 of the Federal Power Act and § 35.3 of the Commission's Regulations so that the Fourth Supplement to the Capacity and Energy Sales Agreement can be made effective as of December 1, 1988.

PP&L States that a copy of its filing was served on JC, the Pennsylvania Public Utility Commission, and the New Jersey Board of Public Utilities.

Comment date: August 9, 1989, in accordance with Standard Paragraph end of this notice.

5. Green Mountain Power Corporation

[Docket No. ER89-425-000]

July 26, 1989.

Take notice that on July 3, 1989, Green Mountain Power Corporation (GMP) tendered for filing additional information, at the Commission's request, concerning the rate impact on GMP's wholesale customers of the Agreement for Purchase of Power between GMP and Fitchburg Gas and Electric Company.

Comment date: August 9, 1989, in accordance with Standard Paragraph E at the end of this notice.

6. Arizona Public Service Company

[Dockt No. ER89-561-000]

July 26, 1989.

Take notice that on July 19, 1989, Arizona Public Service Company (APS) tendered for filing a notice of cancellation of an agreement for firm power between Arizona Electric Power Cooperative, Inc. (AEPCO) (FPC Rate Schedule No. 57).

APS requests waiver of 18 CFR 35.15 of the Commission's rules to allow cancellation of the Agreement to become effect March 9, 1989.

Comment date: August 9, 1989, in accordance with Standard Paragraph E at the end of this notice.

7. Michigan Power Company

[Docket No. ER88-142-003]

July 26, 1989.

Take notice that on July 21, 1989, Michigan Power Company (Michigan Power) tendered for filing, in compliance with the Commission's order of June 7, 1989 in Docket No. ER88-142-002, proposed changes in its electric resale rate schedules presently on file with the Commission which are applicable to the City of Dowagiac, Michigan and the Village of Paw Paw, Michigan. The proposed change in resale rates will decrease Michigan Power's annual revenues from the City of Dowagiac by $86,199 and from the Village of Paw Paw by $67,543 for the period commencing December 22, 1987 and ending December 31, 1988 and will decrease Michigan Power's annual revenues from the City of Dowagiac by $117,649 and from the Village of Paw Paw by $88,624 for the period commencing January 1, 1989, based on a twelve month test period ended December 31, 1988 from rates in effect prior to December 22, 1987. The purpose of the present rate decrease filing is to reflect in Michigan Power's rates for the sale of power to the City of Dowagiac and the Village of Paw Paw reductions, approved by the Commission in Docket No. ER88-30-000, in the wholesale electric rates paid by Michigan Power to Indiana Michigan Power Company and an allocated portion of a one-time refund paid by I&M to Michigan Power as part of a settlement in Docket No. ER88-30-000.

Michigan Power requests that these rate changes be made effective as of December 22, 1987 and January 1, 1989.

Copies of the filing were served upon the City of Dowagiac, the Village of Paw Paw and the Michigan Public Service Commission.

Comment date: August 9, 1989, in accordance with Standard Paragraph E at the end of this notice.

8. American Electric Power Service Corporation

[Docket No. ER89-548-000]

July 26, 1989.

Take notice that on July 3, 1989, American Electric Power Service Corporation (AEP) submitted for informational purposes, on behalf of Ohio Power Company (OPCO) Supplemental Schedules VII and IX, dated May 1, 1989 to the Agreement, dated as of April 1, 1974) between American Muncipal Power-Ohio, Inc. (AMP-Ohio) and OPCO. Also submitted on behalf of Columbus Southern Company (CSP) was Supplemental Schedule I, dated June 1, 1989, to the Interconnection Agreement, dated January 1, 1988 between City of Columbus and CSP.

Comment date: August 9, 1989, in accordance with Standard Paragraph end of this notice.

9. Northeast Utilities Service Company

[Docket No. ER89-555-000]

July 27, 1989.

Take notice that on July 17, 1989, Northeast Utilities Service Company (NUSCO) tendered for filing proposed rate schedules pertaining to:

I. Letter Agreement (Re: Capacity Sales), dated May 17, 1989, between NUSCO, as Agent for The Connecticut Light and Power Company (CL&P) and Western Massachusetts Electric Company (WMECO), and Commonwealth Electric Company (Commonwealth);

II. Letter Agreement (Re: Capacity Sales), dated November 4, 1988, between NUSCO, as Agent for CL&P, and Montaup Electric Company (Montaup); and

III. Sales Agreement with respect to Millstone 3 and Gas Turbines, dated June 1, 1988, between NUSCO, as Agent for CL&P and WMECO, and Newport Electric Company (Newport) (Agreements).

NUSCO requests that the Commission waive its notice and filing regulations to the extent necessary to permit the Agreements (I) to commence effective June 1, 1988 and to terminate effective August 31, 1988; (II) to commence effective July 1, 1988 and to terminate effective October 31, 1989; and (III) to commence effective June 1, 1988, respectively.

NUSCO states that copies of the rate schedules have been mailed or delivered

to CL&P and WMECO, and to Commonwealth, Montaup and Newport.

NUSCO further states that the filing is in accordance with Part 35 of the Commission's Regulations.

Comment date: August 14, 1989, in accordance with Standard Paragraph E at the end of this notice.

10. Nevada Power Company

[Docket No. ER89–560–000]

July 27, 1989.

Take notice that on July 20, 1989, Nevada Power Company (Nevada) tendered for filing an agreement entitled Short Term Power Agreement between Overton Power District No. 5 (Overton) and Nevada Power Company hereinafter "the Agreement". The purpose of the agreement is to establish the terms and conditions for the sale by Nevada to Overton of up to 15 MW per hour of capacity and energy during June, July, August and September, 1989.

Nevada requests an effective date of June 1, 1989 and therefore requests waiver of the Commission's notice requirements.

Nevada states that copies of the filing were serviced upon Overton.

Comment date: August 14, 1989, in accordance with Standard Paragraph E at the end of this notice.

11. Nevada Power Company

[Docket No. ER89–559–000]

July 27, 1989.

Take notice that on July 20, 1989, Nevada Power Company (Nevada) tendered for filing an agreement entitled Short Term Power Agreement between City of Boulder City (Boulder) and Nevada Power Company hereinafter "the Agreement." The purpose of the Agreement is to establish the terms and conditions for the sale by Nevada to Boulder of up to 10 MW per hour of capacity and energy during June, July, August and September, 1989.

Nevada requests an effective date of June 1, 1989 and therefore requests waiver of the Commission's notice requirements.

Nevada states that copies of the filing were served upon Boulder.

Comment date: August 14, 1989, in accordance with Standard Paragraph E at the end of this notice.

12. Oklahoma Gas and Electric Company

[Docket No. EC89–16–000]

July 27, 1989.

Take notice that on July 20, 1989, Oklahoma Gas and Electric Company (Applicant), an Oklahoma Corporation with its principal office at 321 N. Harvey, P.O. Box 321, Oklahoma City, Oklahoma, 73101, filed an application pursuant to Section 203 of the Federal Power Act and Part 33 of the Commission's Regulations thereunder, for authorization to sell certain electrical substation facilities to Oklahoma Municipal Power Authority.

The Company states it is engaged primarily in the generation, transmission, distribution and sales of electric energy in Oklahoma and western Arkansas. The facilities being sold and purchased will be devoted to supplying service to OMPA Participants only.

Comment date: August 16, 1989, in accordance with Standard Paragraph E at the end of this notice.

13. Nevada Power Company

[Docket No. ER89–558–000]

July 27, 1989.

Take notice that on July 20, 1989, Nevada Power Company (Nevada) tendered for filing an agreement entitled Interconnection Agreement between Nevada Power Company and Valley Electric Association (Valley) hereinafter "the Agreement." The primary purpose of the Agreement is to establish the terms and conditions for the interchange of economy, emergency, and banked energy and for other power transactions that may be possible through the Parties' interconnected systems or through the systems of third Parties.

Nevada states that copies of the filing were served upon Valley.

Comment date: August 14, 1989, in accordance with Standard Paragraph E at the end of this notice.

14. Central Vermont Public Service Corporation

[Docket Nos. ER88–456–002 and ER88–629–002]

July 27, 1989.

Take notice that on July 21, 1989, Central Vermont Public Service Corporation ("the Company") tendered for filing a report in compliance with a Commission order in the captioned dockets. The report includes cost reports which reflect the provisions of the settlement agreement among the parties which was approved by the Commission in the order. The report also shows monthly billing determinants, revenue receipts dates, and revenues under prior, present and settlement rates, the monthly revenue refund, and the monthly interest computed, together with a summary of such information for the total refund period.

Central Vermont states that this filing has been posted as required by the Commission's regulations and that it has served copies of this filing upon the affected wholesale customers, the New Hampshire Public Utilities Commission, and the Vermont Public Service Board.

Comment date: August 14, 1989, in accordance with Standard Paragraph E at the end of this notice

15. Pacific Gas and Electric Company

[Docket No. ER89–475–000]

July 28, 1989.

Take notice that on July 21, 1989, Pacific Gas and Electric Company (PG&E) tendered for filing replacement pages for the Interconnection Rate Schedule filed by PG&E for the Sacramento Municipal Utility District in the above referenced docket.

PG&E states that the revised pages reflect the following changes:

(1) Exhibit D2–1: At former lines 2, 7 and 9, to clarify that losses under the separate SMUD EHV Contract (FERC Rate Schedule No. 37) are not changed by the IRS;

(2) Section C.4: At former lines 21 and 22, in addition to a change to Section A.15; and

(3) Section A.15: At former lines 26 (pages A–3) and 1 (page A–4), together with change to Section C.4 these changes should clarify the applicability of Ten-Minute Emergency Power Service to SMUD's purchases of firm power from Third Parties (including SMUD's proposed purchase from Edison).

Comment date: August 11, 1989, in accordance with Standard Paragraph E at the end of this notice

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89–18195 Filed 8–3–89; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. QF89-233-000]

Warner-Lambert Company, Parke-Davis Research Division; Application for Commission Recertification of Qualifying Status of a Cogeneration Facility

July 26, 1989.

On July 5, 1989, Warner-Lambert Company, Parke-Davis Research Division (Applicant), of 2800 Plymouth Road, Ann Arbor, Michigan 48105, submitted for filing an application for recertification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Ann Arbor, Michigan. The facility will consist of a combustion turbine generator and a heat recovery boiler. Thermal energy recovered from the facility will be used for space heating and cooling, hot water production and steam sterilization. The net electric power production capacity will be 2,826 KW. The primary energy source will be natural gas. The completion of the facility is scheduled for July, 1989.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-18196 Filed 8-3-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI89-469-000]

Equitrans, Inc. v. Joseph H. Hager; Application for Abandonment and, in the Alternative, Complaint

July 28, 1989.

On June 29, 1989, as corrected on July 13, 1989, Equitrans, Inc. (Equitrans) filed an application under section 7(b) of the Natural Gas Act (NGA) for abandonment of natural gas sold to Equitrans by Joseph H. Hager (Hager) and, in the alternative, a complaint seeking reformation of the price terms of the contracts between Equitrans and Hager under section 5 of the NGA.

Equitrans states that Hager is the owner of natural gas wells located in West Virginia and sells the gas to Equitrans pursuant to gas purchase agreements [1] between Hager and Equitable Gas Company (Equitable), Equitrans' affiliate and predecessor-in-interest, which require Equitrans to purchase gas during the six month winter period from November 1 to May 1 of each year and provide for the shut-in of such gas from May 1 to November 1, unless such gas is needed by Equitrans. Equitrans further states that the contracts were altered pursuant to a settlement agreement between Hager and Equitrans dated November 1, 1982 (1982 settlement), and approved by the Commission by letter order issued February 17, 1983, in *Independent Oil and Gas Association of West Virginia* (IOGA), Docket Nos. RI74-188 and RI75-21, to provide that for all gas delivered after November 1, 1982, Equitrans shall pay the Natural Gas Policy Act of 1978 (NGPA) section 103 ceiling price, except for gas which qualifies under NGPA sections 102, 107, or 108, in which case Equitrans is obligated to pay the section 102 ceiling price and adjustments permitted by the NGPA and Commission regulations relating to taxes and other production-related allowances.

Equitrans asserts that in the fall of 1985, Equitrans (through Equitable) and Hager agreed to renegotiate the contracts to provide that from November 18, 1985 until January 21, 1988, Hager would sell gas to Equitrans at a price of $3.30 per Mcf and that Hager would pay all taxes and related charges and thereafter the purchase price would be set at the prevailing field purchase price, and Equitrans agreed to purchase gas from Hager during the entire year. Equitrans further asserts that it drafted such an agreement and operated under its terms from November 1985 through January 2, 1988, by refraining from shutting in Hager's production. Equitrans contends that Hager never executed the agreement, and on February 22, 1988, filed a claim against Equitrans in the United States District Court for the Northern District of West Virginia seeking enforcement of the original contracts, as modified by the 1982 settlement. Equitrans states that Hager has delivered and continues to deliver to Equitrans gas which qualifies for NGPA section 108 and therefore, is charging Equitrans the section 102 price.

Equitrans submits that abandonment is in the public interest. Equitrans contends the indefinite price escalation provided for in the contracts as modified by the 1982 settlement and the shutting in of production for six months every year is contrary to the public interest. Equitrans further contends that its willingness to purchase the gas all year at marketable prices clearly serves the public interest. Equitrans also argues that the contracts are unenforceable under West Virginia law. In the alternature, Equitrans requests reformation of the price terms of the underlying contracts to the prevailing field purchase price.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 or 214 of the Commission's rules of practice and procedure. All such motions or protests should be filed within 30 days following publication of this notice in the **Federal Register**. Protests will be considered by the Commission in determining appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. Hager's answer to the complaint is also due within 30 days following **Federal Register** publication.

Lois D. Cashell,

Secretary.

[FR Doc. 89-18197 Filed 8-3-89; 8:45 am]

BILLING CODE 6717-01-M

[1] Equitrans states that the contracts are dated March 9, 1971, December 16, 1974, and two are dated August 18, 1975.

[Docket Nos. RP89-212-000 and CP89-759-001]

Transcontinental Gas Pipe Line Corporation; Proposed Waiver and Tariff Filing

July 31, 1989.

Take notice that on July 28, 1989, Transcontinental Gas Pipe Line Corporation (Transco) filed to request that the Commission take such action as may be necessary to permit Transco to temporarily waive restrictions in its existing FERC Gas Tariff and to submit certain tariff sheets to Second Revised Volume No. 1 of its FERC Gas Tariff.

The proposed effective date of the tariff sheets is August 1, 1989.

Transco states that on April 3, 1989 Transco filed with the Commission a Stipulation and Agreement ("April 3 Settlement") which would have settled various issues and proceedings related to, among other things, the Commission's Order Nos. 436 and 500 and the implementation of such Orders on Transco's system. Included in the April 3 Settlement were proposed revisions to Transco's Rate Schedule GSS, LSS and LGA ("Eastern Storage Rate Schedules") to remove certain restrictions in such rate schedules on the injection of gas purchased by its customers from parties other than Transco. In general terms, these tariff provisions limit the injection of such third-party gas, both on a daily and total quantity basis, to a percentage based upon the amount of each customer's daily firm purchase entitlement from Transco which has been permanently converted to firm transportation service. Pursuant to the terms of the April 3 Settlement, on April 3, 1989 Transco also filed a request for a temporary waiver of the *daily* restrictions on the injection of third-party gas under its affected storage rate schedules pending Commission approval of the April 3 Settlement. By letter order issued May 3, 1989, the Commission granted such temporary waiver. Subsequently, however, by order issued July 19, 1989 the Commission rejected the April 3 Settlement, without prejudice to resubmittal in a modified form.

Transco states that subsequent to the issuance of the July 19, 1989 order, Transco, its customers and other parties have been engaged in discussions regarding the terms of a revised settlement proposal to resolve the same issues that were addressed in the April 3 Settlement, including the removal of the limitations on the injection of third-party gas into storage under the Eastern Storage Rate Schedules. Transco anticipates that a revised settlement will be filed in the near future. However, four of the seven months which comprise the 1989 storage injection season have lapsed. Furthermore, due to the restrictions on the injection of third-party gas into such facilities, many of Transco's customers are behing their normal operational schedules for filling their storage balances. As a temporary resolution of this matter, Transco is willing to waive all restrictions on the injection of third-pary gas into storage under the Eastern Storage Rate Schedules during the month of August, 1989. Therefore, Transco requests that the Commission promptly take such actions as may be necessary to permit such waiver of tariff restrictions by Transco commencing August 1, 1989.

Transco states that with regard to a related matter, the requested waiver by Transco during August of the restrictions on the injection of third-party gas into storage under the Eastern Storage Rate Schedules would result in Transco having virtually no sales under its CD, G or OG Rate Schedules during such month since Transco's currently effective sales rate is substantially above the spot market prices for gas which its customers can purchase to fill their storage balances in the absence of such storage injection restrictions. However, Transco has obligations to certain of its producers to purchase approximately 250 MMcf per day of "must-take" gas supplies consisting mostly of casinghead gas. Transco states that its ability to grant a limited term waiver of the storage restrictions is dependent on its ability to dispose of "must take" gas during such period. If the storage tariff waiver requested herein is granted, Transco states that it intends to continue to purchase such "must-take" gas supplies and to the extent necessary under operating conditions, resell such gas supplies under its Rate Schedule IS which was approved by Commission order issued March 24, 1989 in Docket CP89-759-000. However, Transco does not have on file with the Commission currently effective Rate Schedule IS tariff sheets. In that regard, Transco submits in the instant filing certain original tariff sheets to Second Revised Volume No. 1 of Transco's FERC Gas Tariff, which comprise Rate Schedule IS and the form of Service agreement to be used under such Rate Schedule.

Transco states that copies of the instant filing are being mailed to its jurisdictional customers, State Commissions and interested parties. In accordance with the provisions of § 154.16 of the Commission's Regulations, copies of this filing are available for public inspection during regular business hours, in a convenient form and place at Transco's main offices at 2800 Post Oak Boulevard in Houston, Texas.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before 8/7/89. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 89-18198 Filed 8-3-89; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-3625-1]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared July 17, 1989 through July 21, 1989 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382-5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 7, 1989 (54 FR 15006).

Draft EISs

ERP No. D-AFS-E65038-NC, Rating LO, Grassy Gap and Wesser Timber Sales Management Plan, Implementation, Nantahala National Forest, Graham and Swain Counties, NC.

Summary: EPA does not object to the selection of Alternative D as the preferred alternative.

ERP No. DS-FHW-H40137-NB, Rating LO, Van Dorn Street Connection, NV-2/9th and 10th Street to US-77/West Bypass, Additional Alternatives Analysis, Funding, City of Lincoln, Lancaster County, NB.

Summary: EPA has no objection to the additional alignment addressed in the Supplemental EIS.

ERP No. D-FHW-K40167-CA, Rating EO2, CA-237 Upgrading to Freeway Standards, Mathilda Avenue to I-880, Funding and 404 Permit, Santa Clara County, CA.

Summary: EPA expressed environmental objections because the project would eliminate 20.5 acres of seasonal wetlands and riparian habitat and lacks sufficient information about acreage determination, specific

proposed mitigation and whether other less-damaging, practicable alternatives exist. EPA recommended that the FEIS contain more detailed information on wetland impacts and mitigation and air quality impacts, particularly as they pertain to carbon monoxide and ozone.

EPA No. D–FHW–K40168–CA, Rating EO2, I–5 Widening and Interchange Improvements, I–5 at Genesee Avenue, I–805 at Mira Mesa Boulevard and I–5 at Del Mar Heights Road, Funding, 404 and Bridge Permits, City and County of San Diego County, CA.

Summary: EPA expressed environmental objections because the Build Alternatives would require the placement of fill material in approximately 13–15 acres of wetlands and could not determine whether the proposed project was consistent with section 404 requirements. EPA encourages the development of an alternative that includes high occupancy vehicle and light rail transit features in order to prevent air quality violations or any futher deterioration. EPA recommended the preparation of a supplemental EIS.

FINAL EISs

ERP No. F–COE–H36091–IA, Mississippi River Flood Damage Reduction Facilities, Construction, Coon Rapids Dam to Ohio River, Muscatine and Louisa Counties, IA.

Summary: EPA's concerns have been addressed as long as the recommendations in the Final Fish and Wildlife Service Coordination Act Report, dated March 26, 1986 are implemented.

ERP No. FS–FHW–D40050–MD, MD–32 Relocation and Upgrade of Related Facilities, MD–108 to Pindell School Road, Funding and 404 Permit, Howard County, MD. SUMMARY: EPA has no objections to the project as described in the suplemental final EIS.

ERP No. F–FHW–D40231–MD, US 50/Salisbury Bypass Construction, US 50 East of Rockawalkin Road to the US 50 and US 13 Bypass Interchange, Funding and 404 Permit, Wicomico County, MD.

Summary: EPA is concerned about the lack of additional information on the elimination of Alternative 5, the potential for contamination of groundwater resources and the increased acreage of wetlands impacted.

ERP No. F–FHW–E40572–AL, Corridor X Highway Construction, Walker/Jefferson County Line to US 31, Funding and Possible 404 Permit, Birmingham Metropolitan Area, Jefferson County, AL.

Summary: EPA had minor concerns over impacts to do with residential noise levels and riparian wetlands.

Dated: August 1, 1989.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 89–18295 Filed 8–3–89; 8:45 am]

BILLING CODE 6560–50–M

[ER–FRL–36249]

Environmental Impact Statements; Availability

Responsible Agency: Office of Federal Activities, General Information (202) 382–5073 or (202) 382–5075. Availability of Environmental Impact Statements. Filed July 24, 1989 Through July 28, 1989. Pursuant to 40 CFR 1506.9.

EIS No. 890206, Draft, AFS, UT, Seven Peaks All Season Ski Resort, Development and Management, Special Use Permit, Provo Peak Basin Area, Uinta National Forest, Utah County, UT, Due: September 18, 1989, Contact: Larry Call (801) 377–5780.

EIS No. 890207, Final, BOP, IL, Greenville Federal Correctional Institution, Construction and Operation, Bond County, IL, Due: September 5, 1989, Contact: William Patrick (202) 272–6871.

EIS No. 890208, Final, USN, NC, Mid-Atlantic Electronic Warfare Range (MAEWR) Within Restricted Airspace R–5306A Establishment, Beaufort, Carteret, Craven, Hyde and Pamlico Counties, NC, Due: September 5, 1989, Contact: Charles H. Maguire (804) 445–2307.

EIS No. 890209, FSuppl, UMT, CA, Los Angeles Metro Rail Rapid Transit Project, Updated Information and Impacts of the New Locally Preferred Alternative, Funding, Los Angeles County, CA, Due: September 5, 1989, Contact: Carmen Clark (415) 974–7317.

EIS No. 890210, Final, BOP, PR, Guaynabo Metropolitan Detention Center, Construction and Operation, Implementation, PR, Due: September 5, 1989, Contact: William Patrick (202) 272–6871.

Dated: August 1, 1989.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 89–18294 Filed 8–3–89; 8:45 am]

BILLING CODE 6560–50–M

[FRL–3624–7

National Drinking Water Advisory Council; Open Meeting

Under section 10(a)(2) of Public Law 92–423, "The Federal Advisory Committee Act," notice is hereby given that a meeting of the National Drinking Water Advisory Council established under the Safe Drinking Water Act, as amended (42 U.S.C. S300F *et seq.*), will be held on August 20, 1989 from 1:00 p.m. until 3:00 p.m. in the EPA Auditorium, U.S. Environmental Protection Agency (EPA) Headquarters, 401 M Street SW., Washington, DC. Council members will be participating by Conference Call.

The purpose of the meeting is to prepare recommendations for the Administrator of EPA on the final regulatory structure (e.g. maximum contaminant level or treatment technique) for the National Primary Drinking Water Regulation for Lead and Copper and on whether lead service line replacement should be a component of the final regulation.

The meeting will be open to the public. The Council encourages the hearing of outside statements and will allocate the first hour of their conference call for this purpose. Oral statement will be limited to five minutes and it is preferred that only one person present the statement. Any outside parties interested in presenting an oral statement should petition the Council by telephone at (202) 2285 before August 28, 1989. Due to time constraints, oral statements will be reserved on a first come, first served basis. When one hour block is filled, no more time will be available.

The Council encourages written statements that may be sent to them prior to the meeting. Anyone wishing to provide a written statement, must do so before August 21, 1989. These statements should be sent to: Charlene E. Shaw, Designated Federal Official, National Drinking Water Advisory Council, U.S. Environmental Protection Agency, Office of Drinking Water (WH–550A), 401 M Street, SW., Washington, DC 20460. Written statements will be recognized at the Council meeting and will become part of the permanent meeting record.

Any member of the public that would like to attend the Council meeting, present an oral statement, or submit a written statement, should contact Ms. Charlene Shaw at the address listed above, or call (202) 382–2285.

Dated: July 28, 1989.

Rebecca W. Hanmer,

Acting Assistant Administrator for Water.

[FR Doc. 89–18258 Filed 8–3–89; 8:45 am]

BILLING CODE 6560–50–M

[FRL-3624-6]

National Drinking Water Advisory Council; Open Meeting

Under section 10(a)(2) of Public Law 92-423, "The Federal Advisory Committee Act," notice is hereby given that a meeting of the National Drinking Water Advisory Council established under the Safe Drinking Water Act, as amended (42 U.S.C. S300F *et seq.*), will be held on August 18, 1989 from 1:00 p.m. until 3:00 p.m. in Room #2, South Conference Center, U.S. Environmental Protection Agency (EPA) Headquarters, 401 M Street SW., Washington, DC. Council members will be participating by Conference Call.

The purpose of the meeting is to prepare recommendations for the Administrator of EPA on the proposed National Primary and Secondary Drinking Water Regulations for 30 synthetic organic chemicals (SOCs) and 8 inorganic chemicals (Phase 2).

The meeting will be open to the public. The Council encourages the hearing of outside statements and will allocate the first hour of their conference call for this purpose. Oral statements will be limited to five minutes and it is preferred that only one person present the statement. Any outside parties interested in presenting an oral statement should petition the Council by telephone at (202) 382-2285 before August 16, 1989. Due to time constraints, oral statements will be reserved on a first come, first served basis. When the one hour block is filled, no more time will be available.

The Council encourages written statements that may be sent to them prior to the meeting. Anyone wishing to provide a written statement, must do so before August 11, 1989. These statements should be sent to: Charlene E. Shaw, Designated Federal Official, National Drinking Water Advisory Council, U.S. Environmental Protection Agency, Office of Drinking Water (WH-550A), 401 M Street, SW., Washington, DC 20460. Written statements will be recognized at the Council meeting and will become part of the permanent meeting record.

Any member of the public that would like to attend the Council meeting, present an oral statement, or submit a written statement, should contact Ms. Charlene Shaw at the address listed above, or call (202) 382-2285.

Dated: July 28, 1989.

Rebecca W. Hanmer,

Acting Assistant Administrator for Water.

[FR Doc. 89-18259 Filed 8-3-89; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-44534; FRL-3625-3]

TSCA Chemical Testing; Receipt of Test Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the receipt of test data on commercial hexane (CAS Nos. 96-37-7 and 110-54-3) and diethylene glycol butyl ether (DGBE) (CAS No. 112-34-5), submitted pursant to a final test rule under the Toxic Substances Control Act (TSCA). This notice also announces the receipt of test data on aniline (CAS No. 62-53-3) and methyl tert-butyl ether (MTBE) (CAS No. 1634-04-4), submitted pursuant to a consent order under TSCA. Publication of this notice is in compliance with section 4(d) of TSCA.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. EB-44, 401 M St., SW., Washington, DC 20460, (202) 554-1404, TDD (202) 554-0551.

SUPPLEMENTARY INFORMATION: Section 4(d) of TSCA requires EPA to publish a notice in the **Federal Register** reporting the receipt of test data submitted pursuant to test rules promulgated under section 4(a) within 15 days after it is received. Under 40 CFR 790.60, all TSCA section 4 consent orders must contain a statement that results of testing conducted pursuant to these testing consent orders will be announced to the public in accordance with section 4(d).

I. Test Data Submissions

Test data for commercial hexane was submitted by the American Petroleum Institute pursuant to a test rule at 40 CFR 799.2155. It was received by EPA on July 17, 1989. The submission describes salmonella/mammalian-microsome mutagenicity assay of the vapor phase of commercial hexane using the desiccator methodology. Mutagenicity testing is required by this test rule.

Test data for (DGBE) was submitted by the Chemical Manufacturers Association, on behalf of Union Carbide Corporation, pursuant to a test rule at 40 CFR 799.1560. It was received by EPA on July 13, 1989. The submission describes a 90-day dermal toxicity study with a subgroup to evaluate fertility in rats with DGBE. Subchronic toxicity testing is required by this test rule.

Test data for aniline was submitted by the Synthetic Organic Chemical Manufacturers Association, Inc., pursuant to a consent order at 40 CFR 799.5000. It was received by EPA on July 14, 1989. The submission describes a mouse bone marrow micronucleus assay of aniline. In vivo mammalian bone marrow cytogenetics tests: Micronucleus assay are required by this consent order.

Test data for MTBE was submitted by the Methyl Tertiary Butyl Ether Committee (MTBE Health Effects Testing Task Force) on behalf of: Amoco Corporation, ARCO Chemical Company, Exxon Chemical Company—a division of Exxon Corporation, Sun Refining and Marketing Company and Texaco Chemical Company, pursuant to a consent order at 40 CFR 799.5000. It was received by EPA on July 12, 1989. The submission describes an inhalation developmental toxicity study in rabbits for MTBE. Developmental toxicity testing is required by this consent order.

EPA has initiated its review and evaluation process for these data submissions. At this time, the Agency is unable to provide any determination as to the completeness of these submissions.

II. Public Record

EPA has established a public record for this TSCA section 4(d) receipt of data notice (docket number OPTS-44534). This record includes copies of all studies reported in this notice. The record is available for inspection from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays, in the TSCA Public Docket Office, Rm. NE-G004, 401 M St., SW., Washington, DC 20460.

Authority: 15 U.S.C. 2603.

Dated: July 31, 1989.

Joseph J. Merenda,

Director, Existing Chemical Assessment Division, Office of Toxic Substances.

[FR Doc. 89-18260 Filed 8-3-89; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Information Collection Submitted to the Office of Management and Budget for Review

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of information collection submitted to the Office of Management and Budget (OMB) for review and approval under the Paperwork Reduction Act.

SUMMARY: The submission is summarized as follows:

Type of Review: Extension of expiration date without any change in substance or method of collection.

Title: Application for a Merger or Other Transaction Pursuant to section 8(c) of the Federal Deposit Insurance Act (Phantom or Corporate Reorganization).

Form Number: FDIC 6220/07.

OMB Number: 3064–0015.

Expiration Date of Current OMB Clearance: October 31, 1989.

Frequency of Response: On occasion.

Respondents: Insured nonmember banks who apply for FDIC approval to effect a merger transaction for the principal purpose of corporate reorganization.

Number of Respondents: 200.

Number of Responses per Respondent: 1.

Total Annual Responses: 200.

Average Number of Hours per Response: 20.

Total Annual Burden Hours: 4,000.

OMB Reviewer: Gary Waxman, (202) 395–7340, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FDIC Contact: John Keiper, (202) 898–3810, Assistant Executive Secretary, Room 6096, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

Comments: Comments on this collection of information are welcome and should be submitted on or before October 3, 1989.

ADDRESSES: A copy of the submission may be obtained by calling or writing the FDIC contact listed. Comments regarding the submission should be addressed to the OMB reviewer listed. The FDIC contact would also be interested in receiving a copy of the comments.

SUPPLEMENTARY INFORMATION: The FDIC is requesting OMB approval to extend the use of application form FDIC 6220/07 which is used by FDIC-supervised banks who apply for FDIC approval to effect a merger transaction under section 18(c) of the Federal Deposit Insurance Act (12 U.S.C. 1828(c)). This type of transaction involves a phantom bank merger or other merger transaction for the principal purpose of corporate reorganization. The application form requires the applicant to furnish information concerning the terms and conditions of the merger, structure of the transaction, and a statement of condition of recent date for the applicant and the other institution. The information collected on the form is used by the FDIC as a basis for evaluating certain factors as required by section 18(c) of the FDIC Act before approving the application.

Dated: July 28, 1989.

Robert E. Feldman,

Deputy Executive Secretary, Federal Deposit Insurance Corporation.

[FR Doc. 89–18276 Filed 8–3–89; 8:45 am]

BILLING CODE 6714–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–835–DR]

Louisiana; Amendment to a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Louisiana (FEMA–835–DR), dated July 18, 1989, and related determinations.

DATED: July 28, 1989.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646–3614.

NOTICE: Notice is hereby given that the incident period for this disaster is closed effective July 21, 1989.

(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. 89–18263 Filed 8–3–89; 8:45 am]

BILLING CODE 6718–02–M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., Room 10220. Interested parties may submit comments on each agreement to the Secretary, 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.: 224–200272.

Title: South Carolina State Ports Authority Terminal Agreement.

Parties:

South Carolina State Ports Authority (Authority)

Harmony Cruise Lines, Ltd. (HCL)

Synopsis: The Agreement provides for a nonexclusive license to HCL to use the Authority's passenger terminal facility at the south end of Union Pier Terminal for HCL's day excursion cruise service.

By Order of the Federal Maritime Commission.

Dated: July 31, 1989.

Joseph C. Polking,

Secretary.

[FR Doc. 89–18201 Filed 8–3–89; 8:45 am]

BILLING CODE 6730–01–M

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) prusuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, 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.: 212–010286–020.

Title: South Europe/U.S.A. Pool Agreement.

Parties:

Compania Trasatlantica Espanola, S.A.

Costa Container Line (A Division of Contship Containerlines Limited)

Evergreen Marine Corporation (Taiwan) Ltd.

Farrell Lines, Inc.

'Italia' di Navigazione, S.p.A.

Jugolinija

Lykes Lines (Lykes Bros. Steamship Co., Inc.)

A.P. Moller-Maersk Line

Nedlloyd Lines (Nedlloyd Lijnen B.V.)

P & O Containers (TFL) Ltd.

Zim Israel Navigation Company, Ltd.

Synopsis: The proposed modification would extend the existing Pool Period

from July 31, 1989, until September 30, 1989.

By Order of the Federal Maritime Commission.

Dated: July 31, 1989.

Joseph C. Polking,

Secretary.

[FR Doc. 89-18202 Filed 8-3-89; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Northern Trust Corp.; Application To Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 21, 1989.

A. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Northern Trust Corporation,* Chicago, Illinois; to engage *de novo* through Northern Trust Brokerage, Inc., Chicago, Illinois, in combining investment advice with its existing brokerage services activities to institutional and retail customers, pursuant to § 225.25(b)(4) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, July 31, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-18214 Filed 8-3-89; 8:45 am]

BILLING CODE 6210-01-M

Ocean State Bancshares Corp., et al.; Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicted. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than August 28, 1989.

A. **Federal Reserve Bank of Boston** (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *Ocean State Bancshares Corporation,* Middletown, Rhode Island; to become a bank holding company by acquiring 100 percent of the voting shares of Ocean State National Bank, Middletown, Rhode Island.

B. **Federal Reserve Bank of New York** (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *West Jersey Bancshares, Inc.,* Fairfield, New Jersey; to become a bank holding company by acquiring 100 percent of the voting shares of West Jersey Community Bank, Fairfield, New Jersey.

C. **Federal Reserve Bank of Cleveland** (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Citizens Bancshares, Inc.,* Salineville, Ohio; to acquire 97 percent of the voting shares of First National Bank of Chester, Chester, West Virginia.

D. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street NW., Atlanta, Georgia 30303:

1. *First Security Corporation,* Norcross, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of First Security National Bank, Norcross, Georgia.

E. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South La Salle Street, Chicago, Illinois 60690:

1. *Overton Bank Shares, Inc.,* Mondamin, Iowa; to become a bank holding company by acquiring 100 percent of the voting shares of Mondamin Savings Bank, Mondamin, Iowa.

F. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Bancook Corporation,* Cook, Nebraska; to acquire 87.5 percent of the voting shares of Farmers Bank, Prairie Home, Nebraska.

2. *Tulsa National Bancshares, Inc.,* Tulsa, Oklahoma; to become a bank holding company by acquiring 100 percent of the voting shares to Tulsa National Bank, Tulsa, Oklahoma.

Board of Governors of the Federal Reserve System, July 31, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-18215 Filed 8-3-89; 8:45 am]

BILLING CODE 6210-01-M

Albert P. Qualls, Jr.; Change in Bank Control Notice; Acquisition of Shares of Banks or Bank Holding Companies.

The notificant listed below has applied under the Change in Bank Control. Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reseve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than August 28, 1989.

A. Federal Reserve Bank of Atlanta (Robert E., Heck, Vice President) 104 Marietta Street NW., Atlanta, Georgia 30303:

1. *Albert P. Qualls,Jr.*, Fort Walton Beach, Florida; to acquire 68.05 percent of the voting shares of American National Financial Corporation, Panama City, Florida, and thereby indirectly acquire American National Bank, Panama City, Florida.

Board of Governors of the Federal Reserve System, July 31, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-18216 Filed 8-3-89; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL TRADE COMMISSION

[File No. 891-0069]

Societe Nationale Elf Aquitaine, et al; Proposed Consent Agreement With Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of Federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require, among other things, Societe Nationale Elf Aquitaine, a corporation based in Paris, to divest a chemical plant in New Jersey, and to "hold separate" the entire fluorocarbon division to eliminate antitrust concerns that would be created by its acquisition of Pennwalt Corp..

DATE: Comments must be received on or before October 3, 1989.

ADDRESS: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pennsylvania Ave. NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Edward F. Glynn, Jr., FTC/S-2627, Washington, DC 20580, (202) 326-2955. off.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement(s) containing a consent order(s) to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has(ve) been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Agreement Containing Consent Order; Societe Nationale Elf Aquitaine et al.

In the matter of Societe Nationale Elf Aquitaine, a Corporation, Atochem S.A., a Corporation, Elf Aquitaine, Inc., a Corporation, Atochem Inc., a Corporation, Atochem North America, Inc., a Corporation, and Pennwalt Corporation, a Corporation.

The Federal Trade Commission (the "Commission"), having initiated an investigation of the proposed acquisition of the voting securities of Pennwalt Corporation ("Pennwalt") by Societe Nationale Elf Aquitaine ("SNEA") (SNEA, Atochem S.A., Elf Aquitaine, Inc., Atochem, Inc., Atochem North America, Inc., and Pennwalt collectively the "Proposed Respondents"), and it now appearing that Proposed Respondents are willing to enter into an agreement containing an order to divest certain assets and providing for other relief,

It is hereby agreed by and between Proposed Respondents, by their duly authorized officers and attorneys, and counsel for the Commission that:

1. Proposed Respondent SNEA is a French corporation with its principal executive offices located at Tour Elf, Paris La Defense, France.

2. Proposed Respondent Pennwalt is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Pennsylvania with its principal executive offices located at Three Parkway, Philadelphia, Pennsylvania 19102, USA.

3. Proposed Respondent Atochem S.A. is a French corporation with its principal executive offices located at 4 cour Michelet, Paris La Defense, France.

4. Proposed Respondent Elf Aquitaine, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware with its principal executive offices located at High Ridge Park, Stamford, Connecticut 06904, USA.

5. Proposed Respondent Atochem North America, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware with its principal executive offices located at 266 Harristown Road, Glen Rock, New Jersey 07452, USA.

6. Proposed Respondent Atochem Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware with its principal executive offices located at 266 Harristown Road, Glen Rock, New Jersey 07452, USA.

7. Proposed Respondents SNEA and Atochem S.A. submit to the jurisdiction of the Commission for the purpose of the entry and enforcement of the Order contained in this Agreement, and to the jurisdiction of the courts of the United States for the purpose of enforcing the Order.

8. Proposed Respondents Atochem Inc., Elf Aquitaine, Inc., Atochem North America, Inc. and Pennwalt admit all the jurisdictional facts set forth in the draft of complaint here attached.

9. Proposed Respondents waive:

a. Any further procedural steps;

b. The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

c. All rights to seek judicial review or otherwise to challenge or contest the validity of the Order entered pursuant to this agreement; and

d. All rights under the Equal Access to Justice Act.

10. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify Proposed Respondents, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

11. This agreement is for settlement purposes only and does not constitute an admission by Proposed Respondents that the law has been violated as alleged in the draft of complaint here attached.

12. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant

to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to Proposed Respondents, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following Order to divest certain assets and providing for other relief in disposition of the proceeding, and (2) make information public with respect thereto. When so entered, the Order shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The Order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to Order to Proposed Respondents or to their American counsel's addresses as stated in this Agreement shall constitute service. Proposed Respondents waive any right they may have to any other manner of service. The complaint may be used in construing the terms of the Order, and no agreement, understanding, representation, or interpretation not contained in the Order or the Agreement may be used to vary or contradict the terms of the Order.

13. Proposed Respondents have read the proposed complaint and Order contemplated hereby. They understand that once the Order has been issued, they will be required to file one or more compliance reports showing that they have fully complied with the Order. Proposed Respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the Order after it becomes final.

Order

I.

As used in this Order, the following definitions shall apply:

a. "Acquisition" means SNEA's acquisition of any or all voting securities of Pennwalt.

b. "SNEA" means Société Nationale Elf Aquitaine, a French corporation, its predecessors, any other corporations, partnerships, joint ventures, companies, subsidiaries, divisions, groups and affiliates that Société Nationale Elf Aquitaine controls, directly or indirectly, and their respective directors, officers, employees, agents and representatives, and their respective successors and assigns.

c. "Pennwalt" means Pennwalt Corporation, a Pennsylvania corporation, as it was constituted prior to the acquisition, its predecessors, any other corporations, partnerships, joint ventures, companies, subsidiaries, divisions, groups and affiliates Pennwalt controls, directly or indirectly, and their respective directors, officers, employees, agents and representatives, and their respective successors and assigns.

d. "Atochem" means Atochem S.A., a French corporation, a directly wholly-owned subsidiary of SNEA, its predecessors, any other corporations, partnerships, joint ventures, companies, subsidiaries, divisions, groups and affiliates Atochem S.A. controls, directly or indirectly, and their respective directors, officers, employees, agents and representatives, and their respective successors and assigns.

e. "EAI" means Elf Aquitaine, Inc., a Delaware corporation and a directly wholly-owned subsidiary of SNEA, its predecessors, any other corporations, partnerships, joint ventures, companies, subsidiaries, divisions, groups and affiliates Elf Aquitaine, Inc. controls, directly or indirectly, and their respective directors, officers, employees, agents and representatives, and their respective successors and assigns.

f. "Atochem Inc." means Atochem Inc., a Delaware corporation and an indirectly wholly-owned subsidiary of SNEA, its predecessors, any other corporations, partnerships, joint ventures, companies, subsidiaries, divisions, groups and affiliates Atochem Inc. controls, directly or indirectly, and their respective directors, officers, employees, agents and representatives, and their respective successors and assigns.

g. "ANA" means Atochem North America, Inc., a Delaware corporation and an indirectly wholly-owned subsidiary of SNEA, its predecessors, any other corporations, partnerships, joint ventures, companies, subsidiaries, divisions, groups and affiliates Atochem North America, Inc. controls, directly or indirectly, and their respective directors, officers, employees, agents and representatives, and their respective successors and assigns.

h. "Respondents" means SNEA, Atochem S.A., Elf Aquitaine, Inc., Atochem Inc., Atochem North America, Inc. and Pennwalt.

i. "PVDF" means polyvinylidene fluoride homopolymers and copolymers.

j. "VF_2" means vinylidene fluoride monomer.

k. "Thorofare Plant" means the manufacturing facility currently owned and operated by Pennwalt located at Thorofare, New Jersey, and all of its assets, title, properties, interests, rights and privileges, of whatever nature, tangible and intangible, including without limitation all buildings, machinery, equipment, customer lists, and other property of whatever description, and including the right to use in the United States on a nonexclusive basis (under a license, lease, contract or similar arrangement) Pennwalt's current technology and know-how employed to produce HCFC-142b and VF_2 at such plant and all Pennwalt's commercial grades of PVDF whether or not produced at such plant.

l. "Acquirer" shall have the meaning given to the term in Section II.

m. "Commission" means the Federal Trade Commission.

II

It is ordered, That Respondents shall divest, absolutely and in good faith, to an acquirer that receives the prior approval of the Commission (the "Acquirer"), within twelve (12) months after the date this Order becomes final, the Thorofare Plant.

III

It is further ordered, That:

A. If Respondents have not divested the Thorofare Plant as contemplated by Section II within the twelve-month period provided for in Section II, Respondents shall consent to the appointment of a trustee empowered to divest the Thorofare Plant. In the event that the Commission brings an action pursuant to section 5(*l*) of the Federal Trade Commission Act, 15 U.S.C. 45(*l*), or any other statute enforced by the Commission, Respondents shall consent to the appointment of a trustee in such action. The appointment of a trustee shall not preclude the Commission from seeking civil penalties or any other relief available to it for any failure by Respondents to comply with this Order.

B. The trustee shall also be empowered to include in the assets to be divested a commitment from Respondents to provide the Acquirer for a period of at least one (1) year from the date of divestiture with technical assistance required by said Acquirer to operate the Thorofare Plant using the proprietary technology and know-how licensed as part of the divestiture of the Thorofare Plant. If the commitment to provide technical assistance to the Acquirer is included in the assets that the trustee is empowered to divest and if the Commission determines that Respondents have not complied with its commitment, the Commission may extend the period of the commitment in addition to any other remedies available to the Commission.

C. The trustee shall use his or her best efforts to negotiate the most favorable price and terms available in each

contract that is submitted to the Commission, subject to Respondents' absolute and unconditional obligation to divest at no minimum price. The trustee shall make the divestitures contemplated by this Section III only to an Acquirer that receives the prior approval of the Commission, and only in a manner that receives the prior approval of the Commission.

D. If a trustee (the "Trustee") is appointed by the Commission or a court in order to discharge Respondents' obligations under Section III of this Order, the following terms and conditions shall apply to the Trustee's duties and responsibilities:

(1) The Commission shall select the Trustee, subject to the consent of Respondents, which consent shall not be unreasonably withheld. The Trustee shall be a person with experience and expertise in acquisitions and divestitures.

(2) The Trustee shall have the power and authority to accomplish the divestiture contemplated by Section III of this Order. The Trustee shall have twelve (12) months from the date of appointment to accomplish the divestiture, which shall be subject to the prior approval of the Commission and, if the Trustee is appointed by a court, subject also to the prior approval of the court. If, however, at the end of such twelve-month period the Trustee has submitted a plan of divestiture or believes that divestiture can be achieved within a reasonable time, the divestiture period may be extended by the Commission, or by the court for a court-appointed trustee; *Provided, however,* That the Commission or court may only extend the divestiture period two (2) times.

(3) Respondents shall make available in the United States to the Trustee and the Trustee shall have full and complete access to the personnel, books, records and facilities of any businesses that the Trustee has the duty to divest. Respondents shall develop such financial or other information as the Trustee may reasonably request and shall cooperate with the Trustee. Respondents shall take no action to interfere with or impede the Trustee's accomplishment of the divestiture.

(4) The Trustee shall use his or her best efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to Respondents' absolute and unconditional obligation to divest at no minimum price.

(5) The Trustee shall serve at the cost and expense of Respondents, on such reasonable and customary terms and conditions as the Commission or a court may set. The Trustee shall have authority to employ such consultants, accountants, attorneys or other persons reasonably necessary to carry out the Trustee's duties and responsibilities and Respondents shall bear the expense for such services. The Trustee shall account for all monies derived from the sale and all expenses incurred. After approval by the Commission and, in the case of a court-appointed Trustee, by the court, of the account of the Trustee, including fees for his or her services, all remaining monies shall be paid at the direction of Respondents and the Trustee's power shall be terminated. The Trustee's compensation shall be based at least in significant part on a commission arrangement contingent on the Trustee's accomplishing the divestiture of the Thorofare Plant.

(6) Within sixty (60) days after appointment of the Trustee, and subject to the prior approval of the Commission, and, in the case of a court-appointed Trustee, of the court, the Respondents shall execute a trust agreement that transfers to the Trustee all rights and powers necessary to permit the Trustee to effect the divestiture for which the Trustee is responsible.

(7) If the Trustee ceases to act or fails to act diligently, one or more substitute Trustees shall be appointed in the same manner as provided in this Section III of the Order.

(8) The Trustee shall report in writing to Respondents and the Commission every sixty (60) days concerning each Trustee's efforts to accomplish the divestiture.

IV

It is further ordered, That:

A. The Agreement to Hold Separate shall continue in effect until Respondents' divestiture obligations under Sections II and III of the Order are satisfied, or until such other time as the Agreement to Hold Separate provides, and the Respondents shall comply with all terms of said Agreement.

B. The divestiture required by the Order shall be made only to an Acquirer that receives the prior approval of the Commission, and only in a manner that receives the prior approval of the Commission. The purpose of the divestiture required by this Order is to ensure the continuation of an ongoing viable enterprise and to remedy the lessening of competition charged in the Commission's complaint.

C. Respondents shall take such action as is necessary to maintain the viability and marketability of the Thorofate Plant, and to prevent the destruction, removal or impairment of any assets subject to possible divestiture pursuant to this Order except in the ordinary course of business and except for ordinary wear and tear.

V

It is further ordered, That within sixty (60) days after the date of this Order becomes final and every sixty (60) days thereafter until Respondents have fully satisfied the divestiture obligation of this Order, Respondents shall submit to the Commission a verified written report setting forth in detail the manner and form in which they intend to comply, are complying or have complied with the Order. Respondents shall include in their compliance reports, among other things that are required from time to time, a full description of all contacts or negotiations with prospective acquirers for the divestiture required by this Order, including the identity of all parties contacted. Respondents also shall include in their compliance reports copies of all written communications to and from such parties, and all internal memoranda, reports, and recommendations concerning the required divestiture.

VI

It is further ordered, That for the purposes of determining or securing compliance with this Order, and subject to any legally recognized privilege, upon written request and on reasonable notice to Respondents made to their principal offices, Respondents shall make available to any duly authorized representatives of the Commission:

A. All books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of Respondents relating to any matters contained in this Order, for inspection and copying in the United States during office hours and in the presence of counsel; and

B. Upon five (5) days' notice to Respondents, and without restraint or interference from Respondents, for interview in the United States, officers or employees of Respondents, who may have counsel present, regarding such matters.

VII

It is further ordered, That Respondents shall notify the Commission at least thirty (30) days prior to any proposed change in any Respondent, such as dissolution, assignment or sale resulting in the emergency of a successor, or the creation or dissolution of subsidiaries or any other change that may affect compliance with this Order.

VIII

It is further ordered, That, for a period of ten (10) years from the date this order becomes final, each Respondent shall cease and desist from acquiring, without the prior approval of the Commission, directly or indirectly, through subsidiaries or otherwise, assets used or previously used in (and still suitable for use in), or the whole or any part of the stock or share capital of, or interest in, any company engaged in, the manufacture or sale of PVDF or VF_2 in the United States. One year from the date this Order becomes final and annually thereafter for nine (9) more years, Respondents shall file with the Commission a verified written report of their compliance with this paragraph.

Agreement To Hold Separate

This Agreement to Hold Separate (the "Agreement") is by and between Société Nationale Elf Aquitaine, a French limited company ("SNEA"), Atochem S.A., a French limited company, Atochem North America, Inc., a Delaware corporation, Elf Aquitaine, Inc., a Delaware corporation, Atochem Inc., a Delaware corporation, Pennwalt Corporation, a Pennsylvania corporation (collectively the "Respondents"), and the Federal Trade Commission (the "Commission"), an independent agency of the United States Government, established under the Federal Trade Commission Act of 1914, 15 U.S.C. 41 *et seq.* (Respondents and the Commission collectively, the "Parties")

Premises

Whereas, Elf Aquitaine, Inc. ("EAI"), a direct wholly-owned subsidiary of SNEA, and AC Development, Inc. ("AC"), an indirect wholly-owned subsidiary of SNEA, commenced a tender offer on March 23, 1989, as amended, for all outstanding shares of Pennwalt Corporation ("Pennwalt"), with the intent of effecting a merger of AC into Pennwalt, pursuant to which Pennwalt would become a wholly-owned subsidiary of SNEA (the "Acquisition"), all as contemplated by and provided for in that certain Agreement and Plan of Merger dated as of March 20, 1989, among SNEA, EAI, AC and Pennwalt; and

Whereas, the Commission has reason to believe that the Acquisition would violate the statutes enforced by the Commission; and

Whereas, if the Commission accepts the attached Agreement Containing Consent Order (the "Consent Order"), the Commission must place it on the public record for a period of at least sixty (60) days and may subsequently withdraw such acceptance pursuant to the provisions of Section 2.34 of the Commission's Rules; and

Whereas, the Commmission is concerned that if an understanding is not reached to preserve the status quo ante and to hold separate the assets and businesses of the Fluorochemicals Division of Pennwalt (the "Division") until the divestiture contemplated by the Consent Order has been made, divestiture resulting from any proceeding challenging the legality of the acquisition might not be possible or might be less than an effective remedy; and

Whereas, the purpose of this Agreement and the Consent Order is to preserve the assets to be divested as a viable business pending divestiture, and to preserve the Commission's ability to require the divestiture of properties described in the Consent Order and to remedy any anticompetitive aspects of the Acquisition; and

Whereas, Respondents' entering into this Agreement shall in no way be construed as an admission by Respondents that the Acquisition is unlawful; and

Whereas, Respondents understand that no act or transaction contemplated by this Agreement shall be deemed immune or exempt from the provisions of the antitrust laws or the Federal Trade Commission Act by reason of anything contained in this Agreement.

Now, Therefore, the Parties agree, upon the understanding that the Commission has determined that the Acquisition would be challenged, and in consideration of the Commission's agreement that, unless the Commission determines to reject the Consent Order, it will not seek further relief from Respondents with respect to the Acquisition, except that the Commission may exercise any and all rights to enforce this Agreement and the Consent Order to which it is annexed and made a part thereof, as follows:

1. Respondents agree to execute and be bound by the attached Consent Order.

2. Respondents agree that, until the first to occur of (i) three business days after the Commission withdraws its acceptance of the Consent Order pursuant to the provisions of § 2.34 of the Commisison's Rules; or (ii) if the Commission issues the Consent Order finally, until the date the divestiture required by the Consent Order is accomplished, Respondents shall hold the Divison separate and apart on the following terms and conditions:

a. All of the Division's assets and businesses shall be operated independently of Respondents.

b. Except as is necessary to assure compliance with this Agreement and the Consent Order, Respondents shall not exercise direction or control over, or influence directly or indirectly, the Division.

c. Respondents shall not change the composition of the management of the Division, except that they may replace the head of the Division for cause.

d. Respondents shall not cause or permit the wasting or deterioration of the Division assets in any manner that impairs the marketability of such assets and operations or that impairs in any manner the viability of the assets and operations as a going concern until such time as the divestiture to a Commission-approved acquirer, as required by the Consent Order, has been accomplished.

e. Respondents shall maintain separate financial and operating books and records, shall prepare separate financial statements for the Division assets and shall, within ten (10) days after they become available, provide the Commission's Bureau of Competition with quarterly and annual financial statements for the Division assets, which annual financial statements shall be audited and certified by independent certified public accountants.

f. Except as required by law, and except to the extent that necessary information is exchanged in the course of defending investigations or litigation, or to comply with any of Respondent's obligations under this Agreement or the Consent Order, Respondents shall not receive or have access to, or the use of, any "material confidential information" relating to the Division not in the public domain, except as such information would be available in the normal course of business if the Acquisition had not taken place. Any such information that is obtained pursuant to this subparagraph shall only be used for the purposes set out in this subparagraph. "Material confidential information", as used herein, means competitively sensitive or proprietary information, including but not limited to customer lists, price information, marketing methods, patents, technologies, processes, and sales of individual products and product lines, but shall not include information in the public domain, information which would be available to Respondents in the normal course of business if the Acquisition had not taken place, information independently known to Respondents from sources other than Pennwalt, and information on Division-wide sales and profits. Respondents shall not disclose to any third person or use to obtain any advantage for itself any material

confidential information which it may be permitted to receive under this Agreement.

g. Nothing herein shall prevent Respondents requiring their prior approval of the following actions concerning the Division: (i) Capital expenditures in excess of $1,500,000; (ii) sale of any capital assets for more than $1,500,000; and (iii) actions reasonably necessary to assure that the Parties comply with their obligations under the Consent Order.

h. Notwithstanding paragraphs a through g above Respondents may engage in joint research and development activities with the Division with respect to chlorofluorocarbons ("CFCs") substitutes.

3. Should the Commission seek in any proceeding to compel Respondents to divest itself of the shares of Pennwalt stock that SNEA may acquire, or to compel Respondents to divest any assets or businesses Respondents may hold, or to seek any other injunctive or equitable relief, Respondents shall not raise any objection based upon the expiration of the applicable Hart-Scott-Rodino Antitrust Improvements Act waiting period or the fact that the Commission has permitted Pennwalt stock to be acquired. Respondents also waive all rights to contest the validity of this Agreement.

4. In the event the Commission has not finally approved and issued the Consent Order within one hundred twenty (120) days of its publication in the **Federal Register**, Respondents may, at their option, terminate this Agreement to Hold Separate by delivering written notice of termination to the Commission, which termination shall be effective ten (10) days after the Commission's receipt of such notice, and this Agreement shall thereafter be of no further force and effect. If this Agreement is so terminated, the Commission may take such action as it deems appropriate, including but not limited to an action pursuant to section 13(b) of the Federal Trade Commission Act, 15 U.S.C. 53(b). Termination of this Agreement to Hold Separate shall in no way operate to terminate the Agreement Containing Consent Order that Respondents have entered into in this matter.

5. For the purpose of determining or securing compliance with this Agreement, subject to any legally recognized privilege, and upon written request and on reasonable notice to Respondents made to their principal offices, Respondents shall make available to any duly authorized representatives of the Commission:

a. All books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of Respondents relating to any matters contained in this Agreement, for inspection and copying in the United States during office hours and in the presence of counsel; and

b. Upon five (5) days' notice to Respondents and without restraint or interference from Respondents for interview in the United States, officers or employees of Respondents, who may have counsel present, regarding such matters.

Any information or documents obtained by the Commission from Respondents shall be accorded such confidential treatment as is available under sections 6(f) and 21 of the Federal Trade Commission Act, 15 U.S.C. 46(f) and 57b–2.

6. This Agreement shall not be binding until approved by the Commission.

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission ("Commission") has accepted, subject to final approval, from Societe Nationale Elf Aquitaine ("SNEA"); Atochem S.A.; Elf Aquitaine, Inc.; Atochem North America, Inc.; Atochem, Inc. (collectively "Elf"); and the Pennwalt Corporation ("Pennwalt"), an Agreement Containing Consent Order. The Commission is placing the agreement on the public record for sixty (60) days for reception of comments from interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The Commission's investigation of this matter concerned a proposed acquisition by Elf of Pennwalt. Pennwalt is a specialty chemical manufacturer. SNEA, which is a French corporation, is 54% owned by the French Government and is principally engaged in the petroleum industry. Through its Atochem S.A. and Atochem, Inc. subsidiaries, SNEA also manufacturers and sells commodity and specialty chemicals.

The Commission has reason to believe that Elf's acquisition of Pennwalt would substantially lessen competition in two markets: vinylidene fluoride ("VF_2") and polyvinylidene fluoride ("PVDF"), worldwide, in violation of section 7 of the Clayton Act and section 5 of the Federal Trade Commission Act.

The Agreement Containing Consent Order ("Order") would, if issued by the Commission, settle the complaint that alleges anticompetitive effects in the VF_2 and PVDF markets.

Under the terms of the proposed Order, Elf must divest Pennwalt's Thorofare, New Jersey plant, which produces VF_2 and PVDF, to a Commission approved purchaser. If Elf fails to complete the required divestiture within a twelve-month period, the Commission may authorize a trustee to divest the plant. The Thorofare plant is one of two plants that Pennwalt currently owns which produces VF_2 and PVDF, the other being at Calvert City, Kentucky. Elf produces VF_2 and PVDF in France.

The Order also requires that, until the divestiture required by the Order is approved by the Commission, Elf must hold Pennwalt's Fluorochemicals Division separate and apart from other entities owned by Elf.

For a period of ten (10) years from its effective date, the proposed Order also prohibits Elf from making acquisitions, without prior Commission approval, of assets or businesses that produce or sell VF_2 or PVDF in the United States.

It is anticipated that the proposed Order would resolve the competitive problems alleged in the Complaint. The purpose of this analysis is to invite public comment concerning the Order, in order to aid the Commission in its determination of whether it should make final the Order contained in the agreement.

This analysis is not intended to constitute an official interpretation of the agreement and proposed Order, nor is it intended to modify the terms of the agreement and proposed Order in any way.

Donald S. Clark,

Secretary.

[FR Doc. 89–18300 Filed 8–3–89; 8:45 am]

BILLING CODE 6750–01–M

GENERAL SERVICES ADMINISTRATION

Agency Information Collections Activities Under OMB Review

The GSA hereby gives notice under the Paperwork Reduction Act of 1980 that it is requesting the Office of Management and Budget (OMB) to renew expiring information collection 3090–0010, New Item Application, GSA Form 1171. This information is necessary to determine the merits of new or improved products for possible introduction into the Federal Supply System.

AGENCY: Cataloging and Requisition Management Division (FCR), GSA.

ADDRESSES: Send comments to Bruce McConnell, GSA Desk Officer, Room 3235, NEOB, Washington, DC, 20503, and to Mary L. Cunningham, GSA Clearance Officer, General Services Administration (CAIR), F Street at 18th NW., Washington, DC 20405.

Annual Reporting Burden: Firms responding, 720; responses, 1 per year; average hours per response, .50; burden hours, 360.

FOR FURTHER INFORMATION CONTACT: Barbara Ellison, 703–557–7510.

Copy of Proposal: A copy of the proposal may be obtained from the Information Collection Management Branch (CAIR), Room 3014, GS Bldg., Washington, DC 20405, or by telephoning 202–535–7691.

Dated: July 28, 1989.

Emily C. Karam,

Director, Information Management Division (CAI).

[FR Doc. 89–18286 Filed 8–3–89; 8:45 am]

BILLING CODE 6820–24–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Alcohol, Drug Abuse, and Mental Health Administration

Advisory Committee Meetings in August; Correction

AGENCY: Alcohol, Drug Abuse, and Mental Health Administration, HHS.

ACTION: Correction of meeting notice.

SUMMARY: Public notice was given in the **Federal Register** on July 7, 1989, Volume 54, No. 129, on page 28721 that the Mental Health AIDS Research Review Committee would meet at the Holiday Inn Crowne Plaza, Rockville, MD on August 18. The meeting has been changed to August 24–25, and will meet at the Canterbury Hotel, 1733 N Street, NW., Washington, DC 20036. The status of the meeting has changed to: Open—August 24: 8:30–9:00 a.m., Closed—Otherwise.

Dated: July 31, 1989.

Peggy W. Cockrill,

Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 89–18222 Filed 8–3–89; 8:45 am]

BILLING CODE 4160–20–M

Centers for Disease Control

Amendment to Cervical Cancer Prevention and Control Program Announcement and Notice of Availability of Funds for Fiscal Year 1986

A notice announcing the availability of funds for Fiscal Year 1986 for cooperative agreements for the Cervical Cancer Prevention and Control Program was published in the **Federal Register** on Tuesday, June 17, 1986 (51 FR 21980). The notice is amended as follows:

On page 21980, first column, the heading "Authority," is revised as follows: This cooperative agreement is authorized by section 301(a) (42 U.S.C. 241(a)) and section 317(k)(3) (42 U.S.C. 247(b)) of the Public Health Service Act, as amended.

Dated: July 31, 1989.

Robert L. Foster,

Acting Director, Office of Program Support, Centers for Disease Control.

[FR Doc. 89–18210 Filed 8–3–89; 8:45 am]

BILLING CODE 4160–18–M

Food and Drug Administration

[Docket No. 89E–0200]

Determination of Regulatory Review Period for Purposes of Patent Extension; Cook Bird's Nest Vena Cava Filter

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for the Cook Bird's Nest Vena Cava Filter and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that medical device.

ADDRESSES: Written comments and petitions should be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: I. David Wolfson, Office of Health Affairs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1382.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For medical devices, the testing phase begins with a clinical investigation of the device and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the device and continues until permission to market the device is granted. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a medical device will include all of the testing phase and approval phase as specified in 35 U.S.C. 158(g)(3)(B).

FDA recently approved for marketing the medical device known as the Cook Bird's Nest Vena Cava Filter which is intended for percutaneous insertion into the inferior vena cavity to filter emboli from blood circulating through the vena cava. Subsequent to approval, the Patent and Trademark Office received a patent term restoration application for U.S. Patent No. 4,494,531 from Cook Incorporated. The Patent and Trademark Office requested FDA's assistance in determining the product's eligibility for patent term restoration, and in a letter dated June 27, 1989, FDA advised the Patent and Trademark Office that the medical device had undergone a regulatory review period and that the medical device represented the first permitted commercial marketing or use. This **Federal Register** notice now represents FDA's determination of the product's regulatory review period.

FDA has determined that the applicable regulatory review period for the Cook Bird's Nest Vena Cava Filter is 1,913 days. Of this time, 1,560 days occurred during the testing phase of the regulatory review period, while 353 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date a clinical investigation involving this device was begun:* February 1, 1984. The applicant claims that the investigational device exemption for this device was conditionally approved on February 15, 1984, which was the date on which clinical trials on humans involving this device began. However, FDA records indicate that the investigational device exemption was determined substantially complete for clinical studies to have begun on February 1, 1984.

2. *The date an application was initially submitted with respect to the device under section 515 of the Federal Food, Drug, and Cosmetic Act:* May 9, 1988. FDA has verified the applicant's claim that the premarket approval application (P850049) was submitted on May 9, 1988.

3. *The date the application was approved:* April 26, 1989. FDA has verified the applicant's claim that the premarket approval application (P850049) was approved on April 26, 1989.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 459 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before October 3, 1989, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before January 31, 1990, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, Part 1, 98th Cong., 2d Sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: July 28, 1989.

Allen B. Duncan,

Acting Associate Commissioner for Health Affairs.

[FR Doc. 89–18173 Filed 8–3–89; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 89N–0066]

Tracking of NDA and ANDA Reformulations for Solid, Oral, Immediate Release Drug Products

AGENCY: Food and Drug Administration.

ACTION: Extension of comment period.

SUMMARY: The Food and Drug Administration (FDA) is extending to October 11, 1989, the comment period for the notice published on April 12, 1989, in the **Federal Register** because of the delayed availability of the draft guidance referred to in the notice.

DATES: Written comments by October 11, 1989.

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

FOR FURTHER INFORMATION CONTACT: Adele S. Seifried, Center for Drug Evaluation and Research (HFD–362), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–295–8046.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of April 12, 1989 (54 FR 14686), FDA published a notice announcing the implementation of a system to improve its monitoring of the bioequivalence of drug products approved under new drug applications (NDA's) and abbreviated new drug applications (ANDA's). The notice solicited comments on distinctions between "major" and "minor" reformulations, and announced the availability of a draft guidance entitled "Waiver Policy for Change in Formulation and Proportionality of Formulation." The notice also solicited the submission of data on bioavailability problems associated with reformulating products.

The agency has received a large number of requests for copies of the draft guidance, which has been revised and retitled "Draft Guidance on Waiver Policy." Because of the delayed availability of copies of the guidance document, and in response to written and oral requests for an extension of the comment period, the agency is extending the comment period to October 11, 1989. Copies of the guidance document can be obtained from the Division of Bioequivalence (HFD–250), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, or by calling 301–443–0181.

Persons interested in commenting on reformulations or tracking of NDA and ANDA reformulations for solid, oral, immediate release drug products may, on or before October 11, 1989, submit to the Dockets Management Branch (address above) written comments to this notice. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. These comments will be considered in determining whether further agency action is appropriate. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: July 27, 1989.

Alan L. Hoeting,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 89–18223 Filed 8–1–89; 11:06 am]

BILLING CODE 4160–01–M

Family Support Administration

Forms Submitted to the Office of Management and Budget for Clearance

The Family Support Administration (FSA) will publish on Fridays information collection packages submitted to the Office of Management and Budget (OMB) for clearance, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). Following is the **Federal Register** submission for FSA:

Target Group Expenditure Report—FSA–302–NEW—The information collected is needed to determine the apropriate Federal Financial Participation Rate for the Job Opportunities and Basic Skills Training (JOBS) Program in each State. *Respondents:* State or local governments; *Number of Respondents:* 51; *Frequency of Response:* Annually; Average *Burden per response:* 22 hours; Estimated Annual *Burden:* 1,122 hours.

OMB Desk Clearance Officer: Justin Kopca.

Consideration will be given to comments and suggestions received within 60 days of publication. Written Comments and recommendations for the proposed information should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive

Office Building, Room 3201, 1725 17th Street, NW., Washington, DC 20503.

Dated: July 27, 1989.

Naomi B. Marr,

Associate Administrator, Office of Management and Information Systems.

[FR Doc. 89-18101 Filed 8-3-89; 8:45 am]

BILLING CODE 4150-04-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Consensus Development Conference on Treatment of Destructive Behaviors in Persons With Developmental Disabilities

Notice is hereby given of the NIH Consensus Development Conference on "Treatment of Destructive Behaviors in Persons with Developmental Disabilities" sponsored by the National Institute of Child Health and Human Development of the NIH; the National Institute of Mental Health of the Alcohol and Drug Abuse and Mental Health Administration; the Bureau of Maternal and Child Health of the Health Resources and Services Administration; and by the NIH Office of Medical Applications of Research. The conference will be held September 11-13, 1989 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.

There are some six million people in the U.S. with developmental disabilities, including autism and mental retardation. Some of these individuals engage in destructive behaviors that are injurious to themselves or to others. Some treatments designed to eliminate or modify these behaviors in persons with developmental disabilities are controversial and their effectiveness has been questioned.

The purpose of this conference is to provide a forum to examine the evidence regarding the effectiveness of the various approaches to treatment and to make recommendations that take into account: (1) The specific behavior; (2) the diagnosis of the individual; (3) the possible effects on the individuals, the family and the community; and (4) the treatment setting.

For several months, a panel has been working to examine the evidence regarding effectiveness and effect of various treatment approaches. The panel will write a draft consensus statement and report concerning the safety and effectiveness of the procedures being evaluated. The statement and report will be circulated widely to the medical profession, the public, the lay media, and medical publications. The panel will present its draft statement and report during the first two days of the conference. The schedule permits time for statements, comments, and discussion from the audience.

The panel's statement and report will respond to the following key questions:

- What are the nature, extent, and consequences of destructive behaviors in persons with developmental disabilities?
- What are the approaches to prevent, treat, and manage these behaviors?
- What is the evidence that these approaches, alone or in combination, eliminate or reduce destructive behaviors?
- What are the risks and benefits associated with the use of these approaches for the individual, family, and community?
- Based on the answers to the above questions, and taking into account (a) the behavior; (b) the diagnosis and functional level of the individual; (c) possible effects on the individual, family, and community; (d) the treatment setting; (ε) other factors, what recommendations can be made at present regarding the use of the different approaches?
- What research is needed on approaches for preventing, treating, and managing destructive behaviors in persons with developmental disabilities?

On the third day of the conference, following deliberation of new findings or evidence that might have been presented during the meeting, the panel will present its final consensus statement.

Information on the program may be obtained from: Susan Wallace, Prospect Associates, 1801 Rockville Pike, Suite 500, Rockville, Maryland 20852, (301) 468-6555.

Dated: July 27, 1989.

James B. Wyngaarden,

Director, NIH.

[FR Doc. 89-18277 Filed 8-3-89; 8:45 am]

BILLING CODE 4140-01-M

Meeting of the Fogarty International Center Advisory Board

Pursuant to Pub. L. 92-463, notice is hereby given of the thirteenth meeting of the Fogarty International Center (FIC) Advisory Board, September 26, 1989, in the Stone House (Building 16), at the National Institute of Health.

The meeting will be open to the public from 8:30 a.m. to 3:00 p.m. The morning agenda will include a report by the Director of the FIC; an overview of the Vth International AIDS Meeting, the status of NIH and FIC AIDS programs, and FIC opportunities for future international activities in AIDS; and a report on recent international meetings regarding international research in nursing.

The afternoon agenda will include reports on FIC's planning activities; FIC's Latin American Initiative; a discussion of the nominations process of the Scholar-in-Residence Program; and the status of implementation of the international study in oral health.

In accordance with the provisions of sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92-463, the meeting will be closed to the public from 3:15 p.m. to adjournment for the review, discussion, and evalution of research fellowship applications. The closed session will also review Scholar-in-Residence nominations, and Scholars' conference proposals, and proposals for international studies. These materials contain information of a proprietary nature, including detailed research protocols, designs, and other technical information; and personal information about individuals associated with the applications.

Myra Halem, Committee Management Officer, Fogarty International Center, Building 38A, Room 609, National Institutes of Health, Bethesda, Maryland 20892 (301-496-1491), will provide a summary of the meeting and a roster of the committee members upon request.

Dr. Coralie Farlee, Assistant Director for Planning and Evaluation, Fogarty International Center (Executive Secretary), Building 38A, Room 609, telephone 301-496-1491, will provide substantive program information.

Dated: July 26, 1989

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 89-18279 Filed 8-3-89; 8:45 am]

BILLING CODE 4140-01-M

National Cancer Institute; Meeting of the Cancer Biology-Immunology Contracts Review Committee

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Cancer Biology-Immunology Contracts Review Committee, National Cancer Institute, National Institutes of Health, August 28, 1989, Building 31C,

Conference Room 6, Bethesda, Maryland 20892.

This meeting will be open to the public on August 28 from 9 a.m. to 9:30 a.m. to discuss administrative details. Attendance by the public will be limited to space available.

In accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92–463, the meeting will be closed to the public on August 28 from 9:30 a.m. to adjournment for the review, discussion and evaluation of individual contract proposals. These proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the proposals, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Winifred Lumsden, the Committee Management Officer, National Cancer Institute, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20892 (301/496–5708) will provide summaries of the meeting and rosters of committee members upon request.

Dr. Wilna A. Woods, Executive Secretary, Cancer Biology-Immunology Contracts Review Committee, 5333 Westbard Avenue, Room 807, Bethesda, Maryland 20892 (301/496–7153) will furnish substantive program information.

Dated: July 26, 1989.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 89–18280 Filed 8–3–89; 8:45 am]

BILLING CODE 4140–01–M

National Heart, Lung, and Blood Institute; Meeting of the Research Manpower Review Committee

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Research Manpower Review Committee, National Heart, Lung, and Blood Institute, National Institutes of Health, on September 24–26, 1989, at the Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, Maryland 20814.

This meeting will be open to the public on September 24, from 7 p.m. to approximately 9:30 p.m. to discuss administrative details and to hear reports concerning the current status of the National Heart, Lung, and Blood Institute. Attendance by the public is limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C., and section 10(d) of Pub. L. 92–463, the meeting will be closed to the public on September 25, from approximately 8 a.m. until adjournment on September 26, for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Terry Bellicha, Chief, Communications and Public Information Branch, National Heart, Lung, and Blood Institute, Building 31, Room 4A21, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–4236, will provide a summary of the meeting and a roster of the Committee members.

Dr. Kathryn Ballard, Executive Secretary, NHLBI, Westwood Building, Room 550, Bethesda, Maryland 20892, (301) 496–7361, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 13.837, Heart and Vascular Diseases Research; 13.838, Lung Diseases Research; and 13.839, Blood Diseases and Resources Research, National Institutes of Health.)

Dated: July 26, 1989.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 89–18281 Filed 8–3–89; 8:45 am]

BILLING CODE 4140–01–M

National Heart, Lung, and Blood Institute; Meeting of the National Heart, Lung, and Blood Advisory Council

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the National Heart, Lung, and Blood Advisory Council, National Heart, Lung, and Blood Institute, September 14–15, 1989, National Institutes of Health, 9000 Rockville Pike, Building 31, Conference Room 10, Bethesda, Maryland 20892.

The Council meeting will be open to the public on September 14 from 9 a.m. to approximately 3:30 p.m. for discussion of program policies and issues. Attendance by the public is limited to space available.

In accordance with the provisions set forth in 552b(c)(4) and 552b(c)(6), Title 5, U.S.C., 10(d) of Pub. L. 92–463, the Council meeting will be closed to the public from approximately 3:30 p.m. on September 14 to adjournment on September 15 for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Terry Bellicha, Chief, Communications and Public Information Branch, National Heart, Lung, and Blood Institute, Building 31, Room 4A21, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–4236, will provide a summary of the meeting and a roster of the Council members.

Ms. Arlene Zimmerman, Executive Secretary, National Heart, Lung, and Blood Advisory Council, Westwood Building, Room 7A–15, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–7548, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 13.837, Heart and Vascular Diseases Research; 13.838, Lung Diseases Research; and 13.839, Blood Diseases and Resources Research, National Institutes of Health.)

Dated: July 26, 1989.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 89–18282 Filed 8–3–89; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Meeting of the National Arthritis and Musculoskeletal and Skin Diseases Advisory Council

Pursuant to Pub. L. 92–463, notice is hereby given of a meeting of the National Arthritis and Musculoskeletal and Skin Diseases Advisory Council to provide advice to the National Institute of Arthritis and Musculoskeletal and Skin Diseases on September 27 and 28, 1989, Conference Room 6, Building 31, National Institutes of Health, Bethesda, Maryland. The meeting will be open to the public September 27 from 8:30 a.m. to 12 noon to discuss administrative details relating to Council business and special reports. Attendance by the public will be limited to space available.

The meeting on the Advisory Council will be closed to the public on September 27 from 1 p.m. to adjournment and again on September 28 from 8:30 a.m. to adjournment at approximately 12 noon in accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92–463, for the review, discussion and evaluation of individual grant applications. These deliberations could reveal confidential trade secrets or commercial property,

such as patentable materials, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Further information concerning the Council meeting may be obtained from Dr. Steven J. Hausman, Executive Secretary, National Arthritis and Musculoskeletal and Skin Diseases Advisory Council, NIAMS, Westwood Building, Room 403, Bethesda, Maryland 20892, (301) 496–7495.

A summary of the meeting and roster of the members may be obtained from the Committee Management Office, NIAMS, Building 31, Room 4C32, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–0803.

(Catalog of Federal Domestic Assistance Program No. 13.846, Arthritis, Bone and Skin Diseases, National Institutes of Health)

Dated: July 26, 1989.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 89–18283 Filed 8–3–89; 8:45 am]

BILLING CODE 4140–01–M

NIH–ADAMHA–Industry Collaboration Forum

The Federal Technology Transfer Act of 1986 has provided new incentives to both scientists and industrial companies to participate in Cooperative Research and Development Agreements (CRADAs), and thus facilitate the transfer of technology from the Federal laboratory into public use by product commercialization. Industrial companies can receive assurance to obtain exclusive licenses to patented inventions developed under a CRADA, paticularly in view of the resources contributed to the CRADA by the company.

As part of a government-wide effort to implement the FITA, the National Institutes of Health (NIH) and the Alcohol, Drug Abuse, and Mental Health Administration (ADAMHA) will sponsor the second annual NIH–ADAMHA–Industry Collaboration Forum to be held on Tuesday, October 3, 1989 at the National Institutes of Health in Bethesda, Maryland. Although eligibility for registration is unrestricted, the forum will be most useful to those for-profit organizations with interest, capabilities and resources to conduct research having biomedical or behavioral applications.

The Forum will begin at 8:00 a.m. with a plenary session consisting of two panels followed by a poster session displaying the goals and research capabilities of various NIH and ADAMHA laboratories. Due to space avaiability, registration by September 25, 1989 is strongly encouraged. To obtain registration information, call (301) 986–4886 or write to: Ms. Judy Gale, Social and Scientific Systems, 7101 Wisconsin Avenue, Suite 610, Bethesda, MD 20814–4805, FAX (301) 652–1749.

Dated: July 3, 1986.

James B. Wyngaarden,

Director, NIH.

[FR Doc. 89–18278 Filed 8–3–89; 8:45 am]

BILLING CODE 4140–01–M

National Library of Medicine; Meeting of the Literature Selection Technical Review Committee

Pursuant to Pub. L. 92–463. notice is hereby given of a meeting of the Literature Selection Technical Review Committee, National Library of Medicine, on September 14–15, 1989, convening at 9:00 a.m. on September 14 and at 8:30 a.m. on September 15 in the Board Room of the National Library of Medicine, Building 38, 8600 Rockville Pike, Bethesda, Maryland.

The meeting on September 14 will be open to the public from 9:00 a.m. to 12:30 p.m. for the discussion of administrative reports and program developments. Attendance by the public will be limited to space available.

In accordance with provisions set forth in section 552b(c)(9)(B), Title 5, U.S.C., Pub. L. 92–463, the meeting will be closed on September 14 from approximately 12:30 to 5:00 p.m. and on September 15 from 8:30 a.m. to adjournment for the review and discussion of individual journals as potential titles to be indexed by the National Library of Medicine. The presence of individuals associated with these publications could hinder fair and open discussion and evaluation of individual journals by the Committee members.

Mrs. Lois Ann Colaianni, Executive Secretary of the Committee, and Associate Director, Library Operations, National Library of Medicine, 8600 Rockville Pike, Bethesda, Maryland 20894, telephone number: 301–496–6921, will provide a summary of the meeting, rosters of the committee members, and other information pertaining to the meeting.

Dated: July 26, 1989.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 89–18284 Filed 8–3–89; 8:45 am]

BILLING CODE 4140–01–M

Public Health Service

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Public Health Service (PHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following are those packages submitted to OMB since the last list was published on Friday, July 28, 1989.

Call Reports Clearance Officer on 202–245–2100 for copies of package.

1. Current Good Manufacturing Practice for Type A Medicated Articles—21 CFR part 226—Recordkeeping Requirements—0910–0154—Businesses marketing Type A Medicated Articles (medicated premixes) must maintain product records in accordance with current good manufacturing practices in order to assure that the premix will be safe and effective when used in the manufacture of a medicated feed. *Respondents:* Businesses or other for-profit, small businesses or organizations; *Number of Respondents:* 600; *Number of Responses per Respondent:* 1; Average Burden per *Response:* 570 hours; *Estimated Annual Burden:* 342,000 hours.

2. Health Hazard Evaluation of Shoprite Supermarkets—NEW—The National Institute for Occupational Safety and Health received a request from the United Food and Commercial Workers Union to evaluate the occurrence of cumulative trauma disorders (CTDs) among grocery checkers at the Shoprite Supermarket chain in New Jersey and New York. The management of Shoprite has agreed to have NIOSH conduct this evaluation. *Respondents:* Individuals or households; *Number of Respondents:* 1,480; *Number of Responses per Respondent:* 1.5; *Average Burden per Response:* .29 hours; *Estimated Annual Burden:* 647 hours.

3. Hepatitis Requirements to Permit Shipment Before Completion of Hepatitis B Surface Antigen Testing—0910–0168—This testing requirement is intended to minimize the danger of transmitting hepatitis in blood-based therapy and to assure the production of blood and blood components of uniform quality throughout the nation. The affected public are manufacturers and distributors of biological products. *Respondents:* Businesses or other for-profit, small businesses or organizations; *Number of Respondents:* 10; *Number of*

Responses per Respondent: 1; Average Burden per *Response:* 6 hours; *Estimated Annual Burden:* 60 hours.

4. Menstrual Function and Long-term Disease Risk—NEW—NIEHS is committed to exploring markers of reproductive function that may serve as screening tools in populations exposed to environmental toxins. This study will evaluate the effect of menstrual function on long-term disease risk using a cohort of 1,100 U.S. women who contributed prospective menstrual cycle data over their entire reproductive lives, beginning in 1935. *Respondents:* Individuals or households; *Number of Respondents:* 1,300; *Number of Responses per Respondent:* 1; Average Burden per *Response:* .572 hours; *Estimated Annual Burden:* 744 hours.

5. General Notice—Federally Assisted Health Professions and Nurse Teaching Facilities; Federal Right of Recovery and Calculation of Recovery Amount and Interest Charges—0915–0106—This submission will reinstate approval for the Department's policy regarding written notification to the Secretary when a health professions or nurse training facility assisted under Title VII or Title VIII of the PHS Act undergoes a change in status or use; recovery of Federal funds, interest charges and waiver of the right of recovery. *Respondents:* Businesses or other for-profit, non-profit institutions; *Number of Respondents:* 5; *Number of Responses per Respondent:* 1; Average Burden per *Response:* 10 hours; *Estimated Annual Burden:* 50 hours.

6. Pulmonary Function Testing Course Approval Application—0920–0138—The National Institute for Occupational Safety and Health (NIOSH) maintains a pulmonary function testing course approval program for certifying courses for training technicians in pulmonary functions testing. Course sponsors must apply to NIOSH for course approval. *Respondents:* State or local government, businesses or other for-profit, Federal agencies or employees, non-profit institutions, small businesses or organizations; *Number of Respondents:* 71; *Number of Responses per Respondent:* 1.3; Average Burden per *Response:* .52 hours; *Estimated Annual Burden:* 48 hours.

7. Foreign Language Disclosure Labeling (21 CFR 101.15 (c)(2) and (3)—0910–0235—This label/labeling requirement is directed at manufacturers who wish to label their food products for foreign speaking consumers. These provisions assure that the food is labeled with complete information in both English and the foreign language. *Respondents:* Businesses or other for-profit, small businesses or organizations; *Number of Respondents:* 150; *Number of Responses per Respondent:* 2; *Average Burden per Response:* 1 hour; *Estimated Annual Burden:* 300 hours.

8. Readership Evaluation of the FDA Drug Bulletin—NEW—Current readership perceptions about the FDA Drug Bulletin will be assessed to focus articles, format and editorial policy. Physicians and pharmacists are surveyed as the major information sources. A postcard survey examines hospital administrator, nurse and dentist perceptions. Data include perceived usefulness, topics desired, duplicative sources and willingness to pay. *Respondents:* Businesses or other for-profit; small businesses or organizations; *Number of Respondents:* 2,740; *Number of Responses per Respondent:* 1; *Average Burden per Response:* .044 hours; Estimated *Annual Burden:* 121 hours.

9. Health Professions Student Loan (HPSL) and Nursing Student Loan (NSL) Program-Forms—0915–0044—The application form provides the Terms of Agreement. The deferment and postponement forms allow the school to suspend loan payments. The school grants partial cancellation of a loan when it receives the completed cancellation of a loan when it receives the completed cancellation form. The Department uses the Annual Operating Report to monitor the financial activities of the school. *Respndents:* Individuals or households; State or local governments, non-profit institutions.

	No. of respondents	No. of hours per response	No. of responses per respondent
Application			
HRSA-514	1,300	.50 hrs.	1
Deferment Form			
HRSA-519	10,375	.17 hrs.	1
HPSL Cancellation			
HRSA-707	5	.08 hrs.	1
HRSA-708	5	.08 hrs.	1
NSL Cancellation			
HRSA-518	1,100	.08 hrs.	1
HRSA-520	1,100	.25 hrs.	1
Annual Operating Report			
HRSA-501	2,000	5.0 hrs.	1

Estimated Annual Burden: 12,747 hours.

10. International Collaborative Study of Oral Health Outcomes: USA Replication—0925–0306—This study is to conduct the U.S. portion of an international collaborative study of oral health, designed to provide critical information on contrasting and comparing the effectiveness and efficacy of various national strategies for enhancing oral health. Clinical and social survey data will be collected from consumers, providers, and administrators involved in oral health delivery systems. *Respondents:* Individuals or households, State or local governments, Federal agencies or employees, small businesses or organizations.

	No. of respondents	No. of hours per response	No. of responses per respondent
Individuals/ households.	11,841	.25 hrs.	1.42
Administrators	162	.88 hrs.	1.0
Providers	220	.33 hrs.	1.83

Estimated Annual Burden: 4,480 hours.

OMB Desk Officer: Shannah Koss-McCallum.

Written comments and recommendations for the proposed information collections should be sent directly to the OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, DC 20503.

Dated: July 31, 1989.

James M. Friedman,

Acting Deputy Assistant Secretary for Health (Planning and Evaluation).

[FR Doc.89–18229 Filed 8–3–89; 8:45 am]

BILLING CODE 4160–17–M

National Toxicology Program Board of Scientific Counselors Meetings; Announcement of Draft Technical Reports Projected for Public Peer Review From November 1989 Through November 1990

To earlier inform the public and allow interested parties to comment or obtain information on long-term toxicology and carcinogenesis studies and short-term toxicity studies prior to public peer review, the National Toxicology Program (NTP) again publishes in the **Federal Register** a current listing of draft Technical Reports projected for evaluation by the Peer Review Panel during their next four meetings from November 1989 through November 1990. The listing will continue to be updated with announcements in the **Federal Register** approximately twice a year. The meeting date for 1989 is: November 20–21. Specific dates for the 1990

meetings will be established at a later time.

The attachment gives draft Technical Reports of studies on chemicals listed alphabetically within known or estimated dates of reviews and includes Chemical Abstracts Service registry numbers, responsible staff scientists with telephone numbers. NTP report numbers (if assigned), primary use(s), species, route of administration, and exposure levels used in the chronic studies.

Those interested in having more information about any of the studies listed in this announcement, or wanting to provide input, should contact the particular NTP staff scientist as early as possible by telephone or by mail to: NIEHS, P.O. Box 12233, Research Triangle Park (RTP) North Carolina 27709. The staff scientists would welcome receiving toxicology and carcinogenesis data from completed, ongoing or planned studies by others as well as current production data, human exposure information, and use and use patterns.

The Executive Secretary, Dr. Larry G. Hart, NTP, P.O. Box 12233, RTP, NORTH Carolina 27709, telephone (919–541–3971), FTS (629–3971), will furnish final agendas, and other program information prior to a meeting, and summary minutes subsequent to a meeting.

Dated: July 24, 1989.

David P. Rall,

Director, National Toxicology Program.

TOXICOLOGY AND CARCINOGENESIS STUDIES, CHEMICALS, PROJECTED FOR PEER REVIEW

Chemical name/cas No.	Use	Study scientist	Route	Species	Exposure levels	NTP TR No.
Chemicals Tentatively Scheduled For Peer Review 11/20–21/89						
Long-Term Studies:						
DL-Amphetamine sulfate, 60–13–9	PHAR	J. Dunnick, 919–541–4811	FEED	RM	0, 20, 100 ppm	
2-Chloroacetophenone (CN), 532–27–4	MLTR.	R. Melnick, 919–541–4142	INHAL	RM	R: 0, 1, 2, M: 0, 2, 4 mg/m3	379
O-Chlorobenzalmalononitrile (CS), 2698–41–1.	MLTR	K. Abdo, 919–541–7819	INHAL	RM	R: 0, .075, .25, .75, M: 0, .75, 1.5 mg/m3	377
3,3'-Dimethylbenzidine Dihydrochloride, 612–82–8.	DYE	D. Morgan, 919–541–2264	WATER	R	R: 0, 30, 0, 150 ppm	
Epinephrine hydrochloride, 55–31–2	PHAR	D. Dietz, 919–541–2272	INHAL	RM	R: 0, 1.5, 5.0, M: 0, 1.5, 3.0 mg/m3	380
Ethylene thiourea (ETU), 96–45–7	PEST	R. Chhabra, 919–541–3386	FEED	RM	R: 0, 25, 83, 250, M: 0, 100, 333, 1000 ppm	
Furfural, 98–01–1	INTR	R. Irwin, 919–541–3340	GAV	RM	R: 0, 30, 60, M: 0, 50, 100, 175 mg/kg	382
Methyl bromide, 74–83–9	FUME	R. Yang, 919–541–2947	INHAL	M	Mice only: 0, 10, 33, 100 ppm	
Tetranitromethane, 509–14–8	FUEL	J. Bucher, 919–541–4532	INHAL	RM	R: 0, 2, 5, M: 0, 0.5, 2 ppm	366
Vinyl toluene, 25013–15–4	SOLV	G. Boorman, 919–541–3440	INHAL	RM	R: 0, 100, 300, M: 0, 10, 25 ppm	375
Short Term Toxicity Studies:						
D&C Yellow No. 11, 8003–22–3	DYE	W. Eastin, 919–541–7941	FEED	RM	R, M: 0, 500, 1700, 5000, 17000, 50000 ppm.	
Pentachlorobenzene, 608–93–5	PEST	R. Yang, 919–541–2947	FEED	RM	R&M: 0, 33, 100, 330, 1000, 2000 ppm	06
1,2,4,5-Tetrachlorobenzene, 95–94–3	HERB	R. Yang, 919–541–2947	FEED	RM	R&M: 0, 30, 100, 300, 1000, 2000 ppm	07
Chemicals Tentatively Scheduled for Peer Review 02/90						
Long-Term Studies:						
4-Hydroxyacetanilide, 103–90–2	PHAR	J. Bucher, 919–541–4532	FEED	RM	R&M: 0, .06, .3, .6%	
Probenecid, 57–66–9	PHAR	D.Dixon, 919–541–3814	GAV	RM	R&M: 0, 100, 400 mg/kg	
Sodium azide, 26628–22–8	PHAR	K. Abdo, 919–541–7819	GAV	R	Rats only: 0, 5, 10 mg/kg	
Tris(2-chloroethyl) phosphate, 115–96–8	FLAM	H. Matthews, 919–541–3252	GAV	RM	R: 0, 44, 88; M: 0, 175, 350 mg/kg	
Short-Term Toxicity Studies:						
2-Chloro-1-Propanol + 1-chloro-2-propanol (75% Mixture).	INTR	R. Yang, 919–541–2947	Water	RM	R&R: 0, 100, 330, 1000, 3300, 10000 ppm	
Cresol (Mixed isomers), 1319–77–3	GERM	D. Dietz, 919–541–2272	FEED	RM	R&M: 0,. 03, .1, .3, 1.0, 3.0%	
O-Cresol, 95–48–7	GERM	D. Dietz, 919–541–2272	FEED	RM,	R&M: 0, .03, .1, .3, 1.0, 3.0%	
Diethanolamine, 111–42–2	TEXL	R. Melnick 919–541–4142	SP	RM	R&M: 0, 37.5, 75, 300, 600 mg/ml	
Diethanolamine, 111–42–2	TEXL	R. Melnick, 919–541–4142	WATER	RM	MR: 0, .32, 63, 1.25, 2.5, 5.0 mg/ml, FR: 0, .16, .32, .63, 1.25, 2.5 mg/ml, Mice: 0, .63, 1.25, 2.5, 5.0, 10.0 mg/ml.	
Ethylbenzene, 100–41–4	RUBR	R. Yang, 919–541–2947	INHAL	RM	R&M: 0, 100, 250, 500, 750, 1000 ppm	
2-Mercaptobenzimidazole 583–39–1	RUBR	K. Abdo, 919–541–7819	INHAL	RM	R&M: 0, 3.13, 6.25, 12.5, 25, 50 mg/m3	
Chemicals Tentatively Scheduled for Peer Review 06/90						
Long-Term Studies:						
C.I. Acid red 114, 6459–94–5	DYE	D. Morgan, 919–541–2264	WATER	R	MR: 0, 70, 150, 300, FR: 0, 150, 300, 600 ppm.	
C.I. Direct Blue 15, 2429–74–5	DYE	D. Morgan, 919–541–2264	WATER	R	R: 0, 630, 1250, 2500 ppm	
2,3-Dibromo-1-propanol, 96–13–9	FLAM	R. Melnick, 919–541–4142	SP	RM	R: 0, 188, 375, M: 0, 88, 177 mg/kg	
Diphenylhydantoin (phenytoin), 57–41–0	PHAR	R. Chhabra, 919–541–3386	FEED	RM	R: 0, 240, 800, 2400, MM: 0, 30, 100, 300, FM: 0, 60, 200, 600 ppm.	
Resorcinol, 108–46–3	PHAR	R. Irwin, 919–541–3340	GAV	RM	MR&M: 0, 112, 225 FR: 0, 50, 100, 150 mg/kg.	
Titanocene dichloride, 1271–19–8	LABC	M. Dieter, 919–541–3368	GAV	R	Rats only: 0, 25, 50 mg/kg	
Short-Term Toxicity Studies:						
Castor oil, 8001–79–4	PHAR	R. Irwin, 919–541–3340	FEED	RM	R, M: 0, .62, 1.25, 2.5, 5.0, 10.0%	
Glyphosate, 1071–83–6	HERB	P. Chan, 919–541–7561	FEED	RM	R&M: 0, 3125, 6250, 12500, 25000, 50000 ppm.	
1,6-Hexanediamine, dihydrochloride, 6055–52–3.	INTR	J. French, 919–541–7790	INHAL	RM	R&M: 0, 1.6, 5, 16, 50, 160 mg/m3	
1,6-Hexanediamine, dihydrochloride, 6055–52–3.	INTR	J. French, 919–541–7790	WATER	RM	MR: 0, 0.75, 1.5, 3.0, 4.5, 6.0; FR: 0, 0.83, 1.7, 3.3, 5.0, 6.7; M: 0, 0.2, 0.4, 0.8, 1.5, 3.0 mg/ml.	
2-Hydroxy-4-methoxybenzophenone, 131–57–7.	PHAR	J. French, 919–541–7790	FEED	RM	R&M: 0, 3125, 6250, 12500, 25000, 50000 ppm.	

TOXICOLOGY AND CARCINOGENESIS STUDIES, CHEMICALS, PROJECTED FOR PEER REVIEW—Continued

Chemical name/cas No.	Use	Study scientist	Route	Species	Exposure levels	NTP TR No.
2-Hydroxy-4-methoxybenzophenone, 131-57-7.	PHAR	J. French, 919-541-7790	SP	RM	R: 0, 12.5, 25, 50, 100, 200: M:0, 22.75, 45.5, 91, 182, 364 mg/kg.	
Riddelliine, 23246-96-0	PHAR	P. Chan, 919-541-7561	GAV	RM	R&M: 0, 0.33, 1.0, 3.3, 10.0, 25.0 mg/kg	
Sodium Xylenesulfonate, 1300-72-7	DTRG	R. Irwin, 919-541-3340	SP	RM	R&M: 120.0, 39.9, 13.2, 4.5, 1.5, 0 mg/kg	
2,4,7-Trinitro-fluoren-9-one, 129-79-3	INTR	F. Kari, 919-541-2926	FEED	RM	R: 0, 1000, 2000, 4000, 8000, 16000; M: 0, 3212, 6250, 12500, 25000, 55000 ppm.	
Chemicals Tentatively Scheduled For Peer Review 10/90						
Long-Term Studies:						
Gamma/Butyrolactone, 96-48-0	INTR	R. Irwin, 919-541-3340	GAV	RM	MR. 0, 112, 225, FR: 0, 225, 450, M: 0, 262, 525 mg/kg.	
2,4-Diaminophenol dihydrochloride, 137-09-7.	PHOT	R. Irwin, 919-541-3340	GAV	RM	R: 0, 12.5, 25, M: 0, 19, 38 mg/kg	
Furan, 110-00-9	INTR	R. Irwin, 919-541-3340	GAV	RM	R: 0, 2, 4, 8, M: 0, 8, 15 mg/kg	
Monochloroacetic acid, 79-11-8	DYE	F. Kari, 919-541-2926	GAV	RM	R: 0, 15, 30 mg/kg	
Polybrominated biphenyl mixture (Firemaster FF-1), 67774-32-7.	FLAM	R. Chhabra, 919-541-3386	FEED	RM	0, 1, 3, 10, 30 ppm	
Short-Term Toxicity Studies:						
Black newsprint ink, BLACKNWSNK	DYE	W. Eastin, 919-541-7941	SP	RM	R&M: Untreated controls & meat application with USP mineral oil, printing ink mineral oil, letter press ink, & offset ink.	
Methyleugenol, 93-15-2	FOOD	D. Bristol, 919-541-2756	GAV	RM	0, 10, 30, 100, 300, 1000 mg/kg plus sham gavage group.	
Nitromethane, 75-52-5	FUEL	J. Roycroft, 919-541-3627	INHAL	RM	R&M: 0, 94.188, 375, 750, 1500 ppm	
Tetrachlorophthalic anhydride, 117-08-8	FLAM	F. Kari, 919-541-2926	GAV	RM	0, 94, 187, 375, 750, 1500 mg/kg	

Abbreviations used:
USE Primary Use Category:
DTRG Detergents and Cleansers.
DYE As or in Dyes, Inks, and Pigments.
FLAM Flame Retardants.
FOOD Food and Food Additives.
FUEL As or in Fuel or Oil Products.
FUME Fumigants.
GERM Germicides, Disinfectants, Antiseptics.
HERB Herbicide(s).
INTR Chemical Intermediate or Catalyst.
LABC Unspecified Chemical Uses not Fitting in.
MLTR Military or Policing Purposes.
PEST Pesticides, General or Unclassified.
PHAR Pharmaceuticals or Intermediates.
PHOT Photography or related purposes.
RUBR Rubber Chemical.
SOLV Vehicles and Solvents.
TEXL In Manufacture of Textiles.
ROUTE Route of Administration:
FEED Oral in Feed.
GAV Oral, Gavage.
INHAL Inhalation.
SP Skin Paint.
WATER Oral with Water.
SPEC Species:
R = Rats.
M = Mice.

[FR Doc. 89-18262 Filed 8-3-89; 8:45 am]
BILLING CODE 4140-01-M

Social Security Administration

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Social Security Administration publishes a list of information collection packages that have been submitted to the Office of Management and Budget (OMB) for clearance in compliance with Pub. L. 96-511, The Paperwork Reduction Act. The following clearance packages have been submitted to OMB since the last list was published in the **Federal Register** on July 14, 1989.

Social Security Administration

(Call Reports Clearance Officer on (301) 965-4149 for copies of package)

1. Report of Continuing Disability Interview—0960-0072—The information collected on the form SSA-454 is used by the Social Security Administration to determine if a disability insurance beneficiary continues to be eligible for those benefits. The respondents are disability insurance beneficiaries who are selected for this review.

Number of Respondents: 300,000
Frequency of Response: 1
Average Burden Per Response: ½ hour
Estimated Annual Burden: 150,000 hours

2. 800 Service Evaluation Caller Recontact Survey—0960-0465—The information collected on the form SSA-4305 will be used by the Social Security Administration (SSA) to evaluate the new toll-free 800 service number. The respondents will consist of selected individuals who have recently contacted SSA using this number.

Number of Respondents: 4,000
Frequency of Response: 1
Average Burden Per Response: 10 minutes
Estimated Annual Burden: 667 hours

3. Enumeration Interview Guide—NEW—The information collected on the form SSA-3172 will be used by the Social Security Administration to determine if its current enumeration document verification policy is sufficient. The respondents will consist of selected individuals who were recently issued Social Security numbers

and who agree to participate in this effort.

Number of Respondents: 2,000
Frequency of Response: 1
Average Burden Per Response: 30 minutes
Estimated Annual Burden: 1,000 hours

OMB Desk Officer: Justin Kopca.

4. Reconsideration Disability Report—0960–0144—The information collected on the form SSA–3441 is used by the Social Security Administration to determine if the medical or vocational situation of a claimant has changed subsequent to a denial of the claimant's disability claim. The SSA–3441 also elicits additional sources of medical and vocational evidence which were not considered in the initial determination.

Number of Respondents: 400,000
Frequency of Response: 1
Average Burden Per Response: 30 minutes
Estimated Annual Burden: 200,000 hours

5. Direct Deposit Mass Change Listing—0960–0297—The information collected on the form SSA–4907 is used by the Social Security Administration to update direct deposit data contained in SSA records. The respondents are financial institutions.

Number of Respondents: 60
Frequency of Response: 1
Average Burden Per Response: 1 hour
Estimated Annual Burden: 60 hours

OMB Desk Officer: Justin Kopca

Written comments and recommendations regarding these information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, DC 20503.

Date: July 28, 1989.

Ron Compston,

Social Security Administration, Reports Clearance Officer.

[FR Doc. 89–18176 Filed 8–3–89; 8:45 am]

BILLING CODE 4190–11–M

Agreement on Social Security Between the United States and Portugal; Entry into Force

The Commissioner of Social Security gives notice that an agreement coordinating the United States (U.S.) and Portuguese social security programs entered into force on August 1, 1989. The agreement with Portugal, which was signed on March 30, 1988, is similar to U.S. social security agreements already in force with ten other countries—Belgium, Canada, the Federal Republic of Germany, France, Italy, Norway, Spain, Sweden, Switzerland, and the United Kingdom. Agreements of this type are authorized by section 233 of the Social Security Act.

Like the other agreements, the U.S.-Portuguese agreement eliminates dual social security coverage—the situation that exists when a worker from one country works in the other country and is covered under the social security systems of both countries for the same work. When dual coverage occurs, the worker or the worker's employer or both may be required to pay social security contributions to the two countries simultaneously. Under the U.S.-Portuguese agreement, a worker who is sent by an employer in the U.S. to work in Portugal for 5 years or less remains covered only by the U.S. system. The agreement includes additional rules that eliminate dual U.S. and Portuguese coverage in other work situations.

The agreement also helps eliminate situations where workers suffer a loss of benefit rights because they have divided their careers between the two countries. Under the agreement, workers may qualify for partial U.S. or partial Portuguese benefits based on combined (totalized) work credits from both countries.

Persons who wish to obtain copies of the agreement or want more information about its provisions may write to the Social Security Administration, Office of International Policy, Room 1104, West High Rise Building, 6401 Security Boulevard, Baltimore, MD 21235.

Dated: July 25, 1989.

Dorcas R. Hardy,

Commissioner of Social Security.

[FR Doc. 89–18177 Filed 8–3–89; 8:45am]

BILLING CODE 4190–11–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. N–89–2027]

Submission of Proposed Information Collection to the Office of Management and Budget

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESS: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: John Allison, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street Southwest, Washington, DC 20410, telephone (202) 755–6050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) which members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: July 31, 1989.

John T. Murphy,

Director, Information Policy and Management Division.

Proposal: Schedule of Buydown Escrow Accounts.

Office: GNMA.

Description of the Need for the Information and Its Proposed Use: The document provides GNMA with a listing of the name, address and account number of each interest escrow account relating to the mortgages comprising the mortgage-backed securities issuance. The information is necessary to protect

GNMA's interest in the event of a default by the issuer.

Form Number: HUD–11744.

Respondents: Businesses or Other For-Profit.

Frequency of submission: On Occasion.

Reporting Burden:

	Number of Respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Schedule of Buydown Escrow Account (Form 11744)	12		2		.25		6

Total Estimated Burden Hours: 6.

Status: Revision.

Contact: Charles Clark, HUD, (202) 755–5535, John Allison, OMB, (202) 395–6880.

Dated: July 31, 1989.

[FR Doc. 89–18251 Filed 8–3–89; 8:45 am]

BILLING CODE 4210–01–M

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

[Docket No. N–89–1917; FR–2606]

Unutilized and Underutilized Federal Buildings and Real Property Determined To Be Suitable for Use for Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: This notice identifies unutilized and underutilized Federal property determined by HUD to be suitable for possible use for facilities to assist the homeless.

DATE: August 4, 1989.

ADDRESS: For further information, contact Morris Bourne, Department of Housing and Urban Development, Room 9140, 451 Seventh Street SW., Washington, DC 20401; telephone (202) 755–9075; TDD number for the hearing- and speech-impaired (202) 426–0015. (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized and underutilized Federal buildings and real property determined by HUD to be suitable for use for facilities to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable this week.

Dated: July 31, 1989.

James E. Schoenberger,

General Deputy Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 89–18285 Filed 8–3–89; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AA–610–09–4112–02]

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's Clearance Office at the phone number listed below. Comments and suggestions on the requirement should be made directly to the Bureau Clearance Officer and to the Office of Management and Budget Paperwork Reduction Project (1004–0134), Washington, DC 20503, telephone 202–395–7340.

Title: 43 CFR Part 3160—Onshore Oil and Gas Operations, Non-form Items.

OMB Approval Number: (1004–0134).

Abstract: Federal and Indian (except Osage) oil and gas operators and operating rights owners are required to retain and/or provide data so that proposed operations may be approved or compliance with granted approvals may be monitored.

Bureau Form Numbers: None.

Frequency: Nonrecurring.

Description of Respondents: Operators and operating rights owners of Federal and Indian (except Osage) oil and gas leases.

Estimate Completion Time: ½ hour.

Annual Responses: 191,755.

Annual Burden Hours: 92,760.

Bureau Clearance Officer: (Alternate) Richard Iovaine, 202–653–8853.

Dated: June 2, 1989.

George F. Brown,

Deputy Assistant Director, Energy and Mineral Resources.

[FR Doc. 89–18287 Filed 8–3–89; 8:45 am]

BILLING CODE 4310–84–M

[CO–070–09–4320–10–2410]

Grand Junction District Grazing Advisory Board; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting of Grand Junction District Advisory Board.

SUMMARY: Notice is hereby given that a meeting of the Grand Junction District Grazing Advisory Board will be held on Thursday, September 14, 1989. The meeting will convene in the conference room at the Bureau of Land Management Office, 50629 Highway 6 and 24, Glenwood Springs, Colorado at 9 a.m.

SUPPLEMENTARY INFORMATION: The agenda for the meeting will include: (1) Introductions; (2) Minutes of the previous meeting; (3) Glenwood Springs Resource Area Rangeland Program Summary Update and Colorado Cattlemen/Colorado Woolgrowers field tour summary; (4) Drought status report; (5) Status of current project work; (6) Range Betterment Fund project proposals; (7) Advisory Board project proposals; (8) Public presentation; and (9) Arrangements for the next meeting.

The meeting is open to the public. Interested persons may make oral statements to the Board between 3 and 3:30 p.m. or file written statements for the Board's consideration. Anyone wishing to make an oral statement must notify the District Manager, Bureau of Land Management, 764 Horizon Drive, Grand Junction, Colorado 81506 by September 12, 1989. Depending on the number of persons wishing to make oral statements, a per person time limit may be established by the District Manager.

Minutes of the Board meeting will be maintained in the District Office and be available for public inspection and reproduction (during regular business

hours) after thirty (30) days following the meeting.

Further information on the meeting may be obtained at the above address, or by calling 303 243–6552, or 303 945–2341.

Bruce Conrad,

District Manager, Grand Junction District.

[FR Doc. 89–18232 Filed 8–3–89; 8:45 am]

BILLING CODE 4310–JB–M

[NM–060–4340–90]

Opening of Public Lands; New Mexico

Recreation and Public Purposes (R&PP) Lease NM 14964 was issued May 22, 1972, to the City of Carlsbad, New Mexico. The City of Carlsbad has requested relinquishment of the lease located in Eddy County, New Mexico:

T. 21 S., R. 27 E., NMPM;
Sec. 5: S½SW¼, SE¼SE¼;
Sec. 8: N½N½.

The land described above contains 280 acres.

Effective the day of publication of this notice, the above described land shall be open to the operation of the public land laws generally, subject to valid existing rights, and the requirements of applicable law.

Inquiries concerning the land should be addressed to District Manager, Bureau of Land Management, P.O. Box 1397, Roswell, NM 88201.

David L. Mari,

Associate District Manager.

[FR Doc. 89–18233 Filed 8–3–89; 8:45 am]

BILLING CODE 4310–FB–M

[AZ 020–09–4212–12; AZA 20346–W]

Realty Action; Exchange of Public Land, Maricopa County, Arizona

BLM proposes to exchange public land in order to achieve more efficient management of the public land through consolidation of ownership.

The following public land is being considered for disposal by exchange pursuant to section 206 of the Federal Land Policy and Management Act of October 21, 1976, 43 U.S.C. 1716.

Gila and Salt River Meridian, Arizona

T. 4 N., R. 1 E.,
Sec. 3, lots 16 to 18, incl;
Sec. 12, W½W½SW¼NW¼;
Sec. 23, W½NW¼NW¼SE¼, N½SW¼NW¼SE¼.
T. 5 N., R. 1 E.,
Sec. 23, N½N½NE¼;
Sec. 24, E½NW¼, NW¼NW¼, E½W½SW¼NW¼, E½SW¼NW¼;
Sec. 27, S½NE¼NE¼SW¼, W½NE¼SW¼, SE¼NE¼SW¼, W½SW¼, SE¼SW¼;
Sec. 28, SW¼NE¼;
Sec. 29, E½E½;
Sec. 30, S½NE¼NE¼, SE¼NE¼.
T. 5 N., R. 1 W.,
Sec. 14, lots 1 to 10, incl., NW¼NE¼, N¼NW¼, NE¼SW¼, S½NW¼;
Sec. 15, lots 1 to 10, incl., N½NE¼, NW¼, N½SW¼;
Sec. 22, N½N½, SW¼NW¼.

Containing 1,814.74 acres, more or less.

This notice supersedes Notices of Realty Action A 22792–A and A 23254, as they affect the land in this notice.

Final determination on disposal will await completion of an environmental analysis.

In accordance with the regulations of 43 CFR 2201.1(b), publication of this notice will segregate the affected public lands from appropriation under the public land laws and the mining laws, but not the mineral leasing laws or Geothermal Steam Act.

The segregation of the above-described lands shall terminate upon issuance of a document conveying such lands or upon publication in the **Federal Register** of a notice of termination of the segregation; or the expiration of two years from the date of publication, whichever occurs first.

For a period of forty-five (45) days from the date of publication of this Notice in the **Federal Register** interested parties may submit comments to the District Manager, Phoenix District Office, 2015 West Deer Valley Road, Phoenix, Arizona 85027.

Dated: July 28,1989.

Charles R. Frost,

Acting District Manager.

[FR Doc. 89–18234 Filed 8–3–89; 8:45 am]

BILLING CODE 4310–32–M

[MT–070–09–4050–91–47 H: M–68142]

Realty Action Sale; Montana

AGENCY: Bureau of Land Management, Butte District, Interior.

SUMMARY: The following described public land has been found to be suitable for disposal by sale pursuant to section 203 and 209 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1713 and 1719) at not less than the appraised fair market value.

Principal Meridian, Montana

T. 9 N., R. 3 W.
Section 14, Lot 2

Containing 8.64 acres.

This land is being offered on a non-competitive basis to Mary Wildish, whose family has resided on the tract under a Small Tract Act lease for 30 years. Surrounding public lands are under application for a Recreation and Public Purposes Act patent to Jefferson County.

This sale is consistent with the Headwaters Resource Management Plan. The land will soon be a small isolated tract which would be difficult to manage. The land is not required for any federal purposes. The sale of this parcel would be in the public interest. The lands will not be offered for sale for at least 60 days after the publication of this notice in the **Federal Register.**

It has been determined that the subject parcel contains no known mineral interests; therefore, conveyance of the mineral estate can occur simultaneously with the sale of the land. Acceptance of a direct sale offer will constitute an application for conveyance of those mineral interests.

The land described is hereby segregated from appropriations under the public land laws, including the mining laws, pending completion of the sale or 270 days from the date of publication of the notice, whichever occurs first. The patent, when issued, will contain the following reservation to the United States:

A right-of-way thereon for ditches and canals constructed by authority of the United States, in accordance with the Act of August 30, 1980 (26 Stat. 391; 43 U.S.C. 945).

This notice terminates Small Tract Classification No. 503 under which the following described lands are classified for lease under the Small Tract Act of June 1, 1938 (52 Stat. 609; 43 U.S.C. 682 (a)).

Prime Meridian Montana

T. 9 N., R. 3 W.
Section 14, SE1/4NW1/4SE1/4SE1/4, S1/2NE1/4SE1/4SE1/4

Containing 7.5 acres.

The above described lands are hereby fully opened to the operation of the public land laws, including the mining laws, subject only to the segregative effort of this notice on the sale parcel. Said opening will take effect 60 days after the date of publication of this notice in the **Federal Register.**

DATES: For a period of 45 days from the date of this notice, interested parties may submit comments to the Bureau of Land Management at the address shown below. Any adverse comments will be evaluated by the BLM, Montana State Director, who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

FOR FURTHER INFORMATION CONTACT: Information related to the sale, including the environmental assessment/land report is available for review at the Butte District Office, P.O. Box 3388, 106 North Parkmont, Butte, Montana 59702.

Dated: July 26, 1989.

J. A. Moorhouse,

District Manager.

[FR Doc. 89-18235 Filed 8-3-89; 8:45 am]

BILLING CODE 4310-DN-M

[NV-930-09-4212-14; N-50100]

Realty Action; Direct Sale of Public Lands in Elko County Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: The following land has been examined and identified as suitable for disposal by direct sale under Section 203 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750; 43 U.S.C. 1713) at no less than fair market value:

Mount Diablo Meridian

T. 47 N., R. 64 E.,
sec. 1, Lot 18

The above-described land comprising .62 acres, is being offered as a direct sale to Al Huber, Juanita Huber and Mildred Standfield, joint adjoining landowners. All but .15 acres of the parcel are encumbered by highway rights-of-way held by the Nevada Department of Transportation (NDOT). The proponents requested the sale as a result of action taken by NDOT to reduce the width of the right-of-way for U.S. Highway 93. Prior to the reduction, the sale proponent's parcel was contiguous to the highway right-of-way. As a result of the right-of-way width reduction, a small parcel of unencumbered public land was created between the highway right-of-way and the sale proponent's property.

The sale is consistent with the Bureau's planning system. The land is not needed for any resource program and is not suitable for management by the Bureau of any other Federal department or agency. Sale of the tract would eliminate from Federal ownership lands that have a high potential for unauthorized use and are difficult and uneconomic to manage. The public lands are being offered by direct sale to assure land use compatibility with adjoining private lands. Topography and configuration of the lands suitable for improvement within the parcel would preclude any development of the parcel by anyone other than the sale proponents who are the adjoining landowners to the east.

The locatable and salable mineral estates have been determined to have no known value. The land is prospectively valuable for geothermal and oil and gas. Therefore, the mineral interest excluding geothermal resources and oil and gas will be conveyed simultaneously with the sale of the parcel. Acceptance of the direct sale ofter will constitute an application to purchase the mineral estate having no known mineral value. A nonrefundable fee of $50.00 will be required with the purchase money. Failure to submit the purchase money and the nonrefundable filing fee for the mineral estate within the timeframe specified by the authorized officer will result in cancellation of the sale.

The patent, when issued, will contain the following reservations to the United States:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States, Act of August 30, 1890, 26 Stat. 391; 43 U.S.C. 945.

2. Oil and gas, and geothermal resources.

And will be subject to:

Those rights for highway purposes which have been granted to the Nevada Highway Department, its sucessors or assigns by Permit Nos. CC-023091, Nev-08440, and Nev-042807, under the Act of November 9, 1921, 42 Stat. 212-216, 23 U.S.C., Sec. 18).

Upon publication of the Notice of Realty Action in the **Federal Register**, the lands will be segregated from all forms of appropriation under the public land laws, including the mining laws but not the mineral leasing laws. This segregation shall terminate upon issuance of patent or other document of conveyance, upon publication in the **Federal Register** of a termination of segregation or 270 days from publication, whichever occurs first.

The land will not be offered for sale any sooner than 60 days after the publication of this Notice in the **Federal Register**. For a period of 45 days from the date of publication of this Notice in the **Federal Register**, interested parties may submit comments to the District Manager, Elko District Office, Bureau of Land Management, P.O. Box 831, Elko, Nevada, 89801. Any adverse comments will be reviewed by the Nevada State Director, who may sustain, vacate or modify this realty action. In the absence of timely filed objections, this realty action will become the final determination of the Department of the Interior.

Dated: July 24, 1989.

Merle Good,

Acting District Manager.

[FR Doc. 89-18180 Filed 8-3-89; 8:45 am]

BILLING CODE 4310-NC-M

[ID-942-09-4730-12]

Filing of Plats of Survey; Idaho

The plat of survey of the following described land was officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 10:00 a.m., July 27, 1989.

The plat representing the dependent resurvey of portions of the subdivisional lines and meanders of the right bank of the Snake River, and the subdivision of section 15, T. 6 S., R. 11 E., Boise Meridian, Idaho, Group No. 706, was accepted July 26, 1989.

This survey was executed to meet certain administrative needs of this Bureau.

All inquiries about this land should be sent to the Idaho State Office, Bureau of Land Management, 3380 Americana Terrace, Boise, Idaho, 83706.

Dated: July 27, 1989.

Jerrold E. Knight,

Acting Chief Cadastral Surveyor for Idaho.

[FR Doc. 89-18236 Filed 8-3-89; 8:45 am]

BILLING CODE 4310-GG-M

[ES-940-09-4520-13; ES-041307, Group 8]

Maine; Filing of Plat of Dependent Resurvey and Survey

July 27, 1989.

1. The plat of the dependent resurvey and survey of the boundaries of the land held in trust for the Passamaquoddy Tribe in Township 6, Range 1, North of Bingham's Kennebec Purchase (N.B.K.P.), Somerset County, Maine, will be officially filed in the Eastern States Office, Alexandria, Virginia at 7:30 a.m., on September 11, 1989.

2. The dependent resurvey and survey was made at the request of the Bureau of Indian Affairs.

3. All inquiries or protest concerning the technical aspects of the dependent resurvey and survey must be sent to the Deputy State Director for Cadastral Survey, Eastern State Office, Bureau of Land Management, 350 South Pickett Street, Alexandria, Virginia 22304, prior to 7:30 a.m., September 11, 1989.

4. Copies of the plat will be made available upon request and prepayment of the reproduction fee of $4.00 per copy.

Joseph W. Beaudin,

Acting Deputy State Director for Cadastral Survey.

[FR Doc. 89-18200 Filed 8-3-89; 8:45 am]

BILLING CODE 4310-GJ-M

Minerals Management Service

Atlantic Outer Continental Shelf Region

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of Third Atlantic Outer Continental Shelf (OCS) Region Information Transfer Meeting (ITM).

SUMMARY: The Atlantic OCS Region has scheduled its Third ITM. The meeting is designed to improve the accessibility, use, and exchange of data and information gathered by the Environmental Studies Program, other State and Federal Government Agencies, academia, and industry consultants.

DATES: September 12-13, 1989.

ADDRESS: Each day, the meeting will begin at 8 a.m. at the Sheraton International Conference Center, 11810 Sunrise Valley Drive, Reston, Virginia 22091.

FOR FURTHER INFORMATION CONTACT: Judy Wilson, Contracting Officer's Technical Representative, Atlantic OCS Region, (703) 787-1075.

SUPPLEMENTARY INFORMATION: The ITM includes a review of active and recently completed studies in biological sciences, physical oceanography and meteorology; presentations by invited scientists showcasing their research relevant to the Environmental Studies Program objectives; and presentations related to Canadian OCS Environmental Studies, Atlantic OCS resource assessments, hard minerals projects, and geological research by State Geological Surveys. In addition, there will be presentations by State representatives from Virginia, North Carolina, South Carolina, Georgia, and Florida on potential impacts of OCS activities. The State presentations will be followed by a panel discussion on how issues can be resolved more effectively.

Dated: July 31, 1989.

Bruce G. Weetman,

Regional Director, Atlantic OCS Region.

[FR Doc. 89-18231 Filed 8-3-89; 8:45 am]

BILLING CODE 4310-MR-M

National Park Service

Concession Contract Negotiations; Isle Royale Ferry Service, Inc.

AGENCY: National Park Service, Interior.

ACTION: Public notice.

SUMMARY: Public notice is hereby given that the National Park Service proposes to negotiate a concession permit with Isle Royale Ferry Service, Inc. authorizing it to continue to provide boat transportation facilities and services for the public at Isle Royale National Park, Michigan for a period of five (5) years from January 1, 1990, through December 31, 1994.

EFFECTIVE DATE: October 3, 1989.

ADDRESSES: Interested parties should contact the Regional Director, Midwest Region, 1709 Jackson St., Omaha, NE 68102, for information as to the requirements of the proposed permit.

SUPPLEMENTARY INFORMATION: This permit renewal has been determined to be categorically excluded from the procedural provisions of the National Environmental Policy Act and no environmental document will be prepared.

The foregoing concessioner has performed it's obligations to the satisfaction of the Secretary under an existing permit which expired by limitation of time on December 31, 1988, and therefore pursuant to the provisions of section 5 of the Act of October 9, 1965 (79 Stat. 969; 16 U.S.C. 20), is entitled to be given preference in the renewal of the permit and in the negotiation of a new permit as defined in 36 CFR 51.5.

The Secretary will consider and evaluate all proposals received as a result of this notice. Any proposal, including that of the existing concessioner, must be postmarked or hand delivered on or before the sixtieth (60th) day following publication of this notice to be considered and evaluated.

Dated: July 19, 1989.

Don H. Castleberry,

Regional Director, Midwest Region.

[FR Doc. 89-18230 Filed 8-3-89; 8:45 am]

BILLING CODE 4310-70-M

[FES 89-19]

Bureau of Reclamation

Ruedi Reservoir, Colorado, Round II Water Marketing Program, Fryingpan-Arkansas Project, Colorado; Final Supplemental Environmental Statement

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of availability of final supplemental environmental statement (FSES); INT-FES-89-19.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, as amended, the Bureau of Reclamation (Reclamation) has prepared a FSES for the Fryingpan-Arkansas Project, Colorado. The FSES addresses the impacts of water marketing alternatives from Ruedi Reservoir.

ADDRESSES: Single copies of the FSES may be obtained on request to the Regional Director or the Eastern Colorado Projects Office at the addresses below.

Copies of the FSES are available for inspection at the following locations:

Bureau of Reclamation, Environment and Planning Branch, U.S. Department of the Interior, Room 7455, 18th and C Streets, NW., Washington, DC 20240; Telephone: (202) 343-4662

Bureau of Reclamation, Denver Office Library, Denver Federal Center, Building 67, room 167, Denver, CO 80225; Telephone: (303) 236-6963

Regional Director, Bureau of Reclamation, Great Plains Regional Office, P.O. Box 36900, Billings, MT: Telephone: (406) 657-6558

Eastern Colorado Projects Office, Bureau of Reclamation, 995 Wilson Avenue, P.O. Box 449, Loveland, Colorado; Telephone: (303) 667-4410

Libraries:

Colorado State University Library, Colorado State University, Fort Collins, CO 80521

University of Colorado Libraries, Boulder Campus, Boulder, CO 80302

Basalt Regional Library, P.O. Box BB, Basalt, CO 81621

Pitkin County Library, 120 East Main, Aspen, CO 81611

Glenwood Springs Library, 413 Ninth Street, Glenwood Springs, CO 81601

Mesa County Public Library, P.O. Box 20000-5019, Grand Junction, CO 81502

FOR FURTHER INFORMATION CONTACT: Mr. Robert Schroeder (Regional Environmental Affairs Officer), (406) 657-6558; or Dr. Wayne O. Deason (Manager, Environmental Services Staff, Denver Federal Center), (303) 236-9336.

SUPPLEMENTARY INFORMATION: The proposed alternative is for Reclamation to make available through long-term contracts, 51,500 acre-feet of Ruedi Reservoir water for municipal and industrial use. Ruedi Reservoir is on the Fryingpan River in Pitkin and Eagle Counties, Colorado. All individual water contracts issued under the proposed

water marketing program will require site-specific environmental impact analysis and documentation.

The FSES presents the Preferred Alternative, the Preferred Alternative with Conservation Measures, and the No-Action Alternative. The no-action alternative presents the baseline against which the other two alternatives for water sale are analyzed. It is anticipated that the Preferred Alternative with Conservation Measures will be the action recommended for implementation. The FSES also presents comments received on the 1983 Draft Environmental Statement and the 1988 Addendum and documents Reclamation's responses.

Dated: August 1, 1989.

D.W. Webber,

Assistant Commissioner-Engineering and Research.

[FR Doc. 89-18299 Filed 8-3-89; 8:45 am]

BILLING CODE 4310-09-M

INTERSTATE COMMERCE COMMISSION

Intention To Engage In Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

1. Parent corporation and address of principal office: Electrohome Limited, 809 Wellington Street North, Kitchener, Ontario, Canada N2G 4J6

2. Wholly-owned subsidiaries which will participate in the operations, and State of incorporation:

Name	State of incorporation
(i) Electrohome (U.S.A.) Inc.	New York.
(ii) Brinkley Motor Products Company.	Illinois.
(iii) Trans-S-Elect Transportation Ltd.	Ontario, Canada.

Noreta R. McGee,

Secretary

[FR Doc. 89-18218 Filed 8-3-89; 8:45 am]

BILLING CODE 7035-01-M

[No. MC-C-30168]

Puerto Rico Maritime Shipping Authority and PRMMI Trucking, Inc.; Petition for Declaratory Order

AGENCY: Interstate Commerce Commission.

ACTION: Notice of institution of proceeding.

SUMMARY: The Commission is granting the request by Puerto Rico Maritime Shipping Authority and PRMMI Trucking, Inc. (petitioners) for institution of a declaratory order proceeding. Petitioners seek a determination that the ICC, not the Federal Maritime Commission, has primary and exclusive jurisdiction to interpret tariffs filed with it and, therefore, that a challenge to an ICC-filed tariff may only be brought at the ICC. They also ask the Commission to determine that the transportation they provide under ICC Tariff PRMU 205, between their marine terminals in the United States and in Puerto Rico, is a through intermodal service subject to ICC jurisdiction.

DATES: Persons interested in participating in this proceeding should so advise the Commission in writing by August 21, 1989. A list of interested parties will then be compiled and served. Petitioners will have 10 days after the service date of that list to serve each party on the list and the Commission with a copy of its petition and any additional information. Other parties will then have 35 days after the service date of the service list to submit their comments to the Commission and to all parties. Parties will have 50 days after the service date of the service list to reply.

ADDRESSES: Send written notice of intent to participate, and an original and, if possible, 10 copies of comments referring to No. MC-C-30168 to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Jasneth C. Metz, (202) 275-7974, or Richard B. Felder, (202) 275-7691. [TDD for hearing impaired: (202) 275-1721.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To obtain a copy of the full decision, write to, call, or pick up in person from: Office of the Secretary, Room 2215, Interstate Commerce Commission, Washington, DC 20423. Telephone: (202) 275-7428. (Assistance for the hearing impaired is available through TDD services (202) 275-1721.)

Decided: July 28, 1989.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 89-18219 Filed 8-3-89; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-52 (Sub 60X)]

The Atchison, Topeka & Santa Fe Railway Co.; Abandonment Exemption in Sedgwick County, KS

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts from prior approval requirements of 49 U.S.C. 10903-10904 the abandonment by The Atchison, Topeka and Santa Fe Railway Company of 12.72 miles of rail line in Sedgwick County, KS, subject to standard labor protective conditions.

DATES: Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on September 5, 1989. Formal expressions of intent to file an offer [1] of financial assistance under 49 CFR 1152.27(c)(2) must be filed by August 14, 1989, petitions to stay must be filed by August 21, 1989, and petitions for reconsideration must be filed by August 31, 1989. Requests for a public use condition must be filed by August 14, 1989.

ADDRESSES: Send pleadings referring to Docket No. AB-52 (Sub-No. 60X) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423
and

(2) Petitioner's representative: Michael W. Blaszak, 80 E. Jackson Blvd., Chicago, IL 60604.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275-7245. [TDD for hearing impaired: (202) 275-1721.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289-4357/4359. (Assistance for the hearing impaired is available through TDD services (202) 275-1721.)

Decided: July 28, 1989.

[1] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987), and final rules published in the **Federal Register** on December 22, 1987 (52 FR 48440-48446).

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Andre, Lamboley, and Phillips.

Noreta R. McGee,

Secretary.

[FR Doc. 89-18221 Filed 8-3-89; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31477 (Sub 2)]

Canadian National Railway Co.; Trackage Rights Exemption From Consolidated Rail Corp.

Consolidated Rail Corporation (Conrail) has agreed to grant local and overhead trackage rights to Canadian National Railway Company (CN) over a 22.2-mile line of railroad, known as the Massena Subdivision, between Massena, NY (CN's milepost 0.0 and Conrail's milepost 160.8) and the U.S.-Canadian border (CN's milepost 22.2). The trackage rights will allow CN to conduct bridge operations, to serve all present shippers and their successors, and to interchange with Conrail and The Massena Terminal R.R. Company at Massena, NY. The trackage rights will become effective upon the consummation of the sale of this line of railroad from CN to Conrail, which is being considered by the Commission in Finance Docket No. 31477, Consolidated Rail Corporation—Acquisition Exemption—Canadian National Railway Company. Both CN and Conrail presently operate over the Massena line, and no change in operations by either carrier is contemplated as a result of these transactions.

This notice is filed under 49 CFR 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Pleadings must be filed with the Commission and served on:

Jonathan M. Broder, Consolidated Rail Corporation, 1138 Six Penn Center Plaza, Philadelphia, PA 19103-2959.

Robert P. vom Eigen, Hopkins, Sutter, Hamel & Park, 888 16th Street NW., Washington, DC 20006.

As a condition to the use of this exemption, any employees affected by the trackage rights will be protected pursuant to Norfolk and Western Ry. Co.—Trackage Rights—BN, 354 I.C.C. 605 (1978), as modified in Mendocino Coast Ry., Inc.—Lease and Operate, 360 I.C.C. 653 (1980).

Decided: July 28, 1989.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 89-18130 Filed 8-3-89; 8:45 am]

BILLING CODE 7035-01-M

[Decision No. 2; Finance Docket No. 31505]

Rio Grande Industries, Inc., et al.; Purchase and Related Trackage Rights To Acquire Soo Line Railroad Co. Line Between Kansas City, MO and Chicago, IL

AGENCY: Interstate Commerce Commission.

ACTION: Notice of prefiling notification and request for comments.

SUMMARY: Pursuant to 49 CFR 1180.4(b), applicants have notified the Commission of their intent to file an application seeking authority for Rio Grande Industries, Inc., to acquire Soo Line Railroad Company's line between Kansas City, MO and Chicago, IL. The applicants also intend to seek authority for a series of related transactions involving stock interests and trackage and haulage rights. The Commission finds this to be a significant transaction as defined in 49 CFR part 1180. Applicants have proposed an accelerated procedural schedule, and the Commission invites interested parties to comment on it.

DATES: Written comments must be filed with the Interstate Commerce Commission no later than August 21, 1989. Applicants' reply is due 10 days thereafter.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275-7245 [TDD for hearing impaired: (202) 275-1721].

ADDRESSES: An original and 15 copies of all documents must refer to Finance Docket No. 31505 and be sent to: Office of the Secretary, Case Control Branch, Attn: Finance Docket No. 31505, Interstate Commerce Commission, Washington, DC 20423.

In addition, one copy of all documents in this proceeding must be sent to each of applicants' representatives:

Terence M. Hynes, Sidley & Austin, 1722 Eye Street, NW., Washington, DC 20006.

E. Barrett Prettyman, Jr., Hogan & Hartson, 555 Thirteenth Street NW., Washington, DC 20004-1109.

SUPPLEMENTARY INFORMATION: On July 3, 1989, Rio Grande Industries, Inc. (RGI), Southern Pacific Transportation Company (SPT), The Denver and Rio Grande Western Railroad Company (DRGW), St. Louis Southwestern Railway Company (SSW), and SKCC Acquisition Corporation (SKCC) (collectively referred to as the RGI applicants), and Soo Line Railroad Company (Soo) (RGI applicants and Soo are referred to collectively as applicants), filed a notice of intent indicating they will file an application seeking Commission approval and authorization under 49 U.S.C. 11341-11345 and 11103 for the following transactions:

(1) Acquisition by SKCC of Soo's line between Kansas City, MO and Chicago, IL, and appurtenant branch lines to Janesville, WI, Albany, IL, and Eldridge, IA. Under the proposal, SSW will operate the line.

(2) Acquisition by SKCC of trackage rights (and associated haulage rights) over Soo's lines between Chicago and Milwaukee, WI, and between Sabula Junction, IA and Dubuque, IA (including related terminal, gathering, and distribution services in the Milwaukee and Dubuque terminal areas).

(3) Acquisition by SKCC of: (a) The 50 percent common stock ownership interest of Soo in the Davenport, Rock Island and North Western Railroad (DRI), and (b) one-half of the 49 percent common stock ownership interest of Soo in the Indiana Harbor Belt Railroad.

(4) Acquisition by the RGI applicants of operating rights over certain properties owned in whole or in part by third parties and over which Soo currently conducts operations under trackage rights and joint facility agreements with such third parties. Those third parties are the Burlington Northern Railroad Company (BN), the Chicago and North Western Transportation Company (CNW), DRI, and Kansas City Southern Railway Company (KCS). Applicants seek Commission authorization and approval for voluntary agreements to be entered with these third parties, or if such party or parties decline to consent to such proposed use, applicants will seek terminal trackage rights pursuant to 49 U.S.C. 11103 with respect to the subject properties or will seek other relief to effect such proposed use.

(5) Acquisition by SKCC of trackage rights through appointment by Soo (with Soo continuing to operate under these same rights) over those lines owned and operated by the Commuter Rail Division of the Regional Transportation Authority (METRA) as to which Soo has trackage rights, including the METRA lines: (a) Between Madison Street, Chicago, and Fox Lake, IL; and (b) between Tower A-5 (Chicago) and Almora, IL.

(6) Acquisition by SKCC of section 11103 terminal trackage rights over a

short segment of KCS trackage which intersects the Kansas City-Chicago line between Air Line Junction and KCS Junction in the Kansas City terminal area, to create a continuous route between the lines to be acquired by SKCC and DRGW's trackage rights over the lines of the Union Pacific Railroad Company via Osawatomie.

(7) A grant by SKCC to Soo of trackage rights (and associated haulage rights, including the provision of gathering and distribution services) over the lines acquired by SKCC from Soo pursuant to subparagraph (1) above.

(8) Acquisition by SKCC from Soo of certain terminal, gathering, and distribution services and trackage rights in the Chicago terminal district.

(9) Acquisition by Soo from SSW of certain terminal, gathering, and distribution services in the Kansas City terminal district.

Applicants will use the year 1988 for purposes of their impact analyses to be filed in the application.[1] They intend to file their applications on or about September 1, 1989.

The Commission finds that this is a significant transaction, as defined at 49 CFR 1180.2(b). It involves two Class I railroads and a major market extension. Because of the size and nature of the Chicago rail market, and its importance to the North-Central region of the United States, the proposed transaction is found to be of regional and national transportation significance as defined in 49 U.S.C. 11345.

The application must conform to the regulations set forth at 49 CFR part 1180, *et seq.*, and must contain all information required there for significant transactions, except as modified by advance waiver.

On July 11, 1989, applicants filed a petition for waiver or clarification of our consolidation procedures. The Commission will address this petition in a separate decision. The Commission is, however, seeking comments now on applicants' proposed procedural schedule, as discussed below.

In its waiver petition, applicants have requested that the Commission adopt an expedited schedule in this proceeding. Applicants' proposed procedural schedule is as follows:

Proposed Procedural Schedule

Day 1, Application filed.
D+15, Notice of the application published in the **Federal Register.**
D+20, Discovery conference on application held.
D+45, Initial list of protective conditions and description of anticipated inconsistent applications due.
D+60, Comments and protests due on the application; requested conditions and inconsistent applications due.
D+70, Discovery conference on comments, protests, conditions and inconsistent applications held; Commission issues list of parties to proceeding.
D+90, Response to comments, protests, conditions and rebuttal in support of primary application due.
D+110, Rebuttal in support of comments, protests, conditions, and inconsistent applications due.
D+125, Opening Briefs due, all parties.
D+140, Reply Briefs due, all parties.
D+150, Oral Argument.
D+160, Commission Voting Conference.
D+180, Target Date for service of decision.[2]

Under that schedule, the Commission would have 15 days to decide whether to accept the primary application. Any initial lists of protective conditions would be filed within 30 days of acceptance of the primary application, and responsive applications, comments, and protests would be due 45 days after such acceptance. Completion of the evidentiary phase would occur 135 days following acceptance. Finally, applicants request that a final decision be issued 30 days after conclusion of the evidentiary phase.

Applicants' proposed schedule contains substantially shorter time periods than those provided in the Commission's rules at 49 CFR 1180.4 (a)–(e). Under these provisions, the Commission has 30 days to accept or reject the primary application. Following acceptance, the rules provide, among other things, the following time periods: (1) Written comments and initial lists of protective conditions must be filed within 30 days of that acceptance; (2) Responsive applications and second lists of requested protective conditions must be filed within 60 days of acceptance; (3) the evidentiary proceeding must be completed within 180 days of acceptance; and (4) a final decision must be issued 90 days after conclusion of the evidentiary phase.

Applicants assert that the 6-month schedule they propose fairly balances their right to obtain timely Commission action on the proposed transactions with the right of third parties to be heard regarding the proposals. However, we invite interested parties to submit written comment on the proposed schedule. Comments must be filed within 15 days of publication of this notice in the **Federal Register.** Applicants may reply within 10 days thereafter.

Decided: July 31, 1989.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Andre, Lamboley, and Phillips.

Noreta R. McGee,

Secretary.

[FR Doc. 89-18220 Filed 8-3-89; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-55 (Sub. 281X)]

CSX Transportation, Inc.; Abandonment Exemption of Line in Newport News, VA

Applicant has filed a notice of exemption under 49 CFR Part 1152, subpart F—Exempt Abandonments to abandon its approximately 2 miles of rail line between milepost 0.00, near 19th Street, and the end of Pier No. 14 and Pier No. 15 in Newport News, VA.

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; and (3) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use this exemption, any employee affected by the abandonment shall be protected under Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

[1] Applicants initially indicated in their notice filed July 3, 1989, that, with one exception, they would use 1988 data for their impact analyses. Because 1988 waybill data were not yet available, they desired to rely on 1987 figures for waybill-related data. By letter dated July 24, 1989, applicants state that they have recently learned that 1988 waybill sample data are currently available and, therefore, withdraw their request to use 1987 waybill data.

[2] Applicants doubt that hearings for purposes of cross-examination would be required, and propose that any necessary cross-examination should be conducted by deposition. Nonetheless, the proposed schedule would accommodate any limited hearing which might be deemed appropriate. In recognition of the accelerated nature of the proposed schedule, applicants will be prepared to afford prompt, informal discovery to interested parties.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on September 3, 1989 (unless stayed pending reconsideration). Petitions to stay that do not involve environmental issues,[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 August 14, 1989.[3] Petitions for reconsideration and requests for public use conditions under 49 CFR 1152.28 must be filed by August 24, 1989, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Lawrence H. Richmond, CSX Transportation, Inc., 100 North Charles Street, Baltimore, MD 21201.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by August 9, 1989. Interested persons may obtain a copy of the EA from SEE by writing to it (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Acting Chief, SEE at (202) 275–7684. Comments on environmental and energy concerns must be filed within 15 days after the EA becomes available to the public.

Environmental, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: July 31, 1989.

[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.2d 377 (1989). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[2] *See* Exempt. of Rail Abandonment—Offers of Finan. Assist., 4 I.C.C.2d 164 (1987).

[3] The Commission will accept a late-filed trail use statement so long as it retains jurisdiction to do so.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 89–18131 Filed 8–3–89; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

Antitrust Division

National Cooperative Research Act of 1984; CAD Framework Initiative, Inc.; Correction

In notice document 89–14802 concerning CAD Framework Initiative, Inc. appearing in the issue of Thursday, June 22, 1989 at 54 FR 26265, make the following correction: in the list of Corporate Member delete "Apollo Bell Laboratories;" and "Apollo Computer, Inc." and "AT&T Bell Laboratories."

John W. Clark,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 89–18288 Filed 8–3–89; 8:45 am]

BILLING CODE 4410–01–M

National Cooperative Research Act of 1984; OSI/Network Management Forum

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), the OSI/Network Management Forum, (the "Forum") on July 3, 1989 filed an additional written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing additions to its membership. The additional written notification was filed for the purpose of extending the protections of section 4 of the Act, limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

On October 21, 1988, the Forum filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on December 8, 1988, 53 FR 49615. On December 23, 1988 and March 23, 1989, the Forum filed additional written notifications pursuant to section 6(a) of the Act. The Department of Justice published notices in the **Federal Register** pursuant to section 6(b) on January 26, 1989, 54 FR 3870 and on April 25, 1989, 54 FR 17834.

The identities of the additional parties to the venture are given below:

McDonnell Douglas Network Systems Company, 2560 North First Street, P.O. Box 49019 M/S F–36, San Jose, CA 95161–9019.

Stratus Computer, Inc., 55 Fairbanks Boulevard, Marlboro, MA 01752.

Teknekron Communications Systems, Inc., 2121 Allston Way, Berkeley, CA 94704.

Ungermann-Bass, Incorporated, 3900 Freedom Circle, Santa Clara, CA 95052.

Applied Computering Devices, Inc., 100 North Campus Drive, Aleph Park, Terre Haute, IN 47802.

France Telecom, Direction Generale—DACT/STP, 36, rue du Commandant Mouchotte, Paris, CEDEX 14 75675, FRANCE.

Gandalf Data Ltd., 130 Colonnade Road S. Nepean, Ontario K2E 7M4, CANADA.

General Datacomm, Inc., 1579 Straits Turnpike, Middlebury, CT 06762–1299.

Netlabs, 11693 San Vicente Boulevard, Suite 348, Los Angeles, CA 90049.

Tandem Computers, Inc., 10501 N. Tantau Avenue, Cupertino, CA 95014.

Televerket, Marketing Department, FFu, S–123 86, FARSTA, SWEDEN.

John W. Clark,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 89–18289 Filed 8–3–89; 8:45 am]

BILLING CODE 4410–01–M

Bureau of Prisons

Modification to List of Bureau of Prisons Institutions

AGENCY: Bureau of Prisons, Justice.

ACTION: Notice.

SUMMARY: Attorney General Order No. 646–76 (41 FR 14805), as amended, classifies and lists the various Bureau of Prisons institutions. Attorney General Order No. 960–81, Reorganization Regulations, published in the **Federal Register** October 27, 1981 (at 46 FR 52339 et seq.) delegated to the Director, Bureau of Prisons, in 28 CFR 0.96(r), the authority to establish and designate Bureau of Prisons institutions. In this present document, the Bureau is publishing a consolidated listing of its institutions, and is designating a new Federal Prison Camp at Bryan, Texas. This camp recently became operational. In addition, the Bureau of Prisons is redesignating the Federal Reformatory for Women from a Federal Correctional Institution to a Federal Prison Camp. This change is made in recognition of the mission of that facility. The Bureau of Prisons is also designating new Federal Correctional Institutions in McKean, Pennsylvania; Fairton, New

Jersey; and Sheridan, Oregon. These facilities are scheduled to become operational later this year.

FOR FURTHER INFORMATION CONTACT: Roy Nanovic, Office of General Counsel, Bureau of Prisons, 320 First Street NW., Washington, DC 20534 (202–724–3062).

SUPPLEMENTARY INFORMATION: This notice is not a rule within the meaning of the Administrative Procedure Act, 5 U.S.C. 551(4), the Regulatory Flexibility Act, 5 U.S.C. 601(2), or Executive Order No. 12291, sec. 1(a).

By virtue of the authority vested in the Attorney General in 18 U.S.C. 3621, 4001, 4003, 4042, 4081, and 4082 (repealed in part October 12, 1984) and delegated to the Director, Bureau of Prisons by 28 CFR 0.96(r), it is hereby ordered as follows:

The following institutions are established and designated as places of confinement for the detention of persons held under authority of any Act of Congress, and for persons charged with or convicted of offenses against the United States or otherwise placed in the custody of the Attorney General of the United States.

A. The Bureau of Prisons institutions at the following locations are designated as U.S. Penitentiaries:

(1) Atlanta, Georgia;
(2) Leavenworth, Kansas;
(3) Lewisburg, Pennsylvania;
(4) Lompoc, California;
(5) Marion, Illinois; and
(6) Terre Haute, Indiana.

B. The Bureau of Prisons institutions at the following locations are designated as Federal Correctional Institutions:

(1) Ashland, Kentucky;
(2) Bastrop, Texas;
(3) Butner, North Carolina;
(4) Danbury, Connecticut;
(5) El Reno, Oklahoma;
(6) Englewood, Colorado;
(7) Fairton, New Jersey;
(8) Fort Worth, Texas;
(9) La Tuna, Texas;
(10) Lexington, Kentucky;
(11) Lorretto, Pennsylvania;
(12) Marianna, Florida;
(13) McKean, Pennsylvania;
(14) Memphis, Tennessee;
(15) Milan, Michigan;
(16) Morgantown, West Virginia;
(17) Otisville, New York;
(18) Oxford, Wisconsin;
(19) Petersburg, Virginia;
(20) Phoenix, Arizona;
(21) Pleasanton, California;
(22) Ray Brook, New York;
(23) Safford, Arizona;
(24) Sandstone, Minnesota;
(25) Seagoville, Texas;
(26) Sheridan, Oregon;
(27) Talladega, Alabama;
(28) Tallahassee, Florida;
(29) Terminal Island, California;
(30) Texarkana, Texas; and
(31) Tucson, Arizona.

C. The Bureau of Prisons institutions at the following locations are designated as Federal Prison Camps:

(1) Alderson, West Virginia;
(2) Allenwood, Pennsylvania;
(3) Big Spring, Texas;
(4) Boron, California;
(5) Bryan, Texas;
(6) Duluth, Minnesota;
(7) Eglin Air Force Base, Florida;
(8) Ft. Bliss, El Paso, Texas;
(9) Homestead Air Force Base, Homestead, Florida;
(10) Lompoc, California;
(11) Maxwell Air Force Base/Gunter Air Force Station, Montgomery, Alabama;
(12) Nellis Air Force Base, Las Vegas, Nevada;
(13) Saufley Field, Pensacola, Florida;
(14) Seymour-Johnson Air Force Base, North Carolina;
(15) Tyndall Air Force Base, Panama City, Florida; and
(16) Yankton, South Dakota.

D. The Bureau of Prisons institutions at the following locations are designated as Metropolitan Correctional Centers:

(1) Chicago, Illinois;
(2) Miami, Florida;
(3) New York, New York; and
(4) San Diego, California.

E. The Bureau of Prisons institution at Springfield, Missouri is designated as the U.S. Medical Center for Federal Prisoners.

F. The Bureau of Prisons institution at Rochester, Minnesota is designated as the Federal Medical Center.

G. The Bureau of Prisons institution at Oakdale, Louisiana is designated as the Federal Detention Center.

H. The Bureau of Prisons institution at Los Angeles, California is designated as the Metropolitan Detention Center.

Dated: July 31, 1989.

J. Michael Quinlan,

Director, Federal Bureau of Prisons.

[FR Doc. 89–18298 Filed 8–3–89; 8:45 am]

BILLING CODE 4410–05–M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget

Background: The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the reporting and recordkeeping requirements that will affect the public.

List of Recordkeeping/Reporting Requirements Under Review: As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in.

The Agency of the Department issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement.

The OMB and Agency identification numbers, if applicable.

How often the recordkeeping/reporting requirement is needed.

Who will be required to or asked to report or keep records.

Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements and the average hours per respondent.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

Comments and Questions: Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, telephone (202) 523–6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OLMS/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, Room 3208, Washington, DC 20503 (Telephone (202) 395–6880).

Any member of the public who wants to comment on a recordkeeping/reporting requirement which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

Extensions

Mine Safety and Health Administration
Records of Fire Drills and Programs to Instruct and Train Miners in the Location and Use of Firefighting Equipment
1219–0054

On occasion; quarterly
Program: 200 respondents; 30 minutes per response; 100 total burden hours
Fire drills: 2,328 respondents; 20 minutes per response; 40,320 total burden hours
Underground coal mine operators are required to have a plan approved by MSHA for the instruction of miners in firefighting and evacuation procedures to be followed in event of an emergency. To implement the plan, fire drills are required to be conducted on a quarterly basis, and a record is required to be kept of the fire drills.
Mine Safety and Health Administration
Mine Rescue Equipment Test and Inspection Records
1219–0093
Monthly
Businesses or other for profit; small businesses or organizations
800 respondents; 12½ minutes per response; 24,000 total burden hours
Breathing apparatus at mine rescue stations are required to be inspected and tested once each month. Records of the results of the inspections and tests are required to be maintained at the mine rescue stations. The information is used to ensure that the breathing apparatus is operable in case of an emergency.
Employment Standards Administration
29 CFR Part 516, Records to be Kept by Employers
1215–0017; WH–1261
Recordkeeping
Individuals or households; State or local governments; Farms; Businesses or other for-profit; Federal agencies or employees; Non-profit institutions; Small businesses or organizations
3,600,000 recordkeepers; 762,194 total hours
Mine Safety and Health Administration
Records of Results of Examinations of Self-Rescuers
1219–0044
Quarterly
Businesses or other for profit; small businesses or organizations
2,328 respondents; 1 hour and 4 minutes per response; 9,871 total burden hours
Requires underground coal mine operators to keep records of the results of required examinations of self-rescue devices. The information is used to ensure that the devices are in operable and usable condition in case of an emergency.

Signed at Washington, DC this 31st day of July, 1989.

Paul E. Larson,

Departmental Clearance Officer.

[FR Doc. 89–18267 Filed 8–3–89; 8:45 am]

BILLING CODE 4510–43–M

Delegation of Authority and Assignment of Responsibility; Pension and Welfare Benefits Administration

Effective June 27, 1989, I hereby delegated authority to Ms. Ann L. Combs, Deputy Assistant Secretary for Pension and Welfare Benefits, and have assigned to her responsibility for performing all of the duties and functions previously assigned to the Assistant Secretary for Pension and Welfare Benefits.

This delegation will remain in effect until a duly appointed Assistant Secretary for Pension and Welfare Benefits takes office.

Signed at Washington, DC this 31st day of July, 1989.

Elizabeth Dole,

Secretary of Labor

[FR Doc. 89–18268 Filed 8–3–89; 8:45 am]

BILLING CODE 4510–23–M

Employment and Training Administration

Investigations Regarding Certifications of Eligibility to Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 211(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than August 14, 1989.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than August 14, 1989.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street, NW., Washington, DC 20213.

Signed at Washington, DC this 24th day of July 1989.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (union/workers/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
ACME Associates (Workers)	New York, NY	7/24/89	7/6/89	23,171	Sliders for Zippers.
Alside Div. (USWA)	Cuyahoga Falls, OH	7/24/89	7/6/89	23,172	Aluminum & Steel Siding.
Blakely Construction (Workers)	Odessa, TX	7/24/89	7/11/89	23,173	Oil & Gas.
Boyd Exploration Co. (Company)	Casper, WY	7/24/89	7/13/89	23,174	Oil & Gas.
Dover Weaver Corp. (AIW)	Paris, KY	7/24/89	7/6/89	23,175	Lifts for Cars, Trucks, Etc.
Eaton Corp.—Controls (Workers)	Freemont, OH	7/24/89	6/29/89	23,176	Automotive & Appliance Controls.
Fox Testing Co., Inc. (Workers)	Dodge City, KS	7/24/89	7/6/89	23,177	Drillstem Testing.
Glenn Russel, Inc. (LGAPNWU)	New York, NY	7/24/89	7/5/89	23,178	Handbags.
Jackson Drilling, Co. (Workers)	Conroe, TX	7/24/89	6/29/89	23,179	Oil & Gas.
Knox Corder Drilling, Co. (Workers)	Devine, TX	7/24/89	7/10/89	23,180	Oil & Gas.
Laird & Co. (Workers)	Scobeyville, NJ	7/24/89	7/10/89	23,181	Packaging of Liquor & Brandy.
Mercury Mfg. Corp. (Workers)	Hancock, MI	7/24/89	7/1/89	23,182	Auto Parts.
Momentum Mfg. Corp. (Company)	Herkimer, NY	7/24/89	7/7/89	23,183	Circuit Boards.
Paterson Shade (IBT)	Paterson, NJ	7/24/89	7/8/89	23,184	Lamp Shades.

APPENDIX—Continued

Petitioner (union/workers/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
Pecten International (Workers)	Houston, TX	7/24/89	7/5/89	23,185	Oil & Gas.
Peter Stewart, Inc. (Workers)	Pleasantville, NJ	7/24/89	6/24/89	23,186	Steel.
Petroleum Management, Inc. (PMI) (Workers)	Corpus Christi, TX	7/24/89	6/30/89	23,187	Oil & Gas.
Petrorentas Internacionales, Inc.	McAllen, TX	7/24/89	7/3/89	23,188	Oil & Gas.
Phillips Mfg. Tech. Center (IUE)	S. Plainfield, NJ	7/24/89	7/10/89	23,189	Machine Parts.
Shell Offshore, Inc. (Workers)	New Orleans, LA	7/24/89	7/5/89	23,190	Oil & Gas.
Shell Oil Co. (Workers)	Houston, TX	7/24/89	7/5/89	23,191	Oil & Gas.
Shell Western E&P, (Workers)	Houston, TX	7/24/89	7/5/89	23,192	Oil & Gas.
Trasco, Inc. (Workers)	South Paris, ME	7/24/89	7/6/89	23,193	Women's Shoes & Boots.
United Auto Workers, Local 558 (UAW)	Willow Springs, IL	7/24/89	7/12/89	23,194	Sheet Metal Stamings.
Wyckoff Steel, Inc. (USWA)	Plymouth, MI	7/24/89	7/7/89	23,195	Bar & Coil Steel.

[FR Doc. 89-18266 Filed 8-3-89; 8:45 am]
BILLING CODE 4510-30-M

[TA-W-22,790]

R.L.D. Dress Co.; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18 an application for administrative reconsideration was filed with the Director of the Office of Trade Adjustment Assistance for workers at R.L.D. Dress Company, Cadillac, Michigan. The review indicated that the application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA-W-22, 790; R.L.D. Dress Company, Cadillac, Michigan (July 26, 1989)

Signed at Washington, DC this 26th day of July 1989.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 89-18269 Filed 8-3-89; 8:45 am]
BILLING CODE 4510-30-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 fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, Appendix, as well as such additional statues as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related 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-3504, Washington, DC 20210.

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I:

Connecticut:
CT89-1 (Jan. 6, 1989) ..... p.61, p.62-64,69.
Maryland:
MD89-15 (Jan. 6, 1989) ..... p.449, p.450.
New Jersey:
NJ89-4 (Jan. 6, 1989) ..... p.657, pp.660-664, pp.666.
New York:
NY89-3 (Jan. 6, 1989) ..... p.701, pp.702-708.

NY89–5 (Jan. 6, 1989)..... p.717, pp.718–726.
NY89–6 (Jan. 6, 1989)..... p.727, pp.728–736.

Volume II:

Iowa:
IA89–5 (Jan. 6, 1989)..... p.41, pp.45.
Illinois:
IL89–13 (Jan. 6, 1989)..... p.179, pp.182, 187, pp.190.
Minnesota:
MN89–5 (Jan. 6, 1989)..... p.557, pp.558–561.
Missouri:
MO89–5 (Jan. 6, 1989)..... p.669, p.670.

Volume III:

Colorado:
CO89–2 (Jan. 6, 1989)..... p.115, p.116.
Colorado:
CO89–4 (Jan. 6, 1989)..... p.123, p.124.
Washington:
WA89–2 (Jan. 6, 1989)..... p.389, pp.391,393.

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783–3238.

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 28th day of July 1989.

Robert V. Setera,

Acting Director, Division of Wage Determinations.

General Wage Determinations Issued Under the Davis-Bacon and Related Acts

Volume I

Transmittal #30—August 4, 1989

This transmittal contains changes to Volume I, including modifications or supersedeas decisions to General Wage Determinations as published in the **Federal Register** on August 4, 1989. The changes are listed by state, decision number(s), and page number(s). The page(s) listed should be removed and the new page(s) attached should be inserted as replacements.

Connecticut:
CT89–1..... p. 61, 62–64, 69.
Maryland:
MD89–15..... p. 449, p.450.
New Jersey:
NJ89–4..... p. 657, 660, 664, 666.
New York:
NY89–3..... p. 701, 702–708.
New York:
NY89–5..... p. 717, 718–726.
New York:
NY89–6..... p.727, pp. 728–736.

Correction: Transmittal #26 (July 7, 1989) Listed General Wage Determination No. MD89–19, but did not contain a copy of that determination. The missing copy is included in this transmittal.

Volume II

Transmittal #30—August 4, 1989

This transmittal contains changes to Volume II, including modifications or supersedeas decisions to General Wage Determinations as published in the **Federal Register** on August 4, 1989. The changes are listed by state, decision number(s), and page number(s). The page(s) listed should be removed and the new page(s) attached should be inserted as replacements.

Iowa:
IA89–5..... p.41, p.45.
Illinois:
IL89–13..... p.179, pp.182–187, pp.190.
Minnesota:
MN89–5..... p.557, pp.558–561.
Missouri:
MO89–5..... p.669, p.670.

Volume III

Transmittal #30—August 4, 1989

This transmittal contains changes to Volume III, including modifications or supersedeas decisions to General Wage Determinations as published in the **Federal Register** on August 4, 1989. The changes are listed by state, decision number(s), and page number(s). The page(s) listed should be removed and the new page(s) attached should be inserted as replacements.

Colorado:
CO89–2..... p.115, p.116.
Colorado:
CO89–4..... p.123 p.124.
Washington:
WA89–2..... p.389, pp.391, 393.

[FR Doc. 89–18096 Filed 8–3–89; 8:45 am]
BILLING CODE 4510–27–M

Mine Safety and Health Administration

[Docket No. M–89–105–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 77.213 (draw-off tunnel escapeways) to its Georgetown Preparation Plant (I.D. No. 33–00958) located in Harrison County, Ohio. The petition is filed under section 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 when it is necessary for a tunnel to be closed at one end, an escapeway not less than 30 inches in diameter (or of the equivalent, if the escapeway does not have a circular cross section) is required to be installed which extends from the closed end of the tunnel to a safe location on the surface; and, if the escapeway is inclined more than 30 degrees from the horizontal, it is required to be equipped with a ladder which runs the full length of the inclined portion of the escapeway.

2. The Trenton Channel Dump Feeder consists of a small hopper and feeder beneath a truck bridge which accommodates the bottom-dump trucks. The feeder discharges the raw coal onto a 48-inch belt conveyor directly under the feeder. The enclosed portion of the feeder and belt conveyor is approximately 45 feet in length. The center height of the belt conveyor enclosure is 11 feet, 10 inches. The walkway clearance width in this area on either side of the belt conveyor is 3 feet, 9½ inches.

3. The drive system for the belt conveyor is located external to the conveyor enclosure and would be operated remotely from the Trenton Channel Tripple.

4. The belt conveyor has pull cords provided on both sides within the enclosed portion. In addition, the belt

conveyor is provided with a belt slippage shutdown switch as well as misalignment run-off switches. The conveyor enclosure slopes towards the opening to allow for sufficient drainage when necessary.

5. As an alternate method, petitioner proposes the following procedures.

(a) The tunnel would be inspected for fire or smoke prior to entry;

(b) Methane gas levels would be checked by a flame safety lamp or methane detector;

(c) A self-contained self-rescue device (SCSR) would be provided and maintained at the feeder area of the tunnel;

(d) Proper instruction for SCSR use would be provided to all tunnel maintenance personnel;

(e) A 20-pound capacity fire extinguisher would be placed at the feeder area of the tunnel;

(f) No one would be permitted inside the tunnel during the time coal is being dumped into the feeder;

(g) A sign would be placed at the tunnel entrance stating DO NOT ENTER DURING DUMPING OPERATIONS;

(h) A "Jog" switch would be installed to operate the belt during tunnel cleanup;

(i) The tunnel would be cleaned of all combustible material and the area dusted with rock dust or hydrated lime prior to any welding or burning operations; and

(j) For the purpose of maintenance or cleanup, two-way communication would be provided within the feeder area of the tunnel to a person on duty outside the tunnel area.

6. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before September 5, 1989. Copies of the petition are available for inspection at that address.

Date: July 26, 1989.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 89-18264 Filed 8-3-89; 8:45 am]

BILLING CODE 4510-13

[Docket No. M-89-104-C]

Southern Ohio Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Southern Ohio Coal Company, P.O. Box 552, Fairmont, West Virginia 26555-0552 has filed a petition to modify the application of 30 CFR 49.6(a)(1) (equipment and maintenance requirements) to its Martinka No. 1 Mine (I.D. No. 46-03805) 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 requirements that each mine rescue station be provided with at least twelve self-contained oxygen breathing apparatus, each with a minimum of 2 hours capacity, and any necessary equipment for testing such breathing apparatus.

2. As an alternate method, petitioner proposes the following:

(a) The mine would be equipped with ten self-contained oxygen breathing apparatus, each with a minimum 2 hours capacity;

(b) The mine would have 9 fully trained mine rescue personnel;

(c) The mine rescue team would not be permitted to perform rescue and recovery work during a mine emergency until the second team, serving as back-up, is present at the mine;

(d) The mine rescue station is of sufficient size to facilitate at least 2 fully equipped mine rescue teams;

(e) The mine has a written reciprocating agreement with its sister mining operation; and

(f) The sister mining operation, which consists of a fully equipped mine rescue team, is within 2 hours travel time to the mine.

3. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or befoe September 5, 1989. Copies of the petition are available for inspection at that address.

Dated: July 26, 1989.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 89-18265 Filed 8-3-89; 8:45 am]

BILLING CODE 4510-43

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

Agency Information Collection Activities Under OMB Review

AGENCY: National Endowment for the Arts.

ACTION: Notice.

SUMMARY: The National Endowment for the Arts (NEA) has sent to the Office of Management and Budget (OMB) the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Comments on this information collection must be submitted by September 5, 1989.

ADDRESSES: Send comments to Mr. Jim Houser, Office of Management and Budget, New Executive Office Building, 726 Jackson Place NW., Room 3002, Washington, DC 20503; (202-395-7316). In addition, copies of such comments may be sent to Mrs. Anne C. Doyle, National Endowment for the Arts, Administrative Services Division, Room 203, 1100 Pennsylvania Avenue NW., Washington, DC 20506; (202-682-5401).

FOR FURTHER INFORMATION CONTACT: Mrs. Anne C. Doyle, National Endowment for the Arts, Administrative Services Division, Room 203, 1100 Pennsylvania Avenue NW., Washington, DC 20506; (202-682-5401) from whom copies of the documents are available.

SUPPLEMENTARY INFORMATION: The Endowment requests a review of the revision of a currently approved collection of information. This entry is issued by the Endowment and contains the following information: (1) The title of the form; (2) how often the required information must be reported; (3) who will be required or asked to report; (4) what the form will be used for; (5) an estimate of the number of responses; (6) the average burden hours per response; (7) an estimate of the total number of hours needed to prepare the form. This entry is not subject to 44 U.S.C. 3504(h).

Title: Music Fellowships Application Guidelines for FY 1991.

Frequency of Collection: One-time.

Respondents: Individuals or households.

Use: Guideline instructions and applications elicit relevant information from individual artists that apply for funding under specific Music Fellowships Program categories. This information is necessary for the accurate, thorough, and fair consideration of competing proposals in the peer review process.

Estimated Number of Respondents: 820.

Average Burden Hours per Response: 40.

Total Estimated Burden: 32,800.

Anne C. Doyle,

Administrative Services Division, National Endowment for the Arts.

[FR Doc. 89-18199 Filed 8-3-89; 8:45 am]

BILLING CODE 7537-01-M

Music Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. (92-463), as amended, notice is hereby given that a meeting of the Music Advisory Panel (Multi-Music Presenters Section) to the National Council on the Arts will be held on August 23-24, 1989, from 9:00 a.m.-6:00 p.m., August 25, 1989, from 9:00 a.m.-4:00 p.m. in Room M14 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public on August 25, 1989, from 2:00 p.m.-4:00 p.m. The topic for discussion will be guidelines and policy issues.

The remaining portion of this meeting on August 23-24, 1989, from 9:00 a.m.-6:00 p.m., August 25, 1989, from 9:00 a.m.-2:00 p.m. is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

If you need special accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682-5433.

Dated: July 31, 1989.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 89-18291 Filed 8-3-89; 8:45 am]

BILLING CODE 7537-01-M

NUCLEAR REGULATORY COMMISSION

Applications for Licenses to Export Nuclear Material; Nissho Iwai Corp.

Pursuant to 10 CFR 110.70(b) "Public notice of receipt of an application", please take notice that the Nuclear Regulatory Commission has received the following applications for export licenses. Copies of the applications are on file in the Nuclear Regulatory Commission's Public Document Room located at 2120 L Street NW., Washington, DC.

A request for a hearing or petition for leave to intervene may be filed within 30 days after publication of this notice in the **Federal Register**. Any request for hearing or petition for leave to intervene shall be served by the requestor or petitioner upon the applicant, the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555; the Secretary, U.S. Nuclear Regulatory Commission; and the Executive Secretary, U.S. Department of State, Washington, DC 20520.

In its review of applications for licenses to export production or utilization facilities, special nuclear materials or source materials, noticed herein, the Commissioin does not evaluate the health, safety or environmental effects in the recipient nation of the facility or material to be exported. The information concerning these applications follows.

NRC Export License Applications

Name of applicant, date of appl., date received, application No.	Material type	Material in total element	Kilograms total isotope	End use	Country of destination
Nissho Iwai Corp., 6/29/89, 7/10/89, XSNM02467	45.0% Enriched Uranium.	85.56	38.50	Fuel for JMTR Research Reactor.	Japan.
Nissho Iwai Corp., 6/29/89, 7/10/89, XSNM02468	45.0% Enriched Uranium.	25.07	11.18	Fuel for JRR-2 Research Reactor.	Japan.

Dated this 28th day of July 1989 at Rockville, Maryland.

For the Nuclear Regulatory Commission.

Marvin R. Peterson,

Assistant Director for International Security, Exports and Materials Safety, International Programs, Office of Governmental and Public Affairs.

[FR Doc. 89-18174 Filed 8-3-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-286]

Power Authority of the State of New York; Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards; Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR-64, issued to Power Authority of the State of New York (the licensee) for operation of Indian Point Nuclear Generating Unit No. 3 located in Westchester County, New York.

The proposed amendment would revise the Technical Specifications to authorize operation of the plant with Hudson River (ultimate heat sink) water temperatures of up to a maximum of 95 °F and with containment air

temperatures of up to a maximum of 130 °F when the reactor is operating. The licensee's application for this amendment is contained in its submittal of July 24, 1989.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the request for amendment involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee provided the following analysis of the proposed changes:

In accordance with the requirements of 10 CFR 50.92, the application is judged to involve no significant hazards based upon the following information:

1. Does the proposed license amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response

Operation of Indian Point Unit 3 with a 95 °F ultimate heat sink temperature does not involve a significant increase in the probability or consequences of an accident previously evaluated.

As discussed in section 5.1.2 of WCAP–12313, operation of Indian Point Unit 3 with a Service Water inlet temperature of 95 °F will not increase the probability of the sudden failure of SWS or CCWS cooled equipment, whose sudden failure could cause an accident evaluated in the FSAR, (i.e. loss of reactor coolant flow due to the sudden failure of a RCP, or reactor coolant system failures due to inadequate reactor vessel support cooling).

Section 5.1.3 of WCAP–12313, states that adequate cooling is provided to safety-related equipment to support operability following design basis accidents. In addition, adequate cooling is provided to the emergency core cooling and containment cooling systems to mitigate design basis accidents and maintain plant safety parameters below safety limits.

The Authority has analyzed the effect of a 95 °F ultimate heat sink temperature on peak containment accident pressure in WCAP–12269. In addition to the 95 °F service water inlet temperature, other key assumptions include a containment ambient temperature of 130 °F, a six (6) second Safety Injection (SI) pure time delay (during a main steam line break accident) and zero (0) ppm boron concentration in the Boron Injection Tank. The results of the analysis show that the calculated peak containment accident pressure for a main steam line break accident, which is the worst case, is 42.42 psig, which is below the containment design pressure of 47 psig. It should also be noted, the new peak containment accident temperature (257 °F) is less than that previously analyzed for Equipment Qualification (EQ).

2. Does the proposed license amendment create the possibility of a new or different kind of accident?

Response

Operation of Indian Point Unit 3 with a 95 °F ultimate heat sink temperature and a 130 °F maximum allowable containment temperature does not create the possibility of a new or different kind of accident than any previously evaluated.

Operation of Indian Point Unit 3 with a 95 °F ultimate heat sink temperature and a 130 °F maximum allowable containment temperature does not create new equipment failure modes from those already evaluated in the Final Safety Analysis Report (FSAR). The failure of nonsafety-related equipment either does not cause a new or different accident or does not cause an accident not already evaluated. Adequate cooling is provided to safety-related equipoment to ensure that they operate as intended. Therefore, no new or different kind of accident is created by increasing the allowable ultimate heat sink temperature to 95 °F or increasing the containment maximum temperature to 130 °F.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response

Operation of Indian Point Unit 3 with a 95 °F ultimate heat sink temperature does not involve a significant reduction in a margin of safety.

As discussed in § 5.1 of WCAP–12313, adequate cooling is provided to support operation of safety-related equipment during normal operation, abnormal operations, and following design basis accident. In addition, adequate cooling is provided to ensure that safety-related equipment performance is sufficient to maintain safety parameters below safety limits. With a 95 °F ultimate heat sink, post-loss of coolant accident emergency core cooling functions are supported to ensure long term core cooling. Peak containment accident pressure (42.42 psig) will not exceed the design pressure of 47 psig. The peak containment accident temperature (247 °F) is less than previously analyzed for EQ. Therefore, since all applicable safety limits are met, there is no reduction in any margin of safety.

The Authority considers that the proposed changes can be classified as not likely to involve significant hazards consideration since with a 95° F ultimate heat sink adequate cooling is provided to support all necessary equipment during normal operation, abnormal operation and following design basis accidents.

The staff agrees with the licensee's analysis. Therefore, based on the above considerations, the Commission has made a proposed determination that the amendment request involves no significant hazards considerations.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration and Resources Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room P–216, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland from 7:30 a.m. to 4:15 p.m. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC. The filing of requests for hearing and petitions for leave to intervene are discussed below.

By August 31, 1989, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be

made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition shuld also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards considerations. The final determination will serve to decide when the hearing is held.

If the final determination is that the request for amendment involves no significant hazards considerations, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves significant hazards considerations, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards considerations. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing on a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325–6000 (in Missouri 1-(800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Robert A. Capra: (petitioner's name and telephone number), (date petition was mailed), (plant name), and (publication date and page number of this **Federal Register** notice). A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20444, and to Mr. Charles M. Pratt, 10 Columbus Circle, New York, New York 10019, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. That determination will be based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated July 24, 1989, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC and at the Local Public Document Room located at White Plains Public Library, 100 Martine Avenue, White Plains, New York 10610.

Dated at Rockville, Maryland, this 31st day of July 1989.

For The Nuclear Regulatory Commission.

Donald S. Brinkman,

Senior Project Manager, Project Directorate I–1, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 89–18254 Filed 8–3–89; 8:45 am]

BILLING CODE 7590–01–M

POSTAL SERVICE

Expiration of the Temporary Domestic Mail Classification Schedule Provision Regarding Second-Class Mail

AGENCY: Postal Service.

ACTION: Notice of expiration of a temporary change in the Domestic Mail Classification Schedule.

SUMMARY: This gives notice of the expiration of the temporary amendment of the Domestic Mail Classification Schedule, adopted on October 9, 1989, to provide specifically that "Plus" issues of second-class publications, whether or not published on the same day as another regular issue of the publication, are separate publications for purposes of qualifying for entry as second-class mail.

EFFECTIVE DATE: July 23, 1989.

FOR FURTHER INFORMATION CONTACT: Grayson M. Poats, (202) 268–2981.

SUPPLEMENTARY INFORMATION: On June 17, 1988, the United States Postal Service, pursuant to 39 U.S.C. 3623, filed a request with the Postal Rate Commission for a change in the mail classification schedule to make clear its authority to prevent the abuse of second-class mail through the mailing of "Plus" issues of publications. The Commission assigned the case Docket No. MC88–2 and published a notice in the **Federal Register** on June 28, 1988 (53 FR 24388) describing the request and offering interested parties an opportunity to intervene.

The Postal Service requested a change in § 200.0123 of the Domestic Mail Classification Schedule to read as follows:

§ 200.0123 For purposes of determining second-class eligibility and postage under Classification Schedule 200, an "issue" of a newspaper or other periodical shall be deemed to be a separate publication if:

a. It is published at a regular frequency, either on the same day as another regular issue of the same publication, or at such other frequency as prescribed by the Postal Service by regulation, and

b. It is distributed to more than (i) 10 percent nonsubscribers, or (ii) twice as many nonsubscribers as the other issue on that same day, or, if no other issue that day, any

other issue distributed at the same frequency, whichever is greater.

Such separate publications must independently meet the qualifications in section 200.0101 through 200.0109, or 200.0110.

Pursuant to 39 U.S.C. 3641(e), the Postal Service implemented the proposed classification change, on a temporary basis, on October 9, 1988. The Commission issued an Opinion and Recommended Decision in Docket No. MC88–2 on June 23, 1989. Pursuant to 39 U.S.C. 3641(e), the temporary classification change became ineffective on July 23, 1989, 30 days after the Commission's Opinion and Recommended Decision was issued.

An implementing regulation (section 428.227 of the Domestic Mail Manual) also became ineffective on July 23, as noticed elsewhere in this issue.

Fred Eggleston

Assistant General Counsel, Legislative Division.

[FR Doc. 89–18305 Filed 8–3–89; 8:45 am]

BILLING CODE 7710–12–M

SECURITIES AND EXCHANGE COMMISSION

[34–27068; NSCC–89–7]

Self-Regulatory Organization; National Securities Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Automated Confirmation Transaction System

July 27, 1989.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on June 9, 1989, NSCC filed with the Securities Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NSCC. The Commission is publishing this notice to solicit comments on the proposed rule change for interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would amend NSCC's Rules and Procedures concerning the reporting of locked-in trade data.[1]

[1] The term "locked-in trade" refers to a trade in an automated system. Under the locked-in comparison method, the entity (*e.g.*, the exchange) that operates the system becomes the contra-side to each half of the trade.

II. Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) The purpose of the proposed rule change is to allow NSCC to accommodate the National Association of Securities Dealers' ("NASD's") Automated Confirmation Transaction System ("Act").[2] Act is an automated comparison system which locks in over-the-counter ("OTC") equities transactions as close as possible to the point of execution. ACT will serve as a conduit for the transfer of trade information to NSCC on behalf of the parties to the transaction. The trades will be reported to NSCC as locked-in trades. By reporting previously negotiated two party OTC transactions to NSCC as locked in trades, ACT will relieve the contra parties of this reporting requirement.

Currently, NSCC receives locked-in trade data from the NASD in connection with: (1) The Small Order Execution System ("SOES"), (2) the Order Confirmation Transaction System ("OCT"), (3) the Intermarket Trading System ("ITS'), and (4) the automated execution systems of Qualified Special Representatives. Trades executed via these four systems result in locked in trades and reported to NSCC on the evening of trade date ("T"). In order to accommodate ACT, NSCC also will accept locked-in trade data from self-regulatory organizations ("SRO"),[3] including NASD, on trade date ("T") and on the day after trade date. ("T+1"). NSCC will report ACT transactions received on T+1 on a T+1 Locked-in Contract available on the morning of T+2. The totals for these locked in trades (and all other trades compared by T+1) are carried forward to the Supplemental Contracts List produced on T+3.

(2) The proposed rule change promotes the prompt and accurate clearance of securities transactions and fosters cooperation and coordination with persons engaged in the clearance and settlement of Securities transactions. Therefore, it is consistent with the requirements of the 1934 Act and the rules and regulations thereunder applicable to a clearing agency.

B. Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not perceive that the proposed rule change will have an impact on or impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments have been solicited or received. NSCC will notify the Commission of any written comments received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective, pursuant to section 19(b)(3)(a) of the Securities Exchange Act of 1934. At anytime within sixty days of the filing of such a proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary to appropriate in the public interest, for the protection of investors, or otherwise in the furtherance of the pruposes of the Securities Exchange Act of 1934.

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 that are filed with 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 provisions of 5. U.S.C. 552, will be available for inspection and

[2] Filed with the Commission May 31, 1989, File no. SR–NASD–89–25.

[3] For definition of the term "SRO", are section 3(a)(26) of the offset.

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 the file number SR–NSCC–89–07 and should be submitted by August 25, 1989.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–18183 Filed 8–3–89; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

July 27, 1989.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following securities:

Eljer Industries, Inc.
Common Stock, $1 Par Value (File No. 7–4728)
Schwitzer, Inc.
Common Stock, $0.10 Par Value (File No. 7–4729)
Scotsman Industries, Inc.
Common Stock, $0.10 Par Value (File No. 7–4730)
IDEX Corporation
Common Stock, $.01 Par Value (File No. 7–4731)
Smith's Food & Drug Centers, Inc.
Class B Common Stock, $.01 Par Value (File No. 7–4732)
AMP Incorporated
Common Stock, No Par Value (File No. 7–4733)
Banc One Corporation
Common Stock, No Par Value (File No. 7–4734)
Global Marine Inc.
Common Stock, $.10 Par Value (File No. 7–4735)
Global Marine Inc.
Warrants to Purchase Common Stock (File No. 7–4736)
Western Company of North America
Common Stock, No Par Value (File No. 7–4737)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before August 17, 1989, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–18184 Filed 8–3–89; 8:45 am]

BILLING CODE 8010–01–M

[Release No. IC–17089; File No. 811–4671]

Indianapolis Life Variable Account A

July 26, 1989.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for an order under the Investment Company Act of 1940 ("1940 Act").

Applicant: Indianapolis Life Variable Account A.

Relevant 1940 Act Section: Order requested under section 8(f).

Summary of Application: Applicant requests an order under section 8(f) of the 1940 Act declaring that it has ceased to be an investment company.

Filing Date: The application was filed on May 10, 1989.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m. on August 21, 1989. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC along with proof of service by affidavit, or for attorneys, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Applicant, 2960 N. Meridian Street, P.O. Box 1230, Indianapolis, Indiana 46206.

FOR FURTHER INFORMATION CONTACT: Joyce M. Pickholz, Staff Attorney, (202) 272–3046 or Clifford E. Kirsch, Acting Assistant Director, (202) 272–2061 (Office of Insurance Products and Legal Compliance, Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier which may be contacted at (800) 231–3282 (Maryland (301) 253–4300).

Applicant's Representations

1. The Applicant was organized as a separate account of Indianapolis Life Insurance Company pursuant to the insurance laws of Indiana on September 13, 1984. The Applicant is registered under the 1940 Act as a unit investment trust. On May 14, 1986, the Applicant filed a Registration Statement on Form S–6 under the Securities Act of 1933 and Form N–8B–2 under the Investment Company Act of 1940 for an indefinite amount of Flexible Premium Variable Life Insurance Policies. The Registration Statement on Forms S–6 never became effective. Consequently, there are no Policies outstanding.

2. The Applicant has no assets or liabilities. Because it has no independent existence under state law, it will cease to exist once the deregistration order is issued and the appropriate action is taken by the officers of Indianapolis Life Insurance Company.

3. The Applicant has not within the last 18 months transferred any of its assets to a separate trust, and is not a party to any litigation or administrative proceeding. The Applicant is not now engaged, nor does it propose to engage in any business activities.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan D. Katz,

Secretary.

[FR Doc. 89–18185 Filed 8–3–89; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q during the Week ended July 28, 1989

The following applications for certificates of public convenience and necessity and foreign air carrier permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 *et seq.*). The due date for answers, conforming application, or motion to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket No. 46416.

Date Filed: July 24, 1989.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: August 21, 1989.

Description: Application of Transcarga, S.A., pursuant to section 402 of the Act and Subpart Q of the Regulations, request a foreign air carrier permit to provide (1) scheduled and non-scheduled foreign air transportation of property and mail between San Jose, Costa Rica and Miami, Florida with intermediate points Belize City, Belize and San Salvador, El Salvador, and (2) charter foreign air transportation of property and mail between points in Costa Rica and points in the United States.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 89-18171 Filed 8-3-89; 8:45 am]

BILLING CODE 4910-62-M

[Order 89-7-51]

Intra-Alaska Bush Service Mail Rates

AGENCY: Department of Transportation.

ACTION: Notice of order tentatively setting bush mail rates.

SUMMARY: The Department of Transportation is directing all parties to show cause why the Intra-Alaska bush mail rates set in Order 89-7-51 should not become final, effective April 13, 1988. The order also establishes temporary rates for application on the issue date of the order.

DATES: Notice of Objection: 15 days after service of this order. Written Objection: 40 days after service of this order.

FOR FURTHER INFORMATION CONTACT: William A. Bingham, Jr., Office of Aviation Analysis, U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC 20590, 202-366-1040.

Dated: July 31, 1989.

Jeffrey N. Shane,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 89-18172 Filed 8-3-89; 8:45 am]

BILLING CODE 4910-62-M

Federal Aviation Administration

Extension of Comment Period on Noise Exposure Maps and Noise Compatibility Program for Colorado Springs, CO

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces an extension of the comment period on the Colorado Springs Municipal Airport noise exposure maps and associated noise compatibility program to August 14, 1989.

FOR FURTHER INFORMATION CONTACT: Dennis Ossenkop, FAA, Airports Division, ANM-611, 17900 Pacific Hwy S., C-68966, Seattle, WA 98168.

Comments on the noise exposure maps and proposed noise compatibility program should be submitted to the above office.

SUPPLEMENTARY INFORMATION: The noise exposure maps and proposed noise compatibility program are available for examination at the following locations:

Federal Aviation Administration, Independence Avenue SW., Room 615, Washington, DC

Federal Aviation Administration, Airports Division, ANM-600, 17900 Pacific Hwy S., C-68966, Seattle, Washington 98168

Colorado Springs Municipal Airport, Colorado Springs.

Issued in Seattle, Washington, July 27, 1989.

Cecil C. Wagner,

Acting Manager, Airports Division.

[FR Doc. 89-18208 Filed 8-3-89; 8:45 am]

BILLING CODE 4910-13-M

Runway Protection Zone Policy Statement

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of agency policy statement.

SUMMARY: The FAA conducts several airport safety and construction programs under which the agency studies existing and proposed objects and activities, both on and off airports. This notice confirms the policy of the FAA that, to protect the public's investment in the national airport system, the FAA will resist or oppose objects or activities in the vicinity of an airport that conflict with an airport planning or design standard or recommendation.

FOR FURTHER INFORMATION CONTACT: Luigi Iori, Manager, Design Standards Group, Office of Airport Safety and Standards (AAS-110), Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; Telephone (202) 267-3664.

SUPPLEMENTARY INFORMATION: Air travel is the major mode of interstate transportation in the United States. As air travel has increased, the frequency of airplane operations and the size of airplanes have likewise increased. At the same time, the public has not seen a corresponding expansion of the airport system. Therefore, handling the increases has challenged the government as well as the aviation industry to maintain a safe and efficient airports-airspace environment.

In meeting this challenge, the FAA conducts several airport safety and construction programs. Under these programs, the FAA studies existing and proposed objects and activities, both on and off airports. These objects and activities are not limited to obstructions to air navigation, as defined in 14 CFR part 77, Objects Affecting Navigable Airspace. The studies also focus on the efficient use of airports and the safety of persons and property on the ground. As the result of a study, the FAA may recommend against the presence of any off-airport object or activity. To protect the public's investment in the national airport system, the FAA will resist or oppose objects or activities in the vicinity of an airport that conflicts with an airports planning or design or recommendation.

Issued in Washington, DC on July 31, 1989.

Leonard E. Mudd,

Director, Office of Airport Safety and Standards.

[FR Doc. 89-18209 Filed 8-3-89; 8:45 am]

BILLING CODE 4910-13-M

National Highway Traffic Safety Administration

[Docket No. 81-02; Notice 8]

Evaluation Report on Center High Mounted Stop Lamps; Federal Motor Vehicle Safety Standards; Lamps, Reflective Devices, and Associated Equipment; Request for Comments

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Request for comments.

SUMMARY: This notice announces the publication by NHTSA of an Evaluation Report concerning Safety Standard No. 108, *Lamps, Reflective Devices, and Associated Equipment.* This staff report evaluates safety effectiveness, benefits, and cost of center high mounted stop lamps. The report was developed in response to Executive Order 12291, which provides for Government-wide review of existing major Federal regulations. The agency seeks public review and comment on this evaluation. Comments received will be used to complete the review required by Executive Order 12291.

DATE: Comments must be received no later than November 2, 1989.

ADDRESSES: Interested persons may obtain a copy of the report free of charge by sending a self-addressed mailing label to Ms. Glorious Harris (NAD-51), National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC, 20590. All comments should refer to the docket and notice number of this notice and be submitted to: Docket Section, Room 5109, Nassif Building, 400 Seventh Street SW., Washington, DC, 20590. [Docket hours, 8:00 a.m.-4:00 p.m., Monday through Friday.]

FOR FURTHER INFORMATION CONTACT: Mr. Frank G. Ephraim, Director, Office of Standards Evaluation, Plans and Policy, National Highway Traffic Safety Administration, Room 5208, 400 Seventh Street SW., Washington, DC, 20590 (202-366-1574).

SUPPLEMENTARY INFORMATION: Standard No. 108 (49 CFR 571.108) regulates the lamps, reflectors and associated equipment for cars, trucks, trailers, buses, multipurpose passenger vehicles and motorcycles. The standard was amended, effective September 1, 1985, to require that new passenger cars be equipped with a center high mounted stop lamp (CHMSL). A CHMSL is a small red stop lamp mounted on the centerline of the rear of the automobile within specified ranges of vertical locations and brightness. The vertical location is specified with the intent of positioning the lamp higher than conventional stop lamps. The lamp is actuated only by braking. Accident reduction, specifically in the group of accidents in which braking by the struck vehicle is a critical factor, is the purpose of the CHMSL.

Pursuant to Executive Order 12291, NHTSA is conducting an evaluation of CHMSL to determine the effectiveness of the CHMSL performance standard in reducing crashes and their associated damages and casualties and to determine the benefits and costs of the standard to consumers. Under the Executive order, agencies are to review existing regulations to determine whether the regulations are achieving the Order's policy goals, i.e., achieving legislative goals effectively and efficiently and without imposing any unnecessary burdens on those affected. This report is the agency's second analysis of the effectiveness of CHMSL in preventing rear impact crashes. This report evaluates the effectiveness, benefits and costs of CHMSL based on their on-the-road experience during calendar year 1987, when approximately ¼ of the passenger car fleet in the United States was CHMSL equipped. The effectiveness analysis is based on police reported accident files from 11 States. Cost estimates are based on detailed engineering analyses of production CHMSL assemblies.

The involvement rate in "CHMSL relevant" rear impacts for model year 1986 and 1987 cars (all CHMSL equipped) is compared to the rate for 1980-85 cars without the lamps. CHMSL relevant collisions are those in which the back of the car is damaged and the stop lamps were actuated prior to impact. "CHMSL effectiveness" is the reduction of CHMSL relevant collisions for CHMSL equipped cars relative to pre-CHMSL cars.

The principal findings and conclusions of this study are the following:

- CHMSL equipped cars were 17 percent less likely to be struck in the rear while braking than the cars without CHMSL (confidence bounds: 13 to 21 percent).
- CHMSL are especially effective in preventing chain collisions involving three or more vehicles.
- When all cars on the road have CHMSL, they will prevent 126,000 police reported accidents, 80,000 nonfatal injuries and $910,000,000 in property damage per year.
- CHMSL add $10.48 (in 1987 dollars) to the lifetime cost of owning and operating a car.
- At the effectiveness levels observed in the 1987 data, the CHMSL is a very cost effective safety device.

NHTSA welcomes public review of the evaluation report and invites the public to submit comments.

It is requested but not required that 10 copies of comments be submitted.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose, in the envelope with their comments, a self-addressed stamped postcard. Upon receiving the comments, the docket supervisor will return the postcard by mail.

(15 U.S.C. 1392, 1401, 1407; delegation of authority at 49 CFR 1.50 and 501.8)

Issued on: July 31, 1989.

Adele Derby,

Associate Administrator for Plans and Policy.

[FR Doc. 89-18211 Filed 8-3-89; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: July 28, 1989.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 1500 Pennsylvnia Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-0770.

Form Number: None.

Type of Review: Extension.

Title: Transfers of Securities Under Certain Agreements.

Description: Section 1058 of the Internal Revenue Code provides tax-free treatment for security lending transactions. A written agreement is necessary to verify the existence of such lending agreement. Lenders of securities are affected.

Respondents: Individuals or households, Busineses or other for-profit, Small businesses or organizations.

Estimated Number of Respondents: 1.

Estimated Burden Hours Per Response: 1 hour.
Frequency of Response: Annually.
Estimated Total Reporting Burden: 1 hour.
Clearance Officer: Garrick Shear, (202) 535–4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW, Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 89–18240 Filed 8–3–89; 8:45 am]

BILLING CODE 4810–25–M

Public Information Collection Requirements Submitted to OMB for Review

Date: July 28, 1989.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

Bureau of Alcohol, Tobacco and Firearms

OMB Number: 1512–0221.
Form Number: ATF F 5640.1.
Type of Review: Extension.
Title: Offer in Compromise of Liability Incurred Under the Internal Revenue Code.
Description: ATF F 5640.1 is used by persons who wish to compromise criminal and/or civil penalties for violations of the Internal Revenue Code. If accepted the offer in compromise is a settlement between the Government and the party in violation in lieu of legal proceedings or prosecution. It also identifies the person making the offer, violations, amount of offer and circumstances concerning the violation.
Respondents: Businesses or other for-profit.
Estimated Number of Respondents: 40.
Estimated Burden Hours Per Response: 2 hours.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 80 hours.

OMB Number: 1512–0247.
Form Number: ATF REC 5000/2.
Type of Review: Extension.
Title: Manufacture of Ammunition, Records and Supporting Data of Ammunition Manufactured and Disposed of.
Description: These records are used by ATF in criminal investigations and compliance inspections in fulfilling the Bureau's mission to enforce the Gun Control Law.
Responents: Businesses or other for-profit, Small businesses or organizations.
Estimated Number of Recordkeepers: 50.
Estimated Burden Hours Per Recordkeeper: 6 hours, 30 minutes.
Frequency of Response: Other.
Estimated Total Recordkeeping/ Reporting Burden: 35 hours.

OMB Number: 1512–0354.
Form Number: ARF REC 5170/3.
Type of Reeview: Extension.
Title: Retail Liquor Dealers Records of Receipts of Alcoholic Beverages and Commercial Invoices.
Description: Information contained in this collection is used by ATF to verify and account for alcoholic beverage transactions between wholesale and retail dealers to ascertain the taxpaid status supportive of complete tax collections.
Respondents: State or local governments, Businesses or other for-profit, Small businesses or organizations.
Estimated Number of Recordkeepers: 360,412.
Estimated Burden Hours Per Response: 1 hour.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 360,412 hours.

OMB Number: 1512–0399.
Form Number: ARF F 5400.21.
Type of Review: Extension.
Title: Application Permit for User Limited Special Fireworks (18 U.S.C. Chapter 40, Explosives).
Description: This form is used to verify the eligibility of and grant permission to the holder to buy or transport explosives in interstate commerce on a one-time basis.
Respondents: Individuals or households, Businesses or other for-profit, Small businesses or organizations.
Estimated Number of Respondents: 1,800.
Estimated Burden Hours Per Recordkeeper: 18 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 540 hours.

OMB Number: 1512–0488.
Form Number: ATF REC 5210/12.
Type of Review: Extension.
Title: Tobacco Products Manufacturers—Notice for Tobacco Products.
Description: ARF requires that tobacco products be identified by staements of information on packages or cases. ATF uses this information to validate the receipts of excise tax revenue and for verification of claims.
Respondents: Businesses or other for-profit.
Estimated Number of Recordkeepers: 120.
Estimated Burden Hours Per Recordkeeper: 1 hour.
Frequency of Response: Other.
Estimated Total Recordkeeping/ Reporting Burden: 1 hour.

Clearance Officer: Robert Masarsky (202) 566–7077, Bureau of Alcohol, Tobacco and Firearms, Room 7011, 1200 Pennsylvania Avenue NW., Washington, DC 20226.
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 89–18241 Filed 8–3–89; 8:45 am]

BILLING CODE 4810–25–M

Public Information Collection Requirements Submitted to OMB for Review

Date: July 31, 1989.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

Comptroller of the Currency

OMB Number: 1557–0070
Form Number: FFIEC 004.
Type of Review: Extension.
Title: Extensions of Credit to National Bank Insiders (12 CFR part 31).
Description: 12 CFR part 31 and FFIEC 004 implement statutes that require national bank insiders to report indebtedness and national banks to

disclose the indebtedness of executive officers and principal stockholders to the bank or its correspondent banks.

Respondents: Individuals or households, Businesses or other for-profit, Small businesses or organizations.

Estimated Number of Respondents/Recordkeepers: 53,360.

Estimated Burden Hours Per Response/Recordkeeper: 7 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 13,786 hours.

Clearance Officer: John Ference (202) 447-1177, Comptroller of the Currency, 5th Floor, L'Enfant Plaza, Washington, DC 20219.

OMB Reviewer: Gary Waxman (202) 395-7340, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 89-18242 Filed 8-3-89; 8:45 am]

BILLING CODE 4810-25-M

Public Information Collection Requirements Submitted to OMB for Review

Date: July 31, 1989.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-0123.

Form Number: IRS Form 1120.

Type of Review: Revision.

Title: U.S. Corporation Income Tax Return, Capital Gains and Losses, Computation of U.S. Personal Holding Company Tax.

Description: Form 1120 is used by corporations to compute their taxable income and tax liability. Schedule D (Form 1120) is used by corporations to report gains and losses from the sale of capital assets. Schedule PH (Form 1120) is used by personal holding companies to compute their tax liability. The IRS uses these forms to determine whether corporations have correctly computed their tax liability.

Respondents: Farms, Businesses or other for-profit, Small businesses or organizations.

Estimated Number of Respondents/Recordkeepers: 2,462,931.

Estimated Burden Hours Per Response/Recordkeeping:

Recordkeeping 68 hrs., 38 min.
Learning about the form 39 hrs., 10 min.
Preparing the form 69 hrs., 55 min.
Copying, assembling, and sending the form to IRS 8 hrs., 2 min.

Frequency of Response: Annually.

Estimated Total Reporting Burden: 465,485,523 hours.

OMB Number: 1545-0890.

Form Number: IRS Form 1120-A, Schedule D (Form 1120), and Schedule PH (Form 1120).

Type of Review: Revision.

Title: U.S. Corporation Short-Form Income Tax Return.

Description: Form 1120-A is used by small corporations, those with less than $500,000 of income and assets, to compute their taxable income and tax liability. The IRS uses Form 1120-A to determine whether corporations have correctly computed their tax liability.

Respondents: Farms, Businesses or other for-profit, Small businesses or organizations.

	1120-A	Schedule D	Schedule PH
Recordkeeping	43 hrs., 17 min.	6 hrs., 28 min.	15 hrs., 47 min.
Learning about the form	23 hrs., 43 min.	3 hrs., 29 min.	7 hrs., 11 min.
Preparing the form	42 hrs., 13 min.	6 hrs., 32 min.	9 hrs., 38 min.
Copying, assembling, and sending the form to IRS.	4 hrs., 50 min.	48 min.	32 min.

Estimated Number of Respondents/Recordkeepers: 285,777.

Estimated Burden Hours Per Response:

Frequency of Response: Annually.

Estimated Total Reporting Burden: 32,590,009 hours.

Clearance Officer: Garrick Shear (202) 535-4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 89-18243 Filed 8-3-89; 8:45 am]

BILLING CODE 4810-25-M

Office of the Secretary

[Supplement to Department Circular—Public Debt Series—No. 20-89]

Treasury Notes, Series AC-1991

Washington, July 27, 1989.

The Secretary announced on July 26, 1989, that the interest rate on the notes designated Series AC-1991, described in Department Circular—Public Debt Series—No. 20-89 dated July 20, 1989, will be 7¾ percent. Interest on the notes will be payable at the rate of 7¾ percent per annum.

Gerald Murphy

Fiscal Assistant Secretary.

[FR Doc. 89-18217 Filed 8-3-89; 8:45 am]

BILLING CODE 4810-01-M

[Number: 107-04]

The General Counsel

Date: July 25, 1989

By virtue of the authority vested in me as Secretary of the Treasury, including authority vested in me by 31 U.S.C. 321(b), it is ordered that:

1. The Department has a General Counsel, who, pursuant to 31 U.S.C. 301(f)(1), is the chief law officer of the Department. The General Counsel is the final legal authority within the Department and, as such, has the authority to participate in and decide any legal matter within the Department. The General Counsel is the head of and supervises the Legal Division, which constitutes the consolidated legal staff of the Department. All attorneys whose duties include providing legal advice to

officials in any office or bureau of the Department shall be part of the Legal Division under the supervision of the General Counsel.

2. The General Counsel provides legal advice to the Secretary of the Treasury, the Deputy Secretary, the Under Secretaries, the Assistant Secretaries and to all offices and bureaus of the Department on any matter that may arise within the Department. The following are also included in the functions of the General Counsel:

a. Considers the legal problems relating to Department management, government financial operations, the public debt, the revenue and customs laws, international and domestic economic, monetary and financial affairs, and law enforcement activities;

b. Coordinates the Department's position in litigation;

c. Reviews the Department's regulations for legal sufficiency;

d. Operates the Department's ethics program and counsels the Department's officers and employees on conflicts of interest and ethics matters;

e. Coordinates and assists in the preparation of certain legislative reports to the Congress and the Office of Management and Budget, and the Department's annual legislative program;

f. Considers appeals to the Secretary in administrative matters where so designated; and

g. Performs such other tasks as the Secretary may direct.

3. In performing these functions and services, the General Counsel operates principally through and supervises a Deputy General Counsel, the Assistant General Counsel (including the Assistant General Counsel who is the Chief Counsel of the Internal Revenue Service), the Counselor to the General Counsel, the Tax Legislative Counsel, the International Tax Counsel, the Chief Counsel of the Office of the Comptroller of the Currency, and the Counsel to the Inspector General. Each of the officials listed in this paragraph shall be responsible for referring to the General Counsel any matter on which action would appropriately be taken by the General Counsel.

4. The General Counsel is hereby delegated authority to determine the structural and functional organization of the Legal Division and to establish the policies, procedures and standards governing its functioning.

5. The Legal Division shall continue to be a bureau within the Department for purposes of appointment and administration of personnel, the labor management relations program, and the ethics program. The General Counsel, with the concurrence of the Assistant Secretary of the Treasury (Management), may determine that the Legal Division shall operate with other authorities and responsibilities of a bureau.

Nicholas F. Brady,

Secretary of the Treasury.

[FR Doc. 89-18293 Filed 8-3-89; 8:45 am]

BILLING CODE 4810-25-M

[Number 101-05]

Reporting Relationships and Supervision of Officials, Offices and Bureaus, Delegation of Certain Authority, and Order of Succession

Date: July 25, 1989.

By virtue of the authority vested in me as Secretary of the Treasury, including the authority vested in me by 31 U.S.C. 321(b), it is ordered that:

1. The Deputy Secretary shall report directly to the Secretary.

2. The Assistant Secretary (Policy Management) and Counselor to the Secretary shall report directly to the Secretary, except that with respect to supervision of the Executive Secretariat, the Assistant Secretary (Policy Management) and Counselor to the Secretary shall report through the Deputy Secretary to the Secretary.

3. The following officials shall report through the Deputy Secretary to the Secretary and shall exercise supervision over those officers and organizational entities set forth on the attached organizational chart:

Under Secretary (International Affairs)
Under Secretary (Finance)
General Counsel
Assistant Secretary (Enforcement)
Assistant Secretary (Legislative Affairs)
Assistant Secretary (Management)
Assistant Secretary (Public Affairs and Public Liaison)
Assistant Secretary (Tax Policy)
Inspector General
Treasurer of the United States
Comptroller of the Currency
Commissioner of Internal Revenue

4. The Tax Legislative Counsel and International Tax Counsel provide counsel directly to the Assistant Secretary (Tax Policy), but are supervised by the General Counsel as part of the Department's Legal Division.

5. The Deputy Secretary is authorized, in that official's own capacity and that official's own title, to perform any functions the Secretary is authorized to perform and shall be responsible for referring to the Secretary any matter on which action would appropriately be taken by the Secretary.

6. The Under Secretaries, the General Counsel, and the Assistant Secretaries are authorized to perform any functions the Secretary is authorized to perform. Each of these officials will ordinarily perform under this authority only functions which arise out of, relate to, or concern the activities or functions of, or the laws administered by or relating to, the bureaus, offices, or other organizational units over which the incumbent has supervision. Each of these officials shall perform under this authority in their own capacity and their own title and shall be responsible for referring to the Secretary any matter on which action would appropriately be taken by the Secretary. Any action heretofore taken by the Deputy Secretary or any of these officials in the incumbent's own title is hereby affirmed and ratified as the action of the Secretary.

7. The following officials shall, in the order of succession indicated, act as Secretary of the Treasury in case of the death, resignation, absence or sickness of the Secretary and other officers succeeding the incumbent, until a successor is appointed, or until the absence or sickness shall cease:

a. Deputy Secretary;

b. Under Secretary (International Affairs);

c. Under Secretary (Finance);

d. Assistant Secretary (Policy Management) and Counselor to the Secretary;

e. General Counsel; and

f. Assistant Secretaries, appointed by the President with Senate confirmation, in the order designated by the Secretary.

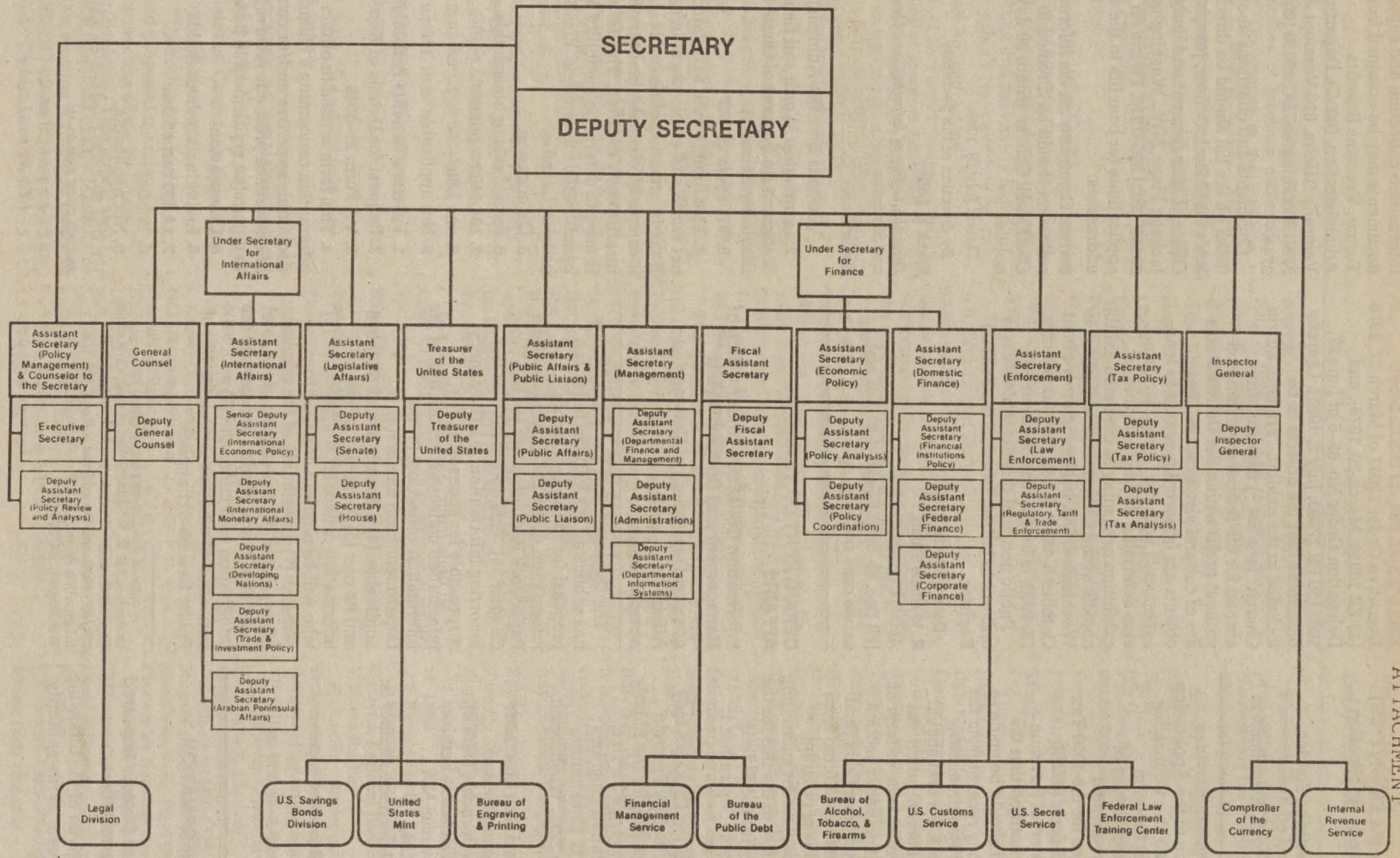
8. Treasury Order 101-05, "Supervision of Offices and Bureaus, Delegation of Certain authority, and Order of Succession in the Department of the Treasury," dated February 17, 1987, is superseded as of this date. To the extent that any provision of any other Order of the Department is inconsistent with any provision of this Order, the provisions of this Order shall govern.

Nicholas F. Brady,

Secretary of the Treasury.

BILLING CODE 4810-25-M

THE DEPARTMENT OF THE TREASURY



ATTACHMENT

July 25, 1989

[FR Doc. 89–18292 Filed 8–3–89; 8:45 am]

BILLING CODE 4810-25-C

Internal Revenue Service

Tax Counseling for the Elderly (TCE) Program; Correction to Application Packages

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correction to TCE application packages.

SUMMARY: This document provides notice of a correction to the Application Packages for the 1990 Tax Counseling for the Elderly (TCE) Program

Correction: Representatives of organizations who requested Application Packages for the 1990 Tax Counseling for the Elderly (TCE) Program from the Internal Revenue Service, are hereby notified that the following correction should be made to the packages that they receive from the IRS. Under Program Requirements, Subpart 120(s), Page 3, the text should read: "(s) Non-profit organization. An organization which meets the criteria of an exempt organization under section 501 of the Internal Revenue Code (and which is not otherwise prohibited from being a sponsor by these program guidelines)." The deadline for submitting an application package to the IRS for the 1990 Tax Counseling for the Elderly (TCE) Program remains September 1, 1989.

ADDRESSES: Application Packages may be requested by contacting: Program Manager, Tax Counseling for the Elderly Program, Internal Revenue Service, Volunteer and Education Programs Branch (T:T:VE), 1111 Constitution Avenue NW., Room 7215, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Mr. Roy Johnson, Volunteer and Education Programs Branch, (T:T:VE), Room 7215, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224.

The non-toll-free telephone number is: (202) 566–4904.

Neil Patton,

Chief, Volunteer and Education Programs Branch.

[FR Doc. 89–18175 Filed 8–3–89; 8:45 am]

BILLING CODE 4830–01–M

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit, "Frederic Edwin Church" (see list [1]) imported from abroad for the temporary exhibition without profit within the United States are of cultural significance. These objects are imported pursuant to loan agreements with the foreign lenders. I also determine that the temporary exhibition or display of the listed exhibit objects at the National Gallery of Art in Washington, DC, beginning on or about October 8, 1989, to on or about January 28, 1990, is in the national interest.

Public notice of this determination is ordered to be published in the **Federal Register.**

Dated: July 28, 1989.

R. Wallace Stuart,

Acting General Counsel.

[FR Doc. 89–18207 Filed 8–3–89; 8:45 am]

BILLING CODE 8230–01–M

DEPARTMENT OF VETERANS AFFAIRS

Information Collection Under Office of Management and Budget Review

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document lists the following information: (1) The agency responsible for sponsoring the information collection; (2) the title of the information collection; (3) the Department form number(s), if applicable; (4) a description of the need and its use; (5) frequency of the information collection, if applicable; (6) who will be required or asked to respond; (7) an estimate of the number of responses; (8) an estimate of the total number of hours needed to complete the information collection; and (9) an indication of whether section 3504(h) of Public Law 96–511 applies.

[1] A copy of this list may be obtained by contacting Mr. R. Wallace Stuart of the Office of the General Counsel of USIA. The telephone number is 202/485–7979, and the address is Room 700, U.S. Information Agency, 301 Fourth Street, SW., Washington, DC 20547.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from John Turner, Veterans Benefits Administration, (203C), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 (202) 233–2744.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503, (202) 395–7316. Please do not send applications for benefits to the above addressees.

DATES: Comments on the information collection should be directed to the OMB Desk Officer within 30 days of this notice.

Dated: July 28, 1989.

By direction of the Secretary.

Frank E. Lalley,

Director, Office of Information Management and Statistics.

Extension

1. Veterans Benefits Administration
2. Income-Net Worth and Employment Statement (In Support of Claim for Total Disability Benefits)
3. VA Form 21–527
4. This form is used to obtain income, net worth and employment information if the information of record is incomplete, obsolete, inaccurate, or insufficiently detailed. This information is used to determine eligibility and benefit rates for veterans' disability pension benefits.
5. On occasion
6. Individuals or households
7. 104,440 responses.
8. one hour
9. Not applicable

1. Veterans Benefits Administration
2. Request for Details of Expenses
3. VA Form 21–8049
4. This form is used to obtain information concerning a claimant's deductible expenses and/or commercial life insurance proceeds received in order to determine entitlement to benefits.
5. On occasion
6. Individuals or households
7. 22,800 responses.
8. ¼ hour
9. Not applicable

[FR Doc. 89–18228 Filed 8–3–89; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 54, No. 149
Friday, August 4, 1989

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL COMMUNICATIONS COMMISSION

Deletion of Agenda Item From August 2nd Open Meeting

August 1, 1989.

The following items have been deleted from the list of agenda items scheduled for consideration at the August 2, 1989, Open Meeting and previously listed in the Commission's Notice of July 26, 1989.

Agenda, Item No., and Subject

General—2—Title: Further Studies on the Availability of Spectrum Advanced Television. Summary: The Commission will consider an interim report describing further studies conducted by the Office of Engineering and Technology on the availability of spectrum for advanced television.

Mass Media—1—Title: Advanced Television Systems and Their Impact on the Existing Television Broadcast Service; Review of technical and Operational Requirements of Part 73–E Reevaluation of the UHF Television Channel and Distant Separation Requirements of part 73 of the Commission's Rules. Summary: The Commission will consider a Policy Statement and second Further Notice of Inquiry concerning the policy, economic, legal and technical issues related to the introduction of advanced television technologies.

Additional information concerning these items may be obtained from Sarah Lawrence, Office of Public Affairs, telephone number (202) 632–5050.

Issued: August 1, 1989.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 89–18356 Filed 8–2–89; 10:26 am]

BILLING CODE 6712–0–M

NATIONAL COUNCIL ON THE HANDICAPPED

Quarterly Meeting

AGENCY: National Council on Disability.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Council on Disability. This notice also describes the functions of the Council. Notice of this meeting is required under section 522(b)(10) of the "Government in Sunshine Act" (Public Law 94–409).

DATES:

Aug. 7, 1989, 9:00 a.m. to 5:00 p.m.
Aug. 8, 1989, 9:00 a.m. to 5:00 p.m
Aug. 9, 1989, 9:00 a.m. to 5:00 p.m.
Aug. 10, 1989, 9:00 a.m. to 5:00 p.m.
Aug. 11, 1989, 9:00 a.m. to 5:00 p.m.

LOCATION: Omni Hotel, San Diego, California.

FOR FURTHER INFORMATION CONTACT: National Council on Disability, 800 Independence Avenue, SW., Suite 814, Washington, DC 20591, (202) 267–3846, TDD: (202) 267–3232.

The National Council on Disability is an independent Federal agency comprised of 15 members appointed by the President of the United States and confirmed by the Senate. Established by the 95th Congress in Title IV of the Rehabilitation Act of 1973 (as amended by Public Law No. 95–602 in 1978), the Council was initially an advisory board within the Department of Education. In 1984, however, the Council was transformed into an independent agency by the Rehabilitation Act Amendments of 1984 (Public Law No. 98–221).

The Council is charged with reviewing all laws, programs, and policies of the Federal Government affecting disabled individuals and making such recommendations as it deems necessary to the President, the Congress, the Secretary of the Department of Education, the Commissioner of the Rehabilitation Services Administration, and the Director of the National Institute on Disability and Rehabilitation Research (NIDRR).

The meeting of the Council shall be open to the Public. The proposed agenda includes:

Report from the Chairperson and Executive Committee
Update on Education Study

Committee Meetings

- Education
- Personal Assistance
- Communications
- NIDRR
- Employment
- Family Conference

NCD Planning Session
Committee Reports
Update on Prevention Initiative
Unfinished Business
New Business
Announcements
National Conference for Families of Persons With Disabilities: A Family Affair—August 9–12, 1989

Records shall be kept of all Council proceedings and shall be available after the meeting for public inspection at the National Council on Disability.

Signed at Washington, DC on July 31, 1989.

Ethel D. Briggs,

Deputy Director.

[FR Doc. 89–18407 Filed 8–2–89; 1:24 pm]

BILLING CODE 6820–BS–M

POSTAL SERVICE BOARD OF GOVERNORS

Meeting

The Board of Governors of the United States Postal Service, pursuant to its Bylaws (39 CFR 7.5) and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice that it intends to hold a meeting at 8:30 a.m. on Tuesday, August 15, 1989, in San Francisco, California. The meeting is open to the public and will be held in the Elizabethan Room, C and D, at the Westin St. Francis Hotel, Union Square, 335 Powell Street. The Board expects to discuss the matters stated in the agenda which is set forth below. Requests for information about the meeting should be addressed to the Secretary of the Board, David F. Harris, at (202) 268–4800.

There will also be a session of the Board on Monday, August 14, 1989, but it is not open to the public. It will consist entirely of briefings, the agenda item on capital investment noted in 54 FR 30972, July 25, 1989, having been deleted.

Agenda

Tuesday Session (St. Francis Hotel)
August 15—8:30 a.m. (Open)

1. Minutes of the Previous Meeting, July 10–11, 1989.
2. Remarks of the Postmaster General.
3. Western Region Overview. (Joseph R. Caraveo, Regional Postmaster General, Western Region)
4. Quarterly Report on Financial Performance. (Comer S. Coppie, Senior Assistant Postmaster General, Finance Group)
5. Quarterly Report on Service Performance. (Ann McK. Robinson, Consumer Advocate)
6. Report on EEO/Affirmative Action Programs in the San Francisco Division. (Dallas W. Keck, Field Division Manager/Postmaster, San Francisco Division)
7. Tentative Agenda for September 11–12, 1989, meeting in Washington, DC.

David F. Harris,

Secretary.

[FR Doc. 89–18427 Filed 8–2–89; 1:59 pm]

BILLING CODE 7710–12–M

SECURITIES AND EXCHANGE COMMISSION

Notice is hereby given, pursuant to the provisions of the Government in the Sunchine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of August 7, 1989.

A closed meeting will be held on Tuesday, August 8, 1989, at 2:30 p.m.

The Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who are responsible for the calendared matters may also be present.

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

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

The subject matter of the closed meeting scheduled for Tuesday, August 8, 1989, at 2:30 p.m., will be:

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

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Barabara Green at (202) 272–2000.

Dated: August 1, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–18435 Filed 8–2–89; 3:08 pm]

BILLING CODE 8010–01–17

Corrections

Federal Register
Vol. 54, No. 149
Friday, August 4, 1989

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 COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 90643-9143]

RIN 0648-AC34

King and Tanner Crab Fisheries in the Bering Sea/Aleutian Islands

Correction

In notice document 89-10236 beginning on page 29080 in the issue of Tuesday, July 11, 1989, make the following corrections:

1. On page 29080, in the third column, in the first complete paragraph, in the third line from the bottom, "(AD&G)" should read "(ADF&G)".

2. On the same page, in the third column, in the second complete paragraph, in the first line "minimum" should read "maximum".

3. On page 29082, in the second column, the second "Comment" should be removed.

4. On page 29084, in the third column, in the first complete paragraph, in the third line, "not" should read "nor".

BILLING CODE 1505-01-D

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Textile and Apparel Categories With Harmonized Tariff Schedule of the United States Annotated; Changes to the 1989 Correlation

Correction

In notice document 89-15581 beginning on page 27924 in the issue of Monday, July 3, 1989, make the following corrections:

1. On page 27925, in the table, under "Changes to the 1989 correlation," the third entry in Category 359 should read "Add 6203.42.2005-men's or boys' bib and brace overalls, insulated for cold weather protection".

2. On page 27926, in the table, under "Changes to the 1989 correlation," in the last entry in Category 631, "6116.00.3025" should read "6216.00.3025".

3. On the same page, in the table, under the same heading, in the last entry in Category 633, "6103" should read "6203".

BILLING CODE 1505-01-D

DEPARTMENT OF DEFENSE

48 CFR Parts 203, 208, 209, 212, 213, 214, 215, 216, 217, 219, 222, 223, 236, 242, 245, 252, 253, and 271

[Defense Acquisition Circular (DAC) 88-10]

Department of Defense, Federal Acquisition Regulation Supplement; Regulatory and Miscellaneous Amendments

Correction

In rule document 89-17183 beginning on page 30738 in the issue of Monday, July 24, 1989, make the following correction:

On page 30738, in the third column, the heading directly above the fifth full paragraph should read "*DAC 88-10, Item VI*".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Receipt of Petition for Federal Acknowledgment of Existence as an Indian Tribe

Correction

In notice document 89-16994 beginning on page 30474 in the issue of Thursday, July 20, 1989, make the following correction:

On the same page, in the 1st column, in the 2nd paragraph, in the 11th line, "July" should read "June".

BILLING CODE 1505-01-D

federal register

Friday
August 4, 1989

Part II

Railroad Retirement Board

20 CFR Parts 208, 220, 230, and 260
Determining Disability; Proposed Rule

RAILROAD RETIREMENT BOARD

20 CFR Parts 208, 220, 230, and 260

RIN 3320-AA01

Determining Disability

AGENCY: Railroad Retirement Board.

ACTION: Proposed rule.

SUMMARY: The Railroad Retirement Board (Board) hereby proposes to amend its regulations covering determinations of disability as provided for in the Railroad Retirement Act of 1974 (Act). This part will replace Part 208 and §§ 230.3 and 230.4 of chapter II, and amend § 260.1 of chapter II. The Board's present regulations concerning disability determinations were promulgated under the Railroad Retirement Act of 1937, and no longer adequately describe the process by which the Board makes disability determinations as provided for in the Act. Consequently, these regulations have been totally revised.

DATE: Comments must be received by the Secretary to the Board on or before October 3, 1989.

ADDRESS: Secretary to the Board, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611.

FOR FURTHER INFORMATION CONTACT: Grace Koester, Director of Hearings and Appeals, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611, telephone 312-751-4790.

SUPPLEMENTARY INFORMATION: These proposed regulations provide rules for the three types of disability decisions made by the Board; namely, occupational disability, disability for any regular employment and disability as defined in the Social Security Act. In general, the proposed regulations provide for a sequential method of evaluating disability which initially takes into consideration all medical evidence and then proceeds to consider such vocational factors as age, education and work experience. In this regard many of the proposed regulations parallel the regulations of the Social Security Administration found in Subpart P, Part 404, of Title 20 (Determining Disability and Blindness). This is because courts have held that "regular employment" as that term is used in the Act has the same meaning as the term "substantial gainful activity" as that term is used in the Social Security Act. See, for example, *Peppers* v. *Railroad Retirement Board*, 728 F. 2d 404 (7th Cir., 1984). The proposed regulations also include the requirements set forth in the recent proposed regulations of the Social Security Administration dealing with consultative examinations. See 52 FR 13014-13031. These proposed regulations also provide for trial work periods during which disabled individuals may attempt to work without jeopardizing loss of any disability benefits. Finally, the proposed rules provide a procedure which must be followed before disability benefits may be terminated. Proposed Part 220 is divided into 15 Subparts, A through O.

Subpart A, General (§§ 220.1 through 220.3), is introductory in nature and sets forth the three types of disability decisions, described above, made by the Board.

Subpart B, General Definition of Terms Used in This Part (§ 220.5), defines certain terms used throughout Part 220.

Subpart C, Disability Under the Railroad Retirement Act for Work in Regular Occupation (§§ 220.10 through 220.21), sets forth the requirements which an employee must meet to receive a disability annuity because of his or her inability to work in his or her regular occupation. Proposed § 220.10 provides that in order to receive this annuity an employee must be unable to engage in his or her regular occupation (defined in § 220.11) because of a permanent physical or mental condition. Proposed § 220.13 describes the process by which the Board evaluates claims for this type of disability annuity. Generally speaking, if an employer does not allow an employee to continue working for medical reasons he or she will be found disabled for his or her occupation. However, the Board may find the employee disabled or not disabled regardless of the employer's findings by evaluating his or her impairments against the requirements of his or her job.

Subpart D, Disability Under the Railroad Retirement Act for Any Regular Employment (§§ 220.25 through 220.30), sets forth the requirements which an employee, child, widow(er) must meet in order to receive an annuity because he or she is disabled for any regular employment. Proposed § 220.26 provides that in order to receive such an annuity the claimant must show that he or she is unable to engage in any substantial gainful activity because of a permanent physical or mental condition.

Subpart E, Disability Determination Governed by the Regulations of the Social Security Administration (§§ 220.35 through 220.39), describes when the Board has authority to determine when someone is disabled as that term is defined in the Social Security Act. Such determinations are made by the Board where they may increase an individual's annuity under the Act or provide for Medicare coverage prior to the age of 65. In addition, in order to pay a disability annuity to a surviving divorced spouse or remarried widow(er) he or she must be found disabled under the Social Security Act (proposed § 220.39). This subpart emphasizes that in making the determinations described therein the Board follows Subpart P, Part 404, of Title 20 of the Code of Federal Regulations and not the regulations in this part.

Subpart F, Evidence of Disability (§§ 220.45 through 220.48), describes what type of evidence the Board considers in making disability determinations.

Subpart G, Consultative Examinations (§§ 220.50 through 220.64), describes the process the Board follows for developing medical evidence in a disability claim. The proposed regulations make clear that the Board will request and make every reasonable effort to obtain medical evidence from the claimant's treating sources. The proposed regulations also describe when the Board will require a claimant to take a medical examination at the Board's expense in order to assist the Board in making the disability determination.

Subpart H, Evaluation of Disability (§§ 220.100 through 220.105), describes the process which the Board proposes to use in determining whether one is unable to engage in any regular employment because of a disability. In general, the proposed process parallels that as provided for in the Social Security Administration Regulations: Subpart P of Part 404 of Title 20. Under this process if a claimant's impairments are not severe enough to merit a rating of disability on the medical evidence alone, the Board will look to see if the claimant can do his or her past relevant work. If he or she cannot, then the Board will determine whether the individual can do any other work. Proposed § 220.101 also describes the additional considerations the Board will use when evaluating any mental impairment(s) a claimant may have.

Subpart I, Medical Considerations (§§ 220.110 through 220.115), describes a listing of medical impairments which are found at Appendix 1 of the proposed regulations. If a claimant has an impairment which, based upon medical findings, is identical or medically equivalent to one listed in Appendix 1, he or she is considered to be unable to engage in any regular employment unless he or she is actually working. Proposed § 220.113 describes medical findings as consisting of symptoms,

signs and laboratory findings. Proposed § 220.114 provides that an individual will not be found to be disabled based upon his or her own description of his or her symptoms unless medical signs or laboratory findings show an impairment that could reasonably be expected to produce those symptoms. Proposed § 220.115 describes when the Board will deny an application for a disability annuity or stop paying a disability annuity because the claimant fails to follow prescribed treatment.

Subpart J, Residual Functional Capacity (§§ 220.120 through 220.121), describes how the Board determines what an individual can do despite limitations because of physical or mental impairments. When an individual cannot be found disabled, either occupationally or for any regular employment, based upon medical consideration alone, the residual functional capacity determination is a threshold step in determining what, if any, other type of work the claimant can do. This determination will include a consideration of what the claimant's treating physicians have stated the claimant can do.

Subpart K, Vocational Considerations (§§ 220.125 through 220.134), applies only to claimants who claim they are disabled for any regular employment. When the Board cannot decide whether such a claimant is disabled based upon medical evidence alone, it then makes a residual functional capacity determination as provided in Subpart J. If based upon this determination it is found that a claimant cannot do work similar to that which he has done in the past, then the Board applies the vocational considerations in this subpart to determine whether an individual can do any other type of work which exists in the national economy. Proposed § 220.129 describes the effect of an individual's educational background on this type of disability determination. Proposed § 220.130 describes the impact of an individual's past work experience upon this type of disability determination. Proposed § 220.131 defines work which exists in the national economy and how the Board determines the existence of such work. Proposed § 220.133 describes how in evaluating an individual's past work it is categorized as unskilled, semi-skilled or skilled with or without skills transferable. Proposed § 220.134 describes the listing of medical-vocational guidelines found in Appendix 2 of this proposed part. These rules set forth combinations of residual functional capacity, described in terms of physical exertion (proposed § 220.132), age, education and previous work experience. After each combination there is an indicated decision of disabled or not disabled. Thus, for example, rule § 201.01 provides that an individual who has the residual functional capacity to do sedentary work (proposed § 220.132(a)) who is of advanced age (proposed § 220.128(d)), and whose previous work experience is unskilled (proposed § 220.133(b)) is found disabled. However, if the same individual has transferable skills (proposed § 220.133(e)) he or she would be found *not* disabled under rule 201.03. These rules only apply if all the findings of fact about the claimant's vocational factors and the residual functional capacity meet the profile set forth in the rule. If the rule applies, the decision as to whether one is disabled or not is governed by the rule (proposed § 220.134(c)).

Subpart L, Substantial Gainful Activity (§§ 220.140 through 220.145), defines substantial gainful activity. Under proposed § 220.141 substantial gainful activity is work which involves significant physical or mental activity and which an individual does for pay or profit. As noted in proposed Subpart D, an individual must be found unable to do substantial gainful activity in order to receive an annuity based upon his or her inability to engage in any regular employment. Proposed § 220.143 describes how the amount of an individual's earnings may create a presumption as to whether or not such person is engaging in substantial gainful activity. Proposed § 220.144 describes how the Board evaluates a self-employed individual to determine if he or she is engaging in substantial gainful activity. Proposed § 220.145 describes how the Board takes into consideration impairment-related work expenses, such as wheel chairs, prosthetic devices, braille typewriters, in determining an individual's earnings when applying § 220.143.

Subpart M, Disability Annuity Earnings Restrictions (§§ 220.160 through 220.164), describes the effect of earnings upon an employee receiving a disability annuity, whether occupational or due to inability to engage in any regular employment. An employee annuity is suspended in any month in which an employee earns $400 or more in employment or self-employment (proposed § 220.161(b)). However, if the employee's earnings are less than $5000 a year all annuities withheld are paid back at the end of the year. The earnings limitations in this subpart are not to be confused with the earnings tests found in proposed § 220.143 of proposed Subpart L. As noted earlier these tests are used to determine whether an individual is engaged in substantial gainful activity. Suffering a deduction in one's annuity under this subpart because of earnings of more than $5000 a year does not necessarily mean the employee is engaging in substantial gainful activity. Proposed § 220.162 explains the reporting requirements with regard to earnings that disability annuitants must follow, and proposed § 220.163 explains the penalties for failure to report earnings.

Subpart N, Trial Work Period and Reentitlement Period for Annuitants Disabled for Any Regular Employment (§§ 220.170 through 220.171), describes the trial work period for annuitants who are unable to engage in any regular employment. This is a period of nine months in which the individual may work and the Board will not consider that work as showing that the annuitant's disability has ended. Proposed § 220.171 describes the reentitlement period which follows the trial work period. During this period an individual may have his or her annuity terminated because he or she engages in substantial gainful activity but should substantial gainful activity cease, he or she may begin to receive the disability annuity again without a new application or a new determination of disability.

Subpart O, Continuing or Stopping Disability Due to Substantial Gainful Activity or Medical Improvement (§§ 220.175 through 220.184), describes the process under which the Board would determine whether an individual continues to be disabled for purposes of receiving an annuity based upon his or her inability to engage in regular employment. Generally, unless the annuitant has demonstrated his or her ability to engage in substantial gainful activity, for example, by the amount of his or her earnings (proposed Subpart L), in order to terminate an annuity the Board must determine if there has been any medical improvement in the annuitant's impairment and, if so, whether this medical improvement is related to the annuitant's ability to work (proposed § 220.178). If the Board finds that there is no medical improvement, then it must determine whether one of the exceptions to the medical improvement rule exists. These exceptions are found in proposed § 220.179. If medical improvement related to ability to work has not occurred and no exception applies, the disability annuity will continue. However, even where medical improvement related to ability to work has occurred or an exception to medical

improvement applies, the Board must also show that the annuitant is currently able to engage in any substantial gainful activity before it can terminate the annuity (proposed § 220.180). Proposed § 220.183 provides that no disability annuity will be terminated without advanced written notice to the annuitant and without an opportunity being provided to the annuitant to show that he or she is still disabled.

The Board will perform continuing disability review at the same intervals as required in regulations of the Social Security Administration. Although not included in this notice, the Board will incorporate provisions identical to those found in 20 CFR 404.1590 (dealing with how often disability reviews are conducted by the Social Security Administration) into this regulation before promulgating it as a final rule.

The Board has determined that this is not a major rule under Executive Order No. 12291; therefore, no regulatory impact analysis is required. The information collection requirements contained in this proposed rule have been approved by the Office of Management and Budget under the Paperwork Reduction Act. The public reporting burden for the collection of information at 20 CFR 220.36(b)(6) (OMB No. 3220–0002), 220.45 (OMB No. 3220–0002, 3220–0030, 3220–0106, 3220–0141), 220.46 (OMB No. 3220–0038), and 220.50 (OMB No. 3220–0124) is estimated to average 28, 28, 22, 10, 30, 24, and 60 minutes per response respectively, including the time for reviewing the completed form. If you wish, send comments regarding the accuracy of our estimates or any other aspects of these information collections, including suggestions for reducing completion time, to the Director of Information Resources Management, Railroad Retirement Board, 844 Rush Street, Chicago, IL 60611 and to the Office of Management and Budget, Paperwork Reduction Project, Washington, DC 20503.

A distribution table is provided to show the disposition of the old Part 208 and portions of Part 230.

DISTRIBUTION TABLE

Current section and name	New section and name
208.9 Regular occupation defined.	220.11 Regular occupation defined.
208.10 Permanent physical or mental condition.	220.12 Permanent physical or mental condition.
	220.28 How long the impairment must last.

DISTRIBUTION TABLE—Continued

Current section and name	New section and name
208.11 Establishment of permanent disability for work in the applicant's "regular occupation".	220.13 Establishment of permanent disability for work in the regular occupation.
208.17 Establishment of permanent disability for work in any regular employment.	220.26 Disability for any regular employment, defined.
	220.110 Listing of Impairments in Appendix 1.
	220.141 Substantial gainful activity, defined.
208.25 Proof of continuance of disability.	220.176 When disability continues or ends.
208.27 Disability annuitant to notify of recovery from disability and of employment or self-employment.	220.162 Earnings report.
208.29 Cessation of eligibility for disability annuities.	220.48 If the claimant fails to submit medical or other evidence.
	220.52 Failure to appear at a consultative examination.
	220.181 The month in which the Board will find that the annuitant is no longer disabled.
208.31 Cessation of disability annuity not prejudicial to further eligibility.	Obsolete.
230.3 Loss of disability annuity because of earnings and penalties.	220.162 Earnings report.
	220.163 Employee penalty deductions.
230.4 Limit of loss of disability annuity because of earnings and penalty.	220.164 Employee end-of-the-year adjustment.

List of Subjects

20 CFR Parts 208 and 220

Disability benefits.

20 CFR Parts 230 and 260

Railroad employees.

For the reasons set out in the preamble, chapter II of title 20 of the Code of Federal Regulations is proposed to be amended as follows:

1. Part 220, Determining Disability, is added to read as follows:

PART 220—DETERMINING DISABILITY

Subpart A—General

Sec.

Authority: 45 U.S.C. 231a, 45 U.S.C. 231f.

Subpart A—General

§ 220.1 Introduction of part.

(a) This part explains how disability determinations are made by the Railroad Retirement Board. In some determinations of disability entitlement, as described below, the Board makes the decision of disability under the Railroad Retirement Act based on the regulations set out in this part. However, in certain other determinations of disability entitlement (as also described below) the Board has the authority to decide whether the claimant is disabled as that term is defined in the Social Security Act and the regulations of the Social Security Administration.

(b) In order for a claimant to become entitled to a railroad retirement annuity based on disability for his or her regular railroad occupation, or to become entitled to a railroad retirement annuity based on disability for any regular employment as an employee, widow(er), or child, he or she must be disabled as those terms are defined in the Railroad Retirement Act. In order for a claimant to become entitled to a period of disability, to early Medicare coverage based on disability, to benefits under the social security overall minimum, or to a disability annuity as a surviving divorced spouse or remarried widow(er) the claimant must be found disabled as that term is defined in the Social Security Act.

§ 220.2 The basis for the Board's disability decisions.

(a) The Board makes disability decisions for claims of disability under the Railroad Retirement Act. These decisions are based either on the rules contained in the Board's regulations in this part or the rules contained in the regulations of the Social Security Administration, whichever is controlling.

(b) A disability decision is made only if the claimant meets other basic eligibility requirements for the specific disability benefit for which he is applying. For example, a claimant for an occupational disability annuity must first meet the eligibility requirements for that annuity, as explained in Part 216 of this chapter, in order for the Board to make a disability decision.

§ 220.3 Determinations by other organizations and agencies.

Determinations of the Social Security Administration or any other governmental or non-governmental agency about whether or not a claimant is disabled under the laws, regulations or standards administered by that agency shall be considered by the Board but are not binding on the Board.

Subpart B—General Definitions of Terms Used in This Part

§ 220.5 Definitions as used in this part.

"Act" means the Railroad Retirement Act of 1974.

"Application" refers only to a form described in Part 217 of this chapter.

"Board" means the Railroad Retirement Board Agency.

"Claimant" means the person for whom an application for an annuity, period of disability or Medicare coverage is filed.

"Eligible" means that a person would meet all the requirements for payment of an annuity but has not yet applied.

"Employee" is defined in Part 203 of this title.

"Entitled" means that a person has applied and has proven his or her right

to have the annuity, period of disability, or Medicare coverage to begin.

"Medical Source" refers to both a treating source and a source of record.

"Review physician"—a medical doctor either employed by or under contract to the Board who upon request reviews medical evidence and provides medical advice.

"Social Security Overall Minimum" refers to the provision of the Railroad Retirement Act which guarantees that the total monthly annuities payable to an employee and his or her family will not be less than the total monthly amount which would be payable under the Social Security Act if the employee's railroad service were credited as employment under the Social Security Act.

"Source of Record" means a hospital, clinic or other source that has provided a claimant with medical treatment or evaluation, as well as a physician or psychologist who has treated or evaluated a claimant but does not have an ongoing relationship with him or her.

"Treating Source" means the claimant's own physician or psychologist who has provided the claimant with medical treatment or evaluation and who has an ongoing treatment relationship with him or her.

Subpart C—Disability Under the Railroad Retirment Act for Work in the Regular Occupation

§ 220.10 Disability for work in the regular occupation.

In order to receive an occupational disability annuity, an eligible employee must be found by the Board to be disabled for work in his or her regular occupation because of a permanent physical or mental impairment.

§ 220.11 Regular occupation, defined.

(a) For the purpose of this Part, an employee's "regular occupation" shall be his or her occupation in the railroad industry in which—

(1) He or she has been engaged in service for hire in more calendar months than the calendar months in which he or she has been engaged in service for hire in any other occupation during the last preceding five calendar years, whether or not consecutive; or

(2) He or she has engaged in service for hire in not less than one-half of all of the months in which he or she has been engaged in service for hire during the last preceding 15 consecutive calendar years.

(b) If an employee last worked as an officer or employee of a railway labor organization and if continuance in such employment is no longer available to him or her, the "regular occupation" shall be the position to which the employee holds seniority rights or the position which he or she left to work for a railway labor organization.

§ 220.12 Permanent physical or mental impairment, defined.

For the purposes of this Part, the term "permanent physical or mental impairment" means a physical or mental impairment or combination of impairments that can be expected to result in death or has lasted, or can be expected to last, for a continuous period of not less than 12 months.

§ 220.13 Establishment of permanent disability for work in the regular occupation.

The Board usually considers an employee disabled for work in his or her regular occupation if the employer does not allow the employee to continue working in that occupation for a medically documented reason and the Board has evidence that supports the conclusion that the employee is unable to perform the duties of his or her regular occupation because of a permanent physical or mental impairment. (See § 220.21 if the claimant is not currently disabled but was previously occupationally disabled for a specified period of time in the past.) The Board uses the following evaluation process in determining disability for work in the regular occupation:

(a) The Board evaluates the employee's medically documented physical and mental impairment(s) to determine if the employee has an impairment which is listed in the Listing of Impairments in Appendix 1 of this part. That Listing describes impairments which are considered severe enough to prevent a person from doing any substantial gainful activity. If the Board finds that an employee has an impairment which is listed or is equal to one which is listed, it will find the employee disabled for work in his or her regular occupation without considering the duties of his or her regular occupation.

(b) If the Board finds that the employee does not have an impairment described in (a) above, it will—

(1) Review the occupations which the employee has held in the last 5–15 calendar years in which he or she was employed, to determine his or her regular occupation (see § 220.11); and

(2) Determine what the physical and mental demands of the employee's regular occupation are. In making this determination, the Board will consider the employee's own description of his or her regular occupation and all information obtained from his or her employer(s). The Board may also take administrative notice of reliable job information available from various governmental and other publications; and

(3) Evaluate the employee's physical and mental impairments to determine what limitations these impairments cause. The Board will consider the effect of all of the employee's medically documented impairments to determine whether he or she retains the capacity to meet the physical and mental demands of his or her regular occupation.

§ 220.14 Evidence considered.

The regulations explaining the employee's responsibility to provide evidence of disability, the kind of evidence, what medical evidence consists of, and the consequences of refusing or failing to provide evidence or to have a medical examination are found in § 220.45 through § 220.48. The regulations explaining when the employee may be requested to report for a consultative examination are found in § 220.50 and § 220.51. The regulations explaining how the Board evaluates conclusions by physicians concerning the employee's disability, how the Board evaluates the employee's symptoms, what medical findings consist of, and the need to follow prescribed treatment are found in § 220.112 through § 220.115.

§ 220.15 Effects of work on occupational disability.

(a) *Disability onset when the employee works despite impairment.* An employee who has stopped work in his or her regular occupation due to a permanent physical or mental impairment(s) may make an effort to return to work in his or her regular occupation. If the employee is subsequently forced to stop that work after a short time because of his or her impairment(s), the Board will generally consider that work as an unsuccessful work attempt. In this situation, the Board may determine that the employee became disabled for work in his or her regular occupation before the last date the employee worked in his or her regular occupation. No annuity will be payable, however, until after the last date worked.

(b) *Occupational disability annuitant work restrictions.* The restrictions which apply to an annuitant who is disabled for work in his or her regular occupation are found in §§ 220.160 through 220.164.

§ 220.16 Responsibility to notify the Board of events which affect disability.

If the annuitant is entitled to a disability annuity because he or she is

disabled for work in his or her regular occupation, the annuitant should promptly tell the Board if—

(a) His or her impairment(s) improves;

(b) He or she returns to any type of work;

(c) He or she increases the amount of work; or

(d) His or her earnings increase.

§ 220.17 Recovery from disability for work in the regular occupation.

(a) *General.* Disability for work in the regular occupation will end if—

(1) There is medical improvement in the annuitant's impairment(s) to the extent that the annuitant is able to perform the duties of his or her regular occupation; or

(2) The annuitant demonstrates the ability to perform the duties of his or her regular occupation. The Board provides a trial work period before terminating a disability annuity because of the annuitant's return to work.

(b) *Definition of the trial work period.* The trial work period is a period during which the annuitant may test his or her ability to work and still be considered occupationally disabled. It begins and ends as described in paragraph (e) of this section. During this period, the annuitant may perform "services" (see paragraph (c) of this section) in as many as nine months, but these months do not have to be consecutive. The Board will not consider those services as showing that the annuitant's occupational disability has ended until the annuitant has performed services in at least nine months. However, after the trial work period has ended, the Board will consider the work the annuitant did during the trial work period in determining whether the annuitant's occupational disability has ended at any time after the trail work period.

(c) *What the Board means by services in an occupational disability case.* When used in this section, "services" means any activity which, even though it may not be substantial gainful activity as defined in § 220.141, is—

(1) Done by a person in employment or self-employment for pay or profit, or is the kind normally done for pay or profit; and

(2) The activity is a return to the same duties of the annuitant's regular occupation or the activity so closely approximates the duties of the regular occupation as to demonstrate the ability to perform those duties.

(d) *Limitations on the number of trial work periods.* The annuitant may have only one trial work period during each period in which he or she is occupationally disabled.

(e) *When the trial work period begins and ends.* (1) The trial work period begins with whichever of the following calendar months is the latest—

(i) The month disability begins;

(ii) The month after the end of the appropriate waiting period; or

(iii) The month the application for disability is filed.

(2) The trial work period ends with the close of whichever of the following calendar months is the earlier—

(i) The ninth month (whether or not the months have been consecutive) in which the annuitant performed services; or

(ii) The month in which new evidence, other than evidence relating to any work the annuitant did during the trial work period, shows that the annuitant is not disabled, even though the annuitant has not worked a full nine months. The Board may find that the annuitant's disability has ended at any time during the trial work period if the medical or other evidence shows that the annuitant is no longer disabled.

§ 220.18 The reentitlement period.

(a) *General.* The reentitlement period is an additional period after the nine months of trial work during which the annuitant may continue to test his or her ability to work if the annuitant has a disabling impairment.

(b) *When the reentitlement period begins and ends.* The reentitlement period begins with the first month following completion of nine months of trial work but cannot begin earlier than December 1, 1980. It ends with whichever is earlier—

(1) The month before the first month in which the annuitant's impairment(s) no longer exists or is not medically disabling; or

(2) The last day of the fifteenth month following the end of the annuitant's trial work period.

(c) *When the annuitant is not entitled to reentitlement period.* The annuitant is not entitled to a reentitlement period if—

(1) The annuitant is not entitled to a trial work period; or

(2) The annuitant's disability ended before the annuitant completed nine months of trial work in that period in which he or she was disabled.

§ 220.19 Payment of the disability annuity during the trial work period and the reentitlement period.

(a) The employee who is entitled to an occupational disability annuity will not be paid an annuity for each month in the trial period or reentitlement period in which he or she—

(1) Works for an employer covered by the Railroad Retirement Act (see §220.160); or

(2) Earns more than $400 (after deduction of impairment related work expenses) in employment or self-employment (see §§ 220.161 and 220.164). See § 220.145 for the definition of impairment related work expenses.

(b) If the employee's occupational disability annuity is stopped because of work during the trial work period or reentitlement period, and the employee discontinues that work before the end of either period, the disability annuity may be started again without a new application and a new determination of disability.

§220.20 Notice that an annuitant is no longer disabled.

The regulation explaining the Board's responsibilities in notifying the annuitant, and the annuitant's rights when the disability annuity is stopped is found in § 220.183.

§ 220.21 Initial evaluation of a previous occupational disability.

(a) In some cases, the Board may determine that a claimant is not currently disabled for work in his or her regular occupation but was previously disabled for a specified period of time in the past. This can occur when—

(1) The disability application was filed before the claimant's occupational disability ended, but the Board did not make the initial determination of occupational disability until after the claimant's disability ended; or

(2) The disability application was filed after the claimant's occupational disability ended but no later than the 12th month after the month the disability ended.

(b) When evaluating a claim for a previous occupational disability, the Board follows the steps in § 220.13 to determine whether an occupational disability existed, and follows the steps in §§ 220.16 and 220.17 to determine when the occupational disability ended.

Example 1: The claimant sustained multiple fractures to his left leg in an automobile accident which occurred on June 16, 1982. For a period of 18 months following the accident the claimant underwent 2 surgical procedures which restored the functional use of his leg. After a recovery period following the last surgery, the claimant returned to his regular railroad job on February 1, 1984. The claimant, although fully recovered medically and regularly employed, filed an application on December 3, 1984 for a determination of occupational disability for the period June 16, 1982 through January 31, 1984. The Board reviewed his claim in January 1985 and determined that he was occupationally disabled for the period which began on June

16, 1982 and continued through January 31, 1984. A disability annuity is payable to the employee only for the period December 1, 1983 through January 31, 1984. An annuity may not begin any earlier than the 1st day of the 12th month before the month in which the application was filed. (See Part 218 of this chapter for the rules on when an annuity may begin).

Example 2: The claimant is occupationally disabled using the same medical facts disclosed above, beginning June 16, 1982 (the date of the automobile accident). The claimant files an application for an occupational disability annuity, dated December 1, 1983. However, as of February 1, 1984, and before the Board makes a disability determination, the claimant returns to his regular railroad job and is no longer considered occupationally disabled. The Board reviews the claimant's application in May of 1984 and finds him occupationally disabled for the period June 16, 1982 through Janaury 31, 1984. A disability annuity is payable to the employee from December 1, 1982 through January 31, 1984. (See Part 218 of this chapter for the rules on when an annuity may begin).

Subpart D—Disability Under the Railroad Retirement Act for Any Regular Employment

§ 220.25 General.

The definition and discussion of disability for any regular employment are found in §§ 220.26 through 220.184.

§ 220.26 Disability for any regular employment, defined.

An employee, widow(er), or child is disabled for any regular employment if he or she is unable to do any substantial gainful activity because of a medically determinable physical or mental impairment which meets the duration requirement defined in § 220.28. In the case of a widow(er), the permanent physical or mental impairment must have prevented work in any regular employment before the end of a specific period (see § 220.30). In the case of a child, the permanent physical or mental impairment must have prevented work in any regular employment since before age 22. To meet this definition of disability, a claimant must have a severe impairment, which makes him or her unable to do any previous work or other substantial gainful activity which exists in the national economy. To determine whether a claimant is able to do any other work, the Board considers a claimant's residual functional capacity, age, education and work experience. See § 220.100 for the process by which the Board evaluates disability for any regular employment. This process applies to employees, widow(er)s, or children who apply for annuities based on disability for any regular employment. This process does not apply to surviving divorced spouses or remarried widow(er)s who apply for annuities based on disability.

§ 220.27 What is needed to show an impairment.

A physical or mental impairment must result from anatomical, physiological, or psychological abnormalities which can be shown by medically acceptable clinical and laboratory diagnostic techniques. A physical or mental impairment must be established by medical evidence consisting of signs, symptoms, and laboratory findings, not only by the claimant's statement of symptoms. (See § 220.113 for further information about what is meant by symptoms, signs, and laboratory findings.) (See also § 220.112 for the effect of a medical opinion about whether or not a claimant is disabled.)

§ 220.28 How long the impairment must last.

Unless the claimant's impairment is expected to result in death, it must have lasted or must be expected to last for a continuous period of at least 12 months. This is known as the duration requirement.

§ 220.29 Work that is considered substantial gainful activity.

Work is considered to be substantial gainful activity if it—

(a) Involves doing significant and productive physical or mental duties; and

(b) Is done or is intended to be done for pay or profit. (See § 220.141 for a detailed explanation of what is substantial gainful activity.)

§ 220.30 Special period required for eligibility of widow(er)s.

In order to be found disabled for any regular employment, a widow(er) must have a permanent physical or mental impairment which prevented work in any regular employment since before the end of a specific period as defined in Part 216 of this chapter.

Subpart E—Disability Determinations Governed by the Regulations of the Social Security Administration

§ 220.35 Introduction.

In addition to its authority to decide whether a claimant is disabled under the Railroad Retirement Act, the Board has authority in certain instances to decide whether a claimant is disabled as that term is defined in the Social Security Act. In making these decisions the Board must apply the regulations of the Social Security Administration in the same manner as does the Secretary of Health and Human Services in making disability decisions under the Social Security Act. Regulations of the Social Security Administration concerning disability are found at Part 404, Subpart P of this title.

§ 220.36 Period of disability.

(a) *General.* In order to receive an annuity based upon a disability, an employee must be found disabled under the Railroad Retirement Act. If an employee is found disabled under the Railroad Retirement Act, the Board will determine whether he is disabled under the Social Security Act to qualify for a period of disability as defined in that Act.

(b) *Period of disability.*—(1) *Definition and effect.* A period of disability is a continuous period of time during which an employee is disabled as that term is defined in § 404.1505 of this title. A period of disability established by the Board—

(i) Preserves the disabled employee's earnings record as it is when the period begins;

(ii) Protects the insured status required for entitlement to Social Security overall minimum;

(iii) May cause an increase in the rate of an employee, spouse, or survivor annuity; or

(iv) May permit a disabled employee to receive Medicare benefits in addition to an annuity under the Railroad Retirement Act.

(2) *Effect on benefits.* The establishment of a period of disability for the employee will never cause a denial or reduction in benefits under the Railroad Retirement Act or Social Security Act, but it will always be used to establish Medicare entitlement before age 65.

(3) *Who may establish a period of disability.* The Railroad Retirement Board or the Social Security Administration may establish a period of disability. However, the decision of one agency is not binding upon the other agency.

(4) *When the Board may establish a period of disability.* The Board has independent authority to decide whether or not to establish a period of disability for any employee who was awarded an annuity under the Railroad Retirement Act, or who—

(i) Has applied for a disability annuity; and

(ii) Has at least 10 years of railroad service.

(5) *When an employee is entitled to a period of disability.* An employee is entitled to a period of disability if he or she meets the following requirements:

(i) The employee is disabled under the Social Security Act, as described in § 404.1505 of this title.

(ii) The employee is insured for a period of disability under § 404.130 of this title based on combined railroad and social security earnings.

(iii) The employee files an application as shown in subparagraph (b)(6) of this section.

(iv) At least five consecutive months elapse from the month in which the period of disability begins and before the month in which it would end.

(6) *Application for a period of disability.* (i) An application for an employee disability annuity under the Railroad Retirement Act or an employee disability benefit under the Social Security Act is also an application for a period of disability.

(ii) An employee who is receiving an age annuity or who was previously denied a period of disability must file a separate application for a period of disability.

(iii) In order to be entitled to a period of disability, an employee must apply while he or she is disabled or not later than 12 months after the month in which the period of disability ends.

(iv) An employee who is unable to apply within the 12 month period after the period of disability ends because his or her physical condition limited his or her activities to the extent that he or she could not complete and sign an application or because he or she was mentally incompetent, may apply no later than 36 months after the period of disability ends.

(v) A period of disability can also be established on the basis of an application filed within three months after the month a disabled employee died.

(c) *Social Security overall minimum.* The Social Security overall minimum provision of the Railroad Retirement Act guarantees that the total monthly annuities payable to an employee and his or her family will not be less than the total monthly benefit which would be payable under the Social Security Act if the employee's railroad service were credited as employment under the Social Security Act.

(The information collection requirements contained in paragraph (b)(6) were approved by the Office of Management and Budget under control number 3220–0002.)

§ 220.37 When a child's disability determination is governed by the regulations of the Social Security Administration.

(a) In order to receive an annuity based upon disability, a child of a deceased employee must be found disabled under the Railroad Retirement Act. However, in addition to this determination, the child must be found disabled under the Social Security Act in order to quality for Medicare based upon disability.

(b) Although the child of a living employee may not receive an annuity under the Railroad Retirement Act, he or she, if found disabled under the Social Security Act, may qualify for the following:

(1) Inclusion as a disabled child in the employee's annuity rate under the Social Security overall minimum.

(2) Entitlement to Medicare based upon disability.

§ 220.38 When a widow(er)'s disability determination is governed by the regulations of the Social Security Administration.

In order to receive an annuity based upon disability, a widow(er) must be found disabled under the Railroad Retirement Act. However, in addition to this determination, the widow(er) must be found disabled under the Social Security Act in order to qualify for early Medicare based upon disability.

§ 220.39 Disability determination for a surviving divorced spouse or remarried widow(er).

A surviving divorced spouse or a remarried widow(er) must be found disabled under the Social Security Act in order to qualify for both an annuity under the Railroad Retirement Act and early Medicare based upon disability.

Subpart F—Evidence of Disability

§ 220.45 Providing evidence of disability.

(a) *General.* The claimant for a disability annuity is responsible for providing evidence of the claimed disability and the effect of the disability on the ability to work. The Board will assist the claimant, when necessary, in obtaining the required evidence. At its discretion, the Board will arrange for an examination by a consultant at the expense of the Board as explained in §§ 220.50 and 220.51.

(b) *Kind of evidence.* The claimant must provide medical evidence showing that he or she has an impairment(s) and how severe it is during the time the claimant claims to be disabled. The Board will consider only impairment(s) the claimant claims to have or about which the Board receives evidence. Before deciding that the claimant is not disabled, the Board will develop a complete medical history (i.e., evidence from the records of the claimant's medical sources) covering at least the preceding 12 months, unless the claimant says that his or her disability began less than 12 months before he or she filed an application. The Board will make every reasonable effort to help the claimant in getting medical reports from his or her own medical sources when the claimant gives the Board permission to request them. Every reasonable effort means that the Board will make an initial request and, after 20 days, one followup request to the claimant's medical source to obtain the medical evidence necessary to make a determination before the Board evaluates medical evidence obtained from another source on a consultative basis. The medical source will have 10 days from the followup request to reply (unless experience indicates that a longer period is advisable in a particular case). In order to expedite processing the Board may order a consultative exam from a non-treating source while awaiting receipt of medical source evidence. If the Board ask the claimant to do so, he or she must contact the medical sources to help us get the medical reports. The Board may also ask the claimant to provide evidence about his or her—

(1) Age:

(2) Education and training;

(3) Work experience;

(4) Daily activities both before and after the date the claimant says that he or she became disabled;

(5) Efforts to work; and

(6) Any other evidence showing how the claimant's impairment(s) affects his or her ability to work. (In §§ 220.125 through 220.134, we discuss in more detail the evidence the Board needs when it considers vocational factors.)

(Approved by the Office of Management and Budget under control numbers 3220–0002, 3220–0030, 3220–0106 and 3220–0141)

§ 220.46 Medical evidence.

(a) *Acceptable sources.* The Board needs reports about the claimant's impairment(s) from acceptable medical sources. Acceptable medical sources are—

(1) Licensed physicians;

(2) Licensed osteopaths;

(3) Licensed or certified psychologists;

(4) Licensed optometrists for the measurement of visual acuity and visual fields (a report from a physician may be needed to determine other aspects of eye diseases); and

(5) Persons authorized to furnish a copy or summary of the records of a medical facility. Generally, the copy or summary should be certified as accurate by the custodian or by any authorized employee of the Railroad Retirement Board, Social Security Administration,

Veterans Administration, or State agency.

(b) *Medical reports.* Medical reports should include—

(1) Medical history;

(2) Clinical findings (such as the results of physical or mental status examinations);

(3) Laboratory findings (such as blood pressure, x-rays);

(4) Diagnosis (statement of disease or injury based on its signs and symptoms);

(5) Treatment prescribed, with response to treatment and prognosis; and

(6) (i) Statements about what the claimant can still do despite his or her impairment(s) based on the medical source's findings on the factors under paragraphs (b) (1) through (5) of this section (except in disability claims for remarried widow's and surviving divorced spouses). (See § 220.112).

(ii) Statements about what the claimant can still do (based on the medical source's findings on the factors under paragraphs (b) (1) through (5) of this section) should describe—

(A) The medical source's opinion about the claimant's ability, despite his or her impairment(s), to do work-related activities such as sitting, standing, moving about, lifting, carrying, handling objects, hearing, speaking, and traveling; and

(B) In cases of mental impairment(s), the medical source's opinion about the claimant's ability to reason or make occupational, personal, or social adjustments. (See § 220.112.)

(c) *Completeness.* The medical evidence, including the clinical and laboratory findings, must be complete and detailed enough to allow the Board to make a determination about whether or not the claimant is disabled. It must allow the Board to determine—

(1) The nature and limiting effects of the claimant's impairment(s) for any period in question;

(2) The probable duration of the claimant's impairment(s); and

(3) The claimant's residual functional capacity to do work-related physical and mental activities.

(d) *Evidence from physicians.* A statement by or the opinion of the claimant's treating physician will not determine whether the claimant is disabled. However, the medical evidence provided by a treating physician will be considered by the Board in making a disability decision. A treating physician is a doctor to whom the claimant has been going for treatment on a continuing basis. The claimant may have more than one treating physician. The Board may use consulting physicians or other medical consultants for specialized examinations or tests, to obtain more complete evidence, and to resolve any conflicts. A consulting physician is a doctor (often a specialist) to whom the claimant is referred for an examination once or on a limited basis. (See § 220.50 for an explanation of when the Board may request a consultative examination.)

(e) *Information from other sources.* Information from other sources may also help the Board understand how an impairment affects the claimant's ability to work. Other sources include—

(1) Public and private social welfare agencies;

(2) Observations by non-medical sources;

(3) Other practitioners (for example, naturopaths, chiropractors, audiologists, etc.); and

(4) Railroad and non-railroad employers.

(Approved by the Office of Management and Budget under control number 3220-0038)

§ 220.47 Purchase of existing medical evidence.

The Board needs specific medical evidence to determine whether a claimant is disabled. The claimant is responsible for providing that evidence. However, at its discretion, the Board will pay the reasonable cost to obtain medical evidence that it needs and requests from physicians not employed by the Federal government and other non-Federal providers of medical services.

§ 220.48 If the claimant fails to submit medical or other evidence.

The Board may request a claimant to submit medical or other evidence. If the claimant does not submit that evidence, the Board will make a decision on other evidence which is either already available in the claimant's case or which the Board may develop from other sources, including reports of consultative examinations.

Subpart G—Consultative Examinations

§ 220.50 Consultative examinations at the Board's expense.

A consultative examination is a physical or mental examination or test purchased for a claimant at the Board's request and expense. If the claimant's medical sources cannot provide sufficient medical evidence about the claimant's impairment(s) in order to enable the Board to determine whether the claimant is disabled, the Board may ask the claimant to have one or more consultative examinations or tests. The decision to purchase a consultative examination will be made on an individual case basis in accordance with the provisions of § 220.53 through § 220.56. Selection of the source for the examination will be consistent with the provisions of § 220.64. (Program Integrity)

(Approved by the Office of Management and Budget under control number 3220-0124)

§ 220.51 Notice of the examination.

If the Board arranges for an examination or test, the claimant will be provided with reasonable notice of the date, time and place of the examination or test and the name of the person who will do it. The Board will also give the examiner any necessary background information about the claimant's impairment(s).

§ 220.52 Failure to appear at a consultative examination.

(a) *General.* The Board may find that the claimant is not disabled if he or she does not have good reason for failing or refusing to take part in a consultative examination or test which was arranged by the Board. If the individual is already receiving an annuity and does not have a good reason for failing or refusing to take part in a consultative examination or test which the Board arranged, the Board may determine that the individual's disability has stopped because of his or her failure or refusal. The claimant for whom an examination or test has been scheduled should notify the Board as soon as possible before the scheduled date of the examination or test if he or she has any reason why he or she cannot go to the examination or test. If the Board finds that the claimant has a good reason for failure to appear, another examination or test will be scheduled.

(b) *Examples of good reasons for failure to appear.* Some examples of good reasons for not going to a scheduled examination or test include—

(1) Illness on the date of the scheduled examination or test;

(2) Failure to receive notice or timely notice of an examination or test;

(3) Receipt of incorrect or incomplete information about the examination or test; or

(4) A death or serious illness in the claimant's immediate family.

(c) *Objections by a claimant's physician.* The Board should be notified immediately if the claimant is advised by his or her treating physician not to take an examination or test. In some cases, the Board may be able to secure the information which is needed in another way or the treating physician may agree to another type of examination for the same purpose.

§ 220.53 When the Board will purchase a consultative examination and how it will be used.

(a)(1) *General.* The decision to purchase a consultative examination for a claimant will be made after full consideration is given to whether the additional information needed (e.g., clinical findings, laboratory tests, diagnosis, and prognosis, etc.) is readily available from the records of the claimant's medical sources. Upon filing an application for a disability annuity a claimant will be required to obtain from his or her medical source(s) information regarding the claimed impairments. The Board will seek clarification from a medical source who has provided a report when that report contains a conflict or ambiguity, or does not contain all necessary information or when the information supplied is not based on objective evidence. The Board will not, however, seek clarification from a medical source when it is clear that the source either cannot or will not provide the necessary findings, or cannot reconcile a conflict or ambiguity in the findings provided from the source's records. Therefore, before purchasing a consultative examination, the Board will consider not only existing medical reports, but also the background report containing the claimant's allegations and information about the claimant's vocational background, as well as other pertinent evidence in his or her file.

(2) When the Board purchases a consultative examination, we will use the report from the consultative examination to try to resolve a conflict or ambiguity if one exists. The Board will do this by comparing the persuasiveness and value of the evidence. The Board will also use a consultative examination to secure needed medical evidence the file does not contain such as clinical findings, laboratory tests, a diagnosis or prognosis necessary for decision.

(b) *Situations requiring a consultative examination.* A consultative examination may be purchased when the evidence as a whole, both medical and non-medical, is not sufficient to support a decision on the claim. In addition, other situations, such as one or more of the following, will normally require a consultative examination (these situations are not all-inclusive):

(1) The specific additional evidence needed for adjudication has been pinpointed and high probability exists for obtaining it through purchase.

(2) The additional evidence needed is not contained in the records of the claimant's treating sources.

(3) Evidence that may be needed from the claimant's treating or other medical sources cannot be obtained for reasons beyond his or her control, such as death or noncooperation of the medical source.

(4) Highly technical or specialized medical evidence which is needed is not available from the claimant's treating sources.

(5) A conflict, inconsistency, ambiguity or insufficiency in the evidence must be resolved.

(6) There is an indication of a change in the claimant's condition that is likely to affect his or her ability to function, but current severity is not documented.

(7) Information provided by any source appears not to be supported by objective evidence.

§ 220.54 When the Board will not purchase a consultative examination.

A consultative examination will not be purchased in the following situations (these situations are not all-inclusive):

(a) In disabled widow(er) benefit claims, when the alleged month of disability is after the end of the 7-year period specified in § 216.38 and there is no possibility of establishing an earlier onset, or when the 7-year period expired in the past and all the medical evidence in the claimant's file establishes that he or she was not disabled on or before the expiration date.

(b) When any issues about the actual performance of substantial gainful activity have not been resolved.

(c) In childhood disability claims, when it is determined that the claimant's alleged childhood disability did not begin before the month of attainment of age 22. In this situation, the claimant could not be entitled to benefits as a disabled child unless found disabled before age 22.

(d) When, on the basis of the claimant's allegations and all available medical reports in his or her case file, it is apparent that he or she does not have an impairment which will have more than a minimal effect on his or her capacity to work.

(e) Childhood disability claims filed concurrently with the employee's claim and entitlement cannot be established for the employee.

(f) Survivors childhood disability claims where entitlement is precluded based on non-disability factors.

§ 220.55 Purchase of consultative examinations at the reconsideration level.

(a) When a claimant requests a review of the Board's initial determination at the reconsideration level of review, consultative medical examinations will be obtained when needed, but not routinely. A consultative examination will not, if possible, be performed by the same physician or psychologist used in the initial claim.

(b) Where the evidence tends to substantiate an affirmation of the initial denial but the claimant states that the treating physician or psychologist considers him or her to be disabled, the Board will assist the claimant in securing medical reports or records from the treating physician.

§ 220.56 Securing medical evidence at the appeals referee hearing level.

(a) Where there is a conflict in the medical evidence at the hearing level of review before an appeals referee, the referee will try to resolve it by comparing the persuasiveness and value of the conflicting evidence. The referee's reasoning will be explained in the decision rationale. Where such resolution is not possible, the referee will secure additional medical evidence (e.g., clinical findings, laboratory test, diagnosis, prognosis, etc.) to resolve the conflict. Even in the absence of a conflict, the referee will also secure additional medical evidence when the file does not contain clinical findings, laboratory tests, a diagnosis, or a prognosis necessary for a decision.

(b) Before requesting a consultative examimination, the referee will ascertain whether the information is available as a result of a recent examination by any of the claimant's medical sources. If it is, the referee will request the evidence from that medical practitioner. If contact with the medical source is not productive for any reason, or if there is no recent examination by a medical source, the referee will obtain a consultative examination.

§ 220.57 Type of purchased examinations and selection of source.

(a) *Additional evidence needed for disability determination.* The types of examinations and tests the Board will purchase depends upon the additional evidence needed for the disability determination. The Board will purchase only the specific evidence needed. For example, if special tests (such as X-rays, blood studies, or EKG) will furnish the additional evidence needed for the disability determination, a more comprehensive medical examination will not be authorized.

(b) *The physician or psychologist selected to do the examination or test must be qualified.* The physician's or psychologist's qualifications must indicate that the physician or psychologist is currently licensed in the State and has the training and experience to perform the type of

examination or test requested. The physician or psychologist may use support staff to help perform the examination. Any such support staff must meet appropriate licensing or certification requirements of the State. See also § 220.64.

§ 220.58 Objections to the designated physician or psychologist.

A claimant or his or her representative may object to his or her being examined by a designated physician or psychologist. If there is a good reason for the objection, the Board will schedule the examination with another physician or psychologist. A good reason may be where the consultative examination physician or psychologist had previously represented an interest adverse to the claimant. For example, the physician or psychologist may have represented the claimant's employer in a worker's compensation case or may have been involved in an insurance claim or legal action adverse to the claimant. Other things the Board will consider are: language barrier, office location of consultative examination physician or psychologist (2nd floor, no elevator, etc.), travel restrictions, and examination by the physician or psychologist in connection with a previous unfavorable determination. If the objection is because a physician or psychologist allegedly "lacks objectivity" (in general, but not in relation to the claimant personally) the Board will review the allegations. To avoid a delay in processing the claimant's claim, the consultative examination in such a case will be changed to another physician or psychologist while a review is being conducted. Any objection to use of the substitute physician or psychologist will be handled in the same manner. However, if the Board or the Social Security Administration had previously conducted such a review and found that the reports of the consultative physician or psychologist in question conform to the Board's guidelines, then the Board will not change the claimant's examination.

§ 220.59 Requesting examination by a specific physician, psychologist or institution—appeals referee hearing level.

In an unusual case, an appeals referee may have reason to request an examination by a particular physician, psychologist or institution. Some examples include the following:

(a) Conflicts in the existing medical evidence require resolution by a recognized authority in a particular specialty;

(b) The impairment requires hospitalization for diagnostic purposes; or

(c) The claimant's treating physician or psychologist is in the best position to submit a meaningful report.

§ 220.60 Diagnostic surgical procedures.

The Board will not order diagnostic surgical procedures such as myelograms and arteriograms for the evaluation of disability under the Board's disability program. In addition, the Board will not order procedures such as cardiac catheterization and surgical biopsy. However, if any of these procedures have been performed as part of a workup by the claimant's treating physician or other medical source, the results may be secured and used to help evaluate an impairment(s)'s severity.

§ 220.61 Informing the examining physician or psychologist of examination scheduling, report content and signature requirements.

Consulting physicians or psychologists will be fully informed at the time the Board contacts them of the following obligations:

(a) *General.* In scheduling full consultative examinations, sufficient time should be allowed to permit the examining physician to take a case history and perform the examination (including any needed tests).

(b) *Report content.* The reported results of the claimant's medical history, examination pertinent requested laboratory findings, discussions and conclusions must conform to accepted professional standards and practices in the medical field for a complete and competent examination. The facts in a particular case and the information and findings already reported in the medical and other evidence of record will dictate the extent of detail needed in the consultative examination report for that case. Thus, the detail and format for reporting the results of a purchased examination will vary depending upon the type of examination or testing requested. The reporting of information will differ from one type of examination to another when the requested examination relates to the performance of tests such as ventilatory function tests, treadmill exercise tests, or audiological tests. The medical report must be complete enough to help the Board determine the nature, severity, duration of the impairment and residual functional capacity. Pertinent points in the claimant's medical history, such as a description of chest pain, will reflect the claimant's statements of his or her symptoms, not simply the physician's or psychologist's statements or conclusions. The examining physician's or psychologist's report of the consultative examination will include the objective medical facts.

(c) *Elements of a complete examination.* A complete examination is one which involves all the elements of a standard examination in the applicable medical specialty. When a complete examination is involved, the report will include the following elements:

(1) The claimant's major or chief complaint(s).

(2) A detailed description, within the area of specialty of the examination, of the history of the claimant's major complaint(s).

(3) A description, and disposition, of pertinent "positive," as well as "negative," detailed findings based on the history, examination and laboratory test related to the major complaint(s) and any other abnormalities reported or found during examination or laboratory testing.

(4) The results of laboratory and other tests (e.g., x-rays) performed according to the requirements stated in the Listing of Impairments (see Appendix 1 of this Part I).

(5) The diagnosis and prognosis for the claimant's impairment(s).

(6) A statement as to what the claimant can still do despite his or her impairment(s) (except in disability claims for remarried widows and widowers, and surviving divorced spouses). This statement must describe the consultative physician's or psychologist's opinion concerning the claimant's ability, despite his or her impairment(s), to do basic work activities such as sitting, standing, lifting, carrying, handling objects, hearing, speaking, and traveling; and, in cases of mental impairment(s), the consultative physician's or psychologist's opinion as to the claimant's ability to reason or make occupational, personal, or social adjustments.

(7) When less than a complete examination is required (for example, a specific test or study is needed), not every element is required.

(d) *Signature requirements.* All consultative examination reports will be personally reviewed and signed by the physician or psychologist who actually performed the examination. This attests to the fact that the physician or psychologist doing the examination or testing is solely responsible for the report contents and for the conclusions explanations or comments provide with report to the history, examination and evaluation of laboratory test results.

§ 220.62 Reviewing reports of consultative examinations.

(a) The Board will review the report of the consultative examination to determine whether the specific information requested has been furnished. The Board will consider these factors in reviewing the report:

(1) Whether the report provides evidence which serves as an adequate basis for decisionmaking in terms of the impairment it assesses.

(2) Whether the report is internally consistent. Whether all the diseases, impairments and complaints described in the history are adequately assessed and reported in the physical findings. Whether the conclusions correlate the findings from the claimant's medical history, physical examination and laboratory tests and explain all abnormalities.

(3) Whether the report is consistent with the other information available to the Board within the specialty of the examination requested. Whether the report fails to mention an important or relevant complaint within the speciality that is noted on other evidence in the file (e.g., blindness in one eye, amputations, flail limbs or claw hands, etc.).

(4) Whether the report is properly signed.

(b) If the report is inadequate or incomplete, the Board will contact the examining consultative physician or psychologist, give an explanation of the Board's evidentiary needs, and ask that the physician or psychologist furnish the missing information or prepare a revised report.

(c) Where the examination discloses new diagnostic information or test results which are significant to the claimant's treatment, the Board will consider referral of the consultative examination report to the claimant's treating physician or psychologist.

(d) The Board will take steps to ensure that consultative examinations are scheduled only with medical sources who have the equipment required to provide an adequate assessment and record of the level of severity of the claimant's alleged impairments.

§ 220.63 Conflict of interest.

All implications of possible conflict of interest between Board medical consultants and their medical practices will be avoided. Board review physicians and psychologists will not perform consultative examinations for the Board's disability programs without prior approval. In addition, they will not acquire or maintain, directly or indirectly, including any member of their families, any financial interest in a medical partnership or similar relationship in which consultative examinations are provided. Sometimes one of the Board's review physicians or psychologists will have prior knowledge of a case (e.g., the claimant was a patient). Where this is so, the physician or psychologist will not participate in the review or determination of the case. This does not preclude the physician or psychologist from submitting medical evidence based on prior treatment or examination of the claimant.

§ 220.64 Program integrity.

The Board will not use in its program any individual or entity who is excluded, suspended, or otherwise barred from participation in the Medicare or Medicaid programs, or any other Federal or Federally-assisted program; who has been convicted, under Federal or State law, in connection with the delivery of health care services, of fraud, theft, embezzlement, breach of fiduciary responsibility or financial abuse; who has been convicted under Federal or State law of unlawful manufacture, distribution, prescription, or dispensing of a controlled substance; whose license to provide health care services is revoked or suspended by any State licensing authority for reasons bearing on professional competence, professional conduct, or financial integrity; who has surrendered such a license while formal disciplinary proceedings involving professional conduct were pending; or who has had a civil monetary assessment or penalty imposed on such individual or entity for any activity described in this section or as a result of formal disciplinary proceedings. Also see §§ 220.53 and 220.57(b).

Subpart H—Evaluation of Disability

§ 220.100 Evaluation of disability for any regular employment.

(a) *General.* The Board uses a set evaluation process, explained in paragraph (b) of this section, to determine whether a claimant is disabled for any regular employment. This evaluation process applies to employees, widow(er)s, and children who have applied for annuities under the Railroad Retirement Act based on disability for any regular employment. Regular employment means substantial gainful activity as that term is defined in § 220.141.

(b) *Steps in evaluating disability.* A set order is followed to determine whether disability exists. The duration requirement, as described in § 220.28, must be met for a claimant to be found disabled. The Board reviews any current work activity, the severity of the claimant's impairment(s), the claimant's impairment(s), the claimant's residual functional capacity, and the claimant's age, education, and work experience. If the Board finds that the claimant is disabled or is not disabled at any step in the process, the Board does not review further. (See § 220.105 if the claimant is not currently disabled but was previously disabled for a specified period of time in the past.) The steps are as follows:

(1) *Claimant is working.* If the claimant is working, and the work is substantial gainful activity, the Board will find that he or she is not disabled regardless of his or her impairments, age, education, or work experience. If the claimant is not performing substantial gainful activity, the Board will follow paragraph (b)(2) of this section.

(2) *Impairment(s) not severe.* If the claimant does not have an impairment or combination of impairments which significantly limit his or her physical or mental ability to do basic work activities, the Board will find that the claimant is not disabled without consideration of age, education, or work experience. If the claimant has an impairment or combination of impairments which significantly limit his or her ability to do basic work activities, the Board will follow paragraph (b)(3) of this section. (See § 220.102(b) for a definition of basic work activities.)

(3) *Impairment(s) meets or equals one in the Listing of Impairments.* If the claimant has an impairment or combination of impairments which meets the duration requirement and such impairment is listed or is medically equal to one which is listed in the Listing of Impairments, the Board will find the claimant disabled without considering his or her age, education or work experience. (The Listing of Impairments is contained in Appendix 1 of this part.) If the claimant's impairment or combination of impairments is not listed or is not medically equal to one which is listed in the Listing of Impairments, the Board will follow paragraph (b)(4) of this section. (Medical equivalence is discussed in § 220.111).

(4) *Impairment(s) must prevent past relevant work.* If the claimant's impairment or combination of impairments is not listed or is not medically equal to one which is listed in the Listing of Impairments, the Board will then review the claimant's residual functional capacity (see § 220.120) and the physical and mental demands of past relevant work (see § 220.130). If the

Board determines that the claimant is still able to do his or her past relevant work, the Board will find that he or she is not disabled. If the claimant is unable to do his or her past relevant work, the Board will follow paragraph (b)(5) of this section.

(5) *Impairment(s) must prevent any other work.* (i) If the claimant is unable to do his or her past relevant work because of his or her impairment or combination of impairments, the Board will review the claimant's residual functional capacity and his or her age, education and work experience to determine if the claimant is able to do any other work. If the claimant cannot do other work, the Board will find him or her disabled. If the claimant can do other work, the Board will find the claimant not disabled.

(ii) If the claimant has only a marginal education (see § 220.129) and long work experience (i.e., 35 years or more) in which he or she only did arduous unskilled physical labor, and the claimant can no longer do this kind of work, the Board will use a different rule (see § 220.127) to determine disability.

(c) Once a claimant has been found eligible to receive a disability annuity, the Board follows a somewhat different order of evaluation to determine whether the claimant's eligibility continues as explained in § 220.180.

§ 220.101 Evaluation of mental impairments.

(a) *General.* The steps outlined in § 220.100 apply to the evaluation of physical and mental impairments. In addition, in evaluating the severity of a mental impairment(s), the Board will follow a special procedure at each administrative level of review. Following this procedure will assist the Board in—

(1) Identifying additional evidence necessary for the determination of impairment severity;

(2) Considering and evaluating aspects of the mental impairment(s) relevant to the claimant's ability to work; and

(3) Organizing and presenting the findings in a clear, concise, and consistent manner.

(b) *Use of the procedure to record pertinent findings and rate the degree of functional loss.* (1) This procedure requires the Board to record the pertinent signs, symptoms, findings, functional limitations, and effects of treatment contained in the claimant's case record. This will assist the Board in determining if a mental impairment(s) exists. Whether or not a mental impairment(s) exists is decided in the same way the question of a physical impairment is decided, i.e., the evidence must be carefully reviewed and conclusions supported by it. The mental status examination and psychiatric history will ordinarily provide the needed information. (See § 220.27 for further information about what is needed to show an impairment.)

(2) If the Board determines that a mental impairment(s) exists, this procedure then requires the Board to indicate whether certain medical findings which have been found especially relevant to the ability to work are present or absent.

(3) The procedure then requires the Board to rate the degree of functional loss resulting from the impairment(s). Four areas of function considered by the Board as essential to work have been identified, and the degree of functional loss in those areas must be rated on a scale that ranges from no limitation to a level of severity which is incompatible with the ability to perform those work-related functions. For the first two areas (activities of daily living and social functioning), the rating is done based upon the following five point scale: none, slight, moderate, marked, and extreme. For the third area (concentration, persistence, or pace), the following five point scale is used: Never, seldom, often, frequent, and constant. For the fourth area (deterioration or decompensation in work or work-like settings), the following four point scale is used: never, once or twice, repeated (three or more), and continual. The last two points for each of these scales represent a degree of limitation which is incompatible with the ability to perform the work-related function.

(c) *Use of the procedure to evaluate mental impairments.* Following the rating of the degree of functional loss resulting from the impairment(s), the Board then determines the severity of the mental impairment(s).

(1) If the four areas considered by the Board as essential to work have been rated to indicate a degree of limitation as "none" or "slight" in the first and second area, "never" or "seldom" in the third area, and "never" in the fourth area, the Board can generally conclude that the impairment(s) is not severe, unless the evidence otherwise indicates that there is significant limitation of the claimant's mental ability to do basic work activities (see § 220.102).

(2) If the claimant's mental impairment(s) is severe, the Board must then determine if it meets or equals a listed mental impairment. This is done by comparing the Board's prior conclusions based on this procedure (i.e., the presence of certain medical findings considered by the Board as especially relevant to a claimant's ability to work and the Board's rating of functional loss resulting from the mental impairment(s)) against the criteria of the appropriate listed mental disorder(s).

(3) If the claimant has a severe impairment(s), but the impairment(s) neither meets nor equals the Listings, the Board will then do a residual functional capacity assessment for those claimants (employees, widow(er)s, and children) whose applications are based on disability for any regular employment under the Railroad Retirement Act.

(4) At all adjudicative levels, the Board will, in each case, incorporate the pertinent findings and conclusions based on this procedure in its decision rationale. The Board's rationale must show the significant history, including examination, laboratory findings, and functional limitations that the Board considered in reaching conclusions about the severity of the mental impairment(s).

§ 220.102 Non-severe impairment(s), defined.

(a) *Non-severe impairment(s).* An impairment or combination of impairments is not severe if it does not significantly limit the claimant's physical or mental ability to do basic work activities.

(b) *Basic work activities.* Basic work activities means the ability and aptitudes necessary to do most jobs. Examples of these include—

(1) Physical functions such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling;

(2) Capacities for seeing, hearing, and speaking;

(3) Understanding, carrying out, and remembering simple instructions;

(4) Use of judgment;

(5) Responding appropriately to supervision, co-workers and usual work situations; and

(6) Dealing with changes in a routine work setting.

§ 220.103 Two or more unrelated impairments—initial claims.

(a) *Unrelated severe impairments.* Two or more unrelated severe impairments cannot be combined to meet the 12-month duration test. If the claimant has a severe impairment(s) and then develops another unrelated severe impairment(s) but neither one is expected to last for 12 months, he or she cannot be found disabled even though the two impairments in combination last for 12 months.

(b) *Concurrent Impairments.* If the claimant has two or more concurrent impairments which, when considered in

combination, are severe, the Board must also determine whether the combined effect of the impairments can be expected to continue to be severe for 12 months. If one or more of the claimant's impairments improves or is expected to improve within 12 months, so that the combined effect of the claimant's impairments is no longer severe, he or she will be found to not meet the 12-month duration test.

§ 220.104 Multiple impairments.

To determine whether the claimant's physical or mental impairment or impairments are of a sufficient medical severity that such impairment or impairments could be the basis of eligibility under the law, the combined effect of all of the claimant's impairments are considered regardless of whether any such impairment, if considered separately, would be of sufficient severity. If a medically severe combination of impairments is found, it will be considered throughout the disability evaluation process. If a medically severe combination of impairments is not found, the claimant will be determined to be not disabled.

§ 220.105 Initial evaluation of a previous disability.

(a) In some cases, the Board may determine that a claimant is not currently disabled but was previously disabled for a specified period of time in the past. This can occur when—

(1) The disability application was filed before the claimant's disability ended but the Board did not make the initial determination of disability until after the claimant's disability ended; or

(2) The disability application was filed after the claimant's disability ended but no later than the 12th month after the month the disability ended.

(b) When evaluating a claim for a previous disability, the Board follows the steps in § 220.100 to determine whether a disability existed, and follows the steps in § 220.180 to determine when the disability ended.

Example 1: The claimant sustained multiple fractures to his left leg in an automobile accident which occurred on June 16, 1982. For a period of 18 months following the accident the claimant underwent 2 surgical procedures which restored the functional use of his leg. After a recovery period following the last surgery, the claimant returned to work on February 1, 1984.

The claimant, although fully recovered medically and regularly employed, filed an application on December 3, 1984 for a determination of disability for the period June 16, 1982 through January 31, 1984. The Board reviewed his claim in January 1985 and determined that he was disabled for the prior period which began on June 16, 1982 and continued through January 31, 1984. A disability annuity is payable to the employee only for the period December 1, 1983 through January 31, 1984.

An annuity may not begin any earlier than the 1st of the 12th month before the month in which the application was filed (See Part 218 of this chapter for the rules on when an annuity may begin).

Example 2: The claimant is disabled using the same medical facts disclosed above, beginning June 16, 1982 (the date of the automobile accident). The claimant files an application for a disability annuity, dated December 1, 1983. However, as of February 1, 1984 and before the Board makes a disability determination, the claimant returns to full-time work and is no longer considered disabled. The Board reviews the claimant's application in May of 1984 and finds him disabled for the period June 16, 1982 through January 31, 1984. A disability annuity is payable to the employee from December 1, 1982 through January 31, 1984. (See Part 218 of this chapter for the rules on when an annuity may begin).

Subpart 1—Medical Considerations

§ 220.110 Listing of impairments in Appendix I of this part.

(a) *Purpose of the Listing of Impairments.* The Listing of Impairments describes, for each of the major body systems, impairments which are considered severe enough to prevent a person from doing any substantial gainful activity. Most of the listed impairments are permanent or expected to result in death, or a specific statement of duration is made. For all others, the evidence must show that the impairment has lasted or is expected to last for a continuous period of at least twelve months.

(b) *Adult and Childhood Listings.* The Listing of Impairments consists of two parts:

(1) *Part A* contains medical criteria that apply to claimants age 18 and over. The medical criteria in Part A may also be applied in evaluating impairments in claimants under age 18 if the disease processes have a similar effect on adults and younger persons.

(2) *Part B* contains additional medical criteria that apply only to the evaluation of impairments of disabled children who are between the ages of 16 and 18. Certain criteria in Part A do not give appropriate consideration to the particular effects of the disease processes in childhood: i.e., when the disease process is generally found only in children or when the disease process differs in its effect on children than on adults. Additional criteria are included in Part B, and the impairment categories are, to the extent possible, numbered to maintain a relationship with their counterparts in Part A. In evaluating disability for a child between 16 and 18, Part B will be used first. If the medical criteria in Part B do not apply, then the medical criteria in Part A will be used.

(c) *How to use the Listing of Impairments.* Each section of the Listing of Impairments has a general introduction containing definitions of key concepts used in that section. Certain specific medical findings, some of which are required in establishing a diagnosis or in confirming the existence of the impairment for the purpose of this Listing, are also given in the narrative introduction. If the medical findings needed to support a diagnosis are not given in the introduction or elsewhere in the Listing, the diagnosis must still be established on the basis of medically acceptable clinical and laboratory techniques. Following the introduction in each section, the required level of severity of impairment is shown under "Category of Impairments" by one or more sets of medical findings. The medical findings consist of symptoms, signs, and laboratory findings.

(d) *Diagnosis of Impairments.* The Board will not consider the claimant's impairment to be one listed in Appendix I of this part solely because it has the diagnosis of a listed impairment. It must also have the findings shown in the Listing of that impairment.

§ 220.111 Medical equivalence.

(a) *How medical equivalence is determined.* The Board will decide that the claimant's impairment(s) is medically equivalent to a listed impairment in Appendix I of this part if the medical findings are at least equal in severity and duration to the listed findings. The Board compares the symptoms, signs, and laboratory findings about the claimant's impairment(s), as shown in the medical evidence in his or her claim, with the medical criteria shown with the listed impairment. If the claimant's impairment is not listed, the Board will consider the listed impairment most like the claimant's impairment to decide whether his or her impairment is medically equal. If the claimant has more than one impairment, and none of them meets or equals a listed impairment, the Board will review the symptoms, signs, and laboratory findings about the claimant's impairments to determine whether the combination of his or her impairments is medically equal to any listed impairment.

(b) *Medical equivalence must be based on medical findings.* The Board will base its decision about whether the claimant's impairment(s) is medically equal to a listed impairment on medical

evidence only. Any medical findings in the evidence must be supported by medically acceptable clinical and laboratory diagnostic techniques. The Board will also consider the medical opinion given by one or more physicians employed or engaged by the Board or the Social Security Administration to make medical judgments.

§ 220.112 Conclusions by physicians concerning the claimant's disability.

(a) *General.* Under the statute, the Board is responsible for making the decision about whether a claimant meets the statutory definition of disability. A claimant can only be found disabled if he or she is unable to do any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months. (See §220.28). A claimant's impairment must result from anatomical, physiological, or psychological abnormalities which are demonstrable by medically acceptable clinical and laboratory diagnostic techniques. (See § 220.27). Except in cases of remarried widows, widowers, and surviving divorced spouses, the decision as to whether a claimant is disabled may involve more than medical considerations and the Board may have to consider such factors as age, education, and past work experience. Such vocational factors are not within the expertise of medical sources.

(b) *Medical opinions that are conclusive.* A medical opinion by a treating source will be conclusive as to the medical issues of the nature and severity of a claimant's impairment(s) where the Board finds that (1) it is fully supported by medically acceptable clinical and laboratory diagnostic techniques and (2) it is not inconsistent with the other substantial medical evidence of record. A medical opinion that is not fully supported will not be conclusive.

(c) *Medical opinions that are not fully supported.* If an opinion by a treating source(s) is not fully supported, the Board will make every reasonable effort (i.e., an initial request and, after 20 days, one followup request) to obtain from the claimant's treating source(s) the relevant evidence that supports the medical opinion(s) before the Board makes a determination as to whether a claimant is disabled.

Example: In a case involving an organic mental disorder caused by trauma to the head a consultative physician upon interview with the claimant found only mild disorientation as to time and place. The claimant's treating physician reports that the claimant as the result of his impairment has severe disorientation as to time and place. The treating physician supplies office notes which follow the course of claimant's illness from date of injury to present. These notes indicate that the claimant's condition is such that he has some "good days" on which he appears to be unimpaired but generally support the treating physician's opinion that claimant is severely impaired. In this case the treating physician's opinion will be given some weight over that of the consultative physician.

(d) *Inconsistent medical opinions.* Where the Board finds that the opinion of a treating source regarding medical issues is inconsistent with the evidence of record including opinions of other sources that are supported by medically acceptable clinical and laboratory diagnostic techniques, the Board must resolve the inconsistency. If necessary to resolve the inconsistency, the Board will secure additional independent evidence and/or further interpretation or explanation from the treating source(s) and/or the consultative physician or psychologist. The Board's determination will be based on all the evidence in the case record, including the opinions of the medical sources. In resolving an inconsistency, the Board will give some extra weight to the treating source's supported opinion(s) which interprets the medical findings about the nature and severity of the impairment(s).

Example: In a case involving arthritis of the shoulder, where the X-rays confirm bony destruction, the examinations indicate minimal swelling and inflammation, but the treating source supplies evidence of greater restriction in the range of motion than found by the consultative physician, the Board will ask the treating source for further interpretation of the range of motion studies. If the treating source supplies a reasonable explanation, e.g., that the individual's condition is subject to periods of aggravation, the treating source's explanation will be given some extra weight over that of the consultative physician.

(e) *Medical opinions that will not be considered conclusive nor given extra weight.* The Board will not consider as conclusive nor give extra weight to medical opinions which are not in accord with the statutory or regulatory standards for establishing disability. Thus, opinions that the individual's impairments meet the Listing of Impairments in Appendix 1 of this part, where the medical findings which are the basis for that conclusion would not meet the specific criteria applicable to the particular impairment as set out in the Listing, will not be conclusive nor given extra weight. Likewise, an opinion(s) as to the individual's residual functional capacity which is not in accord with regulatory requirements set forth in §§ 220.120 and 220.121 will not be conclusive nor given extra weight.

Example 1: A medical opinion that an impairment meets listing 2.02, but the medical findings show that the individual's visual acuity in the better eye after best correction is 20/100, would not be conclusive nor would it be given extra weight since listing 2.02 requires that the remaining vision in the better eye after best correction be 20/200 or less.

Example 2: A medical opinion that the individual is limited to light work when the evidence shows that he or she can lift a maximum of 50 pounds and lift 25 pounds frequently will not be considered as conclusive nor given extra weight. This is because the individual's exertional capacity exceeds the criteria set forth in the regulations for light work.

§ 220.113 Symptoms, signs, and laboratory findings.

Medical findings consist of symptoms, signs, and laboratory findings:

(a) *Symptoms* are the claimant's own description of his or her physical or mental impairment(s). The claimant's statements alone are not enough to establish that there is a physical or mental impairment(s).

(b) *Signs* are anatomical, physiological, or psychological abnormalities which can be observed, apart from the claimant's own statements (symptoms). Signs must be shown by medically acceptable clinical diagnostic techniques. Psychiatric signs are medically demonstrable phenomena which indicate specific abnormalities of behavior, affect, thought, memory, orientation and contact with reality. They must also be shown by obsevable facts that can be medically described and evaluated.

(c) *Laboratory findings* are anatomical, physiological, or psychological phenomena which can be shown by the use of medically acceptable laboratory diagnostic techniques. Some of these diagnostic techniques include chemical tests, electrophysiological studies (electrocardiogram, electroencephalogram, etc.) x-rays, and psychological tests.

§ 220.114 Evaluation of symptoms, including pain.

The Board considers all of the claimant's symptoms, including pain, and the extent to which signs and laboratory findings confirm these symptoms. The Board will not find the claimant disabled based on his or her symptoms unless medical signs or findings show a medical impairment

that could be reasonably expected to produce those symptoms.

§ 220.115 Need to follow prescribed treatment.

(a) *What treatment the claimant must follow.* In order to get a disability annuity, the claimant must follow treatment prescribed by his or her physician if this treatment can restore the claimant's ability to work.

(b) *When the claimant does not follow the prescribed treatment.* If the claimant does not follow prescribed treatment without a good reason, the Board will find him or her not disabled or, if the claimant is already receiving a disability annuity, the Board will stop paying the annuity.

(c) *Acceptable reasons for failure to follow prescribed treatment.* The following are examples of a good reason for not following treatment:

(1) The specific medical treatment is contrary to the established teaching and tenets of the claimant's religion.

(2) The prescribed treatment would be cataract surgery for one eye, when there is an impairment of the other eye resulting in a severe loss of vision and is not subject to improvement through surgery.

(3) Surgery was previously performed with unsuccessful results and the same surgery is again being recommended for the same impairment.

(4) The treatment because of its magnitude (e.g., open heart surgery), unusual nature (e.g., organ transplant), or other reason is very risky for the claimant.

(5) The treatment involves amputation of an extremity, or a major part of an extremity.

Subpart J—Residual Functional Capacity

§ 220.120 Residual functional capacity, defined.

(a) *General.* (1) The claimant's impairment(s) may cause physical and mental limitations that affect what the claimant can do in a work setting. Residual functional capacity is what the claimant can do despite his or her limitations. If the claimant has more than one impairment, the Board will consider all of his or her impairments of which the Board is aware. The Board considers the claimant's capacity for various functions as described in the following paragraphs: (b) physical abilities, (c) mental impairments, and (d) other impairments. Residual functional capacity is a medical assessment. However, it may include descriptions (even the claimant's) of the limitations that go beyond the symptoms that are important to diagnosis and treatment of the claimant's medical impairment(s) and may include observations of the claimant's work limitations in addition to those usually made during formal medical examinations.

(2) The descriptions and observations of the limitations, when used, must be considered along with the rest of the claimant's medical records to enable the Board to decide to what extent the claimant's impairment(s) keep him or her from performing particular work activities.

(3) The assessment of the claimant's residual functional capacity for work is not a decision on whether the claimant is disabled, but is used as the basis for determining the particular types of work the claimant may be able to do despite his or her impairment(s). A claimant's vocational background (see §§ 220.125 through 220.134) is considered along with his or her residual functional capacity in arriving at a disability decision.

(4) In deciding whether disability continues or ends, the residual functional capacity assessment may also be used to determine whether any medical improvement the claimant's ability to work as discussed in § 220.180.

(b) *Physical abilities.* When the Board assesses the claimant's physical abilities, the Board assesses the severity of his or her impairment(s) and determines his or her residual functional capacity for work activity on a regular and continuing basis. The Board considers the claimant's ability to do physical activities such as walking, standing, lifting, carrying, pushing, pulling, reaching, handling, and the evaluation of other physical functions. A limited ability to do these things may reduce the claimant's ability to do work.

(c) *Mental impairments.* When the Board assesses a claimant's mental impairment(s), the Board considers the factors, such as—

(1) His or her ability to understand, to carry out, and remember instructions; and

(2) His or her ability to respond appropriately to supervision, co-workers, and work pressures in a work setting.

(d) *Other impairments.* Some medically determinable impairments, such as skin impairments, epilepsy, and impairments of vision, hearing, or other senses, postural and manipulative limitations, and environmental restrictions do not limit physical exertion. If the claimant has this type of impairment, in addition to one that affects physical exertion, the Board considers both in deciding his or her residual functional capacity

§ 220.121 Responsibility for assessing and determining residual functional capacity.

(a) For cases at the initial or reconsideration level, the responsibility for determining residual functional capacity rests with the bureau of retirement claims. This assessment is based on all the evidence the Board has, including any statements regarding what the claimant can still do that have been provided by treating or examining physicians, consultative physicians, or any other physican designated by the Board. In any case where there is evidence which indicates the existence of a mental impairment, the bureau of retirement claims will not make a residual functional capacity determination without making every reasonable effort to ensure that a qualified psychiatrist or psychologist has provided a medical review of the case.

(b) For cases at the hearing level or the three-member-Board review level, the responsibility for deciding residual functional capacity rests with the appeals referee or the three-member-Board, respectively.

Subpart K—Vocational Considerations

§ 220.125 When vocational background is considered.

(a) *General.* The Board will consider vocational factors when the claimant is applying for—

(1) An employee annuity based on disability for any regular employment (See § 220.45(b));

(2) Widow(er) disability annuity; or

(3) Child's disability annuity based on disability before age 22.

(b) *Disability determinations in which vocational factors must be considered along with medical evidence.* When the Board cannot decide whether the claimant is disabled on medical evidence alone, the Board must use other evidence.

(1) The Board will use information from the claimant about his or her age, education, and work experience.

(2) The Board will consider the doctors' reports, and hospital records, as well as the claimant's own statements and other evidence to determine a claimant's residual functional capacity and how it affects the work the claimant can do. Sometimes, to do this, the Board will need to ask the claimant to have special examinations or tests. (See § 220.50.)

(3) If the Board finds that the claimant can no longer do the work he or she has done in the past, the Board will determine whether the claimant can do other work (jobs) which exist in

significant numbers in the national economy.

§ 220.126 Relationship of ability to do work and residual functional capacity.

(a) If the claimant can do his or her previous work (his or her usual work or other applicable past work), the Board will determine he or she is not disabled.

(b) If the residual functional capacity is not enough for the claimant to do any of his or her previous work, the Board must still decide if the claimant can do any other work. To determine whether the claimant can do other work, the Board will consider the claimant's residual functional capacity, and has or her age, education, and work experience. Any work (jobs) that the claimant can do must exist in significant numbers in the national economy (either in the region where he or she lives or in several regions of the country).

§ 220.127 When the only work experience is arduous unskilled physical labor.

(a) *Arduous work.* Arduous work is primarily physical work requiring a high level of strength or endurance. The Board will consider the claimant unable to do lighter work and therefore, disabled if he or she has—

(1) A marginal education (see § 220.129);

(2) Work experience of 35 years or more during which he or she did arduous unskilled physical labor; and

(3) A severe impairment which no longer allows him or her to do arduous unskilled physical labor.

(b) *Exceptions.* The Board may consider the claimant not disabled if—

(1) The claimant is working or has worked despite his or her impairment(s) (except where work is sporadic or not medically advisable); or

(2) Evidence shows that the claimant has training or past work experience which enables him or her to do substantial gainful activity in another occupation with his or her impairment, either full-time or on reasonably regular part-time basis.

Example: B is a 60-year-old miner with a fourth grade education who has a life-long history of arduous physical labor. B says that he is disabled because of arthritis of the spine, hips, and knees, and other impairments. Medical evidence shows a combination of impairments and establishes that these impairments prevent B from performing his usual work or any other type of arduous physical labor. His vocational background does not show that he has skills or capabilities needed to do ligher work which would be readily transferable to another work setting. Under these circumstances, the Board will find that B is disabled.

§ 220.128 Age as a vocational factor.

(a) *General.* (1) "Age" refers to how old the claimant is (chronological age) and the extent to which his or her age affects his or her ability to—

(1) Adapt to a new work situation; and

(ii) Do work in competition with others.

(2) In determining disability, the Board does not consider age alone. The Board must also consider the claimant's residual functional capacity, education, and work experience. If the claimant is unemployed because of his or her age and can still do a significant number of jobs which exist in the national economy, the Board will find that he or she is not disabled. Appendix 2 of this part explains in detail how the Board considers age as a vocational factor. However, the Board does not apply these age categories mechanically in a borderline situation.

(b) *Younger person.* If the claimant is under age 50, the Board generally does not consider that his or her age will seriously affect the ability to adapt to a new work situation. In some circumstances, the Board considers age 45 a handicap in adapting to a new work setting (see Rule 201.17 in Appendix 2 of this Part.)

(c) *Person approaching advanced age.* If the claimant is closely approaching advanced age (50–54), the Board considers that the claimant's age, along with a severe impairment and limited work experience, may seriously affect the claimant's ability to adjust to a significant number of jobs in the national economy.

(d) *Person of advanced age.* The Board considers that advanced age (55 or over) is the point at which age significantly affects the claimant's ability to do substantial gainful activity.

(1) If the claimant is severely impaired and of advanced age, and he or she cannot do medium work (see § 220.132), the claimant may not be able to work unless he or she has skills that can be used in less demanding jobs which exist in significant numbers in the national economy.

(2) If the claimant is close to retirement age (60–64) and has a severe impairment, the Board will not consider him or her able to adjust to sedentary or light work unless the claimant has skills which are highly marketable.

§ 220.129 Education as a vocational factor.

(a) *General.* "Education" is primarily used to mean formal schooling or other training which contributes to the claimant's ability to meet vocational requirements, for example, reasoning ability, communication skills, and arithmetical ability. If the claimant does not have formal schooling, this does not necessarily mean that the claimant is uneducated or lacks these abilities. Past work experience and the kinds of responsibilities the claimant had when he or she was working may show that he or she has intellectual abilities, although the claimant may have little formal education. A claimant's daily activities, hobbies, or the results of testing may also show that the claimant has significant intellectual ability that can be used to work.

(b) *How the Board evaluates the claimant's education.* (1) The importance of the claimant's educational background may depend upon how much time has passed between the completion of the claimant's formal education and the beginning of the claimant's physical or mental impairment(s) and what the claimant has done with his or her education in a work or other setting. Formal education completed many years before the claimant's impairment(s) began, or unused skills and knowledge that were a part of the claimant's formal education, may no longer be useful or meaningful in terms of ability to work. Therefore, the numerical grade level that the claimant completed in school may not represent his or her actual educational abilities. These educational abilities may be higher or lower than the numerical grade level that the claimant completed. However, if there is no other evidence to contradict it, the Board uses the claimant's numerical grade level to determine the claimant's educational abilities. The term "education" also includes how well the claimant is able to communicate in English since this ability is often acquired or improved by education. In evaluating the claimant's educational level, the Board uses the following categories:

(1) *Illiteracy.* Illiteracy means the inability to read or write. The Board will consider the claimant illiterate if he or she cannot read or write a simple message such as instructions or inventory lists even though the claimant can sign his or her name. Generally, the illiterate claimant has had little or no formal schooling.

(2) *Marginal education.* Marginal education means ability in reasoning, arithmetic, and language skills which are needed to do simple, unskilled types of jobs. Generally, this means a 6th grade or less level of education.

(3) *Limited education.* Limited education means ability in reasoning, arithmetic, and language skills, but not enough to allow a person with these

educational qualifications to do most of the more complex duties needed in semi-skilled or skilled jobs. Generally, a limited education is a 7th grade through 11th grade level of education.

(4) *High school education and above.* High school and above means abilities in reasoning, arithmetic, and language skills acquired through formal schooling at a 12th grade level or above. The claimant with this level of education is generally considered able to do semi-skilled through skilled work.

(5) *Inability to communicate in English.* Since the ability to speak, read, and understand English is generally learned or increased at school, the Board may consider this an educational factor. Because English is the dominant language of the country, it may be difficult for the claimant who does not speak and understand English to do a job, regardless of the amount of education he or she may have in another language. The claimant's ability to speak, read and understand English will be considered when the Board evaluates what work, if any, he or she can do.

(6) *Information about the claimant's education.* The Board will ask the claimant how long he or she attended school and whether he or she can speak, understand, read and write in English, and do at least simple calculations in arithmetic. The Board will also consider information about how much formal or informal education the claimant received from his or her previous work, community projects, hobbies and any other activities which might help him or her to work.

§ 220.130 Work experience as a vocational factor.

(a) *General.* "Work experience" means skills and abilities the claimant has acquired through work he or she has done which show the type of work he or she may be expected to do. Work the claimant has already been able to do shows the kind of work that he or she may be expected to do. The Board considers that the claimant's work experience is relevant and applies when it was done within the last 15 years, lasted long enough for him or her to learn to do it, and was substantial gainful activity. This work experience is called "past relevant work." The Board does not usually consider that work the claimant did 15 years or more before the time the Board is deciding whether he or she is disabled (or when the disability insured status requirement was last met, if earlier) applies. A gradual change occurs in most jobs so that after 15 years, it is no longer realistic to expect that skills and abilities acquired in a job done then continue to apply. The 15-year guide is intended to insure that remote work experience is not currently applied. If the claimant has no work experience or worked only "off-and-on" or for brief periods of time during the 15-year period, the Board generally considers that these do not apply. If the claimant has acquired skills through his or her past work, the Board considers the claimant to have these work skills unless he or she cannot use them in other skilled or semi-skilled work that he or she can do. If the claimant cannot use his or her skills in other skilled or semi-skilled work, the Board will consider his or her work background the same as unskilled. However, even if the claimant has no work experience, the Board may consider that the claimant is able to do unskilled work because it requires little or no judgment and can be learned in a short period of time.

(b) *Information about the claimant's work.* (1) Sometimes the Board will need information about the claimant's past work to make a disability determination. The Board may request work information from—

(i) The claimant; and

(ii) The claimant's employer or other person who knows about the claimant's work (member of family or co-worker) with the claimant's permission.

(2) The Board will ask for the following information about all the jobs the claimant has had in the last 15 years:

(i) The dates the claimant worked.

(ii) All the duties the claimant did.

(iii) Any tools, machinery, and equipment the claimant used.

(iv) The amount of walking, standing, sitting, lifting and carrying the claimant did during the work day, as well as any other physical and mental duties of the job.

(3) If all the claimant's work in the past 15 years has been arduous and unskilled, and the claimant has very little education, the Board will ask the claimant to tell about all of his or her work from the time he or she first began working. (See § 220.45(b).)

§ 220.131 Work which exists in the national economy.

(a) *General.* The Board considers that work exists in the national economy when it exists in significant numbers either in the region where the claimant lives or in several other regions of the country. It does not matter whether—

(1) Work exists in the immediate area in which the claimant lives,

(2) A specific job vacancy exists for the claimant; or

(3) The claimant would be hired if the claimant applied for work.

(b) *How the Board determines the existence of work.* Work exists in the national economy when there is a significant number of jobs (in one or more occupations) having requirements which the claimant is able to meet with his or her physical or mental ability and vocational qualifications. Isolated jobs that exist in very limited numbers in relatively few locations outside the region where the claimant lives are not considered "work which exists in the national economy." The Board will not deny the claimant a disability annuity on the basis of the existence of these kinds of jobs. The Board will determine that the claimant is disabled if the work he or she can do does not exist in the national economy. If the work the claimant can do does exist in the national economy, the Board will determine that the claimant is not disabled.

(c) *Inability to obtain work.* The Board will determine that the claimant is not disabled if he or she has the residual functional capacity and vocational abilities to do work which exists in the national economy but the claimant remains unemployed because of—

(1) His or her inability to get work;

(2) Lack of work in his or her local area;

(3) The hiring practices of employers;

(4) Technological changes in the industry in which the claimant has worked;

(5) Cyclical economic conditions;

(6) No job openings for the claimant;

(7) The claimant not actually being hired to do work he or she could otherwise do; or

(8) The claimant not wishing to do a particular type of work.

(d) *Administrative notice of job data.* The following sources are used when the Board determines that unskilled, sedentary, light and medium jobs exist in the national economy:

(1) *Dictionary of Occupational Titles,* published by the Department of Labor.

(2) *County Business Patterns,* published by the Bureau of the Census.

(3) *Census Reports,* also published by the Bureau of the Census.

(4) *Occupational Analyses,* prepared for the Social Security Administration by various State employment agencies.

(5) *Occupational Outlook Handbook,* published by the Bureau of Labor Statistics.

(e) *Use of vocational experts and other specialists.* If the issue in determining whether the claimant is disabled is whether his or her work skills can be used in other work and the specific occupations in which they can be used, or there is a similarly complex issue, the Board may use the services of

a vocational expert or other specialist. The Board will decide whether to use a vocational expert or other specialist.

§ 220.132 Physical exertion requirements.

To determine the physical exertion requirements of work in the national economy, jobs are classified as "sedentary", "light", "medium", "heavy", and "very heavy." These terms have the same meaning as they have in the Dictionary of Occupational Titles, published by the Department of Labor. In making disability determinations the Board uses the following definitions:

(a) *Sedentary work.* Sedentary work involves lifting no more than 10 pounds at a time and occastionally lifting or carrying articles like docket files, ledgers, and small tools. Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. Jobs are sedentary if walking and standing are required occasionally and the other sedentary criteria are met.

(b) *Light work.* Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to 10 pounds. Even though the weight lifted may be very little, a job is in this category when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls. To be considered capable of performing a full or wide range of light work, the claimant must have the ability to do substantially all of these activities. If the claimant can do light work, the Board determines that he or she can also do sedentary work, unless there are additional limiting factors such as loss of fine dexterity or inability to sit for long periods of time.

(c) *Medium work.* Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. If the claimant can do medium work, the Board determines that he or she can also do sedentary and light work.

(d) *Heavy work.* Heavy work involves lifting no more than 100 pounds at a time with frequent lifting or carrying of objects weighing up to 50 pounds. If the claimant can do heavy work, the Board determines that he or she can also do medium, light, and sedentary work.

(e) *Very heavy work.* Very heavy work involves lifting objects weighing more than 100 pounds at a time with frequent lifting or carrying of objects weighing 50 pounds or more. If the claimant can do very heavy work, the Board determines that he or she can also do heavy, medium, light and sedentary work.

§ 220.133 Skill requirements.

(a) *General.* To evaluate skills and to help determine the existence in the national economy of work the claimant is able to do, occupations are classified as unskilled, semi-skilled, and skilled. In classifying these occupations, the Board uses materials published by the Department of Labor.

(b) *Unskilled work.* Unskilled work is work which needs little or no judgment to do simple duties that can be learned on the job in a short period of time (30 days). The job may or may not require considerable strength. A job is considered unskilled if the claiment can usually learn to do the job in 30 days, and little job training and judgment are needed. The claimant does not gain work skills by doing unskilled jobs. For example, jobs are considered unskilled if primary work duties are—

(1) Handling;

(2) Feeding;

(3) Offbearing (placing or removing materials from machines which are automatic or operated by others; or

(4) Machine tending.

(c) *Semi-skilled work.* Semi-skilled work is work which needs some skills but does not require doing the more complex work duties. A job may be classified as semi-skilled where coordination and dexterity are necessary, as when hand or feet must be moved quickly to do repetitive tasks. Semi-skilled jobs may require—

(1) Alertness and close attention to watching machine processes;

(2) Inspecting, testing, or otherwise looking for irregularities;

(3) Tending or guarding equipment, property, materials, or persons against loss, damage, or injury; or

(4) Other types of activities which are similarly less complex than skilled work but more complex than unskilled work.

(d) *Skilled work.* Skilled work requires qualifications in which a person uses judgment to determine the machine and manual operations to be performed in order to obtain the proper form, quality, or quantity of material to be produced. Skilled jobs may require—

(1) Laying out work;

(2) Estimating quality;

(3) Determining suitability and needed quantities of materials;

(4) Making precise measurements;

(5) Reading blueprints or other specifications;

(6) Making necessary computations or mechanical adjustments to control or regulate work; or

(7) Dealing with people, facts, figures or abstract ideas at a high level of complexity.

(e) *Skills that can be used in other work (transferability)*—(1) *What the Board means by transferable skills.* The Board considers the claimant to have skills that can be used in other jobs, when the skilled or semi-skilled work activities the claimant did in past work can be used to meet the requirements of skilled or semi-skilled work activities of other jobs or kinds of work. This depends largely on the similarity of occupationally significant work activities among different jobs.

(2) *How the Board determines skills that can be transferred to other jobs.* Transferability is most probable and meaningful among jobs in which—

(i) The same or a lesser degree of skill is required;

(ii) The same or similar tools and machines are used; and

(iii) The same or similar raw materials, products, processes, or services are involved.

(3) *Degrees of transferability.* There are degrees of transferability of skills ranging from very close similarities to remote and incidental similarities among jobs. A complete similarity of all three factors is not necessary for transferability. However, when skills are so specialized or have been acquired in such an isolated vocational setting (like many jobs in mining, agriculture, or fishing) that they are not readily usable in other industries, jobs, and work settings, they are considered not transferable.

§ 220.134 Medical Vocational Guidelines in Appendix 2 of this part.

(a) The Dictionary of Occupational Titles includes information about jobs (classified by their exertional and skill requirements) that exist in the national economy. Appendix 2 of this part provides rules using this data reflecting major functional and vocational patterns.

(b) The Board applies the rules in appendix 2 of this part in cases where a claimant is not doing substantial gainful activity and is prevented by a severe impairment(s) from doing vocationally relevant past work.

(c) The rules in Appendix 2 of this part do not cover all possible variations of factors. The Board does not apply these rules if one of the findings of fact about the claimant's vocational factors and residual functional capacity is not the same as the corresponding criterion of a rule. In these instances, the Board gives full consideration to all relevant facts in accordance with the definitions and discussions under vocational considerations. However, if the findings of fact made about all factors are the

same as the rule, the Board uses that rule to decide whether that claimant is disabled.

Subpart L—Substantial Gainful Activity

§ 220.140 General.

The work that a claimant has done during any period in which the claimant believes he or she is disabled may show that the claimant is able to do work at the substantial gainful activity level. If the claimant is able to engage in substantial gainful activity, the Board will find that the claimant is not disabled for any regular employment under the Railroad Retirement Act. Even if the work the claimant has done was not substantial gainful activity, it may show that the claimant is able to do more work than he or she actually did. The Board will consider all of the medical and vocational evidence in the claimant's file to decide whether or not the claimant has the ability to enagage in substantial gainful activity.

§ 220.141 Substantial gainful activity, defined.

Substantial gainful activity is work activity that is both substantial and gainful.

(a) *Substantial work activity.* Substantial work activity is work activity that involves doing significant physical or mental activities. The claimant's work may be substantial even if it is done on a part-time basis or if the claimant does less, gets paid less, or has less responsibility than when the claimant worked before.

(b) *Gainful work activity.* Gainful work activity is work activity that the claimant does for pay or profit. Work activity is gainful if it is the kind of work usually done for pay or profit, whether or not a profit is realized

(c) *Some other activities.* Generally, the Board does not consider activities like taking care of one's self, household tasks, hobbies, therapy, school attendance, club activities, or social programs to be substantial gainful activity.

§ 220.142 General information about work activity.

(a) *The nature of the claimant's work.* If the claimant's duties require use of the claimant's experience, skills, supervision and responsibilities, or contribute substantially to the operation of a business, this tends to show that the claimant has the ability to work at the substantial gainful activity level.

(b) *How well the claimant performs.* The Board considers how well the claimant does his or her work when the Board determines whether or not the claimant is doing substantial gainful activity. If the claimant does his or her work satisfactorily, this may show that the claimant is working at the substantial gainful activity level. If the claimant is unable, because of his or her impairments, to do ordinary or simple tasks satisfactorily without more supervision or assistance than is usually given other people doing similar work, this may show that the claimant is not working at the substantial gainful activity level. If the claimant is doing work that involves minimal duties that make little or no demands on the claimant and that are of little or no use to the claimant's railroad or non-railroad employer, or to the operation of a business if the claimant is self-employed, this does not show that the claimant is working at the substantial gainful activity level.

(c) *If the claimant's work is done under special conditions.* Even though the work the claimant is doing takes into account his or her impairment, such as work done in a sheltered workshop or as a patient in a hospital, it may still show that the claimant has the necessary skills and ability to work at the substantial gainful activity level.

(d) *If the claimant is self-employed.* Supervisory, managerial, advisory or other significant personal services that the claimant performs as a self-employed person may show that the claimant is able to do substantial gainful activity.

(e) *Time spent in work.* While the time the claimant spends in work is important, the Board will not decide whether or not the claimant is doing substantial gainful activity only on that basis. The Board will still evaluate the work to decide whether it is substantial and gainful regardless of whether the claimant spends more time or less time at the job than workers who are not impaired and who are doing similar work as a regular means of their livelihood.

§ 220.143 Evaluation guides for an employed claimant.

(a) *General.* The Board uses several guides to decide whether the work the claimant has done shows that he or she is able to do substantial gainful activity.

(1) *The claimant's earnings may show the claimant has done substantial gainful activity.* The amount of the claimant's earnings from work the claimant has done may show that he or she has engaged in substantial gainful activity. Generally, if the claimant worked for substantial earnings, this will show that he or she is able to do substantial gainful activity. On the other hand, the fact that the claimant's earnings are not substantial will not necessarily show that the claimant is not able to do substantial gainful activity. The Board will generally consider work that the claimant is forced to stop after a short time because of his or her impairment(s) as an unsuccessful work attempt and the claimant's earnings from that work will not show that the claimant is able to do substantial gainful activity.

(2) *The Board considers only the amounts the claimant earns.* The Board does not consider any income not directly related to the claimant's productivity when the Board decides whether the claimant has done substantial gainful activity. If the claimant's earnings are subsidized, the amount of the subsidy is not counted when the Board determines whether or not the claimant's work is substantial gainful activity. Thus, where work is done under special conditions, the Board only considers the part of the claimant's pay which the claimant actually "earns." For example, where a handicapped person does simple tasks under close and continuous supervision, the Board would not determine that the person worked at the substantial gainful activity level only on the basis of the amount of pay. A railroad or non-railroad employer may set a specific amount as a subsidy after figuring the reasonable value of the employee's services. If the claimant's work is subsidized and the claimant's railroad and non-railroad employer does not set the amount of the subsidy or does not adequately explain how the subsidy was figured, the Board will investigate to see how much the claimant's work is worth.

(3) *If the claimant is working in a sheltered or special environment.* If the claimant is working in a sheltered workshop, the claimant may or may not be earning the amounts he or she is being paid. The fact that the sheltered workshop or similar facility is operating at a loss or is receiving some charitable contributions or governmental aid does not establish that the claimant is not earning all he or she is being paid. Since persons in military service being treated for a severe impairment usually continue to receive full pay, the Board evaluates work activity in a therapy program or while on limited duty by comparing it with similar work in the civilian work force or on the basis of reasonable worth of the work, rather than on the actual amount of the earnings.

(b) *Earnings guidelines*—(1) *General.* If the claimant is employed, the Board first considers the criteria in paragraph (a) of this section and § 220.145, and

then the guides in paragraphs (b) (2), (3), (4), (5), and (6) of this section.

(2) *Earnings that will ordinarily show that the claimant has engaged in substantial gainful activity.* The Board will consider that the earnings from the employed claimant's work activities show that the claimant has engaged in substantial gainful activity if—

(i) The claimant's earnings averaged more than $200 a month in calendar years prior to 1976;

(ii) The claimant's earnings averaged more than $230 a month in calendar years prior to 1976;

(iii) The claimant's earnings averaged more than $240 a month in calendar year 1977;

(iv) The claimant's earnings averaged more than $260 a month in calendar year 1978;

(v) The claimant's earnings averaged more than $280 a month in calendar year 1979; or

(vi) The claimant's earnings averaged more than $300 a month in calendar years after 1979.

(3) *Earnings that will ordinarily show that the claimant has not engaged in substantial gainful activity.* The Board will generally consider that the earnings from the employed claimant's work will show that the claimant has not engaged in substantial gainful activity if—

(i) The claimant's earnings averaged less than $130 a month in calendar year before 1976;

(ii) The claimant's earnings averaged less than $150 a month in calendar year 1976;

(iii) The claimant's earnings averaged less than $160 a month in calendar year 1977;

(iv) The claimant's earnings averaged less than $170 a month in calendar year 1978;

(v) The claimant's earnings averaged less than $180 a month in calendar year 1979; or

(vi) The claimant's earnings averaged less than $190 a month in calendar years after 1979.

(4) *If the claimant works in a sheltered workshop.* If the claimant is working in a sheltered workshop or a comparable facility especially set up for severely impaired persons, the claimant's earnings and activities will ordinarily establish that the claimant has not done substantial gainful activity if—

(i) The claimant's average earnings are not greater than $200 a month in calendar years prior to 1976;

(ii) The claimant's average earnings are not greater than $230 a month in calendar year 1976;

(iii) The claimant's average earnings are not greater than $240 a month in calendar year 1977;

(iv) The claimant's average earnings are not greater than $260 a month in calendar year 1978;

(v) The claimant's average earnings are not greater than $280 a month in calendar year 1979; or

(vi) The claimant's average earnings are not greater than $300 a month in calendar year after 1979.

(5) *If there is evidence showing that the claimant may have done substantial gainful activity.* If there is evidence showing that the claimant may have done substantial gainful activity, the Board will apply the criteria in paragraph (b)(6) of this section regarding comparability and value of services.

(6) *Earnings that are not high or low enough to show whether the claimant engaged in substantial gainful activity.* If the claimant's earnings, on the average, are between the amounts shown in paragraphs (b) (2) and (3) of this section, the Board will generally consider other information in addition to the claimant's earnings, such as whether—

(i) The claimant's work is comparable to that of unimpaired persons in the claimant's community who are doing the same or similar occupations as their means of livelihood, taking into account the time, energy, skill, and responsibility involved in the work; or

(ii) The claimant's work, although significantly less than that done by unimpaired persons, is clearly worth the amounts shown in paragraph (b)(2) of this section, according to pay scales in the claimant's community.

§ 220.144 Evaluation guides for a self-employed claimant.

(a) *If the claimant is a self-employed claimant.* The Board will consider the claimant's activities and their value to the claimant's business to decide whether the claimant has engaged in substantial gainful activity if the claimant is self-employed. The Board will not consider the claimant's income alone since the amount of income the claimant actually receives may depend upon a number of different factors like capital investment, profit sharing agreements, etc. The Board will generally consider work that the claimant is forced to stop after a short time because of his or her impairment(s) as an unsuccessful work attempt and the claimant's income from that work will not show that the claimant is able to do substantial gainful activity. The Board will evaluate the claimant's work activity on the value to the business of the claimant's services regardless of whether the claimant receives an immediate income for his or her services. The Board considers that the claimant has engaged in substantial gainful activity if—

(1) The claimant's work activity, in terms of factors such as hours, skills, energy output, efficiency, duties, and responsibilities, is comparable to that of unimpaired persons in the claimant's community who are in the same or similar businesses as their means of livelihood;

(2) The claimant's work activity, although not comparable to that of unimpaired persons, is clearly worth the amount shown in § 220.143 (b)(2) when considered in terms of its value to the business, or when compared to the salary that an owner would pay to an employed person to do the work the claimant is doing; or

(3) The claimant renders services that are significant to the operation of the business and receives a substantial income from the business.

(b) *What the Board means by significant services*—(1) *Claimants who are not farm landlords.* If the claimant is not a farm landlord and the claimant operates a business entirely by himself or herself, any services that the claimant renders are significant to the business. If the claimant's business involves the services of more than one person, the Board will consider the claimant to be rendering significant services if he or she contributes more than half the total time required for the management of the business or he or she renders management services for more than 45 hours a month regardless of the total management time required by the business.

(2) *Claimants who are farm landlords*— (i) *General.* If the claimant is a farm landlord, that is, the claimant rents farm land to another, the Board will consider the claimant to be rendering significant services if the claimant materially participates in the production or the management of the production of the things raised on the rented farm. If the claimant was given social security earnings credits because he or she materially participated in the activities of the farm and he or she continues these same activities, the Board will consider the claimant to be rendering significant services.

(ii) *Material participation.* (A) The claimant will have established that he or she is materially participating if he or she—

(*1*) Furnishes a large portion of the machinery, tools, and livestock used in the production of the things raised on the rented farm; or

(2) Furnishes or advances monies or assumes financial responsibility for a substantial part of the expense involved in the production of the things raised on the rented farm.

(B) The claimant will have presented strong evidence that he or she is materially participating if he or she periodically—

(1) Advises or consults with the other person, who under the rental agreement produces the things raised on the rented farm; and

(2) Inspects the production activities on the land.

(iii) *Production.* The term "production" refers to the physical work performed and the expenses incurred in producing the things raised on the farm. It includes activities like the actual work of planting, cultivating, and harvesting of crops, and the furnishing of machinery, implements, seed, and livestock.

(iv) *Management of the production.* The term "management of the production" refers to services performed in making managerial decisions about the production of the crop, such as when to plant, cultivate, dust, spray or harvest. It includes advising and consulting, making inspections, and making decisions on matters, such as rotation of crops, the type of crops to be grown, the type of livestock to be raised, and the type of machinery and implements to be furnished.

(c) *What the Board means by substantial income.* After the claimant's normal business expenses are deducted from the claimant's gross income to determine net income, the Board will deduct the reasonable value of any unpaid help, any soil bank payments that were included as farm income, and impairment-related work expenses described in § 220.145 that have not been deducted in determining the claimant's net earnings from self-employment. The Board will consider the resulting amount of income from the business to be substantial if—

(1) It averages more than the amounts described in § 220.143(b)(2); or

(2) It averages less than the amounts described in § 220.143(b)(2) but the livelihood which the claimant gets from the business is either comparable to what it was before the claimant became severely impaired or is comparable to that of unimpaired self-employed persons in the claimant's community who are in the same or similar businesses as their means of livelihood.

§ 220.145 Impairment-related work expenses.

(a) *General.* When the Board figures the claimant's earnings in deciding if the claimant has done substantial gainful activity, the Board will subtract the reasonable costs to the claimant of certain items and services which, because of his or her impairment(s), the claimant needs and uses to enable him or her to work. The costs are deductible even though the claimant also needs or uses the items and services to carry out daily living functions unrelated to his or her work. Paragraph (b) of this section explains the conditions for deducting work expenses. Paragraph (c) of this section describes the expenses the Board will deduct. Paragraph (d) of this section explains when expenses may be deducted. Paragraph (e) of this section describes how expenses may be allocated. Paragraph (f) of this section explains the limitations on deducting expenses. Paragraph (g) of this section explains the Board's verification procedures.

(b) *Conditions for deducting impairment-related work expenses.* The Board will deduct impariment-related work expenses if—

(1) The claimant is otherwise disabled as defined in § 220.26;

(2) The severity of the claimant's impairment(s) requires the claimant to purchase (or rent) certain items and services in order to work;

(3) The claimant pays the cost of the item or service. No deduction will be allowed to the extent that payment has been or will be made by another source. No deduction will be allowed to the extent that the claimant has been, could be, or will be reimbursed for such cost by any other source (such as through a private insurance plan, Medicare or Medicaid, or other plan or agency). For example, if the claimant purchases crutches for $80 but the claimant was, could be, or will be reimbursed $64 by some agency, plan, or program, the Board will deduct only $16;

(4) The claimant pays for the item or service in a month he or she is working (in accordance with paragraph (d) of this section); and

(5) The claimant's payment is in cash (including checks or other forms of money). Payment in kind is not deductible.

(c) *What expenses may be deducted—*(1) *Payments for attendant care services.* (i) If because of the claimant's impairment(s) the claimant needs assistance in travelling to and from work, or while at work the claimant needs assistance with personal functions (e.g., eating, toileting) or with work-related functions (e.g., reading, communicating), the payments the claimant makes for those services may be deducted.

(ii) If because of the claimant's impairment(s) the claimant needs assistance with personal functions (e.g., dressing, administering medications) at home in preparation for going to and assistance in returning from work, the payments the claimant makes for those services may be deducted.

(iii) (A) The Board will deduct payments the claimant makes to a family member for attendant care services only if such person, in order to perform the services, suffers an economic loss by terminating his or her employment or by reducing the number of hours he or she worked.

(B) The Board considers a family member to be anyone who is related to the claimant by blood, marriage or adoption, whether or not that person lives with the claimant.

(iv) If only part of the claimant's payment to a person is for services that come under the provisions of paragraph (c)(1) of this section, the Board will only deduct that part of the payment which is attributable to those services. For example, an attendant gets the claimant ready for work and helps the claimant in returning from work, which takes about 2 hours a day. The rest of the attendant's 8 hour day is spent cleaning the claimant's house and doing the claimant's laundry, etc. The Board would only deduct one-fourth of the attendant's daily wages as an impairment-related work expense.

(2) *Payment for medical devices.* If the claimant's impairment(s) requires that the claimant utilize medical devices in order to work, the payments the claimant makes for those devices may be deducted. As used in this subparagraph, medical devices include durable medical equipment which can withstand repeated use, is customarily used for medical purposes, and is generally not useful to a person in the absence of an illness or injury. Examples of durable medical equipment are wheelchairs, hemodialysis equipment, canes, crutches, inhalators and pacemakers.

(3) *Payments for prosthetic devices.* If the claimant's impairment(s) requires that the claimant utilize a prosthetic device in order to work, the payments the claimant makes for that device can be deducted. A prosthetic device is that which replaces an internal body organ or external body part. Examples of prosthetic devices are artificial replacements of arms, legs and other parts of the body.

(4) *Payments for equipment*—(i) *Work-related equipment.* If the claimant's impairment(s) requires that the claimant utilize special equipment in

order to do his or her job, the payments the claimant makes for that equipment may be deducted. Examples of work-related equipment are one-hand typewriters, vision aids, sensory aids for the blind, telecommunication devices for the deaf and tools specifically designed to accommodate a person's impairment(s).

(ii) *Residential modifications.* If the claimant's impairment(s) requires that the claimant make modifications to his or her residence, the location of the claimant's place of work will determine if the cost of these modifications will be deducted. If the claimant is employed away from home, only the cost of changes made outside of the claimant's home to permit the claimant to get to his or her means of transportation (e.g., the installation of an exterior ramp for a wheelchair confined person or special exterior railings or pathways for someone who requires crutches) will be deducted. Costs relating to modifications of the inside of the claimant's home will not be deducted. If the claimant works at home, the costs of modifying the inside of the claimant's home in order to create a working space to accommodate the claimant's impairment(s) will be deducted to the extent that the changes pertain specifically to the space in which the claimant works. Examples of such changes are the enlargement of a doorway leading into the workspace or modification of the workspace to accommodate problems in dexterity. However, if the claimant is self-employed at home, any cost deducted as a business expense cannot be deducted as an impairment-related work expense.

(iii) *Non-medical appliances and equipment.* Expenses for appliances and equipment which the claimant does not ordinarily use for medical purposes are generally not deductible. Examples of these items are portable room heaters, air conditioners, humidifiers, dehumidifiers, and electric air cleaners. However, expenses for such items may be deductible when unusual circumstances clearly establish an impairment-related and medically verified need for such an item because it is for the control of the claimant's disabling impairment(s), thus enabling the claimant to work. To be considered essential, the item must be of such a nature that if it were not available to the claimant there would be an immediate adverse impact on the claimant's ability to function in his or her work activity. In this situation, the expense is deductible whether the item is used at home or in the working place. An example would be the need for an electric air cleaner by a person with severe respiratory disease who cannot function in a non-purified air environment. An item such as an exercycle is not deductible if used for general physical fitness. If an exercycle is prescribed and used as necessary treatment to enable the claimant to work, the Board will deduct payments the claimant makes toward its cost.

(5) *Payments for drugs and medical services.* (i) If the claimant must use drugs or medical services (including diagnostic procedures) to control his or her impairment(s) the payments the claimant makes for them may be deducted. The drugs or services must be prescribed (or utilized) to reduce or eliminate symptoms of the claimant's impairment(s) or to slow down its progression. The diagnostic procedures must be performed to ascertain how the impairment(s) is progressing or to determine what type of treatment should be provided for the impairment(s).

(ii) Examples of deductible drugs and medical services are anticonvulsant drugs to control epilepsy or anticonvulsant blood level monitoring; antidepressant medication for mental impairments; medication used to allay the side effects of certain treatments; radiation treatment or chemotherapy for cancer patients; corrective surgery for spinal impairments; electroencephalograms and brain scans related to a disabling epileptic impairment; tests to determine the efficacy of medication on a diabetic condition; and immunosuppresive medications that kidney transplant patients regularly take to protect against graft rejection.

(iii) The Board will only deduct the costs of drugs or services that are directly related to the claimant's impairment(s). Examples of non-deductible items are routine annual physical examinations, optician services (unrelated to a disabling visual impairment) and dental examinations.

(6) *Payments for similar items and services*—(i) *General.* If the claimant is required to utilize items and services not specified in paragraphs (c)(1) through (5) of this section, but which are directly related to his or her impairment(s) and which the claimant needs to work, their costs are deductible. Examples of such items and services are medical supplies and services not discussed above, the purchase and maintenance of a dog guide which the claimant needs to work, and transportation.

(ii) *Medical supplies and services not described above.* The Board will deduct payments the claimant makes for expendable medical supplies, such as incontinence pads, catheters, bandages, elastic stockings, face masks, irrigating kits, and disposable sheets and bags. The Board will also deduct payments the claimant makes for physical therapy which the claimant requires because of his or her impairment(s) and which the claimant needs in order to work.

(iii) *Payments for transportation costs.* The Board will deduct transportation costs in these situations:

(A) The claimant's impairment(s) requires that in order to get to work the claimant needs a vehicle that has structural or operational modifications. The modifications must be critical to the claimant's operation or use of the vehicle and directly related to the claimant's impairment(s). The Board will deduct the cost of the modifications, but not the cost of the vehicle. The Board will also deduct a mileage allowance for the trip to and from work. The allowance will be based on data compiled by the Federal Highway Administration relating to vehicle operating costs.

(B) The claimant's impairment(s) requires the claimant to use driver assistance, taxicabs or other hired vehicles in order to work. The Board will deduct amounts paid to the driver and, if the claimant's own vehicle is used, the Board will also deduct a mileage allowance, as provided in paragraph (c)(6)(iii)(A) of this section, for the trip to and from work.

(C) The claimant's impairment(s) prevents the claimant from taking available public transportation to and from work and the claimant must drive his or her (unmodified) vehicle to work. If the Board can verify through the claimant's physician or other sources that the need to drive is caused by the claimant's impairment(s) (and not due to the unavailability of public transportation), the Board will deduct a mileage allowance, as provided in paragraph (c)(6)(iii)(A) of this section, for the trip to and from work.

(7) *Payments for installing, maintaining, and repairing deductible items.* If the device, equipment, appliance, etc., that the claimant utilizes qualifies as a deductible item as described in paragraphs (c)(2), (3), (4) and (6) of this section, the costs directly related to installing, maintaining and repairing these items are also deductible. (The costs which are associated with modifications to a vehicle are deductible. Except for a mileage allowance, as provided for in paragraph (c)(6)(iii)(A) of this section, the costs which are associated with the vehicle itself are not deductible.)

(d) *When expenses may be deducted*—(1) *Effective date.* To be

deductible, an expense must be incurred after November 30, 1980. An expense may be considered incurred after that date if it is paid thereafter even though pursuant to a contract or other arrangement entered into before December 1, 1980.

(2) *Payments for services.* A payment the claimant makes for services may be deducted if the services are received while the claimant is working and the payment is made in a month the claimant is working. The Board considers the claimant to be working even though he or she must leave work temporarily to receive the services.

(3) *Payments for items.* A payment the claimant makes toward the cost of a deductible item (regardless of when it is acquired) may be deducted if payment is made in a month the claimant is working. See paragraph (e)(4) of this section when purchases are made in anticipation of work.

(e) *How expenses are allocated*—(1) *Recurring expenses.* The claimant may pay for services on a regular periodic basis, or the claimant may purchase an item on credit and pay for it in regular periodic installments or the claimant may rent an item. If so, each payment the claimant makes for the services and each payment the claimant makes toward the purchase or rental (including interest) is deductible in the month it is made.

Example: B starts work in October 1981 at which time she purchases a medical device at a cost of $4,800 plus interest charges of $720. Her monthly payments begin in October. She earns and receives $400 a month. The term of the installment contract is 48 months. No downpayment is made. The monthly allowable deduction for the item would be $115 ($5,520 divided by 48) for each month of work during the 48 months.

(2) *Non-recurring expenses.* Part or all of the claimant's expenses may not be recurring. For example, the claimant may make a one-time payment in full for an item or service or make a downpayment. If the claimant is working when he or she makes the payment, the Board will either deduct the entire amount in the month the claimant pays it or allocate the amount over a 12 consecutive month period beginning with the month of payment, whichever the claimant selects.

Example: A begins working in October 1981 and earns $525 a month. In the same month, he purchases and pays for a deductible item at a cost of $250. In this situation the Board could allow a $250 deduction for October 1981, reducing A's earnings below the substantial gainful activity level for that month.

If A's earnings had been $15 above the substantial gainful activity earnings amount, A probably would select the option of projecting the $250 payment over the 12-month period, October 1981–September 1982, giving A an allowable deduction of $20.83 a month for each month of work during that period. This deduction would reduce A's earnings below the substantial gainful activity level for 12 months.

(3) *Allocating downpayments.* If the claimant makes a downpayment, the Board will, if the claimant chooses, make a separate calculation for the downpayment in order to provide for uniform monthly deductions. In these situations the Board will determine the total payment that the claimant will make over a 12 consecutive month period beginning with the month of the downpayment and allocate that amount over the 12 months. Beginning with the 13th month, the regular monthly payment will be deductible. This allocation process will be for a shorter period if the claimant's regular monthly payments will extend over a period of less than 12 months.

Example 1: C starts working in October 1981, at which time he purchases special equipment at a cost of $4,800, paying $1,200 down. The balance of $3,600, plus interest of $540, is to be repaid in 36 installments of $115 a month beginning November 1981. C earns $500 a month. He chooses to have the downpayment allocated. In this situation the Board would allow a deduction of $205.42 a month for each month of work during the period October 1981 through September 1982. After September 1982, the deduction amount would be the regular monthly payment of $115 for each month of work during the remaining installment period.

Explanation:

Downpayment in October 1981	$1,200	
Monthly payments: November 1981 through September 1982	1,265	
	$2,465	12 = 205.42

Example 2. D, while working, buys a deductible item in July 1981, paying $1,450 down. However, his first monthly payment of $125 is not due until September 1981. D chooses to have the downpayment allocated. In this situation, the Board would allow a deduction of $225 a month for each month of work during the period July 1981 through June 1982. After June 1982, the deduction amount would be the regular monthly payment of $125 for each month of work.

Explanation:

Downpayment in July 1981	$1,450	
Monthly payments: September 1981 through June 1982	1,250	
	$2,700	12 = $225

(4) *Payments made in anticipation of work.* A payment made toward the cost of a deductible item that the claimant made in any of the 11 months preceding the month he or she started working will be taken into account in determining the claimant's impairment-related work expenses. When an item is paid for in full during the 11 months preceding the month the claimant started working, the payment will be allocated over the 12 consecutive month period beginning with the month of the payment. However, the only portion of the payment which may be deductible is the portion allocated to the month work begins and the following months. For example, if an item is purchased 3 months before the month work began and is paid for with a one-time payment of $600, the deductible amount would be $450 ($600 divided by 12, multiplied by 9). Installment payments (including a downpayment) that the claimant made for a particular item during the 11 months preceding the month he or she started working will be totalled and considered to have been made in the month of the claimant's first payment for that item within this 11 month period. The sum of these payments will be allocated over the 12 consecutive month period beginning with the month of the claimant's first payment (but never earlier than 11 months before the month work began). However, the only portion of the total which may be deductible is the portion allocated to the month work begins and the following months. For example, if an item is purchased three months before the month work began and is paid for in three monthly installments of $200 each, the total payment of $600 will be considered to have been made in the month of the first payment, that is, three months before the month work began. The deductible amount would be $450 ($600 divided by 12, multiplied by 9). The amount, as determined by these formulas, will then be considered to have been paid in the first month of work. The Board will deduct either this entire amount in the first month of work or allocate it over a 12 consecutive month period, beginning with the first month of work, whichever the claimant selects. In the above examples, the claimant would have the choice of having the entire $450 deducted in the first month of work or having $37.50 a month ($450 divided by 12) deducted for each month that he or she works over a 12 consecutive month period, beginning with the first month of work. To be deductible, the payments must be for durable items such as medical devices, prostheses, work-related equipment, residential

modifications, non-medical appliances and vehicle modifications. Payments for services and expendable items such as drugs, oxygen, diagnostic procedures, medical supplies and vehicle operating costs are not deductible for the purpose of this paragraph.

(f) *Limits on deductions.* (1) The Board will deduct the actual amounts the claimant pays towards his or her impairment-related work expenses unless the amounts are unreasonable. With respect to durable medical equipment, prosthetic devices, medical services, and similar medically-related items and services, the Board will apply the prevailing charges under Medicare (Part B of title XVIII, Health Insurance for the Aged and Disabled) to the extent that this information is readily available. Where the Medicare guides are used, the Board will consider the amount that the claimant pays to be reasonable if it is no more than the prevailing charge for the same item or service under the Medicare guidelines. If the amount the claimant actually pays is more than the prevailing charge for the same item under the Medicare guidelines, the Board will deduct from the claimant's earnings the amount the claimant paid to the extent he or she establishes that the amount is consistent with the standard or normal charge for the same or similar item or service in his or her community. For items and services that are not listed in the Medicare guidelines, and for items and services that are listed in the Medicare guidelines but for which such guides cannot be used because the information is not readily available, the Board will consider the amount the claimant pays to be reasonable if it does not exceed the standard or normal charge for the same or similar item or service in the claimant's community.

(2) Impairment-related work expenses are not deducted in computing the claimant's earnings for purposes of determining whether the claimant's work was "services" as described in § 220.170.

(3) The decision as to whether the claimant performed substantial gainful activity in a case involving impairment-related work expenses for items or services necessary for the claimant to work generally will be based upon the claimant's "earnings" and not on the value of "services" the claimant rendered. (See § 220.143(b)(6) (i) and (ii), and § 220.144(a)). This is not necessarily so, however, if the claimant is in a position to control or manipulate his or her earnings.

(4) No deduction will be allowed to the extent that any other source has paid or will pay for an item or service. No deduction will be allowed to the extent that the claimant has been, could be, or will be reimbursed for payments he or she made. (See paragraph (b)(3) of this section.)

(5) The provisions described in the foregoing paragraphs of this section are effective with respect to expenses incurred on or after December 1, 1980, although expenses incurred after November 1980, as a result of contractual or other arrangements entered into before December 1980, are deductible. For months before December 1980, the Board will deduct impairment-related work expenses from the claimant's earnings only to the extent they exceeded the normal work-related expenses the claimant would have had if the claimant did not have his or her impairment(s). The Board will not deduct expenses, however, for those things which the claimant needed even when he or she was not working.

(g) *Verification.* The Board will verify the claimant's need for items or services for which deductions are claimed, and the amount of the charges for those items or services. The claimant will also be asked to provide proof that he or she paid for the items or services.

Subpart M—Disability Annuity Earnings Restrictions

§ 220.160 How work for a railroad employer affects a disability annuity.

A disability annuity is not payable and the annuity must be returned for any month in which the disabled annuitant works for an employer as defined in Part 202 of this chapter.

§ 220.161 How work affects an employee disability annuity.

In addition to the condition in § 220.160, the employee's disability annuity is not payable and the employee must return the annuity payment for any month in which the employee earns more than $400 (after deduction of impairment related work expenses) in employment or self-employment of any kind. Any annuity amounts withheld because the annuitant earned over $400 in a month may be paid after the end of the year, as shown in § 220.164. The $400 monthly limit no longer applies when the employee becomes 65 years old and the disability annuity is converted to an age annuity. See § 220.145 for the definition of impairment related work expenses.

§ 220.162 Earnings report.

(a) *General.* Any annuitant receiving an annuity based on disability must report to the Board any work and earnings as described in §§ 220.160 and 220.161. The report may be a written or oral statement by the annuitant, or a person acting for the annuitant made or sent to a representative of the Board. The report should include the name and address of the railroad or non-railroad employer, a description of the work and the amount of gross wages (before deductions) or the net income from self-employment (earnings after deducting business expenses).

(b) *Employee reports.* In addition to the requirement described in (a), a report of earnings over $400 a month must be made before the employee accepts a disability annuity (the annuity payment is issued and not returned) for the second month after the first month in which earnings are over $400. Along with the report, the employee must return the annuity payment for any month in which he or she earns over $400.

§ 220.163 Employee penalty deductions.

If the employee earns over $400 in a month and does not report it within the time limit shown in § 220.162(b), a penalty is imposed. The penalty deduction for the first failure to report equals the annuity amount for the first month in which the employee earned over $400. The deduction for a second or later failure to report equals the annuity amount for each month in which the employee earned over $400 and failed to report it on time.

§ 220.164 Employee end-of-year adjustment.

(a) *General.* After the end of a year, the employee whose annuity was withheld for earnings over $400 in a month receives a form on which to report his or her earnings for the year.

(b) *Earnings are less than $5,000.* If the employee's yearly earnings are less then $5,000, all annuity payments and penalties withheld during the year because of earnings over $4,800 are paid.

(c) *Earnings are $5,000 or more.* (a) If the employee's yearly earnings are $5,000 or more, the annuity payments are adjusted so that the employee does not have more than one regular deduction for every $400 of earnings over $4,800. The last $200 or more of earnings over $4,800 is treated as if it were $400. If the annuity rate changes during the year, any annuities due at the end of the year are paid first for months in which the annuity rate is higher. Penalty deductions may also apply as described in paragraph (c)(2) of this section.

(2) If the employee's yearly earnings are $5,000 or more and the employee failed to report monthly earnings over

$400 within the time limit described in § 220.162(b), penalty deductions will also apply. If it is the employee's first failure to report, the penalty deduction is equal to one month's annuity. If it is the employee's second or later failure to report, the penalty deduction equals the annuity amount for each month in which the employee earned over $400 and failed to report it on time.

(d) This section is illustrated by the following examples:

Example 1: Employee is awarded a disability annuity based upon his inability to engage in his regular railroad occupation effective January 1, 1989. During that year, he works April through October, for which he receives $785 per month. He does not report these earnings to the Board until January of the following year. The employee is considered to have earned $5,600 (7×$785 = $5,495, which is rounded up to the nearest $400). He forfeits three months of annuities:

$$\frac{(\$5600-\$4800}{\$400} = \text{2 plus 1 month annuity penalty for failure to report).}$$

Example 2: The same employee in the following year also works April through October, for which he receives $785 per month. This time he reports the earnings on October 31. This year he forfeits 6 months of annuity payments, 2 due to earnings, computed as above, and 4 more due to penalty deductions for failure to report earnings over $400 for the months April through July. There are no penalty deductions with respect to the months August, September, and October, since the employee reported these earnings prior to accepting an annuity for the second month after the month of earnings in excess of $400.

Subpart N—Trial Work Period and Reentitlement Period for Annuitants Disabled for Any Regular Employment

§ 220.170 The trial work period.

(a) *Definition of the trial work period.* The trial work period is a period during which the annuitant may test his or her ability to work and still be considered disabled. The trial work period begins and ends as described in paragraph (e) of this section. During this period, the annuitant may perform "services" (see paragraph (b) of this section) in as many as nine months, but these months do not have to be consecutive. The Board will not consider those services as showing that the annuitant's disability has ended until the annuitant has performed services in at least nine months. However, after the trial work period has ended, the Board will consider the work the annuitant did during the trial work period in determining whether the annuitant's disability has ended at any time after the trial work period.

(b) *What the Board means by services.* When used in this section, "services" means any activity, even though it is not substantial gainful activity, which is done by the annuitant in employment or self-employment for pay or profit, or is the kind normally done for pay or profit. If the annuitant is employed, the Board will consider his or her work to be "services" if in any calendar year after 1978 the annuitant earns more than $75 a month ($50 a month is the figure for earnings in any calendar year before 1979). If the annuitant is self-employed, the Board will consider his or her activities "services" if in any calendar year after 1978 the annuitant's net earnings are more than $75 a month, ($50 a month is the figure for earnings in any calendar year before 1979), or the annuitant works more than 15 hours a month in the business. The Board generally does not consider work to be "services" when it is done without remuneration or merely as therapy or training, or when it is work usually done in a daily routine around the house, or in self-care.

(c) *Limitations on the number of trial work periods.* The annuitant may have only one trial period during each period in which he or she is disabled for any regular employment as defined in § 220.26.

(d) *Who is and is not entitled to a trial work period.* (1) Generally, the annuitant is entitled to a trial work period if he or she is entitled to an annuity based on disability.

(2) An annuitant is not entitled to a trial work period if he or she is in a second period of disability for which he or she did not have to complete a waiting period before qualifying for a disability annuity.

(e) *Payment of the disability annuity during the trial work period.* (1) The disability annuity of an employee, child, or widow(er) who is disabled for any regular employment will not be paid for any month in the trial work period in which the annuitant works for an employer covered by the Railroad Retirement Act (see § 220.160).

(2) The disability annuity of an employee who is disabled for any regular employment will not be paid for any month in this period in which the employee annuitant earns more than $400 in employment or self-employment (see §§ 220.161 and 220.164).

(3) If the disability annuity for an employee, child, or widow(er) who is disabled for any regular employment is stopped because of work during the trial work period, and the disability annuitant discontinues that work before the end of the trial work period, the disability annuity may be started again without a new application and a new determination of disability.

(f) *When the work period begins and ends.* (1) The trial work period begins with whichever of the following calendar months is the later—

(i) The month disability begins;

(ii) The month after the end of the appropriate waiting period; or

(iii) The month the application for disability is filed.

(2) The trial work period ends with the close of whichever of the following calendar months is the earlier—

(i) The ninth month (whether or not the months have been consecutive) in which the annuitant performed services; or

(ii) The month in which new evidence, other than evidence relating to any work the annuitant did during the trial work period, shows that the annuitant is not disabled, even through he or she has not worked a full nine months. The Board may find that the annuitant's disability has ended at any time during the trial work period if the medical or other evidence shows that the annuitant is no longer disabled.

§ 220.171 The reentitlement period.

(a) *General.* (1) The reentitlement period is an additional period after the nine months of trial work during which the annuitant may continue to test his or her ability to work if he or she has a disabling impairment(s).

(2) The disability annuity of an employee, child, or widow(er) who is disabled for any regular employment will not be paid for—

(i) Any month, after the third month, in this period in which the annuitant does substantial gainful activity; or

(ii) Any month in this period in which the annuitant works for an employer covered by the Railroad Retirement Act (see § 220.160).

(3) The disability annuity of an employee who is disabled for any regular employment will not be paid for any month in this period in which the employee annuitant earns more than $400 in employment or self-employment (see §§ 220.161 and 220.164).

(4) If the disability annuity of an employee, child or widow(er) who is disabled for any regular employment is stopped because of work during the trial work period or reentitlement period, and the disability annuitant discontinues that work before the end of either period, the disability annuity may be started again without a new application or a new determination of disability.

(b) *When the reentitlement period begins and ends.* The reentitlement period begins with the first month following completion of nine months of trial work but cannot begin earlier than December 1, 1980. It ends with whichever is earlier—

(1) The month before the first month in which the annuitant's impairment(s) no longer exists or is not medically disabling; or

(2) The last day of the fifteenth month following the end of the annuitant's trial work period.

(c) *When the annuitant is not entitled to a reentitlement period.* The annuitant is not entitled to a reentitlement period if—

(1) He or she is not entitled to a trial work period; or

(2) His or her disability ended before the annuitant completed nine months of trial work in that period in which he or she was disabled.

Subpart O—Continuing or Stopping Disability Due to Substantial Gainful Activity or Medical Improvement

§ 220.175 Responsibility to notify the Board of events which affect disability.

If the annuitant is entitled to a disability annuity because he or she is disabled for any regular employment, the annuitant should promptly tell the Board if—

(a) His or her impairment(s) improves;

(b) He or she returns to work;

(c) He or she increases the amount of work; or

(d) His or her earnings increase.

§ 220.176 When disability continues or ends.

There is a statutory requirement that, if an annuitant is entitled to a disability annuity, the annuitant's continued entitlement to such an annuity must be reviewed periodically until the employee or child annuitant reaches age 65 and the widowe(er) annuitant reaches age 60. When the annuitant is entitled to a disability annuity as a disabled employee, disabled widow(er) or as a person disabled since childhood, there are a number of factors to be considered in deciding whether his or her disability continues. The Board must first consider whether the annuitant has worked and, by doing so, demonstrated the ability to engage in substantial gainful activity. If so, the disability will end. If the annuitant has not demonstrated the ability to engage in substantial gainful activity, then the Board must determine if there has been any medical improvement in the annuitant's impairment(s) and, if so, whether this medical improvement is related to the annuitant's ability to work. If an impairment(s) has not medically improved, the Board must consider whether one or more of the exceptions to medical improvement applies. If medical improvement related to ability to work has not occurred and no exception applies, the disability will continue. Even where medical improvement related to ability to work has occurred or an exception applies (see § 220.179 for exceptions), in most cases the Board must also show that the annuitant is currently able to engage in substantial gainful activity before it can find that the annuitant is no longer disabled.

§ 220.177 Terms and definitions.

There are several terms and definitions which are important to know in order to understand how the Board reviews whether a disability for any regular employment continues:

(a) *Medical improvement.* Medical improvement is any decrease in the medical severity of an impairment(s) which was present at the time of the most recent favorable medical decision that the annuitant was disabled or continued to be disabled. A determination that there has been a decrease in medical severity must be based on a comparison of prior and current medical evidence showing changes (improvement) in the symptoms, signs or laboratory findings associated with the impairment(s).

Example 1: The claimant was awarded a disability annuity due to a herniated disc. At the time of the Board's prior decision granting the claimant an annuity he had had a laminectomy. Postoperatively, a myelogram still shows evidence of a persistent deficit in his lumbar spine. He had pain in his back, and pain and a burning sensation in his right foot and leg. There were no muscle weakness or neurological changes and a modest decrease in motion in his back and leg. When the Board reviewed the annuitant's claim to determine whether his disability should be continued, his treating physician reported that he had seen the annuitant regularly every 2 to 3 months for the past 2 years. No further myelograms had been done, complaints of pain in the back and right leg continued especially on sitting or standing for more than a short period of time. The annuitant's doctor further reported a moderately decreased range of motion in the annuitant's back and right leg, but again no muscle atrophy or neurological changes were reported. Medical improvement has *not* occurred because there has been no decrease in the severity of the annuitant's back impairment as shown by changes in symptoms, signs or laboratory findings.

Example 2: The claimant was awarded a disability annuity due to a rheumatoid arthritis. At the time, laboratory findings were positive for this impairment. The claimant's doctor reported persistent swelling and tenderness of the claimant's fingers and wrists and that he complained of joint pain. Current medical evidence shows that while laboratory tests are still positive for rheumatoid arthritis, the annuitant's impairment has responded favorably to therapy so that for the last year his fingers and wrists have not been significantly swollen or painful. Medical improvement has occurred because there has been a decrease in the severity of the annuitant's impairment as documented by the current symptoms and signs reported by his physician. Although the annuitant's impairment is subject to temporary remission and exacerbations, the improvement that has occurred has been sustained long enough to permit a finding of medical improvement. The Board would then determine if this medical improvement is related to the annuitant's ability to work.

(b) *Medical improvement not related to ability to do work.* Medical improvement is not related to the annuitant's ability to work if there has been a decrease in the severity of the impairment(s) (as defined in paragraph (a) of this section) present at the time of the most recent favorable medical decision, but *no* increase in that annuitant's functional capacity to do basic work activities as defined in paragraph (d) of this section. If there has been any medical improvement in an annuitant's impairment(s), but it is not related to the annuitant's ability to do work and none of the exceptions applies, the annuity will be continued.

Example: An annuitant was 65 inches tall and weighed 246 pounds at the time his disability was established. He had venous insufficiency and persistent edema in his legs. At the time, the annuitant's ability to do basic work activities was affected because he was able to sit for 6 hours, but was able to stand or walk only occasionally. At the time of the Board's continuing disability review, the annuitant had undergone a vein stripping operation. He now weighed 220 pounds and had intermittent edema. He is still able to sit for 6 hours at a time and to stand or walk only occassionally although he reports less discomfort on walking. Medical improvement has occurred because there has been a decrease in the severity of the existing

impairment as shown by his weight loss and the improvement in his edema. This medical improvement is not related to his ability to work, however, because his functional capacity to do basic work activities (i.e., the ability to sit, stand and walk) has not increased.

(c) *Medical improvement that is related to ability to do work.* Medical improvement is related to an annuitant's ability to work if there has been a decrease in the severity (as defined in paragraph (a) of this section) of the impairment(s) present at the time of the most recent favorable medical decision *and* an increase in the annuitant's functional capacity to do basic work activities as discussed in paragraph (d) of this section. A determination that medical improvement related to an annuitant's ability to do work has occurred does not, necessarily, mean that such annuitant's disability will be found to have ended unless it is also shown that the annuitant is currently able to engage in substantial gainful activity as discussed in paragraph (e) of this section.

Example 1: The annuitant has a back impairment and has had a laminectomy to relieve the nerve root impingement and weakness in his left leg. At the time of the Board's prior decision, basic work activities were affected because he was able to stand less than 6 hours, and sit no more than ½ hour at a time. The annuitant had a successful fusion operation on his back about 1 year before the Board's review of his entitlement.

At the time of the Board's review, the weakness in his leg decreased. The annuitant's functional capacity to perform basic work activities now is unimpaired because he now has no limitation on his ability to sit, walk, or stand. Medical improvement has occurred because there has been a decrease in the severity of his impairment as demonstrated by the decreased weakness in his leg. This medical improvement is related to his ability to work because there has been also an increase in his functional capacity to perform basic work activities (or residual functional capacity) as shown by the absence of limitation on his ability to sit, walk, or stand. Whether or not his disability is found to have ended, however, will depend on the Board's determination as to whether he can currently engage in substantial gainful actitity.

Example 2: The annuitant was injured in an automobile accident receiving a compound fracture to his right femur and a fractured pelvis. When he applied for disability annuity 10 months after the accident his doctor reported that neither fracture had yet achieved solid union based on his clinical examination. X-rays supported this finding. The annuitant's doctor estimated that solid union and a subsequent return to full weight bearing would not occur for at least 3 months. At the time of the Board's reviw 6 months later, solid union had occurred and the annuitant had been returned to full weight-bearing for over a month. His doctor reported this and the fact that his prior fracture no longer placed any limitation on his ability to walk, stand, and lift, and, that in fact, he could return to full-time work if he so desired.

Medical improvement has occurred because there has been a decrease in the severity of the annuitant's impairments as shown by x-ray and clinical evidence of solid union and his return to full weight-bearing. This medical improvement is related to his ability to work because he no longer meets the same listed impairment in Appendix 1 of this part (see § 220.178(c)(1)). Whether or not the annuitant's disability is found to have ended will depend on the Board's determination as to whether he can currently engage in substantial gainful activity.

(d) *Functional capacity to do basic work activities.* (1) Under the law, disability is defined, in part, as the inability to do any regular employment by reason of a physical or mental impairment(s). "Regular employment" is defined in this part as "substantial gainful activity." In determining whether the annuitant is disabled under the law, the Board will measure, therefore, how and to what extent the annuitant's impairment(s) has affected his or her ability to do work. The Board does this by looking at how the annuitant's functional capacity for doing basic work activities has been affected. Basic work activities means the abilities and aptitudes necessary to do most jobs. Included are exertional abilities such as walking, standing, pushing, pulling, reaching and carrying, and nonexertional abilities and aptitudes such as seeing, hearing, speaking, remembering, using judgment, dealing with changes in a work setting and dealing with both supervisors and fellow workers. The annuitant who has no impairment(s) would be able to do all basic work activities at normal levels; he or she would have an unlimited functional capacity to do basic work activities. Depending on its nature and severity, an impairment(s) will result in some limitation to the functional capacity to do one or more of these basic work activities. Diabetes, for example, can result in circulatory problems which could limit the length of time the annuitant could stand or walk and can result in damage to his or her eyes as well, so that the annuitant also has limited vision. What the annuitant can still do, despite his or her impairment(s), is called his or her residual functional capacity. How the residual functional capacity is assessed is discussed in more detail in § 220.120. Unless an impairment is so severe that it is deemed to prevent the annuitant from doing substantial gainful activity (i.e., the impairment(s)) meets or equals the severity of a listed impairment in Appendix 1 of this part), it is this residual functional capacity that is used to determine whether the annuitant can still do his or her past work or, in conjunction with his or her age, education and work experience, do any other work.

(2) A decrease in the severity of an impairment as measured by changes (improvement) in symptoms, signs or laboratory findings can, if great enough, result in an increase in the functional capacity to do work activities. Vascular surgery (e.g., femaropopliteal bypass) may sometimes reduce the severity of the circulatory complications of diabetes so that better circulation results and the annuitant can stand or walk for longer periods. When new evidence showing a change in medical findings establishes that both medical improvement has occurred and the annuitant's functional capacity to perform basic work activities, or residual functional capacity, has increased, the Board will find that medical improvement which is related to the annuitant's ability to do work has occurred. A residual functional capacity assessment is also used to determine whether an annuitant can engage in substantial gainful activity and, thus, whether he or she continues to be disabled (see paragraph (e) of this section).

(3) Many impairment-related factors must be considered in assessing an annuitant's functional capacity for basic work activities. Age is one key factor. Medical literature shows that there is a gradual decrease in organ function with age; that major losses and deficits become irreversible over time and that maximum exercise performance diminishes with age. Other changes related to sustained periods of inactivity and the aging process include muscle atrophy, degenerative joint changes, decrease in range of motion, and changes in the cardiac and respiratory systems which limit the exertional range.

(4) Studies has also shown that the longer the annuitant is away from the workplace and is inactive, the more difficult it becomes to return to ongoing gainful employment. In addition, a gradual change occurs in most jobs so that after about 15 years, it is no longer realistic to expect that skills and abilities acquired in these jobs will continue to apply to the current workplace. Thus, if the annuitant is age 50 or over and has been receiving a disability annuity for a considerable period of time, the Board will consider this factor along with his or her age in assessing the residual functional capacity. This will ensure that the

disadvantages resulting from inactivity and the aging process during a longer period of disability will be considered. In some instances where available evidence does not resolve what the annuitant can or cannot do on a sustained basis, the Board may provide special work evaluations or other appropriate testing.

(e) *Ability to engage in substantial gainful activity.* In most instances, the Board must show that the annuitant is able to engage in substantial gainful activity before stopping his or her annuity. When doing this, the Board will consider all of the annuitant's current impairments not just that impairment(s) present at the time of the most recent favorable determination. If the Board cannot determine that the annuitant is still disabled based on medical considerations alone (as discussed in §§ 220.110 through 220.115), it will use the new symptoms, signs and laboratory findings to make an objective assessment of functional capacity to do basic work activities (or residual functional capacity) and will consider vocational factors. See §§ 220.120 through 220.134.

(f) *Evidence and basis for the Board's decision.* The Board's decisions under this section will be made on a neutral basis without any initial inference as to the presence or absence of disability being drawn from the fact that the annuitant had previously been determined to be disabled. The Board will consider all of the evidence the annuitant submits. An annuitant must give the Board reports from his or her physician, psychologist, or others who have treated or evaluated him or her, as well as any other evidence that will help the Board determine if he or she is still disabled (see § 220.45). The annuitant must have a good reason for not giving the Board this information or the Board may find that his or her disability has ended (see § 220.178(b)(2)). If the Board asks the annuitant, he or she must contact his or her medical sources to help the Board get the medical reports. The Board will make every reasonable effort to help the annuitant in getting medical reports when he or she gives the Board permission to request them from his or her physician, psychologist, or other medical sources. Every reasonable effort means that the Board will make an initial request and, after 20 days, one followup request to the annuitant medical source to obtain the medical evidence necessary to make a determination before the Board evaluates medical evidence obtained from another source on a consultative basis. The medical source will have 10 days from the followup to reply (unless experience indicates that a longer period is advisable in a particular case). In some instances the Board may order a consultative examination while awaiting receipt of medical source evidence. Before deciding that an annuitant's disability had ended, the Board will develop a complete medical history covering at least the preceding 12 months (See § 220.45(b)). A consultative examination may be purchased when the Board needs additional evidence to determine whether or not an annuitant's disability continues. As a result, the Board may ask the annuitant, upon the Board request and reasonable notice, to undergo consultative examinations and tests to help the Board determine if the annuitant is still disabled (see § 220.50). The Board will decide whether or not to purchase a consultative examination in accordance with the standards in §§ 220.53 through 220.54.

(g) *Point of comparison.* For purposes of determining whether medical improvement has occurred, the Board will compare the current medical severity of that impairment(s), which was present at the time of the most recent favorable medical decision that the annuitant was disabled or continued to be disabled, to the medical severity of that impairment(s) at that time. If medical improvement has occurred, the Board will compare the annuitant's current functional capacity to do basic work activities (i.e., his or her residual functional capacity) based on this previously existing impairment(s) with the annuitant's prior residual functional capacity in order to determine whether the medical improvement is related to his or her ability to do work. The most recent favorable medical decision is the latest decision involving a consideration of the medical evidence and the issue of whether the annuitant was disabled or continued to be disabled which became final.

§ 220.178 Determining medical improvement and its relationship to the annuitant's ability to do work.

(a) *General.* Paragraphs (a), (b), and (c) of § 220.177 discuss what is meant by medical improvement, medical improvement not related to the ability to work and medical improvement that is related to the ability to work. How the Board will arrive at the decision that medical improvement has occurred and its relationship to the ability to do work, is discussed in paragraphs (b) and (c) of this section.

(b) *Determining if medical improvement is related to ability to work.* If there is a decrease in medical severity as shown by the symptoms, signs and laboratory findings, the Board then must determine if it is related to the annuitant's ability to do work. In § 220.177(d) the relationship between medical severity and limitation on functional capacity to do basic work activities (or residual functional capacity) and how changes in medical severity can affect the annuitant's residual functional capacity is explained. In determining whether medical improvement that has occurred is related to the annuitant's ability to do work, the Board will assess the annuitant's residual functional capacity (in accordance with § 220.177(d)) based on the current severity of the impairment(s) which was present at that annuitant's last favorable medical decision. The annuitant's new residual functional capacity will then be compared to the annuitant's residual functional capacity at the time of the Board's most recent favorable medical decision. Unless an increase in the current residual functional capacity is based on changes in the signs, symptoms, or laboratory findings, any medical improvement that has occurred will not be considered to be related to the annuitant's ability to do work.

(c) *Additional factors and considerations.* The Board will also apply the following in its determinations of medical improvement and its relationship to the annuitant's ability to do work:

(1) *Previous impairment met or equaled listings.* If the Board's most recent favorable decision was based on the fact that the annuitant's impairment(s) at the time met or equaled the severity contemplated by the Listing of Impairments in Appendix I of this Part, an assessment of his or her residual functional capacity would not have been made. If medical improvement has occurred and the severity of the prior impairment(s) no longer meets or equals the same listing, the Board will find that the medical improvement was related to the annuitant's ability to work. Appendix I of this Part describes impairments which, if severe enough, affect the annuitant's ability to work. If the Listing level of severity is met or equaled, the annuitant is deemed, in the absence of evidence to the contrary, to be unable to engage in substantial gainful activity. If there has been medical improvement to the degree that the requirement of the listing is no longer met or equaled, then the medical improvement is related to the annuitant's ability to work. The Board must, of course, also establish that the annuitant can currently engage

in gainful activity before finding that his or her disability has ended.

(2) *Prior residual functional capacity assessment made.* The residual functional capacity assessment used in making the most recent favorable medical decision will be compared to the residual functional capacity assessment based on current evidence in order to determine if an annuitant's functional capacity for basic work activities has increased. There will be no attempt made to reassess the prior residual functional capacity.

(3) *Prior residual functional capacity assessment should have been made, but was not.* If the most recent favorable medical decision should have contained an assessment of the annuitant's residual functional capacity (i.e., his or her impairment(s) did not meet or equal the level of severity contemplated by the Listing of Impairments in Appendix I of this Part) but does not, either because this assessment is missing from the annuitant's file or because it was not done, the Board will reconstruct the residual functional capacity. This reconstructed residual functional capacity will accurately and objectively assess the annuitant's functional capacity to do basic work activities. The Board will assign the maximum functional capacity consistent with an allowance.

Example: The annuitant was previously found to be disabled on the basis that while his impairment did not meet or equal a listing, it did prevent him from doing his past or any other work. The prior adjudicator did not, however, include a residual functional capacity assessment in the rationale of that decision and a review of the prior evidence does not show that such an assessment was ever made. If a decrease in medical severity, i.e., medical improvement, has occurred, the residual functional capacity based on the current level of severity of the annuitant's impairment will have to be compared with his residual functional capacity based on its prior severity in order to determine if the medical improvement is related to his ability to do work. In order to make this comparison, the Board will review the prior evidence and make an objective assessment of the annuitant's residual functional capacity at the time of its most recent favorable medical determination, based on the symptoms, signs and laboratory findings as they then existed.

(4) *Impairment subject to temporary remission.* In some cases the evidence shows that the annuitant's impairment(s) are subject to temporary remission. In assessing whether medical improvement has occurred in annuitants with this type of impairment(s), the Board will be careful to consider the longitudinal history of the impairment(s), including the occurrence of prior remission, and prospects for future worsenings. Improvement in such impairment(s) that is only temporary, i.e., less than 1 year, will not warrant a finding of medical improvement.

(5) *Prior file cannot be located.* If the prior file cannot be located, the Board will first determine whether the annuitant is able to now engage in substantial gainful activity based on all of his or her current impairments. (In this way, the Board will be able to determine that his or her disability continues at the earliest point without addressing the often lengthy process of reconstructing prior evidence.) If the annuitant cannot engage in substantial gainful activity currently, his or her disability will continue unless one of the second group of exceptions applies (see § 220.179(b)).

§ 220.179 Exceptions to medical improvement.

(a) *First group of exceptions to medical improvement.* The law provides for certain limited situations when the annuitant's disability can be found to have ended even though medical improvement has not occurred, if he or she can engage in substantial gainful activity. These exceptions to medical improvement are intended to provide a way of finding that the annuitant is no longer disabled in those limited situations where, even though there has been no decrease in severity of the impairment(s), evidence shows that the annuitant should no longer be considered disabled or never should have been considered disabled. If one of these exceptions applies, the Board must also show that, taking all of the annuitant's current impairment(s) into account, not just those that existed at the time of the Board's most recent favorable medical decision, the annuitant is now able to engage in substantial gainful activity before his or her disability can be found to have ended. As part of the review process, the annuitant will be asked about any medical or vocational therapy that he or she has received or is receiving. Those answers and the evidence gathered as a result as well as all other evidence, will serve as the basis for the finding that an exception applies.

(1) *Substantial evidence shows that the annuitant is the beneficiary of advances in medical or vocational therapy or technology (related to his or her ability to work).* Advances in medical or vocational therapy or technology are improvements in treatment or rehabilitative methods which have increased the annuitant's ability to do basic work activities. The Board will apply this exception when substantial evidence shows that the annuitant has been the beneficiary of services which reflect these advances and they have favorably affected the severity of his or her impairment(s) or ability to do basic work activities. This decision will be based on new medical evidence and a new residual functional capacity assessment. In many instances, an advanced medical therapy or technology will result in a decrease in severity as shown by symptoms, signs and laboratory findings which will meet the definition of medical improvement. This exception will, therefore, see very limited application.

(2) *Substantial evidence shows that the annuitant has undergone vocational therapy (related to his or her ability to work).* Vocational therapy (related to the annuitant's ability to work) may include, but is not limited to, additional education, training, or work experience that improves his or her ability to meet the vocational requirements of more jobs. This decision will be based on substantial evidence which includes new medical evidence and a new residual functional capacity assessment. If, at the time of the Board's review the annuitant has not completed vocational therapy which could affect the continuance of his or her disability, the Board will review such annuitant's claim upon completion of the therapy.

Example 1: The annuitant was found to be disabled because the limitations imposed on him by his impairment(s) allowed him to only do work that was at a sedentary level of exertion. The annuitant's prior work experience was work that required a medium level of exertion with no acquired skills that could be transferred to sedentary work. His age, education, and past work experience at the time did not qualify him for work that was below this medium level of exertion. The annuitant enrolled in and completed a specialized training course which qualifies him for a job in data processing as a computer programmer in the period since he was awarded a disability annuity. On review of his claim, current evidence shows that there is no medical improvement and that he can still do only sedentary work. As the work of a computer programmer is sedentary in nature, he is now able to engage in substantial gainful activity when his new skills are considered.

Example 2: The annuitant was previously entitled to a disability annuity because the medical evidence and assessment of his residual functional capacity showed he could only do light work. His prior work was considered to be of a heavy exertional level with no acquired skills that could be transferred to light work. His age, education, and past work experience did not qualify him for work that was below the heavy level of exertion. The current evidence and residual functional capacity show there has been no medical improvement and that he can still do only light work. Since he was originally

entitled to a disability annuity, his vocational rehabilitation agency enrolled him in and he successfully completed a trade school course so that he is now qualified to do small appliance repair. This work is light in nature, so when his new skills are considered, he is now able to engage in substantial gainful activity even though there has been no change in his residual functional capacity.

(3) *Substantial evidence shows that based on new or improved diagnostic or evaluative techniques the annuitant's impairment(s) is not as disabling as it was considered to be at the time of the most recent favorable decision.* Changing methodologies and advances in medical and other diagnostic or evaluative techniques have given, and will continue to give, rise to improved methods for measuring and documenting the effect of various impairments on the ability to do work. Where, by such new or improved methods, substantial evidence shows that the annuitant's impairment(s) is not as severe as was determined at the time of the Board's most recent favorable medical decision, such evidence may serve as a basis for finding that the annuitant can engage in substantial gainful activity and is no longer disabled. In order to be used under this exception, however, the new or improved techniques must have become generally available after the date of the Board's most recent favorable medical decision.

(i) *How the Board will determine which methods are new or improved techniques and when they become generally available.* New or improved diagnostic techniques or evaluations will come to the Board's attention by several methods. In reviewing cases, the Board often becomes aware of new techniques when their results are presented as evidence. Such techniques and evaluations are also discussed and acknowledged in medical literature by medical professional groups and other governmental entities. Through these sources, the Board develops listings of new techniques and when they become generally available.

(ii) *How the annuitant will know which methods are new or improved techniques and when they become generally available.* The Board will let annuitants know which methods it considers to be new or improved techniques and when they become available. Some of the future changes in the Listing of Impairments in Appendix 1 of this part will be based on new or improved diagnostic or evaluative techniques. Such listings changes will clearly state this fact as they are published as Notices of Proposed Rulemaking and the new or improved techniques will be considered generally available as of the date of the final publication of that particular listing in the **Federal Register.**

Example: The electrocardiographic exercise test has replaced the Master's 2-step test as a measurement of heart function since the time of the annuitant's last favorable medical decision. Current evidence shows that the annuitant's impairment, which was previously evaluated based on the Master's 2-step test, is not now as disabling as was previously thought. If, taking all his current impairments into account, the annuitant is now able to engage in substantial gainful activity, this exception would be used to find that he is no longer disabled even if medical improvement has not occurred.

(4) *Substantial evidence demonstrates that any prior disability decision was in error.* The Board will apply the exception to medical improvement based on error if substantial evidence (which may be evidence on the record at the time any prior determination of the entitlement to an annuity based on disability was made, or newly obtained evidence which relates to that determination) demonstrates that a prior determination was in error. A prior determination will be found in error only if:

(i) Substantial evidence shows on its face that the decision in question should not have been made (e.g., the evidence in file such as pulmonary function study values was misread or an adjudicative standard such as a listing in Appendix 1 of this part or a medical/vocational rule in Appendix 2 of this part was misapplied).

Example 1: The annuitant was granted a disability annuity when it was determined that his epilepsy met Listing 11.02. This listing calls for a finding of major motor seizures more frequently than once a month as documented by EEG evidence and by a detailed description of a typical seizure pattern. A history of either diurnal episodes or nocturnal episodes with residuals interfering with daily activities is also required. On review, it is found that a history of the frequency of his seizures showed that they occurred only once or twice a year. The prior decision would be found to be in error, and whether the annuitant was still considered to be disabled would be based on whether he could currently engage in substantial gainful activity.

Example 2: The annuitant's prior award of a disability annuity was based on vocational rule 201.14 in Appendix 2 of this part. This rule applies to a person age 50–54 who has at least a high school education, whose previous work was entirely at semiskilled level, and who can do only sedentary work. On review it is found that at the time of the prior determination the annuitant was actually only age 46 and vocational rule 201.21 should have been used. This rule would have called for a denial of his claim and the prior decision is found to have been in error. Continuation of his disability would depend on a finding of his current inability to engage in substantial gainful activity.

(ii) At the time of the prior evaluation, required and material evidence of the severity of the annuitant's impairment(s) was missing. That evidence becomes available upon review, and substantial evidence demonstrates that had such evidence been present at the time of the prior determination, disability would not have been found.

Example: The annuitant was found disabled on the basis of chronic obstructive pulmonary disease. The severity of his impairment was documented primarily by pulmonary function testing results. The evidence showed that he could do only light work. Spirometric tracings of this testing, although required, were not obtained, however. On review, the original report is resubmitted by the consultative examining physician along with the corresponding spirometric tracings. A review of the tracings shows that the test was invalid. Current pulmonary function testing supported by spirometric tracings reveals that the annuitant's impairment does not limit his ability to perform basic work activities in any way. Error is found based on the fact that required material evidence, which was originally missing, now becomes available and shows that if it had been available at the time of the prior determination, disability would not have been found.

(iii) Substantial evidence which is new evidence relating to the prior determination (of allowance or continuance) refutes the conclusions that were based upon the prior evidence (e.g., a tumor thought to be malignant was later shown to have actually been benign). Substantial evidence must show that had the new evidence (which relates to the prior determination) been considered at the time of the prior decision, the disability would not have been allowed or continued. A substitution of current judgment for that used in the prior favorable decision will not be the basis for applying this exception.

Example: The annuitant was previously found entitled to a disability annuity on the basis of diabetes mellitus which the prior adjudicator believed was equivalent to the level of severity contemplated in the Listing of Impairments. The prior record shows that the annuitant has "brittle" diabetes for which he was taking insulin. The annuitant's urine was 3+ for sugar, and he alleged occasional hypoglycemic attacks caused by exertion. His doctor felt the diabetes was never really controlled because he was not following his diet or taking his medication regularly. On review, symptoms, signs and laboratory findings are unchanged. The current adjudicator feels, however, that the annuitant's impairment clearly does not equal the severity contemplated by the listings. Error *cannot* be found because it would represent a substitution of current judgment

for that of the prior adjudicator that the annuitant's impairment equaled a listing. The exception for error will not be applied retroactively under the conditions set out above unless the conditions for reopening the prior decision are met.

(5) *The annuitant is currently engaging in substantial gainful activity.* If the annuitant is currently engaging in substantial gainful activity, before the Board determines whether he or she is no longer disabled because of his or her work activity, the Board will consider whether he or she is entitled to a trial work period as set out in § 220.170. The Board will find that the annuitant's disability has ended in the month in which he or she demonstrated the ability to engage in substantial gainful activity (following completion of a trial work period, where it applies). This exception does not apply in determining whether the annuitant continues to have a disabling impairment(s) for purposes of deciding his or her eligibility for a reentitlement period.

(b) *Second group of exceptions to medical improvement.* In addition to the first group of exceptions to medical improvement, the following exceptions may result in a determination that the annuitant is no longer disabled. In these situations the decision will be made without a determination that the annuitant has medically improved or can engage in substantial gainful activity.

(1) *A prior determination was fraudulently obtained.* If the Board finds that any prior favorable determination was obtained by fraud, it may find that the annuitant is not disabled. In addition, the Board may reopen the claim.

(2) *Failure to cooperate with the Board.* If there is a question about whether the annuitant continues to be disabled and the Board requests that he or she submit medical or other evidence or go for a physical or mental examination by a certain date, the Board will find that the annuitant's disability has ended if he or she fails (without good cause) to do what is requested. The month in which the annuitant's disability ends will be the first month in which he or she failed to do what was requested.

(3) *Inability of the Board to locate the annuitant.* If there is a question about whether the annuitant continues to be disabled and the Board is unable to find him or her to resolve the question, the Board will suspend annuity payments. If, after a suitable investigation, the Board is still unable to locate the annuitant, the Board will determine that the annuitant's disability has ended. The month such annuitant's disability ends will be the first month in which the question arose and the annuitant could not be found.

(4) *Failure of the annuitant to follow prescribed treatment which would be expected to restore the ability to engage in substantial gainful activity.* If treatment has been prescribed for the annuitant which would be expected to restore his or her ability to work, he or she must follow that treatment in order to be paid a disability annuity. If the annuitant is not following that treatment and he or she does not have good cause for failing to follow the treatment, the Board will find that his or her disability has ended. The month such annuitant's disability ends will be the first month in which he or she failed to follow the prescribed treatment.

§ 220.180 Determining continuation or cessation of disability.

Evaluation steps. To assure that disability reviews are carried out in a uniform manner, that decisions of continuing disability can be made in the most expeditious and administratively efficient way, and that any decisions to stop a disability annuity are made objectively, neutrally and are fully documented, the Board will follow specific steps in reviewing the question of whether an annuitant's disability continues. The Board's review may cease and the disability may be continued at any point if the Board determines that there is sufficient evidence to find that the annuitant is still unable to engage in substantial gainful activity. The steps are—

(a) Is the annuitant engaging in substantial gainful activity? If he or she is (and any applicable trial work period has been completed), the Board will find disability to have ended (see § 220.179(a)(5));

(b) If the annuitant is not engaging in substantial gainful activity, does he or she have an impairment or combination of impairments which meets or equals the severity of an impairment listed in Appendix I of this part. If the annuitant's impairment(s) does meet or equal the level of severity of an impairment listed in Appendix I of this part, his or her disability will be found to continue;

(c) If the annuitant's impairment(s) does not meet or equal the level of severity of an impairment listed in Appendix I of this part, has there been medical improvement as defined in § 220.177(a)? If there has been medical improvement as shown by a decrease in medical severity, see step (d). If there has been no decrease in medical severity, then there has been no medical improvement (See step (e));

(d) If there has been medical improvement, the Board must determine whether it is related to the annuitant's ability to do work in accordance with paragraphs (a) through (d) of § 220.177 (i.e., whether or not there has been an increase in the residual functional capacity based on the impairment(s) that was present at the time of the most recent favorable medical determination). If medical improvement is *not* related to the annuitant's ability to do work, see step (e). If medical improvement *is* related to the annuitant's ability to do work, see step (f);

(e) If the Board found at step (c) that there has been no medical improvment or if it found at step (d) that the medical improvement is not related to the annuitant's ability to work, the Board considers whether any of the exceptions in § 220.178 apply. If none of them apply, disability will be found to continue. If one of the first group of exceptions to medical improvement applies, see step (f). If an exception from the second group of exceptions to medical improvement applies, disability will be found to have ended. The second group of exceptions to medical improvement may be considered at any point in this process;

(f) If medical improvement is shown to be related to the annuitant's ability to do work or if one of the first group of exceptions to medical improvement applies, the Board will determine whether all of the annuitant's current impairments in combination are severe. This determination will consider all current impairments and the impact of the combination of those impairments on the ability to function. If the residual functional capacity assessment in step (d) above shows significant limitation of ability to do basic work activities, see step (g). When the evidence shows that all current impairments in combination do not significantly limit physical or mental abilities to do basic work activities, these impairments will not be considered severe in nature, and the annuitant will no longer be considered to be disabled;

(g) If the annuitant's impairment(s) is severe, the Board will assess his or her current ability to engage in substantial gainful activity. That is, the Board will assess the annuitant's residual functional capacity based on all of his or her current impairments and consider whether he or she can still do work that was done in the past. If he or she can do such work, disability will be found to have ended; and

(h) If the annuitant is not able to do work he or she has done in the past, the

Board will consider one final step. Given the residual functional capacity assessment and considering the annuitant's age, education and past work experience, can he or she do other work? If the annuitant can do other work, disability will be found to have ended. If he or she cannot do other work, disability will be found to continue.

§ 220.181 The month in which the Board will find that the annuitant is no longer disabled.

If the evidence shows that the annuitant is no longer disabled, the Board will find that his or her disability ended in the earliest of the following months—

(a) The month the Board mails the annuitant a notice saying that the Board finds that he or she is no longer disabled based on evidence showing:

(1) there has been medical improvement in the annuitant's impairments related to the ability to work and the annuitant has the capacity to engage in substantial gainful work under the rules set out in §§ 220.177 and 220.178; or

(2) there has been no medical improvement in the annuitant's impairments related to the ability to work but the annuitant has the capacity to engage in substantial gainful work and one of the exceptions to medical improvement set out in § 220.179(a)(1), (2), (3) or (4) applies.

(b) The month in which the annuitant demonstrated his or her ability to engage in substantial gainful activity (following completion of a trial work period);

(c) The month in which the annuitant actually does substantial gainful activity where such annuitant is not entitled to a trial work period;

(d) The month in which the annuitant returns to full-time work, with no significant medical restrictions and acknowledges that medical improvement has occurred, and the Board expected the annuitant's impairment(s) to improve;

(e) The first month in which the annuitant failed without good cause to do what the Board asked, when the rule set out in paragraph (b)(2) of § 220.179 applies;

(f) The first month in which the question of continuing disability arose and the Board could not locate the annuitant after a suitable investigation (see § 220.179(b)(3));

(g) The first month in which the annuitant failed without good cause to follow prescribed treatment, when the rule set out in paragraph (b)(4) of § 220.179 applies; or

(h) The first month the annuitant was told by his or her physician that he or she could return to work provided there is no substantial conflict between that physician's and the annuitant's statements regarding that annuitant's awareness of his or her capacity for work and the earlier date is supported by the medical evidence.

(i) The month the evidence shows that the annuitant is no longer disabled under the rules set out in §§ 220.177 through 220.180, and he or she was disabled only for a specified period of time in the past as discussed in § 220.21 or § 220.105;

§ 220.182 Before a disability annuity is stopped.

Before the Board stops a disability annuity, it will give the annuitant a chance to explain why it should not do so.

§ 220.183 Notice that the annuitant is not disabled.

(a) *General.* If the Board determines that the annuitant does not meet the disability requirements of the law, the disability annuity will generally stop. Except in the circumstance described in paragraph (d) of this section, the Board will give the annuitant advance written notice when the Board has determined that he or she is not now disabled.

(b) *What the advance written notice will tell the annuitant.* The advance written notice will provide—

(1) A summary of the information the Board has and an explanation of why the Board believes the annuitant is no longer disabled. If it is because of medical reasons, the notice will tell the annuitant what the medical information in his or her file shows. If it is because of the annuitant's work activity, the notice will tell the annuitant what information the Board has about the work he or she is doing or has done, and why this work shows that he or she is not disabled. If it is because of the annuitant's failure to give the Board information the Board needs or failure to do what the Board asks, the notice will tell the annuitant what information the Board needs and why, or what the annuitant has to do and why;

(2) The date the disability annuity will stop;

(3) An opportunity for the annuitant to submit evidence within a specified period to support continuance of disability before the decision becomes final; and

(4) An explanation of the annuitant's rights to reconsideration and appeal after the decision becomes final.

(c) *What the annuitant should do if he or she receives an advance written notice.* If the annuitant agrees with the advance written notice, he or she does not need to take any action. If the annuitant desires further information or disagrees with what the Board has told him or her, the annuitant should immediately write or visit a Board office. If the annuitant believes he or she is now disabled, the annuitant should tell the Board why. The annuitant may give the Board any additional or new information, including reports from doctors, hospitals, railroad or non-railroad employers, or others that he or she believes the Board should have. The annuitant should send these as soon as possible to a Board office.

(d) *When the Board will not give the annuitant advance written notice.* The Board will not give the annuitant advance written notice when the Board determines that he or she is not now disabled if the Board recently told the annuitant that—

(1) The information the Board has shows that he or she is not disabled;

(2) The Board was gathering more information; and

(3) The disability annuity would stop.

§ 220.184 If the annuitant becomes disabled by another impairment(s).

If a new severe impairment(s) begins in or before the month in which the last impairment(s) ends, the Board will find that disability is continuing. The impairment(s) need not be expected to last 12 months or to result in death, but it must be severe enough to keep the annuitant from doing substantial gainful activity, or severe enough so that he or she is still disabled.

Appendix 1—Listing of Impairments

In the Listing of Impairments, the listings under each separate body system in both Part A and Part B will be effective for periods ranging from 4 to 8 years unless extended or revised and promulgated again. Specifically, the body system listings in the Listing of Impairments will be subject to the following termination dates:

Musculoskeletal system (1.00) within 5 years. Consequently, the listings in this body system will no longer be effective on December 6, 1990.

Respiratory system (3.00) within 6 years. Consequently, the listings in this body system will no longer be effective on December 6, 1991.

Cardiovascular system (4.00) within 4 years. Consequently, the listings in this body system will no longer be effective on December 6, 1989.

The listings under the other body systems in Part A and Part B will expire in 8 years. Consequently, the listing in these body systems will no longer be effective on December 6, 1993. The mental disorders listings in Part A will no longer be effective

on August 28, 1990, unless extended by the Secretary or revised and promulgated again.

Part A

Criteria applicable to individuals age 18 and over and to children under age 18 where criteria are appropriate.

Sec.

1.00 Musculoskeletal System

A. *Loss of function* may be due to amputation or deformity. Pain may be an important factor in causing functional loss, but it must be associated with relevant abnormal signs or laboratory findings. Evaluations of musculoskeletal impairments should be supported where applicable by detailed descriptions of the joints, including ranges of motion, condition of the musculature, sensory or reflex changes, circulatory deficits, and X-ray abnormalities.

B. *Disorders of the spine,* associated with vertebrogenic disorders as in 1.05C, result in impairment because of distortion of the bony and ligamentous architecture of the spine or impingement of a herniated nucleus pulposus or bulging annulus on a nerve root. Impairment caused by such abnormalities usually improves with time or responds to treatment. Appropriate abnormal physical findings must be shown to persist on repeated examinations despite therapy for a reasonable presumption to be made that severe impairment will last for a continuous period of 12 months. This may occur in cases with unsuccessful prior surgical treatment.

Evaluation of the impairment caused by disorders of the spine requires that a clinical diagnosis of the entity to be evaluated first must be established on the basis of adequate history, physical examination, and roentgenograms. The specific findings stated in 1.05C represent the level required for that impairment; these findings, by themselves, are not intended to represent the basis for establishing the clinical diagnosis. Furthermore, while neurological examination findings are required, they are not to be interpreted as a basis for evaluating the magnitude of any neurological impairment. Neurological impairments are to be evaluated under 11.00–11.19.

The history must include a detailed description of the character, location, and radiation of pain; mechanical factors which incite and relieve pain; prescribed treatment, including type, dose, and frequency of analgesic; and typical daily activities. Care must be taken to ascertain that the reported examination findings are consistent with the individual's daily activities.

There must be a detailed description of the orthopedic and neurologic examination findings. The findings should include a description of gait, limitation of movement of the spine given quantitatively in degrees from the vertical position, motor and sensory abnormalities, muscle spasm, and deep tendon reflexes. Observations of the individual during the examination should be reported; e.g., how he or she gets on and off the examining table. Inability to walk on heels or toes, to squat, or to arise from a squatting position, where appropriate, may be considered evidence of significant motor loss. However, a report of atrophy is not acceptable as evidence of significant motor loss without circumferential measurements of both thighs and lower legs (or upper or lower arms) at a stated point above and below the knee or elbow given in inches or centimeters. A specific description of atrophy of hand muscles is acceptable without measurements of atrophy but should include measurements of grip strength.

These physical examination findings must be determined on the basis of objective observations during the examination and not simply a report of the individual's allegation, e.g., he says his leg is weak, numb, etc. Alternative testing methods should be used to verify the objectivity of the abnormal findings, e.g., a seated straight-leg raising test in addition to a supine straight-leg raising test. Since abnormal findings may be intermittent, their continuous presence over a period of time must be established by a record of ongoing treatment. Neurological abnormalities may not completely subside after surgical or nonsurgical treatment, or with the passage of time. Residual neurological abnormalities, which persist after it has been determined clinically or by direct surgical or other observation that the ongoing or progressive condition is no longer present, cannot be considered to satisfy the required findings in 1.05C.

Where surgical procedures have been performed, documentation should include a copy of the operative note and available pathology reports.

Electrodiagnostic procedures and myelography may be useful in establishing the clinical diagnosis, but do not constitute alternative criteria to the requirements in 1.05C.

C. *After maximum benefit from surgical therapy* has been achieved in situations involving fractures of an upper extremity (see 1.12) or soft tissue injuries of a lower or upper extremity (see 1.13), i.e., there have been no significant changes in physical findings or X-ray findings for any 6-month period after the last definitive surgical procedure, evaluation should be made on the basis of demonstrable residuals.

D. *Major joints* as used herein refer to hip, knee, ankle, shoulder, elbow, or wrist and hand. (Wrist and hand are considered together as one major joint.)

E. *The measurements of joint motion are* based on the techniques described in the "Joint Motion Method of Measuring and Recording," published by the American Academy of Orthopedic Surgeons in 1965, or the "Guides to the Evaluation of Permanent Impairment—The Extremities and Back" (Chapter I); American Medical Association, 1971.

1.01 Category of Impairments, Musculoskeletal

1.02 *Active rheumatoid arthritis and other inflammatory arthritis.*

With both A and B.

A. History of persistent joint pain, swelling, and tenderness involving multiple major joints (see 1.00D) and with signs of joint inflammation (swelling and tenderness) on current physical examination despite prescribed therapy for at least 3 months, resulting in significant restriction of function of the affected joints, and clinical activity expected to last at least 12 months; and

B. Corroboration of diagnosis at some point in time by either.

1. Positive serologic test for rheumatoid factor; or

2. Antinuclear antibodies; or

3. Elevated sedimentation rate; or

4. Characteristic histologic changes in biopsy of synovial membrane or subcutaneous nodule (obtained independent of Social Security disability evaluation).

1.03 *Arthritis of a major weight-bearing joint (due to any cause):*

With history of persistent joint pain and stiffness with signs of marked limitation of motion or abnormal motion of the affected joint on current physical examination. With:

A. Gross anatomical deformity of hip or knee (e.g. subluxation, contracture, bony or fibrous ankylosis, instability) supported by X-ray evidence of either significant joint space narrowing or significant bony destruction and markedly limiting ability to walk and stand; or

B. Reconstructive surgery or surgical arthrodesis of a major weight-bearing joint and return to full weight-bearing status did not occur, or is not expected to occur, within 12 months of onset.

1.04 *Arthritis of one major joint in each of the upper extremities (due to any cause):*

With history of persistent joint pain and stiffness, signs of marked limitation of motion of the affected joints on current physical examination, and X-ray evidence of either significant joint space narrowing or significant bony destruction. With:

A. Abduction and forward flexion (elevation) of both arms at the shoulders, including scapular motion, restricted to less than 90 degrees; or

B. Gross anatomical deformity (e.g., subluxation, contracture, bony or fibrous ankylosis, instability, ulnar deviation) and enlargement or effusion of the affected joints.

1.05 *Disorders of the spine:*

A. Arthritis manifested by ankylosis or fixation of the cervical or dorsolumbar spine at 30° or more of flexion measured from the neutral postion, with X-ray evidence of:

1. Calcification of the anterior and lateral ligaments; or

2. Bilateral ankylosis of the sacroiliac joints with abnormal apophyseal articulations; or

B. Osteoporosis, generalized (established by X-ray) manifested by pain and limitation of back motion and paravertebral muscle spasm with X-ray evidence of either:

1. Compression fracture of a vertebral body with loss of at least 50 percent of the estimated height of the vertebral body prior

to the compression fracture, with no intervening direct traumatic episode; or

2. Multiple fractures of vertebrae with no intervening direct traumatic episode; or

C. Other vertebrogenic disorders (e.g., herniated nucleus pulposus, spinal stenosis) with the following persisting for at least 3 months despite prescribed therapy and expected to last 12 months. With both 1 and 2:

1. Pain, muscle spasm, and significant limitation of motion in the spine; and

2. Appropriate radicular distribution of significant motor loss with muscle weakness and sensory and reflex loss.

1.08 *Osteomyelitis or septic arthritis (established by X-ray):*

A. Located in the pelvis, vertebra, femur, tibia, or a major joint of an upper or lower extremity, with persistent activity or occurrence of at least two episodes of acute activity within a 5-month period prior to adjudication, manifested by local inflammatory, and systemic signs and laboratory findings (e.g., heat, redness, swelling, leucocytosis, or increased sedimentation rate) and expected to last at least 12 months despite prescribed therapy; or

B. Multiple localizations and systemic manifestations as in A above.

1.09 *Amputation or anatomical deformity of (i.e., loss of major function due to degenerative changes associated with vascular or neurological deficits, traumatic loss of muscle mass or tendons and X-ray evidence of bony ankylosis at an unfavorable angle, joint subluxation or instability):*

A. Both hands; or

B. Both feet; or

C. One hand and one foot.

1.10 *Amputation of one lower extremity (at or above the tarsal region):*

A. Hemipelvectomy or hip disarticulation; or

B. Amputation at or above the tarsal region due to peripheral vascular disease or diabetes mellitus; or

C. Inability to use a prosthesis effectively, without obligatory assistive devices, due to one of the following:

1. Vascular disease; or

2. Neurological complications (e.g., loss of position sense); or

3. Stump too short or stump complications persistent, or are expected to persist, for at least 12 months from onset; or

4. Disorder of contralateral lower extremity which markedly limits ability to walk and stand.

1.11 *Fracture of the femur, tibia, tarsal bone of pelvis* with solid union not evident on X-ray and not clinically solid, when such determination is feasible, and return to full weight-bearing status did not occur or is not expected to occur within 12 months of onset.

1.12 *Fractures of an upper extremity* with non-union of a fracture of the shaft of the humerus, radius, or ulna under continuing surgical management directed toward restoration of functional use of the extremity and such function was not restored or expected to be restored within 12 months after onset.

1.13 *Soft tissue injuries of an upper or lower extremity* requiring a series of staged surgical procedures within 12 months after onset for salvage and/or restoration of major function of the extremity, and such major function was not restored or expected to be restored within 12 months after onset.

2.00 **Special Senses and Speech**

A. *Ophthalmology*

1. *Causes of impairment.* Diseases or injury of the eyes may produce loss of central or peripheral vision. Loss of central vision results in inability to distinguish detail and prevents reading and fine work. Loss of peripheral vision restricts the ability of an individual to move about freely. The extent of impairment of sight should be determined by visual testing.

2. *Central visual acuity.* A loss of central visual acuity may be caused by impaired distant and/or near vision. However, for an individual to meet the level of severity described in 2.02 and 2.04, only the remaining central visual acuity for distance of the better eye with best correction based on the Snellen test chart measurement may be used. Correction obtained by special visual aids (e.g., contact lenses) will be considered if the individual has the ability to wear such aids.

3. *Field of vision.* Impairment of peripheral vision may result if there is contraction of the visual fields. The contraction may be either symmetrical or irregular. The extent of the remaining peripheral visual field will be determined by usual perimetric methods at a distance of 330 mm. under illumination of not less than 7-foot candles. For the phakic eye (the eye with a lens), a 3 mm. white disc target will be used, and for the aphakic eye (the eye without the lens), a 6 mm. white disc target will be used. In neither instance should corrective spectacle lenses be worn during the examination but if they have been used, this fact must be stated.

Measurements obtained on comparable perimetric devices may be used; this does not include the use of tangent screen measurements. For measurements obtained using the Goldmann perimeter, the object size designation III and the illumination designation 4 should be used for the phakic eye, and the object size designation IV and illumination designation 4 for the aphakic eye.

Field measurements must be accompanied by notated field charts, a description of the type and size of the target and the test distance. Tangent screen visual fields are not acceptable as a measurement of peripheral field loss.

Where the loss is predominantly in the lower visual fields, a system such as the weighted grid scale for perimetric fields described by B. Esterman (see Grid for Scoring Visual Fields, II. Perimeter, *Archives of Ophthalmology*, 79:400, 1968) may be used for determining whether the visual field loss is comparable to that described in Table 2.

4. *Muscle function.* Paralysis of the third cranial nerve producing ptosis, paralysis of accommodation, and dilation and immobility of the pupil may cause significant visual impairment. When all the muscle of the eye are paralyzed including the iris and ciliary body (total ophthalmoplegia), the condition is considered a severe impairment provided it is bilateral. A finding of severe impairment based primarily on impaired muscle function must be supported by a report of an actual measurement of ocular motility.

5. *Visual efficiency.* Loss of visual efficiency may be caused by disease or injury resulting in a reduction of central visual acuity or visual field. The visual efficiency of one eye is the product of the percentage of central visual efficiency and the percentage of visual field efficiency. (See Tables No. 1 and 2, following 2.09.)

6. *Special situations.* Aphakia represents a visual handicap in addition to the loss of central visual acuity. The term monocular aphakia would apply to an individual who has had the lens removed from one eye, and who still retains the lens in his other eye, or to an individual who has only one eye which is aphakic. The term binocular aphakia would apply to an individual who has had both lenses removed. In cases of binocular aphakia, the central efficiency of the better eye will be accepted as 75 percent of its value. In cases of monocular aphakia, where the better eye is aphakic, the central visual efficiency will be accepted as 50 percent of the value. (If an individual has binocular aphakia, and the central visual acuity in the poorer eye can be corrected only to 20/200, or less, the central visual efficiency of the better eye will be accepted as 50 percent of its value.)

Ocular symptoms of systemic disease may or may not produce a disabling visual impairement. These manifestations should be evaluated as part of the underlying disease entity by reference to the particular body system involved.

7. *Statutory blindness.* The term "statutory blindness" refers to the degree of visual impairment which defines the term "blindness" in the Social Security Act. Both 2.02 and 2.03 A and B denote statutory blindness.

B. *Otolaryngology*

1. *Hearing impairment.* Hearing ability should be evaluated in terms of the person's ability to hear and distinguish speech.

Loss of hearing can be quantitatively determined by an audiometer which meets the standards of the American National Standards Institute (ANSI) for air and bone conducted stimuli (i.e., ANSI S 3.6–1969 and ANSI S 3.13–1972, or subsequent comparable revisions) and performing all hearing measurements in an environment which meets the ANSI standard for maximal permissible background sound (ANSI S 3.1–1977).

Speech discrimination should be determined using a standardized measure of speech discrimination ability in quiet at a test presentation level sufficient to ascertain maximum discrimination ability. The speech discrimination measure (test) used, and the level at which testing was done, must be reported.

Hearing tests should be preceded by an otolaryngologic examination and should be performed by or under the supervision of an otolaryngologist or audiologist qualified to perform such tests.

In order to establish an independent medical judgment as to the level of impairment in a claimant alleging deafness,

the following examinations should be reported: Otolaryngologic examination, pure tone air and bone audiometry, speech reception threshold (SRT), and speech discrimination testing. A copy of reports of medical examination and audiologic evaluations must be submitted.

Cases of alleged "deaf mutism" should be documented by a hearing evaluation. Records obtained from a speech and hearing rehabilitation center or a special school for the deaf may be acceptable, but if these reports are not available, or are found to be inadequate, a current hearing evaluation should be submitted as outlined in the preceding paragraph.

2. *Vertigo associated with disturbances of labyrinthine-vestibular function, including Meniere's disease.* These disturbances of balance are characterized by an hallucination of motion or loss of position sense and a sensation of dizziness which may be constant or may occur in paroxysmal attacks. Nausea, vomiting, ataxia, and incapacitation are frequently observed, particularly during the acute attack. It is important to differentiate the report of rotary vertigo from that of "dizziness" which is described as lightheadedness, unsteadiness, confusion, or syncope.

Meniere's disease is characterized by paroxysmal attacks of vertigo, tinnitus, and fluctuating hearing loss. Remissions are unpredictable and irregular, but may be longlasting; hence, the severity of impairment is best determined after prolonged observation and serial reexaminations.

The diagnosis of a vestibular disorder requires a comprehensive neuro-otolaryngologic examination with a detailed description of the vertiginous episodes, including notation of frequency, severity, and duration of the attacks. Pure tone and speech audiometry with the appropriate special examinations, such as Bekesy audiometry, are necessary. Vestibular functions is assessed by positional and caloric testing, preferably by electronystagmography. When polytograms, contrast radiography, or other special tests have been performed, copies of the reports of these tests should be obtained in addition to reports of skull and temporal bone X-rays.

3. *Organic loss of speech.* Glossectomy or larynegectomy or cicatricial laryngeal stenosis due to injury or infection results in loss of voice production by normal means. In evaluating organic loss of speech (see 2.09), ability to produce speech by any means includes the use of mechanical or electronic devices. Impairment of speech due to neurologic disorders should be evaluated under 11.00–11.19.

2.01 Category of Impairments, Special Senses and Speech

2.02 *Impairment of central visual acuity.* Remaining vision in the better eye after best correction is 20/200 or less.

2.03 *Contraction of peripheral visual fields in the better eye.*

A. To 10° or less from the point of fixation; or

B. So the widest diameter subtends an angle no greater than 20°; or

C. To 20 percent or less visual field efficiency.

2.04 *Loss of visual efficiency.* Visual efficiency of better eye after best correction 20 percent or less. (The percent of remaining visual efficiency = the product of the percent of remaining central visual efficiency and the percent of remaining visual field efficiency.)

2.05 *Complete homonymous hemianopsia* (with or without macular sparing). Evaluate under 2.04.

2.06 *Total bilateral ophthalmoplegia.*

2.07 *Disturbance of labyrinthine-vestibular function (including Meniere's disease),* characterized by a history of frequent attacks of balance disturbance, tinnitus, and progressive loss of hearing. With both A and B:

A. Disturbed function of vestibular labyrinth demonstrated by caloric or other vestibular tests; and

B. Hearing loss established by audiometry.

2.08 *Hearing impairments* (hearing not restorable by a hearing aid) manifested by:

A. Average hearing threshold sensitivity for air conduction of 90 decibels or greater and for bone conduction to corresponding maximal levels, in the better ear, determined by the simple average of hearing threshold levels at 500, 1000 and 2000 hz. (see 2.00B1); or

B. Speech discrimination scores of 40 percent or less in the better ear;

2.09 *Organic loss of speech* due to any cause with inability to produce by any means speech which can be heard understood and sustained.

TABLE NO. 1—PERCENTAGE OF CENTRAL VISUAL EFFICIENCY CORRESPONDING TO CENTRAL VISUAL ACUITY NOTATIONS FOR DISTANCE IN THE PHAKIC AND APHAKIC EYE (BETTER EYE)

Snellen		Percent central visual efficiency		
English	Metric	Phakic [1]	Aphakic monocular [2]	Aphakic binocular [3]
20/16	6/5	100	50	75
20/20	6/6	100	50	75
20/25	6/7.5	95	47	71
20/32	6/10	90	45	67
20/40	6/12	85	42	64
20/50	6/15	75	37	56
20/64	6/20	65	32	49
20/80	6/24	60	30	45
20/100	6/30	50	25	37
20/125	6/38	40	20	30
20/160	6/48	30	.....	22
20/200	6/60	20	.....	.....

Column and Use.

[1] Phakic.—1. A lens is present in both eyes. 2. A lens is present in the better eye and absent in the poorer eye. 3. A lens is present in one eye and the other eye is enucleated.

[2] Monocular.—1. A lens in absent in the better eye and present in the poorer eye. 2. The lenses are absent in both eyes; however, the central visual acuity in the poorer eye after best correction in 20/200 or less. 3. A lens is absent from one eye and the other eye is enucleated.

[3] Binocular.—1. The lenses are absent from both eyes and the central visual acuity in the poorer eye after best correction is greater than 20/200.

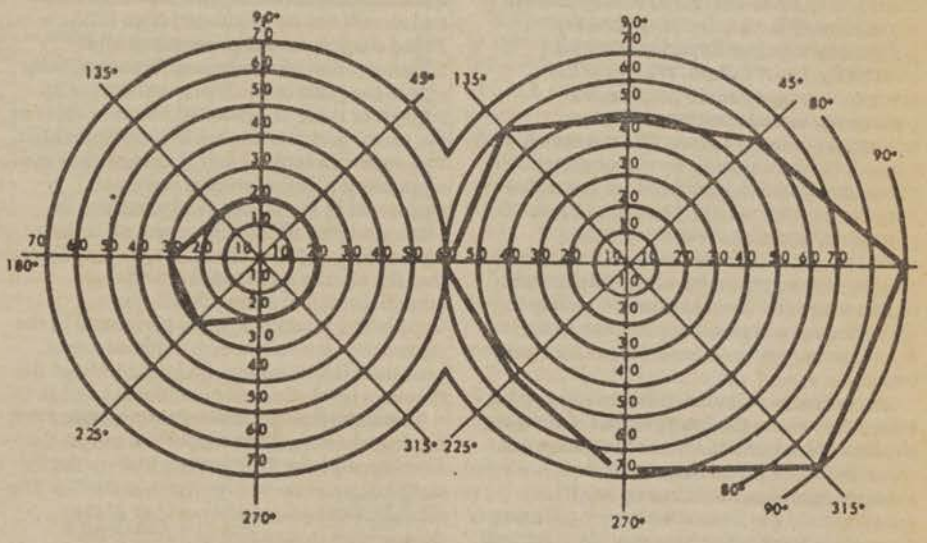


Table No. 2—Chart of Visual Field Showing Extent of Normal Field and Method of Computing Percent of Visual Field Efficiency

1. Diagram of right eye illustrates extent of normal visual field as tested on standard perimeter at 3/330 (3 mm. white disc at a distance of 330 mm.) under 7 foot-candles illumination. The sum of the eight principal meridians of this field total 500°.

2. The percent of visual field efficiency is obtained by adding the number of degrees of the eight principal meridians of the contracted field and dividing by 500. Diagram of left eye illustrates visual field contracted to 30° in the temporal and down and out meridians and to 20° in the remaining six meridians. The percent of visual field

efficiency of this field is: $6\times20+2\times30=180\div500=0.36$ or 36 percent remaining visual field efficiency, or 64 percent loss.

3.00 Respiratory System

A. *Introduction:* Impairments caused by the chronic disorder of the respiratory system generally result from irreversible loss of pulmonary functional capacity (ventilatory impairment, gas exchange impairment, or a combination of both). The most common symptom attributable to these disorders is dyspnea on exertion. Cough, wheezing, sputum production, hemoptysis, and chest pain may also occur, but need not be present. However, since these symptoms are common to many other diseases, evaluation of impairments of the respiratory system requires a history, physical examination, and chest roentgenogram to establish the diagnosis of a chronic respiratory disorder. Pulmonary function testing is required to provide a basis for assessing the impairment, once the diagnosis is established by appropriate clinical findings.

Alteration of ventilatory function may be due primarily to chronic obstructive pulmonary disease (emphysema, chronic bronchitis, chronic asthmatic bronchitis) or restrictive disorders with primary loss of lung volume (pulmonary resection, thoracoplasty, chest cage deformity as seen in kyphoscoliosis), or infiltrative interstitial disorders (diffuse fibrosis). Impairment of gas exchange without significant airway obstruction may be produced by interstitial disorders (diffuse fibrosis). Primary disease of pulmonary circulation may produce pulmonary vascular hypertension and, eventually, heart failure. Whatever the mechanism, any chronic progressive pulmonary disorder may result in cor pulmonale or heart failure. Chronic infection caused, most frequently by mycobacterial or mycotic organisms, may produce extensive lung destruction resulting in marked loss of pulmonary functional capacity. Some disorders such as bronchiectasis and asthma may be characterized by acute, intermittent illnesses of such frequency and intensity that they produce a marked impairment apart from intercurrent functional loss, which may be mild.

Most chronic pulmonary disorders may be adequately evaluated on the basis of history, physical examination, chest roentgenogram, and ventilatory function tests. Direct assessment of gas exchange by exercise arterial blood gas determination or diffusing capacity is required only in specific relatively rare circumstances, depending on the clinical features and specific diagnosis.

B. *Mycobacterial and mycotic infections of the lung will be evaluated* on the basis of the resulting impairment to pulmonary function. Evidence of infectious or active mycobacterial or mycotic infection, such as positive cultures, increasing lesions, or cavitation, is not, by itself, a basis for determining that the individual has a severe impairment which is expected to last 12 months. However, if these factors are abnormally persistent, they should not be ignored. For example, in those unusual cases where there is evidence of persistent pulmonary infection caused by mycobacterial or mycotic organisms for a period closely approaching 12 consecutive months, the clinical findings, complications, treatment considerations, and prognosis must be carefully assessed to determine whether, despite the absence of impairment of pulmonary function, the individual has a severe impairment that can be expected to last for 12 consecutive months.

C. *When a respiratory impairment is episodic in nature,* as may occur in complications of bronchiectasis and asthmatic bronchitis, the frequency of severe episodes despite prescribed treatment is the criterion for determining the level of impairment. Documentation for episodic asthma should include the hospital or emergency room records indicating the dates of treatment, clinical findings on presentation, what treatment was given and for what period of time, and the clinical response. Severe attacks of episodic asthma, as listed in section 3.03B, are defined as prolonged episodes lasting at least several hours, requiring intensive treatment such as intravenous drug administration or inhalation therapy in a hospital or emergency room.

D. *Documentation of ventilatory function tests.* The results of ventilatory function studies for evaluation under tables I and II should be expressed in liters or liters per minute (BTPS). The reported one second forced expiratory volume (FEV_1) should represent the largest of at least three attempts. One satisfactory maximum voluntary ventilation (MVV) is sufficient. The MVV should represent the observed value and should not be calculated from FEV_1. These studies should be repeated after administration of a nebulized bronchodilator unless the prebronchodilator values are 80 percent or more of predicted normal values or the use of bronchodilators is contraindicated. The values in tables I and II assume that the ventilatory function studies were not performed in the presence of wheezing or other evidence of bronchospasm or, if these were present at the time of the examination, that the studies were repeated after administration of a bronchodilator. Ventilatory function studies performed in the presence of bronchospasm, without use of bronchodilators, cannot be found to meet the requisite level of severity in tables I and II.

The appropriately labeled spirometric tracing, showing distance per second on the abscissa and the distance per liter on the ordinate, must be incorporated in the file. The manufacturer and model number of the device used to measure and record the ventilatory function should be stated. If the spirogram was generated other than by direct pen linkage to a mechanical displacement-type spirometer, the spirometric tracing must show the calibration of volume units through mechanical means such as would be obtained using a giant syringe. The FEV_1 must be recorded at a speed of at least 20 mm. per second. Calculation of the FEV_1 from a flow volume loop is not acceptable. The recording device must provide a volume excursions of at least 10 mm. per liter. The MVV should be represented by the tidal excursions measured over a 10- to 15-second interval. Tracings showing only cumulative volume for the MVV are not acceptable. The ventilatory function tables are based on measurement of the height of the individual without shoes. Studies should not be performed during or soon after an acute respiratory illness. A statement should be made as to the individual's ability to understand the directions and cooperate in performing the test.

E. *Documentation of chronic impairment of gas exchange—Arterial blood gases and exercise tests.*

1. *Introduction:* Exercise tests with measurement of arterial blood gases at rest and during exercise should be purchased when not available as evidence of record in cases in which there is documentation of chronic pulmonary disease, but the existing evidence, including properly performed ventilatory function tests, is not adequate to evaluate the level of the impairment. Before purchasing arterial blood gas tests, medical history, physical examination, report of chest roentgenogram, ventilatory function tests, electrocardiographic tracing, and hematocrit must be obtained and should be evaluated by a physician competent in pulmonary medicine. Arterial blood gas tests should not be purchased where full development short of such purchase reveals that the impairment meets or equals any other listing or when the claim can be adjudicated on some other basis. Capillary blood analysis for PO_2 or PCO_2 is not acceptable. Analysis of arterial blood gases obtained after exercise is stopped is not acceptable.

Generally individuals with an FEV_1 greater than 2.5 liters or an MVV greater than 100 liters per minute would not be considered for blood gas studies unless diffuse interstitial pulmonary fibrosis was noted on chest X-ray or documented by tissue diagnosis. The exercise test facility should be provided with the clinical reports, report of chest roentgenogram, and spirometry results obtained by the DDS. The testing facility should determine whether exercise testing is clinically contraindicated. If an exercise test is clinically contraindicated, the reason for exclusion from the test should be stated in the report of the exercise test facility.

2. *Methodology.* Individuals considered for exercise testing first should have resting PaO_2, $PaCO_2$, and pH determinations by the testing facility. The samples should be obtained in the sitting or standing position. The individual should be exercised under steady state conditions, preferably on a treadmill for a period of 6 minutes at a speed and grade providing a workload of approximately 17 ml. O_2/kg./min. If a bicycle ergometer is used, an exercise equivalent of 450 kgm./min., or 75 watts, should be used. At the option of the facility, a warm-up period of treadmill walking may be performed to acquaint the applicant with the procedure. If, during the warm-up period, the individual cannot exercise at the designated level, a lower speed and/or grade may be selected in keeping with the exercise capacity estimate. The individual should be monitored by electrocardiogram throughout the exercise and representative strips taken to provide heart rate in each minute of exercise. During the 5th or 6th minute of

exercise, an arterial blood gas sample should be drawn and analyzed for PO_2, PCO_2, and pH. If the facility has the capability, and at the option of the DDS and the facility, minute ventilation (BTPS) and oxygen consumption per minute (STPD) and CO_2 production (STPD) should be measured during the 5th or 6th minute of exercise. If the individual fails to complete 6 minutes of exercise, the facility should comment on the reason.

The report should contain representative strips of electrocardiograms taken during the exercise, hematocrit, resting and exercise arterial blood gas value, speed and grade of the treadmill or bicycle ergometer exercise level in watts or kgm./min., and duration of exercise. The altitude of the test site, barometric pressure, and normal range of blood gas values for that facility should also be reported.

3. *Evaluation.* Three tables are provided in Listing 3.02C1 for evaluation of arterial blood gas determinations at rest and during exercise. The blood gas levels in Listing 3.02C1, Table III–A, are applicable at test sites situated at less than 3,000 feet above sea level. The blood gas levels in Listing 3.02C1, Table III–B, are applicable at test sites situated at 3,000 through 6,000 feet above sea level. The blood gas levels in Listing 3.02C1, Table III–C, are applicable for test sites over 6,000 feet above sea level. Tables III–B and C, take into account the lower blood PaO_2 normally found in individuals tested at the higher altitude. When the barometric pressure is unusually high for the altitude at the time of testing, consideration should be given to those cases in which the PaO_2 falls slightly above the requirements of Table III–A, III–B, or III–C, whichever is appropriate for the altitude at which testing was performed.

3.01 Category of Impairments, Respiratory

3.02 *Chronic Pulmonary Insufficiency.*

With:

A. Chronic obstructive pulmonary disease (due to any cause). With: Both FEV_1 and MVV equal to or less than values specified in Table I corresponding to the person's height without shoes.

TABLE I

Height without shoes (inches)	FEV_1 and MVV	
	Equal to or less than (L, BTPS)	(MBC) equal to or less than (L/min., BTPS)
60 or less	1.0	40
61–63	1.1	44
64–65	1.2	48
66–67	1.3	52
68–69	1.4	56
70–71	1.5	60
72 or more	1.6	64

or

B. *Chronic restrictive ventilatory disorders.* With: Total vital capacity equal to or less than values specified in Table II corresponding to the person's height without shoes. In severe kyphoscoliosis, the measured span between the fingertips when the upper extremities are abducted 90 degrees should be substituted for height.

TABLE II

Height without shoes (inches)	VC equal to or less than (L, BTPS)
60 or less	1.2
61–63	1.3
64–65	1.4
66–67	1.5
68–69	1.6
70–71	1.7
72–or more	1.8

or

C. Chronic impairment of gas exchange (due to any cause). With:

1. Steady-state exercise blood gases demonstrating values of PaO_2 and simultaneously determined $PaCO_2$, measured at a workload of approximately 17 ml. O_2/kg./min. or less of exercise, equal to or less than the values specified in Table III–A or III–B or III–C.

TABLE III—A

[Applicable at test sites less than, 3,000 feet above sea level]

Arterial PCO_2 (mm. Hg)	Arterial PO_2 and equal to or less than (mm. Hg)
30 or below	65
31	64
32	63
33	62
34	61
35	60
36	59
37	58
38	57
39	56
40 or above	55

TABLE III—B

[Applicable at test sites 3,000 through 6,000 feet above sea level]

Arterial PCO_2 (mm. Hg)	Arterial PCO_2 and equal to or less than (mm. Hg)
30 or below	60
31	59
32	58
33	57
34	56
35	55
36	54
37	53
38	52
39	51
40 or above	50

TABLE III—C

[Applicable at test sites over 6,000 feet above sea level]

Arterial PCO_2 (mm. Hg) and	Arterial PO_2 equal to or less than (mm. Hg)
30 or below	56
31	54
32	53
33	52
34	51
35	50
36	49
37	48
38	47
39	46
40 or above	45

or

2. Diffusing capacity for the lungs for carbon monoxide less than 6 ml./mm. Hg/min. (steady-state methods) or less than 9 ml./mm. Hg/min. (single breath method) or less than 30 percent of predicted normal. (All method, actual values, and predicted normal values for the methods used should be reported.): or

D. Mixed obstructive ventilatory and gas exchange impairment. Evaluate under the criteria in 3.02A, B, and C.

3.03 *Asthma.* With:

A Chronic asthmatic bronchitis. Evaluate under the criteria for chronic obstructive ventilatory impairment in 3.02A, or

B. Episodes of severe attacks (See 3.00C), in spite of prescribed treatment, occurring at least once every 2 months or on an average of at lest 6 times a year, and prolonged expiration with wheezing or rhonchi on physical examination between attacks.

3.06 *Pneumoconiosis (demonstrated by roentgenographic evidence).* Evaluate under criteria in 3.02.

3.07 *Bronchiectasis (demonstrated by radio-opaque material).* With:

A. Episodes of acute bronchitis or pneumonia or hemoptysis (more than blood-streaked sputum) occurring at least every 2 months; or

B. Impairment of pulmonary function due to extensive disease should be evaluated under the applicable criteria in 3.02.

3.08 *Mycobacterial infection of the lung.* Impairment of pulmonary function due to extensive disease should be evaluated under appropriate criteria in 3.02.

3.09 *Mycotic infection of the lung.* Impairment of pulmonary function due to extensive disease should be evaluated under the appropriate criteria in 3.02.

3.11 *Cor pulmonale, or pulomonary vascular hypertension.* Evaluate under the criteria in 4.02D.

4.00 Cardiovascular System

A. *Severe cardiac impairment* results from one or more of three consequences of heart disease: (1) congestive heart failure; (2) ischemia (with or without necrosis) of heart muscle; (3) conduction disturbances and/or arrhythmias resulting in cardiac syncope.

With diseases of arteries and veins, severe impairment may result from disorders of the vasculature in the central nervous system, eyes, kidneys, extremities, and other organs.

The criteria for evaluating impairment resulting from heart diseases or diseases of the blood vessels are based on symptoms, physical signs and pertinent laboratory findings.

B. *Congestive heart failure* is considered in the Listing under one category whatever the etiology (i.e., arteriosclerotic, hypertenaive, rheumatic, pulmonary, congenital, or other organic heart diseases). Congestive heart failure is not considered to have been established for the purpose of 4.02 unless there is evidence of vascular congestion such as hepatomegaly or peripheral or pulmonary edema which is consistent with clinical diagnosis. (Radiological description of vascular congestion, unless supported by appropriate clinical evidence, should not be construed as pulmonary edema.) The findings of vascular congestion need not be present at the time of adjudication (except for 4.02A), but must be casually related to the current episode of marked impairment. The findings other than vascular congestion must be persistent.

Other congestive, ischemic, or restrictive (obstructive) heart diseases such as caused by cardiomyopathy or aortic stenosis may result in signficant impairment dues to congestive heart failure, rhythm disturbances, or ventricular outflow obstruction in the absence of left ventricular enlargement as described in 4.02B1. However, the ECG criteria as defined in 4.02B2 should be fulfilled. Clinical findings such as symptions of dyspnea, fatigue, rhythm disturbances, etc., should be documented and the diagnosis confirmed by echocardiography or at cardiac catheterization.

C. *Hypertensive vascular diseases* does not result in severe impairment unless it causes severe damage to one or more of four end organs; heart, brain, kidneys, or eyes. (retinae). The presence of such damage must be established by appropriate abnormal physical signs and laboratory findings as specified in 4.02 or 4.04, or for the body system involved.

D. *Ischemic heart diseases* may result in a marked impairment due to chest pain. Description of the pain must contain the clinical characteristics as discussed under 4.00E. In addition, the clinical impression of chest pain of cardiac origin must be supported by objective evidence as described under 4.00 F.G. or H.

E. *Chest pain of cardic origin* is considered to be pain which is precipitated by effort and promptly relieved by sublingual nitroglycerin or rapid-acting nitrates or rest. The character of the pain is classically described as crushing squeezing, burning, or oppressive pain located in the chest. Excluded is sharp, sticking or rhythmic pain. Pain occurring on exercise should be described specifically as to usual inciting factors (kind and degree), character, location, radiation, duration, and responses to nitroglycerin or rest.

So-called "anginal equivalent" locations manifested by pain in the throat, arms, or hands have the same validity as the chest pain described above. Status anginosus and variant angina of the Prinzmetal type (e.g., rest angina with transitory ST elevation on electrocardiogram) will be considered to have the same validity as classical angina pectoris as described above. Shortness of breath as an isolated finding should not be considered as an anginal equivalent.

Chest pain that appears to be of cardiac origin may be caused by noncoronary conditions. Evidence for the latter should be actively considered in determining whether the chest pain is of cardiac origin. Among the more common conditions which may masquerade as angina are gastrointestinal tract lesions such as biliary tract disease, esophagitis, hiatal hernia, peptic ulcer, and pancreatitis; and musculoskeletal lesions such as costochondritis and cervical arthritis.

F. *Documentation of electrocardiography.*

1. *Electrocardiograms obtained at rest* must be submitted in the original or a legible copy of a 12-lead tracing appropriately labeled, with the standardization inscribed on the tracing. Alteration in standardization of specific leads (such as to accommodate large ORS amplitudes) must be shown on those leads.

The effect of drugs, electrolyte imbalance, etc., should be considered as possible noncoronary causes of ECG abnormalities, especially those involving the ST segment. If needed and available, pre-drug (especially predigitalis) tracing should be obtained.

The term "ischemic" is used in 4.04 to describe a pathologic ST deviation. Nonspecific repolarization changes should not be confused with ischemic configurations or a current of injury.

Detailed descriptions or computer interpretations without the original or legible copies of the ECG are not acceptable.

2. *Electrocardiograms obtained in conjunction with exercise tests* must include the original tracings or a legible copy of appropriate leads obtained before, during, and after exercise. Test control tracings, taken before exercise in the upright position, must be obtained. An ECG after 20 seconds of vigorous hyperventilation should be obtained. A posthyperventilation tracing may be essential for the proper evaluation of an "abnormal" test in certain circumstances, such as in women with evidence of mitral valve prolapse. A tracing should be taken at approximately 5 METs of exercise and at the time the ECG becomes abnormal according to the criteria in 4.04A. The time of onset of these abnormal changes must be noted, and the ECG tracing taken at the time should be obtained. Exercise histograms without the original tracings or legible copies are not acceptable.

Whenever electrocardiographically documented stress test data are submitted, irrespective of the type, the standardization must be inscribed on the tracings and the strips must be labeled appropriately, indicating the times recorded. The degree of exercise achieved, the blood pressure levels during the test, and any reason for terminating the test must be included in the report.

G. *Exercise testing.*

1. *When to purchase.* Since the results of a treadmill exercise test are the primary basis for adjudicating claims under 4.04, they should be included in the file whenever they have been performed. There are also circumstances under which it will be appropriate to purchase exercise tests. Generally, these are limited to claims involving chest pain which is considered to be of cardiac origin but without corroborating ECG or other evidence of ischemic heart disease.

Exercise test should not be purchased in the absence of alleged chest pain of cardiac origin. Even in the presence of an allegation of chest pain of cardiac origin, an exercise test should not be purchased where full development short of such a purchase reveals that the impairment meets or equals any Listing or the claim can be adjudicated on some other basis.

2. *Methodology.* When an exercise test is purchased, it should be a treadmill type using a continuous progressive multistage regimen. The targeted heart rate should be not less than 85 percent of the maximum predicted heart rate unless it becomes hazardous to exercise to the heart rate or becomes unnecessary because the ECG meets the criteria in 4.04A at a lower heart rate (see also 4.00F.2). Beyond these requirements, it is prudent to accept the methodology of a qualified, competent test facility. In any case, a precise description of the protocol that was followed must be provided.

3. *Limitations of exercise testing.* Exercise testing should not be purchased for individuals who have the following: unstable progressive angina pectoris; recent onset (approximately 2 months) of angina; congestive heart failure; uncontrolled serious arrhythmias (including uncontrolled auricular fibrillation); second or third-degree heart block; Wolff-Parkinson-White syndrome; uncontrolled marked hypertension; marked aortic stenosis; marked pulmonary hypertension; dissecting or ventricular aneurysms; acute illness; limiting neurological or musculoskeletal impairments; or for individuals on medication where performance of stress testing may constitute a significant risk.

The presence of noncoronary or nonischemic factors which may influence the ECG response to exercise include hypokalemia, hyperventilation, vasoregulatory asthenia, significant anemia, left bundle branch block, and other heart disease, particularly valvular.

Digitalis may cause ST segment abnormalities at rest, during, and after exercise. Digitalis-related ST depression, present at rest, may become accentuated and result in false interpretations of the ECG taken during or after exercise test.

4. *Evaluation.* Where the evidence includes the results of a treadmill exercise test, this evidence is the primary basis for adjudicating claims under 4.04. For purposes of this Social Security disability program, treadmill exercise testing will be evaluated on the basis of the level at which the test becomes positive in accordance with the ECG criteria in 404A. However, the significance of findings of a treadmill exercise test must be considered in light of the clinical course of the disease which may have occurred subsequent to performance of the exercise

test. The criteria in 4.04B are not applicable if there is documentation of an acceptable treadmill exercise test, it there is no evidence of a treadmill exercise test or if the test is not acceptable, the criteria in 4.04B should be used. The level of exercise is considered in terms of multiples of MET's (metabolic equivalent units). One MET is the basal O_2 requirement of the body in an inactive state, sitting quiely. It is considered by most authorities to be approximately 3.5 ml. O_2/kg./min.

H. *Angiographic evidence.*

1. *Coronary arteriography.* This procedure is not to be purchased by the Social Security Administration. Should the results of such testing be available, the report should be considered as to the quality and kind of data provided and its applicability to the requirements of the Listing of Impairments. A copy of the report of the catheterization and ancillary studies should be obtained. The report should provide information as to the technique used, the method of assessing coronary lumen diameter, and the nature and location of any obstructive lesions.

It is helpful to know the method used, the number of projections, and whether selective engagement of each coronary vessel was satisfactorily accomplished. It is also important to know whether the injected vessel was entirely and uniformly opacified, thus avoiding the artifactual appearance of narrowing or an obstruction.

Coronary artery spasm induced by intracoronary catheterization is not to be considered as evidence of ischemic heart disease.

Estimation of the functional significance of an obstructive lesion may also be aided by description of how well the distal part of the vessel is visualized. Some patients with significant proximal coronary atherosclerosis have well-developed large collateral blood supply to the distal vessels without evidence of myocardial damage or ischemia, even under conditions of severe stress.

2. *Left ventriculography.* The report should describe the local contractility of the myocardium as may be evident from areas of hypokinesia, dyskinesia, or akinesia; and the overall contractility of the myocardium as measured by the ejection fraction.

3. *Proximal coronary arteries* (see 4.04B7) will be considered as the:

a. Right coronary artery proximal to the acute marginal branch; or

b. Left anterior descending coronary artery proximal to the first septal perforator; or

c. Left circumflex coronary artery proximal to the first obtuse marginal branch.

I. *Results of other tests.* Information from adequate reports of other tests such as radionuclide studies or echocardiography should be considered where that information is comparable to the requirements in the listing. An ejection fraction measured by echocardiography is not determinative, but may be given consideration in the context of associated findings.

J. *Major surgical procedures.* The amount of function restored and the time required to effect improvement after heart or vascular surgery vary with the nature and extent of the disorder, the type of surgery, and other individual factors. If the criteria described for heart or vascular disease are met, proposed heart or vascular surgery (coronary artery bypass procedure, valve replacement, major arterial grafts, etc.) does not militate against a finding of disability with subsequent assessment postoperatively.

The usual time after surgery for adequate assessment of the results of surgery is considered to be approximately 3 months. Assessment of the magnitude of the impairment following surgery requires adequate documentation of the pertinent evaluations and tests performed following surgery, such as an interval history and physical examination, with emphasis on those signs and symptoms which might have changed postoperatively, as well as X-rays and electrocardiograms. Where treadmill exercise tests or angiography have been performed following the surgical procedure, the results of these tests should be obtained.

Documentation of the preoperative evaluation and a description of the surgical procedure are also required. The evidence should be documented from hospital records (catheterization reports, coronary arteriographic reports, etc.) and the operative note.

Implantation of a cardiac pacemaker is not considered a major surgical procedure for purposes of this section.

K. *Evaluation of peripheral arterial disease.* The evaluation of peripheral arterial disease is based on medically acceptable clinical findings providing adequate history and physical examination findings describing the impairment, and on documentation of the appropriate laboratory techniques. The specific findings stated in Listing 4.13 represent the level of severity of that impairment; these findings, by themselves, are not intended to represent the basis for establishing the clinical diagnosis. The level of the impairment is based on the symptomatology, physical findings, Doppler studies before and after a standard exercise test, and/or angiographic findings.

The requirements for evaluation of peripheral arterial disease in Listing 4.13B are based on the ratio of systolic blood pressure at the ankle, determined by Doppler study, to the systolic blood pressure at the brachial artery determined at the same time. Results of plethysmographic studies, or other techniques providing systolic blood pressure determinations at the ankle, should be considered where the information is comparable to the requirements in the listing.

Listing 4.13B.1 provides for determining that the listing is met when the resting ankle/brachial systolic blood pressure ratio is less than 0.50. Listing 4.13B.2 provides additional criteria for evaluating peripheral arterial impairment on the basis of exercise studies when the resting ankle/brachial systolic blood pressure ratio is 0.50 or above. The results of exercise studies should describe the level of exercise (e.g., speed and grade of the treadmill settings), the duration of exercise, symptoms during exercise, the reasons for stopping exercise if the expected level of exercise was not attained, blood pressures at the ankle and other pertinent levels measured after exercise, and the time required to return the systolic blood pressure toward or to, the preexercise level. When exercise Doppler studies are purchased by the Social Security Administration, it is suggested that the requested exercise be on a treadmill at 2 mph. on a 12 percent grade for 5 minutes. Exercise studies should not be performed on individuals for whom exercise is contraindicated. The methodology of a qualified, competent facility should be accepted. In any case, a precise description of the protocol that was followed must be provided.

It must be recognized that application of the criteria in Listing 4.13B may be limited in individuals who have severe calcific (Monckeberg's) sclerosis of the peripheral arteries or severe small vessel disease in individuals with diabetes mellitus.

4.01 Category of Impairments, Cardiovascular System

4.02 *Congestive heart failure [manifested by evidence of vascular congestion such as hepatomegaly, peripheral or pulmonary edema].* With:

A. Persistent congestive heart failure on clinical examination despite prescribed therapy; or

B. Persistent left ventricular enlargement and hypertrophy documented by both:

1. Extension of the cardiac shadow (left ventricle) to the vertebral column on a left lateral chest roentgenogram; and

2. ECG showing QRS duration less than 0.12 second with S_{v1} plus R_{v5} (or R_{v6}) of 35 mm. or greater *and* ST segment depressed more than 0.5 mm. *and* low, diphasic or inverted T waves in leads with tall R waves: or

C. Persistent "mitral" type heart involvement documented by left atrial enlargement shown by double shadow on PA chest roentgenogram (or characteristic distortion of barium-filled esophagus) and either;

1. ECG showing QRS duration less than 0.12 second with S_{v1} plus R_{v5} (or R_{v6}) of 35 mm. or greater *and* ST segment depressed more than 0.5 mm. *and* low, diphasic or inverted T wavers in leads with tall R waves, or

2. ECG evidence of right ventricular hypertrophy with R wave of 5.0 mm. or greater in lead V_1 *and* progressive decrease in R/S amplitude from lead V_1 to V_5 or V_6; or

D. Cor pulmonale (non-acute) documented by both:

1. Right ventricular enlargement (or prominence of the right out-flow tract) on chest roentgenogram or fluoroscopy; and

2. ECG evidence of right ventricular hypertrophy with R wave of 5.0 mm. or greater in lead V_1 *and* progressive decrease in R/S amplitude from lead V_1 to V_5 or V_6

4.03 *Hypertensive vascular disease.* Evaluate under 4.02 04 4.04 or under the criteria for the affected body system.

4.04 *Ischemic heart disease with chest pain or cardiac origin as described in 4.00E* With:

A. Treadmill exercise test (see 4.00 F and (G) demonstrating one of the following at an exercise level of 5 METs or less:

1. Horizontal or downsloping depression (from the standing control) of the ST segment to 1.0 mm. or greater, lasting for at least 0.08 second after the J junction, and clearly

discernible in at least two consecutive complexes which are on a level baseline in any lead; or

2. Junctional depression occurring during exercise, remaining depressed (from the standing control) to 2.0 mm. or greater for at least 0.08 second after the J junction (the so-called slow upsloping ST segment), and clearly discernible in at least two consecutive complexes which are on a level baseline in any lead; or

3. Premature ventricular systoles which are multiform or bidirectional or are sequentially inscribed (3 or more); or

4. ST segment elevation (from the standing control) to 1 mm. or greater; or

5. Development of second or third degree heart block; or

B. In the absence of a report of an acceptable treadmill exercise test (see 4.00G), one of the following:

1. Transmural myocardial infarction exhibiting a QS pattern or a Q wave with amplitude at least ⅓rd of R wave and with a duration of 0.04 second or more. (If these are present in leads III and a VF only, the requisite Q wave findings must be shown, by labelled tracing, to persist on deep inspiration); or

2. Resting ECG findings showing ischemic-type (see 4.00F1) depression of ST segment to more than 0.5 mm. in either (a) leads I and a VL and V_6 or (b) leads II and III and a VF or (c) leads V_3 through V_6; or

3. Resting ECG findings showing an ischemic configuration or current of injury (see 4.00F1) with ST segment elevation to 2 mm. or more in either (a) leads I and a VL and V_6 or (b) leads II and III and a VF or (c) leads V_3 through V_6; or

4. Resting ECG findings showing symmetrical inversion of T waves to 5.0 mm. or more in any two leads except leads III or aVR or V_1 or V_2; or

5. Inversion of T wave to 1.0 mm. or more in any of leads I, II, aVL, V_2 to V_6 *and* R wave of 5.0 mm. or more in lead aVL *and* R wave greater than S wave in lead aVF; or

6. "Double" Master Two-Step test demonstrating one of the following:

a. Ischemic depression of ST segment to more than 0.5 mm. lasting for at least 0.08 second beyond the J junction and clearly discernible in at least two consecutive complexes which are on a level baseline in any lead; or

b. Development of a second or third degree heart block; or

7. Angiographic evidence (see 4.00H) (obtained independent of Social Security disability evaluation) showing one of the following:

a. 50 percent or more narrowing of the left main coronary artery; or

b. 70 percent or more narrowing of a *proximal* coronary artery (see 4.00H3) (excluding the left main coronary artery); or

c. 50 percent or more narrowing involving a long (greater than 1 cm.) segment of a proximal coronary artery or multiple proximal coronary arteries; or

8. Akinetic or hypokinetic myocardial wall or septal motion with left ventricular ejection fraction of 30 percent of less measured by contrast or radio-isotopic ventriculographic methods; or

C. Resting ECG findings showing left bundle branch block as evidenced by QRS duration of 0.12 second or more in leads I, II, or III *and* R peak duration of 0.06 second or more in leads I, aVL, V_5, or V_6, unless there is a coronary angiogram of record which is negative (see criteria in 4.04B7).

4.05 *Recurrent arrhythmias* (not due to digitalis toxicity) resulting in uncontrolled repeated episodes of cardiac syncope and documented by resting or ambulatory (Holter) electrocardiography.

4.09 *Myocardiopathies, rheumatic or syphilitic heart disease.* Evaluate under the criteria in 4.02, 4.04, 4.05, or 11.04.

4.11 *Aneurysm of aorta or major branches* (demonstrated by roentgenographic evidence). With:

A. Acute or chronic dissection not controlled by prescribed medical or surgical treatment; or

B. Congestive heart failure as described under the criteria in 4.02; or

C. Renal failure as described under the criteria in 6.02; or

D. Repeated snycopal episodes.

4.12 *Chronic venous insufficiency* of the lower extremity with incompetency or obstruction of the deep venous return, associated with superficial varicosities, extensive brawny edema, stasis dermatitis, and recurrent or persistent ulceration which has not healed following at least 3 months of prescribed medical or surgical therapy.

4.13 *Peripheral arterial disease.* With:

A. Intermittent claudication with failure to visualize (on arteriogram obtained independent of Social Security disability evaluation) the common femoral or deep femoral artery in one extremity; or

B. Intermittent claudication with marked impairment of peripheral arterial circulation as determined by Doppler studies showing:

1. Resting ankle/brachial systolic blood pressure ratio of less than 0.50; or

2. Decrease in systolic blood pressure at ankle or exercise (see 4.00K) to 50 percent or more of preexercise level *and* requiring 10 minutes or more to return to prexercise level; or

C. Amputation at or above the tarsal region due to peripheral arterial disease.

5.00 Digestive System

A. *Disorders of the digestive system* which result in a marked impairment usually do so because of interference with nutrition, multiple recurrent inflammatory lesions, or complications of disease, such as fistulae, abscesses, or recurrent obstruction. Such complications usually respond to treatment. These complications must be shown to persist on repeated examinations despite therapy for a reasonable presumption to be made that a marked impairment will last for a continuous period of at least 12 months.

B. *Malnutrition or weight loss from gastrointestinal disorders.* When the primary disorder of the digestive tract has been established (e.g. enterocolitis, chronic pancreatitis, postgastrointestinal resection, or esophageal stricture, stenosis, or obstruction), the resultant interference with nutrition will be considered under the criteria in 5.08. This will apply whether the weight loss is due to primary or secondary disorders of malabsorption, malassimilation or obstruction. However, weight loss not due to diseases of the digestive tract, but associated with psychiatric or primary endocrine or other disorders, should be evaluated under the appropriate criteria for the underlying disorder.

C. *Surgical diversion of the intestinal tract,* including colostomy or ileostomy, are not listed since they do not represent impairments which preclude all work activity if the individual is able to maintain adequate nutrition and function of the stoma. Dumping syndrome which may follow gastric resection rarely represents a marked impairment which would continue for 12 months. Peptic ulcer disease with recurrent ulceration after definitive surgery ordinarily responds to treatment. A recurrent ulcer after definitive surgery must be demonstrated on repeated upper gastrointestinal roentgenograms or gastroscopic examinations despite therapy to be considered a severe impairment which will last for at least 12 months. Definitive surgical procedures are those designed to control the ulcer disease process (i.e., vagotomy and pyloroplasty, subtotal gastrectomy, etc.). Simple closure of a perforated ulcer does not constitute definitive surgical therapy for peptic ulcer disease.

5.01 Category of Impairments, Digestive System

5.02 *Recurrent upper gastrointestinal hemorrhage from undetermined cause* with anemia manifested by hematocrit of 30 percent or less on repeated examinations.

5.03 *Stricture, stenosis, or obstruction of the esophagus (demonstrated by X-ray or endoscopy)* with weight loss as described under 5.08.

5.04 *Peptic ulcer disease (demonstrated by X-ray or endoscopy).* With:

A. Recurrent ulceration after definitive surgery persistent despite therapy; or

B. Inoperable fistula formation; or

C. Recurrent obstruction demonstrated by X-ray or endoscopy. or

D. Weight loss as described under 5.08.

5.05 *Chronic liver disease (e.g., portal, postnecrotic, or biliary cirrhosis; chronic active hepatitis; Wilson's disease).* With:

A. Esophageal varices (demonstrated by X-ray or endoscopy) with a documented history of massive hemorrhage attributable to these varices. Consider under a disability for 3 years following the last massive hemorrhage; thereafter, evaluate the residual impairment; or

B. Performance of a shunt operation for esophageal varices. Consider under a disability for 3 years following surgery; thereafter, evaluate the residual impairment; or

C. Serum bilirubin of 2.5 mg. per deciliter (100 ml.) or greater persisting on repeated examinations for at least 5 months; or

D. Ascites, not attributable to other causes, recurrent or persisting for at least 5 months, demonstrated by abdominal paracentesis or associated with persistent hypoalbuminemia of 3.0 gm. per deciliter (100 ml.) or less; or

E. Hepatic encephalopathy. Evaluate under the criteria in listing 12.02; or

F. Confirmation of chronic liver disease by liver biopsy (obtained independent of Social

Security disability evaluation) and one of the following:

1. Ascites not attributable to other causes, recurrent or persisting for at least 3 months, demonstrated by abdominal paracentesis or associated with persistent hypoalbuminemia of 3.0 gm. per deciliter (100 ml.) or less; or

2. Serum bilirubin of 2.5 mg. per deciliter (100 ml) or greater on repeated examinations for at least 3 months; or

3. Hepatic cell necrosis or inflammation, persisting for at least 3 months, documented by repeated abnormalities of prothrombin time and enzymes indicative of hepatic dysfunction.

5.06 *Chronic ulcerative or granulomatous colitis (demonstrated by endoscopy, barium enema, biopsy, or operative findings).* With:

A. Recurrent bloody stools documented on repeated examinations and anemia manifested by hematocrit of 30 percent or less on repeated examinations; or

B. Persistent or recurrent systemic manifestations, such as arthritis, iritis, fever, or liver dysfunction, not attributable to other causes; or

C. Intermittent obstruction due to intractable abscess, fistula formation, or stenosis; or

D. Recurrence of findings of A, B, or C above after total colectomy; or

E. Weight loss as described under 5.08.

5.07 *Regional enteritis (demonstrated by operative findings, barium studies, biopsy, or endoscopy).* With:

A. Persistent or recurrent intestinal obstruction evidenced by abdominal pain, distention, nausea, and vomiting and accompanied by stenotic areas of small bowel with proximal intestinal dilation; or

B. Persistent or recurrent systemic manifestations such as arthritis, iritis, fever, or liver dysfunction, not attributable to other causes; or

C. Intermittent obstruction due to intractable abscess or fistula formation; or

D. Weight loss as described under 5.08.

5.08 *Weight loss due to any persisting gastrointestinal disorder:* (The following weights are to be demonstrated to have persisted for at least 3 months despite prescribed therapy and expected to persist at this level for at least 12 months.) With:

A. Weight equal to or less than the values specified in Table I or II; or

B. Weight equal to or less than the values specified in Table III or IV and one of the following abnormal findings on repeated examinations:

1. Serum albumin of 3.0 gm. per deciliter (100 ml.) or less; or

2. Hematocrit of 30 percent or less; or

3. Serum calcium of 8.0 mg. per deciliter (100 ml.) (4.0 mEq./L) or less; or

4 Uncontrolled diabetes mellitus due to pancreatic dysfunction with repeated hyperglycemia, hypoglycemia, or ketosis; or

5. Fat in stool of 7 gm. or greater per 24-hour stool specimen; or

6. Nitrogen in stool of 3 gm. or greater per 24-hour specimen; or

7. Persistent or recurrent ascites or edema not attributable to other causes.

Tables of weight reflecting malnutrition scaled according to height and sex—To be used only in connection with 5.08.

TABLE I—MEN

Height (inches) [1]	Weight (pounds)
61	90
62	92
63	94
64	97
65	99
66	102
67	106
68	109
69	112
70	115
71	118
72	122
73	125
74	128
75	131
76	134

[1] Height measured without shoes.

TABLE II—WOMEN

Height (inches) [1]	Weight (pounds)
58	77
59	79
60	82
61	84
62	86
63	89
64	91
65	94
66	98
67	101
68	104
69	107
70	110
71	114
72	117
73	120

[1] Height measured without shoes.

TABLE III—MEN

Height (inches) [1]	Weight (pounds)
61	95
62	98
63	100
64	103
65	106
66	109
67	112
68	116
69	119
70	122
71	126
72	129
73	133
74	136
75	139
76	143

[1] Height measured without shoes.

TABLE IV—WOMEN

Height (inches) [1]	Weight (pounds)
58	82
59	84
60	87
61	89
62	92
63	94
64	97
65	100
66	104
67	107
68	111
69	114
70	117
71	121
72	124
73	128

[1] Height measured without shoes.

6.00 Genito-Urinary System

A. *Determination of the presence of chronic renal disease will be based upon* (1) a history, physical examination, and laboratory evidence of renal disease, and (2) indications of its progressive nature or laboratory evidence of deterioration of renal function.

B. *Nephrotic Syndrome.* The medical evidence establishing the clinical diagnosis must include the description of extent of tissue edema, including pretibial, periorbital, or presacral edema. The presence of ascites, pleural effusion, pericardial effusion, and hydroarthrosis should be described if present. Results of pertinent laboratory tests must be provided. If a renal biopsy has been performed, the evidence should include a copy of the report of microscopic examination of the specimen. Complications such as severe orthostatic hypotension, recurrent infections or venous thromboses should be evaluated on the basis of resultant impairment.

C. *Hemodialysis, peritioneal dialysis, and kidney transplantation.* When an individual is undergoing periodic dialysis because of chronic renal disease, severity of impairment is reflected by the renal function prior to the institution of dialysis.

The amount of function restored and the time required to effect improvement in an individual treated by renal transplant depend upon various factors, including adequacy of post transplant renal function, incidence and severity of renal infection, occurrence of rejection crisis, the presence of systemic complications (anemia, neunropathy, etc.) and side effects of corticosteroids or immunosuppressive agents. A convalesent period of at least 12 months is required before it can be reasonably determined whether the individual has reached a point of stable medical improvement.

D. *Evaluate associated disorders and complications* according to the appropriate body system Listing.

6.01 Category of Impairments, Genito-Urinary System

6.02 Impairment of renal function, due to any chronic renal disease expected to last 12 months (e.g., hypertensive vascular disease, chronic nephritis, nephrolithiasis, polycystic disease, bilateral hydronephrosis, etc.) With:

A. Chronic hemodialysis or peritoneal dialysis necessitated by irreversible renal failure; or

B. Kidney transplant. Consider under a disability for 12 months following surgery; thereafter, evaluate the residual impairment (see 6.00C); or

C. Persistent elevation of serum creatine in to 4 mg. per deciliter (100 ml.) or greater or reduction of creatinine clearance to 20 ml. per minute (29 liters/24 hours) or less, over at least 3 months, with one of the following:

1. Renal osteodystrophy manifested by severe bone pain and appropriate radiographic abnormalities (e.g., osteitis fibrosa, marked osteoporosis, pathologic fractures); or

2. A clinical episode of pericarditis; or

3. Persistent motor or sensory neuropathy; or

4. Intractable pruritus; or

5. Persistent fluid overload syndrome resulting in diastolic hypertension (110 mm. or above) or signs of vascular congestion; or

6. Persistent anorexia with recent weight loss and current weight meeting the values in 5.08, Table III or IV; or

7. Persistent hematocrits of 30 percent or less.

6.06 *Nephrotic syndrome, with significant anasarca, persistent for at least 3 months despite prescribed therapy.* With:

A. Serum albumin of 3.0 gm. per deciler (100 ml.) or less *and* protenuria of 3.5 gm. per 24 hours or greater; or

B. Proteinuria of 10.0 gm. per 24 hours or greater.

7.00 Hemic and Lymphatic System

A. *Impairment caused by anemia* should be evaluated according to the ability of the individual to adjust to the reduced oxygen carrying capacity of the blood. A gradual reduction in red cell mass, even to very low values, is often well tolerated in individuals with a healthy cardiovascular system.

B. *Chronicity is indicated by* persistence of the condition for at least 3 months. The laboratory findings cited must reflect the values reported on more than one examination over that 3-month period.

C. *Sickle cell disease* refers to a chronic hemolytic anemia associated with sickle cell hemoglobin, either homozygous or in combination with thalassemia or with another abnormal hemoglobin (such as C or F).

Appropriate hematologic evidence for sickle cell disease, such as hemoglobin electrophoresis, must be included. Vasoocclusive or aplastic episodes should be documented by description of severity, frequency, and duration.

Major visceral episodes include meningitis, osteomyelitis, pulmonary infections or infarctions, cerebrovascular accidents, congestive heart failure, genito-urinary involvement, etc.

D. *Coagulation defects.* Chronic inherited coagulation disorders must be documented by appropriate laboratory evidence. Prophylactic therapy such as with antihemophilic globulin (AHG) concentrate does not in itself imply severity.

E. *Acute leukemia.* Initial diagnosis of acute leukemia must be based upon definitive bone marrow pathologic evidence. Recurrent disease may be documented by peripheral blood, bone marrow, or cerebrospinal fluid examination. The pathology report must be included.

The acute phase of chronic myelocytic (granulocytic) leukemia should be considered under the requirements for acute leukemia.

The criteria in 7.11 contain the designated duration of disability implicit in the finding of a listed impairment. Following the designated time period, a documented diagnosis itself is no longer sufficient to establish a marked impairment. The level of any remaining impairment must be evaluated on the basis of the medical evidence.

7.01 Category of Impairments, Hemic and Lymphatic System

7.02 *Chronic anemia (hematocrit persisting at 30 percent or less due to any cause).* With:

A. Requirement of one or more blood transfusions on an average of at least once every 2 months; or

B. Evaluation of the resulting impairment under criteria for the affected body system.

7.05 *Sickle cell disease, or one of its variants.* With:

A. Documented painful (thrombotic) crises occurring at least three times during the 5 months prior to adjudication; or

B. Requiring extended hospitalization (beyond emergency care) at least three times during the 12 months prior to adjudication; or

C. Chronic, severe anemia with persistence of hematocrit of 26 percent or less; or

D. Evaluate the resulting impairment under the criteria for the affected body system.

7.06 *Chronic thrombocytopenia (due to any cause)* with platelet counts repeatedly below 40,000/cubic millimeter. With:

A. At least one spontaneous hemorrhage, requiring transfusion, within 5 months prior to adjudication; or

B. Intracranial bleeding within 12 months prior to adjudication.

7.07 *Hereditary telangiectasia* with hemorrhage requiring transfusion at least three times during the 5 months prior to adjudication.

7.08 *Coagulation defects (hemophilia or a similar disorder)* with spontaneous hemorrhage requiring transfusion at least three times during the 5 months prior to adjudication.

7.09 *Polycythemia vera (with erythrocytosis, splenomegaly, and leukocytosis or thrombocytosis).* Evaluate the resulting impairment under the criteria for the affected body system.

7.10 *Myelofibrosis (myeloproliferative syndrome).* With:

A. Chronic anemia. Evaluate according to the criteria of § 7.02; or

B. Documented recurrent systemic bacterial infections occurring at least 3 times during the 5 months prior to adjudication; or

C. Intractable bone pain with radiologic evidence of osteosclerosis.

7.11 *Acute leukemia.* Consider under a disability for 2½ years from the time of initial diagnosis.

7.12 *Chronic leukemia.* Evaluate according to the criteria of 7.02, 7.06, 7.10B, 7.11, 7.17, or 13.06A.

7.13 *Lymphomas.* Evaluate under the criteria in 13.06A.

7.14 *Macroglobulinemia or heavy chain disease,* confirmed by serum or urine protein electrophoresis or immunoelectrophoresias. Evaluate impairment under criteria for affected body system or under 7.02, 7.06, or 7.08.

7.15 *Chronic granulocytopenia (due to any cause).* With both A and B:

A. Absolute neutrophil counts repeatedly below 1,000 cells/cubic millimeter; and

B. Documented recurrent systemic bacterial infections occurring at least 3 times during the 5 months prior to adjudication.

7.16 *Myeloma (confirmed by appropriate serum or urine protein electrophoresis and bone marrow findings).* With:

A. Radiologic evidence of bony involvement with intractable bone pain; or

B. Evidence of renal impairment as described in 6.02; or

C. Hypercalcemia with serum calcium levels persistently greater than 11 mg. per deciliter (100 ml.) for at least 1 month despite prescribed therapy; or

D. Plasma cells (100 or more cells/cubic millimeter) in the peripheral blood.

7.17 *Aplastic anemias or hematologic malignancies (excluding acute leukemia):* With bone marrow transplantation. Consider under a disability for 12 months following transplantation; thereafter, evaluate according to the primary characteristics of the residual impairment.

8.00 Skin

A. *Skin lesions* may result in a marked, long-lasting impairment if they involve extensive body areas or critical areas such as the hands or feet and become resistant to treatment. These lesions must be shown to have persisted for a sufficient period of time despite therapy for a reasonable presumption to be made that a marked impairment will last for a continuous period of at least 12 months. The treatment for some of the skin diseases listed in this section may require the use of high dosage of drugs with possible serious side effects; these side effects should be considered in the overall evaluation of impairment.

B. *When skin lesions are associated with systemic disease* and where that is the predominant problems, evaluation should occur according to the criteria in the appropriate section. Disseminated (systemic) lupus erythematosus and scleroderma usually involve more than one body system and should be evaluated under 10.04 and 10.05. Neoplastic skin lesions should be evaluated under 13.00ff. When skin lesions (including burns) are associated with contractures or limitation of joint motion, that impairment should be evaluated under 1.00ff.

8.01 Category of Impairments, Skin

8.02 *Exfoliative dermatitis, ichthyosis, ichthyosiform erythroderma.* With extensive lesions not responding to prescribed treatment.

8.03 *Pemphigus, erythema multiforme bullosum, bullous pemphigoid, dermatitis herpetiformis.* With extensive lesions not responding to prescribed treatment.

8.04 *Deep mycotic infections. With extensive fungating, ulcerating lesions not responding to prescribed treatment.*

8.05 *Psoriasis, atopic dermatitis, dyshidrosis.* With extensive lesions, including involvement of the hands or feet which impose a marked limitation of function and which are not responding to prescribed treatment.

8.06 *Hydradenitis suppurative, acne conglobata.* With extensive lesions involving the axillae or perineum not responding to prescribed medical treatment and not amendable to surgical treatment.

9.00 **Endocrine System**

Cause of impairment. Impairment is caused by overproduction or underproduction of hormones, resulting in structural or functional changes in the body. Where involvement of other organ systems has occurred as a result of a primary endocrine disorder, these impairments should be evaluated according to the criteria under the appropriate sections.

9.01 Category of Impairments, Endocrine

9.02 *Thyroid Disorders.* With:

A. Progressive exophthalmos as measured by exophthalmometry; or

B. Evaluate the resulting impairment under the criteria for the affected body system.

9.03 *Hyperparathyroidism.* With:

A. Generalized decalcification of bone on X-ray study and elevation of plasma calcium to 11 mg. per deciliter (100 ml.) or greater; or

B. A resulting impairment. Evaluate according to the criteria in the affected body system.

9.04 *Hypoparathyroidism.* With:

A. Severe recurrent tetany; or

B. Recurrent generalized convulsions; or

C. Lenticular cataracts. Evaluate under the criteria in 2.00ff.

9.05 *Neurohypophyseal insufficiency (diabetes insipidus).* With urine specific gravity of 1.005 or below, persistent for at least 3 months and recurrent dehydration.

9.06 *Hyperfunction of the adrenal cortex.* Evaluate the resulting impairment under the criteria for the affected body system.

9.08 *Diabetes mellitus.* With:

A. Neuropathy demonstrated by significant and persistent disorganization of motor function in two extremities resulting in sustained disturbance of gross and dexterous movements, or gait and station (see 11.00C); or

B. Acidosis occurring at least on the average of once every 2 months documented by appropriate blood chemical tests (pH or pCO2 or bicarbonate levels); or

C. Amputation at, or above, the tarsal region due to diabetic necrosis or peripheral arterial disease; or

D. Retinitis proliferans; evaluate the visual impairment under the criteria in 2.02, 2.03, or 2.04.

10.00 **Multiple Body Systems**

A. The impairments included in this section usually involve more than a single body system.

B. Long-term obesity will usually be associated with disorders in the musculoskeletal, cardiovascular, peripheral vascular, and pulmonary systems, and the advent of such disorders is the major cause of impairment. Extreme obesity results in restrictions imposed by body weight and the additional restrictions imposed by disturbances in other body systems.

10.01 Category of Impairments, Multiple Body Systems

10.02 *Hansen's disease (leprosy).* As active disease or consider as "under a disability" while hospitalized.

10.03 *Polyarteritis or periarteritis nodosa (established by biopsy).* With signs of generalized arterial involvement.

10.04 *Disseminated lupus erythematosus (established by a positive LE preparation or biopsy or positive ANA test).* With frequent exacerbations demonstrating involvement of renal or cardiac or pulmonary or gastrointestinal or central nervous systems.

10.05 *Scleroderma or progressive systemic sclerosis (the diffuse or generalized form).* With:

A. Advanced limitation of use of hands due to sclerodactylia or limitation in other joints; or

B. Significant visceral manifestations of digestive, cardiac, or pulmonary impairment.

10.10 *Obesity.* Weight equal to or greater than the values specified in Table I for males, Table II for females (100 percent above desired level) and one of the following:

A. History of pain and limitation of motion in any weight bearing joint or spine (on physical examination) associated with X-ray evidence of arthritis in a weight bearing joint or spine; or

B. Hypertension with diastolic blood pressure persistently in excess of 100 mm. Hg measured with appropriate size cuff; or

C. History of congestive heart failure manifested by past evidence of vascular congestion such as hepatomegaly, peripheral or pulmonary edema; or

D. Chronic venous insufficiency with superficial varicosities in a lower extremity with pain on weight bearing and persistent edema; or

E. Respiratory disease with total forced vital capacity equal to or less than 2.0 L. or a level of hypoxemia at rest equal to or less than the values specified in Table III–A or III–B or III–C.

TABLE I—MEN

Height without shoes (inches)	Weight (pounds)
60	246
61	252
62	258
63	264
64	270
65	276
66	284
67	294
68	302
69	310
70	318
71	328
72	336
73	346
74	356
75	364
76	374

TABLE II—WOMEN

Height without shoes (inches)	Weight (pounds)
56	208
57	212
58	218
59	224
60	230
61	236
62	242
63	250
64	258
65	266
66	274
67	282
68	290
69	298
70	306
71	314
72	322

TABLE III—A

[Applicable at test sites less than 3,000 feet above sea level]

Arterial PCO_2 (mm. Hg) and	Arterial PO_2 equal to or less than (mm. Hg)
30 or below	65
31	64
32	63
33	62
34	61
35	60
36	59
37	58
38	57
39	56
40 or above	55

TABLE III—B

[Applicable at test sites 3,000 through 6,000 feet above sea level]

Arterial PCO_2 (mm. Hg) and	Arterial PO_2 equal to or less than (mm. Hg)
30 or below	60
31	59
32	58
33	57
34	56
35	55
36	54
37	53
38	52
39	51
40 or above	50

TABLE III—C

[Applicable at test sites over 6,000 feet above sea level]

Arterial PCO_2 (mm. Hg) and	Arterial PO_2 equal to or less than (mm. Hg)
30 or below	55
31	54
32	53
33	52
34	51
35	50
36	49
37	48
38	47
39	46
40 or above	45

11.00 Neurological

A. *Convulsive disorders.* In convulsive disorders, regardless of etiology degree of impairment will be determined according to type, frequency, duration, and sequelae of seizures. At least one detailed description of a typical seizure is required. Such descripiton includes the presence or absence of aura, tongue bites, sphincter control, injuries associated with the attack, and postictal phenomena. The reporting physician should indicate the extent to which description of seizures reflects his own observations and the source of ancillary information. Testimony of persons other than the claimant is essential for description of type and frequency of seizures if professional observation is not available.

Documentation of epilepsy should include at least one electronencephalogram (EEG).

Under 11.02 and 11.03, the criteria can be applied only if the impairment persists despite the fact that the individual is following prescribed anticonvulsive treatment. Adherence to prescribed anticonvulsive therapy can ordinarily be determined from objective clinical findings in the report of the physician currently providing treatment for epilepsy. Determination of blood levels of phenytoin sodium or other anticonvulsive drugs may serve to indicate whether the prescribed medication is being taken. When seizures are occurring at the frequency stated in 11.02 or 11.03, evalution of the severity of the impairment must include consideration of the serum drug levels. Should serum drug levels appear therapeutically inadequate, consideration should be given as to whether this is caused by individual idiosyncrasy in absorption of metabolism of the drug. Blood drug levels should be evaluated in conjunction with all the other evidence to determine the extent of compliance. When the reported blood drug levels are low, therefore, the information obtained from the treating source should include the physician's statement as to why the levels are low and the results of any relevant diagnostic studies concerning the blood levels. Where adequate seizure control is obtained only with unusually large doses, the possibility of impairment resulting from the side effects of this medication must be also assessed. Where documentation shows that use of alcohol or drugs affects adherence to prescribed therapy or may play a part in the precipitation of seizures, this must also be considered in the overall assessment of impairment level.

B. *Brain tumors.* The diagnosis of malignant brain tumors must be established, and the persistence of the tumor should be evaluated, under the criteria described in 13.00B and C for neoplastic disease.

In histologically malignant tumors, the pathological diagnosis alone will be the decisive criterion for severity and expected duration (see 11.05A). For other tumors of the brain, the severity and duration of the impairment will be determined on the basis of symptoms, signs, and pertinent laboratory findings (11.05B).

C. *Persistent disorganization of motor function* in the form of paresis or paralysis, tremor or other involuntary movements, ataxia and sensory distrubances (any or all of which may be due to cerebral cerbellar, brain stem, spinal cord, or peripheral nerve dysfunction) which occur singly or in various combination, frequently provides the sole or partial basis for decision in cases of neurological impairment. The assessment of impairment depends on the degree of interference with locomotion and/or interference with the use of fingers, hands, and arms.

D. *In conditions which are episodic in character,* such as multiple sclerosis or myasthenia gravis, consideration should be given to frequency and duration of exacerbations, length of remissions, and permanent residuals.

E. *Multiple sclerosis.* The major criteria for evaluating impairment caused by multiple sclerosis are discussed in listing 11.09. Paragraph A provides criteria for evaluating disorganization of motor function and gives reference to 11.04B (11.04B then refers to 11.00C). Paragraph B provides references to other listings for evaluating visual or mental impairments caused by multiple sclerosis. Paragraph C provides criteria for evaluating the impairment of individuals who do not have muscle weakness or other significant disorganization of motor function at rest, but who do develop muscle weakness on activity as a result of fatigue.

Use of the criteria in 11.09C is dependent upon (1) documenting a diagnosis of multiple sclerosis, (2) obtaining a description of fatigue considered to be characteristic of multiple sclerosis, and (3) obtaining evidence that the system has actually become fatigued. The evaluation of the magnitude of the impairment must consider the degree of exercise and the severity of the resulting muscle weakness.

The criteria in 11.09C deals with motor abnormalities which occur on activity. If the disorganization of motor function is present at rest, paragraph A must be used, taking into account any further increase in muscle weakness resulting from activity.

Sensory abnormalities may occur, particularly involving central visual acuity. The decrease in visual acuity may occur after brief attempts at activity involving near vision, such as reading. This decrease in visual acuity may not persist when the specific activity is terminated, as with rest, but is predictably reproduced with resumption of the activity. The impairment of central visual acuity in these cases should be evaluated under the criteria in listing 2.02, taking into account the fact that the decrease in visual acuity will wax and wane.

Clarification of the evidence regarding central nervous system dysfunction responsible for the symptoms may require supporting technical evidence of functional impairment such as evoked response tests during exercise.

11.01 Category of Impairments, Neurological

11.02 *Epilepsy—major motor seizures, (grand mal or psychomotor), documented by EEG and by detailed description of a typical seizure pattern, including all associated phenomena; occurring more frequently than once a month, in spite of at least 3 months of prescribed treatment.* With:

A. Daytime episodes (loss of consciousness and convulsive seizures) or

B. Nocturnal episodes manifesting residuals which interfere significantly with activity during the day.

11.03 *Epilepsy—Minor motor seizures (petit mal, psychomotor, or focal), documented by EEC and by detailed description of a typical seizure pattern, including all associated phenomena; occurring more frequently than once weekly in spite of at least 3 months of prescribed treatment.* With alteration of awareness or loss of consciousness and transient postictal manifestations of unconventional behavior or significant interference with activity during the day.

11.04 *Central nervous system vascular accident.* With one of the following more than 3 months post-vascular accident:

A. Sensory or motor aphasia resulting in ineffective speech or communication; or

B. Significant and persistent disorganization of motor function in two extremities, resulting in sustained disturbance of gross and dexterous movements, or gait and station (see 11.00C).

11.05 *Brain tumors.*

A. Malignant gliomas (astrocytoma—grades III and IV, glioblastoma multiforme), medulloblastoma, ependymoblastoma, or primary sarcoma; or

B. Astrocytoma (grades I and II), meningioma, pituitary tumors, oligodendroglioma, ependymoma, clivus chordoma, and benign tumors. Evaluate under 11.02, 11.03, 11.04 A, or B, or 12.02.

11.06 *Parkinsonian syndrome* with the following signs: Significant rigidity, brady kinesia, or tremor in two extremities, which, singly or in combination, result in sustained disturbance of gross and dexterous movements, or gait and station.

11.07 *Cerebral palsy.* With:

A. IQ of 69 or less; or

B. Abnormal behavior patterns, such as destructiveness or emotional instability; or

C. Significant interference in communication due to speech, hearing, or visual defect; or

D. Disorganization of motor function as described in 11.04B.

11.08 *Spinal cord or nerve root lesions, due to any cause* with disorganization of motor function as described in 11.04B.

11.09 *Multiple sclerosis.* With:

A. Disorganization of motor function as described in 11.04B; or

B. Visual or mental impairment as described under the criteria in 2.02, 2.03, 2.04, or 12.02; or

C. Significant, reproducible fatigue of motor function with substantial muscle weakness on repetitive activity, demonstrated on physical examination, resulting from neurological dysfunction in areas of the central nervous system known to be pathologically involved by the multiple sclerosis process.

11.10 *Amyotrophic lateral sclerosis. With:*

A. Significant bulbar signs; or

B. Disorganization of motor function as described in 11.04B.

11.11 *Anterior poliomyelitis.* With:

A. Persistent difficulty with swallowing or breathing; or

B. Unintelligible speech; or

C. Disorganization of motor function as described in 11.04B.

11.12 *Myasthenia gravis.* With:

A. Significant difficulty with speaking, swallowing, or breathing while on prescribed therapy; or

B. Significant motor weakness of muscles of extremities on repetitive activity against resistance while on prescribed therapy.

11.13 *Muscular dystrophy* with disorganization of motor function as described in 11.04B.

11.14 *Peripheral neuropathies.*

With disorganization of motor function as described in 11.04B, in spite of prescribed treatment.

11.15 *Tabes dorsalis.*

With:

A. Tabetic crises occurring more frequently than once monthly; or

B. Unsteady, broad-based or ataxic gait causing significant restriction of mobility substantiated by appropriate posterior column signs.

11.16 *Subacute combined cord degeneration (pernicious anemia) with disorganization of motor function as decribed in 11.04B or 11.15B, not significantly improved by prescribed treatment.*

11.17 *Degenerative disease not elsewhere such as Huntington's chorea, Friedreich's ataxia, and spino-cerebellar degeneration.* With:

A. Disorganization of motor function as described in 11.04B or 11.15B; or

B. Chronic brain syndrome. Evaluate under 12.02.

11.18 *Cerebral trauma:*

Evaluate under the provisions of 11.02, 11.03, 11.04 and 12.02, as applicable.

11.19 *Syringomyelia.*

With:

A. Significant bulbar signs; or

B. Disorganization of motor function as described in 11.04B.

12.00 Mental Disorders

The mental disorders listings in 12.00 of the Listing of Impairments will no longer be effective on August 28, 1990 unless extended by the Secretary or revised and promulgated again.

A. *Introduction:* The evaluation of disability on the basis of mental disorders requires the documentation of a medically determinable impairment(s) as well as consideration of the degree of limitation such impairment(s) may impose on the individual's ability to work and whether these limitations have lasted or are expected to last for a continuous period of at least 12 months. The listings for mental disorders are arranged in eight diagnostic categories: organic mental disorders (12.02); schizophrenic, paranoid and other psychotic disorders (12.03); affective disorders (12.04); mental retardation and autism (12.05); anxiety related disorders (12.06); somatoform disorders (12.07); personality disorders (12.08); and substance addiction disorders (12.09). Each diagnostic group, except listings 12.05 and 12.09, consists of a set of clinical findings (paragraph A criteria), one or more of which must be met, and which, if met, lead to a test of functional restrictions (paragraph B criteria), two or three of which must also be met. There are additional considerations (paragraph C criteria) in listings 12.03 and 12.06, discussed therein.

The purpose of including the criteria in paragraph A of the listings for mental disorders is to medically substantiate the presence of a mental disorder. Specific signs and symptoms under any of the listings 12.02 through 12.09 cannot be considered in isolation from the description of the mental disorder contained at the beginning of each listing category. Impairments should be analyzed or reviewed under the mental category(ies) which is supported by the individual's clinical findings.

The purpose of including the criteria in paragraphs B and C of the listings for mental disorders is to describe those functional limitations associated with mental disorders which are incompatible with the ability to work. The restrictions listed in paragraphs B and C must be the result of the mental disorder which is manifested by the clinical findings outlined in paragraph A. The criteria included in paragraphs B and C of the listings for mental disorders have been chosen because they represent functional areas deemed essential to work. An individual who is severely limited in these areas as the result of an impairment identified in paragraph A is presumed to be unable to work.

The structure of the listing for substance addiction disorders, listing 12.09, is different from that for the other mental disorder listings. Listing 12.09 is structured as a reference listing; that is, it will only serve to indicate which of the other listed mental or physical impairments must be used to evaluate the behavioral or physical changes resulting from regular use of addictive substances.

The listings for mental disorders are so constructed that an individual meeting or equaling the criteria could not reasonably be expected to engage in gainful work activity.

Individuals who have an impairment with a level of severity which does not meet the criteria of the listings for mental disorders may or may not have the residual functional capacity (RFC) which would enable them to engage in substantial gainful work activity. The determination of mental RFC is crucial to the evaluation of an individual's capacity to engage in substantial gainful work activity when the criteria of the listings for mental disorders are not met or equaled but the impairment is nevertheless severe.

RFC may be defined as a multidimensional description of the work-related abilities which an individual retains in spite of medical impairments. RFC complements the criteria in paragraphs B and C of the listings for mental disorders by requiring consideration of an expanded list of work-related capacities which may be impaired by mental disorder when the impairment is severe but does not meet or equal a listed mental disorder. (While RFC may be applicable in most claims, the law specifies that it does not apply to the following special claims categories: disabled title XVI children below age 18, widows, widowers and surviving divorced wives. The impairment(s) of these categories must meet or equal a listed impairment for the individual to be eligible for benefits based on disability.)

B. *Need for Medical Evidence:* The existence of a medically determinable impairment of the required duration must be established by medical evidence consisting of clinical signs, symptoms and/or laboratory or psychological test findings. These findings may be intermittent or persistent depending on the nature of the disorder. Clinical signs are medically demonstrable phenomena which reflect specific abnormalities of behavior, affect, thought, memory, orientation, or contact with reality. These signs are typically assessed by a psychiatrist or psychologist and/or documented by psychological tests. Symptoms are complaints presented by the individual. Signs and symptoms generally cluster together to constitute recognizable clinical syndromes (mental disorders). Both symptoms and signs which are part of any diagnosed mental disorder must be considered in evaluating severity.

C. *Assessment of Severity:* For mental disorders, severity is assessed in terms of the functional limitations imposed by the impairment. Functional limitations are assessed using the criteria in paragraph B of the listings for mental disorders (descriptions of restrictions of activities of daily living; social functioning; concentration, persistence, or pace; and ability to tolerate increased mental demands associated with competitive work). Where "marked" is used as a standard for measuring the degree of limitation, it means more than moderate, but less than extreme. A marked limitation may arise when several activities or functions are impaired or even when only one is impaired, so long as the degree of limitation is such as to seriously interfere with the ability to function independently, appropriately and effectively. Four areas are considered.

1. *Activities of daily living* include adaptive activities such as cleaning, shopping, cooking, taking public transportation, paying bills, maintaining a residence, caring appropriately for one's grooming and hygiene, using telephones and directories, using a post office, etc. In the

context of the individual's overall situation, the quality of these activities is judged by their independence, appropriateness and effectiveness. It is necessary to define the extent to which the individual is capable of initiating and participating in activities independent of supervision or direction.

"Marked" is not the number of activities which are restricted but the overall degree of restriction or combination of restrictions which must be judged. For example, a person who is able to cook and clean might still have marked restrictions of daily activities if the person were too fearful to leave the immediate environment of home and neighborhood, hampering the person's ability to obtain treatment or to travel away from the immediate living environment.

2. *Social functioning* refers to an individual's capacity to interact appropriately and communicate effectively with other individuals. Social functioning includes the ability to get along with others, e.g., family members, friends, neighbors, grocery clerks, landlords, bus drivers, etc. Impaired social functioning may be demonstrated by a history of altercations, evictions, firings, fear of strangers, avoidance of interpersonal relationships, social isolation, etc. Strength in social functioning may be documented by an individual's ability to initiate social contacts with others, communicate clearly with others, interact and actively participate in group activities, etc. Cooperative behaviors, consideration for others, awareness of others' feelings, and social maturity also need to be considered. Social functioning in work situations may involve interactions with the public, responding appropriately to persons in authority, e.g., supervisors, or cooperative behaviors involving coworkers.

"Marked" is not the number of areas in which social functioning is impaired, but the overall degree of interference in a particular area or combination of areas of functioning. For example, a person who is highly antagonistic, uncooperative or hostile but is tolerated by local storekeepers may nevertheless have marked restrictions in social functioning because that behavior is not acceptable in other social contexts.

3. *Concentration, persistence and pace* refer to the ability to sustain focused attention sufficiently long to permit the timely completion of tasks commonly found in work settings. In activities of daily living, concentration may be reflected in terms of ability to complete tasks in everyday household routines. Deficiencies in concentration, persistence and pace are best observed in work and work-like settings. Major impairment in this area can often be assessed through direct psychiatric examination and/or psychological testing, although mental status examination or psychological test data alone should not be used to accurately describe concentration and sustained ability to adequately perform work-like tasks. On mental status examinations, concentration is assessed by tasks such as having the individual subtract serial sevens from 100. In psychological tests of intelligence or memory, concentration is assessed through tasks requiring short-term memory or through tasks that must be completed within established time limits. In work evaluations, concentration, persistence, and pace are assessed through such tasks as filing index cards, locating telephone numbers, or disassembling and reassembling objects. Strengths and weaknesses in areas of concentration can be discussed in terms of frequency of errors, time it takes to complete the task, and extent to which assistance is required to complete the task.

4. *Deterioration or decompensation in work or work-like settings* refers to repeated failure to adapt to stressful circumstances which cause the individual either to withdraw from that situation or to experience exacerbation of signs and symptoms (i.e., decompensation) with an accompanying difficulty in maintaining activities of daily living, social relationships, and/or maintaining concentration, persistence, or pace (i.e., deterioration which may include deterioration of adaptive behaviors). Stresses common to the work environment include decisions, attendance, schedules, completing tasks, interactions with supervisors, interactions with peers, etc.

D. *Documentation:* The presence of a mental disorder should be documented primarily on the basis of reports from individual providers, such as psychiatrists and psychologists, and facilities such as hospitals and clinics. Adequate descriptions of functional limitations must be obtained from these or other sources which may include programs and facilities where the individual has been observed over a considerable period of time.

Information from both medical and nonmedical sources may be used to obtain detailed descriptions of the individual's activities of daily living; social functioning; concentration, persistance and pace; or ability to tolerate increased mental demands (stress). This information can be provided by programs such as community mental health centers, day care centers, sheltered workshops, etc. It can also be provided by others, including family members, who have knowledge of the individual's functioning. In some cases descriptions of activities of daily living or social functioning given by individuals or treating sources may be insufficiently detailed and/or may be in conflict with the clinical picture otherwise observed or described in the examinations or reports. It is necessary to resolve any inconsistencies or gaps that may exist in order to obtain a proper understanding of the individual's functional restrictions.

An individual's level of functioning may vary considerably over time. The level of functioning at a specific time may seem relatively adequate or, conversely, rather poor. Proper evaluation of the impairment must take any variations in level of functioning into account in arriving at a determination of impairment severity over time. Thus, it is vital to obtain evidence from relevant sources over a sufficiently long period prior to the date of adjudication in order to establish the individual's impairment severity. This evidence should include treatment notes, hospital discharge summaries, and work evaluation or rehabilitation progress notes if these are available.

Some individuals may have attempted to work or may actually have worked during the period of time pertinent to the determination of disability. This may have been an independent attempt at work, or it may have been in conjunction with a community mental health or other sheltered program which may have been of either short or long duration. Information concerning the individual's behavior during any attempt to work and the circumstances surrounding termination of the work effort are particularly useful in determining the individual's ability or inability to function in a work setting.

The results of well-standardized psychological tests such as the Wechsler Adult Intelligence Scale (WAIS), the Minnesota Multiphasic Personality Inventory (MMPI), the Rorschach, and the Thematic Apperception Test (TAT), may be useful in establishing the existence of a mental disorder. For example, the WAIS is useful in establishing mental retardation, and the MMPI, Rorschach, and TAT may provide data supporting several other diagnoses. Broad-based neuropsychological assessments using, for example, the Halstead-Reitan or the Luria-Nebraska batteries may be useful in determining brain function deficiencies, particularly in cases involving subtle findings such as may be seen in traumatic brain injury. In addition, the process of taking a standardized test requires concentration, persistence and pace; performance on such tests may provide useful data. Test results should, therefore, include both the objective data and a narrative description of clinical findings. Narrative reports of intellectual assessment should include a discussion of whether or not obtained IQ scores are considered valid and consistent with the individual's developmental history and degree of functional restriction.

In cases involving impaired intellectual functioning, a standardized intelligence test, e.g., the WAIS, should be administered and interpreted by a psychologist or psychiatrist qualified by training and experience to perform such an evaluation. In special circumstances, nonverbal measures, such as the Raven Progressive Matrices, the Leiter international scale, or the Arthur adaptation of the Leiter may be substituted.

Identical IQ scores obtained from different tests do not always reflect a similar degree of intellectual functioning. In this connection, it must be noted that on the WAIS, for example, IQs of 69 and below are characteristic of approximately the lowest 2 percent of the general population. In instances where other tests are administered, it would be necessary to convert the IQ to the corresponding percentile rank in the general population in order to determine the actual degree of impairment reflected by those IQ scores.

In cases where more than one IQ is customarily derived from the test administered, i.e., where verbal, performance, and full-scale IQs are provided as on the WAIS, the lowest of these is used in conjunction with listing 12.05.

In cases where the nature of the individual's intellectual impairment is such that standard intelligence tests, as described above, are precluded, medical reports specifically describing the level of intellectual, social, and physical function

should be obtained. Actual observations by Social Security Administration or State agency personnel, reports from educational institutions and information furnished by public welfare agencies or other reliable objective sources should be considered as additional evidence.

E. *Chronic Mental Impairments:* Particular problems are often involved in evaluating mental impairments in individuals who have long histories of repeated hospitalizations or prolonged outpatient care with supportive therapy and medication. Individuals with chronic psychotic disorders commonly have their lives structured in such a way as to minimize stress and reduce their signs and symptoms. Such individuals may be much more impaired for work than their signs and symptoms would indicate. The results of a single examination may not adequately describe these individuals' sustained ability to function. It is, therefore, vital to review all pertinent information relative to the individual's condition, especially at times of increased stress. It is mandatory to attempt to obtain adequate descriptive information from all sources which have treated the individual either currently or in the time period relevant to the decision.

F. *Effects of Structured Settings:* Particularly in cases involving chronic mental disorders, overt symptomatology may be controlled or attenuated by psychosocial factors such as placement in a hospital, board and care facility, or other environment that provides similar structure. Highly structured and supportive settings may greatly reduce the mental demands placed on an individual. With lowered mental demands, overt signs and symptoms of the underlying mental disorder may be minimized. At the same time, however, the individual's ability to function outside of such a structured and/or supportive setting may not have changed. An evaluation of individuals whose symptomatology is controlled or attenuated by psychosocial factors must consider the ability of the individual to function outside of such highly structured settings. (For these reasons the paragraph C criteria were added to Listings 12.03 and 12.06.)

G. *Effects of Medication:* Attention must be given to the effect of medication on the individual's signs, symptoms and ability to function. While psychotropic medications may control certain primary manifestations of a mental disorder, e.g., hallucinations, such treatment may or may not affect the functional limitations imposed by the mental disorder. In cases where overt symptomatology is attenuated by the psychotropic medications, particular attention must be focused on the functional restrictions which may persist. These functional restrictions are also to be used as the measure of impairment severity. (See the paragraph C criteria in Listings 12.03 and 12.06.)

Neuroleptics, the medicines used in the treatment of some mental illnesses, may cause drowsiness, blunted affect, or other side effects involving other body systems. Such side effects must be considered in evaluating overall impairment severity. Where adverse effects of medications contribute to the impairment severity and the impairment does not meet or equal the listings but is nonetheless severe, such adverse effects must be considered in the assessment of the mental residual functional capacity.

H. *Effect of Treatment:* It must be remembered that with adequate treatment some individuals suffering with chronic mental disorders not only have their symptoms and signs ameliorated but also return to a level of function close to that of their premorbid status. Our discussion here in 12.00H has been designed to reflect the fact that present day treatment of a mentally impaired individual may or may not assist in the achievement of an adequate level of adaptation required in the work place. (See the paragraph C criteria in Listings 12.03 and 12.06.)

I. *Technique for Reviewing the Evidence in Mental Disorders Claims to Determine Level of Impairment Severity:* A special technique has been developed to ensure that all evidence needed for the evaluation of impairment severity in claims involving mental impairment is obtained, considered and properly evaluated. This technique, which is used in connection with the sequential evaluation process, is explained in § 404.1520a and § 416.920a.

12.01 Category of Impairments-Mental

12.02 *Organic Mental Disorders:* Psychological or behaviorial abnormalities associated with a dysfunction of the brain. History and physical examination or laboratory tests demonstrate the presence of a specific organic factor judged to be etiologically related to the abnormal mental state and loss of previously acquired functional abilities.

The required level of severity for these disorders is met when the requirements in both A and B are satisfied.

A. Demonstration of a loss of specific cognitive abilities or affective changes and the medically documented persistence of at least one of the following:

1. Disorientation to time and place; or

2. Memory impairment, either short-term (inability to learn new information), intermediate, or long-term (inability to remember information that was known sometime in the past); or

3. Perceptual or thinking disturbances (e.g., hallucinations, delusions); or

4. Change in personality; or

5. Disturbance in mood; or

6. Emotional lability (e.g., explosive temper outbursts, sudden crying, etc.) and impairment in impulse control; or

7. Loss of measured intellectual ability of at least 15 I.Q. points from premorbid levels or overall impairment index clearly within the severely impaired range on neuropsychological testing, e.g., the Luria-Nebraska, Halstead-Reitan, etc.;

AND

B. Resulting in at least two of the following:

1. Marked restriction of activities of daily living; or

2. Marked difficulties in maintaining social functioning; or

3. Deficiencies of concentration, persistence or pace resulting in frequent failure to complete tasks in a timely manner (in work settings or elsewhere); or

4. Repeated episodes of deterioration or decompensation in work or work-like settings which cause the individual to withdraw from that situation or to experience exacerbation of signs and symptoms (which may include deterioration of adaptive behaviors).

12.03 *Schizophrenic, Paranoid and Other Psychotic Disorders:* Characterized by the onset of psychotic features with deterioration from a previous level of functioning.

The required level of severity for these disorders is met when the requirements in both A and B are satisfied, or when the requirements in C are satisfied.

A. Medically documented persistence, either continuous or intermittent, of one or more of the following:

1. Delusions or hallucinations; or

2. Catatonic or other grossly disorganized behavior; or

3. Incoherence, loosening of associations, illogical thinking, or poverty of content of speech if associated with one of the following:

a. Blunt affect; or

b. Flat affect; or

c. Inappropriate affect;

or

4. Emotional withdrawal and/or isolation;

AND

B. Resulting in at least two of the following:

1. Marked restriction of activities of daily living; or

2. Marked difficulties in maintaining social functioning; or

3. Deficiencies of concentration, persistence or pace resulting in frequent failure to complete tasks in a timely manner (in work settings or elsewhere); or

4. Repeated episodes of deterioration or decompensation in work or work-like settings which cause the individual to withdraw from that situation or to experience exacerbation of signs and symptoms (which may include deterioration of adaptive behaviors);

OR

C. Medically documented history of one or more episodes of acute symptoms, signs and functional limitations which at the time met the requirements in A and B of this listing, although these symptoms or signs are currently attenuated by medication or psychosocial support, and one of the following:

1. Repeated episodes of deterioration or decompensation in situations which cause the individual to withdraw from that situation or to experience exacerbation of signs or symptoms (which may include deterioration of adaptive behaviors); or

2. Documented current history of two or more years of inability to function outside of a highly supportive living situation.

12.04 *Affective Disorders:* Characterized by a disturbance of mood, accompanied by a full or partial manic or depressive syndrome. Mood refers to a prolonged emotion that colors the whole psychic life; it generally involves either depression or elation.

The required level of severity for these disorders is met when the requirements in both A and B are satisfied.

A. Medically documented persistence, either continuous or intermittent, of one of the following:

1. Depressive syndrome characterized by at least four of the following:

a. Anhedonia or pervasive loss of interest in almost all activites; or

b. Appetite disturbance with change in weight; or

c. Sleep disturbance; or

d. Psychomotor agitation or retardation; or

e. Decreased energy; or

f. Feelings of guilt or worthlessness; or

g. Difficulty concentrating or thinking; or

h. Thoughts of suicide; or

i. Hallucinations, delusions or paranoid thinking; or

2. Manic syndrome characterized by at least three of the following:

a. Hyperactivity; or

b. Pressure of speech; or

c. Flight of ideas; or

d. Inflated self-esteem; or

e. Decreased need for sleep; or

f. Easy distractability; or

g. Involvement in activities that have a high probability of painful consequences which are not recognized; or

h. Hallucinations, delusions or paranoid thinking;

or

3. Bipolar syndrome with a history of episodic periods manifested by the full symptomatic picture of both manic and depressive syndromes (and currently characterized by either or both syndromes);

AND

B. Resulting in at least two of the following:

1. Marked restriction of activities of daily living; or

2. Marked difficulties in maintaining social functioning; or

3. Deficiencies of concentration, persistence or pace resulting in frequent failure to complete tasks in a timely manner (in work settings or elsewhere); or

4. Repeated episodes of deterioration or decompensation in work or work-like settings which cause the individual to withdraw from that situation or to experience exacerbation of signs and symptoms (which may include deterioration of adaptive behaviors).

12.05 *Mental Retardation and Autism:* Mental retardation refers to a significantly subaverage general intellectual functioning with deficits in adaptive behavior initially manifested during the developmental period (before age 22). (Note: The scores specified below refer to those obtained on the WAIS, and are used only for reference purposes. Scores obtained on other standardized and individually administered tests are acceptable, but the numerical values obtained must indicate a similar level of intellectual functioning.) Autism is a pervasive developmental disorder characterized by social and significant communication deficits originating in the developmental period.

The required level of severity for this disorder is met when the requirements in A, B, C, or D are satisfied.

A. Mental incapacity evidenced by dependence upon others for personal needs (e.g., toileting, eating, dressing, or bathing) and inability to follow directions, such that the use of standardized measures of intellectual functioning is precluded;

OR

B. A valid verbal, performance, or full scale IQ of 59 or less;

OR

C. A valid verbal, performance, or full scale IQ of 60 to 69 inclusive and a physical or other mental impairment imposing additional and significant work-related limitation of function;

OR

D. A valid verbal, performance, or full scale IQ of 60 to 69 inclusive or in the case of autism gross deficits of social and communicative skills with two of the following;

1. Marked restriction of activities of daily living; or

2. Marked difficulties in maintaining social functioning; or

3. Deficiencies of concentration, persistence or pace resulting in frequent failure to complete tasks in a timely manner (in work settings or eleswhere); or

4. Repeated episodes of deterioration or decompensation in work or work-like settings which cause the individual to withdraw from that situation or to experience exacerbation of signs and symptoms (which may include deterioration of adaptive behaviors).

12.06 *Anxiety Related Disorders:* In these disorders anxiety is either the predominant disturbance or it is experienced if the individual attempts to master symptoms; for example, confronting the dreaded object or situation in a phobic disorder or resisting the obsessions or compulsions in obsessive compulsive disorders.

The required level of severity for these disorders is met when the requirements in both A and B are satisfied, or when the requirements in both A and C are satisfied.

A. Medically documented findings of at least one of the following:

1. Generalized persistent anxiety accompanied by three out of four of the following signs or symptoms:

a. Motor tension; or

b. Autonomic hyperactivity; or

c. Apprehensive expectation; or

d. Vigilance and scanning;

or

2. A persistent irrational fear of a specific object, activity, or situation which results in a compelling desire to avoid the dreaded object, activity, or situation; or

3. Recurrent severe panic attacks manifested by a sudden unpredictable onset of intense apprehension, fear, terror and sense of impending doom occurring on the average of at least once a week; or

4. Recurrent obsessions or compulsions which are a source of marked distress; or

5. Recurrent and intrusive recollections of a traumatic experience, which are a source of marked distress;

AND

B. Resulting in at least two of the following:

1. Marked restriction of activities of daily living; or

2. Marked difficulties in maintaining social functioning; or

3. Deficiencies of concentration, persistence or pace resulting in frequent failure to complete tasks in a timely manner (in work settings or eleswhere); or

4. Repeated episodes of deterioration or decompensation in work or work-like settings which cause the individual to withdraw from that situation or to experience exacerbation of signs and symptoms (which may include deterioration of adaptive behaviors);

OR

C. Resulting in complete inability to function independently outside the area of one's home.

12.07 *Somatoform Disorders:* Physical symptoms for which there are no demonstrable organic findings or known physiological mechanisms.

The required level of severity for these disorders is met when the requirements in both A and B are satisfied.

A. Medically documented by evidence of one of the following:

1. A history of multiple physical symptoms of several years duration, beginning before age 30, that have caused the individual to take medicine frequently, see a physician often and alter life patterns significantly; or

2. Persistent nonorganic disturbance of one of the following:

a. Vision; or

b. Speech; or

c. Hearing; or

d. Use of a limb; or

e. Movement and its control (e.g., coordination disturbance, psychogenic seizures, akinesia, dyskinesia; or

f. Sensation (e.g., diminished or heightened).

3. Unrealistic interpretation of physical signs or sensations associated with the preoccupation or belief that one has a serious disease or injury;

AND

B. Resulting in three of the following:

1. Marked restriction of activities of daily living; or

2. Marked difficulties in maintaining social functioning; or

3. Deficiencies of concentration, persistence or pace resulting in frequent failure to complete tasks in a timely manner (in work settings or elsewhere); or

4. Repeated episodes of deterioration or decompensation in work or work-like settings which cause the individual to withdraw from that situation or to experience exacerbation of signs and symptoms (which may include deterioration of adaptive behavior).

12.08 *Personality Disorders:* A personality disorder exists when personality traits are inflexible and maladaptive and cause either significant impairment in social or occupational functioning or subjective distress. Characteristic features are typical of the individual's long-term functioning and are not limited to discrete episodes of illness.

The required level of severity for these disorders is met when the requirements in both A and B are satisfied.

A. Deeply ingrained, maladaptive patterns of behavior associated with one of the following:

1. Seclusiveness or autistic thinking; or

2. Pathologically inappropriate suspiciousness or hostility; or

3. Oddities of thought, perception, speech and behavior; or

4. Persistent disturbances of mood or affect; or

5. Pathological dependence, passivity, or aggressivity; or

6. Intense and unstable interpersonal relationships and impulsive and damaging behavior;

AND

B. Resulting in three of the following:

1. Marked restriction of activities of daily living; or

2. Marked difficulties in maintaining social functioning; or

3. Deficiencies of concentration, persistence or pace resulting in frequent failure to complete tasks in a timely manner (in work settings or elsewhere); or

4. Repeated episodes of deterioration or decompensation in work or work-like settings which cause the individual to withdraw from that situation or to experience exacerbation of signs and symptoms (which may include deterioration of adaptive behaviors).

12.09 *Substance Addiction Disorders:* Behavioral changes or physical changes associated with the regular use of substances that affect the central nervous system.

The required level of severity for these disorders is met when the requirements in any of the following (A through I) are satisfied.

A. Organic mental disorders. Evaluate under 12.02.

B. Depressive syndrome. Evaluate under 12.04.

C. Anxiety disorders. Evaluate under 12.06.

D. Personality disorders. Evaluate under 12.08.

E. Peripheral neuropathies. Evaluate under 11.14.

F. Liver damage. Evaluate under 5.05.

G. Gastritis. Evaluate under 5.04.

H. Pancreatitis. Evaluate under 5.08.

I. Seizures. Evaluate under 11.02 or 11.03.

13.00 Neoplastic Diseases, Malignant

A. *Introduction:* The determination of the level of impairment resulting from malignant tumors is made from a consideration of the site of the lesion, the histogenesis of the tumor, the extent of involvement, the apparent adequacy and response to therapy (surgery, irradiation, hormones, chemotherapy, etc.), and the magnitude of the post therapeutic residuals.

B. *Documentation:* The diagnosis of malignant tumors should be established on the basis of symptoms, signs, and laboratory findings. The site of the primary, recurrent, and metastatic lesion must be specified in all cases of malignant neoplastic diseases. If an operative procedure has been performed, the evidence should include a copy of the operative note and the report of the gross and microscopic examination of the surgical specimen. If these documents are not obtainable, then the summary of hospitalization or a report from the treating physician must include details of the findings at surgery and the results of the pathologist's gross and microscopic examination of the tissues.

For those cases in which a disabling impairment was not established when therapy was begun but progression of the disease is likely, current medical evidence should include a report of a recent examination directed especially at local or regional recurrence, soft part or skeletal metastases, and significant posttherapeutic residuals.

C. *Evaluation.* Usually, when the malignant tumor consists of a local lesion with metastases to the regional lymph nodes which apparently has been completely excised, imminent recurrence or metastases is not anticipated. A number of exceptions are noted in the specific Listings. For adjudicative purposes, "distant metastases" or "metastases beyond the regional lymph nodes" refers to metastasis beyond the lines of the usual radical en bloc resection.

Local or regional recurrence after radical surgery or pathological evidence of incomplete excision by radical surgery is to be equated with unresectable lesions (except for carcinoma of the breast, 13.09C) and, for the purposes of our program, may be evaluated as "inoperable."

Local or regional recurrence after incomplete excision of a localized and still completely resectable tumor is not to be equated with recurrence after radical surgery. In the evaluation of lymphomas, the tissue type and site of involvement are not necessarily indicators of the degree of impairment.

When a malignant tumor has metastasized beyond the regional lymph nodes, the impairment will usually be found to meet the requirements of a specific listing. Exceptions are hormone-dependent tumors, isotope-sensitive metastases, and metastases from seminoma of the testicles which are controlled by definitive therapy.

When the original tumor and any metastases have apparently disappeared and have not been evident for 3 or more years, the impairment does not meet the criteria under this body system.

D. *Effects of therapy.* Significant posttherapeutic residuals, not specifically included in the category of impairments for malignant neoplasms, should be evaluated according to the affected body system.

Where the impairment is not listed in the Listing of Impairments and is not medically equivalent to a listed impairment, the impact of any residual impairment including that caused by therapy must be considered. The therapeutic regimen and consequent adverse response to therapy may vary widely; therefore, each case must be considered on an individual basis. It is essential to obtain a specific description of the therapeutic regimen, including the drugs given, dosage, frequency of drug administration, and plans for continued drug administration. It is necessary to obtain a description of the complications or any other adverse response to therapy such as nausea, vomiting, diarrhea, weakness, dermatologic disorders, or reactive mental disorders. Since the severity of the adverse effects of anticancer chemotherapy may change during the period of drug administration, the decision regarding the impact of drug therapy should be based on a sufficient period of therapy to permit proper consideration.

E. *Onset.* To establish onset of disability prior to the time a malignancy is first demonstrated to be inoperable or beyond control by other modes of therapy (and prior evidence is nonexistent) requires medical judgment based on medically reported symptoms, the type of the specific malignancy, its location, and extent of involvement when first demonstrated.

13.01 Category of Impairments, Neoplastic Diseases—Malignant

13.02 *Head and neck* (except salivary glands—13.07, thyroid gland—13.08, and mandible, maxilla, orbit, or temporal fossa—13.11):

A. Inoperable; or

B. Not controlled by prescribed therapy; or

C. Recurrent after radical surgery or irradiation; or

D. With distant metastases; or

E. Epidermoid carcinoma occurring in the pyriform sinus or posterior third of the tongue.

13.03 *Sarcoma of skin:*

A. Angiosarcoma with metastases to regional lymph nodes or beyond; or

B. Mycosis fungoides with metastases to regional lymph nodes, or with visceral involvement.

13.04 *Sarcoma of soft parts:* Not controlled by prescribed therapy.

13.05 *Malignant melanoma:*

A. Recurrent after wide excision; or

B. With metastases to adjacent skin (satellite lesions) or elsewhere.

13.06 *Lymph nodes:*

A. Hodgkin's disease or non-Hodgkin's lymphoma with progressive disease not controlled by prescribed therapy; or

B. Metastatic carcinoma in a lymph node (except for epidermoid carcinoma in a lymph node in the neck) where the primary site is not determined after adequate search; or

C. Epidermoid carcinoma in a lymph node in the neck not responding to prescribed therapy.

13.07 *Salivary glands*—carcinoma or sarcoma with metastases beyond the regional lymph nodes.

13.08 *Thyroid gland*—carcinoma with metastases beyond the regional lymph nodes, not controlled by prescribed therapy.

13.09 *Breast:*

A. Inoperable carcinoma; or

B. Inflammatory carcinoma; or

C. Recurrent carcinoma, except local recurrence controlled by prescribed therapy; or

D. Distant metastases from breast carcinoma (bilateral breast carcinoma, synchronous or metachronous is usually primary in each breast); or

E. Sarcoma with metastases anywhere.

13.10 *Skeletal system* (exclusive of the jaw):

A. Malignant primary tumors with evidence of metastases and not controlled by prescribed therapy; or

B. Metastatic carcinoma to bone where the primary site is not determined after adequate search.

13.11 *Mandible, maxilla, orbit, or temporal fossa:*

A. Sarcoma of any type with metastases; or

B. Carcinoma of the antrum with extension into the orbit or ethmoid or sphenoid sinus, or with regional or distant metastases; or

C. Orbital tumors with intracranial extension; or

D. Tumors of the temporal fossa with perforation of skull and meningeal involvement; or

E. Adamantinoma with orbital or intracranial infiltration; or

F. Tumors of Rathke's pouch with infiltration of the base of the skull or metastases.

13.12 *Brain or spinal cord:*

A. Metastatic carcinoma to brain or spinal cord.

B. Evaluate other tumors under the criteria described in 11.05 and 11.08.

13.13 *Lungs.*

A. Unresectable or with incomplete excision; or

B. Recurrence or metastases after resection; or

C. Oat cell (small cell) carcinoma; or

D. Squamous cell carcinoma, with metastases beyond the hilar lymph nodes; or

E. Other histologic types of carcinoma, including undifferentiated and mixed-cell types (but excluding oat cell carcinoma, 13.13C, and squamous cell carcinoma, 13.13D), with metastases to the hilar lymph nodes.

13.14 *Pleura or mediastinum:*

A. Malignant mesothelioma of pleura; or

B. Malignant tumors, metastatic to pleura; or

C. Malignant primary tumor of the mediastinum not controlled by prescribed therapy.

13.15 *Abdomen:*

A. Generalized carcinomatosis; or

B. Retroperitoneal cellular sarcoma not controlled by prescribed therapy; or

C. Ascites with demonstrated malignant cells.

13.16 *Esophagus or stomach:*

A. Carcinoma or sarcoma of the esophagus; or

B. Carcinoma of the stomach with metastases to the regional lymph nodes or extension to surrounding structure; or

C. Sarcoma of stomach not controlled by prescribed therapy; or

D. Inoperable carcinoma; or

E. Recurrence or metastases after resection.

13.17 *Small intestine:*

A. Carcinoma, sarcoma, or carcinoid tumor with metastases beyond the regional lymph nodes; or

B. Recurrence of carcinoma, sarcoma, or carcinoid tumor after resection; or

C. Sarcoma, not controlled by prescribed therapy.

13.18 *Large intestine* (from ileocecal valve to and including anal canal)—carcinoma or sarcoma.

A. Unresectable; or

B. Metastases beyond the regional lymph nodes; or

C. Recurrence or metastases after resection.

13.19 *Liver or gallbladder:*

A. Primary or metastatic malignant tumors of the liver; or

B. Carcinoma of the gallbladder; or

C. Carcinoma of the bile ducts.

13.20 *Pancreas:*

A. Carcinoma except islet cell carcinoma; or

B. Islet cell carcinoma which is unresectable and physiologically active.

13.21 *Kidneys, adrenal glands, or ureters—carcinoma:*

A. Unresectable; or

B. With hematogenous spread to distant sites; or

C. With metastases to regional lymph nodes.

13.22 *Urinary bladder—carcinoma.* With:

A. Infiltration beyond the bladder wall; or

B. Metastases to regional lymph nodes; or

C. Unresectable; or

D. Recurrence after total cystectomy; or

E. Evaluate renal impairment after total cystectomy under the criteria in 6.02.

13.23 *Prostate gland*—carcinoma not controlled by prescribed therapy.

13.24 *Testicles:*

A. Choriocarcinoma; or

B. Other malignant primary tumors with progressive disease not controlled by prescribed therapy.

13.25 *Uterus*—carcinoma or sarcoma (corpus or cervix).

A. Inoperable and not controlled by prescribed therapy; or

B. Recurrent after total hysterectomy; or

C. Total pelvic exenteration

13.26 *Ovaries*—all malignant, primary or recurrent tumors. With:

A. Ascites with demonstrated malignant cells; or

B. Unresectable infiltration; or

C. Unresectable metastases to omentum or elsewhere in the peritoneal cavity; or

D. Distant metastases.

13.27 *Leukemia:* Evaluate under the criteria of 7.00ff, Hemic and Lymphatic Sytem.

13.28 *Uterine (Fallopian) tubes—carcinoma or sarcoma:*

A. Unresectable, or

B. Metastases to regional lymph nodes.

13.29 *Penis—carcinoma with metastases to regional lymph nodes.*

13.30 *Vulva—carcinoma, with distant metastases.*

Part B

Medical criteria for the evaluation of impairments of children under age 18 (where criteria in Part A do not give appropriate consideration to the particular disease process in childhood).

Sec.

100.00 Growth Impairment

A. *Impairment of growth* may be disabling in itself or it may be an indicator of the severity of the impairment due to a specific disease process.

Determinations of growth impairment should be based upon the comparison of current height with at least three previous determinations, including length at birth, if available. Heights (or lengths) should be plotted on a standard growth chart, such as derived from the National Center for Health Statistics: NCHS Growth Charts. Height should be measured without shoes. Body weight corresponding to the ages represented by the heights should be furnished. The adult heights of the child's natural parents and the heights and ages of siblings should also be furnished. This will provide a basis upon which to identify those children whose short stature represents a familial characteristic rather than a result of disease. This is particularly true for adjudication under 100.02B.

B. *Bone age determinations* should include a full descriptive report of roentgenograms specifically obtained to determine bone age and must cite the standardization method used. Where roentgenograms must be obtained currently as a basis for adjudication under 100.03, views of the left hand and wrist should be ordered. In addition, roentgenograms of the knee and ankle should be obtained when cessation of growth is being evaluated in an older child at, or past, puberty.

C. The criteria in this section are applicable until closure of the major epiphyses. The cessation of significant increase in height at that point would prevent the application of these criteria.

100.01 Category of Impairments, Growth

100.02 *Growth impairment,* considered to be related to an additional specific medically determinable impairment, and one of the following:

A. Fall of greater than 15 percentiles in height which is sustained; or

B. Fall to, or persistence of, height below the third percentile.

100.03 *Growth impairment,* not identified as being related to an additional, specific medically determinable impairment. With:

A. Fall of greater than 25 percentiles in height which is sustained; and

B. Bone age greater than two standard deviations (2 SD) below the mean for chronological age (see 100.00B).

101.00 Musculoskeletal System

A. *Rheumatoid arthritis.* Documentation of the diagnosis of juvenile rheumatoid arthritis should be made according to an established protocol, such as that published by the Arthritis Foundation, *Bulletin on the Rheumatic Diseases.* Vol. 23, 1972–1973 Series, p 712. Inflammatory signs include persistent pain, tenderness, erythema, swelling, and increased local temperature of a joint.

B. *The measurements of joint motion* are based on the technique for measurements described in the "Joint Method of Measuring and Recording," published by the American

Academy of Orthopedic Surgeons in 1965, or "The Extremities and Back" in *Guides to the Evaluation of Permanent Impairment*, Chicago, American Medical Association, 1971, Chapter 1, pp. 1–48.

C. *Degenerative arthritis* may be the end stage of many skeletal diseases and conditions, such as traumatic arthritis, collagen disorders septic arthritis, congenital dislocation of the hip, aseptic necrosis of the hip, slipped capital femoral epiphyses, skeletal dysplasias, etc.

101.01 Category of Impairments, Musculoskeletal

101.02 *Juvenile rheumatoid arthritis.* With:

A. Persistence or recurrence of joint inflammation despite three months of medical treatment and one of the following:

1. Limitation of motion of two major joints of 50 percent or greater; or

2. Fixed deformity of two major weight-bearing joints of 30 degrees or more; or

3. Radiographic changes of joint narrowing, erosion, or subluxation; or

4. Persistent or recurrent systemic involvement such as iridocyclitis or pericarditis; or

B. Steroid dependence.

101.03 *Deficit of musculoskeletal function* due to deformity or musculoskeletal disease and one of the following:

A. Walking is markedly reduced in speed or distance despite orthotic or prosthetic devices; or

B. Ambulation is possible only with obligatory bilateral upper limb assistance (e.g., with walker, crutches); or

C. Inability to perform age-related personal self-care activities involving feeding, dressing, and personal hygiene.

101.05 *Disorders of the spine.*

A. Fracture of vertebra with cord involvement (substantiated by appropriate sensory and motor loss); or

B. Scoliosis (congenital idiopathic or neuromyopathic). With:

1. Major spinal curve measuring 60 degrees or greater; or

2. Spinal fusion of six or more levels. Consider under a disability for one year from the time of surgery; thereafter evaluate the residual impairment; or

3. FEV (vital capacity) of 50 percent or less of predicted normal values for the individual's measured (actual) height; or

C. Kyphosis or lordosis measuring 90 degrees or greater.

101.08 *Chronic osteomyelitis* with persistence or recurrence of inflammatory signs or drainage for at least 6 months despite prescribed therapy and consistent radiographic findings.

102.00 Special Senses and Speech

A. *Visual impairments in children.* Impairment of central visual acuity should be determined with use of the standard Snellen test chart. Where this cannot be used, as in very young children, a complete description should be provided of the findings using other appropriate methods of examination, including a description of the techniques used for determining the central visual acuity for distance.

The accommodative reflex is generally not present in children under 6 months of age. In premature infants, it may not be present until 6 months plus the number of months the child is premature. Therefore absence of accommodative reflex will be considered as indicating a visual impairment only in children above this age (6 months).

Documentation of a visual disorder must include description of the ocular pathology.

B. *Hearing impairments in children.* The criteria for hearing impairments in children take into account that a lesser impairment in hearing which occurs at an early age may result in a severe speech and language disorder.

Improvement by a hearing aid, as predicted by the testing procedure, must be demonstrated to be feasible in that child, since younger children may be unable to use a hearing aid effectively.

The type of audiometric testing performed must be described and a copy of the results must be included. The pure tone air conduction hearing levels in 102.08 are based on American National Standard Institute Specifications for Audiometers, S3.6–1969 (ANSI–1969). The report should indicate the specifications used to calibrate the audiometer.

The finding of a severe impairment will be based on the average hearing levels at 500, 1000, 2000, and 3000 Hertz (Hz) in the better ear, and on speech discrimination, as specified in 102.08.

102.01 Category of Impairments, Special Sense Organs

102.02 *Impairments of central visual acuity.*

A. Remaining vision in the better eye after best correction is 20/200 or less; or

B. For children below 3 years of age at time of adjudication:

1. Absence of accommodative reflex (see 102.00A for exclusion of children under 6 months of age); or

2. Retrolental fibroplasia with macular scarring or neovascularization; or

3. Bilateral congenital cataracts with visualization of retinal red reflex only or when associated with other ocular pathology.

102.08 *Hearing impairments.*

A. For children below 5 years of age at time of adjudication, inability to hear air conduction thresholds at an average of 40 decibels (db) hearing level or greater in the better ear; or

B. For children 5 years of age and above at time of adjudication:

1. Inability to hear air conduction thresholds at an average of 70 decibels (db) or greater in the better ear; or

2. Speech discrimination scores at 40 percent or less in the better ear; or

3. Inability to hear air conduction thresholds at an average of 40 decibels (db) or greater in the better ear, and a speech and language disorder which significantly affects the clarity and content of the speech and is attributable to the hearing impairment.

103.00 Respiratory System

A. *Documentation of pulmonary insufficiency.* The reports of spirometric studies for evaluation under Table I must be expressed in liters (BTPS). The reported FEV_1 should represent the largest of at least three satisfactory attempts. The appropriately labeled spirometric tracing of three FEV maneuvers must be submitted with the report, showing distance per second on the abscissa and distance per liter on the ordinate. The unit distance for volume on the tracing should be at least 15 mm. per liter and the paper speed at least 20 mm. per second. The height of the individual without shoes must be recorded.

The ventilatory function studies should not be performed during or soon after an acute episode or exacerbation of a respiratory illness. In the presence of acute bronchospasm, or where the FEV_1 is less than that stated in Table I, the studies should be repeated after the administration of a nebulized bronchodilator. If a bronchodilator was not used in such instances, the reason should be stated in the report.

A statement should be made as to the child's ability to understand directions and to cooperate in performance of the test, and should include an evaluation of the child's effort. When tests cannot be performed or completed, the reason (such as a child's young age) should be stated in the report.

B. *Cystic fibrosis.* This section discusses only the pulmonary manifestations of cystic fibrosis. Other manifestations, complications, or associated disease must be evaluated under the appropriate section.

The diagnosis of cystic fibrosis will be based upon appropriate history, physical examination, and pertinent laboratory findings. Confirmation based upon elevated concentration of sodium or chloride in the sweat should be included, with indication of the technique used for collection and analysis.

103.01 Category of Impairments, Respiratory

103.03 *Bronchial asthma.* With evidence of progression of the disease despite therapy and documented by one of the following:

A. Recent, recurrent intense asthmatic attacks requiring parenteral medication; or

B. Persistent prolonged expiration with wheezing between acute attacks and radiographic findings of peribronchial disease.

103.13 *Pulmonary manifestations of cystic fibrosis.* With:

A. FEV_1 equal to or less than the values specified in Table I (see § 103.00A for requirements of ventilatory function testing); or

B. For children where ventilatory function testing cannot be performed:

1. History of dyspnea on mild exertion or chronic frequent productive cough; and

2. Persistent or recurrent abnormal breath sounds, bilateral rales or rhonchi; and

3. Radiographic findings of extensive disease with hyperaeration and bilateral peribronchial infiltration.

TABLE I

Height (in centimeters)	FEV_1 equal to or less than (L, BTPS)
110 or less	0.6
120	0.7

TABLE I—Continued

Height (in centimeters)	FEV, equal to or less than (L, BTPS)
130	0.9
140	1.1
150	1.3
160	1.5
170 or more	1.6

104.00 **Cardiovascular System**

A. *General.* Evaluation should be based upon history, physical findings, and appropriate laboratory data. Reported abnormalities should be consistent with the pathologic diagnosis. The actual electrocardiographic tracing, or an adequate marked photocopy, must be included. Reports of other pertinent studies necessary to substantiate the diagnosis or describe the severity of the impairment must also be included:

B. *Evaluation of cardiovascular impairment in children* requires two steps:

1. The delineation of a specific cardiovascular disturbance, either congenital or or acquired. This may include arterial or venous disease, rhythm disturbance, or disease involving the valves, septa, myocardium or pericardium; and

2. Documentation of the severity of the impairment, with medically determinable and consistent cardiovascular signs, symptoms, and laboratory data. In cases where impairment characteristics are questionably secondary to the cardiovascular disturbance, additional documentation of the severity of the impairment (e.g., catheterization data, if performed) will be necessary.

C. *Chest roentgenogram* (6 ft. PA film) will be considered indicative of cardiomegaly if:

1. The cardiothoracic ratio is over 60 percent at age one year or less, or 55 percent at more than one year of age; or

2. The cardiac size is increased over 15 percent from any prior chest oentgenograms; or

3. Specific chamber or vessel enlargement is documented in accordance with established criteria.

D. *Tables I, II, and III* below are designed for case adjudication and not for diagnostic purposes. The adult criteria may be useful for older children and should be used when applicable.

E. *Rheumatic fever,* as used in this section assumes diagnosis made according to the revised Jones Criteria.

104.01 Category of Impairments, Cardiovascular

104.02 *Chronic congestive failure.* With two or more of the following signs:

A. Tachycardia (see Table I).

B. Tachypnea (see Table II).

C. Cardiomegaly on chest roentgenogram (see 104.00C).

D. Hepatomegaly (more than 2 cm. below the right costal margin in the right midclavicular line).

E. Evidence of pulmonary edema, such as rales or orthopnea.

F. Dependent edema.

G. Exercise intolerance manifested as labored respiration on mild exertion (e.g., in an infant, feeding).

TABLE I—TACHYCARDIA AT REST

Age	Apical Heart (beats per minute)
Under 1 yr	150
1 through 3 yrs	130
4 through 9 yrs	120
10 through 15 yrs	110
Over 15 yr	100

TABLE II—TACHYPNEA AT REST

Age	Respiratory rate over (per minute)
Under 1 yr	40
1 through 5 yrs	35
6 through 9 yrs	30
Over 9 yrs	25

104.03 *Hypertensive cardiovascular disease.* With persistently elevated blood pressure for age (see Table III) and one of the following:

A. Impaired renal function as described under the criteria in 106.02; or

B. Cerebrovascular damage as described under the criteria in 111.06; or

C. Congestive heart failure as described under the criteria in 104.02.

TABLE III—ELEVATED BLOOD PRESSURE

Age	S (over) mm.	Diastolic (over) in mm.
Under 6 mo	95	60
6 mo. to 1 yr	110	70
1 through 8 yrs	115	80
9 through 11 yrs	120	80
12 through 15 yrs	130	80
Over 15 yrs	140	80

104.04 *Cyanotic congenital heart disease.* With one of the following:

A. Surgery is limited to palliative measures; or

B. Characteristic squatting, hemoptysis, syncope, or hypercyanotic spells; or

C. Chronic hematocrit of 55 percent or greater or arterial O_2 saturation of less than 90 percent at rest, or arterial oxygen tension of less than 60 Torr at rest.

104.05 *Cardiac arrhythmia, such as persistent or recurrent heart block or A-V dissociation (with or without therapy).* And one of the following:

A. Cardiac syncope; or

B. Congestive heart failure as described under the criteria in 104.02; or

C. Exercise intolerance with labored respirations on mild exertion (e.g., in infants, feeding).

104.07 *Cardiac syncope* with at least one documented syncopal episode characteristic of specific cardiac disease (e.g., aortic stenosis).

104.08 *Recurrent hemoptysis.* Associated with either pulmonary hypertension or extensive bronchial collaterals due to documented chronic cardiovascular disease.

104.09 *Chronic rheumatic fever or rheumatic heart disease.* With:

A. Persistence of rheumatic fever activity for 6 months or more, with significant murmur(s), cardiomegaly (see 104.00C), and other abnormal laboratory findings (such as elevated sedimentation rate or electrocardiographic findings); or

B. Congestive heart failure as described under the criteria in 104.02.

105.00 **Digestive System**

A. *Disorders of the digestive system* which result in disability usually do so because of interference with nutrition and growth, multiple recurrent inflammatory lesions, or other complications of the disease. Such lesions or complications usually respond to treatment. To constitute a listed impairment, these must be shown to have persisted or be expected to persist despite prescribed therapy for a continuous period of at least 12 months.

B. *Documentation of gastrointestinal impairments* should include pertinent operative findings, radiographic studies, endoscopy, and biopsy reports. Where a liver biopsy has been performed in chronic liver disease, documentation should include the report of the biopsy.

C. *Growth retardation and malnutrition.* When the primary disorder of the digestive tract has been documented, evaluate resultant malnutrition under the criteria described in 105.08. Evaluate resultant growth impairment under the criteria described in 100.03. Intestinal disorders, including surgical diversions and potentially correctable congenital lesions, do not represent a severe impairment if the individual is able to maintain adequate nutrition growth and development.

D. *Multiple congenital anomalies.* See related criteria, and consider as a combination of impairments.

105.01 Category of Impairments, Digestive

105.03 *Esophageal obstruction, caused by atresia, stricture, or stenosis* with malnutrition as described under the criteria in 105.08.

105.05 *Chronic liver disease.* With one of the following:

A. Inoperable billiary atresia demonstrated by X-ray or surgery; or

B. Intractable ascites not attributable to other causes, with serum albumin of 3.0 gm./100 ml. or less; or

C. Esophageal varices (demonstrated by angiography, barium swallow, or endoscopy or by prior performance of a specific shunt or plication procedure); or

D. Hepatic coma, documentated by findings from hospital records; or

E. Hepatic encephalopathy. Evaluate under the criteria in 112.02; or

F. Chronic active inflammation or necrosis documented by SGOT persistently more than 100 units or serum bilirubin of 2.5 mg. percent or greater.

105.07 *Chronic inflammatory bowel disease (such as ulcerative colitis, regional*

enteritis), as documented in 105.00. With one of the following:

A. Intestinal manifestations or complications, such as obstruction, abscess, or fistula formation which has lasted or is expected to last 12 months; or

B. Malnutrition as described under the criteria in 105.08; or

C. Growth impairment as described under the criteria in 100.03.

105.08 *Malnutrition, due to demonstrable gastrointestinal disease causing either a fall of 15 percentiles of weight which persists or the persistence of weight which is less than the third percentile (on standard growth charts).* And one of the following:

A. Stool fat excretion per 24 hours:

1. More than 15 percent in infants less than 6 months.

2. More than 10 percent in infants 6–18 months.

3. More than 6 percent in children more than 18 months; or

B. Persistent hematocrit of 30 percent or less despite prescribed therapy; or

C. Serum carotene of 40 mcg./100 ml. or less; or

D. Serum albumin of 3.0 gm./100 ml. or less.

106.00 **Genito-Urinary System**

A. *Determination of the presence of chronic renal disease* will be based upon the following factors:

1. History, physical examination, and laboratory evidence of renal disease.

2. Indications of its progressive nature or laboratory evidence of deterioration of renal function.

B. *Renal transplant.* The amount of function restored and the time required to effect improvement depend upon various factors including adequacy of post transplant renal function, incidence of renal infection, occurrence of rejection crisis, presence of systemic complications (anemia, neuropathy, etc.) and side effects of corticosteroid or immuno-suppressive agents. A period of at least 12 months is required for the individual to reach a point of stable medical improvement.

C. Evaluate associated disorders and complications according to the appropriate body system listing.

106.01 Category of Impairments, Genito-Urinary

106.02 *Chronic renal disease.* With:

A. Persistent elevation of serum creatinine to 3 mg. per deciliter (100 ml.) or greater over at least 3 months; or

B. Reduction of creatinine clearance to 30 ml. per minute (43 liters/24 hours) per 1.73 m^2 of body surface area over at least 3 months; or

C. Chronic renal dialysis program for irreversible renal failure; or

D. Renal transplant. Consider under a disability for 12 months following surgery; thereafter, evaluate the residual impairment (see 106.00B).

106.06 Nephrotic syndrome, with edema not controlled by prescribed therapy. And:

A. Serum albumin less than 2 gm./100 ml.; or

B. Proteinuria more than 2.5 gm./1.73m^2/day.

107.00 **Hemic and Lymphatic System**

A. *Sickle cell disease* refers to a chronic hemolytic anemia associated with sickle cell hemoglobin, either homozygous or in combination with thalassemia or with another abnormal hemoglobin (such as C or F).

Appropriate hematologic evidence for sickle cell disease, such as hemoglobin electrophoresis must be included. Vaso-occlusive, hemolytic, or aplastic episodes should be documented by description of severity, frequency, and duration.

Disability due to sickle cell disease may be solely the result of a severe, persistent anemia or may be due to the combination of chronic progressive or episodic manifestations in the presence of a less severe anemia.

Major visceral episodes causing disability include meningitis, osteomyelitis, pulmonary infections or infarctions, cerebrovascular accidents, congestive heart failure, genitourinary involvement, etc.

B. *Coagulation defects.* Chronic inherited coagulation disorders must be documented by appropriate laboratory evidence such as abnormal thromboplastin generation, coagulation time, or factor assay.

C. *Acute leukemia.* Initial diagnosis of acute leukemia must be based upon definitive bone marrow pathologic evidence. Recurrent disease may be documented by peripheral blood, bone marrow, or cerebrospinal fluid examination. The pathology report must be included.

The designated duration of disability implicit in the finding of a listed impairment is contained in 107.11. Following the designated time period, a documented diagnosis itself is no longer sufficient to establish a severe impairment. The severity of any remaining impairment must be evaluated on the basis of the medical evidence.

107.01 Category of Impairments, Hemic and Lymphatic

107.03 *Hemolytic anemia (due to any cause).* Manifested by persistence of hematocrit of 26 percent or less despite prescribed therapy, and reticulocyte count of 4 percent or greater.

107.05 *Sickle cell disease.* With:

A. Recent, recurrent, severe vaso-occlusive crises (musculoskeletal, vertebral, abdominal); or

B. A major visceral complication in the 12 months prior to application; or

C. A hyperhemolytic or aplastic crisis within 12 months prior to application; or

D. Chronic, severe anemia with persistence of hematocrit of 28 percent or less; or

E. Congestive heart failure, cerebrovascular damage, or emotional disorder as described under the criteria in 104.02, 111.00ff, or 112.00ff.

107.06 *Chronic idiopathic thrombocytopenic purpura of childhood* with purpura and thrombocytopenia of 40,000 platelets/cu. mm. or less despite prescribed therapy or recurrent upon withdrawal of treatment.

107.08 *Inherited coagulation disorder.* With:

A. Repeated spontaneous or inappropriate bleeding; or

B. Hemarthrosis with joint deformity.

107.11 *Acute leukemia.* Consider under a disability:

A. For 2½ years from the time of initial diagnosis; or

B. For 2½ years from the time of recurrence of active disease.

108.00 **[Reserved]**

109.00 **Endocrine System**

A. *Cause of disability.* Disability is caused by a disturbance in the regulation of the secretion or metabolism of one or more hormones which are not adequately controlled by therapy. Such disturbances or abnormalities usually respond to treatment. To constitute a listed impairment these must be shown to have persisted or be expected to persist despite prescribed therapy for a continuous period of at least 12 months.

B. *Growth.* Normal growth is usually a sensitive indicator of health as well as of adequate therapy in children. Impairment of growth may be disabling in itself or may be an indicator of a severe disorder involving the endocrine system or other body systems. Where involvement of other organ systems has occurred as a result of a primary endocrine disorder, these impairments should be evaluated according to the criteria under the appropriate sections.

C. *Documentation.* Description of characteristic history, physical findings, and diagnostic laboratory data must be included. Results of laboratory tests will be considered abnormal if outside the normal range or greater than two standard deviations from the mean of the testing laboratory. Reports in the file should contain the information provided by the testing laboratory as to their normal values for that test.

D. *Hyperfunction of the adrenal cortex.* Evidence of growth retardation must be documented as described in 100.00. Elevated blood or urinary free cortisol levels are not acceptable in lieu of urinary 17-hydroxycorticosteroid excretion for the diagnosis of adrenal cortical hyperfunction.

E. *Adrenal cortical insufficiency.* Documentation must include persistent low plasma cortisol or low urinary 17-hydroxycorticosteroids or 17-ketogenic steroids and evidence of unresponsiveness to ACTH stimulation.

109.01 Category of Impairments, Endrocrine

109.02 *Thyroid Disorders.*

A. *Hyperthyroidism (as documented in 109.00C).* With clinical manifestations despite prescribed therapy, and one of the following:

1. Elevated serum thyroxine (T_4) and either elevated free T_4 or resin T_3 uptake; or

2. Elevated thyroid uptake of radioiodine; or

3. Elevated serum triiodothyronine (T_3).

B. *Hypothyroidism.* With one of the following, despite prescribed therapy:

1. IQ of 69 or less; or

2. Growth impairment as described under the criteria in 100.02 A and B; or

3. Precocious puberty.

109.03 *Hyperparathyroidism (as documented in 109.00C).* With:

A. Repeated elevated total or ionized serum calcium; or

B. Elevated serum parathyroid hormone.

109.04 *Hypoparathyroidism or Pseudohypoparathyroidism.* With:

A. Severe recurrent tetany or convulsions which are unresponsive to prescribed therapy; or

B. Growth retardation as described under criteria in 100.02 A and B.

109.05 *Diabetes insipidus, documented by pathologic hypertonic saline or water deprivation test.* And one of the following:

A. Intracranial space-occupying lesion, before or after surgery; or

B. Unresponsiveness to Pitressin; or

C. Growth retardation as described under the criteria in 100.02 A and B; or

D. Unresponsive hypothalmic thirst center, with chronic or recurrent hypernatremia; or

E. Decreased visual fields attributable to a pituitary lesion.

109.06 *Hyperfunction of the adrenal cortex (Primary or secondary).* With:

A. Elevated urinary 17-hyroxycorticosteroids (or 17-ketogenic steroids) as documented in 109.00 C and D; and

B. Unresponsiveness to low-dose dexamethasone suppression.

109.07 *Adrenal cortical insufficiency (as documented in 109.00 C and E)* with recent, recurrent episodes of circulatory collapse.

109.08 *Juvenile diabetes mellitus (as documented in 109.00C) requiring parenteral insulin.* And one of the following, despite prescribed therapy:

A. Recent, recurrent hospitalizations with acidosis; or

B. Recent, recurrent episodes of hypoglycemia; or

C. Growth retardation as described under the criteria in 100.02 A or B; or

D. Impaired renal function as described under the criteria in 106.00ff.

109.09 *Iatrogenic hypercorticoid state.* With chronic glucocorticoid therapy resulting in one of the following:

A. Osteoporosis; or

B. Growth retardation as described under the criteria in 100.02 A or B; or

C. Diabetes mellitus as described under the criteria in 109.08; or

D. Myopathy as described under the criteria in 111.06; or

E. Emotional disorder as described under the criteria in 112.00ff.

109.10 *Pituitary dwarfism (with documented growth hormone deficiency).* And growth impairment as described under the criteria in 100.02B.

109.11 *Adrenogenital syndrome.* With:

A. Recent, recurrent self-losing episodes despite prescribed therapy; or

B. Inadequate replacement therapy manifested by accelerated bone age and virilization, or

C. Growth impairment as described under the criteria in 100.02 A or B.

109.12 *Hypoglycemia (as documented in 109.00C).* With recent, recurrent hypoglycemic episodes producing convulsion or coma.

109.13 *Gonadal Dysgenesis (Turner's Syndrome), chromosomally proven.* Evaluate the resulting impairment under the criteria for the appropriate body system.

110.00 **Multiple Body Systems**

A. *Catastrophic congenital abnormalities or disease.* This section refers only to very serious congenital disorders, diagnosed in the newborn or infant child.

B. *Immune deficiency diseases.* Documentation of immune deficiency disease must be submitted, and may include quantitative immunoglobulins, skin tests for delayed hypersensitivity, lymphocyte stimulative tests, and measurements of cellular immunity mediators.

110.01 Category of Impairments, Multiple Body Systems

110.08 *Catastrophic congenital abnormalities or disease.* With:

A. A positive diagnosis (such as anencephaly, trisomy D or E, cyclopia, etc.), generally regarded as being incompatible with extrauterine life; or

B. A positive diagnosis (such as cri du chat, Tay-Sachs Disease) wherein attainment of the growth and development level of 2 years is not expected to occur.

110.09 *Immune deficiency disease.*

A. *Hypogammaglobulinemia or dysgammaglobulinemia.* With:

1. Recent, recurrent severe infections; or

2. A complication such as growth retardation, chronic lung disease, collagen disorder, or tumors.

E. *Thymic dysplastic syndromes* (such as Swiss, diGeorge).

111.00 **Neurological**

A. *Seizure disorder* must be substantiated by at least one detailed description of a typical seizure. Report of recent documentation should include an electroencephalogram and neurological examination. Sleep EEG is preferable, especially with temporal lobe seizures. Frequency of attacks and any associated phenomena should also be substantiated.

Young children may have convulsions in association with febrile illnesses. Proper use of 111.02 and 111.03 requires that a seizure disorder be established. Although this does not exclude consideration of seizures occurring during febrile illnesses, it does require documentation of seizures during nonfebrile periods.

There is an expected delay in control of seizures when treatment is started, particularly when changes in the treatment regimen are necessary. Therefore, a seizure disorder should not be considered to meet the requirements of 111.02 or 111.03 unless it is shown that seizures have persisted more than three months after prescribed therapy began.

B. *Minor motor seizures.* Classical petit mal seizures must be documented by characteristic EEG pattern, plus information as to age at onset and frequency of clinical seizures. Myoclonic seizures, whether of the typical infantile or Lennox-gastaut variety after infancy, must also be documented by the characteristic EEG pattern plus information as to age at onset and frequency of seizures.

C. *Motor dysfunction.* As described in 111.06, motor dysfunction may be due to any neurological disorder. It may be due to static or progressive conditions involving any area of the nervous system and producing any type of neurological impairment. This may include weakness, spasticity, lack of coordination, ataxia, tremor, athetosis, or sensory loss. Documentation of motor dysfunction must include neurologic findings and description of type of neurologic abnormality (e.g., spasticity, weakness), as well as a description of the child's functional impairment (i.e., what the child is unable to do because of the abnormality). Where a diagnosis has been made, evidence should be included for substantiation of the diagnosis (e.g., blood chemistries and muscle biopsy reports), wherever applicable.

D. *Impairment of communication.* The documentation should include a description of a recent comprehensive evaluation, including all areas of affective and effective communication, performed by a qualified professional.

111.01 Category of Impairment, Neurological

111.02 *Major motor seizure disorder.*

A. *Major motor seizures.* In a child with an established seizure disorder, the occurrence of more than one major motor seizure per month despite at least three months of prescribed treatment. With:

1. Daytime episodes (loss of consciousness and convulsive seizures); or

2. Nocturnal episodes manifesting residuals which interfere with activity during the day.

B. *Major motor seizures.* In a child with an established seizure disorder, the occurrence of a least one major motor seizure in the year prior to application despite at least three months of prescribed treatment. And one of the following:

1. IQ of 69 or less; or

2. Significant interference with communication due to speech, hearing, or visual defect; or

3. Significant emotional disorder; or

4. Where significant adverse effects of medication interfere with major daily activities.

111.03 *Minor motor seizure disorder.* In a child with an established seizure disorder, the occurrence of more than one minor motor seizure per week, with alteration of awareness or loss of consciousness, despite at least three months of prescribed treatment.

111.05 *Brain tumors. A. Malignant* gliomas (astrocytoma—Grades III and IV, glioblastoma multiforme), medulloblastoma, ependymoblastoma, primary sarcoma or brain stem gliomas; or

B. Evaluate other brain tumors under the criteria for the resulting neurological impairment.

111.06 *Motor dysfunction (due to any neurological disorder).* Persistent disorganization or deficit of motor function for age involving two extremities, which (despite prescribed therapy) interferes with age-appropriate major daily activities and results in disruption of:

A. Fine and gross movements; or

B. Gait and station.

111.07 *Cerebral palsy.* With:

A. Motor dysfunction meeting the requirements of 111.06 or 101.03; or

B. Less severe motor dysfunction (but more than slight) and one of the following:

1. IQ of 69 or less; or

2. Seizure disorder, with at least one major motor seizure in the year prior to application; or

3. Significant interference with communication due to speech, hearing or visual defect; or

4. Significant emotional disorder.

111.08 *Meningomyelocele (and related disorders).* With one of the following despite prescribed treatment:

A. Motor dysfunction meeting the requirements of 101.03 or 111.06; or

B. Less severe motor dysfunction (but more than slight), and:

1. Urinary or fecal incontinence when inappropriate for age; or

2. IQ of 69 or less; or

C. Four extremity involvement; or

D. Noncompensated hydrocephalus producing interference with mental or motor developmental progression.

111.09 *Communication impairment, associated with documented neurological disorder.* And one of the following:

A. Documented speech deficit which significantly affects the clarity and content of the speech; or

B. Documented comprehension deficit resulting in ineffective verbal communication for age; or

C. Impairment of hearing as described under the criteria in 102.08.

112.00 Mental and Emotional Disorders

A. *Introduction.* This section is intended primarily to describe mental and emotional disorders of young children. The criteria describing medically determinable impairments in adults should be used where they clearly appear to be more appropriate.

B. *Mental retardation. General.* As with any other impairment, the necessary evidence consists of symptoms, signs, and laboratory findings which provide medically demonstrable evidence of impairment severity. Standardized intelligence test results are essential to the adjudication of all cases of mental retardation that are not clearly covered under the provisions of 112.05A. Developmental milestone criteria may be the sole basis for adjudication only in cases where the child's young age and/or condition preclude formal standardized testing by a psychologist or psychiatrist experienced in testing children.

Measures of intellectual functioning. Standardized intelligence tests, such as the Wechsler Preschool and Primary Scale of Intelligence (WPPSI), the Wechsler Intelligence Scale for Children—Revised (WISC–R), the Revised Stanford-Binet Scale, and the McCarthey Scales of Children's Abilities, should be used wherever possible. Key data such as subtest scores should also be included in the report. Tests should be administered by a qualified and experienced psychologist or psychiatrist, and any discrepancies between formal tests results and the child's customary behavior and daily activities should be duly noted and resolved.

Developmental milestone criteria. In the event that a child's young age and/or condition preclude formal testing by a psychologist or psychiatrist experienced in testing children, a comprehensive evaluation covering the full range of developmental activities should be performed. This should consist of a detailed account of the child's daily activities together with direct observations by a professional person; the latter should include indices or manifestations of social, intellectual, adaptive, verbal, motor (posture, locomotion, manipulation), language, emotional, and self-care development for age. The above should then be related by the evaluating or treating physician to established developmental norms of the kind found in any widely used standard pediatrics text.

c. *Profound combined mental-neurological-musculoskeletal impairments.* There are children with profound and irreversible brain damage resulting in total incapacitation. Such children may meet criteria in either neurological, musculoskeletal, and/or mental sections; they should be adjudicated under the criteria most completey substantiated by the medical evidence submitted. Frequently, the most appropriate criteria will be found under the mental impairment section.

112.01 Category of Impairments, Mental and Emotional

112.02 *Chronic brain syndrome.* With arrest of developmental progression for at least six months or loss of previously acquired abilities.

112.03 *Psychosis of infancy and childhood.* Documented by psychiatric evaluation and supported, if necessary, by the results of appropriate standardized psychological tests and manifested by marked restriction in the performance of daily age-appropriate activities; constriction of age-appropriate interests; deficiency of age-approrpiate self-care skills; and impaired ability to relate to others; together with persistence of one (or more) of the following:

A. Significant withdrawal or detachment; or

B. Impaired sense of reality; or

C. Bizarre behavior patterns; or

D. Strong need for maintenance of sameness, with intense anxiety, fear, or anger when change is introduced; or

E. Panic at threat of separation from parent.

112.04 *Functional nonpsychotic disorders.* Documented by psychiatric evaluation and supported, if necessary, by the results of appropriate standardized psychological tests and manifested by marked restriction in the performance of daily age-appropriate activities; constriction of age-appropriate interests; deficiency of age-appropriate self-care skills; and impaired ability to relate to others; together with persistence of one (or more) of the following:

A. Psychophysiological disorder (e.g., diarrhea, asthma); or

B. Anxiety; or

C. Depression; or

D. Phobic, obsessive, or compulsive behavior; or

E. Hypochondriasis; or

F. Hysteria; or

G. Asocial or antisocial behavior.

112.05 *Mental retardation.*

A. Achievement of only those developmental milestones generally acquired by children no more than one-half the child's chronological age; or

B. IQ of 59 or less; or

C. IQ of 60–69, inclusive, and a physical or other mental impairment imposing additional and significant restriction of function or developmental progression.

113.00 Neoplastic Diseases, Malignant

A. *Introduction.* Determination of disability in the growing and developing child with a malignant neoplastic disease is based upon the combined effects of:

1. The pathophysiology, histology, and natural history of the tumor; and

2. The effects of the currently employed aggressive multimodal therapeutic regimens.

Combinations of surgery, radiation, and chemotherapy or prolonged therapeutic schedules impart significant additional morbidity to the child during the period of greatest risk from the tumor itself. This period of highest risk and greatest therapeutically-induced morbidity defines the limits of disability for most of childhood neoplastic disease.

B. *Documentation.* The diagnosis of neoplasm should be established on the basis of symptoms, signs, and laboratory findings. The site of the primary, recurrent, and metastatic lesion must be specified in all cases of malignant neoplastic diseases. If an operative procedure has been performed, the evidence should include a copy of the operative note and the report of the gross and microscopic examination of the surgical specimen, along with all pertinent laboratory and X-ray reports. The evidence should also include a recent report directed especially at describing whether there is evidence of local or regional recurrence, soft part or skeletal metastases, and significant post therapeutic residuals.

C. *Malignant solid tumors,* as listed under 113.03, include the histiocytosis syndromes except for solitary eosinophilic granuloma. Thus, 113.03 should not be used for evaluating brain tumors (see 111.05) or thyroid tumors, which must be evaluated on the basis of whether they are controlled by prescribed therapy.

D. *Duration of disability* from malignant neoplastic tumors is included in 113.02 and 113.03. Following the time periods designated in these sections, a documented diagnosis itself is no longer sufficient to establish a severe impairment. The severity of a remaining impairment must be evaluated on the basis of the medical evidence.

113.01 Category of Impairments, Neoplastic Diseases—Malignant

113.02 *Lymphoreticular malignant neoplasms.*

A. Hodgkin's disease with progressive disease not controlled by prescribed therapy; or

B. Non-Hodgkin's lymphoma. Consider under a disability:

1. For 2½ years from time of initial diagnosis; or

2. For 2½ years from time of recurrence of active disease.

113.03 *Malignant solid tumors.* Consider under a diability:

A. For 2 years from the time of initial diagnosis; or

B. For 2 years from the time of recurrence of active disease.

113.04 *Neuroblastoma.* With one of the following:
A. Extension across the midline; or
B. Distant metastases; or
C. Recurrence; or
D. Onset at age 1 year or older.

113.05 *Retinoblastoma.* With one of the following:
A. Bilateral involvement; or
B. Metastases; or
C. Extension beyond the orbit; or
D. Recurrence.

Appendix 2—Medical-Vocational Guidelines

Sec.
200.00 Introduction.
201.00 Maximum sustained work capability limited to sedentary work as a result of severe medically determinable impairment(s).
202.00 Maximum sustained work capability limited to light work as a result of severe medically determinable impairment(s).
203.00 Maximum sustained work capability limited to medium work as a result of severe medically determinable impairment(s).
204.00 Maximum sustained work capability limited to heavy work (or very heavy work) as a result of severe medically determinable impairment(s).

200.00 *Introduction.* (a) The following rules reflect the major functional and vocational patterns which are encountered in cases which cannot be evaluated on medical considerations alone, where an individual with a severe medically determinable physical or mental impairment(s) is not engaging in substantial gainful activity and the individual's impairment(s) prevents the performance of his or her vocationally relevant past work. They also reflect the analysis of the various vocational factors (i.e., age, education, and work experience) in combination with the individual's residual functional capacity (used to determine his or her maximum sustained work capability for sedentary, light, medium, heavy, or very heavy work) in evaluating the individual's ability to engage in substantial gainful activity in other than his or her vocationally relevant past work. Where the findings of fact made with respect to a particular individual's vocational factors and residual functional capacity coincide with all of the criteria of a particular rule, the rule directs a conclusion as to whether the individual is or is not disabled. However, each of these findings of fact is subject to rebuttal and the individual may present evidence to refute such findings. Where any one of the findings of fact does not coincide with the corresponding criterion of a rule, the rule does not apply in that particular case and, accordingly, does not direct a conclusion of disabled or not disabled. In any instance where a rule does not apply, full consideration must be given to all of the relevant facts of the case in accordance with the definitions and discussions of each factor in the appropriate sections of the regulations.

(b) The existence of jobs in the national economy is reflected in the "Decisions" shown in the rules; i.e., in promulgating the rules, administrative notice has been taken of the numbers of unskilled jobs that exist throughout the national economy at the various functional levels (sedentary, light, medium, heavy, and very heavy) as supported by the "Dictionary of Occupational Titles" and the "Occupational Outlook Handbook," published by the Department of Labor; the "County Business Patterns" and "Census Surveys" published by the Bureau of the Census; and occupational surveys of light and sedentary jobs prepared for the Social Security Administration by various State employment agencies. Thus, when all factors coincide with the criteria of a rule, the existence of such jobs is established. However, the existence of such jobs for individuals whose remaining functional capacity or other factors do not coincide with the criteria of a rule must be further considered in terms of what kinds of jobs or types of work may be either additionally indicated or precluded.

(c) In the application of the rules, the individual's residual functional capacity (i.e., the maximum degree to which the individual retains the capacity for sustained performance of the physical-mental requirements of jobs), age, education, and work experience must first be determined.

(d) The correct disability decision (i.e., on the issue of ability to engage in substantial gainful activity) is found by then locating the individual's specific vocational profile. If an individual's specific profile is not listed within this Appendix 2, a conclusion of disabled or not disabled is not directed. Thus, for example, an individual's ability to engage in substantial gainful work where his or her residual functional capacity falls between the ranges of work indicated in the rules (e.g., the individual who can perform more than light but less than medium work), is decided on the basis of the principles and definitions in the regulations, giving consideration to the rules for specific case situations in this Appendix 2. These rules represent various combinations of exertional capabilities, age, education and work experience and also provide an overall structure for evaluation of those cases in which the judgments as to each factor do not coincide with those of any specific rule. Thus, when the necessary judgments have been made as to each factor and it is found that no specific rule applies, the rules still provide guidance for decisionmaking, such as in cases involving combinations of impairments. For example, if strength limitations resulting from an individual's impairment(s) considered with the judgments made as to the individual's age, education and work experience correspond to (or closely approximate) the factors of a particular rule, the adjudicator then has a frame of reference for considering the jobs or types of work precluded by other, nonexertional impairments in terms of numbers of jobs remaining for a particular individual.

(e) Since the rules are predicated on an individual's having an impairment which manifests itself by limitations in meeting the strength requirements of jobs, they may not be fully applicable where the nature of an individual's impairment does not result in such limitations, e.g., certain mental, sensory, or skin impairments. In addition, some impairments may result solely in postural and manipulative limitations or environmental restrictions. Environmental restrictions are those restrictions which result in inability to tolerate some physical feature(s) of work settings that occur in certain industries or types of work, e.g., an inability to tolerate dust or fumes.

(1) In the evaluation of disability where the individual has solely a nonexertional type of impairment, determination as to whether disability exists shall be based on the principles in the appropriate sections of the regulations, giving consideration to the rules for specific case situations in this Appendix 2. The rules do not direct factual conclusions of disabled or not disabled for individuals with solely nonexertional types of impairments.

(2) However, where an individual has an impairment or combination of impairments resulting in both strength limitations and nonexertional limitations, the rules in this subpart are considered in determining first whether a finding of disabled may be possible based on the strength limitations alone and, if not, the rule(s) reflecting the individual's maximum residual strength capabilities, age, education, and work experience provide a framework for consideration of how much the individual's work capability is further diminished in terms of any types of jobs that would be contraindicated by the nonexertional limitations. Also, in these combinations of nonexertional and exertional limitations which cannot be wholly determined under the rules in this Appendix 2, full consideration must be given to all of the relevant facts in the case in accordance with the definitions and discussions of each factor in the appropriate sections of the regulations, which will provide insight into the adjudicative weight to be accorded each factor.

201.00 *Maximum sustained work capability limited to sedentary work as a result of severe medically determinable impairment(s).* (a) Most sedentary occupations fall within the skilled, semi-skilled, professional, administrative, technical, clerical, and benchwork classifications. Approximately 200 separate unskilled sedentary occupations can be identified, each representing numerous jobs in the national economy. Approximately 85 percent of these jobs are in the machine trades and benchwork occupational categories. These jobs (unskilled sedentary occupations) may be performed after a short demonstration or within 30 days.

(b) These unskilled sedentary occupations are standard within the industries in which they exist. While sedentary work represents a significantly restricted range of work, this range in itself is not so prohibitively restricted as to negate work capability for substantial gainful activity.

(c) Vocational adjustment to sedentary work may be expected where the individual has special skills or experience relevant to sedentary work or where age and basic educational competences provide sufficient occupational mobility to adapt to the major

segment of unskilled sedentary work. Inability to engage in substantial gainful activity would be indicated where an individual who is restricted to sedentary work because of a severe medically determinable impairment lacks special skills or experience relevant to sedentary work, lacks educational qualifications relevant to most sedentary work (e.g., has a limited education or less) and the individual's age, though not necessarily advanced, is a factor which significantly limits vocational adaptability.

(d) The adversity of functional restrictions to sedentary work at advanced age (55 and over) for individuals with no relevant past work or who can no longer perform vocationally relevant past work and have no transferable skills, warrants a finding of disabled in the the absence of the rare situation where the individual has recently completed education which provides a basis for direct entry into skilled sedentary work. Advanced age and a history of unskilled work or no work experience would ordinarily offset any vocational advantages that might accrue by reason of any remote past education, whether it is more or less than limited education.

(e) The presence of acquired skills that are readily transferable to a significant range of skilled work within an individual's residual functional capacity would ordinarily warrant a finding of ability to engage in substantial gainful activity regardless of the adversity of age, or whether the individual's formal education is commensurate with his or her demonstrated skill level. The acquisition of work skills demonstrates the ability to perform work at the level of complexity demonstrated by the skill level attained regardless of the individual's formal educational attainments.

(f) In order to find transferability of skills to skilled sedentary work for individuals who are of advanced age (55 and over), there must be very little, if any, vocational adjustment required in terms of tools, work processes, work settings, or the industry.

(g) Individuals approaching advanced age (age 50–54) may be significantly limited in vocational adaptability if they are restricted to sedentary work. When such individuals have no past work experience or can no longer perform vocationally relevant past work and have no transferable skills, a finding of disabled ordinarily obtains. However, recently completed education which provides for direct entry into sedentary work will preclude such a finding. For this age group, even a high school education or more (ordinarily completed in the remote past) would have little impact for effecting a vocational adjustment unless relevant work experience reflects use of such education.

(h) The term "younger individual" is used to denote an individual age 18 through 49. For those within this group who are age 45–49, age is a less positive factor than for those who are age 18–44. Accordingly, for such individuals; (1) who are restricted to sedentary work, (2) who are unskilled or have no transferable skills, (3) who have no relevant past work or who can no longer perform vocationally relevant past work, and (4) who are either illiterate or unable to communicate in the English language, a finding of disabled is warranted. On the other hand, age is a more positive factor for those who are under age 45 and is usually not a significant factor in limiting such an individual's ability to make a vocational adjustment, even an adjustment to unskilled sedentary work, and even where the individual is illiterate or unable to communicate in English. However, a finding of disabled is not precluded for those individuals under age 45 who do not meet all of the criteria of a specific rule and who do not have the ability to perform a full range of sedentary work. The following examples are illustrative: Example 1: An individual under age 45 with a high school education can no longer do past work and is restricted to unskilled sedentary jobs because of a severe medically determinable cardiovascular impairment (which does not meet or equal the listings in Appendix 1). A permanent injury of the right hand limits the individual to sedentary jobs which do not require bilateral manual dexterity. None of the rules in Appendix 2 are applicable to this particular set of facts, because this individual cannot perform the full range of work defined as sedentary. Since the inability to perform jobs requiring bilateral manual dexterity significantly compromises the only range of work for which the individual is otherwise qualified (i.e., sedentary), a finding of disabled would be appropriate. Example 2: An illiterate 41 year old individual with mild mental retardation (IQ of 78) is restricted to unskilled sedentary work and cannot perform vocationally relevant past work, which had consisted of unskilled agricultural field work; his or her particular characteristics do not specifically meet any of the rules in Appendix 2, because this individual cannot perform the full range of work defined as sedentary. In light of the adverse factors which further narrow the range of sedentary work for which this individual is qualified, a finding of disabled is appropriate.

(i) While illiteracy or the inability to communicate in English may significantly limit an individual's vocational scope, the primary work functions in the bulk of unskilled work relate to working with things (rather than with data or people) and in these work functions at the unskilled level, literacy or ability to communicate in English has the least significance. Similarly the lack of relevant work experience would have little significance since the bulk of unskilled jobs require no qualifying work experience. Thus, the functional capability for a full range of sedentary work represents sufficient numbers of jobs to indicate substantial vocational scope for those individuals age 18–44 even if they are illiterate or unable to communicate in English.

TABLE NO. 1—RESIDUAL FUNCTIONAL CAPACITY: MAXIMUM SUSTAINED WORK CAPABILITY LIMITED TO SEDENTARY WORK AS A RESULT OF SEVERE MEDICALLY DETERMINABLE IMPAIRMENT(S)

Rule	Age	Education	Previous work experience	Decision
201.01	Advanced age	Limited or less	Unskilled or none	Disabled.
201.02	do	do	Skilled or semiskilled—skills not transferable [1].	Do.
201.03	do	do	Skilled or semiskilled—skills transferable [1]	Not disabled.
201.04	do	High school graduate or more—does not provide for direct entry into skilled work [2].	Unskilled or none	Disabled.
201.05	do	High school graduate or more—provides for direct entry into skilled work [2].	do	Not disabled.
201.06	do	High school graduate or more—does not provide for direct entry into skilled work [3].	Skilled or semiskilled—skills not transferable [1].	Disabled.
201.07	do	do	Skilled or semiskilled—skills transferable [1]	Not disabled.
201.08	do	High school graduate or more—provides for direct entry into skilled work [2].	Skilled or semiskilled—skills not transferable [1].	Do.
201.09	Closely approaching advanced age	Limited or less	Unskilled or none	Disabled.
201.10	do	do	Skilled or semiskilled—skills not transferable	Do.
201.11	do	do	Skilled or semiskilled—skills transferable	Not disabled.
201.12	do	High school graduate or more—does not provide for direct entry into skilled work [3].	Unskilled or none	Disabled.
201.13	do	High school graduate or more—provides for direct entry into skilled work [3].	do	Not disabled.
201.14	do	High school graduate or more—does not provide for direct entry into skilled work [3].	Skilled or semiskilled—skills not transferable	Disabled.
201.15	do	do	Skilled or semiskilled—skills transferable	Not disabled.

TABLE NO. 1—RESIDUAL FUNCTIONAL CAPACITY: MAXIMUM SUSTAINED WORK CAPABILITY LIMITED TO SEDENTARY WORK AS A RESULT OF SEVERE MEDICALLY DETERMINABLE IMPAIRMENT(S)—Continued

Rule	Age	Education	Previous work experience	Decision
201.16	do	High school graduate or more—provides for direct entry into skilled work [3].	Skilled or semiskilled—skills not transferable	Do.
201.17	Younger individual age 45–49	Illiterate or unable to communicate in English.	Unskilled or none	Disabled.
201.18	do	Limited or less—at least literate and able to communicate in English.	do	Not disabled.
201.19	do	Limited or less	Skilled or semiskilled—skills not transferable	Do.
201.20	do	do	Skilled or semiskilled—skills transferable	Do.
201.21	do	High school graduate or more	Skilled or semiskilled—skills not transferable	Do.
201.22	do	do	Skilled or semiskilled—skills transferable	Do.
201.23	Younger individual age 18–44	Illiterate or unable to communicate in English.	Unskilled or none	Do.[4]
201.24	do	Limited or less—at least literate and able to communicate in English.	do	Do.[4]
201.25	do	Limited or less	Skilled or semiskilled—skills not transferable	Do.[4]
201.26	do	do	Skilled or semiskilled—skills transferable	Do.[4]
201.27	do	High school graduate or more	Unskilled or none	Do.[4]
201.28	do	do	Skilled or semiskilled—skills not transferable	Do.[4]
201.29	do	do	Skilled or semiskilled—skills transferable	Do.[4]

[1] See 201.00(f).
[2] See 201.00(d).
[3] See 201.00(g).
[4] See 201.00(h).

202.00 *Maximum sustained work capability limited to light work as a result of severe medically determinable impairment(s).* (a) The functional capacity to perform a full range of light work includes the functional capacity to perform sedentary as well as light work. Approximately 1,600 separate sedentary and light unskilled occupations can be identified in eight broad occupational categories, each occupation representing numerous jobs in the national economy. These jobs can be performed after a short demonstration or within 30 days, and do not require special skills or experience.

(b) The functional capacity to perform a wide or full range of light work represents substantial work capability compatible with making a work adjustment to substantial numbers of unskilled jobs and, thus, generally provides sufficient occupational mobility even for severely impaired individuals who are not of advanced age and have sufficient educational competences for unskilled work.

(c) However, for individuals of advanced age who can no longer perform vocationally relevant past work and who have a history of unskilled work experience, or who have only skills that are not readily transferable to a significant range of semi-skilled or skilled work that is within the individual's functional capacity, or who have no work experience, the limitations in vocational adaptability represented by functional restriction to light work warrant a finding of disabled. Ordinarily, even a high school education or more which was completed in the remote past will have little positive impact on effecting a vocational adjustment unless relevant work experience reflects use of such education.

(d) Where the same factors in paragraph (c) of this section regarding education and work experience are present, but where age, though not advanced, is a factor which significantly limits vocational adaptability (i.e., closely approaching advanced age, 50–54) and an individual's vocational scope is further significantly limited by illiteracy or inability to communicate in English, a finding of disabled is warranted.

(e) The presence of acquired skills that are readily transferable to a significant range of semi-skilled or skilled work within an individual's residual functional capacity would ordinarily warrant a finding of not disabled regardless of the adversity of age, or whether the individual's formal education is commensurate with his or her demonstrated skill level. The acquisition of work skills demonstrates the ability to perform work at the level of complexity demonstrated by the skill level attained regardless of the individual's formal educational attainments.

(f) For a finding of transferability of skills to light work for individuals of advanced age who are closely approaching retirement age (age 60–64), there must be very little, if any, vocational adjustment required in terms of tools, work processes, work settings, or the industry.

(g) While illiteracy or the inability to communicate in English may significantly limit an individual's vocational scope, the primary work functions in the bulk of unskilled work relate to working with things (rather than with data or people) and in these work functions at the unskilled level, literacy or ability to communicate in English has the least significance. Similarly, the lack of relevant work experience would have little significance since the bulk of unskilled jobs require no qualifying work experience. The capability for light work, which includes the ability to do sedentary work, represents the capability for substantial numbers of such jobs. This, in turn, represents substantial vocational scope for younger individuals (age 18–49) even if illiterate or unable to communicate in English.

TABLE NO. 2—RESIDUAL FUNCTIONAL CAPACITY: MAXIMUM SUSTAINED WORK CAPABILITY LIMITED TO LIGHT WORK AS A RESULT OF SEVERE MEDICALLY DETERMINABLE IMPAIRMENT(S)

Rule	Age	Education	Previous work experience	Decision
202.01	Advanced age	Limited or less	Unskilled or none	Disabled.
202.02	do	do	Skilled or semiskilled—skills not transferable	Do.
202.03	do	do	Skilled or semiskilled—skills transferable [1]	Not disabled.
202.04	do	High school graduate or more—does not provide for direct entry into skilled work [2].	Unskilled or none	Disabled.
202.05	do	High school graduate or more—provides for direct entry into skilled work [2].	do	Not disabled.
202.06	do	High school graduate or more—does not provide for direct entry into skilled work [2].	Skilled or semiskilled—skills not transferable	Disabled.
202.07	do	do	Skilled or semiskilled—skills transferable [2]	Not disabled.

TABLE NO. 2—RESIDUAL FUNCTIONAL CAPACITY: MAXIMUM SUSTAINED WORK CAPABILITY LIMITED TO LIGHT WORK AS A RESULT OF SEVERE MEDICALLY DETERMINABLE IMPAIRMENT(S)—Continued

Rule	Age	Education	Previous work experience	Decision
202.08	do	High school graduate or more—provides for direct entry into skilled work [2].	Skilled or semiskilled—skills not transferable	Do.
202.09	Closely approaching advanced age	Illiterate or unable to communicate in English.	Unskilled or none	Disabled.
202.10	do	Limited or less—At least literate and able to communicate in English.	do	Not disabled.
202.11	do	Limited or less	Skilled or semiskilled—skills not transferable	Do.
202.12	do	do	Skilled or semiskilled—skills transferable	Do.
202.13	do	High school graduate or more	Unskilled or none	Do.
202.14	do	do	Skilled or semiskilled—skills not transferable	Do.
202.15	do	do	Skilled or semiskilled—skills transferable	Do.
202.16	Younger individual	Illiterate or unable to communicate in English.	Unskilled or none	Do.
202.17	do	Limited or less—At least literate and able to communicate in English.	do	Do.
202.18	do	Limited or less	Skilled or semiskilled—skills not transferable	Do.
202.19	do	do	Skilled or semiskilled—skills transferable	Do.
202.20	do	High school graduate or more	Unskilled or none	Do.
202.21	do	do	Skilled or semiskilled—skills not transferable	Do.
202.22	do	do	Skilled or semiskilled—skills transferable	Do.

[1] See 202.00(f).
[2] See 202.00(c).

203.00 *Maximum sustained work capability limited to medium work as a result of severe medically determinable impairment(s).* (a) The functional capacity to perform medium work includes the functional capacity to perform sedentary, light, and medium work. Approximately 2,500 separate sedentary, light, and medium occupations can be identified, each occupation representing numerous jobs in the national economy which do not require skills or previous experience and which can be performed after a short demonstration or within 30 days.

(b) The functional capacity to perform medium work represents such substantial work capability at even the unskilled level that a finding of disabled is ordinarily not warranted in cases where a severely impaired individual retains the functional capacity to perform medium work. Even the adversity of advanced age (55 or over) and a work history of unskilled work may be offset by the substantial work capability represented by the functional capacity to perform medium work. However, an individual with a marginal education and long work experience (i.e., 35 years or more) limited to the performance of arduous unskilled labor, who is not working and is no longer able to perform this labor because of a severe impairment(s), may still be found disabled even though the individual is able to do medium work.

(c) However, the absence of any relevant work experience becomes a more significant adversity for individuals of advanced age (55 and over). Accordingly, this factor, in combination with a limited education or less, militates against making a vocational adjustment to even this substantial range of work and a finding of disabled is appropriate. Further, for individuals closely approaching retirement age (60–64) with a work history of unskilled work and with marginal education or less, a finding of disabled is appropriate.

TABLE NO. 3—RESIDUAL FUNCTIONAL CAPACITY: MAXIMUM SUSTAINED WORK CAPABILITY LIMITED TO MEDIUM WORK AS A RESULT OF SEVERE MEDICALLY DETERMINABLE IMPAIRMENT(S)

Rule	Age	Education	Previous work experience	Decision
203.01	Closely approaching retirement age	Marginal or none	Unskilled or none	Disabled.
203.02	do	Limited or less	None	Do.
203.03	do	Limited	Unskilled	Not disabled.
203.04	do	Limited or less	Skilled or semiskilled—skills not transferable	Do.
203.05	do	do	Skilled or semiskilled—skills transferable	Do.
203.06	do	High school graduate or more	Unskilled or none	Do.
203.07	do	High school graduate or more—does not provide for direct entry into skilled work.	Skilled or semiskilled—skills not transferable	Do.
203.08	do	do	Skilled or semiskilled—skills transferable	Do.
203.09	do	High school graduate or more—provides for direct entry into skilled work.	Skilled or semiskilled—skills not transferable	Do.
203.10	Advanced age	Limited or less	None	Disabled.
203.11	do	do	Unskilled	Not disabled.
203.12	do	do	Skilled or semiskilled—skills not transferable	Do.
203.13	do	do	Skilled or semiskilled—skills transferable	Do.
203.14	do	High school graduate or more	Unskilled or none	Do.
203.15	do	High school graduate or more—does not provide for direct entry into skilled work.	Skilled or semiskilled—skills not transferable	Do.
203.16	do	do	Skilled or semiskilled—skills transferable	Do.
203.17	do	High school graduate or more—provides for direct entry into skilled work.	Skilled or semiskilled—skills not transferable	Do.
203.18	Closely approaching advanced age	Limited or less	Unskilled or none	Do.
203.19	do	do	Skilled or semiskilled—skills not transferable	Do.
203.20	do	do	Skilled or semiskilled—skills transferable	Do.
203.21	do	High school graduate or more	Unskilled or none	Do.
203.22	do	High school graduate or more—does not provide for direct entry into skilled work.	Skilled or semiskilled—skills not transferable	Do.
203.23	do	do	Skilled or semiskilled—skills transferable	Do.

TABLE NO. 3—RESIDUAL FUNCTIONAL CAPACITY: MAXIMUM SUSTAINED WORK CAPABILITY LIMITED TO MEDIUM WORK AS A RESULT OF SEVERE MEDICALLY DETERMINABLE IMPAIRMENT(S)—Continued

Rule	Age	Education	Previous work experience	Decision
203.24	do	High school graduate or more—provides for direct entry into skilled work.	Skilled or semiskilled—skills not transferable	Do.
203.25	Younger individual	Limited or less	Unskilled or none	Do.
203.26	do	do	Skilled or semiskilled—skills not transferable	Do.
203.27	do	do	Skilled or semiskilled—skills transferable	Do.
203.28	do	High school graduate or more	Unskilled or none	Do.
203.29	do	High school graduate or more—does not provide for direct entry into skilled work.	Skilled or semiskilled—skills not transferable	Do.
203.30	do	do	Skilled or semiskilled—skills transferable	Do.
203.31	do	High school graduate or more—provides for direct entry into skilled work.	Skilled or semiskilled—skills not transferable	Do.

204.00 *Maximum sustained work capability limited to heavy work (or very heavy work) as a result of severe medically determinable impairment(s).* The residual functional capacity to perform heavy work or very heavy work includes the functional capability for work at the lesser functional levels as well, and represents substantial work capability for jobs in the national economy at all skill and physical demand levels. Individuals who retain the functional capacity to perform heavy work (or very heavy work) ordinarily will not have a severe impairment or will be able to do their past work—either of which would have already provided a basis for a decision of "not disabled". Environmental restrictions ordinarily would not significantly affect the range of work existing in the national economy for individuals with the physical capability for heavy work (or very heavy work). Thus an impairment which does not preclude heavy work (or very heavy work) would not ordinarily be the primary reason for unemployment, and generally is sufficient for a finding of not disabled, even though age, education, and skill level of prior work experience may be considered adverse.

PART 208—DISABILITY [REMOVED]

2. Part 208—Disability consisting of §§ 208.9 through 208.11, § 208.17, § 208.25, § 208.27, § 208.29 and § 208.31 is removed.

PART 230—MONTHS ANNUITIES NOT PAYABLE BY REASON OF WORK

3. Part 230 is amended as follows:

A. The authority citation for Part 230 is revised to read as follows:

Authority: 45 U.S.C. 231f.

§§ 230.3 and 230.4 [Removed]

B. Part 230 is amended by removing §§ 230.3 and 230.4.

PART 260—REQUESTS FOR RECONSIDERATION AND APPEALS WITHIN THE BOARD FROM DECISIONS ISSUED BY THE BUREAU OF RETIREMENT CLAIMS AND THE BUREAU OF COMPENSATION AND CERTIFICATION

4. Part 260 is amended as follows:

A. The authority citation for Part 260 is revised to read as follows:

Authority: 45 U.S.C. 231f, 45 U.S.C. 231g, 45 U.S.C. 355.

B. Section 260.1 is amended by revising paragraphs (d)(3) introductory text, (d)(3)(iii) and (d)(3)(iv) as follows:

§ 260.1 Initial decisions by the Bureau of Retirement Claims.

(d) * * *

(3) When an initial decision is made that an annuitant's entitlement to a disability has ended, written notice of that decision shall be mailed to the annuitant or payee of an annuity at the annuitant's or payee's last known address. Such notice shall inform the annuitant or payee of an annuity:

* * * * *

(iii) That entitlement to the annuity ends on the last day of the second month after the month in which disability ends as described in § 220.181;

(iv) That the Board will stop payment of the annuitant's disability annuity with the last day of the second month following the month in which disability ends as described in § 220.181, or the last day of the first month following the month in which the notice provided by this paragraph is sent by the Board, whichever date is later;

* * * * *

Dated: July 17, 1989.

By authority of the Board.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 89-17622 Filed 8-3-89; 8:45 am]

BILLING CODE 7905-01-M

federal register

Friday
August 4, 1989

Part III

Securities and Exchange Commission

17 CFR Part 230 et al.
Multijurisdictional Disclosure; Proposed Rules

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 230, 239, 240, 249, 260 and 269

[Release No. 33-6841; 34-27055; 39-2217; International Series—109; File No. S7-19-89]

RIN 3235-AC64

Multijurisdictional Disclosure

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rules.

SUMMARY: The Securities and Exchange Commission (the "Commission") is publishing for comment proposed Rules, Forms and Schedules intended to facilitate cross-border offerings of securities by specified Canadian issuers. The Rules, Forms and Schedules will provide a foundation for a multijurisdictional disclosure system (the "system") that can be expanded to encompass a wider class of issuers and be extended to additional jurisdictions.

As currently proposed, the multijurisdictional disclosure system would permit Canadian issuers that, depending on the nature of the offering, meet market value, public float and Canadian reporting history tests to register securities in the United States using disclosure documents prepared according to the requirements of Canadian regulatory authorities. Issuers meeting tests of market value and public float also would be able to use such documents to meet U.S. periodic disclosure requirements. Companies subject to U.S. proxy requirements could use their Canadian documents for certain solicitations. In addition, insiders of companies subject to Section 16 of the Securities Exchange Act could meet the reporting requirements by filing Canadian forms.

The multijurisdictional disclosure system further would permit third-party and issuer exchange and cash tender offers for securities issued by a Canadian company to be made in compliance with the provisions of applicable Canadian tender offer regulation where less than 20 percent of the class of securities subject to the offer were held of record by U.S. residents.

Concurrently with the publication of this Release, the Ontario Securities Commission and the Commission des valeurs mobilieres du Quebec are issuing for comment proposals that would provide for the implemention of the multijurisdictional disclosure system in Canada and would permit U.S. issuers to make public offerings and tender offers in Canada using disclosure documents prepared in accordance with Commission requirements. Such proposals are published as an appendix to this Release.

DATE: Comments should be received on or before October 31, 1989.

ADDRESS: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Comment letters should refer to File No. S7-19-89. All comment letters will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549.

FOR FURTHER INFORMATION CONTACT: Sara Hanks or William B. Haseltine, Office of International Corporate Finance, Division of Corporation Finance at (202) 272-3246; David Sirignano, Office of Tender Offers, Division of Corporation Finance at (202) 272-3097; Catherine Dixon, Office of Chief Counsel, Division of Corporation Finance at (202) 272-2573; Robert Bayless, Office of the Chief Accountant, Division of Corporation Finance at (202) 272-2553; Nancy J. Sanow, Elizabeth Jacobs or Mark L. Berman, Office of Trading Practices, Division of Market Regulation at (202) 272-2848, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Commission is proposing for comment new Forms F-7, F-8, F-9, F-10 and F-X under the Securities Act of 1933; new Form 40-F, new Schedules 14D-1F, 14D-9F and 13E-4F and new Form F-X (also proposed under the Securities Act) under the Securities Exchange Act of 1934; and new Form T-5 under the Trust Indenture Act of 1939. The Commission further is proposing new Rule 467 and changes to Rules 174(a) and 477(b) under the Securities Act; new Rules 3a12-3(c), 13e-4(h), 14a-6(m), 14a-8(f), 14d-1(b), 14e-2(c), 15d-4, 15d-5(c), and 16a-12, and changes to Rule 12g3-2(b), under the Exchange Act; and new Rules 4d-1 through 4d-6 under the Trust Indenture Act.

I. Executive Summary

Securities markets around the world are changing as foreign issuers expand their use of U.S. capital markets, domestic issuers increase their access to foreign markets, and both debt and equity offerings are made multinationally. As a result of these offerings, the lines of demarcation between domestic and international capital markets are beginning to blur and domestic markets are facing serious competition from a largely unregulated, transnational financial market.

Foreign issuers that consider direct access to the U.S. capital markets through registered public offerings frequently are dissuaded by the substantial differences in disclosure standards, particularly with respect to accounting standards. Because registration under the Securities Act of 1933 (the "Securities Act") [1] brings with it a periodic reporting requirement under the Securities Exchange Act of 1934 (the "Exchange Act"),[2] a foreign issuer deciding whether to register securities also must consider the cost of incurring a continuing reporting obligation.

The Commission's challenge is to remove unnecessary impediments to transnational capital formation without unduly disadvantaging U.S. issuers in the U.S. markets, while ensuring that those buying securities in the U.S. capital markets are afforded the protections intended by the Securities Act and the Exchange Act. One such impediment is the fact that issuers making securities offerings across national boundaries may have to comply with the disclosure requirements of two or more jurisdictions.[3] Attempting to comply with the requirements of multiple jurisdictions is expensive not only because of the cost of retaining local accountants and lawyers, but also because of the additional time needed, since conditions advantageous to the issuer may prevail in the capital markets only for a limited period. Rather than comply with the requirements of regulators in more than one country, issuers may choose to exclude certain jurisdictions from their offerings, thus excluding investors in that jurisdiction from investment opportunities.

As an initial step towards addressing these issues, the Commission in 1985 issued a Concept Release [4] requesting comments on two alternative methods of facilitating multijurisdictional offerings: The "common prospectus approach" and the "reciprocal prospectus approach." The common prospectus approach would require that participating jurisdictions agree upon a set of disclosure requirements that would be the same in each jurisdiction, with the result that a prospectus prepared pursuant to the requirements

[1] 15 U.S.C. 77a et seq.

[2] 15 U.S.C. 78a et seq.

[3] The Commission has already made a number of accommodations to foreign issuers in its disclosure standards. See section II.C.

[4] Securities Act Release No. 6568, "Facilitation of Multinational Securities Offerings" (Feb. 28, 1985) (50 FR 9281) (the "Concept Release").

of one participating jurisdiction automatically would comply with the requirements of all other participating jurisdictions. The reciprocal prospectus approach, on the other hand, would enable an issuer to prepare a disclosure document according to the requirements of its home jurisdiction, and to have that document accepted for securities offerings in every other participating jurisdiction.

A majority of commenters were of the opinion that although the common prospectus approach might be ideal, the more workable system was represented by the reciprocal prospectus approach. The staff of the Commission thereafter began discussions with the staffs of the Ontario and Quebec securities commissions with a view toward establishing a multijurisdictional disclosure system. The system proposed today is a hybrid between the reciprocal approach and the common prospectus approach.

Development of a multijurisdictional disclosure system between the United States and the Canadian provinces of Ontario and Quebec was a logical first step in meeting the needs of transnational securities transactions. Canada has mature capital markets with a strong regulatory tradition. The United States and Canada have the common goal of investor protection through refined and developed disclosure systems for both the primary and secondary markets. Of particular significance is the extensive cooperation in enforcement matters provided by the 1988 Memorandum of Understanding ("MOU") with British Columbia, Ontario and Quebec. The MOU covers virtually the entire spectrum of cases which could arise under the federal securities laws, and provides a full range of assistance, including use of subpoena power to compel the production of documents in furtherance of administrative investigations.

While each jurisdiction's requirements may differ in detail, they share the common purpose of ensuring that investors are given information adequate to permit them to make an informed investment decision, and an historical reliance on disclosure as the principal protection of investors. Key to any system of disclosure is the application of accounting and auditing standards, and Canada, like the United States, has highly developed accounting and auditing standards.

The system proposed today would permit single-jurisdiction [5] regulation of certain securities offerings and continuous reporting obligations, so that cross-border securities offerings could be made more efficiently and at less expense. The disclosure document for an offering would be prepared in accordance with the requirements of the issuer's home jurisdiction and the regulatory authorities of the home jurisdiction would be responsible for establishing the applicable disclosure standards. Review of the disclosure document would be that customary in the issuer's home jurisdiction. Issuers using the system would, however, continue to be subject to provisions imposing civil or criminal liability for fraud in each jurisdiction where the securities were offered, if the offer was made through a material misrepresentation or omission in the disclosure document or there was fraud or manipulation in connection with the offering. Issuers would be subject to the authority of each such jurisdiction to halt the offering in the public interest and for the protection of investors.

The system would cover registration of offerings by "substantial" Canadian issuers, all of which are eligible to use the Canadian integrated disclosure system, the Prompt Offering Prospectus system. As an initial step, the multijurisdictional disclosure system would be limited to "substantial issuers" that could be assumed to have a large market following and the prices for whose securities reflect all available public information. Multijurisdictional registration also would be made available for certain rights and exchange offers, although more because of concerns for domestic investors' interests than for encouraging cross-border public offers. Foreign issuers making a rights or exchange offer frequently do not extend offers to U.S. holders because these issuers are unwilling to register securities with the Commission, thereby denying U.S. holders the opportunity to realize significant value on their investment. Therefore, it appears in the interest of domestic investors to facilitate the registration of rights and exchange offers to encourage foreign issuers to extend such offers to U.S. investors. Reliance on home jurisdiction disclosure appears particularly appropriate where U.S. investors do not own a substantial percentage of the foreign securities.[6]

In the case of offerings by substantial issuers of securities other than non-convertible investment grade debt or non-convertible investment grade preferred stock, reconciliation of financial statements to U.S. generally accepted accounting principles ("GAAP") would be required. No reconciliation would be required for investment grade securities, or in connection with rights or exchange offers. Qualification under the Trust Indenture Act of 1939 (the "Trust Indenture Act") [7] of indentures relating to debt offerings would continue to be required, but under rules proposed today use of Canadian trustees would be permitted under specified conditions.

Transactions made in the United States pursuant to the multijurisdictional disclosure system may raise issues under certain anti-manipulation and other rules under the Exchange Act.[8] The Commission's staff is proposing to take no-action positions under Rules 10b–6 and 10b–13 [9] to permit specified purchases of securities outside the offer as permitted by Canadian law during tender and exchange offers made pursuant to the system. Moreover, the staff will consider the extent to which relief from these provisions is appropriate in connection with other transactions pursuant to the multijurisdictional disclosure system.

The multijurisdictional disclosure system also would extend to Williams Act regulations applicable to third-party and issuer exchange and cash tender offers made for the securities of Canadian issuers in compliance with Canadian tender offer regulations, where less than 20 percent of the shares involved were held of record by U.S. residents. In the case of exchange offers, Canadian bidders would be permitted to use Canadian disclosure in the required registration statement if they met a (CN) $75 million market capitalization test and less than 20 percent of the shares subject to the offer were held of record by U.S. residents. U.S. bidders in an exchange offer would continue to register the exchange offer on the standard U.S. forms (e.g., Form S–1 or S–4).

The multijurisdictional disclosure system additionally would permit use of home jurisdiction periodic reporting forms to meet the reporting requirements of the Exchange Act, where (a) such requirements arose solely by reason of offerings registered on the forms proposed today, or (b) the issuer of the securities met tests of market value and reporting history. With respect to all Canadian issuers subject to Section 16

[5] Public offerings in the United States are regulated at both the federal and the state level. See section V.

[6] The tests for eligibility to use the system are discussed more fully in section IV.C.

[7] 15 U.S.C. 77aaa–77bbbb.

[8] See Exchange Act Release No. 21958 (April 18, 1985) [50 FR 16302, 16308–09] ("Global Trading Release").

[9] 17 CFR 240.10b–6 and 240.10b–13.

of the Exchange Act,[10] insider reports filed under Canadian law would suffice for Exchange Act purposes. In addition, Canadian issuers subject to U.S. proxy regulations could rely on Canadian regulations and Canadian documents to meet U.S. requirements in certain limited circumstances.

The multijurisdictional system would not be available with respect to offers and sales of securities issued by investment companies required to register under the Investment Company Act of 1940.[11]

Concurrently with the publication of today's Release by the Commission, the Ontario Securities Commission ("OSC") and the Commission des valeurs mobilieres du Quebec ("CVMQ") are publishing for comment proposals that would provide for the implementation of a multijurisdictional disclosure system in Canada and permit U.S. issuers to make public offerings and tender offers in Canada using disclosure documents prepared according to Commission requirements. Such proposals are published as an appendix to this Release.

II. Background

A. Developments in International Securities Markets

In recent years, there has been substantial growth [12] in both U.S. investors' purchases of foreign securities and offerings by U.S. issuers outside the United States. In 1988, gross transactions by U.S investors in foreign corporate stocks totalled over $151 billion, representing almost nine times the total of such transactions in 1980.[13] Gross U.S. transactions in foreign debt securities totalled $445 billion in 1988, reflecting a more than twelve-fold increase since 1980. There are 150 foreign securities traded on U.S. securities exchanges, and 291 quoted in NASDAQ (99 in the National Market System). Many others are traded over-the-counter. In all, the securities of over 2000 foreign issuers are traded in the United States.[14]

Part of the growth in cross-border securities transactions has consisted of an increase in the number of offerings made simultaneously in two or more countries, one of which may be the country of the issuer. Such offerings typically are made when the size of the offering is such that it cannot be absorbed by the issuer's domestic market (for example, in the case of large issuers from the comparatively small Scandinavian markets, or the recent British and French government privatizations), when the issuer desires to expand the geographic base of its security holders, when the issuer wishes to increase the market for its securities internationally, or when strategic reasons exist (for example, to protect against takeover attempts). The issues raised by transnational capital formation became most apparent in the course of such multinational offerings, and were the impetus for the Concept Release.

The number of multinational offerings including a U.S. public tranche has increased significantly in recent years, due in large part to the increase in privatization offerings.[15] The first such major offering was by British Petroleum Company PLC in 1977. Since then, major public multinational offerings have increased significantly, especially in connection with privatizations of various foreign industries.[16] The significance of the privatization offerings lies not only in their increasing frequency and international impact, but also in their enormous size.[17]

In the past few years non-governmental companies also have made multinational offerings involving a public U.S. tranche.[18] Although these offerings usually are substantial in size, to date they have not been as large as the industry privatizations.[19] They can be expected to continue to increase in size and number, especially in view of developments such as the creation of a single market in Europe in 1992.[20]

With increasing U.S. interest in and holding of foreign securities, the impact of registration obligations and tender offer regulation on the willingness of foreign issuers to extend rights and exchange offers or cash tender offers to U.S. shareholders has become increasingly significant. Frequently, U.S. investors are denied participation in such offers, or cashed out, because foreign issuers decide not to subject themselves to U.S. registration and continuous reporting requirements. Consequently, while rights offers are very common in Europe [21] and exchange

---

[10] 15 U.S.C. 78p.

[11] 15 U.S.C. 80a-1-80a-52.

[12] Eurobond offerings totalled $177.2 billion in 1988, $140.5 billion in 1987, and $187.7 billion in 1986. Source: OECD Financial Statistics Monthly (various issues). The value of international offerings of common and preferred stocks in 1988 was $7.4 billion, down from the record total in 1987 of $20.3 billion, but representing an increase over the total in 1983 of $200 million. Source: Euromoney Bondware. International secondary markets are strong, too, with a total of 406 companies whose shares are actively traded in one or more foreign markets. "The Corporate List," Euromoney (May 1989).

[13] Source: U.S. Treasury Bulletin (various issues). In 1987, a record total of over $189 billion was invested in foreign corporate stocks by U.S. investors.

[14] This figure represents the 516 issuers that file periodic reports with the Commission under the Exchange Act and the 1488 issuers that have established and are currently in compliance with the exemption from such reporting provided by Rule 12g3-2(b) under the Exchange Act (17 CFR 240.12g3-2(b)). The securities of other foreign issuers are traded occasionally in the United States.

[15] Problems associated with multinational offerings that involve a public tranche in more than one country are discussed *infra* section II.C.

[16] British Telecommunications PLC conducted a $279 million public offering in the United States in December 1984, simultaneously issuing securities in the United Kingdom, Canada and Japan. In December 1986, British Gas PLC conducted a multinational offering of nearly 4 billion ordinary shares, of which nearly 167 million were offered as American Depositary Shares in the United States. British Airways PLC offered 720 million shares publicly in the United Kingdom, the United States and Canada simultaneously with private offerings in Switzerland and Japan in February 1987. The latest British privatization involved the sale by British Steel PLC of 2 billion shares in simultaneous public offerings in the United Kingdom, the United States, Canada, Japan and Europe in December 1988. Also in December 1988, Hong Kong Telecommunications Limited offered over 877 million shares simultaneously in Hong Kong, the United States and an international offering.

[17] The portions of these offerings allocated to the United States tranches have been larger than those allocated to other countries. The U.S. tranches, however, have often amounted to a relatively small fraction of the domestic offerings in recent British and Hong Kong privatizations: British Telecom, United States tranche equalled 6.93 percent of the domestic offering of 2,597,000,000 shares; British Gas, 4.75 percent of 3,505,386,339 shares; British Airways, 10.62 percent of 582,518,707 shares; British Petroleum, 49.11 percent of 1,030,000,000 shares; British Steel, 11.98 percent of 1,502,000,000 shares; and Hong Kong Telecom, 29.75 percent of 607,500,000 shares. Nevertheless, the United States tranches of these offerings were valued at $278,928,000 in British Telecom, $319,608,807 in British Gas, $120,141,000 in British Airways, $2,549,653,500 in British Petroleum, $420,840,000 in British Steel and $105,433,878 in Hong Kong Telecom.

[18] *E.g.*, Reuters Holdings PLC and Louis Vuitton S.A. in June 1984; Wellcome PLC in January 1986; Philips N.V. in May 1987; Banco Central, S.A. and Banco de Santander, S.A. de Crédito in July 1987; Racal Telecom PLC in October 1988; and Pacific Dunlop Limited in May 1989.

[19] The following amounts were involved in the U.S. tranches of the above mentioned offerings: Reuters, $107,250,000; Louis Vuitton, $15,469,260; Wellcome, $72,332,000; Philips, $120,000,000; Banco Central, $152,000,000; Banco de Santander, $105,500,000; Racal Telecom, $129,489,300; and Pacific Dunlop, $128,000,000.

[20] *See, e.g.*, "Europe Falls Behind in the Securities Race," *Financial Times*, section 1, p. 27 (Jan. 25, 1989). The size of European companies is likely to grow to meet the challenge of 1992. *See, e.g.*, "Statute For the European Company," Commission Memorandum to Parliament (June 8, 1988).

[21] The existence of statutory preemptive rights for shareholders in many countries, primarily in Europe, dictates that this method is the most common avenue for raising equity capital in those countries. *See, e.g.*, Companies Act 1985, sections

Continued

offers are not uncommon in non-U.S. markets, rights and exchange offers by foreign companies into the United States are rare,[22] while cash tender offers are much more frequent.[23]

B. Canadian Issuers in the United States Market

Canadian companies are frequent issuers in the U.S. capital markets. In 1987 and 1988, Canadian issuers made a total of 124 public offerings in the United States, registering approximately $10 billion of securities, of which $8 billion was equity.[24] Large Canadian multinational offerings have included, for example, an offering in July 1987 by Gulf Canada Resources Limited. This offering, which was part of a major reorganization of Gulf Canada Corp., involved a Canadian tranche of 7.8 million shares for (CN) $175.5 million, a U.S. tranche of 6.6 million shares for (US) $111.3 million, and an international tranche of 5.6 million shares for (US) $94.5 million. Canadian companies also have made use of the U.S. shelf registration system. Over $1.7 billion in debt securities have been registered by Canadian issuers for sale under Rule 415 in the last three years.[25]

Of the 516 foreign issuers filing periodic reports with the Commission under the Exchange Act, more than half are Canadian.[26] As of June 30, 1989, there were 21 Canadian issuers listed on the New York Stock Exchange, 38 on the American Stock Exchange and 146 quoted in NASDAQ.

C. Accommodations Made to Foreign Issuers; Issues Raised by Multijurisdictional Offerings

1. Disclosure Issues

The Commission traditionally has accommodated various foreign disclosure policies and business practices, recognizing the differences in foreign disclosure and reporting requirements, and making available special forms for use by foreign issuers.[27]

In 1977, the Commission adopted a new form, Form 20–F, for registration statements and annual reports filed under the Exchange Act.[28] This form may be used by non-Canadian foreign private issuers and Canadian issuers that are not listed on a U.S. securities exchange and have not offered their securities publicly in the United States. Although the form requires substantial disclosure by foreign private issuers, it makes several concessions based on a recognition of foreign disclosure practices. The form permits preparation of financial statements in accordance with GAAP in the registrant's home country, with reconciliation to U.S. GAAP attached thereto.[29] The form also calls for less detail regarding related-party transactions than is required for domestic registrants,[30] and management remuneration may be presented on an aggregate basis.[31] Additionally, the time frame for filing annual reports on Form 20–F is designed to accommodate foreign issuers.[32]

Quarterly reports are not required to be filed by foreign private issuers. Rather, current information that is made public or required to be filed in the home country of a foreign issuer must be provided to the Commission on Form 6–K.[33]

Until 1982, foreign issuers making a public offering in the United States were required to use the same forms as domestic issuers. The system was revised that year with the adoption of the foreign integrated disclosure system.[34] This system parallels the integrated disclosure system for domestic issuers,[35] but extends the accommodations made to foreign issuers in Form 20–F to registration statements under the Securities Act.

Foreign issuers with fewer than 300 U.S. shareholders are exempt from the reporting requirements of Section 12(g) of the Exchange Act [36] pursuant to Rule 12g3–2(a) thereunder.[37] Additionally, foreign private issuers not listed on an exchange or quoted in NASDAQ or subject to reporting requirements under Section 15(d) of the Exchange Act [38] may qualify for the "information supplying-exemption" provided by Rule 12g3–2(b). Under this rule, foreign issuers that furnish the Commission with current information required in their home jurisdiction are exempt from the reporting requirements of Section 12(g).

Foreign governmental issuers and foreign private issuers eligible to use Form 20–F are exempt from the proxy and short-swing profit regulations of

89(1), 90(6) (United Kingdom); Aktiengesetz (Stock Corporation Act), sections 179–221 (Federal Republic of Germany); Law No. 73–1196 of 27 December 1973, sections 178–180 (France).

[22] Foreign issuers have registered only 13 rights offerings in the United States in the last three years. Foreign issuers (the majority of which were Canadian) also registered only 13 exchange offers in the United States during the same period.

[23] While extensive information about the offeror is required where a foreign bidder issues securities, cash tender offers require less disclosure about the offeror since the public is not being offered a security issued by that entity. However, substantial information is required regarding the identity and plans of the offeror, recent transactions in the target securities and the transaction contemplated. *See* Exchange Act 14(d) (15 U.S.C. 78n(d)); Rule 13e–4 (17 CFR 240.13e–4); Schedule 13E–4 (17 CFR 240.13E–101); Schedule 14D–1 (17 CFR 240.14d–100). In the period from 1987 through 1988, there were 99 tender offers commenced by foreign bidders for shares in United States companies, of which 22 were hostile, 4 were neutral and 73 were friendly.

[24] Convertible debt is included in equity figures. These figures do not include offerings by Canadian governmental issuers. The figures include securities registered for "flowback," (*i.e.*, not targeted to the United States, but where a substantial U.S. market interest in the issuer's securities indicates that securities are likely to be sold in the United States shortly after issue).

[25] 17 CFR 230.415. Canadian governmental entities also use the shelf registration system. In the last three years, 13 filings have been made by such entities for approximately $10.6 billion.

[26] The next most numerous groups of reporting issuers are from the United Kingdom (45) and Israel (27).

[27] *See, e.g.*, former Form 20, adopted July 15, 1935 (Securities Act Release No. 324 (Class A)); Form 20–K, adopted Dec. 20, 1935 (Securities Act Release No. 445 (Class A)).

[28] 17 CFR 249.220f. Exchange Act Release No. 16371 (Nov. 29, 1977) (42 FR 58684).

[29] *See* Items 17 and 18 of Form 20–F. Items 17 and 18 both allow presentation of financial statements in accordance with the accounting principles of a foreign country so long as, *inter alia*, a discussion of material variances from U.S. principles is included, and quantified reconciliation is made as to material variances between net income as presented and net income under U.S. principles. Item 18 differs from Item 17 in that it further calls for all other information required by U.S. GAAP, including segment information. Item 18(c)(3). Segment reporting generally is not required in foreign countries, although it should be noted that it is required by Canadian GAAP.

While Item 17 disclosure may be used for annual reports and registration under the Exchange Act, Item 18 disclosure is required on an historic basis in Forms F–1, F–2, F–3 and F–4 (17 CFR 239.31, 239.32, 239.33, 239.34) in connection with the public offering of securities in the United States.

It should be noted that the Commission generally has made no accommodation for foreign auditing practices.

[30] *See* General Instruction 1 to Item 13 of Form 20–F, incorporated by reference into Forms F–1, F–2, and F–3. Compare Item 404 of Regulation S–K (17 CFR 229.404). Item 404 is incorporated by reference into, *inter alia*, Forms S–1, S–2, and S–3 (17 CFR 239.11, 239.12, 239.13).

[31] *See* Item 11(a) of Form 20–F, incorporated by reference into Forms F–1, F–2 and F–3. *Compare* Item 402 of Regulation S–K (17 CFR 229.402).

[32] An annual report on Form 20–F may be filed within six months after the end of the fiscal year covered by the report. General Instruction A.(c) to Form 20–F. By contrast, annual reports on Form 10–K (17 CFR 239.310) must be filed within 90 days of the relevant fiscal year-end. General Instruction A to Form 10–K.

[33] 17 CFR 249.306. Forms 6–K are not deemed to be filed for purposes of liability under Section 18 of the Exchange Act (15 U.S.C. 78r). *See* General Instruction B to Form 6–K.

[34] Securities Act Release No. 6437 (Nov. 19, 1982). Pursuant to this release, Forms F–1, F–2 and F–3 were adopted. Form F–4 was adopted in 1985. Securities Act Release No. 6579 (April 23, 1985).

[35] Adopted in Securities Act Release No. 6383 (March 16, 1982) (47 FR 54764).

[36] 15 U.S.C. 77*l*(g).

[37] 17 CFR 240.12g3–2(a). *See* Exchange Act Release No. 8066 (April 28, 1967) (32 FR 7848).

[38] 15 U.S.C. 77*o*(d).

Sections 14 [39] and 16 of the Exchange Act.[40]

Notwithstanding the accommodations made to foreign issuers, U.S. requirements reportedly continue to deter foreign companies from entering the U.S. markets.[41] When a multinational offering includes a public U.S. tranche, the disclosure requirements established by the Commission usually dictate the addition of information to selling documents prepared in accordance with another jurisdiction's rules.[42]

2. Distribution Issues

Problems of timing also often arise in multijurisdictional offerings as a result of different offering practices and regulatory schemes.[43] This has been a significant issue in recent offerings that included public tranches in the United States and the United Kingdom,[44] because the price is set at different times in relation to the offering in the two jurisdictions. Timing problems also arise from the different regulatory clearances required in multijurisdictional offers. While Canadian offerings have not involved the first difficulty, they have involved the second.[45]

In light of the different distribution techniques used by U.S. and foreign underwriters,[46] the application of Rules 10b–6,[47] 10b–7,[48] and 10b–8 [49] under the Exchange Act also affects the process of bringing a multinational offering to market.[50]

In an increasing number of contexts, the Commission has crafted relief from these and other applicable Exchange Act provisions in order to accommodate the structure and regulatory pattern of foreign jurisdictions, and to permit non-U.S. distribution participants to continue certain customary activities in foreign markets.[51]

---

[39] 15 U.S.C. 78n.

[40] Rule 3a12–3 (17 CFR 240.3a12–3). *See* Exchange Act Release No. 16371, *supra* n. 28.

[41] For example, a working party established by the International Organization of Securities Commissions ("IOSCO") identified coordination of prospectus requirements and underwriting arrangements as the areas causing the most problems in multijurisdictional equity offerings. IOSCO Working Paper No. 1, Progress Report prepared for the Annual Meeting of IOSCO 16–19 (November 1988).

[42] Although separate prospectuses often are used for the United States and for other parts of the world where the offering is conducted, such prospectuses usually are distinguishable only in the descriptions of the offering procedures, the underwriting syndicates and the offering amounts, rather than in substantive content. Although less disclosure may be required in other countries, the potential liability created by disclosing information in one market but not in another dictates that issuers tend to provide the same disclosure in each market.

[43] *See* generally S. Wolfram & B. Bennett, "Multinational Offerings: A United States Perspective After British Telecom, British Gas and British Airways", 1987 Col. Bus. Rev. 339 ("Wolfram").

[44] For example, in offerings by British Petroleum PLC, Reuters PLC and British Telecom PLC, the different underwriting procedures necessary under the respective regulatory systems led to timing problems. In the United Kingdom, the price of the issue is set on "Impact Day," followed immediately by publication of the prospectus and commencement of the offering period. After the offering period, allotments are made according to subscriptions received during the offering period ("Allotment Day"). In the United States, the offering period occurs prior to pricing pursuant to a preliminary prospectus. Thus a choice must be made by the underwriters and the issuer: Either the U.K. offering must proceed without a U.S. underwriting commitment in place, or the U.S. syndicate must commit itself to the deal far in advance of being able to set a public offering price or being able actually to sell the securities.

[45] Canadian underwriting and marketing procedures do not differ significantly from those in the United States. Such problems may be relevant, however, to the foreseen future extension of the principles contained herein to other jurisdictions. *See* Wolfram, *supra* n.43, at 343. *See also* W. Plapinger and R. Morrissey, "U.S. and U.K. Underwriting Mechanics: A Comparison", 2 Insights 3 (April 1988) ("Plapinger").

[46] *See* Staff of the U.S. Securities and Exchange Commission, "Report to the Senate Committee on Banking, Housing and Urban Affairs and the House Committee on Energy and Commerce on the Internationalization of the Securities Markets" V–77 (1987). *See also* Plapinger *supra* n.45; Wolfram, *supra* n.43, at 342–348.

[47] Rule 10b–6 is designed to protect the integrity of the securities trading market as an independent pricing mechanism during a distribution of securities and thereby enhance investor confidence in the marketplace. *See* Exchange Act Release No. 24003 (Jan. 16, 1987) (52 FR 2994). The rule prohibits distribution participants from bidding for or purchasing, or inducing other persons to bid for or purchase, the securities that are the subject of the distribution (or any security of the same class and series as those securities, or any right to purchase any security) until they have completed their participation in the distribution.

Distribution participants include any person who participates in the distribution of securities, including the issuer, underwriters, and selling securityholders. *See* Rule 10b–6(a)(1)–(4). The rule also applies to "affiliated purchasers" of distribution participants. *See* Rule 10b–6(c)(6).

"Distribution" with respect to this provision of the Exchange Act means an offering of securities, whether or not registered under the Securities Act, "that is distinguished from ordinary trading transactions by the magnitude of the offering and the presence of special selling efforts and selling methods." Rule 10b–6(c)(5). A distribution in this context also may include private placements. *See* Letter regarding Electro Funds Corporation (Nov. 17, 1986), (1987 Decisions) Fed. Sec. L. Rep. (CCH) ¶78,445, at 77,464.

The rule contains certain exceptions to its general prohibition which are designed to facilitate an orderly distribution or limit disruption of the trading market for the securities being distributed.

[48] 17 CFR 240.10b–7. Rule 10b–7 makes it unlawful for any person who stabilizes the price of a security to facilitate an offering to conduct stabilizing activities in violation of the provisions of the rule. Stabilizing is defined as the "placing of any bid, or the effecting of any purchase, for the purpose of pegging, fixing or stabilizing the price of any security * * * *" Rule 10b–7(b)(3). For example, the rule prohibits bids or purchases not necessary for the purpose of preventing or retarding a decline in the open market price of the security, and stabilizing at a price resulting from unlawful activity.

[49] 17 CFR 240.10b–8. Rule 10b–8 applies to the distribution of securities offered through rights. The rule makes it unlawful for any person participating in the offering to sell the underlying security or to bid for or purchase the rights being offered in contravention of the provisions of the rule. The rule aims to prevent fraud and manipulation in rights offerings by controlling the price of sales of the underlying security, as well as the prices and conditions of purchases of rights by any person participating in such offerings.

[50] Where the activities of non-U.S. persons may have an impact on the U.S. securities markets, the Commission has taken the position that the antifraud and antimanipulation provisions of the Exchange Act may have extraterritorial effect. *See, e.g.*, Global Trading Release, *supra* n.8 (50 FR at 16308–09); Brief for Securities and Exchange Commission as *amicus curiae*, *Consolidated Gold Fields PLC* v. *Minorco, S.A.*, 871 F.2d 252 (2d Cir. 1989); "Letter Regarding The International Stock Exchange of the United Kingdom and the Republic of Ireland Limited" (Sept. 29, 1987), (1987–1988 Decisions) Fed. Sec. L. Rep. (CCH) ¶ 78,713, at 78,031 ("ISE Letter"). *See also Schoenbaum* v. *Firstbrook*, 405 F.2d 200 (2d Cir.), rev'd in part on other grounds, 405 F.2d 215 (2d Cir. 1968) (en banc), *cert denied sub nom. Manley* v. *Schoenbaum*, 395 U.S. 906 (1969). *See also* "Letter Regarding Barclays PLC" (April 29, 1988), [Current Binder] Fed. Sec. L. Rep. (CCH) ¶ 78,821, at 78,192; "Letter Regarding Tokio Marine and Fire Insurance Company" (Sept. 30, 1987), (1987–1988 Decisions) Fed. Sec. L. Rep. (CCH) ¶ 78,519, at 77,612. Of course, such activities also may raise issues under the general antifraud provisions of the securities laws *e.g.*, Section 17(a) of the Securities Act (15 U.S.C. 77q(a)) and Rule 10b–5 under the Exchange Act (17 CFR 240.10b–5).

[51] For example, the ISE Letter contained exemptions from Rules 10b–6 and 10b–7 to permit ISE member broker-dealers to engage in "passive market making" on the ISE, where ISE member firms participated in a multinational distribution of securities of certain U.K. issuers partially being offered in the U.S., or where such firms were affiliated with U.S. broker-dealers participating in a distribution of such securities in the U.S. Under Rule 10b–6, such ISE firms would have had to cease market-making activities during specified periods during the distribution. *See* Rule 10b–6(a)(4)(xi). *See also supra* n. 47. In permitting "passive market making" as described in the ISE Letter, U.K. firms could provide depth and liquidity to the U.K. market while minimizing any potential manipulative impact on the U.S. markets. The exemptive relief recognized the highly developed regulatory structure of the ISE and was subject to several conditions and specifically designed to avoid a manipulative impact on the U.S. market.

Similar exemption letters have been issued in other contexts. *See, e.g.*, "Letter Regarding Banco de Santander, S.A." (July 28, 1987), (1987 Decisions) Fed. Sec. L. Rep. (CCH) ¶78,523, at 77,684 and (1987–1988 Decisions) Fed. Sec. L. Rep. (CCH) ¶78,532, at 77,733 (October 23, 1987) (Spain); "Letter Regarding Rhone-Poulenc, S.A." (March 13, 1987), (1987 Decisions) Fed. Sec. L. Rep. (CCH) ¶78,444, at 77,455 (France).

The multijurisdictional disclosure system was designed to mitigate the problems posed by multinational offerings. Canada is the first partner for the United States in this effort because of the sophistication of its markets, and the similarities between U.S. and Canadian securities laws, in terms of both their investor protection mandate and the structure of the regulatory scheme established to effect that mandate.

D. Mutual Recognition and Harmonization

Efficiency of the capital-raising process would be enhanced greatly by permitting an issuer to prepare one disclosure document for use in each jurisdiction in which it chooses to sell securities. There are two primary approaches to achieve this goal: Harmonization of disclosure standards worldwide and mutual recognition of disclosure standards established in other countries. The multijurisdictional registration system proposed today includes aspects of both of these approaches.

Under a harmonization approach, participating jurisdictions would agree upon a set of disclosure requirements that would be the same in each jurisdiction, with the result that a prospectus prepared pursuant to the requirements of one participating jurisdiction would comply automatically with the requirements of all other participating jurisdictions. In addition to reducing costs, a prime benefit of such a system would be providing comparability of information from issuer to issuer and country to country.[52]

Mutual recognition, on the other hand, would enable an issuer to prepare a disclosure document according to the requirements of its home jurisdiction, and to have that document accepted for securities offerings in every other participating jurisdiction.[53] Mutual recognition may sacrifice comparability in order to facilitate the offering process.

As proposed, the multijurisdictional disclosure system is a hybrid of the two approaches. While it is based on the concept of mutual recognition, the participants will be those jurisdictions whose disclosure systems, while different in detail, provide investors with information to make an informed investment decision and financial statements of relevance and reliability. The existence of a well-developed, sophisticated and reliable system for administering these requirements is also critical, as the Commission will rely on foreign definitions and application of disclosure standards, and day-to-day enforcement of those standards.

The Commission recognizes that the success of the multijurisdictional approach is contingent upon the ability of the relevant regulators to enforce effectively their securities laws as applied to cross-border securities offerings. As a result, in the Commission's view, Memoranda of Understanding,[54] which provide mechanisms for comprehensive cooperation and enforcement assistance among regulators, are a key component of this approach. The SEC's MOU with British Columbia, Ontario and Quebec exemplifies such a comprehensive mechanism.

III. Canadian Securities Regulation

Canadian securities law has two distinct, yet related purposes: (1) To ensure full and fair disclosure to the capital markets through the registration of securities and continuous reporting of all material information necessary for informed investment decision making; and (2) to maintain fairness and equality of treatment of investors in these markets through the promulgation and enforcement of substantive rules.[55]

Like the United States, Canada requires the registration of securities intended to be offered to the public, [56] the provision of information adequate to enable investors to make informed investment decisions, and continuous disclosure by issuers of publicly sold securities.

---

[52] The European Community has taken steps toward harmonization of securities disclosure and accounting requirements among its member countries. The first step toward harmonization is the adoption of basic standards of disclosure to be adopted by all member countries. While member states may add additional requirements for domestic issuers, they must recognize and accept the compliance of other member states' issuers with their home country requirements. *See*, for example, Preamble to Council Directive of March 17, 1980 (80/390/EEC) (relating to listing particulars). ("[w]hereas (disclosure) differences should be eliminated by coordinating the rules and regulations without necessarily making them completely uniform, in order to achieve an adequate degree of equivalence in the safeguards required in each Member State to ensure the provision of information which is sufficient and as objective as possible for actual or potential security holders * * *").

See also Proposed Directive on the Requirements for Prospectuses (COM (80) 895) (relating to prospectuses for public offers), which would require mutual acceptance of prospectuses by member countries.

See generally, on the subject of reciprocity and mutual recognition in the European Community, "Completing the Internal Market", White Paper from the Commission to the European Council (June 28–29, 1985), articles 101–104; and Third Report from the Commission to the Council and the European Parliament (March 21, 1988), article 49.

[53] *See, e.g.*, Memorandum of Understanding between the Government of Australia and the Government of New Zealand on Harmonization of Business Law, July 1, 1988. This Memorandum noted the establishment of a program to examine, *inter alia*, harmonization of regulatory practices and cross-recognition of prospectuses.

[54] Memoranda of Understanding ("MOUs") are formal understandings between the Commission and foreign governments or foreign securities authorities which provide for the sharing of information in Commission and foreign agency investigations and litigation. Although MOUs are not binding agreements under international law, they serve as statements of intent between like-minded regulators to provide mutual assistance and cooperation in a variety of matters. MOUs formalize methods for requesting and providing information in connection with Commission and foreign agency efforts to administer and enforce their respective securities laws, and provide the Commission with direct access to information held or obtained by a counterpart in a foreign country.

For example, on January 7, 1988, the Commission signed a Memorandum of Understanding (the "Canadian MOU") with the British Columbia Securities Commission, the OSC, and the CVMQ, concerning mutual cooperation in matters relating to the administration and enforcement of U.S. and Canadian securities laws. The Canadian MOU contemplates that the United States and Canadian regulators will provide comprehensive assistance to each other in order to facilitate the administration and enforcement of the full range of laws, regulations and regulatory policies of the United States and Canada concerning securities matters, including specifically disclosure obligations relating to the issuance of securities. Such assistance includes providing access to information in the files of each securities authority and obtaining compulsory testimony and production of documents. The Canadian MOU recognizes that, at the time it was signed, a signatory may not have had the authority to provide such assistance, and the signatories undertook to seek to obtain that authorization if necessary.

Section 21(a)(2) of the Exchange Act (15 U.S.C. 78u(a)(2)), which was added on November 19, 1988, pursuant to the Insider Trading and Securities Fraud Enforcement Act of 1988, Pub. L. No. 100–704, provides the necessary authority for the Commission to implement fully the provisions of the Canadian MOU. This section allows the Commission to provide assistance to foreign securities authorities to determine whether violations of a foreign country's securities laws have occurred, are occurring, or are about to occur. The Commission can provide this assistance regardless of whether the matter under investigation in the foreign country also would be a violation of U.S. law.

The Provinces of British Columbia and Quebec also have passed legislation providing the necessary authority for their respective securities authorities to implement fully the provisions of the Canadian MOU, and it is the staff's understanding that the OSC soon will submit similar legislation in Ontario.

[55] *See* National Policy Statement No. 1 (Dec. 1, 1987), reprinted in 3 Cdn. Sec. L. Rep. (CCH) ¶ 470–001; 2 "Doing Business in Canada" section 21.01[1] (1988 ed.) ("Doing Business"); Weinstein, "Securities Law in Canada: Quebec: A Case Study", 21 Int'l L. 169, 170 (1987) ("Weinstein").

[56] Although in Canada the registration process is referred to as the "qualification" of securities for sale, the term "registration" often is used in this Release to facilitate discussion. Quebec and Ontario require that both public and non-exempt private offerings of securities be registered. *See* 2 "Doing Business", *supra* n.55, section 21.02[2]. *See also* 1 "International Securities Regulation: Canada—Commentary" 9–11 (1986 ed.).

A. Canada's Regulatory System

Within the framework of Canada's federal system, securities regulation falls primarily under the legislative authority of that country's ten provinces and two territories.[57] Each provincial legislature has enacted its own securities laws and regulations applicable to all nonexempt securities transactions occurring within the borders of the particular province, which typically are administered and enforced by a commission empowered to license brokers and securities dealers and to compel full disclosure to the investing public.[58] Due in major part to the location of Canada's principal stock exchanges in Toronto and Montreal, the OSC and the CVMQ are very influential in the regulation of securities markets.[59]

While there is neither a federal securities commission nor a comprehensive federal statute governing the Canadian capital markets, the national Parliament has enacted a body of corporate law, known as the Canada Business Corporations Act ("CBCA"), which is administered by the Department of Consumer and Corporate Affairs (the "Department").[60] Many of Canada's largest reporting companies are incorporated under the CBCA, and therefore are subject to regulation by the Department.[61] Because these companies must comply with securities laws of all provinces in which their securities are distributed or traded, provincial jurisdiction also exists over transactions in such securities.[62]

B. The Registration Process

Subject to statutory exemptions,[63] any distribution of securities [64] in Canada must be registered through the filing of a prospectus with the appropriate securities commission.[65] An identical prospectus, which meets the most stringent provincial disclosure requirements, must be filed with the securities commissions of any province in which securities will be distributed.[66] Virtually all distributions by major issuers are regulated by the OSC and CVMQ, given that most securities offerings include residents of Ontario and Quebec.

As in the United States, a waiting period triggered by the filing of registration documents precedes the effective date of the offering, or the date on which the securities may be sold.[67] During this period, such documents are reviewed by every provincial commission with jurisdiction over the offering. Pursuant to a system of coordinated review in which all provincial securities administrators participate, a Canadian issuer planning to offer and sell securities in several provinces may designate one province, typically Ontario or Quebec, as its principal jurisdiction for review purposes.[68] Substantive review and comments of all interested administrators concerning identical preliminary prospectuses filed in their jurisdictions [69] are gathered and issued

[57] *See* 2 "Doing Business", *supra* n.55, at section 21.01[1]; 2 B. Laskin, "Canadian Constitutional Law" 712–14 (5th ed. 1986) ("Laskin").

[58] *Id.* Commissions administer the securities laws in seven provinces (Ontario, Quebec, Alberta, British Columbia, Manitoba, Nova Scotia and Saskatchewan). In the remaining provinces and the Northwest and Yukon territories, commissions have not been established and the securities laws are administered by designated officials.

[59] *See* 2 "Doing Business", *supra* n.55, section 21.01[1]. The Toronto Stock Exchange ("TSE"), which is one of the world's largest in terms of both capitalization and trading volume, currently accounts for more than 75 percent of the total value, and close to 50 percent of the total volume, of securities traded in Canada. *See* Toronto Stock Exchange, 1988 Fact Book 1. As of 1987, the Montreal Exchange ("ME") accounted for approximately 17 percent of the value and almost 14 percent of the volume of the Canadian securities market. Montreal Exchange, Market Information: 1987 Statistics 5 (1988).

[60] CBCA sections 1 *et seq. See* 2 "Doing Business", *supra* n.55, section 21.01(2)(c). The CBCA contains provisions regulating takeover bids (CBCA sections 194-206 and Reg. sections 58–73) for, and proxy solicitations (CBCA sections 147–154 and Reg. sections 32–43) involving, the securities of all companies incorporated thereunder. As the agency charged with administering the CBCA, the Department requires that most documents filed with provincial securities commissions in respect of CBCA-incorporated companies be filed with it contemporaneously. *See, e.g.*, CBCA sections 193 (prospectus, statement of material facts, registration statement and securities exchange takeover bid circular or similar document relating to the issuer's distribution of securities to the public); 150(2) (form of proxy); 127(1) (insider reports).

[61] One of the purposes of the CBCA is to enable companies incorporated thereunder to conduct business throughout Canada, although provincially incorporated companies may conduct inter-provincial business. CBCA companies may not engage in the businesses of banks and insurance, trust and loan companies, all of which entities are regulated by other federal or provincial statutes. *See* CBCA sections 3(2), (4). Nor does the CBCA apply to non-profit or Special Act corporations covered by its predecessor statute, the Canadian Corporations Act. CBCA section 3(3).

[62] *See* "Multiple Access Ltd. v. McCutcheon", (1983) 138 D.L.R. (3rd) 1 (S.C.C.) (decision by the Supreme Court of Canada upholding the constitutionality of Ontario's insider trading legislation as applied to a federally incorporated company with headquarters in Toronto and securities listed on the TSE). Canada's Constitution does not include a supremacy clause like that of the U.S. Constitution, but has been construed to embody the "paramountcy" doctrine, a narrower version of the U.S. preemption doctrine, providing that federal law must prevail in the face of a direct conflict with provincial or territorial law. *See* section 94 of the Constitution Act of 1867; "Doing Business", *supra* n.55, sections 2.04[3]–2.04[5].

[63] Both Ontario and Quebec exempt from prospectus requirements an issuer's distribution to shareholders of subscription rights as well as the securities issued upon exercise of such rights. *See* Ontario Securities Act ("OSA") section 71(h); Quebec Securities Act ("QSA") section 52(1). The exemption may not be invoked with respect to major financings or offerings that would result in an increase of more than 25 percent in the number of outstanding securities of the class subject to the offering. *See* OSC Policy Statement 6.2 (Dec. 24, 1982) (as amended), *reprinted in* 3 Cdn. Sec. L. Rep. (CCH) ¶ 471–602; QSA Reg. section 70.2. Any issuer relying upon the exemption must provide the appropriate securities commission with written notice of the proposed offering and substantial information concerning the issuer, which materials may be disseminated to shareholders in the form of a rights circular within 10 days of such submission, thereby instituting the offering, if the commission raises no written objection. *See id.;* QSA section 53; Uniform Policy No. 2–05 (April 1971) (as amended), reprinted in 3 Cdn. Sec. L. Rep. (CCH) ¶¶ 470–205, 471–602; 1 V. Alboini, "Securities Law and Practice", section 16.9.1, at 36 (1984 ed. and 1988 Supp.) ("Alboini"). Once the offering documents are filed, any amendment thereto is subject to review and comment by the commission. Discussion with OSC staff.

[64] In Canada, such distributions include initial and repeat public offerings, certain private offerings, exchange offers and secondary trades that materially affect control of the issuer. *See* OSA sections 1(1)(11), 71(4)–(7); QSA section 5.

[65] *See* OSA section 52; QSA section 11; compare section 5 of the Securities Act (15 U.S.C. 77(e)).

[66] Provincial law, rather than the CBCA applicable to all companies incorporated thereunder, governs the regulation of securities offerings in Canada. *See* 2 "Doing Business", *supra* n.55, section 21.01[1]; 2 Laskin, *supra* n.57, at 712–14.

[67] Securities may be offered, but not sold, during this period. Compare OSA section 64 and QSA sections 19, 21 with section 5(c) of the Securities Act. Only the following limited items of information may be disseminated after filing of the prospectus to solicit interest in the prospective offering: (a) Identification of the security to be offered; (b) offering price; (c) name and address of persons from whom purchases may be made, or the managing underwriters; and (d) solicitations of expression of interest from potential buyers. Compare OSA sections 52(1), 64(2) and OSC Notice No. 24 (May 15, 1987) (as amended), reprinted in 3 Cdn. Sec. L. Rep. (CCH) ¶ 473–048 with sections 2(10), 5 and 10 of the Securities Act (77 U.S.C. 77b(10), 77e and 77j) *and* Rules 134 and 135 (17 CFR 230.134 and 230.135). *See* QSA sections 21, 22, 99–100; Uniform Act Policy No. 2–13 (May 30, 1980), reprinted in 3 Cdn. Sec. L. Rep. ¶ 470–213; Weinstein, *supra* n.55, at 178–79.

[68] National Policy No. 1, *supra* n.55. *See* 2 "Doing Business", *supra* n.55, section 21.02[4]; M. Connelly, "Multinational Securities Offerings: A Canadian Perspective", 50 Law & Cont. Probs. 251, 258 (1987) ("Connelly"). In general, the issuer deals exclusively with the principal jurisdiction during the comment process. If a dispute between the issuer and a secondary jurisdiction cannot be resolved through this process, the issuer must seek permission from the principal jurisdiction to engage in direct discussions with that secondary jurisdiction. Connelly, *supra*, at 258.

[69] As in the United States (section 10 of the Securities Act (15 U.S.C. 77j) and Rule 430 of

Continued

by the principal jurisdiction.[70] Securities commission staff of that jurisdiction generally advise the issuer orally and through comment letters of material deficiencies in the offering materials, and permit the issuer to provide additional information and make corrective disclosure.[71] By contrast with the Commission's review, which focuses exclusively on the adequacy of disclosure, a Canadian provincial commission also evaluates the merits of the transaction. Approval of the offering may be withheld in a province if, in the opinion of the securities regulator in that jurisdiction, the offering will not be conducted with integrity or in the public interest.[72]

Once the securities are qualified for sale, an offering may commence.[73] Prospectuses must accompany or precede all written confirmations of sale throughout the offering period.[74] The final prospectus must provide full, true and plain disclosure of all material facts pertaining to the securities to be offered as prescribed by line-item requirements, comply with all other provisions of the relevant statutes and rules, and contain the issuer's audited financial statements and other prescribed materials.[75]

As in the United States, a final prospectus in Canada must describe the issuer's capital structure as well as its property and business, including development of business, acquisitions and operating results; discuss officer and director compensation, indebtedness to the issuer and interests in material transactions; describe the security to be offered; outline use of proceeds and the underwriters' obligations, plan of distribution, and distribution spread; and identify material risks and risk factors.[76] Along with five years' financial statements, documents to be filed with the final prospectus include the auditor's report; any expert's report or appraisal relied upon in preparing the prospectus; a certified copy of a resolution of the board of directors approving the prospectus and financial statements and authorizing the execution of the prospectus by the chief executive and financial officers and any two other directors; and a resolution or other evidence of review by the board's audit committee of the issuer's financial statements.[77]

Canadian underwriting and marketing procedures do not differ significantly from those used in the United States. Under Canadian law, however, investors have a statutory right to withdraw from purchases of distribution securities if they so notify in writing the dealer from whom they purchased not later than midnight on the second business day after receipt of the latest prospectus.[78] Also, pursuant to the system for filing short-form prospectuses, known as the "Prompt Offering Qualification" system, Canadian underwriters can solicit non-binding expressions of interest prior to the filing of any preliminary short-form prospectus so long as they commit to file a prospectus within 48 hours of signing an underwriting agreement.[79]

Canadian law imposes liability on registrants for use of a prospectus containing misstatements or omissions of material fact.[80] Accordingly, the prospectus must be updated throughout the distribution as material events or changes arise or as information originally believed correct is discovered to be inadequate.[81] If an event leading to the filing of an amendment concerns the issuance of additional securities or affects the value or market price of the securities being distributed, any provincial commission with jurisdiction over the offering must review and approve the amendment.[82] Although not required by statute or rule, amendments relating to any other matter likewise are reviewed by commission staff.[83]

Regulation C (17 CFR 230.430)), a preliminary prospectus filed in Canada must comply substantially with the requirements of applicable statutes and rules prescribing the form and content of a prospectus. OSA section 53; QSA section 20 and Reg. sections 15–16. At a minimum, the prospectus must contain the financial statements of the issuer (Schedule A, Items 25–27 (15 U.S.C. 77aa); Items 11 and 16 of Forms S–1 and S–2, and Item 12 of Form S–3; Regulation S–X (17 CFR 210.1–01 *et seq.*); OSA Reg. sections 41(1)–(6), 42; QSA Reg. section 13), and the "red herring" statement identifying the document as a preliminary prospectus subject to completion by amendment, and stating that securities may not be sold or offers to buy accepted prior to the effective date in the United States (sections 5(b) and 10(b) of the Securities Act and Rule 430 thereunder), Item 501(c)(8) of Regulation S–K (17 CFR 229.501(c)(8))), and in Canada, of the issuance by the appropriate provincial commission of a receipt for the final prospectus (*see* OSA Reg. sections 37–39; QSA Reg. section 74; National Policy No. 32 (Oct. 21, 1981) (as amended), reprinted in 3 Cdn. Sec. L. Rep. (CCH) ¶ 470–032).

[70] *See* 1 Alboini, *supra* n.63, section 14.4.4.

[71] Compare id. at section 14.4.3 with 2 A. Sommer, "Securities Law Techniques" sections 22.05, 22.06 (1988) ("Sommer").

[72] OSA section 60; QSA section 15.6.

[73] *See* OSA sections 52, 60; QSA section 14.

[74] Compare OSA section 70 and QSA section 29 with Sections 2(10) and 5(b) of the Securities Act. Both Canada and the United States require delivery of the prospectus throughout the offering period. Compare OSA section 70 and QSA section 29 with section 5(b) of the Securities Act. Participating underwriters in Canadian offerings must deliver the prospectus during the entire offering period (OSA section 70), whereas in the United States participating underwriters, members of the selling group and all dealers, whether or not participating, must do so (a) in the case of an unregistered offering, prior to the expiration of 40 days after the first *bona fide* offer to the public, (b) in the case of a registered public offering, 40 days (90 days for initial public offerings) after the later of the first *bona fide* offer to the public or the effectiveness of the registration statement, or (c) in any event, in any sale of an unsold allotment of securities received as a participant in the distribution. *See* Section 4(3) of the Securities Act (15 U.S.C. 77d(3)). The Commission in Rule 174 (17 CFR 230.174) has modified these requirements in connection with registered offerings by reporting companies, shelf offerings, and registered offerings by non-reporting companies which, as of the effective date, are listed on a national securities exchange or authorized for inclusion in NASDAQ. *See also* Rule 15c2–8(d) (17 CFR 240.15c2–8(d)).

[75] Compare OSA section 55 and Reg. sections 26–32, 34–37, 41–50, 59–65, and Form 12 and QSA section 13 and Reg. sections 17, 29–31 and Schedule I with Schedule A, Items 25 and 26 and Forms S–1, S–2, and S–3.

[76] Compare OSA Form 12 and QSA Schedule I with Schedule A, Items 501–512 of Regulation S–K (17 CFR 229.501–229.512) and Forms S–1, S–2 and S–3.

[77] Compare OSA Reg. sections 52, 53(3), Uniform Act Policy 2–03 (April 1971), reprinted in 3 Cdn. Sec. L. Rep. (CCH) ¶ 470–203 and QSA Reg. sections 32, 84–87 with Schedule A, Items 25–27, Rule 2–02 of Regulation S–X (17 CFR 210.2–02), Items 509 and 601(5)–(8), (24) of Regulation S–K (17 CFR 229.509, 601(5)–(8), (24)), and Items 11(e) and 16 of Forms S–1 and S–2 and Item 12 of Form S–3. On the subject of comparability of U.S. and Canadian prospectus requirements, *see* generally Connelly, *supra* n.68, at 263.

[78] *See* OSA section 70(2); QSA sections 29–32. The staff understands that this withdrawal right is used rarely.

[79] *See* OSC Policy Statement No. 5.6 (Dec. 24, 1982) (as amended), reprinted in 3 Cdn. Sec. L. Rep. (CCH) ¶ 471–506.

[80] *Compare* OSA section 126 *and* OSA sections 217–218 with sections 11, 12(2) and 17(a) of the Securities Act (15 U.S.C. 77k,77*l*(2), 77q(a)), and Section 10(b) of the Exchange Act.

[81] *See* OSA section 56(1); QSA section 25. A duty to update the prospectus frequently arises under U.S. securities law in the context of a continuous or delayed offering (*see* Rules 415 and 424(c) of Regulation C (17 CFR 230.415, 230.424(c))) and, in Canada, where the distribution has extended beyond the six weeks typical of a firm-commitment underwriting, or the minimum 60-day period of a best-efforts underwriting. *See* OSA Reg. sections 27(1)(5), (7); QSA Reg. sections 22(1), (3). Canadian law prohibits, absent leave from a securities commission, the continuation of a distribution beyond 12 months from the later of the date of the particular commission's issuance of a receipt for the preliminary prospectus, or the date of the last prospectus refiled with leave of the commission upon expiration of the 12-month period. *See* OSA section 61(1); QSA section 33.

[82] *See* OSA section 56; QSA section 25. Compare Rule 413 of Regulation C (17 CFR 230.413) (new registration statement must be filed if additional securities issued). Provided its financial statements did not lapse prior to the issuance of a receipt for the final prospectus, a Canadian registrant need not amend the prospectus to update the financial statements within the maximum 12-month offering period unless a material event affecting the accuracy of the information in such financial statements has occurred. Discussions with OSC staff; *see* OSA section 56. Compare section 10(a)(3) of the Securities Act; Rule 3–12 of Regulation S–X (17 CFR 210.3–12).

[83] Discussions with OSC and CVMQ staff.

Ontario and Quebec have adopted a system for filing a short-form prospectus for eligible senior reporting issuers similar to the Commission's Forms S–3 and F–3, which is known as the Prompt Offering Qualification system.[84] As with Forms F–3 or S–3, this short form prospectus contains virtually all information called for in a long-form prospectus, in part by incorporating by reference other filings (including future filings), such as the Annual Information Form that must be filed annually with the proper securities commission. To qualify to use a short form prospectus in a province, a reporting company must have filed periodic reports with that commission for a fixed period,[85] and must incorporate such reports by reference in this prospectus.[86] Moreover, the issuer may not be in default of financial obligations or violation of applicable securities statutes and rules at the time the preliminary short-form prospectus is filed,[87] and must have securities listed on a stock exchange and held by nonaffiliated shareholders of an aggregate market value of (CN) $75 million.[88]

Quebec has adopted a procedure permitting the use of a simplified prospectus, referred to as a "shelf" prospectus, that is subject to abbreviated CVMQ review and thus, like the Commission's Rule 415,[89] "allows the frequent issuer (of securities) easier and quicker access to the market" over the maximum one-year period of distribution.[90] Reporting issuers with permanent information records that fulfill certain conditions are eligible to use this prospectus.[91] As with a short-form prospectus under the Prompt Offering Qualification system, the shelf prospectus is accompanied by an annual information form, incorporates by reference all mandatory periodic reports, and discloses a limited amount of information relating to the issuer and the securities to be offered.[92] Shortly before the issuer is prepared to commence an offering pursuant to a shelf prospectus, a supplement thereto must be filed with the CVMQ that, with the prospectus, constitutes the final prospectus.[93] If an issuer using a shelf prospectus does not make a distribution of securities at least once a year, a new shelf prospectus must be filed at the same time the required annual information form is updated.[94]

Every issuer that registers an offering of securities in Canada becomes subject to periodic disclosure requirements.[95] Registrants must file audited annual[96] and unaudited quarterly financial statements[97] and reports of any material change or other events,[98] and are subject to proxy solicitation requirements.[99] Registrants under the Prompt Offering Qualification system must file Annual Information Forms similar to annual reports on Form 10–K filed with the Commission.[100]

C. Accounting; Auditing

Canada's public accountants (primarily designated as chartered accountants) are licensed to practice by provincial statute. Authoritative accounting and auditing standards, which are uniform across Canada, are developed by a national body, the Canadian Institute of Chartered Accountants ("CICA"). Separate provincial institutes establish rules pertaining to professional conduct and ethics.

Although promulgated auditing standards in Canada differ from U.S. standards in some respects, generally accepted practice in Canada routinely encompasses all significant auditing procedures required by U.S. standards. Further, CICA periodically evaluates new auditing standards adopted by the American Institute of Certified Public Accountants ("AICPA"), CICA's U.S. counterpart, to determine whether similar guidelines may be appropriate for Canadian auditors.

CICA reporting standards comply with the reporting requirements specified by Article 2 of Regulation S–X,[101] but differ from the AICPA's reporting standards. While AICPA standards require U.S. auditors to include an explanatory paragraph in their report if substantial doubts exist about an entity's continued existence or

[84] *See* OSA section 62; OSC Policy Statement No. 5.6, *supra* n.79; QSA sections 18–19.

[85] OSC Policy Statement No. 5.6, *supra* n.79 (36 calendar months); QSA section 18 (1 year); *compare* Form S–3, General Instruction I.A.3 (36 calendar months in United States).

[86] These reports include Annual Information Forms (which are filed by Prompt Offering Prospectus registrants only), or, in some jurisdictions, SEC Forms 10–K or 20–F that have been accepted by the Commission for filing, regular prospectuses approved by a provincial commission within the preceding 12 months, takeover bid circulars, and any other equivalent documents that contain information required by the POP policy. OSC Policy Statement No. 5.6, *supra* n.79; QSA section 59.1. Other documents that must be incorporated by reference in a short form prospectus are material change reports (Canada's counterpart to Form 8–K (17 CFR 249.308)), interim financial statements, financial statements for the issuer's last completed financial year, and information circulars (proxy materials) filed since the commencement of the issuer's financial year in which its latest annual information report was filed. *See id.*; 1 Alboini, *supra* n.63, section 14.12.2.

[87] Compare General Instruction I.A.3 to Form F–3; General Instruction I.A.4 to Form S–3.

[88] OSC Policy Statement No. 5.6, *supra* n. 79; QSA section 59–60; CVMQ Policy No. Q–1 (April 8, 1983) (as amended), reprinted in 4 Cdn. Sec. L. Rep. (CCH) ¶ 570–001.

[89] 17 CFR 230.415 (use limited to issuers eligible to use Forms S–3 and F–3).

[90] Weinstein, *supra* n.55, at 178. *See* QSA sections 24.1–24.2, sections 62.1–62.10; National Policy Statement No. 1, *supra* n.55; CVMQ Policy Statement No. Q–1, *supra* n.88. *Compare* 2 Sommer, *supra* n.71, at § 23.01.

[91] QSA Reg. section 62.1. These conditions vary according to the type of security to be issued: (a) When common shares are issued, a three-year disclosure requirement must have been met, and the total value of all outstanding common shares met, and the total value of all outstanding common shares must exceed (CN) $150 million (QSA Reg. section 160; CVMQ Policy Statement No. Q–1, *supra* n.88); and (b) where debt or nonconvertible preferred securities are issued: (i) The issuer must have a three-year reporting history and all such outstanding securities issued and to be issued must be rated by a recognized evaluation agency (QSA Reg. section 161); or (ii) the securities to be issued are "provisionally classified" by such an agency (QSA Reg. section 162).

[92] *See* QSA Reg. section 62.3.

[93] QSA section 24.1. The supplement must present any information omitted in the prospectus and update a required statement listing documents incorporated by reference. QSA Reg. sections 62.9, 59.1. *Compare* Rule 415 (after registration of amounts to be issued, the registrant must update the registration statement through an effective post-effective amendment on specified events (*see* Item 512 of Regulation S–K), or through a supplement to the prospectus, to be filed with the Commission and disseminated with the core prospectus to investors during periods securities are offered and sold).

[94] QSA Reg. sections 62.8; Weinstein, *supra* n.55, at 178.

[95] *See* CBCA section 160; OSA section 1(1)38; QSA section 68; 1 Alboini, *supra* n.63, section 17.00. Once an issuer becomes subject to Canadian continuous reporting requirements by virtue of the filing of a registration statement, it continues to be bound by such requirements absent the commission's grant of an application to cease public filings. *See, e.g.*, OSA section 82 (application for order relieving reporting issuer with fewer than 15 shareholders in Ontario of obligation to report).

[96] *See* CBCA sections 155, 160; OSA section 77; QSA section 75. Compare Form 10–K and Form 20–F (annual reports including financial statements).

[97] *See* CBCA section 160(4); OSA section 76; QSA section 75. Compare Form 10–Q (17 CFR 240.308a).

[98] *See* OSA section 74; QSA section 73. Material changes mandating the filing in Canada of a material change report are defined as any "change in the business, operations or capital of the issuer that would reasonably be expected to have a significant effect on the market price or value of any securities of the issuer and includes a decision to implement such a change made by the board of directors of the issuer or by senior management of the issuer who believe that confirmation of the decision by the board of directors is probable." OSA section 1(1)(21). Accord QSA section 73. Compare Form 8–K.

[99] *See* CBCA sections 147–154 and Reg. sections 32–43; OSA sections 83–87; QSA section 73. Compare Regulations 14A–14C (17 CFR 240.14a–1 to 240.14c–101).

[100] *See* OSC Policy Statement No. 5.6, *supra* n.79; CVMQ Policy Statement No. Q–1, *supra* n.88.

[101] 17 CFR 210.2–01 through 210.2–05.

there are other material uncertainties, the Canadian auditor is prohibited from including such a reference in the audit report if the matter is disclosed adequately in a note to the financial statements. However, CICA has published a guideline intended to apply where the report is to be included in a filing with the Commission. The guideline indicates that the auditor should add comments for U.S. readers explaining the conflict in reporting standards and providing a cross-reference to the relevant uncertainty or other consideration disclosed in the financial statements. Compliance with this guidance would be required specifically in filings made pursuant to the multijurisdictional system.

Canadian GAAP are similar to their U.S. counterparts, although there are differences in measurement and disclosure. Some of the most significant differences include the methods of accounting for business combinations (Canadian GAAP require the purchase method of accounting in most situations that call for the pooling-of-interests method in the United States);[102] development costs (U.S. GAAP requires expensing of certain costs that may be capitalized under Canadian GAAP);[103] foreign currency gains and losses (U.S. GAAP require current recognition in some cases where Canadian GAAP permits deferral and amortization);[104] pension accounting (differences in measurement methodology);[105] employee stock compensation plans (an expense must be recognized in some circumstances under U.S. GAAP);[106] income taxes (Canadian GAAP more closely follow the method that was acceptable in the U.S. prior to the recent adoption of the new balance-sheet approach, and measures deferred taxes based on rates existing when timing differences originate rather than at current tax rates);[107] earnings per share (Canadian GAAP do not consider the effect of common stock equivalents);[108] extraordinary items (more restrictively defined under U.S. GAAP);[109] and consolidation (Canadian GAAP do not require consolidation of nonhomogeneous subsidiaries).[110] Also, differences may be significant with respect to particular industries, such as the specialized accounting practices of insurance companies.[111] Additionally, U.S. standards typically include more implementation guidance, and address some areas that have not been considered formally by Canadian standards.

As is true of the AICPA's independence rules, the rules on ethics and independence adopted by the provincial institutes differ from the Commission's rules on auditor independence. The Commission's rules more extensively address such areas as non-audit services and financial interests associated with the client.[112] Canadian regulatory bodies have not developed independence rules similar to those of the Commission.

D. Exchange and Tender Offer Regulation

In contrast with offers and sales of securities to the public (which are regulated principally at the provincial level), the acquisition of shares in Canadian companies through a takeover bid or exchange offer is regulated at both the federal and the provincial levels. A bidder must comply with the securities acts of each province in which one or more target shareholders resides[113] and with the federal[114] or provincial corporate statute under which the target company is incorporated. As is true of the registration process, Ontario and Quebec laws apply to most takeovers and exchange offers conducted in Canada due to the concentration of shareholdings in these provinces.

A takeover bid is defined by provincial securities laws as a nonexempt offer[115] to acquire shares that, if combined with shares already beneficially owned or controlled, directly or indirectly, on the date of the bid by the bidder or its affiliate, or by any co-bidder or person acting in concert with the bidder, equal or exceed in the aggregate 20 percent of the outstanding voting or equity securities of a class of a target issuer.[116] Acquisition of ten percent or more of the outstanding voting shares of a federally incorporated company will trigger the application of federal takeover law, as set forth in the CBCA.[117]

Canada's federal and provincial takeover laws impose on third-party bidders and target management detailed disclosure requirements that closely resemble those prescribed by the Williams Act. Once the bidder exceeds the ten or 20 percent threshold for companies incorporated under the CBCA or provincial law, respectively, it must file with the appropriate authority a copy of the bid itself and a takeover bid circular, similar in all material respects to a Schedule 14D–1 under the Exchange Act filed with the Commission,[118] and deliver that

---

[102] *See* Canadian Institute of Charted Accountants Handbook ("CICA") section 1580. *Compare* Statement of Financial Accounting Standards ("SFAS") No. 16.

[103] *See* CICA section 3450. Compare SFAS No. 2.

[104] *See* CICA section 1650. Compare SFAS No. 52.

[105] *See* CICA section 3460. Compare SFAS No. 87.

[106] *See* Accounting Principles Board Opinion ("APB") No. 25.

[107] *See* CICA sections 3470, 3471. Compare SFAS No. 96, which superceded APB No. 11.

[108] *See* CICA section 3500. Compare APB No. 15.

[109] *See* CICA section 3480. Compare APB No. 30.

[110] *See* CICA section 1600. Compare SFAS No. 94.

[111] *See* CICA section 4210. Compare SFAS No. 60 and SFAS No. 97.

[112] *See* Rule 2–01 of Regulation S–X (17 CFR 210.2–01); Financial Reporting Codification Sections 601–602.

[113] *See, e.g.*, OSA section 88; QSA section 113.

[114] *See* CBCA sections 3, 194.

[115] Canadian law exempts certain transactions from rules requiring formal takeover bids upon reaching the prescribed acquisition threshold. Purchases of ten percent or more (CBCA) or 20 percent or more (provincial law) of a company's equity securities will be exempt if such purchases are executed through the facilities of and in compliance with the rules of a stock exchange (CBCA section 194 and Reg. section 58(b); OSA section 92(1)(a); QSA section 119). Acquisitions also are exempt if they (a) do not exceed five percent of the outstanding shares of the specific class and the consideration is less than or equal to the market price at the date of purchase (OSA section 92(1)(b); QSA section 126; 2 Alboini, *supra* n.63, section 19.6.5); (b) are consummated by private agreement at not more than a 15 percent premium over market price with five or fewer persons or companies (OSA section 92(1)(c) and Reg. section 165; QSA section 123; *see* CBCA section 194 (offers to purchase made to fewer than 15 shareholders by way of separate agreements)); or (c) involve the securities of a privately held company (OSA section 92(1)(d)).

[116] OSA sections 88–90; QSA sections 110, 111. Under provincial definitions, an offer to acquire voting or equity shares will not constitute a takeover bid unless made to at least one shareholder either situated, or whose last address on the target's books is, in the particular province. *See* OSA section 88; QSA section 113.

[117] CBCA section 194. By contrast with Canadian law, the Williams Act does not define the term "tender offer," thus leaving that task to the courts. *See, e.g., Field v. Trump*, 850 F.2d 938, 943 (2d Cir. 1988), *cert. denied*, 57 U.S.L.W. 3533 (1989).

[118] Canadian line-item requirements for bidders, as set forth in federal and provincial regulations and forms, are substantially similar to their U.S. counterparts as prescribed by Commission rules and schedules under the Williams Act. A Canadian takeover bid circular, like a Schedule 14D–1, must include (a) the terms, conditions, withdrawal date, and purpose of the bid, as well as the time and method of payment; (b) plans for post-acquisition disposition of target assets and change of directors and/or management, or of the target's organization, affairs or capitalization; (c) holdings and recent trading in target securities by the bidder and any of its directors, senior officers and principal shareholders; and (d) agreements or arrangements either regarding target securities (*e.g.*, lock-up agreements), or between the bidder and target officers and directors (*e.g.*, compensation for post-takeover loss of office). Compare CBCA Reg. section 59, OSA Form 32 *and* QSA Schedule XI with Schedule 14D–1. In the case of exchange offers in both countries, the bidder in addition must provide prospectus disclosure. Compare CBCA Reg. section 60, OSA section 71(1)(k) and Form 32 *and* QSA Reg. section 187 with Form S–4 (17 CFR 239.25).

document to the target and target shareholders.[119] Within 10 days of the commencement of the bid, the Canadian target's board of directors must file and disseminate to shareholders a board of directors' circular that, much like a Schedule 14D–9 under the Exchange Act filed with the Commission, contains the target's response to the offer and other disclosures.[120]

If the bidders' securities are offered in whole or in part pursuant to an exchange offer, the offering materials also must satisfy standards applicable to prospectus disclosure.[121] The requisite prospectus disclosures are incorporated directly in the takeover bid circular.[122] The exchange offer is deemed to commence, or "go effective," immediately upon dissemination by mail to shareholders of the circular and any accompanying offering materials,[123] which generally is effected contemporaneously with the filing of offering documents with the appropriate commissions.

All cash and exchange offer documents are reviewed by the CVMQ after such documents are filed and transmitted to shareholders.[124] Neither the OSC nor the Department has established a formal system for review of tender offer materials, even in the case of an exchange offer mandating prospectus disclosures in the bid circular. In response to complaints from target counsel or any other person, however, the OSC will undertake scrutiny of tender offer materials.[125]

Substantive protections analogous to those provided in the United States by the Williams Act and the Commission's rules thereunder are available under the CBCA and provincial takeover statutes. A bid must be made to all holders of the same class of target shares residing in a province with jurisdiction over the bid,[126] and must remain open for acceptance by such holders for a minimum period (21 days) that may be extended (by ten days) upon any material change in the information contained in the offering materials or any variation in the terms of the bid.[127] If more target shares are deposited than the bidder is willing to purchase under a partial bid, the bidder must accept on a *pro rata* basis all tenders made throughout the offering period.[128] Target shares deposited generally may be withdrawn during the offering period and any extension thereof and, if the shares have not been taken up and paid for, after a 45- or 60-day period (under the provincial statutes and the CBCA, respectively) from the date of the bid.[129]

All holders of the same class of securities must be offered the same consideration.[130] Both Canadian and U.S. law provide that, if various forms of consideration are offered, all target shareholders must be given the opportunity to elect which form they will receive.[131] In contrast to the Williams Act, however, Canadian law prohibits any decrease in consideration during the offering period.[132] Moreover, under Canadian law, unlike U.S. law, a bidder must offer the highest identical consideration for the largest block of shares in a Canadian target purchased in any solicited transaction entered into within a period of 90 days prior to the bid.[133]

Finally, unlike the United States,[134] Canadian law provides that all purchases of a class of securities within a 20-day period after the termination of a tender offer must be made on the same terms available to target shareholders in the offering, even if the tender offer is not completed.[135]

A takeover bid made by an insider of a Canadian target issuer,[136] or by an associate or affiliate of such an insider, is regulated principally by third-party takeover bid requirements,[137] much like

---

[119] *See* CBCA section 198; OSA sections 97, 99 and Form 32; QSA section 128 and Schedule XI.

[120] Compare CBCA Reg. section 68, OSA Form 34 *and* QSA Schedule XII with Schedule 14D–9 (17 CFR 240.14d–101). Individual directors and officers also may file such a circular. *See* OSA Form 35; QSA Schedule XIII.

[121] *See* CBCA Reg. section 60; OSA section 71(1)(k) and Form 32, Item 15; QSA Reg. section 187.

[122] 2 Alboini, *supra* n.63, section 19.1.8. *See* CBCA section 200 and Reg. sections 59–60; OSA section 71(1), Reg. section 31a and Form 32, Item 15; QSA section 50 and Reg. section 187. Quebec may require a valuation by an independent appraiser of either or both the exchange offeror and offeree, which valuation must be filed with the CVMQ and summarized in the bid circular. QSA Reg. section 183. Ontario and Quebec mandate the filing of a valuation and summary disclosure thereof in the circular where any tender offer will be followed by a going-private transaction whereby the interests of minority shareholders in the subject company will be terminated without their consent. *See* OSA Reg. section 163(1); OSC Policy Statement No. 9.1 (Dec. 24, 1982) (as amended), reprinted in 3 Cdn. Sec. L. Rep. (CCH) ¶ 471–901; Ontario Business Corporation Act ("OBCA") sections 187–189; QSA Reg. section 183; *infra* n.139 and accompanying text.

[123] *See* OSA sections 88, 94; QSA sections 113, 128. *Compare* Rule 14d–2, which provides that a tender offer subject to the registration provisions of the Securities Act generally does not commence until the registration statement becomes effective and a definitive prospectus is disseminated.

[124] Discussions with CVMQ staff. Securities and Exchange Commission staff members generally conduct pre-effective review of registration statements covering exchange offers and post-commencement review of all tender offer materials.

[125] Discussions with OSC staff.

[126] Compare OSA section 94(1) and QSA section 145 with Rule 14d–10(a).

[127] Compare CBCA section 197(b); OSA sections 94(2), 97(5); and QSA sections 147.3, 147.8 (21 calendar-day offering period; ten-day extension after delivery to shareholders of notice of material change or variation in terms of bid) with Rule 14e–1(a) (17 CFR 240.14e–1(a)) (offering period of 20 business days); Rule 14e–1(b) (at least 10 business days must remain in offering period if material change involves an increase of more than two percent or any decrease in the percentage of the class of securities sought or an increase or decrease in either the consideration being offered or the dealers soliciting fee); Rule 14e–1(d) (17 CFR 240.14e–1(d)) (bidder must give notice of extension to target shareholders); and Exchange Act Release No. 23421 (July 17, 1986) (51 FR 25873) (material change requires a five- to ten-day extension of offering period, citing Rule 14d–4(c) (17 CFR 240.14d–4(c))). Partial bids for companies incorporated or organized under the CBCA may not continue beyond 35 days from the date of commencement of the offer. CBCA section 196(1)(b). No extension of the offering period may or need be made under Canadian law where (a) a material change was outside the bidders' control, unless related to the bidder securities to be issued in an exchange offer (OSA sections 97(3), 97(5)); or (b) where a variation in the terms of the bid consists solely of the waiver of a term or condition in an all cash-offer (OSA section 97(5); QSA § 147.8).

[128] Compare CBCA section 196(1)(c), OSA section 94(7) and QSA section 147(2) with Section 14(d)(6) of the Exchange Act (15 U.S.C. 78n(d)(6)).

[129] Compare CBCA section 195(a) (if the bid is for all shares, right to withdraw, if shares are not taken up, after 60 days following the date of the bid) and OSA section 94(4) and QSA section 147.5 (right to withdraw tendered securities during offering period and any ten-day extension thereof, and at any time after 45 days from the date of the bid) with Section 14(d)(5) of the Exchange Act (15 U.S.C. 78n(d)(5)) and Rule 14d–7(a) (17 CFR 240.14d–7(a)) (right to withdraw tendered securities during offering period and any extension thereof, and at any time after 60 days from the date of the tender offer). There is no right of withdrawal under Canadian law where (a) a change in the terms of the bid is attributable to an increase in the consideration offered and the time for deposit is not extended beyond 10 days (OSA section 94(5)(ii); QSA section 147.5(2)(1)); (b) the securities have been taken up by the bidder when it receives a holder's notice of withdrawal (OSA section 94(5)(i)); or (c) a change in the terms of the bid consists only of a waiver of a condition of an all-cash bid (OSA section 94(5)(iii); QSA section 147.5(2)(2)).

[130] Compare CBCA § 197(d), OSA section 96 and QSA sections 145, 146 with Rule 14d–10(a)(2) and Rule 13e–4(f)(8)(ii) (17 CFR 240.13e–4(f)(8)(ii)).

[131] Compare OSA section 96(3) with Exchange Act Release No. 23421, *supra* n.127 (51 FR at 25877). *See* CBCA section 197(d); QSA sections 145, 146.

[132] Discussions with OSC and CVMQ staff; compare with Rule 14e–1(b) and Exchange Act Release No. 23421, *supra* n.127 (51 FR at 25877).

[133] OSA section 93(5)(a); QSA section 142.1. Where a variation in the terms of the bid increases the value of the consideration offered, all shareholders must receive such increase. *See* OSA section 96(3); QSA section 146; compare Rule 14d–10(a)(2).

[134] *See Hanson Trust PLC* v. *MLSCM Corp.*, 774 F.2d 47 (2d Cir. 1985).

[135] *See* OSA sections 93(6), (7); QSA section 144.

[136] Every director and senior officer of the target or of a company that is itself an insider by virtue of stock ownership, any person or company who beneficially owns or controls, directly or indirectly, more than ten percent of the voting rights attached to the target's voting securities, and an issuer that has purchased, redeemed or otherwise acquired any of its own stock, will be deemed an insider. *See* OSA Reg. section 163(1).

[137] *See* CBCA Reg. section 62 (if federally incorporated); OSC Policy Statement No. 9.1.IV.B, *supra* n.122; Discussion with CVMQ staff.

affiliate bids subject to the Williams Act.[138] Ontario and Quebec further require that a valuation of the target be performed by an independent appraiser within 120 days of the bid, and filed with the takeover bid circular in which the results of the valuation must be summarized for shareholders.[139] Insiders also must make certain disclosures in the takeover bid circular derived from the standard-form issuer bid circular.[140] As with any third-party bid, the target's board of directors must file with the proper securities commission(s) and disseminate to shareholders its response to the bid.

An issuer bid or self-tender is defined as an issuer's nonexempt offer[141] to acquire or redeem any percentage of its own equity or convertible debt securities and, like third-party tender offers, is within the regulatory jurisdiction of securities authorities of all provinces in which solicited shareholders reside.[142] If the target is federally incorporated, the Director charged with administering the CBCA likewise has jurisdiction over the transaction.[143] Most of the substantive protections, disclosure requirements and agency review procedures applicable to issuer cash and exchange offers governed by Canadian securities law are virtually identical to those relating to third-party takeover bids.[144]

IV. The Proposed System

A. Overview; Purpose

The multijurisdictional disclosure system proposed today would permit public offers to be made in the United States on the basis of disclosure documents prepared in accordance with Canadian law. The system would cover multijurisdictional and cross-border offerings by Canadian issuers that met specified size tests, in order to encourage cross-border public offers and facilitate the free flow of capital. The system also would cover specified rights and exchange offers in order to encourage Canadian issuers to extend such offers to U.S. shareholders.

The multijurisdictional disclosure system also would permit tender offers that are primarily Canadian in character to comply with the provisions of the Williams Act by complying with the applicable Canadian tender offer regulations, again to encourage such offers to be made to U.S. investors. Given the extensive Canadian regulatory provisions, the United States does not have an overriding investor protection interest in insisting on compliance with the specific regulatory provisions of Regulations 14D and 14E.

The multijurisdictional disclosure system likewise would extend to continuous reporting, in light of Canada's continuous reporting requirements providing investor protection comparable to that provided by the similar U.S. requirements, as discussed above, and the likelihood that facilitation of the registration process without extension to the reporting process would render the system of little utility.

Under the multijurisdictional disclosure system as it would operate in Canada, U.S. issuers would be able to make public offerings of securities in all provinces of Canada on the basis of prospectuses prepared in accordance with U.S. law. Such prospectus disclosure would be updated in accordance with U.S. requirements, and U.S. documents would be used to comply with continuous reporting requirements. Although Ontario currently does not have a concept of shelf registration, procedures will be proposed by the OSC staff to accommodate U.S. issuers making shelf offerings. Tender offers that are primarily U.S. in character would be deemed to comply with applicable Canadian regulations if they were conducted in accordance with the provisions of the Williams Act.

In proposing adoption of the system, the Commission and Canadian securities authorities are taking a conservative first step rather than providing for multijurisdictional registration and disclosure in all cases. The first phase of the system will enable the Commission and the Canadian authorities to monitor use of the system and to address potential problems. At a later date, a wider variety of transactions and a greater number of issuers may be added.

To be eligible to participate in the multijurisdictional system, an issuer would be required to have a three-year reporting history with either the OSC or the CVMQ,[145] and to be in compliance with the reporting requirements of such authorities at the time of filing. Issuers also would be required, except in the case of rights offerings, to meet tests of minimum market value or public float. The system further would permit compliance with Canadian law to suffice for compliance with the Williams Act in the case of tender offers made for the securities of Canadian issuers, a limited percentage of which is held by U.S. residents.

---

[138] Unless made by a wholly owned subsidiary of the target, an affiliate bid subject to the Williams Act is treated as a third-party tender offer as to which a Schedule 14D–1 must be filed.

[139] *See* OSA Reg. section 163; OSC Policy Statement No. 9.1, *supra* n.122; QSA Reg. sections 183–186; 2 Alboini, *supra* n. 63, section 19.12.1.

[140] Under Ontario law, the insider must disclose the following information called for by OSC Form 33, the issuer bid circular: (a) Reasons for bid; (b) issuer's purchases and sales over the 12-month period preceding the bid; (c) dividend policy; and (d) tax consequences of the bid. OSC Policy Statement No. 9.1.IV.B.2., *supra* n. #122. Item 20 of OSA Form 32, the third-party takeover bid circular, requests the insider's discussion of recent legal developments, if any, relating to the type of transaction or proposed transaction. An insider of a CBCA-incorporated target must include in the takeover bid circular information from the directors' circular not already set forth in the takeover bid circular, and a statement indicating whether and how the remuneration of the directors of both the bidder and target will be affected by a successful bid. CBCA Reg. section 62.

[141] As in the United States, an issuer bid is exempt from Canada's takeover regulation if the securities are purchased or redeemed to meet contract sinking fund requirements or to comply with the terms and conditions creating the class of securities or the statute pursuant to which the issuer was organized, incorporated or continued. Compare OSA sections 92(3)(a)–(c) and QSA section 147.21(1) with Rules 13e–4(g)(1)–(3) (17 CFR 240.13e–4(g)(1)–(3)). Also exempt from Canadian takeover law are acquisitions by the issuer of (a) employee stock; (b) less than five percent of the issuer's shares within 12 months; (c) its own shares on a stock exchange in accordance with exchange rules; and (d) stock held by less than 50 shareholders, where the bid originated in a recognized jurisdiction and thus is governed by that jurisdiction's takeover rules. OSA sections 92(3)–(d) (i); *see* QSA section 147.21(2) and Reg. section 189.9; 2 Alboini, *supra* n.63, sections 19.1.13, 19.1.14.

[142] *See* OSA sections 88(1), (3); QSA section 147.19.

[143] *See* CBCA Reg. section 63.

[144] *See* QSA section 147.20; 2 Alboini, *supra* n.63, section 19.1.16; 2 "Doing Business", *supra* n.55, section 21.06[5]; 2 R. Kingston, "Canada Corporation Manual" 14–114 (1988 rev'd ed.). Additional disclosures that must be made in an issuer bid circular include (a) any benefits to insiders resulting from the bid (OSA Form 33, Items 15 and 17; QSA Schedule XIV, Item 14 and 16; *see* CBCA Reg. section 63(7)(h); compare Schedule 13E–4, Item 8(a)); (b) issuer's purchases and sales of its own stock over the preceding 12 months (CBCA Reg. section 63(1)(f); OSA Form 33, Item 19; QSA Schedule XIV, Item 18; compare Schedule 13E–4, Item 4); (c) financial statements, or provision thereof at shareholder's request (CBCA Reg. section 63(1)(j); OSA Form 33, Item 20; QSA Schedule XIV, Item 19; compare Schedule 13E–4, Item 7 (mandatory only if material)); and (d) any distribution of issuer securities over the past five years (CBCA Reg. section 63(1)(n); OSA Form 33, Item 24; QSA Schedule XIV, Item 22).

[145] Issuers of rights and exchange offers would be required to have listed securities on the ME or TSE for the three years prior to the offering. Pursuant to OSC and CVMQ rules, they thus would have been reporting to the OSC for that period. *See* OSA section 1(1)(38); QSA § 68. The forms require substantial issuers to have a three-year reporting history with any Canadian authority, but the size tests for use of Forms F–9 and F–10 are such that eligible issuers most likely would be reporting to the OSC or CVMQ.

Audits conducted in accordance with generally accepted auditing standards in Canada would be accepted in the United States pursuant to the multijurisdictional system. Auditor independence requirements would not be affected by the multijurisdictional process and accountants therefore must continue to meet the independence requirements of the jurisdiction in which an offer is made. Moreover, Canadian auditors would be required specifically to follow the existing Canadian professional guidelines[146] regarding additional comments for U.S. readers that may be appropriate with respect to contingencies and going-concern considerations.

1. Offerings by Substantial Issuers

The purpose of the "substantial" designation is to single out issuers whose size is such that the market operates efficiently for them.[147] Such issuers generally have a wide market following and the marketplace can be expected to have set a price for their securities based on all publicly available information. As in the case of determining the availability of Form S–3 or F–3, the Commission has distinguished between investment grade and other securities in determining whether to rely completely on Canadian disclosure, although a size test would be applied to investment grade debt offerings (which is not the case for offerings on Forms F–3 or S–3). In the context of investment grade debt and preferred stock, a "substantial" issuer is defined as one that has a market value of at least (CN) $180 million, as opposed to the (CN) $360 million required in the case of other securities.

The Commission is proposing to rely entirely on Canadian disclosures in the case of investment grade debt and preferred stock. These securities generally trade on the basis of the yield on such securities and assessments of their creditworthiness. The financial information pertaining to liquidity and capital resources is most relevant to this investment decision, and the differences between U.S. and Canadian GAAP usually are not of such magnitude as to affect materially an assessment of this information with respect to the ability to repay principal and interest when due.

In the case of offerings by substantial issuers of securities other than investment grade debt and preferred stock, reconciliation to U.S. GAAP would be required. While the financial statements prepared in accordance with Canadian GAAP are relevant and reliable, financial statement reconciliation would increase comparability of financial information, which is of greater importance to investment decisions with respect to equity and other non-investment grade securities.

The Commission specifically requests comment as to whether the differences between U.S. and Canadian accounting standards are sufficient to warrant continued reconciliation requirements, or whether Canadian financial statements would provide investors with adequate information for comparative analysis purposes in some or all cases. If reconciliation is not necessary in all cases, should it be required only for specific regulated industries (for example, insurance companies, where specialized industry guidance in both countries may result in very different balance sheets) or specific transactions? The Commission also requests comment as to whether domestic issuers would be disadvantaged unduly if Canadian issuers were to be permitted to sell noninvestment grade debt or equity in the United States without reconciliation. Depending on the responses received to these questions, the Commission may reconsider the need to require reconciliation, and could eliminate or modify that requirement in Form F–10.

In the case of banks registering securities on proposed Form F–10, supplemental disclosure of specified portions of the information prescribed by Securities Act Industry Guide 3, discussed below, also would be required. Review by Commission staff of applicable Canadian law indicated that equivalent disclosure currently is not required in Canada.

2. Rights and Exchange Offers

The multijurisdictional registration process also would be extended to certain rights and exchange offers, primarily because of concerns for domestic investors' interests. Rights and exchange offers made in the United States generally must be registered with the Commission.[148] As noted above, foreign issuers making a rights or exchange offer frequently do not extend offers to U.S. holders because they are unwilling to bear the costs and other burdens of registering securities in the United States.[149] U.S. holders of securities that are the subject of a rights offering are typically "cashed out" and thereby may be denied the opportunity to realize significant value on their investments.[150] 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.[151]

---

[146] *See* CICA Auditing Guideline, "Canada-United States reporting conflict with respect to contingencies and going concern considerations" (December 1988).

[147] *Compare* Securities Act Release No. 6331 (August 6, 1981), adopting Form S–3 ("Because these registrants are widely followed, the disclosure set forth in the prospectus may appropriately be limited, without the loss of investor protection, to information concerning the offering and material facts which have not been disclosed previously.").

[148] Rights offers generally are not required to be registered under state law. *See* section 402(14), Uniform Securities Act (1985), Official Code Comment, n.14.

[149] To avoid filing a registration statement in the United States, Canadian exchange offerors may restrict U.S. shareholders to receiving cash. *See, e.g., Alberta Energy Ltd.* (avail. July 19, 1982); *Jamaica National Investment Co. Ltd.* (avail. Nov. 29, 1979).

[150] *See* letter to the Commission from the College Retirement Equity Fund, April 22, 1988.

[151] In adopting the All Holders, Best Price Rule requiring that tender offers be made to all holders of the class of securities subject to a tender offer and on identical terms (Rule 14d–10(a); Rule 13e–4(f)(8)), the Commission stated that the new rules would not require foreign bidders to extend offers to target shareholders residing in the United States. Exchange Act Release No. 23421, *supra* n.127. If a foreign offeror uses the jurisdictional means of the United States (*see, e.g., Consolidated Gold Fields PLC* v. *Minorco S.A.*, 871 F.2d 252 (2d Cir. 1989)), however, the offer must be made to U.S. shareholders on the same terms as other target shareholders. Rather than create a specific exception to the Rule's requirement that all alternative forms of consideration be offered to all shareholders when (a) a foreign bidder makes an exchange offer to non-U.S. shareholders but wishes to offer only cash to U.S. shareholders (*see supra* n.149), or (b) a U.S. bidder wishes to make an exchange offer to U.S. shareholders and a cash-only offer to nonresident foreign shareholders, the Commission indicated in the adopting release that it would consider applications for exemptive relief under Rules 14d–10(e) or 13e–4(g)(7) (17 CFR 240.13e–4(g)(7)) on a case-by-case basis. Pursuant to delegated authority, the Commission's Division of Corporation Finance has granted exemptive relief to a Canadian bidder that excluded U.S. shareholders of the Canadian target due to a Canadian law prohibiting foreign ownership. *Alberta Energy Co. Ltd.* (June 19, 1989). In addition, the Division has granted exemptive relief to a U.S. company that excluded Canadian shareholders of the U.S. target because U.S. law prohibited foreign ownership of domestic oil and gas leases. *Freeport-McMoran Energy Partners, Ltd.* (June 19, 1989). Exemptive relief was denied in connection with a tender offer by a Canadian corporation for 78 percent of the common stock of a Canadian affiliate of a U.S. company, where the bidder proposed to offer cash only to U.S. target shareholders, and the choice of cash or stock to Canadian target shareholders, but did not argue that Canadian law foreclosed U.S. ownership of target stock. *Imperial Oil Ltd.* (June 19, 1989).

It therefore would appear to be in the interests of domestic investors to facilitate the registration of such offerings to encourage foreign issuers to include domestic shareholders. Particularly when U.S. holdings are small, Canadian issuers currently find that the costs of extending these offers into the United States outweigh the benefits of such entry. The proposed system should alter the costbenefit analysis made by Canadian issuers in favor of extending offers to relatively small numbers of securities holders in the United States.

Additionally, imposing a duplicative cost on issuers seems particularly inappropriate where the effect on the United States is incidental to a transaction. For this reason, where less than 20 percent of the class of securities to which the rights or exchange offer related is held of record by U.S. residents, offers could be made in the United States pursuant to the system. The percentage of record holders would be determined as of the end of the issuer's last quarter or, if such quarter ended within 60 days prior to the date of filing, as of the end of the preceding quarter. Comment is requested as to whether the percentage should be determined as of a different date.

Rights offerings to U.S. investors that already own the securities of the issuer are particularly appropriate for multijurisdictional registration. Investors already holding the securities can be expected reasonably to make a further investment based on the same type of information on which they relied when they bought the securities in the secondary market. Consistent with this theory, multijurisdictional registration for rights offerings would be made available to a larger class of issuers than those designated "substantial." For the same reason, however, the rights so registered could not be transferred to investors in the United States who were not already shareholders.

Comment is requested as to whether rights offers should be permitted to be made pursuant to the system in the event more than 20 percent of the subject securities were held of record by U.S. residents. For example, should the limit be 30, 40 or 50 percent or should there be no limit at all?

In the case of exchange offers, it similarly seems appropriate to facilitate registration so that domestic investors are not denied rights of value that are offered to all other holders of the same class of securities. On the other hand, in non-issuer exchange offers, unlike rights offerings, the investor has not made a prior investment decision with respect to the bidder whose securities are being offered in the exchange. Due to this difference, eligibility standards for exchange offers would be higher than those applicable to rights offerings, and a narrower class of exchange offers could be made through the multijurisdictional system. While issuers of both rights and exchange offers would have to have three-year reporting histories, only in exchange offers would issuers be required to have a public float of (CN) $75 million.[152]

In the case of exchange offers, a decision to extend offers to U.S. investors depends not only on the application of U.S. disclosure requirements, but also on U.S. tender offer regulation. Foreign issuers conducting tender offers for the shares of Canadian target companies often are deterred from extending both exchange and cash offers to target shareholders residing in the United States by costs attendant to compliance with this country's applicable tender offer regulations,[153] and thus exclude U.S. investors from their tender offers. In some cases, although purporting to exclude U.S. shareholders from the offer, the bidder in fact may have intended that U.S. holders sell into the market so that the shares could be purchased on the open market by the bidder, as permitted under Canadian law,[154] or tendered by Canadians who purchased such shares in the market. Rather than protecting U.S. investors, the application of tender offer rules under the U.S. regulatory scheme to predominantly Canadian tender offers can operate to deny these investors the full benefit of participation in such transactions.

In sum, the multijurisdictional system should reduce disincentives to the inclusion of U.S. shareholders in predominantly Canadian cash or exchange offers where less than 20 percent of the subject class was held of record by U.S. residents. More importantly, because the substantive protections and disclosure obligations established by Canada's tender offer regulations are comparable to those prescribed by the Williams Act and the Commission's rules thereunder, holders of shares in Canadian companies residing in the United States would not be disadvantaged unduly by comparison with U.S. shareholders in domestic companies. To minimize any potential regulatory inequality, the nationality of a bidder in a cash tender offer would not determine availability of the system. Thus U.S. and Canadian bidders for a Canadian target would be governed by the same tender offer regulation.

B. The Mechanics of the Multijurisdictional Disclosure System

An issuer using the multijurisdictional disclosure system would prepare a disclosure document according to the requirements of its home jurisdiction and use that document for securities or cash offerings in the United States. Review of the disclosure document generally would be that customary in Canada, and the Canadian regulatory authorities would be responsible for applying disclosure standards. Thus, except in the unusual case where the Commission staff had reason to believe there was a problem with the filing or the offering, the documents generally would be given a "no review" status. Although Canadian issuers offering securities pursuant to the system would not be required to comply with U.S. disclosure requirements, they nonetheless would be liable under U.S civil liability and antifraud provisions [155] and, with respect to securities offerings, subject to the authority of the Commission to stop the offering in the public interest and for the protection of investors.[156]

The system would distinguish between the disclosure document required to be given to each investor and the documents to be filed with the Commission. Participating Canadian issuers could provide investors in the United States with the same information delivered to investors in Canada. Information incorporated by reference in the prospectus would not be required to be distributed to investors, but would be filed with the Commission.[157] Investors

---

[152] This requirement is derived from the requirements of Canada's Prompt Offering Qualification system. *See supra* Section III.B.

[153] A particular deterrent arises from differences in the minimum offering period. Canadian law requires that tender offers remain open only for 21 calendar days, whereas the Williams Act prescribes a minimum offering period of 20 business days. *See supra* section III.D. Participation of U.S. shareholders likewise may not be sought due to cost considerations involved in making tender offer filings under U.S. law, including reconciliation of financial statements to U.S. GAAP. *See supra* section II.C.

[154] *See infra* nn. 206–208.

[155] Sections 11, 12(2) and 17(a) of the Securities Act, sections 10(b), 14(e) and 18 of the Exchange Act, and Rules 10b–5, 13e–4(b)(1) and 14e–3 under this Act. In essence, the Commission is proposing the adoption of the disclosure provisions of the Canadian forms, and omission of information otherwise generally included in Commission forms would not violate U.S. disclosure requirements. However, an antifraud action could be brought alleging that the document was misleading because information had been omitted.

[156] *See* section 8 of the Securities Act (15 U.S.C. 77h).

[157] Such documents would be part of the prospectus and subject to liability under section 12(2) of the Securities Act for any misleading statement.

would be able to obtain such information from the Commission or, upon request, from the issuer.

All exhibits to the Canadian prospectus, takeover bid circular or other document, including those incorporated by reference, would be required to be filed with the Commission as part of the registration statement or schedule.

Documents already filed with the Commission would not be required to be filed again. Experts' consents filed with the Commission as a part of a registration statement would be required to indicate clearly that the consent to use the experts' statements and consents extends to all the documents being filed with the Commission which attribute a report or opinion to the expert.[158] Thus, all the documents would be subject to Section 11 liability and all other provisions of the U.S. securities laws applicable to a registration statement filed under the Securities Act, as well as (in the case of tender offers) the antifraud provisions of the Exchange Act. Moreover, such documents would be in the Commission's public files, available for public review.

Participating issuers could use a brief "wraparound" form or schedule to register their offerings with, or otherwise provide disclosure to, the Commission. This form or schedule would give the issuer's name and address, and that of its agent for service in the United States, include the prospectus or offering circular, and list the exhibits filed, including documents incorporated by reference, with the Commission. Each form and schedule proposed today contains a requirement that the Commission be advised of any change to the name or address of an agent.[159] All the forms and schedules proposed also expressly require that the issuer add to the prospectus or circular legends warning investors that the investment may have tax consequences in the issuer's jurisdiction, that investors may have to pursue remedies for any securities law violation against persons and assets located in the issuer's jurisdiction, and that any financial statements are prepared in accordance with Canadian accounting standards.

The forms and schedules would be accompanied by a Form F-X, which includes not only a consent to service of process and appointment of a U.S. person as agent for process, but also a consent to service of an administrative subpoena and an undertaking to assist the Commission with administrative investigations.[160]

Where debt securities were registered, issuers would be required to comply with the Trust Indenture Act, and would file as exhibits to the registration statement a copy of the trust indenture [161] and the statement of eligibility on Form T-1.[162] In the event that the registrant intended to use a non-U.S. trustee, it also would have to provide information regarding that trustee or incorporate by reference the application form previously used to obtain a waiver of the U.S. trustee requirement. The procedure for application for waiver is discussed in detail below.[163] If any exchange or tender offer for debt securities were registered on Form F-8, pursuant to section 306(c) of the Trust Indenture Act, offers could not be made until an indenture (including the related statement(s) of eligibility and qualification of the trustee or trustees) had been filed for qualification with the Commission.

Registration statements on the proposed forms must be filed with the Commission on the same day as the filing of a prospectus or other document with the securities authorities of the jurisdiction identified by the registrant on the cover of the form as the principal jurisdiction regulating the offering. Any amendment to the document filed with that jurisdiction similarly must be filed on the same day with the Commission under cover of a post-effective amendment. Because the provincial securities commission must review and approve all prospectuses and related documents prior to effectiveness except those incorporated in exchange offer filings,[164] these registration statements and amendments would be deemed effective on the date the securities could legally be sold in the principal Canadian jurisdiction.[165] With respect to exchange offers, which may commence immediately in Canada upon dissemination of offering documents to target company shareholders, filings on Form F-8 would become effective upon filing with the Commission.[166] Post-effective amendments to proposed Forms F-7 through F-10 also would become effective on the date on which the securities legally may be sold in the principal Canadian jurisdiction.[167]

In the case of a U.S.-only offering on Forms F-9 and F-10, the registration statement would be made effective on the date specified by the registrant, but in no event less than seven days after the registration statement was filed with the Commission.[168] This seven-day period corresponds to the average time that is required for a registration statement to be reviewed in Canada. It would provide adequate time for Canadian authorities to advise the Commission of any regulatory concerns and would minimize any potential for the proposed system to encourage Canadian issuers to forego qualification in Canada. The Commission specifically requests comment as to whether the procedures outlined in this Release are likely to result in Canadian issuers that would otherwise have offered securities in Canada choosing to offer only in the United States.

In the case of a debt offering, the trust indenture relating to the securities would be qualified when the registration statement became effective. The registration statement would not be deemed effective, however, in any case where either all the provisions of the Trust Indenture Act had not been complied with, or an appropriate exemption had not been obtained from those provisions with which the registrant had not complied.

Registrants on the multijurisdictional forms would be able to make a delayed or continuous offering to the same extent foreign private issuers currently may make such offerings pursuant to Rule 415. However, prospectus updating would be accomplished in compliance with Canadian law.[169] Any updated prospectus would be filed with the Commission as a post-effective amendment and would be declared effective on the date on which the securities legally may be sold in the principal Canadian jurisdiction. A registration statement for a delayed or continuous offering could be filed with the Commission if the documents contained in the registration statement included the documents required in Canada and complied with all Canadian requirements. In the case of offerings made in both Canada and the United States, the registrant would comply with Canadian law regarding prospectus

[158] *See* Securities Act Rules 436-439 (17 CFR 230.436-439).

[159] This would codify staff interpretations to the effect that such notification is necessary.

[160] Proposed Form F-X.

[161] 17 CFR 229.601(b)(4)(i) and (iv).

[162] 17 CFR 229.601(b)(26).

[163] *See infra* section IV.G.

[164] *See supra* section III.B.

[165] Proposed Rule 467(a).

[166] *Id. See supra* n. 123 and accompanying text.

[167] *Id.*

[168] Proposed Rule 467(b).

[169] Canadian law requires a prospectus to be amended to reflect any material change in the information contained therein. See discussion in text accompanying nn. 80-83, *supra.*

updating, and no special undertaking would be required in the registration statement.[170] In the event there was no contemporaneous offering in Canada, the registrant would be required to enter into an undertaking regarding prospectus updating.

C. Application of the System to Specific Transactions

Discussed in detail below are the procedures whereby Canadian issuers could offer securities or any offerors could make a cash tender offer in the United States under the multijurisdictional disclosure system. Equivalent procedures are being proposed by the OSC and the CVMQ for use by U.S. issuers in Canada.

1. Offerings by Substantial Issuers

(a) *Offerings of Investment Grade Debt and Preferred Stock (Form F–9).* Multijurisdictional registration would be permitted for offerings by substantial issuers of non-convertible debt securities [171] or non-convertible preferred stock that are investment grade, as defined in the United States.[172] Securities that are not convertible for one year from the date of effectiveness of the registration statement would be treated as non-convertible. Comment is requested as to the treatment of convertible securities. Should the period of non-convertibility be longer (*e.g.*, for two or three years)?

Eligible offerings of investment grade securities would be registered with the Commission on proposed Form F–9. To be eligible to use that form, an issuer would be required to be incorporated or organized under the laws of Canada or any Canadian province or territory, with a total market value for its common stock of at least (CN) $180 million and a public float [173] of (CN) $75 million. The (CN) $180 million requirement parallels one of the eligibility standards for use of Form S–3,[174] which permits use of a short-form prospectus in the United States by U.S. issuers. The public float requirement is derived from the Canadian test for eligibility for the Prompt Offering Qualification system, discussed above,[175] and is based on the Canadian, rather than the U.S. definition of affiliates in determining the amount of securities publicly held. These requirements are expressed in terms of Canadian, rather than U.S., currency so that fluctuations in exchange rates would not affect an issuer's eligibility to use the Form.

Comment is requested as to whether the requirements set forth provide adequate indication of an issuer's market following. Should the market value and public float tests be set at different levels, and if so, should they be higher (for example, market value of (CN) $300 or $500 million, or float of (CN) $100 or $300 million) or lower (for example, market value of (CN) $75 or $100 million or float of (CN) $25 or $50 million)?

(b) *Other Offerings (Form F–10).* Offerings by substantial issuers of securities other than investment grade debt or preferred stock would be registered on proposed Form F–10. In this context, "substantial issuers" would be those with a common stock market value of at least (CN) $360 million (to approximate the Commission's requirement that equity issuers eligible to use the Form F–3 short form prospectus have a market value of voting securities of (U.S.) $300 million [176]), and a public float of (CN) $75 million. As with Form F–9, comment is solicited as to the appropriateness of the tests for eligibility for Form F–10. Should the market value and public float tests be set at different levels, and if so, should they be higher (for example, market value of (CN) $500 or $700 million, or float of (CN) $100 or $300 million) or lower (for example, market value of (CN) $100 or $200 million or float of (CN) $25 or $50 million)?

As discussed above, Form F–10 would require reconciliation of financial statements to U.S. GAAP as specified in Item 18 of Commission Form 20–F. Item 18 requires the full disclosure of all information required by Regulation S–X and U.S. GAAP, including segment information and supplemental oil and gas data. Comment is solicited as to whether, if reconciliation is to be required, Item 17 reconciliation should suffice.[177]

In the United States, registration statements are subject to certain industry-specific requirements relating to an issuer's business and operations. Foreign issuers generally are held to the same level of disclosure as domestic issuers. Given Canadian comprehensive disclosure requirements and practices, the Commission proposes to require additional industry-specific information only from issuers engaged in banking. Canadian banks using Form F–10 would be required to disclose the information set out under Item III.C., "Risk Elements," and Item IV., "Summary of Loan Loss Experience" of Industry Guide 3 under the Securities Act.[178] Both the reconciliation and the supplemental Guide 3 information are required to be included in both the prospectus delivered to investors and the registration statement.

2. Rights and Exchange Offers

(a) *Rights Offers (Form F–7).* Form F–7 is proposed for use by Canadian issuers making rights offerings in the United States. To be eligible, the issuer would have to (1) be incorporated in Canada, and (2) have had, for the 36 months immediately preceding the offering, a class of securities listed on The Toronto Stock Exchange or the Montreal Exchange.[179] Form F–7 would not require that registrants meet any test related to market value of shares or public float. Comment is requested as to whether the eligibility tests proposed for use of Form F–7 are appropriate, or whether the (CN) $75 million (or $10 million, $25 million or $50 million) market value requirement imposed by Form F–8 be extended to Form F–7.

Since it is intended that Form F–7 would exclude offerings that are major financings, so that an issuer that did not meet the tests for use of Form F–10 would not be eligible to take advantage of the system by characterizing an offer as a rights offering, an eligible offer could not increase the capital of the class of securities offered by more than 25 percent. The 25 percent test is derived from Canadian requirements, which use the 25 percent threshold to identify

---

[170] *See* Item 512(a) of Regulation S–K.

[171] 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 IV.G.

[172] Securities would 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 rule 15c–1(c)(2)(vi)(F) under the Exchange Act) has rated the security in one of its generic rating categories that signifies investment grade; typically the four highest rating categories (within which there may be subcategories indicating relative standing) signify investment grade.

[173] "Public float" is the monetary value of all outstanding equity securities owned by non-affiliates, and would be determined according to Canadian practice. In the multijurisdictional system, Canadian (but not U.S.) issuers would include non-voting common stock in the calculation of public float.

[174] Instruction I.B.1. (market value of securities of issuer to be (US) $150 million).

[175] *See* text accompanying nn. 84–88, *supra*.

[176] Instruction I.A.4.

[177] *See supra* n.29. Item 17 requires reconciliation only in measurement items (the income statements and balance sheet amounts).

[178] Both Canadian banks and bank holding companies (not common in Canada) would be covered by this requirement.

[179] Pursuant to the securities laws of Ontario or Quebec, such issuers thus would have three-year reporting histories with the OSC or CVMQ. *See* OSA section 1(1)(38); QSA section 68.

rights offerings subject to additional regulatory requirements.[180]

U.S. residents must hold of record [181] less than 20 percent of the class of securities to which the rights offering related. To preclude a public offering being made indirectly by an issuer not eligible to make such an offering, the rights could not be transferable by U.S. residents. The underlying securities, however, could be so transferable. Consistent with Canadian regulations, a further condition of Form F-7 is that the exercise period of the rights must not exceed 90 days.

The securities to be registered on Form F-7 would be those issuable upon the exercise of rights. The rights themselves, whether issued to shareholders by means of warrants or otherwise, generally are not registrable on a "no-sale" theory.[182] If the rights were required to be registered, the issuer would be permitted to register them on Form F-7.

(b) *Exchange Offers (Form F-8)*—(i) *Registration Issues.* Proposed Form F-8 would be used to register exchange offers that are primarily Canadian in character, in which all or a portion of the consideration offered is the securities of the bidder, and less than 20 percent of the securities of the target class is held of record by U.S. residents. The aggregate market value of the registrant's common stock must equal or exceed (CN) $75 million.[183] As with rights offerings registered on Form F-7, registrants would be required to have had their securities listed on The Toronto Stock Exchange or the Montreal Exchange for the 36 months immediately preceding the offering. Comment is requested as to the appropriateness of these tests. Given the application of Canadian tender offer regulation to the exchange offer and the interdependence of tender offer and exchange registration disclosure, should the offer be permitted to be registered using Canadian disclosure, without regard to the market capitalization? Should a public float test be imposed, as in the case of offerings by substantial issuers? If so, should the same requirements as apply to either Form F-9 or F-10 be applied, or should a different public float be required, for example, (CN) $25 million or $50 million? Should the market value of the registrant's securities be set at a higher level (for example, (CN) $100 million or $200 million) or a lower level (for example, (CN) $25 million or $50 million)?

The target of the bid would be required to be incorporated or organized under the laws of Canada or any Canadian province or territory. The bidder would be required to offer its securities upon identical terms and conditions to both U.S. and Canadian shareholders of the target, consistent with Canada's all-holders and best-price policies.[184] Adherence to these policies, which as discussed are similar to the Commission's All-Holders, Best Price Rule,[185] would prevent discrimination among holders of the class of securities that is the subject of the offer.

Contemporaneously with the filing with Canadian authorities and mailing to target shareholders of the required documents, a Canadian offeror making an offer pursuant to the system would file these documents, under cover of Form F-8 and accompanied by Form F-X, with the Commission. The offer and takeover bid circular would be distributed by mail in accordance with Canadian law [186] to shareholders in both countries. In the United States an exchange offer cannot commence until a registration statement has become effective,[187] thereby delaying the commencement date of the offer pending acceleration of the effective date.[188] An exchange offer commences under Canadian law, however, immediately upon the mailing to target shareholders of the takeover bid circular containing the required prospectus disclosure.[189] Since Form F-8 and any amendments thereto would become effective for purposes of the Securities Act at the time the securities legally may be sold in the principal jurisdiction, such filings could become effective immediately.[190] Exchange offers registered on Form F-8 under the system thus would commence in the United States simultaneously with dissemination to shareholders of the integrated circular.[191]

(ii) *Tender Offer Regulation for Exchange Offers.* Exchange offers also raise the question of the need for compliance with each jurisdiction's exchange offer regulatory scheme relating to tender offers. When a Canadian bidder is eligible to use Form F-8, the tender offer regulations applicable in Canada would govern under the system, and compliance with such regulations would be sufficient under the Williams Act. U.S. and other non-Canadian offerors not eligible to use Form F-8 similarly could make exchange offers for the securities of Canadian issuers (where less than 20 percent of the holders of record of the subject securities were U.S. residents) pursuant to Canadian tender offer regulations. Such non-Canadian issuers, however, would have to comply with U.S. disclosure requirements, as set forth on any available Commission registration form. The application of tender offer regulation under the proposed system is discussed in Section 3 hereof.

(iii) *Proxy Regulation.* Any solicitation of U.S. shareholders involved in the offer and sale of securities registered on Form F-8 (for example, if, in connection with a tender offer, the issuer proposed to increase its authorized share capital) would be exempt from Exchange Act proxy information and filing requirements pursuant to a proposed new rule.[192]

3. *Tender Offers Pursuant to the System*

Pursuant to amendments to be proposed to the Commission's tender offer rules, third-party or issuer tender offer filings in connection with offers in both jurisdictions for a class of shares of a Canadian issuer, less than 20 percent of which is held of record by U.S. residents, would be permitted to proceed in the United States in compliance with the law of Canada, provided the tender offer is extended to all holders of the class of securities in the United States [193] and that the transaction is covered by and not exempted from substantive provisions of Canadian law regulating the terms and conditions of the offer. In these instances, compliance with Canadian law would suffice for compliance with

---

[180] *See* OSA Policy Statement No. 6.2, *supra* n.63.

[181] *See* Rule 12g5-1 (17 CFR 240.12g5-1). Subject to several explanations and qualifications set forth in that Rule, securities are deemed to be "held of record" by each person identified as the owner of such securities in the records maintained by or on behalf of the issuer of such securities.

[182] Securities Act Release No. 929 (July 29, 1936).

[183] The securities also could be registered on Form F-9 or F-10 if the offeror was eligible to use such forms, without regard to the number of shares held by U.S. residents.

[184] *See supra* nn. 126, 130-133 and accompanying text.

[185] *See supra* n. 151 and accompanying text.

[186] *See* Proposed Rule 467(a); CBCA section 198; OSA sections 97, 99; QSA section 128 and Schedule XI.

[187] *See* Section 8 of the Securities Act; Rule 459 (17 CFR 230.459).

[188] *See supra* n. 123, citing Rule 14d-2.

[189] *See id.*, citing Canadian authorities; *see also supra* nn. 164-166 and accompanying text.

[190] *See* General Instruction I.E. to proposed Form F-8.

[191] *See id.*; *see also* proposed Rule 467.

[192] Proposed Rule 3a12-3(c).

[193] Consistent with the Commission's All Holders and Best Price Rules (Rules 14d-10(b)(2), and 13e-4(f)(9)(ii), a Canadian bidder or issuer eligible to invoke the multijurisdictional system would not be prohibited from excluding from a tender offer U.S. shareholders residing in a particular state if administrative or judicial action taken pursuant to a statute enacted by that state barred extension of the offer to state residents.

the Williams Act.[194] Where a bid not covered by such Canadian regulation [195] was extended to U.S. shareholders, the Williams Act and the rules thereunder would govern the conduct of the offer in the United States even if the bid otherwise would qualify for inclusion in the multijurisdictional system. The schedules would require that the bidder comply with the laws, regulations and policies of any Canadian federal and/or provincial or territorial regulatory agency applicable to the particular offer. If the offeror failed to comply with Canadian law, it would be in violation of both Canadian and U.S. law.

Under the proposal, documents containing tender offer and prospectus disclosures mailed to target shareholders and filed with Canadian securities authorities would be filed simultaneously with the Commission, together with the appropriate "wraparound" forms or schedules (F–8 or other Securities Act registration form for exchange offers, Schedule 14D–1F for third-party and affiliate tender offers, Schedule 14D–9F for the target's response and Schedule 13E–4F for issuer tender offers [196]) and an executed Form F–X consenting to service of process. Information would be disseminated to all U.S. and Canadian shareholders in accordance with Canadian law.[197] U.S. shareholders would receive a Canadian offering document bearing additional informational legends prescribed by the Commission. Where an exchange offer was being made pursuant to the system by an offeror not eligible to use Form F–8, U.S. shareholders would receive Commission-mandated disclosure in addition to the information required to be disseminated under Canadian law.

While the eligibility of a bidder to use Form F–8 would depend upon whether the bidder met the specified nationality, size, market value and float tests, there would be no such eligibility standards for bidders making cash tender offers. Under either circumstance, however, the subject issuer must be a Canadian reporting company, less than 20 percent of the subject securities of which is held of record by U.S. residents.[198]

It should be emphasized that bidders using Schedule 14D–1F would not be relieved of any obligation to file a Schedule 13D [199] that may arise, should their beneficial ownership of the target's equity securities subject to the offer exceed five percent.[200]

Neither an F–8 eligible registrant,[201] an all-cash bidder nor the issuer [202] would be exempt, by virtue of the proposed rule amendments, from the civil liability and antifraud provisions of Sections 10(b), 13(e), 14(e) and 18 and Rules 10b–5, 13e–4(b)(1) and 14e–3 under the Exchange Act nor, in the case of an exchange offer, from the provisions of Sections 11, 22(2) and 17(a) of the Securities Act.

In cases of tender offers ineligible for multijurisdictional treatment in the United States because 20 percent or more of the subject shares were held by U.S. residents, the rules and regulations of the United States generally would apply. In the Commission's view, the requisite use of the jurisdictional means can be established, notwithstanding the absence of an affirmative act of the bidder, where it is reasonably foreseeable that U.S. shareholders of a foreign issuer that have been excluded from an offshore offer will sell their shares into the market in response to that offer.[203] Further, as a policy matter, the Commission, the Canadian federal government, the OSC and the CVMQ believe that tender offers should be extended to all holders of the class of securities in Canada and the United States, and that efforts to avoid compliance with the other jurisdiction's regulation by attempting to exclude certain shareholders from the offer are consistent neither with the purposes of either country's laws nor with the public interest.[204] The United States and Canada mutually recognize this principle of equal treatment of target shareholders in the tender offer context. Traditional precepts of comity do not call for exclusion of either country's shareholders from a tender offer, but rather for the offer to be made on an equal basis to all shareholders.

D. Exchange Act Provisions Affecting the Activities of Participants in Tender and Exchange Offers

Rule 10b–6 generally prohibits a distribution participant from, directly or indirectly, bidding for or purchasing, or attempting to induce others to purchase, the securities in distribution or any security of the same class and series or any right to purchase such security ("related securities"), until the participant's role in the distribution has terminated.[205] Rule 10b–13 prohibits a

---

[194] Proposed Rule 14d–1(b) for third-party and affiliate tender offers, proposed Rule 14e–2(c) for the target company's response thereto and proposed Rule 13e–4(h) for issuer tender offers.

[195] For example, Canada's federal and provincial securities laws expressly exempt from tender offer regulation any takeover or issuer bid conducted on a recognized Canadian stock exchange such as the TSE or ME. CBCA section 194 and Reg. section 58(b); OSA section 92(1)(a); QSA section 119.

[196] Canadian law permits target officers and directors to file and transmit to shareholders a recommendation regarding the offer accompanied by his or her individual circular. *See* OSA section 98(3) (officers and directors); QSA section 137 (senior executives). Schedule 14D–9F could be used to file such responses with the Commission.

[197] *See supra* n. 123 and accompanying text (mail delivery). Any amendment to a document made in accordance with the laws of Canada and/or any of its provinces or territories, would be filed with the Commission under cover of an amended wraparound form and transmitted to shareholders of the subject company residing in the United States in compliance with applicable Canadian law.

[198] In order to fall within the subject matter jurisdiction of the Williams Act's tender offer provisions and, accordingly, the provisions of proposed Rule 14d–1(b), the securities sought to be acquired must be equity securities registered under Section 12 of the Exchange Act. With respect to issuer tender offers, however, the securities of any issuer filing periodic reports with the Commission pursuant to Section 15(d) of the Exchange Act, or that has any class of equity security registered pursuant to Section 12 of the Exchange Act, also may be subject to Rule 13e–4.

[199] 17 CFR 240–13d 101.

[200] *See* General Instruction I.D. of proposed Schedule 14D–1F.

[201] Part III.B. of proposed Form F–8.

[202] General Instruction III.B. of proposed Schedule 14D–1F; General Instruction III.B. of proposed Schedule 14D–9F; General Instruction III.B. of proposed Schedule 13E–4F.

[203] *See Schmuck* v. *United States*, 109 S. Ct. 1443 (1989); *Carpenter* v. *United States*, 484 U.S. 19 (1987).

[204] The terms of an exchange offer for certain, otherwise qualified Canadian issuers may conflict with restrictions on foreign ownership imposed by Canadian and United States law. Such provisions, for example, effectively would prohibit the acquisition by Canadian shareholders of stock in U.S. entities holding oil and gas leases (*see* 30 U.S.C. 181, 184, 188), or by U.S. shareholders of stock in a Canadian energy company (*see* Section 7 of the Alberta Energy Act, R.S.A. 1980 C.A. 17 s.7). Under circumstances where national policy concerns may militate against application of the principles of equality underlying the multijurisdictional system, the Commission may determine to exercise its exemptive authority under Rules 14d–10(e) or 13e–4(g)(7) (All Holders) to permit a Canadian bidder to issue cash consideration in lieu of securities in connection with an exchange offer concurrently made to Canadian holders of the target. Relief thus may be sought from this "all holders" policy that otherwise would mandate the extension of an exchange offer to U.S. shareholders of the Canadian target on the identical terms and conditions offered to Canadian shareholders.

[205] During an exchange offer, the bidder's securities would be in distribution and the distribution participants would be prohibited from bidding for or purchasing those securities or any related securities until the exchange offer ended. *See also* QSA Section 252.1; OSC Policy Statement 9.3(C) (Dec. 24, 1982) (as amended), *reprinted in* 3 Cdn. Sec. L. Rep. (CCH) ¶ 471–903 (concerning stock exchange bids). The target's securities in an exchange offer are considered "rights to purchase" the securities in distribution; accordingly, distribution participants also would be prohibited from purchasing those securities during the exchange offer. *See* Exchange Act Release No. 19565 (March 4, 1983) (48 FR 10628, 10636 n.58). To a degree, Rule 10b–13 (17 CFR 240.10b 13) contains a similar prohibition on the purchase of target securities. *See Piper* v. *Chris Craft Industries, Inc.*, 430 U.S. 1, 43 n.30 (1977).

person who is making a cash tender offer or exchange offer for any equity security from, directly or indirectly, purchasing or making any arrangement to purchase such security (or any other security which is immediately convertible into or exchangeable for such security) otherwise than pursuant to the tender offer or exchange offer, from the time of announcement of the offer until its expiration, including any extensions thereof. The rule is designed to "protect shareholders in the tender offer from the harmful effects of purchases or arrangements made outside, and on terms or conditions different from, the tender offer, and to protect the integrity of the tender offer process by proscribing side deals that could render the tender offer a sham." [206]

Canadian procedures permit participants in transactions contemplated by proposed Form F–8 and Schedules 14D–1F and 13E–4F to engage in certain activities that are prohibited by Rules 10b–6 and 10b–23. For example, Canadian provisions permit, in limited circumstances, purchases by an offeror during a third-party bid, or by an issuer during an issuer bid, otherwise than pursuant to a tender offer conducted by circular bid.[207] Such purchases are permitted from the third business day following the date of the bid until its termination. Purchases are conditioned upon limiting the amount of securities acquired to five percent of the outstanding securities as of the date of the bid, disclosing the intention to make such purchases in the third-party or issuer bid circular, and issuing and filing a press release with the relevant exchange or regulatory commission at the close of each day on which securities have been purchased.[208] The press release is required to disclose the purchaser, the number of shares purchased, the highest price paid on that day, the average price paid for the securities that were purchased by the purchaser through the facilities of the stock exchange during the bid, and the total number of securities owned by the purchaser as of the close of business of the stock exchange on that day.[209]

In connection with the proposed multijurisdictional disclosure system, the Commission is considering publication of no-action positions with respect to Rules 10b–6 and 10b–13. The contemplated no-action positions would apply solely to tender and exchange offers on Form F–8 and Schedules 14D–1F and 13E–4F, and would permit securities purchases in Canada that are not made for the purposes of creating actual or apparent trading activity in or of raising the price of such securities. The no-action positions would permit: (1) With respect to cash tender offers, purchases of the securities which are the subject of the offer and any other security that is a right to purchase such security or is immediately convertible into or exchangeable for such security ("target securities"); and (2) with respect to exchange offers, purchases of target securities and bids for and purchases of the securities offered by the bidder or issuer ("offered securities"), and any security of the same class and series or any right to purchase any such offered securities (collectively, "subject securities").[210] The proposed no-action positions would be available to issuers and bidders that: (1) Disclose in the Form F–8 and Schedules 13E–4F and 14D–1F the possibility of, or the intent to make, purchases of subject securities as permitted by applicable Canadian regulations; and (2) submit an undertaking to disclose in the U.S. information regarding purchases of subject securities on the same basis as it is required to be disclosed or otherwise is disclosed pursuant to Canadian statutory and regulatory requirements.[211]

The Commission believes that the proposed no-action positions with respect to Rules 10b–6 and 10b–13 are consistent with the philosophy underlying the proposed multijurisdictional disclosure system, and represent an appropriate accommodation that recognizes that Canadian procedures applicable to tender and exchange offers afford a large measure of the protections provided by Rules 10b–6 and 10b–13. The contemplated no-action positions would be announced in the release if and when proposed Form F–8 and Schedules 13E–4F and 14D–1F are adopted, announced in a companion release, or incorporated into Form F–8 and Schedules 13E–4F and 14D–1F. Commenters are invited to address the scope and content of the proposed no-action positions, as well as the means by which the requisite undertaking is made.

E. Proxy and Insider Reports

Canadian issuers that currently are eligible to use Form 20–F are not subject to U.S. proxy regulation.[212] All other Canadian issuers, however, must comply with both Canadian and U.S. proxy regulations when they solicit U.S. residents. In connection with the implementation of the system, the Commission proposes to amend certain of the proxy rules to allow compliance by Canadian issuers with Canadian proxy rules to suffice for U.S. purposes.

The Commission's proxy rules provide that, if an issuer is soliciting proxies for an annual meeting at which the only matters being voted upon include such routine items as the election of directors or/and ratification or approval of accountants, only definitive proxy statements must be filed with the Commission.[213] Thus, no filing of preliminary materials is required. If a Canadian issuer falls within the provisions of this rule so that only definitive material is required to be filed, the amendments to Rule 14a–6 proposed today would provide that the proxy material need only be prepared in accordance with Canadian requirements.[214] If, however, the matters to be voted on would require the filing of preliminary proxy materials in the United States, then a Canadian issuer subject to U.S. proxy rules would be required to prepare the proxy statement in accordance with U.S. rules.

---

[206] Brief of the Securities and Exchange Commission, *Amicus Curiae* at 2, *Texaco Inc.* v. *Pennzoil Co.*, No. C–6432 (Sup. Ct. Tex., July 1987).

[207] *See* CBCA section 197(f); OSA sections 93(3)–(7); QSA sections 120, 142. Note, however, that various other provisions of Canadian law proscribe transactions before and after the tender offer period and afford protections similar to those contained in Rule 10b–13. *See, e.g.*, OSA section 93(5) (integrating pre-bid private transactions by an offeror with formal bid purchases and requiring the offeror, *inter alia*, to offer consideration for securities deposited under the bid at least equal to the highest consideration paid on a per security basis in any such prior transaction); OSA section 93(6) (proscribing purchases by an offeror of the securities that were the subject of the bid for a period of 20 days after the expiration of the bid on terms not generally available to holders of that class of securities). The restrictions of OSA sections 93 (5) and (6) do not apply to trades effected in the normal course on a published market, subject to certain conditions. *See also* OSC Policy Statement 9.3, *supra* n.204.

[208] OSA section 93(3) and Reg. section 169; QSA section 142.

[209] *See* QSA section 142; OSA Reg. section 169.

[210] All exceptions, exemptions, and no-action positions with respect to Rules 10b–6 and 10b–13 are premised upon the condition that none of the transactions thereby permitted is engaged in for a manipulative purpose. *See* Rule 10b–6(a)(4); *Jaffee & Co.* v. *SEC*, 446 F.2d 391 (2d Cir. 1977); *Bruns, Nordeman & Co.*, 40 S.E.C. 652, 660 (1961).

[211] Canadian regulatory officials and broker-dealers have advised the staff that it would not be a significant burden to provide this additional disclosure.

[212] Rule 3a12–3.

[213] Rule 14a–6(a) (17 CFR 240.14a–6(a)) sets forth the circumstances under which any issuer must file only definitive proxy materials.

[214] *Id. See* proposed Rule 14a–6(m). Canadian issuers whose proxy materials describe a meeting the subject matter of which would require filing of only definitive materials will be required only to file definitive materials with the Commission.

An additional area affected by the proposed rule changes would be that of shareholder proposals. An amendment to Rule 14a–8 under the Exchange Act [215] would provide that any Canadian issuer subject to U.S. proxy rules that complied with applicable Canadian shareholder proposal rules would be deemed to have complied with the requirements of Rule 14a–8.

Directors, officers and principal stockholders of Canadian and other foreign private issuers eligible to use Form 20–F are not subject [216] to Section 16 of the Exchange Act.[217] In a situation somewhat analogous to the case of proxy regulation, Canadian persons that are in certain relationships with a Canadian foreign private issuer must comply with both Canadian and U.S. reporting requirements. The Commission today is proposing a new rule [218] that would provide that only persons required to report their securities holdings in Canada would be required to report to the Commission, and the reporting obligations with the Commission could be met by furnishing the report filed with the Canadian authorities.

F. Continuous Disclosure

Issuers that make a registered offering of securities in the United States, or that acquire a certain number of shareholders of record resident in the United States, are subject to reporting requirements under the Exchange Act.

Section 15(d) of the Exchange Act,[219] as supplemented by Regulation 15D,[220] requires each issuer that has filed a registration statement that has become effective pursuant to the Securities Act to file periodic reports thereafter.[221] Section 13(a) of the Exchange Act also requires each issuer that has securities registered under Section 12 of that Act to file periodic reports.[222] Securities may be registered under Section 12 for two reasons. Section 12(b) of the Exchange Act requires registration of any class of securities, whether debt or equity, that is listed on a national securities exchange.[223] Section 12(g) requires issuers to register any class of equity securities held of record by 500 or more persons if certain asset tests are met.[224] Foreign private issuers are exempt from the requirements of Section 12(g) if they have fewer than 300 U.S. holders. Rule 12g3–2(b) provides a further exemption from Section 12(g).[225]

Any Section 15(d) obligation resulting solely from use of the forms proposed today could be met by filing with the Commission under cover of proposed Form 40–F the periodic disclosure documents required in Canada. These would include Annual Information Forms (for Prompt Offering Qualification issuers), annual and interim financial statements and material change reports.[226] Documents would be filed with the Commission at the same time as they were filed with the appropriate Canadian agency. No reconciliation of financial statements would be required. All Canadian disclosure documents filed with the Commission, as discussed above, would be subject to antifraud and Section 18 liability.[227]

Canadian issuers that incurred registration or reporting obligations under Section 12(g) generally would be required to fulfill those obligations by filing regular SEC continuous disclosure forms.[228] The proposed system, however, would permit Canadian issuers that met the tests for eligibility for use of Form F–10 (*i.e.*, that had an aggregate market value for their securities of (CN) $360 million and a public float of (CN) $75 million), regardless of whether they had made offerings pursuant to the system ("F–10 issuers"), to comply with Section 12(g) continuous disclosure requirements by filing the equivalent Canadian documents under cover of Form 40–F. Reconciliation of financial statements would be required, but (as in annual reports on Form 20–F) this reconciliation would be to Item 17 of Form 20–F rather than to Item 18. The Commission will consider comments received in response to its questions concerning the need for reconciliation for offerings on Form F–10 in determining whether to require reconciliation for continuous reporting purposes. The Commission requests comment as to whether there are distinct reasons not to require reconciliation for Exchange Act reporting purposes.

As is the case with F–10 issuers, Canadian issuers that met the test for eligibility for use of Form F–9 (*i.e.*, that had an aggregate market value for the securities of (CN) $160 million and a public float of (CN) $75 million), even if they had not made an offering pursuant to the system ("F–9 issuers"), could comply with Section 12(g) continuous disclosure requirements that arose in connection with nonconvertible investment grade preferred stock [229] by filing Canadian periodic reporting documents under cover of Form 40–F. Reconciliation of financial statements would not be required.

The exemption from Section 12(g) provided by Rule 12g3–2(b) would continue to exist and would be unaffected by adoption of the multijurisdictional system. A Canadian issuer currently furnishing Canadian disclosure documents to the Commission pursuant to Rule 12g3–2(b) that extended a public offer into the United States registered on the proposed forms would become subject to the periodic reporting requirements of Section 15(d). It could meet this obligation by filing with the Commission the same documents as it presently furnishes under Rule 12g3–2(b), except that documents would be filed under cover of Form 40–F. Further, Section 18

---

[215] 17 CFR 240.14a–8. *See* proposed Rule 14a–8(f).

[216] Rule 3a12–3.

[217] The reporting obligations of Section 16 are implemented by Rules 16a–1 through 16a–11 (17 CFR 240.16a–1 through 240.16a–11). The current forms used for filing reports subject to Section 16(a) are Form 3 for initial statements and Form 4 for subsequent changes in beneficial ownership.

[218] Proposed Rule 16a–12.

[219] 15 U.S.C. 78*o*(d).

[220] 17 CFR 240.15d–1 through 240.15d–21.

[221] This requirement applies in the first year after making a Securities Act registration and any subsequent year in which the class of securities registered are held by 300 or more persons. Section 15(d) filing requirements are suspended so long as the issuer has a class of securities registered under Section 12, discussed *infra*.

[222] 15 U.S.C. 78m(a). The Commission has implemented the requirements of this section through Regulation 13A (17 CFR 240.13a–1 through 240.13a–17).

[223] 15 U.S.C. 78*l*(b).

[224] 15 U.S.C. 78*l*(g), as supplemented by Rule 12g–1 thereunder (17 CFR 240.12g–1). Registration of a class of securities under Section 12(g) is made by all foreign private issuers on Form 20–F, and by Canadian foreign private issuers who meet the requirements of that form. *See* General Instruction A. Form 20–F is also the form used for annual reports by non-Canadian foreign issuers and eligible Canadian issuers. However, since it is not available for annual reports by issuers that have a reporting obligation under Sections 12(b) or 15(d), most Canadian issuers currently file annual reports on Form 10–K, quarterly reports on Form 10–Q and current reports on Form 8–K. General Instruction A.(b) to Form 20–F.

[225] Rule 12g3–2(b) exempts from Section 12(g) issuers that furnish to the Commission the documents that they either are required to or actually do 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. When the Commission adopted this position regarding issuers quoted on NASDAQ, it "grandfathered" certain issuers already relying on this exemption that were so quoted. The grandfathered period has expired with respect to all Canadian issuers. Securities Act Release No. 6493 (Oct. 6, 1983).

[226] *See* discussion of reporting requirements in Section III.B., *supra*.

[227] *See supra* nn. 96–100 and accompanying text.

[228] Form 20–F would be used to register and report, and Form 6–K would be used to report, by Canadian issuers that had not registered an offering under the Securities Act (*e.g.*, pursuant to the proposed system). Canadian issuers that had registered securities pursuant to the proposed system would have to register on Form 10 and report on Forms 10–K, 8–K and 10–Q. See General Instruction A(b) to Form 20–F.

[229] Section 12(g) does not apply to debt securities.

liability under the Exchange Act now would attach to those filings.[230]

Section 12(b) registration [231] and reporting obligations would be treated similarly under the system to obligations arising under Section 12(g). Canadian issuers that had a class of securities listed on an exchange would have to file SEC continuous disclosure documents. F–10 issuers, and F–9 issuers of non-convertible investment grade debt or non-convertible investment grade preferred stock, however, would be able to comply with their Section 12(b) reporting obligations by filing the appropriate Canadian forms under cover of proposed Form 40–F. If the class of securities listed was non-convertible investment grade debt or preferred stock, no reconciliation of financial statements would be required, while if other securities were listed, Item 17 reconciliation would be required. Comment is requested as to whether, when non-convertible investment grade debt or preferred stock is listed, the issuer thereof should be permitted to meet Section 12(b) reporting obligations by filing Canadian documents, whether or not it met any size test.[232]

The Commission recognizes the potential anomalies of permitting use of the system to meet continuous disclosure requirements under Section 15(d), but only permitting its use to meet similar continuous disclosure requirements under other sections of the Exchange Act by specified, larger issuers. For example, a relatively small Canadian issuer of debt securities trading over-the-counter in the United States would not be subject to reporting requirements. If it listed those securities in the United States, it would become subject to Section 12(b) reporting obligations, and would have to file U.S. documents with the Commission. If later it met the size requirements for Form F–9, it could file Canadian documents with the Commission. Similarly, issuers making exchange offers (but not meeting the tests for eligibility for Form F–9 or F–10) are likely to encounter Section 12(g) continuous reporting requirements immediately upon consummation of the offer.

The Commission therefore requests comment as to whether the system should be extended to permit its use for continuous disclosure purposes by a larger number of issuers. Should the system be extended to encompass all Canadian issuers having a reporting obligation under Section 12(b), to all issuers having a reporting obligation under Section 12(g), or to both, and if not to both groups of issuers, upon what grounds should they be distinguished? Should all issuers to which the system is extended meet the requirements for inclusion in the Prompt Offering Qualification systems? Should issuers be permitted to use Canadian disclosure documents for particular classes of securities, for example, for all investment grade securities or for all investment grade debt securities, in all circumstances? Should Forms S–3 and F–3 be amended to permit the incorporation by reference of information filed on proposed Form 40–F?

Canadian issuers currently filing SEC continuous disclosure forms could change to filing Canadian forms on the same basis as issuers filing registration statements on the proposed forms, *i.e.*, they would have to meet the same size tests and reconcile their financial statements as described above. Canadian issuers that had not made an offering pursuant to the multijurisdictional system, and thus did not have a Form F–X on file with the Commission, would be required to file a Form F–X if they wished to comply with the Commission's periodic reporting requirements by filing Canadian documents under cover of Form 40–F.

G. Use of Foreign Trustees in Trust Indentures

1. Background

The Trust Indenture Act applies generally to the offer and sale of debt securities and participation interests in debt securities if the means of U.S. interstate commerce are used. In such cases, the securities must be issued under an indenture that has been qualified under the Act, unless an exemption is available. The Trust Indenture Act imposes standards of conduct on the indenture trustee, requires the furnishing of reports and notices by the obligor and the trustee, regulates impairments of holders' rights to sue for principal and interest on the indenture securities and establishes eligibility requirements for the indenture trustee.

Section 310(a)(1) of the Trust Indenture Act establishes the eligibility requirements for trustees to serve under a qualified indenture.[233] The indenture must require that there at all times shall be one or more trustees serving under the indenture, at least one of whom at all times shall be a corporation organized and doing business under the laws of the United States or of any state or territory or the District of Columbia.[234] The trustee also must be authorized under such laws to exercise corporate trust powers, and be subject to supervision or examination by Federal, State, territorial or District of Columbia authority. Absent an exemption,[235] a Canadian issuer selling securities in the United States [236] pursuant to the multijurisdictional registration system would be obligated to comply with the requirement to have a U.S. trustee.

The U.S. trustee requirement of Section 310(a)(1) could create an impediment to the efficient use of the multijurisdictional system by Canadian issuers. In practice, trust indentures in Canada invariably provide for all trustees to be Canadian registered trust companies; [237] thus, the U.S. trustee requirement would disrupt established Canadian business practices.

Under the Trust Indenture Act, the Commission may exercise authority in accordance with Section 304(d) to exempt from one or more provisions of the Trust Indenture Act any security issued or proposed to be issued by a foreign person. Such authority may be exercised upon application by a foreign issuer, and after opportunity for a hearing, if the Commission finds that compliance is not necessary "in the public interest and for the protection of investors." Since Section 304(d) requires that the Commission make a finding after opportunity for a hearing, thus contemplating case-by-case determinations, exemptions under this Section may not be granted pursuant to

---

[230] Information supplied to the Commission under Rule 12g3–2(b) is not "filed" with the Commission and therefore is not subject to Section 18 liability.

[231] Form 8–A could be used to register listed securities in conjunction with the Forms proposed today in the same way as it is presently used with standard Commission forms.

[232] *Compare* General Instruction I.A.4. to Form F–3; General Instruction I.B.2. to Form S–3 (no size requirements to use such forms if investment grade debt, and investment grade preferred stock in the case of Form S–3, is offered).

[233] 15 U.S.C. 77jjj(a)(1).

[234] *Id.*

[235] *E.g.*, Section 304(a)(6) of the Trust Indenture Act (15 U.S.C. 77ddd) (exemption for securities issued or guaranteed by a foreign government or subdivision, agency or instrumentality thereof).

[236] The staff has granted numerous no-action letters involving offers and sales of securities otherwise than under a qualified indenture, where the securities were being offered and sold outside the United States in reliance upon Securities Act Release No. 4708 (July 9, 1964) (29 FR 9828). *E.g.*, *Goldman, Sachs & Co.* (Oct. 3, 1985). The Commission has expressed its intention to continue this position if Proposed Regulation S is adopted. Securities Act Release No. 6779 (June 10, 1988) (53 FR 22661).

[237] *See generally* Waters, *Law of Trusts in Canada* 100–103 (2d ed. 1984).

a rule promulgated by the Commission.[238]

The Commission has proposed the Trust Indenture Reform Act of 1989 ("Bill"), which was introduced this legislative session into both houses of the Congress.[239] This Bill is designed to refine provisions of the Trust Indenture Act to accommodate new developments in the types of debt instruments and distribution techniques. If enacted, the Commission's proposal would conditionally permit foreign persons to act as sole trustees under qualified indentures.[240] Pending passage of the Bill, the Commission today is proposing the establishment of a process for application for exemption from the relevant provisions of the Trust Indenture Act.

2. Exemptive Relief Under Section 304(d)

The Commission is proposing two alternative methods of applying for waiver of the U.S. trustee requirement in offerings made pursuant to the multijurisdictional system. One method would permit application for waiver to be made on the proposed registration forms themselves. The other would provide for application prior to making any filing pursuant to the multijurisdictional system. Under the prior application system, a waiver, if granted, would be effective for a year. Prior application would be particularly useful in the case where there were already security holders under the indenture proposed to be used and the requirement discussed below to provide notice to such holders would delay an anticipated offering.

Proposed Rules 4d–1 to 4d–6 would implement Section 304(d) of the Trust Indenture Act by establishing a procedure under which Canadian issuers could apply for an exemption from the U.S. trustee requirement of Section 310(a) of the Act.[241] As required under Section 304(d), applications would continue to be decided on a case-by-case basis.

a. *Application for Waiver at Time of Offering*

The first method of applying under Section 304(d)[242] and Rule 4d–1 for a waiver of U.S. trustee requirements of Section 310(a)(I) would permit application to be made on the form used to register the offering. An issuer applying for a waiver would so indicate on the cover page of the form, and would provide the information regarding the trustee requested by the form (which is the same as the substantive information that would be provided on Form T–5). It also would indicate whether there were any securities already outstanding under the indenture. Under the proposal, an application for an exemption from the requirements of Section 310(a)(1) of the Act could be filed pursuant to Section 304(d) and Rule 4d–1 if three conditions were met. First, the application must relate to securities registered or to be registered on Form F–7, F–8, F–9, or F–10 under the Securities Act. Second, the application must relate to securities that have been issued or that the applicant reasonably expects to issue within one year from the date of application.[243] Third, the application must relate to securities that have been or will be issued under an indenture that (i) is or will be qualified under the Act, and (ii) requires there to be at all times one or more trustees thereunder, at least one of whom is a corporation or other person organized and doing business under the laws of Canada or any province thereof (referred to as the institutional trustee), and is (A) authorized under such laws to exercise corporate trust powers, and (B) subject to supervision or examination by governmental authority.

Proposed Rule 4d–4 provides that if an applicant files an application relating to securities issued or issuable under an indenture under which any other securities are outstanding, the applicant must send concurrently, by first class mail or other equally prompt means, notice of such application to all holders of record of outstanding securities under such indenture.[244] The proposal requires the notice to advise holders of the filing of the application.[245] Any request by a holder for a hearing must be filed within 20 days of the application date set forth on such notice. A subsequent notice must be sent to such holders if any hearing on the application is to be held by the Commission.[246] Commenters should address whether, as an alternative, notice should be given whether or not there are outstanding securities under the indenture and whether that notice should be required to be by publication in the **Federal Register** or otherwise, instead of or in addition to the procedure described above.

Proposed Rule 4d–5 gives an applicant the opportunity to waive a hearing and request the Commission to decide the application without a formal hearing on the basis of the application and other information and documents that the Commission designates as part of the record. However, under the proposal, a hearing may be called upon order of the Commission notwithstanding that the applicant shall have filed a waiver and request whenever, in the judgment of the Commission, such a hearing is necessary or appropriate in the public interest. The proposal requires the applicant, at the request of the Commission, to furnish such additional information or documents as the Commission may deem necessary to decide the application.

If no hearing were held, the Commission would issue an order

---

[238] The Commission has not, to date, promulgated any rules or forms under Section 304(d). *Compare* Rule 4c–4 (17 CFR 260.4c–4) (applications under Section 304(c)(1)); Rule 4c–5 (17 CFR 260.4c–5) (applications under Section 304(c)(2)); Form T–4 (17 CFR 269.4) (form for applications for exemption pursuant to Section 304(c)). Applications currently are made by the issuer—formally, but without any specific form—and decided on a case-by-case basis by the Commission or staff. *E.g., Allgemeine Elektricitats-Gesellschaft*, Release 39–81 (1955); *The Mexican Light and Power Company Limited*, Release No. 39–48 (1949). The exemptive authority under Section 304(d) has been delegated to the Director of the Division of Corporation Finance. 17 CFR 200.30–1(e)(2).

[239] S. 651, 101st Cong., 1st Sess., 135 Cong. Rec. 3034, 3064 (1989). H.R. 1786, 101st Cong., 1st Sess., 135 Cong. Rec. 1028, 1141 and 1154 (1989). On June 1, 1989, the Subcommittee on Telecommunications and Finance, Committee on Energy and Commerce of the House of Representatives held hearings on the bill.

[240] The bill would automatically incorporate the mandatory provisions of the Trust Indenture Act into each qualified indenture; confer more general exemptive authority upon the Commission, enabling it to adapt the Trust Indenture Act to market conditions; change the time at which a trustee having a proscribed conflict of interest must resign to 90 days after an event of default (excluding notice and/or grace periods), rather than within 90 days after the trustee ascertains that it has such proscribed conflict of interest; include creditor status as a proscribed conflict of interest; and effect technical changes intended to modernize requirements under the Act that do not compromise indenture security holder protection.

[241] Applications for exemption from other provisions of the Act (if necessary) or by foreign issuers not using the multijurisdictional forms still could be made pursuant to the statutory exemptive process of Section 304(d).

[242] Section 304(d) provides that the Commission may exempt securities issued or "proposed to be issued." *Compare* Section 6 of the Securities Act (registration statement deemed effective only as to securities "proposed to be offered"). Rule 415 under the Securities Act permits securities specified in Rule 415(a)(1)(viii) through (x) to be registered only in an amount which, at the time the registration statement becomes effective, is reasonably expected to be offered and sold within two years from the initial effective date of registration.

[243] See discussion of application for waiver prior to offering, *infra*.

[244] A copy of such notice shall also be filed with the Commission as part of the application.

[245] The notice also must set forth the date on which the application was filed with the Commission and state that any interested person may request in writing, within 20 days of the date of filing of the application, that a hearing be held. Such request shall state the nature of the interested person's interest and the reason for such request.

[246] Notice of hearing must include the time, place and nature of the hearing, the legal authority and jurisdiction under which the hearing is being held, and the matters of fact and law at issue.

granting the exemption on the twentieth day following the filing of the application. If there were no securities already outstanding under the relevant indenture, the Commission could grant the exemption at any time after the filing.

Applications pursuant to Proposed Rule 4d–1 would be considered and decided on a case-by-case basis. In deciding whether to grant applications, the Commission would consider all the relevant facts and circumstances, including comparability of regulation with respect to supervision and examination by governmental authority of the foreign trustee.

One factor to be considered in deciding applications is the extent to which the foreign trustee is subject to supervision or examination substantially equivalent to that applicable to U.S. institutional trustees. Although applications would be decided under the proposal on a case-by-case basis, the Commission's staff has preliminarily reviewed regulation of trust companies under the laws of Canada and Ontario. In order to be licensed under the federal statute to operate as a trust company, a corporation must file an application, satisfy capital and other requirements, and comply with inspection and recordkeeping requirements.[247] Similarly, in order to be licensed under the Ontario Trust Company Act, a corporation must file an application, satisfy minimum capital requirements, demonstrate fitness of insiders, and demonstrate that the proposed plan of operations is feasible. The Ontario statute also establishes recordkeeping requirements and accounting rules, and requires the filing of an annual return.[248]

b. *Application for Waiver Prior to Offering.* Another method of applying for a waiver of U.S. trustee requirements would permit application to be made in advance. This provision would allow issuers to file applications pursuant to Rule 4d–1 in advance of filing a registration statement on a multijurisdictional form, if the issuer reasonably expected to issue the securities within one year from the date of application. Comment is requested as to whether this provision is appropriate. Specifically, should the period of applicability for the waiver be longer than one year, for example, two or three years?

Applications for waiver prior to an offering would be filed on Form T–5. The applicant would be required to describe, as part of the application, the securities that are the subject of the application and to identify the indenture or indentures under which the securities are issued or to be issued. Form T–5 only would require, however, such information as would indicate the type and general character of the securities. Thus, the applicant might provide a non-specific description of the securities, such as "unsecured debentures or notes." Under Rule 4d–1 and Form T–5, as proposed, the application could relate, moreover, to different types or classes of securities issued or to be issued under different indentures, but appropriate description would be required to be given in the Form T–5, such as: "unsecured debentures to be issued under an indenture between the applicant and trustee x," and "mortgage bonds to be issued under an indenture and deed of trust between the applicant and trustee y."[249]

As is the case with applications made at the time of offering, waivers would be granted on a case-by-case basis, and the same factors would be taken into account in granting a waiver. Again, as is the case with applications made prior to the offering, the Commission would issue an order granting the exemption on the twentieth day of the application if no hearing were held. If there were no securities already outstanding under the relevant indenture, the Commission could grant the exemption at any time after the filing. Comment is requested as to whether notice of the application should be given in all cases, whether or not there are securities outstanding under the indenture and whether that notice should be required to be by publication in the Federal Register or otherwise, instead of or in addition to the applicant's mailing of notice to security holders.

V. State Securities Regulation

In addition to complying with the federal securities laws, issuers selling their securities in the United States are subject to the securities laws of the 50 states, the District of Columbia and Puerto Rico. Generally, these laws require state registration of offerings made to persons in the state.

In most jurisdictions, the registration statement filed with the Commission will also satisfy the state filing requirements. The filings are subject to review by each of the states, as to the adequacy of the disclosure and, in many states, for compliance with additional substantive standards. For example, a state may have the authority to deny registration if the offering involves excessive "cheap stock" to promoters, excessive options or warrants, unreasonable underwriters' compensation, or excessive dilution, or if a class of common stock lacks voting rights.

Various exemptions from registration under state law are available; the two most relevant to the multijurisdictional disclosure process are that for rights offerings and that for securities traded in specified marketplaces. The former exemption is usually limited to rights which are either nontransferable or exercisable for only a limited period of time. The marketplace exemptions generally apply to securities listed on the New York and American Stock Exchanges, and in some instances on specified regional exchanges, or designated as National Market System securities and quoted on NASDAQ. Securities of the same issuer which are senior to securities included in an exempt marketplace are also exempt.

Two factors have operated to produce considerable uniformity among the states. First, the securities laws of most states are modeled after the Uniform Securities Act. Second, the North American Securities Administrators Association ("NASAA")[250] proposes uniform guidelines and procedures which are frequently adopted by many of its member states. Notwithstanding these factors, the specific requirements for offering and selling securities in any state will be governed by that jurisdiction's statute, rules and policies.

In April 1989, NASAA adopted a Statement on Internationalization of the Securities Markets, in which it urged securities regulators to "encourage legitimate capital raising activities across national borders," subject to "minimum rules to ensure investor protection." Consistent with that Statement, NASAA has formed a special task force to work with the Commission and the provinces of Ontario and Quebec to determine what accommodations would be appropriate at the state level to facilitate use of the multijurisdictional disclosure process.

---

[247] Trust Companies Act, R.S.C. 1970, Chap. T–16, as amended.

[248] Loan and Trust Corporation Act, S.O. 1987, c. 33.

[249] It should be noted, however, that nothing in the proposed rules or forms would change current policies and practices concerning the qualification of "open-ended" indentures. An "open-ended" indenture frequently provides only a general description of securities. Under staff policies and procedures, however, an "open-ended" indenture cannot pertain to both secured and unsecured, or subordinated and unsubordinated, securities.

[250] NASAA is an association of state and provincial securities regulators in the United States and Canada.

VI. Request for Comments

Any interested person wishing to submit written comments on any aspect of the Forms and Rules proposed today, or the multijurisdictional disclosure system as a whole, is requested to do so.

VII. Cost-Benefit Analysis

To evaluate fully the benefits and costs associated with the proposed multijurisdictional disclosure system, the Commission requests commenters to provide views and data as to the costs and benefits associated with multijurisdictional offerings and tender offers under current law as compared to such costs and benefits under the proposed system. The Commission is not aware of any additional costs that would result from the proposed system, as issuers would be able to avoid expenses associated with the preparation of more than one disclosure document.

VIII. Statutory Basis of Rule Proposals and Form Changes

These revisions are being proposed pursuant to Section 19 of the Securities Act,[251] sections 12, 13, 14, 15, 16, and 23 of the Exchange Act,[252] and section 304 of the Trust Indenture Act.[253]

List of Subjects in 17 CFR Parts 230, 239, 240, 249, 260 and 269.

Reporting and recordkeeping requirements, securities.

IX. Text of Rule Proposals and Form Changes

In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

1. The authority citation for Part 230 is amended by adding the following citations:

Authority: Sec. 19 of the Securities Act of 1933, as amended, 48 Stat. 85 (15 U.S.C. 77s), unless otherwise noted.

2. By adding § 230.467 to read as follows:

§ 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 Forms F-7, F-8, F-9 or F-10 (§§ 239.37, 239.38, 239.39 or 239.40 of this chapter), or a post-effective amendment thereto, filed in connection with a contemporaneous offering of securities in the registrant's home jurisdiction shall become effective on the date on which such securities legally may be sold in the jurisdiction identified on such Form as the principal jurisdiction regulating such offering (the "principal jurisdiction").

(b) If there is no contemporaneous offering in the registrant's home jurisdiction, a registration statement that is filed on Form F-9 or F-10, or a post-effective amendment thereto, may designate on the facing page a date and time for such filing to become effective, and such registration statement or post-effective amendment shall become effective in accordance with such designation; *provided, however,* That such registration statement shall not become effective until seven calender days or more after it is filed.

(c) Notwithstanding the provisions of paragraphs (a) and (b) of this section, no registration statement relating to the issue of debt securities shall become effective until the provisions of the Trust Indenture Act of 1939 (15 U.S.C. 78aaa *et seq.*) have been satisfied or an exemption from any provisions of that Act that have not been satisfied has been granted pursuant to section 304(d) (15 U.S.C. 78ddd(d)) or Rule 4d-5 under that Act (17 CFR 240.4d-5).

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

3. The authority citation for Part 239 continues to read as follows:

Authority: The Securities Act of 1933, 15 U.S.C. 77a, unless otherwise noted.

4. By adding §§ 239.37, 239.38, 239.39, 239.40 and 239.41 to read as follows:

Note: See appendix for text of Forms. The Forms do not appear in the Code of Federal Regulations.

§ 239.37 Form F-7, for registration under the Securities Act of 1933 of securities of certain Canadian issuers offered for cash upon the exercise of rights granted to existing security holders.

(a) Form F-7 may be used for the registration under the Securities Act of 1933 (the "Securities Act") of securities offered for cash upon the exercise of rights granted to existing security holders of the registrant.

(b) Form F-7 is available to any registrant incorporated or organized under the laws of Canada, or any Canadian province or territory, that, for the 36 calendar months immediately preceding the filing of a registration statement on this Form, has had any class of securities listed on the Montreal Exchange or The Toronto Stock Exchange and that currently is in compliance with the obligations arising from such listing. The rights granted to security holders that are resident in the United States shall be granted upon the same terms and conditions as those granted to such holders resident in the registrant's jurisdiction of incorporation or organization, *provided,* That the securities offered upon exercise of such rights may not be registered on this Form if such rights are transferable to U.S. residents and *further provided,* That the exercise period for the rights granted to security holders shall be 90 days or less.

(c) Less than 20 percent of the class of securities with respect to which the rights are granted shall be held of record by U.S. residents. For purposes of this instruction, "held of record" shall be construed in accordance with Rule 12g5-1 under the Securities Exchange Act of 1934 (the "Exchange Act").

Instruction. For purposes of this Form, the term "U.S. resident," as applied to security holders, shall mean any person whose address appears on the records of the issuer of the security or its share transfer agent as being located in the United States. The calculation of record holders shall be as of the end of the issuer's last quarter or, if such quarter ended within 60 days prior to the date of filing, then as of the end of the preceding quarter.

(d) Any transaction in which securities registered on this Form are offered shall not increase the registrant's issued and outstanding capital by more than 25 percent.

(e) This Form shall not be used if the registrant is an investment company, as defined in Section 3 of the Investment Company Act of 1940.

(f) A registration statement on this Form should be filed with the Commission simultaneously with the filing of the home jurisdiction document(s) accompanying such Form with the jurisdiction identified on the cover of the Form as the principal jurisdiction regulating the offering ("principal jurisdiction"). Pre-effective amendments to this Form should be filed simultaneously with the filing of additional or changed documents in the principal jurisdiction. In accordance with Rule 467, this registration statement shall be deemed effective for purposes of the Securities Act on the date on which the securities covered herein legally may be sold in the principal jurisdiction.

(1) Any amendment to such home jurisdiction document(s) after the effective date of this registration statement shall be filed with the Commission as a post-effective

---

[251] 15 U.S.C. 77s.

[252] 15 U.S.C. 78*l*, 78m, 78n, 78*o*, 78p, and 78w.

[253] 15 U.S.C. 77ddd(d).

amendment to this Form simultaneously with the filing of such document(s) with the principal jurisdiction. Such post-effective amendment shall be deemed effective for purposes of the Securities Act at such time as the amendment to the home jurisdiction document(s) legally may be used under the applicable law of such jurisdiction, in accordance with Rule 467.

(2) Any amendment to a registration statement on this Form shall be filed under cover of an appropriate facing sheet, shall be numbered consecutively in the order in which filed, and shall indicate on the facing sheet the applicable registration form on which the amendment is prepared and the file number of the registration statement.

(3) If, however, an amendment to the home jurisdiction document(s) is filed after effectiveness of the registration statement that increases the number of securities that may be sold thereunder, in lieu of filing a post-effective amendment hereto, a new registration statement shall be filed on this Form. As provided in Rule 429, the prospectus included in the new registration statement shall be deemed to include a prospectus covering unsold securities registered previously. If this is the case, the following legend shall appear at the bottom of the facing page of the registration statement: "This combined prospectus relates to registration statement[s] 33-[insert file numbers of previous registration statements]."

§ 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.

(a) Form F-8 may be used for registration under the Securities Act of 1933 ("Securities Act") of securities to be issued in an exchange offer. Securities may be registered on this Form whether they constitute the sole consideration for such exchange offer, or are offered in conjunction with cash.

(b) Form F-8 is available to any registrant incorporated or organized under the laws of Canada, or any Canadian province or territory, that, for the 36 calendar months immediately preceding the filing of the registration statement on this Form, has had any class of securities listed on the Montreal Exchange or The Toronto Stock Exchange and that currently is in compliance with the obligations arising from such listing, if the aggregate market value of the common stock (including non-voting common stock) of such registrant held by non-affiliates is (CN) $75 million or more, *provided*, That for the purposes of this instruction, the term "affiliate" shall mean any person holding 10 percent or more of the common stock (including non-voting common stock) of the registrant.

Instruction. The market value of the registrant's outstanding common stock shall be the average of the bid and asked prices of such stock, in the principal market for such stock as of a date within 30 days prior to the date of filing.

(c) The issuer of the securities to be exchanged (the "subject securities") for securities of the registrant shall be incorporated or organized under the laws of Canada or any Canadian province or territory, and less than 20 percent of the class of subject securities shall be held of record by U.S. residents. For purposes of this instruction, "held of record" shall be construed in accordance with Rule 12g5-1 under the Securities Exchange Act of 1934 (the "Exchange Act").

Instruction. For the purpose of this Form, the term "U.S. resident," as applied to security holders, shall mean any person whose address appears on the records of the subject issuer or its share transfer agent as being located in the United States. The calculation of record holders shall be as of the end of the issuer's last quarter or, if such quarter ended within 60 days prior to the date of filing, then as of the end of the preceding quarter.

(d) The securities to be registered on Form F-8 shall be offered to U.S. residents upon the same terms and conditions as they are required to be offered to residents of Canada.

(e) This Form shall not be used if the registrant is an investment company, as defined in section 3 of the Investment Company Act of 1940.

(f) A registration statement on this Form should be filed with the Commission simultaneously with the filing of the home jurisdiction document(s) accompanying such Form with the jurisdiction identified on the cover of the Form as the principal jurisdiction regulating the offering ("principal jurisdiction"). Pre-effective amendments to this Form should be filed simultaneously with the filing of additional or changed documents in the principal jurisdiction. In accordance with Rule 467, this registration statement shall be deemed effective for purposes of the Securities Act on the date on which the securities covered herein legally may be sold in the principal jurisdiction.

(1) Any amendment to such home jurisdiction document(s) after the effective date of this registration statement shall be filed with the Commission as a post-effective amendment to this Form simultaneously with the filing of such document(s) with the principal jurisdiction. Such post-effective amendment shall be deemed effective for purposes of the Securities Act at such time as the amendment to the home jurisdiction document(s) legally may be used under the applicable law of such jurisdiction, in accordance with Rule 467.

(2) Any amendment to a registration statement on this Form shall be filed under cover of an appropriate facing sheet, shall be numbered consecutively in the order in which filed, and shall indicate on the facing sheet the applicable registration form on which the amendment is prepared and the file number of the registration statement.

(3) If, however, an amendment to the home jurisdiction document(s) is filed after effectiveness of the registration statement that increases the number of securities that may be sold thereunder, in lieu of filing a post-effective amendment hereto, a new registration statement shall be filed on this Form. As provided in Rule 429, the prospectus included in the new registration statement shall be deemed to include a prospectus covering unsold securities registered previously. If this is the case, the following legend shall appear at the bottom of the facing page of the registration statement: "This combined prospectus relates to registration statement[s] 33—[insert file numbers of previous registration statements]."

§ 239.39 Form F-9, for registration under the Securities Act of 1933 of investment grade non-convertible 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 non-convertible debt or preferred securities.

Instructions

1. Securities shall be "investment grade" if, at the time of effectiveness of the registration statement, at least one nationally recognized statistical rating organization (as that term is used in relation to Rule 15c3-1(c)(2)(vi)(F) under the Securities Exchange Act of 1934 (the "Exchange Act") (§ 240.15c3-1(c)(2)(vi)(F) of this chapter) has rated the security in one of its generic rating categories that signifies investment grade; typically, the four highest rating categories (within which there may be subcategories or gradations indicating relative standing) signify investment grade.

2. Securities shall be "non-convertible" if they may not be converted for a period of at least one year from the date of effectiveness of the registration statement.

(b) Form F-9 is available to any registrant incorporated or organized under the laws of Canada, or any Canadian province or territory, that has been subject to the periodic reporting

requirements of any securities commission or equivalent regulatory authority in Canada for a period of at least 36 calendar months immediately preceding the filing of the registration statement on this Form, and that is currently in compliance with such obligations, if (1) the aggregate market value of the common stock (including nonvoting common stock) of such registrant is (CN) $160 million or more; and (2) the aggregate market value of such common stock held by non-affiliates is (CN) $75 million or more, *provided*, That for the purposes of this Instruction, the term "affiliate" shall mean any person holding 10 percent or more of the common stock (including non-voting common stock) of the registrant.

Instruction. The market value of the registrant's outstanding voting stock shall be computed by use of the price at which the stock was last sold, or the average of the bid and asked prices of such stock, in the principal market for such stock as of a date within 30 days prior to the date of filing.

(c) This Form shall not be used if the registrant is an investment company, as defined in section 3 of the Investment Company Act of 1940.

(d) A registration statement on this Form should be filed with the Commission simultaneously with the filing of the home jurisdiction document(s) accompanying such Form with the jurisdiction identified on the cover of the Form as the principal jurisdiction regulating the offering ("principal jurisdiction"). Pre-effective amendments to this Form should be filed simultaneously with the filing of additional or changed documents in the principal jurisdiction. In accordance with Rule 467, this registration statement shall be deemed effective for purposes of the Securities Act on the date on which the securities covered herein legally may be sold in the principal jurisdiction.

(1) Any amendment to such home jurisdiction document(s) after the effective date of this registration statement shall be filed with the Commission as a post-effective amendment to this Form simultaneously with the filing of such document(s) with the principal jurisdiction. Such post-effective amendment shall be deemed effective for purposes of the Securities Act at such time as the amendment to the home jurisdiction document(s) legally may be used under the applicable law of such jurisdiction, in accordance with Rule 467.

(2) Any amendment to a registration statement on this Form shall be filed under cover of an appropriate facing sheet, shall be numbered consecutively in the order in which filed, and shall indicate on the facing sheet the applicable registration form on which the amendment is prepared and the file number of the registration statement.

(3) If, however, an amendment to the home jurisdiction document(s) is filed after effectiveness of the registration statement that increases the number of securities that may be sold thereunder, in lieu of filing a post-effective amendment hereto, a new registration statement shall be filed on this Form. As provided in Rule 429, the prospectus included in the new registration statement shall be deemed to include a prospectus covering unsold securities registered previously. If this is the case, the following legend shall appear at the bottom of the facing page of the registration statement: "This combined prospectus relates to registration statement[s] 33—[insert file numbers of previous registration statements]."

(4) If the registration statement relates to an offering that is not a contemporaneous offering, it shall become effective in accordance with Rule 467(b).

§ 239.40 Form F–10, for registration under the Securities Act 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 incorporated or organized under the laws of Canada, or any Canadian province or territory, that has been subject to the periodic reporting requirements of any securities commission or equivalent regulatory authority in Canada for a period of at least 36 calendar months immediately preceding the filing of the registration statement on this Form, and that is currently in compliance with such obligations, if (1) the aggregate market value of the common stock (including non-voting common stock) of such registrant is (CN) $360 million or more; and (2) the aggregate market value of such common stock held by non-affiliates is (CN) $75 million or more, *provided*, That for the purposes of this Instruction, the term "affiliate" shall mean any person holding 10 percent or more of the common stock (including non-voting common stock) of the registrant.

Instruction. The market value of the registrant's outstanding voting stock shall be computed by use of the price at which the stock was last sold, or the average of the bid and asked prices of such stock, in the principal market for such stock as of a date within 30 days prior to the date of filing.

(c) This Form shall not be used if the registrant is an investment company, as defined in section 3 of the Investment Company Act of 1940.

(d) A registration statement on this Form should be filed with the Commission simultaneously with the filing of the home jurisdiction document(s) accompanying such Form with the jurisdiction identified on the cover of the Form as the principal jurisdiction regulating the offering ("principal jurisdiction"). Pre-effective amendments to this Form should be filed simultaneously with the filing of additional or changed documents in the principal jurisdiction. In accordance with Rule 467, this registration statement shall be deemed effective for purposes of the Securities Act on the date on which the securities covered herein legally may be sold in the principal jurisdiction.

(1) Any amendment to such home jurisdiction document(s) after the effective date of this registration statement shall be filed with the Commission as a post-effective amendment to this Form simultaneously with the filing of such document(s) with the principal jurisdiction. Such post-effective amendment shall be deemed effective for purposes of the Securities Act at such time as the amendment to the home jurisdiction document(s) legally may be used under the applicable law of such jurisdiction, in accordance with Rule 467.

(2) Any amendment to a registration statement on this Form shall be filed under cover of an appropriate facing sheet, shall be numbered consecutively in the order in which filed, and shall indicate on the facing sheet the applicable registration form on which the amendment is prepared and the file number of the registration statement.

(3) If, however, an amendment to the home jurisdiction document(s) is filed after effectiveness of the registration statement that increases the number of securities that may be sold thereunder, in lieu of filing a post-effective amendment hereto, a new registration statement shall be filed on this Form. As provided in Rule 429, the prospectus included in the new registration statement shall be deemed to include a prospectus covering unsold securities registered previously. If this is the case, the following legend shall appear at the bottom of the facing page of the registration statement: "This combined prospectus relates to registration statement[s] 33-[insert file numbers of previous registration statements]."

(4) If the registration statement relates to an offering that is not a contemporaneous offering, it shall become effective in accordance with Rule 467(b).

§ 239.41 Form F-X, for appointment of agent for service of process by foreign issuers registering securities on Forms F-7, F-8, F-9 or F-10 (§§ 239.37, 239.38, 239.39 or 239.40 of this chapter), or registering securities or filing periodic reports on Form 40-F (§ 249.240f of this chapter), or by any person filing tender offer documents on Schedule 13E-4F, 14d-1F or 14D-9F (§§ 240.13e-102, 240.14d-102 or 240.14d-103 of this chapter).

Form F-X shall be filed with the Commission:

(a) By any issuer registering securities on Forms F-7, F-8, F-9 or F-10 under the Securities Act of 1933;

(b) By any issuer registering securities or filing periodic reports on Form 40-F under the Securities Exchange Act of 1934 if it has not previously filed a Form F-X in connection with the class of securities registered or in relation to which a report is filed on Form 40-F; and

(c) By any issuer or other person filing tender offer documents on Schedules 13E-4F, 14D-1F or 14D-9F.

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

5. The authority citation for Part 240 continues to read as follows:

Authority: Sec. 23 of the Securities Exchange Act of 1934, as amended, 48 Stat. 901 (15 U.S.C. 78w), unless otherwise noted.

6. By adding paragraph (c) to § 240.3a12-3 to read as follows:

§ 240.3a12-3 Exemptions from Sections 14(a), 14(b), 14(c), 14(f) and 16 for securities of certain foreign issuers.

* * * * *

(c) An issuer otherwise subject to the provisions of sections 14(a), 14(b), 14(c), or 14(f) of the Act, that is soliciting proxies in order to vote upon a matter being considered in order that an exchange offer to be registered on Form F-8 (§ 239.38 of this chapter) may be made, will not be subject to such provisions with regard to such solicitation.

7. By revising paragraphs (a) and (b) to § 240.12g-3 to read as follows:

§ 240.12g-3 Registration of securities of successor issuers.

(a) Where in connection with a succession by merger, consolidation, exchange of securities or acquisition of assets, equity securities of an issuer, not previously registered pursuant to section 12 of the Act, are issued to the holders of any class of equity securities of another issuer which is registered pursuant to section l2 of the Act, the class of securities so issued shall be deemed to be registered under section 12 of the Act unless upon consummation of the succession such class is exempt from such registration other than by Rule 12g3-2 (§ 240.12g3-2 of this chapter) or all securities of such class are held of record by less than 300 persons (or the securities issued in connection with the succession were registered on Form F-8 (§ 239.38 of this chapter) and following the succession the successor would not be required to register such class of securities under section 12 but for this section).

(b) Where in connection with a succession by merger, consolidation, exchange of securities or acquisition of assets, equity securities of an issuer, which are not registered pursuant to section 12 of the Act, are issued to the holders of any class of equity securities of another issuer which is required to file a registration statement pursuant to section 12 but has not yet done so, the duty to file such statement shall be deemed to have been assumed by the issuer of the class of securities so issued and such issuer shall file 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 12g3-2 (or all securities of such class are held of record by less than 300 persons or the securities issued in connection with the succession were registered on Form F-8 and following the succession the successor would not be required to register such class of securities under section 12 but for this section).

* * * * *

8. By revising paragraph (d)(2) of § 240.12g3-2 to read as follows:

§ 240.12g3-2 Exemption for American Depositary receipts and certain foreign securities.

* * * * *

(d) * * *

(2) Securities of a foreign private issuer issued in a transaction ((other than a transaction registered on Form F-8)) to acquire by merger, consolidation, exchange of securities or acquisition of assets, another issuer that had securities registered under section 12 of the Act or a reporting obligation (suspended or active) under section 15(d) of the Act.

* * * * *

9. By adding § 240.13a-3 to read as follows:

§ 240.13a-3 Reporting by Form 40-F registrant.

A registrant that is eligible to use Form 40-F and files reports thereon shall not be subject to the requirements of Regulation 13A (§§ 240.13a-1 through 240.13a-17).

10. By adding paragraph (h) to § 240.13e-4(h) to read as follows:

§ 240.13e-4 Tender offers by issuers.

* * * * *

(h) The requirements of section 13(e)(1) of the Act and Rule 13e-4 and Schedule 13E-4 thereunder shall be deemed satisfied with respect to any issuer tender offer, including any exchange offer, where the issuer is incorporated or organized under the laws of Canada or any Canadian province or territory, and is not an investment company as defined in section 3 of the Investment Company Act of 1940, if less than 20 percent of the class of securities that is the subject of the tender offer is held of record by U.S. residents and the tender offer is subject to (and not entitled to an exemption from), and the issuer complies with, the laws, regulations and policies of Canada and/or any of its provinces or territories governing the conduct of the offer, *provided* That:

(1) Where the consideration for an issuer tender offer subject to this paragraph consists solely of cash, the entire disclosure document or documents required to be furnished to holders of the class of securities to be acquired shall be filed with the Commission on Schedule 13E-4F (17 CFR 240.13e-102) and disseminated to shareholders residing in the United States in accordance with such Canadian laws, regulations and policies; or

(2) Where the consideration for an issuer tender offer subject to this paragraph includes securities to be issued pursuant to the offer, any registration statement and/or prospectus relating thereto shall be filed with the Commission along with the Schedule 13E-4F referred to in paragraph (h)(1) of this section, and shall be disseminated, together with the home jurisdiction document(s) accompanying such Schedule, to shareholders of the issuer residing in the United States in accordance with such Canadian laws, regulations and policies.

11. By adding § 240.13e-102 to read as follows:

§ 240.13e–102 Tender offer statement pursuant to section 13(e)(1) of the Securities Exchange Act of 1934 and § 240.13e–4 thereunder.

Schedule 13E–4F

U.S. Securities and Exchange Commission, Washington, DC 20549
OMB Approval
OMB Number: 3235–040P
Expires: Approval Pending
Estimated average burden hours per response—2.0

Issuer Tender Offer Statement Pursuant to Section 13(e)(1) of the Securities Exchange Act of 1934 Amendment No. _____

(Exact name of Issuer as specified in its charter)

(Translation of Issuer's Name into English)

(Jurisdiction of Issuer's Incorporation or Organization)

(Name of Person(s) Filing Statement)

(Title of Class of Securities)

(CUSIP Number of Class of Securities) (if applicable))

(Name, address, including zip code, and telephone number, including area code, of person authorized to receive notices and communications on behalf of the person(s) filing statement)

(Date tender offer first published, sent or given to security holders)

Calculation of Filing Fee

Transaction Valuation
Amount of Filing Fee

General Instructions

I. Eligibility Requirements for Use of Schedule 13E–4F

A. Schedule 13E–4F may be used by any issuer incorporated or organized under the laws of Canada or any province or territory thereof making a tender offer for the issuer's own securities, where 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.

Instruction For the purpose of this Schedule, the term "U.S. resident," as applied to security holders, shall mean any person whose address appears on the records of the subject issuer or its share transfer agent as being located in the United States. The calculation of record holders shall be as of the end of the issuer's last quarter, or if such quarter ended within 30 days prior to the date the tender offer is first published, sent or given to security holders, then as of the end of the preceding quarter.

B. Any issuer using this Schedule must extend the tender offer to holders of the class of securities subject to the offer residing in the United States upon the same terms and conditions as such securities are required to be offered to security holders residing in Canada, and must comply with the requirements of any Canadian federal, provincial and/or territorial law, regulation or policy relating to the terms and conditions of the offer.

C. This Schedule shall not be used if the issuer is an investment company as defined in section 3 of the Investment Company Act of 1940.

II. Filing Instructions and Fees

A. Eight copies of this Schedule and any amendment thereto (see Part I, Item 1(b)), including all exhibits and any other paper or document filed as part of the Schedule, shall be filed with the Commission at its principal office. Each copy shall be bound, stapled or otherwise compiled in one or more parts, without stiff covers. The binding shall be made on the side 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, by a U.S. postal money order, certified check, bank cashier's check or bank money order, a fee of one-fiftieth of one percent of the aggregate of the cash or of the value of the securities or other non-cash consideration offered by the 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.

(3) When the fee is based upon the market value of the securities, such market value shall be calculated upon the basis of either the average of the high and low prices reported on the consolidated reporting system (for exchange-traded securities and last sale reported over-the-counter securities) or the average of the bid and asked price (for other over-the-counter securities) as of a specified date within 5 business days prior to the date of filing the Schedule.

D. If at any time after the initial payment of the fee the aggregate consideration offered is increased, an additional filing fee based upon such increase shall be paid with the required amended filing.

E. Subject to the requirements of Item 1, if any part of this Schedule, or any exhibit or other paper or document filed as part of the schedule, is in a foreign language, it shall be accompanied by a summary, version or translation in the English language.

F. The manually signed original of the Schedule or any amendment thereto shall be numbered sequentially (in addition to any internal numbering which otherwise may be present) by handwritten, typed, printed or other legible form of notation from the first page of the document through the last page of that document and any exhibits or attachments thereto. Further, the total number of pages contained in a numbered original shall be set forth on the first page of the document.

G. Any change to the name or address of a registrant's agent for service shall be communicated promptly in writing to the Commission, referencing the file number of the registrant.

III. Compliance with the Exchange Act

A. Pursuant to Rule 13e–4(h) under the Securities Exchange Act of 1934 (the "Exchange Act"), the issuer shall be deemed to 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 tender offer for securities that may be made pursuant to this Schedule; *provided that*, if no substantive requirements of any Canadian federal, provincial and/or territorial law, regulation or policy relating to the terms and conditions of the tender offer apply, or if an exemption from such requirements is applicable, the issuer shall comply with the provisions of section 13(e)(1) and Rule 13e–4 and Schedule 13E–4 thereunder.

B. Any tender offer made pursuant to this Schedule is not exempt from the antifraud provisions of section 10(b) of the Exchange Act and Rule 10b–5 thereunder, section 13e–1 of the Exchange Act and Rule 13e–4(b)(1) thereunder, and section 14(e) of the Exchange Act and Rule 14e–3 thereunder, and shall be deemed "filed" for purposes of section 18 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 exchange offer, and Rule 10b–13 under the Exchange Act, in the case of an issuer cash tender offer or issuer exchange offer. [See Note following Part III, 1. for an explanation of the no-action positions taken under Rules 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 Canadian jurisdiction in which the issuer is incorporated or organized, and any other Canadian federal, provincial and/or territorial law, regulation or policy relating to the terms and conditions of the offer. The Schedule need not include any documents incorporated by reference into such disclosure document(s) and not distributed to offerees pursuant to any such law, regulation or policy. If any part of the document or documents to be sent to shareholders is in a

language other than English, it shall be accompanied by a translation in English.

(b) Any amendment made by the issuer to a home jurisdiction document or 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 been or are to be offered or cancelled in the transaction: (i) such securities shall be registered under the laws of the issuer's jurisdiction on the Commission's Form F–8, and (ii) the home jurisdiction prospectus shall be included in this registration statement.

Item 2. Informational Legends

The following legend shall appear on the outside front cover page of the home jurisdiction document(s) in bold-face roman type at least as high as a 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 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 or or make purchases of the securities of the issuer subject to the offer, or of its related securities, during the period of the issuer tender offer, as permitted by applicable Canadian laws or provincial laws or regulations."

Part II—Information Not Required To Be Sent to Shareholders

The exhibits specified below shall be filed as part of the Schedule, but are not required to be sent to shareholders unless so required pursuant to the laws, regulations or policies of Canada and/or any of its provinces or territories. 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

This issuer undertakes to make available, in person or by telephone, representatives to respond to inquiries made by the Commission staff, and to furnish promptly, when requested to do so by the Commission staff, information relating to this Schedule or to transactions in said securities.

The issuer also undertakes to disclose in the United States, on the same basis as it is required to make such disclosure pursuant to applicable Canadian federal and/or provincial or territorial laws, regulations or policies, or otherwise discloses, information regarding purchases of the issuer's securities during the issuer tender offer.

Note: No-action position taken under Rule 10b–13 in the case of an issuer cash tender offer:

The staff of the Division of Market Regulation has taken a no-action position under Rule 10b–13 under the Exchange Act to allow certain purchases by the issuer of the issuer's securities in Canada, as permitted by Canadian federal and/or provincial or territorial laws, regulations or policies, during the period of an issuer tender offer filed on Schedule 13E–4F. With respect to an issuer cash tender offer filed on Schedule 13E–4F, the staff will not recommend that the Commission take enforcement action under Rule 10b–13 for purchases by the issuer in Canada, as permitted by Canadian federal and/or provincial or territorial laws, regulations or policies, of the security that is the subject of the offer (or any security which is immediately convertible into or exchangeable for such security), subject to the conditions that: (i) The issuer discloses on Schedule 13E–4F the possibility of, or the intent to make, such purchases; and (ii) the issuer submits an undertaking to disclose in the United States information regarding such purchases on the same basis as it is required to be disclosed in Canada pursuant to Canadian federal and/or provincial or territorial laws, regulations or policies, or otherwise is disclosed.

Note: No-action position taken under Rules 10b–6 and 10b–13 in the case of an issuer exchange offer:

The staff of the Division of Market Regulation has taken no-action positions under Rules 10b–6 and 10b–13 under the Exchange Act to allow certain purchases by the issuer of the issuer's securities in Canada, as permitted by Canadian federal and/or provincial or territorial laws, regulations or policies, during the period of an issuer exchange offer filed on Schedule 13E–4F. With respect to an issuer exchange offer filed on Schedule 13E–4F, the staff will not recommend that the Commission take enforcement action under Rules 10b–6 and 10b–13 for bids and purchases by the issuer in Canada, as permitted by Canadian federal and/or provincial or territorial laws, regulations or policies, of the security being distributed (or any security of the same class and series, or any right to purchase 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 issuer discloses on Schedule 13E–4F the possibility of, or the intent to make, such purchases; and (iii) the issuer submits an undertaking to disclose in the United States information regarding such purchases on the same basis as it is required to be disclosed in Canada pursuant to Canadian federal and/or provincial or territorial laws, regulations or policies, or otherwise is disclosed.

2. Consent to Service of Process

The issuer shall, at the time of filing this Schedule, furnish to the Commission, on Form F–X, a written irrevocable consent and power of attorney which designates an agent upon whom may be served any process, pleadings, subpoenas, or other papers in

(1) Any investigation or administrative proceeding conducted by the Commission; and

(2) Any civil suit or civil action brought against the issuer or to which the issuer 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 issuer tender offer made or purported to be made using this Schedule, or any purchases or sales of any security in connection therewith, and stipulates and agrees that any such civil suit or action or administrative proceeding may be commenced by the service or process upon, and that service of an administrative subpoena shall be effected by service upon, said agent for service or process, and that the service as aforesaid shall be taken and held in all courts and administrative tribunals to be as valid and binding as if due personal service thereof had been made.

Part IV

A. Signatures

The Schedule shall be signed by each person on whose behalf the Schedule is filed or its authorized representative. If the Schedule is signed on behalf of a person by his authorized representative (other than an executive officer or general partner of the company), evidence of the representative's authority shall be filed with the Schedule.

B. The name of each person who signs the Schedule shall be typed or printed beneath his signature.

C. By signing this Schedule, the person(s) filing the Schedule consents without power of revocation that any administrative subpoena may be served, or any administrative proceeding, civil suit or civil action where the cause of action arises out of or related to or concerns any offering made or purported to be made in connection with the filing on Schedule 13E–4F or any purchases or sales of any security in connection therewith, may be commenced against it in any administrative tribunal or in any appropriate court in any

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) _____

12. By adding paragraph (m) to § 240.14a–6 to read as follows:

§ 240.14a–6 Filing requirements.

* * * * *

(m) A Canadian foreign private issuer that is furnishing soliciting material to shareholders in connection with an annual meeting described in paragraphs (a) (1) through (5) of this section, and which therefore must file with the Commission only definitive proxy materials, may file definitive proxy materials that meet the applicable Canadian federal and provincial proxy regulations. Such an issuer shall be deemed to have complied with Rules 14a–1 through 14a–7 (§§ 240.14a–1 through 240.14a–7) if it complies with applicable Canadian federal and provincial proxy regulations.

13. By adding paragraph (f) to § 240.14a–8 to read as follows:

§ 240.14a–8 Proposals of security holders.

* * * * *

(f) A Canadian foreign private issuer shall be deemed to have complied with the requirements of this section if it complies with all applicable Canadian federal and provincial requirements relating to shareholder proposals.

14. By amending § 240.14d–1 by redesignating paragraph (b) as (c) and adding a new paragraph (b) 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, and is not an investment company as defined in section 3 of the Investment Company Act, if less than 20 percent of the class of securities that is the subject of the tender offer is held of record by U.S. residents and the tender offer is subject to (and not entitled to an exemption from), and the bidder complies with, the laws, regulations and policies of Canada and/or any of its provinces or territories governing the conduct of the offer, *Provided That:*

(1) Where the consideration for a tender offer subject to this section consists solely of cash, the entire disclosure document or documents required to be furnished to holders of the class of securities to be acquired shall be filed with the Commission on Schedule 14D–1F (17 CFR 240.14d–102) and disseminated to shareholders of the subject company residing in the United States in accordance with such Canadian laws, regulations and policies; or

(2) Where the consideration for a tender offer subject to this section includes securities of the bidder to be issued pursuant to the offer, any registration statement and/or prospectus relating thereto shall be filed with the Commission along with the Schedule 14D–1F referred to in paragraph (b)(1) of this section, and shall be disseminated, together with the home jurisdiction document(s) accompanying such Schedule, to shareholders of the subject company residing in the United States in accordance with such Canadian laws, regulations and policies.

* * * * *

15. By adding § 240.14d–102 to read as follows:

§ 240.14d–102 Tender offer statement pursuant to section 14(d)(1) of the Securities Exchange Act of 1934.

Schedule 14D–1F

U.S. Securities and Exchange Commission, Washington, DC 20549

OMB Approval
OMB Number: 3235–040M
Expires: Approval Pending
Estimated average burden hours per response—2.0

Tender Offer Statement Pursuant to Section 14(d)(1) of the Securities Exchange Act of 1934 (Amendment No. _____)

_____

(Name of Subject Company [Issuer])

_____

(Translation of Subject Company's [Issuer's] name into English)

_____

(Jurisdiction of Subject Company's Incorporation or Organization)

_____

(Bidder)

_____

(Title of Class of Securities)

_____

(CUSIP Number of Class of Securities (if applicable))

_____

(Name, address, including zip code, and telephone number, including area code, of persons authorized to receive notices and communications on behalf of subject company)

_____

(Date tender offer first published, sent or given to security holders)

Calculation of Filing Fee [1]

Transaction Valuation
Amount of Filing Fee

General Instructions

I. Eligibility Requirements for Use of Schedule 14D–1F

A. Schedule 14D–1F may be used by any person making a tender offer (the "bidder") for securities of any issuer incorporated or organized under the laws of Canada, or any Canadian province or territory, where less than 20 percent of the class of such issuer's securities that is the subject of the tender offer is held of record by U.S. residents.

Instruction. For the purpose of this Schedule, the term "U.S. resident," as applied to security holders, shall mean any person whose address appears on the records of the subject issuer or its share transfer agent as being located in the United States.

B. Any bidder using this Schedule must extend the tender offer to U.S. residents of the subject issuer upon the same terms and conditions as they are required to be offered to security holders residing in Canada, and must comply with the requirements of any Canadian federal, provincial and/or territorial law, regulation or policy relating to the terms and conditions of the offer.

C. This Schedule shall not be used if the subject company is an investment company as defined in Section 3 of the Investment Company Act of 1940.

D. This Schedule shall not be used to comply with the reporting requirements of Section 13(d) of the Securities Exchange Act of 1934 (the "Exchange Act"). Issuers using this Schedule are reminded of their obligation to file or update a Schedule 13D where required by section 13(d)(1) of the Exchange Act and the Commission's rules and regulations thereunder.

II. Filing Instructions and Fee

A. Eight copies of this Schedule and any amendment thereto (see Part I, Item 1(b)), including all exhibits and any other paper or document filed as part of the Schedule, shall be filed with the Commission at its principal office. Each copy shall be bound, stapled or otherwise compiled in one or more parts, without 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 bidder shall pay to the

[1] Set forth the amount on which the filing fee is calculated and state how it was determined. See General Instruction II.C.—for rules governing the calculation of the filing fee.

Commission, by a U.S. postal money order, certified check, bank cashier's check or bank money order, a fee of one-fiftieth of one percent of the aggregate of the cash or of the value of the securities or other non-cash consideration offered by the bidder to shareholders of the subject company residing in the United States.

(1) Where the bidder is offering securities or other non-cash consideration 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 book value of such securities computed as of the latest practicable date prior to the date of filing the Schedule shall be used, unless the issuer of such securities is in bankruptcy or receivership or has an accumulated capital deficit, in which case one-third of the principal amount, par value or stated value of such securities shall be used.

(3) When the fee is based upon the market value of the securities, such market value shall be calculated upon the basis of either the average of the high and low prices reported 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. 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 language other than English, it shall be accompanied by a summary, version or translation in the English language.

F. The manually signed original of the Schedule or any amendment thereto shall be numbered sequentially (in addition to any internal numbering which otherwise may be present) by handwritten, typed, printed or other legible form of notation from the first page of the document through the last page of that document and any exhibits or attachments thereto. Further, the total number of pages contained in a numbered original shall be set forth on the first page of the document.

G. Any change to the name or address of a registrant's agent for service shall be communicated promptly in writing to the Commission, referencing the file number of the 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(d)(1) through 14(d)(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 tender offer for securities that may be made pursuant to this Schedule; *provided that,* if no substantive requirement of any Canadian federal, provincial or territorial law, regulation or policy relating to the terms and conditions of the tender offer applies, or if an exemption from any such requirement is applicable, the bidder shall comply with the provisions of sections 14(d)(1) through 14(d)(7), Regulation 14D and Schedule 14D–1 thereunder, Rule 14e–1 of Regulation 14E, and any other applicable U.S. statute or rule.

B. Any tender offer made pursuant to this Schedule is not exempt from the antifraud provisions of section 10(b) of the Exchange Act and Rule 10b–5 thereunder, and section 14(e) of the Exchange Act and Rule 14e–3 thereunder, and shall be deemed "filed" for purposes of section 18 of the Exchange Act.

C. The bidder's attention is directed to Rule 10b–6 under the Exchange Act in the case of an exchange offer, and to Rule 10b–13 under the Exchange Act for any exchange or cash tender offer. [See Note following Part III, 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 Canada 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 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 foreign language, it shall be accompanied by a translation in English.

(b) Any amendment made by the bidder to a home jurisdiction document or documents shall be filed with the Commission under cover of this Schedule, which must indicate on the cover page the number of the amendment.

(c) In an exchange offer where securities of the bidder have 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–8 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 leaded:

"This tender offer is made for the securities of a foreign issuer and while the offer is subject to disclosure requirements of the country in which subject company 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 subject company 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 bidder or its affiliates, directly or indirectly, may bid for or make purchases of the issuer's securities subject to the offer, or of the issuer's related securities, during the period of the tender offer, as permitted by applicable Canadian laws or provincial laws or regulations."

In the case of an exchange offer:

"Prospective investors should be aware that the bidder or its affiliates, directly or indirectly, may bid for or make purchases of the issuer's securities subject to the offer or of the issuer's related securities, or of the bidder's securities to be distributed or of the bidder's related securities, during the period of the tender offer, as permitted by applicable Canadian laws or provincial laws or regulations."

PART II—INFORMATION NOT REQUIRED TO BE SENT TO SHAREHOLDERS

The exhibits specified below shall be filed as part of the Schedule, but are not required to be sent to shareholders unless so required pursuant to the laws, regulations or policies of Canada and/or any of its provinces or territories. Exhibits shall be appropriately lettered or numbered 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 bidder 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 this Schedule pursuant to power of attorney, manually signed copies of any such power of attorney shall be filed. If the name of any officer signing in behalf of the bidder is signed pursuant to a power of attorney, certifed copies of the bidder's board of directors authorizing such signature also shall be filed.

PART III—UNDERTAKING AND CONSENT TO SERVICE OF PROCESS

1. Undertaking

a. The bidder undertakes to make available, in person or by telephone, representatives to respond to inquiries made by the Commission staff, and to furnish promptly, when requested to do so by the Commission staff, information relating to this Schedule or to transactions in said securities.

b. The bidder undertakes to disclose in the United States, on the same basis as 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 tender offer.

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 any applicable Canadian federal and/or provincial or territorial law, regulation or policy, or otherwise discloses, information regarding purchases of the issuer's or bidder's securities during the tender offer.

Note: No-action position taken under Rule 10b–13 in the case of a third party or affiliate cash tender offer:

The staff of the Division of Market Regulation has taken no-action position under Rule 10b–13 under the Exchange Act to allow certain purchases by the bidder of the issuer's securities in Canada, as permitted by Canadian federal and/or provincial or territorial laws, regulations or policies, during the period of a tender offer filed on Schedule 14D–1F. With respect to a cash tender offer filed on Schedule 14D–1F, the staff will not recommend that the Commission take enforcement action under Rule 10b–13 for purchases by the bidder in Canada, as permitted by Canadian federal and/or provincial or territorial laws, regulations or policies, of the security that is the subject of the offer (or any security which is immediately convertible into or exchangeable for such security), subject to the conditions that: (i) The bidder discloses on Schedule 14D–1F the possibility of, or the intent to make, such purchases; and (ii) the bidder submits an undertaking to disclose in the United States information regarding such purchases on the same basis as it is required to be disclosed in Canada pursuant to Canadian federal and/or provincial or territorial laws, regulations or policies, 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 10b–6 and 10b–13 under the Exchange Act to allow certain purchases by the bidder of the issuer's or bidder's securities in Canada, as permitted by Canadian federal and/or provincial or territorial laws, regulations or policies, during the period of an exchange offer filed on Schedule 14D–1F. With respect to an exchange offer filed on Schedule 14D–1F, the staff will not recommend that the Commission take enforcement action under Rules 10b–6 and 10b–13 for bids and purchases by the bidder in Canada, as permitted by Canadian federal and/or provincial or territorial laws, regulations or policies, of the security being distributed (or any security of the same class and series, or any right to purchase any such security), or of the security that is the subject of the offer (or any security which is immediately convertible into or exchangeable for such security), subject to the conditions that: (i) Such purchases are not made for the purpose of creating actual, or apparent, active trading 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

The bidder shall, at the time of filing this Schedule, furnish to the Commission, on Form F–X, a written irrevocable consent and power of attorney which designates an agent upon whom may be served any process, pleadings, subpoenas, or other papers in

(1) Any investigation or administrative proceeding conducted by the Commission; and

(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 purported to be made in connection with the filing on Schedule 14D–1F or any purchases or sales of any security in connection therewith, may be commenced against it in any administrative tribunal or in any appropriate court in any place subject to the jurisdiction of any state or of the United States by service of said subpoena or process upon the registrant's designated agent.

After due inquiry and to the best of my knowledge and belief, I certify that the information set forth in this statement is true, complete and correct.

(Signature) _____

(Name and Title) _____

(Date) _____

16. By adding § 240.14d–103 to read as follows:

§ 240.14d–103 Schedule 14D–9F.

Schedule 14D–9F (Amendment No. _____)

U.S. Securities and Exchange Commission,
Washington, DC 20549

OMB APPROVAL
OMB Number: 3235–040N
Expires: Approval Pending
Estimated average burden hours per response—2.0

Recommendation of the Subject Issuer's Board of Directors, Director or Officer

_____

(Name of Subject Company [Issuer])

_____

(Translation of Issuer's Name into English)

_____

(Jurisdiction of Issuer's Incorporation or Organization)

_____

(Name of Person(s) Filing Statement)

_____

(Title of Class of Securities)

_____

(CUSIP Number of Class of Securities (if applicable))

_____

(Name, address, including zip code, and telephone number, including area code, of person authorized to receive notices and communications on behalf of the person(s) filing statement)

General Instructions

I. Eligibility Requirements for Use of Schedule 14D–9F

A. Schedule 14D–9F is used by any issuer incorporated or organized under the Laws of Canada or any Canadian province or territory (the "subject company"), or by any director or officer of such issuer, where the issuer is the subject of a tender offer for a class of its securities filed on Schedule 14D–1F.

B. Any person(s) using this Schedule must comply with the requirements of any Canadian federal, provincial and/or territorial law, regulation or policy relating to a recommendation by the subject issuer's board of directors, or any director or officer thereof, with respect to the offer.

C. This Schedule shall not be used if the subject company is an investment company as defined in Section 3 of the Investment Company Act of 1940.

II. Filing Instructions

A. Eight copies of this Schedule and any amendment thereto (see Part I, Item 1(b)), including all exhibits and any other paper or document filed as part of the Schedule, shall be filed with the Commission at its principal office. Each copy shall be bound, stapled or otherwise compiled in one or more parts, without stiff covers. The binding shall be made on the side or stitching margin in such manner as to leave the reading matter legible. Three additional copies of the Schedule and any amendment thereto, similarly bound, also shall be filed. No exhibits are required to accompany such additional copies.

B. The original and at least one copy of this Schedule and any amendments thereto shall be signed manually by the persons specified herein. Unsigned copies shall be conformed.

C. Subject to the requirements of Item 1, if any part of this Schedule, or any exhibit or other paper or document filed as part of the schedule, is in a language other than English, it shall be accompanied by a summary, version or translation in the English language.

D. The manually signed original of the Schedule or any amendment thereto shall be numbered sequentially (in addition to any internal numbering which otherwise may be 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 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 tender offer filed on Schedule 14D–1F, and may be filed by any director or officer of such issuer.

B. Any recommendation with respect to a tender offer for a class of securities of the subject company made pursuant to this Schedule is not exempt from the antifraud provisions of section 10(b) of the Exchange Act and Rule 10b–5 thereunder and section 14(e) of the Exchange Act and Rule 14e–3 thereunder, and shall be deemed "filed" with the Commission for purposes of section 18 of the Exchange Act.

PART I—INFORMATION REQUIRED TO BE SENT TO SHAREHOLDERS

Item 1. Home Jurisdiction Documents

(a) This Schedule shall be accompanied by the entire disclosure document or documents required to be delivered to holders of securities to be acquired in the proposed transaction pursuant to the laws, regulations or policies of Canada and/or any of its provinces or territories governing the conduct of the offer. It shall not include any documents incorporated by reference into such disclosure document(s) and not distributed to offerees pursuant to any such law, regulation or policy. If any part of the document or documents to be sent to shareholders is in a language other than English, it shall be accompanied by a translation in English.

(b) Any amendment made to a home jurisdiction document or documents 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 leaded:

"This tender offer is made for the securities of a foreign issuer and while the offer is subject to disclosure requirements of the country in which subject issuer is incorporated or organized, prospective investors should be aware that these requirements are different from those of the United States. Financial statements included herein, if any, have not been prepared in accordance with United States generally accepted accounting principles and thus may not be comparable to financial statements of United States companies.

"The enforcement by investors of civil liabilities under the federal securities laws may be affected adversely by the fact that the issuer is located in a foreign country, and that some or all of its officers and directors are residents of a foreign country."

PART II—INFORMATION NOT REQUIRED TO BE SENT TO SHAREHOLDERS

The exhibits specified below shall be filed as part of the Schedule, but are not required to be sent to shareholders unless so required pursuant to the laws, or 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 any reports or information that, in accordance with the requirements of the home jurisdictions(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 also shall be filed.

PART III—UNDERTAKING AND CONSENT TO SERVICE OF PROCESS

1. Undertaking

The person(s) filing this Schedule undertakes to make available, in person or by telephone, representatives to respond to inquiries made by the Commission staff, and to furnish promptly, when requested to do so by the Commission staff, information relating to this Schedule or to transactions in said securities.

2. Consent to Service of Process

The person(s) so filing shall, at the time of filing this Schedule, furnish to the Commission, on Form F–X, a written irrevocable consent and power of attorney which designates an agent upon whom may be served any process, pleadings, subponeas, or other papers in

(1) any investigation or administrative proceeding conducted by the Commission; and

(2) any civil suit or action brought against such person(s) or to which such person(s) has or have been joined as defendant or respondent, in any appropriate court in any place subject to the jurisdiction of any state or of the United States,

where the investigation, proceeding or cause of action arises out of or relates to or concerns any tender offer made or purported to be made for the securities of the subject issuer, or any 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 peson by his authorized representative (other than an executive officer or general partner of the subject company), evidence of the representative's authority shall be filed with the Schedule.

B. The name and any title of each person who signs the Schedule shall be type or printed beneath his signature.

C. By signing this Schedule, the subject company consents without power of revocation that any administrative subpoena may be served, or any administrative proceeding, civil suit or civil action where the cause of action arises out of or relates to or concerns any offering made or purported to be made in connection with filing on this Schedule 14D–9F or any purchases or sales of any security in connection therewith, may be commenced against it in any administrative or in any appropriate court in any place subject to the jurisdiction of any state or of the United States by service of said subpoena or process upon the registrant's designated agent.

After due inquiry and to the best of my knowledge and belief, I certify that the information set forth in this statement is true, complete and corrct.

(Signature) _____

(Name and Title) _____

(Date) _____

17. By adding paragraph (c) to § 240.14e–2 to read as follows:

§ 240.14e–2 Position of a subject company with respect to a tender offer.

* * * * *

(c) Any issuer, a class of the securities of which is the subject of a tender offer filed with the Commission on Schedule 14D–1F and conducted in reliance upon and in conformity with Rule 14d–1(b) under the Act, and any director or officer of such issuer where so required by the laws, regulations and policies of Canada and/or any of its provinces or territories, in lieu of the statements called for by paragraph (a) of this section and Rule 14d–9 under the Act, shall file with the Commission on Schedule 14D–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.

18. By adding § 240.15d–4 to read as follows:

§ 240.15d–4 Reporting by Form 40–F Registrant.

A registrant that is eligible to use Form 40–F and files reports thereon shall not be subject to the requirements of Regulation 15D (§§ 240.15d–1 though 240.15d–21).

19. By adding paragraph (c) to § 240.15d–5 to read as follows:

§ 240.15d–5 Reporting by successor issuers.

* * * * *

(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).

20. By adding § 240.16a–12 to read as follows:

§ 240.16a–12 Reporting by directors, officers and principal shareholders of canadian foreign private issuers.

In lieu of the provisions of section 16(a) of the Act, the equivalent law of Canada, or the law of any Canadian province or territory, shall govern the U.S. reporting requirements for directors, officers, and principal shareholders of Canadian foreign private issuers. Every person that otherwise would have a reporting obligation pursuant to section 16(a) of the Act as a result of any relationship to a Canadian foreign private issuer shall be deemed to comply with the requirements of section 16(a) if such person files, under cover of Form 3 or 4, the forms that are required to be filed under the applicable law of Canada, or the law of any Canadian province or territory, by that person. Such forms shall be filed with the Commission under the appropriate cover at the time they are required to be filed pursuant to the law of Canada, or the law of any Canadian province or territory.

PART 249—FORMS PRESCRIBED UNDER THE SECURITIES EXCHANGE ACT OF 1934

21. The authority citation for Part 249 continues to read as follows:

Authority: The Securities Exchange Act of 1934, 15 U.S.C. 78a, unless otherwise noted.

22. By adding §§ 249.240f and 249.250 to read as follows:

Note. See appendix 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–9 or F–10 under the Securities Act of 1933.

(b) Form 40–F also may be used to register securities with the Commission pursuant to section 22 (b) or (g) of the Exchange Act, and to file reports with the Commission pursuant to section 13(a) of the Exchange Act and Rule 13a–3 (17 CFR 240.13a–3) thereunder. Registrants eligible to use this form for such purposes shall have been incorporated or organized under the laws of Canada, or any Canadian province or territory, been subject to the periodic reporting requirements of any securities commission or equivalent regulatory authority in Canada for a period of at least 36 calendar months immediately preceding the filing of this form and be currently in compliance with such obligations. The market value of the common stock (including non-voting common stock) of such registrant shall be

(1) (CN) $180 million or more if a report or registration statement filed on this Form relates to debt or preferred stock that is investment grade; or

(2) (CN) $360 million or more in the case of all other reporting requirements. The aggregate market value of such common stock held by non-affiliates shall be (CN) $75 million or more, *provided,* That for the purposes of this Instruction, the term "affiliate" shall mean any person holding 10 percent or more of the common stock (including non-voting common stock) of the registrant.

Instructions

1. A security is "investment grade" if at the time of filing this form, at least one nationally recognized statistical rating organization (as that term is used in Rule 15c3–1(c)(2)(vi)(F) under the Exchange Act (§ 240.15c3–1(c)(2)(vi)(F) of this chapter)) has rated the security in one of its generic rating categories that signifies investment grade; typically, the four highest rating categories (within which there may be subcategories or gradations indicating relative standing) signify investment grade.

2. The market value of the registrant's outstanding voting stock shall be computed by use of the price at which the stock was last sold, or the average of the bid and asked prices of such stock, in the principal market for such stock as of a date within 30 days prior to the date of filing.

(c) A report on this Form shall be filed at the same time the information included herein is filed with the securities commission or equivalent regulatory authority of the jurisdiction of incorporation of the registrant.

(d) Registrants not previously having filed a Form F–X (§ 249.250) in relation to the class of securities registered on this Form or with regard to which this report is filed shall file a Form F–X with the Commission together with their first filing on this form.

(e) Any change to the name or address of a registrant's agent for service shall be communicated promptly in writing to the Commission, referencing the file number of the registrant.

§ 249.250 Form F–X, for appointment of agent for service of process by foreign issuers registering securities on Forms F–7, F–8, F–9 or F–10 (§§ 239.37, 239.38, 239.39 or 239.40 of this chapter), or registering securities or filing periodic reports on Form 40–F (§ 249.240f of this chapter), or by any person filing tender offer documents on Schedule 13E–4F, 14D–1F or 14D–9F (§§ 240.13e–102, 240.14d–102 or 240.14d–103 of this chapter).

Form F–X shall be filed with the Commission:

(a) By any issuer registering securities on Forms F–7, F–8, F–9 or F–10 under the Securities Act of 1933;

(b) By any issuer registering securities or filing periodic reports on Form 40–F under the Securities Exchange Act of 1934 if it has not previously filed a Form F–X in connection with the class of securities registered or in relation to which a report is filed on Form 40–F; and

(c) By any issuer or other person filing tender offer documents on Schedules 13E–4F, 14D–1F or 14D–9F.

23. By revising the introductory text of §§ 249.103 and 249.104; adding new paragraph (c) to General Instruction 1 to Form 3 in § 249.103; and redesignating the existing paragraph under General Instruction 1 as (a) and adding a new paragraph (b) to Form 4 in § 249.104 to read as follows:

§ 249.103 Form 3, initial statement of beneficial ownership of securities.

This form shall be filed pursuant to Rule 16a–1(a) (17 CFR 240.16a–1(a)) (or Rule 16a–12 (17 CFR 240.16a–12)) * * *.

* * * * *

Form 3

General Instructions

1. When Statements Are To Be Filed.

* * * * *

(c) Pursuant to Rule 16a–12, reporting persons of Canadian foreign private issuers may file the equivalent Canadian form under the cover of this Form. Canadian reporting persons should complete Items 1 through 7 of Form 3. Tables I and II of Form 3 may be left blank, replaced by the required Canadian forms, which should be attached to this Form.

§ 249.104 Form 4, statement of changes in beneficial ownership of securities.

This form shall be filed pursuant to Rule 16a–1(a) (17 CFR 240.16a 1(a)) (or Rule 16a–12 (17 CFR 240.16a–12)) * * *.

* * * * *

Form 4

General Instructions

1. When Statements Are To Be Filed.

* * * * *

(b) Pursuant to Rule 16a–12, reporting persons of Canadian foreign private issuers may file the equivalent Canadian form under the cover of this Form. Canadian reporting persons should complete Items 1 through 8 of Form 4. Tables I and II of Form 4 may be left blank, replaced by the required Canadian forms, which should be attached to this Form.

PART 260—GENERAL RULES AND REGULATIONS, TRUST INDENTURE ACT OF 1939

24. The authority citation for Part 260 continues to read as follows:

Authority: Secs. 305, 307, 314, 319, 53 Stat. 1154, 1156, 1167, 1173; 15 U.S.C. 77eee, 77ggg, 77nnn, 77sss, unless otherwise noted.

25. By adding § 260.4d–1 to read as follows:

§ 260.4d–1 Application for exemption from Section 310(a)(1) of the Trust Indenture Act.

An application for an exemption from the requirements of section 310(a)(1) of the Act may be filed pursuant to section 304(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 that the applicant reasonably expects to issue within one year from the date of application; and

(c) Securities that have been or will be issued under an indenture:

(1) That has been qualified under the Act, and

(2) That requires there to be at all times one or more trustees thereunder, at least one of whom is a corporation or other person that is:

(i) Organized and doing business under the laws of Canada or any province thereof (referred to as the institutional trustee), and

(ii) Is authorized under such laws to exercise corporate trust powers, and

(iii) Is subject to supervision or examination by governmental authority.

26. By adding § 260.4d–2 to read as follows:

§ 260.4d–2 Application for appointment of a foreign trustee.

(a) Form T–5 shall be used for applications for exemption pursuant to Rule 4d–1 (§ 260.4d–1 of this chapter), except as provided in paragraph (b) of this section.

(b) Application may be made pursuant to Rule 4d–1 by filing a registration statement under the Securities Act on Form F–7, F–8, F–9 or F–10 (§§ 239.37, 239.38, 239.39 or § 239.40 of this chapter), indicating on the facing page of the registration statement that such application is being made, and responding to the applicable Item of Part II of such form.

27. By adding § 260.4d–3 to read as follows:

§ 260.4d–3 General requirements as to form and content of applications.

Rule 4c–3 (§ 260.4c–3) and Rules 7a–15 through 7a–37 (§§ 260.7a–15 through 7a–37) shall be applicable to applications on Form T–5.

28. By adding § 260.4d–4 to read as follows:

§ 260.4d–4 Notice of application under Rule 4d–1.

If an applicant under Rule 4d–1 (§ 260.4d–1) files an application relating to securities issued or issuable under an indenture under which any other securities are outstanding, the applicant shall at the time of such filing send, by first class mail or other equally prompt means, notice of such application to all holders of record of outstanding securities under such indenture. A copy of such notice also shall be filed with the Commission as part of the application. The notice shall advise holders of the filing of the application and the date of such filing, and shall further advise that any interested person may, by written request filed with the Commission within 20 days of the application date set forth on such notice, request that a hearing be held on such matter. Such request shall also indicate the nature of such person's interest and the reason for such request. A subsequent notice shall be sent to such holders if any hearing on the application is to be held by the Commission. Such subsequent notice shall set forth the time, place and nature of the hearing, the legal authority and jurisdiction under which the hearing is to be held, and the matters of fact and law asserted to.

29. By adding § 260.4d–5 to read as follows:

§ 260.4d–5 Waiver of hearing; Designation of record.

(a) An applicant under § 260.4d–1 may, if it so desires, waive a hearing and request the Commission to decide the application without a formal hearing on the basis of the application and such other information and documents as the Commission shall designate as part of the record. However, a hearing may be called upon order of the Commission notwithstanding that the applicant shall have filed such a waiver and request whenever, in the judgement of the Commission, such a hearing is necessary or appropriate in the public interest.

(b) The applicant shall, at the request of the Commission, furnish such additional information or documents as the Commission may deem necessary to decide the application. The Commission may make a part of the record any pertinent information or documents filed with the Commission by the applicant or by any other person. The Commission shall, in its order deciding the application, designate and describe the information and documents comprising the record on which the decision is based.

30. By adding § 260.4d–6 to read as follows:

§ 260.4d–6 Consent of trustee to service of process.

The applicant shall, at the time of filing an application pursuant to § 260.4d–1, furnish to the Commission in a form prescribed by or acceptable to it, a written irrevocable consent of the trustee and power of attorney, which designates an agent upon whom may be served any process, pleadings, or other papers in any civil suit or action brought against the trustee or to which the trustee has been joined as defendant or respondent, in any appropriate court in any place subject to the jurisdiction of any state or of the United States, where

the cause of action arises out of any offering made or purported to be made in connection with the securities that are the subject of the application pursuant to § 260.4d–1, or any purchase or 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

31. By adding § 269.8 to read as follows:

§ 269.8 Form T–5, application for exemption pursuant to Rule 4d–1.

Form T–5 shall be used for applications for exemption filed pursuant to Rule 4d–1 under the Trust Indenture Act of 1939 (the "Act") (17 CFR 260.4d–1), except those filed pursuant to subparagraph (b) of Rule 4d–2 (17 CFR 260.4d–2).

By the Commission.

Dated: July 24, 1989.

Jonathan G. Katz,

Secretary.

Appendix A—Proposed Forms Under the Securities Act of 1933 and the Securities Exchange Act of 1934, and Amendments to Forms Under the Securities Exchange Act of 1934

Form F–7
Form F–8
Form F–9
Form F–10
Form 40–F
Form F–X
Form T–5

Form F–7

U.S. Securities and Exchange Commission, Washington, DC 20549
OMB Approval
OMB Number: 3235–040G
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)

(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)

This registration statement and any post-effective amendment thereto shall be deemed effective at the time the securities covered hereby legally may be sold in the principal jurisdiction in accordance with Rule 467.

Check if appropriate:

[ ] This filing constitutes an application for exemption under section 304(d) of the Trust Indenture Act of 1939 from section 310 of that Act.

[ ] There are existing security holders under the indenture to which such application relates.

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 II.D for rules as to calculation of the registration fee.

If, as a result of stock splits, stock dividends or similar transactions, the number of securities purported to be registered on this registration statement changes, the provisions of Rule 416 shall apply to this transaction.

The Registrant hereby amends this Registration Statement on such date or dates as may be necessary to delay its effective date until the Registrant shall file a further amendment which specifically states that this Registration Statement shall thereafter become effective in accordance with section 8(a) of the Securities Act of 1933 or until the Registration Statement shall become effective on such date as the Commission, acting pursuant to said section 8(a), may determine.

General Instructions

I. Eligibility Requirements for Use of Form F–7

A. Form F–7 may be used for the registration under the Securities Act of 1933 (the "Securities Act") of securities offered for cash upon the exercise of rights granted to existing security holders of the registrant.

B. Form F–7 is available to any registrant incorporated or organized under the Laws of Canada, or any Canadian province or territory, that, for the 36 calendar months immediately preceding the filing of a registration statement on this Form, has had any class of securities listed on the Montreal Exchange or The Toronto Stock Exchange and that currently is in compliance with the obligations arising from such listing. The rights granted to security holders that are resident in the United States shall be granted upon the same terms and conditions as those granted to such holders resident in the registrant's jurisdiction of incorporation or organization, *provided*, That the securities offered upon exercise of such rights may not be registered on this Form if such rights are transferable to U.S. residents and *further provided*, That the exercise period for the rights granted to security holders shall be 90 days or less.

C. Less than 20 percent of the class of securities with respect to which the rights are granted shall be held of record by U.S. residents. For purposes of this instruction, "held of record" shall be construed in accordance with Rule 12g5–1 under the Securities Exchange Act of 1934 (the "Exchange Act").

Instruction. For purposes of this Form, the term "U.S. resident," as applied to security holders, shall mean any person whose address appears on the records of the issuer of the security or its share transfer agent as being located in the United States. The calculation of record holders shall be as of the end of the issuer's last quarter or if such quarter ended within 60 days prior to the date of filing, then as of at end of the preceding quarter.

D. Any transaction in which securities registered on this Form are offered shall not increase the registrant's issued and outstanding capital by more than 25 percent.

E. This Form shall not be used if the registrant is an investment company, as defined in section 3 of the Investment Company Act of 1940.

F. A registration statement on this Form should be filed with the Commission simultaneously with the filing of the home jurisdiction document(s) accompanying such Form with the jurisdiction identified on the cover of the Form as the principal jurisdiction regulating the offering ("principal jurisdiction"). Pre-effective amendments to this Form should be filed simultaneously with the filing of additional or changed documents in the principal jurisdiction. In accordance with Rule 467, this registration statement shall be deemed effective for purposes of the Securities Act on the date on which the securities covered herein legally may be sold in the principal jurisdiction.

Any amendment to such home jurisdiction document(s) after the effective date of this

registration statement shall be filed with the Commission as a post-effective amendment to this Form simultaneously with the filing of such document(s) with the principal jurisdiction. Such post-effective amendment shall be deemed effective for purposes of the Securities Act at such time as the amendment to the home jurisdiction document(s) legally may be used under the applicable law of such jurisdiction, in accordance with Rule 467.

Any amendment to a registration statement on this Form shall be filed under cover of an appropriate facing sheet, shall be numbered consecutively in the order in which filed, and shall indicate on the facing sheet the applicable registration form on which the amendment is prepared and the file number of the registration statement.

If, however, an amendment to the home jurisdiction document(s) is filed after effectiveness of the registration statement that increases the number of securities that may be sold thereunder, in lieu of filing a post-effective amendment hereto, a new registration statement shall be filed on this Form. As provided in Rule 429, the prospectus included in the new registration statement shall be deemed to include a prospectus covering unsold securities registered previously. If this is the case, the following legend shall appear at the bottom of the facing page of the registration statement: "This combined prospectus relates to registration statement[s] 33-[insert file numbers of previous registration statements]."

II. Application of General Rules and Regulations

A. The only Securities Act rules and regulations that apply to filings on this Form are those rules and regulations specifically referred to in the Form and Rule 408, 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.

B. Three copies of the complete registration statement and any post-effective amendments thereto, including exhibits and all other papers and documents filed as a part of the registration statement or post-effective amendment 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 stiching margin in such manner as to leave the reading matter legible. Three additional copies of the registration statement and any post-effective amendments thereto, similarly bound, also shall be filed. No other exhibits are required to accompany such additional copies.

C. At least one copy of every registration statement and any post-effective amendment thereto shall be signed manually by the persons specified herein. Unsigned copies shall be conformed.

D. At the time of filing this registration statement, the applicant shall pay to the Commission, by United States postal money order, certified check, bank cashier's check or bank money order, a fee of one-fiftieth of one per centum of the maximum aggregate price at which the securities registered on this form are proposed to be offered in the United States, but in no case shall such fee be less than $100.

The registration fee is to be calculated at the price at which the rights may be exercised if known at the time of filing the registration statement, or, if not known, at the market value of securities of the same class included in the registration statement. If the fee is to be calculated upon the basis of the price at which the rights may be exercised and they are exercisable over a period of time at progressively higher prices, the fee shall be calculated on the basis of the highest price at which they may be exercised.

Instruction. The market value of the registrant's outstanding common stock shall be the average of the bid and asked price of such stock, in the principal market for such stock as of a date within 30 days prior to the date of filing.

E. Subject to the requirements of Item 1 of Part I, if any part of the registration statement or post-effective amendment thereto, or any exhibit or other paper or document filed as part of the registration statement or a post-effective amendment, is in a foreign language, it shall be accompanied by a summary, version or translation in the English language.

F. The manually signed original of the registration statement or any post-effective amendment thereto shall be numbered sequentially (in addition to any internal numbering which otherwise may be present) by handwritten, typed, printed or other legible form of notation from the first page of the document through the last page of that document and any exhibits or attachments thereto. Further, the total number of pages contained in a numbered original shall be set forth on the 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 Exchange Act, Trust Indenture Act and Auditor Independence and Reporting Requirements

A. Pursuant to Rule 15d-4 under the exchange Act, reporting obligations under section 15(d) of the Exchange Act arising solely from an offering of securities registered on this Form may be met by filing with the Commission, under cover of Form 40-F, documents that are filed with the securities commission or equivalent regulatory authority of the registrant's jurisdiction of incorporation. Registrants' attention is directed, however, towards other provisions of the Exchange Act that may be applicable, and specifically to the provisions of sections 12(b) and 12(g) of the Exchange Act and Rules 10b-6, 10b-7 and 10b-8 under the Exchange Act.

B. Pursuant to Rule 4d-2(b) under the Trust Indenture Act of 1939 (the "Trust Indenture Act"), a registrant registering debt securities on this Form may apply for exemption from the U.S. trustee provisions of section 310(a) of that Act by so indicating on the facing page of this Form and including the information specified by Item (6) of Part II thereof. Pursuant to Rule 4d-5 under the Trust Indenture Act, the application will be deemed to be granted unless, within seven days after such filing, the Commission orders a hearing thereon. Registrants' attention is directed to other provisions of the Trust Indenture Act that may be applicable.

C. The Commission's rules on auditor independence as codified in Section 600 of the Codification of Financial Reporting Policies apply to all financial statements that are included in this registration statement.

D. Independent accountants reporting on financial statements included in the registration statement should consider Canadian auditing guidelines pertaining to the Canada-U.S. reporting conflict with respect to contingencies and going concern considerations. If additional comments for U.S. readers are appropriate under those guidelines but are not included in the prospectus itself, those comments should be included with the legends required by Item 2 of Part I herein. In addition, the accountant's consent specifically should refer to any additional comments provided for U.S. readers.

Part I—Information Required to be Sent to Shareholders

Item 1. Home Jurisdiction Document

The prospectus shall consist of the entire disclosure document or documents required to be delivered to holders of the securities with respect to which rights are distributed pursuant to the laws of the jurisdiction in which the registrant is incorporated or organized or, where applicable, pursuant to the rules of any stock exchange upon which the issuer has any class of securities listed or has applied for such listing. It need not include any documents incorporated by reference into such disclosure documents and not distributed to security holders pursuant to the laws of such jurisdiction. If any part of the document or documents to be sent to shareholders is in a foreign language, it shall be accompanied by a translation in English.

Item 2. Informational Legends

The following legends, to the extent applicable, shall appear on the outside front cover page of the prospectus in bold-face roman type at least as high as ten-point modern type and at least two points leaded:

"This offering is made by a foreign issuer, and while the issuer is subject to disclosure requirements in its own country, prospective investors should be aware that these requirements are different from those of the United States. Financial statements included herein, if any, have not been prepared in accordance with United States generally accepted accounting principles and thus may not be comparable to financial statements of United States companies.

"Prospective investors should be aware that the acquisition of the securities described herein may have tax consequences both in the United States and in the country of the registrant. Such consequences for investors who are resident in, or citizens of, the United States may not be described fully herein.

"The enforcement by investors of civil liabilities under the federal securities laws may be affected adversely by the fact that the registrant is located in a foreign country, that some or all of its officers and directors are residents of a foreign country, that some or all of the underwriters or experts named in the registration statement are residents of a foreign country and that all or a substantial portion of the assets of the registrant and said persons are located outside the United States."

Item 3. List of Documents Filed with Commission

There shall be attached to the prospectus a list of all documents filed with the Commission as part of the registration statement.

Part II—Information Not Required to be Sent to Shareholders

The exhibits specified below shall be field as part of the registration statement. Exhibits shall be appropriately lettered or numbered for convenient reference.

(1) File any reports or information that in accordance with the requirements of the jurisdiction of the registrant must be made publicly available in connection with the transaction.

(2) File copies of any documents incorporated by reference into, or filed with any other regulatory authority concurrently with, the prospectus.

(3) If any accountant, engineer or appraiser, or any person whose profession gives authority to a statement made by him, is named as having prepared or certified any part of the offering document, or is named as having prepared or certified a report or valuation for use in connection with the offering document, the written consent of such person shall be filed.

If any such person is named as having prepared or certified any other report or valuation (other than a public official document or statement) which is used in connection with the registration statement, but is not named as having prepared or certified such report or valuation for use in connection with the registration statement, the written consent of such person also shall be filed unless the Commission dispenses with such filing as impracticable or as involving undue hardship in accordance with Rule 437.

Any other consent required by Rules 436 or 438 also shall be filed. Every amendment relating to a certified financial statement shall include the consent of the certifying accountant to the use of his certificate in connection with the amended financial statements in the registration statement or prospectus and to being named as having certified such financial statements.

Note: The consents required by this item shall specifically indicate consent regarding use of the report or valuation in the registration statement filed in the United States.

(4) If any name is signed to the registration statement or report pursuant to a power of attorney, manually signed copies of such power of attorney shall be filed. If the name of any officer signing on behalf of the registrant is signed pursuant to a power of attorney, certified copies of a resolution of the registrant's board of directors authorizing such signature also shall be filled.

(5) File a copy of any indenture relating to the registered securities. If such indenture is to be qualified under the Trust Indenture Act, it should include or be accompanied by (1) a cross-reference sheet to the location in the indenture of information included pursuant to sections 310–318(a) of the Trust Indenture Act and (2) a table of contents. If any such indenture is to be qualified under the Trust Indenture Act, also file the statement of eligibility of the trustee on Form T–1 and, if applicable, for individual trustee(s) on Form T–2.

(6) If debt securities are to be registered and an exemption from the U.S. trustee provisions of section 310(a) of the Trust Indenture Act is sought pursuant to General Instruction III.B. or has been sought with respect to the securities to be registered, the registrant shall file as an exhibit the information specified in Items 4, 5, 6, 7, 8, 9 (if applicable), and 10 of Form T–5, or shall file as an exhibit copies or incorporate by reference any Form T–5 filed with the Commission not more than one year prior to the date of this filing.

Part III—Undertakings and Consent to Service of Process

1. Undertakings

Registrant undertakes to make available, in person or by telephone, representatives to respond to inquiries made by the Commission staff, and to furnish promptly, when requested to do so by the Commission staff, information relating to the securities registered pursuant to Form F–7 or to transactions in said securities.

2. Consent to Service of Process

The registrant shall, at the time of filing Form F–7, furnish to the Commission, on Form F–X, a written irrevocable consent and power of attorney which designates an agent upon whom may be served any process, pleadings, subpoenas, or other papers in

(1) Any investigation or administrative proceeding conducted by the Commission; and

(2) Any civil suit or action brought against the registrant or to which the registrant has been joined as defendant or respondent, in any appropriate court in any place subject to the jurisdiction of any state or of the United States,

where the investigation, proceeding or cause of action arises out of or relates to or concerns any offering made or purported to be made in connection with the securities registered pursuant to Form F–7 or any purchases or sales of any security in connection therewith, and stipulates and agrees that any such civil suit or action or administrative proceeding may be commenced by the service of process upon, and that service of an administrative subpoena shall be effected by service upon, said agent for service of process, and that the service as aforesaid shall be taken and held in all courts and administrative tribunals to be as valid and binding as if due personal service thereof had been made.

Signatures

Pursuant to the requirements of the Securities Act, the registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form F–7 and has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of _____, State (Province or Territory) of _____, on _____, 19____.

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 comptroller or principal accounting officer, at least a majority of the board of directors or persons performing similar functions and its authorized representative in the United States. Where the registrant is a limited partnership, the registration statement shall be signed by a majority of the board of directors of any corporate general partner signing the registration statement.

B. The name of each person who signs the registration statement shall be typed or printed beneath his signature. Any person who occupies more than one of the specified positions shall indicate 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 by service of said subpoena or process upon the registrant's designated agent.

Form F–8—Registration Statement Under the Securities Act of 1933

U.S. Securities and Exchange Commission,
Washington, DC 20549
OMB Approval
OMB Number: 3235–040H
Expires: Approval Pending
Estimated average burden hours per response: 2.0

_____

(Exact name of Registrant as specified in its charter)

_____

(Translation of Registrant's name into English)

_____

(Province or other jurisdiction of incorporation or organization)

(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)

This registration statement and any post-effective amendment thereto shall be deemed effective at the time the securities covered hereby legally may be sold in the principal jurisdiction in accordance with Rule 467.

Check if appropriate:

[ ] This filing constitutes an application for exemption under section 304(d) of the Trust Indenture Act of 1939 from section 310 of that Act.

[ ] There are existing security holders under the indenture to which such application relates.

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 II.D for rules as to calculation of the registration fee.

If, as a result of stock splits, stock dividends or similar transactions, the number of securities purported to be registered on this registration statement changes, the provisions of Rule 416 shall apply to this transaction.

The Registrant hereby amends this Registration Statement on such date or dates as may be necessary to delay its effective date until the Registrant shall file a further amendment which specifically states that this Registration Statement shall thereafter become effective in accordance with section 8(a) of the Securities Act of 1933 or until the Registration Statement shall become effective on such date as the Commission, acting pursuant to said section 8(a), may determine.

General Instructions

I. Eligibility Requirements for Use 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. Securities may be registered on this Form whether they constitute the sole consideration for such exchange offer, or are offered in conjunction with cash.

B. Form F–8 is available to any registrant incorporated or organized under the laws of Canada, or any Canadian province or territory, that, for the 36 calendar months immediately preceding the filing of the registration statement on this Form, has had any class of securities listed on the Montreal Exchange or The Toronto Stock Exchange and that currently is in compliance with the obligations arising from such listing, if the aggregate market value of the common stock (including non-voting common stock) of such registrant held by non-affiliates is [CN] $75 million or more, *provided,* That for the purposes of this instruction, the term "affiliate" shall mean any person holding 10 percent or more of the common stock (including non-voting common stock) of the registrant.

Instruction. 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 as of a date within 30 days prior to the date of filing.

C. The issuer of the securities to be exchanged (the "subject securities") for securities of the registrant shall be incorporated or organized under the laws of Canada or any Canadian province or territory, and less than 20 percent of class of subject securities shall be held or record by U.S. residents. For purposes of this instruction, "held of record" shall be construed in accordance with Rule 12g5–1 under the Securities Exchange Act of 1934 (the "Exchange Act").

Instruction. For the purpose of this Form, the term "U.S. resident," as applied to security holders, shall mean any persons whose address appears on the records of the subject issuer or its share transfer agent as being located in the United States. The calculation of record holders shall be as of the end of the issuer's last quarter or if such quarter ended within 60 days prior to the date of filing, then as of the preceding quarter.

D. The securities to be registered on Form F–8 shall be offered to U.S. residents upon the same terms and conditions as they are required to be offered to residents of Canada.

E. This Form shall not be used if the registrant is an investment company, as defined in section 3 of the investment Company Act of 1940.

F. A registration statement on this Form should be filed with the Commission simultaneously with the filing of the home jurisdiction document(s) accompanying such Form with the jurisdiction identified on the cover of the Form as the principal jurisdiction regulating the offering ("principal jurisdiction"). Preeffective amendments to this Form should be filed simultaneously with the filing of additional or changed documents in the principal jurisdiction. In accordance with Rule 467, this registration statement shall be deemed effective for purposes of the Securities Act on the date on which the securities covered herein legally may be sold in the principal jurisdiction.

Any amendment to such home jurisdiction document(s) after the effective date of this registration statement shall be filed with the Commission as a post-effective amendment to this Form simultaneously with the filing of such document(s) with the principal jurisdiction. Such post-effective amendment shall be deemed effective for purposes of the Securities Act at such time as the amendment to the home jurisdiction document(s) legally may be used under the applicable law of such jurisdiction, in accordance with Rule 467.

Any amendment to a registration statement on this Form shall be filed under cover of an appropriate facing sheet, shall be numbered consecutively in the order in which filed, and shall indicate on the facing sheet the applicable registration form on which the amendment is prepared and the file number of the registration statement.

If, however, an amendment to the home jurisdication document(s) is filed after effectiveness of the registration statement that increases the number of securities that may be sold thereunder, in lieu of filing a post-effective amendment hereto, a new registration statement shall be filed on this Form. As provided in Rule 429, the prospectus included in the new registration statement shall be deemed to include a prospectus covering unsold securities registered previously. If this is the case, the following legend shall appear at the bottom of the facing page of the registration statement: "This combined prospectus relates to registration statement[s] 33-[insert file numbers of previous registration statements]."

II. Application of General Rules and Regulations

A. The only Securities Act rules and regulations that apply to filings on this Form are those rules and regulations specifically referred to in the Form and Rule 408, which provides that in addition to the information expressly required to be included in the registration statement, there shall be added such further material information, if any, as may be necessary to make the required statements, in light of the circumstances under which they are made, not misleading. A registration statement or amendment thereto shall be deemed to be filed on the proper form unless objection to the form is made by the Commission prior to the effective date.

B. Three copies of the complete registration statement and any post-effective amendments thereto, including exhibits and all other papers and documents filed as a part of the registration statement or post-effective amendment, shall be filed with the Commission at its principal office. Each copy

shall be bound, stapled or otherwise compiled in one or more parts, without stiff covers. The binding shall be made on the side or stitching margin in such manner as to leave the reading matter legible. Three additional copies of the registration statement and any post-effective amendments thereto, similarly bound, shall also be filed. No exhibits are required to accompany such additional copies.

C. At least one copy of every registration statement and any post-effective amendment thereto shall be signed manually by the persons specified herein. Unsigned copies shall be conformed.

D. At the time of filing this registration statement, the applicant shall pay to the Commission, by a United States postal money order, certified check, bank cashier's check or bank money order, a fee of one fiftieth of one per centurm of the maximum aggregate price at which the securities are proposed to be offered in the United States, but in no case shall such fee be less than $100.

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 latest practicable date prior to the date of filing the registration statement shall be used unless the issuer of such securities is in bankruptcy of receivership or has an accumulated capital deficit, in which case one-third of the principal amount, par value or stated value of such securities shall be used.

(3) If any cash may be received by the registrant 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.

E. Subject to the requirements of Item 1 of Part I, if any part of the registration statement or a post-effective amendment thereto, or any exhibit or other paper or document filed as part of the registration statement or post-effective amendment, is in a foreign language, it shall be accompanied by a summary, version or translation in the English language.

F. The manually signed original of the registration statement or any post-effective amendment thereto shall be numbered sequentially (in addition to any internal numbering which otherwise may be present) by handwritten, typed, printed or other legible form of notation from the first page of the document through the last page of that document and any exhibits or attachements 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 Exchange Act, Trust, Indenture Act and Auditor Independence and Reporting Requirements

A. Pursuant to Rule 3a12–3(c) under the Exchange Act, if the issuer registering securities on Form F–8 is required to obtain the vote of its security holders to approve an action which must be taken to enable the issuer to make the exchange offer (such as approving an increase in authorized securities), the U.S. proxy regulations will not apply to such solicitations.

B. Pursuant to Rule 13e–4(h) under the Exchange Act, the provisions of Rule 13e–4 are not applicable, and pursuant to Rule 14d–1(b) under the Exchange Act, the provisions of Sections 14(d)(1) through 14(d)(7) of the Exchange Act, Regulation 14D under the Exchange Act and Schedule 14D–1 thereunder, and Rule 14e–1 under Regulation 14E, are not applicable to a transaction involving offerings of securities that may be registered on this Form; *Provided*, that if no substantive requirements of any Canadian federal, provincial and/or territorial law, regulation or policy relating to the terms and conditions of the offering apply, or if an exemption from such requirements is applicable, the registrant shall comply with such provisions of the Exchange Act. Such transaction is not exempt from the antifraud provisions of sections 10(b), 13e–4(b)(1) or 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.

C. Pursuant to Rule 15d–4 under the Exchange Act, reporting obligations under section 15(d) of the Exchange Act arising solely from an offering of securities registered on this Form may be met by filing with the Commission, under cover of Form 40–F, documents that are filed with the securities commission or equivalent regulatory authority in the registrant's jurisdiction of incoporation. 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.]

D. 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 thereof. Pursuant to Rule 4d–5 under the Trust Indenture Act, the application will be deemed to be granted unless, within seven days after such filing, the Commission orders a hearing thereon. Registrants' attention is directed to other provisions of the Trust Indenture Act that may be applicable.

E. The Commission's rules on auditor independence as codified in section 600 of the Codification of Financial Reporting Policies apply to all financial statements which are included in this registration statement.

F. Independent accountants reporting on financial statements included in the registration statement should consider Canadian auditing guidelines pertaining to the Canada-U.S. reporting conflict with respect to contingencies and going concern considerations. If additional comments for U.S. readers are appropriate under those guidelines but are not included in the prospectus itself, those comments should be included with the legends required by Item 2 of Part I herein. In addition, the accountant's consent specifically should refer to any additional comments provided for U.S. readers.

Part I—Information Required to be Sent to Shareholders

Item 1. Home Jurisdiction Document

The prospectus shall consist of the entire disclosure document or documents required to be delivered to holders of securities to be acquired in the proposed transaction by the registrant pursuant to the laws of the jurisdiction in which the registrant is incorporated or organized and/or, where applicable, pursuant to the rules of any stock exchange upon which the registrant has any class of securities listed, or has applied for such listing. It need not include any documents incorporated by reference into such disclosure document and not distributed to offerees pursuant to the laws of such jurisdiction. If any part of the document or documents to be sent to shareholders is in a foreign language, it shall be accompanied by a translation in English.

Item 2. Informational Legends

The following legends, to the extent applicable, shall appear on the outside front cover page of the prospectus in bold-face roman type at least as high as ten-point modern type and at least two points leaded:

"This offering is made by a foreign issuer, and while the issuer is subject to disclosure requirements in its own country, prospective investors should be aware that these requirements are different from those of the United States. The financial statements have not been prepared in accordance with United States generally accepted accounting principles and, thus, may not be comparable to financial statements of United States companies.

"Prospective investors should be aware that the acquisition of the securities described herein may have tax consequences both in the United States and in the country of the registrant. Such consequences for investors who are resident in, or citizens of,

the United States may not be described fully herein.

"The enforcement by investors of civil liabilities under the federal securities laws may be affected adversely by the fact that the registrant is located in a foreign country, that some or all of its officers and directors are residents of a foreign country, that some or all of the underwriters or experts named in the registration statement are residents of a foreign country and that all or a substantial portion of the assets of the registrant and said persons are located outside the United States.

"Prospective investors should be aware that, during the period of the exchange offer, the registrant or its affiliates, directly or indirectly, may bid for or make purchases of the securities to be distributed, certain related securities of the registrant, the securities to be exchanged or certain related securities of the issuer, as permitted by applicable Canadian laws or provincial laws or regulations."

Item 3. List of Documents Filed with Commission

There shall be attached to the prospectus a list of all documents filed with the Commission as part of the registration statement.

Part II—Information not Required to be Sent to Shareholders

The exhibits specified below shall be filed as part of the registration statement. Exhibits shall be appropriately lettered or numbered for convenient reference.

(1) File any reports or information that, in accordance with the requirements of the jurisdiction of the subject issuer, must be made publicly available by the registrant in connection with the transaction.

(2) File a copy of the acquisition agreement.

(3) File copies of any documents incorporated by reference into, or filed with any other regulatory authority concurrently with, the prospectus.

(4) If any accountant, engineer or appraiser, or any person whose profession gives authority to a statement made by him, is named as having prepared or certified any part of the offering document, or is named as having prepared or certified a report or valuation for use in connection with the offering document, the written consent of such person shall be filed.

If any such person is named as having prepared or certified any other report or valuation (other than a public official document or statement) which is used in connection with the registration statement, but is not named as having prepared or certified such report or valuation for use in connection with the registration statement, the written consent of such person also shall be filed unless the Commission dispenses with such filing as impracticable or as involving undue hardship in accordance with Rule 437.

Any other consent required by Rules 436 or 438 also shall be filed. Every amendment relating to a certified financial statement shall include the consent of the certifying accountant to the use of his certificate in connection with the amended financial statements in the registration statement or prospectus and to being named as having certified such financial statements.

Note: The consents required by this item shall specifically indicate consent regarding use of the report or valuation in the registration statement filed in the United States.

(5) If any name is signed to the registration statement or report pursuant to power of attorney, manually signed copies of such power of attorney shall be filed. If the name of any officer signing on behalf of the registrant is signed pursuant to a power of attorney, certified copies of a resolution of the registrant's board of directors authorizing such signature shall also be filed.

(6) File a copy of any indenture relating to the registered securities. If such indenture is to be qualified under the Trust Indenture Act, it should include or be accompanied by (1) a cross-reference sheet to the location in the indenture of sections 310–318(a) of the Trust Indenture Act and (2) a table of contents. If any such indenture is to be qualified under the Trust Indenture Act, also file the statement of eligibility of the trustee on Form T–1 and, if applicable, for individual trustee(s) on Form T–5.

(7) If debt securities are to be registered and an exemption from the U.S. trustee provisions of section 310(a) of the Trust Indenture Act is sought pursuant to General Instruction III.C. or has been sought with respect to the securities to be registered, the registrant shall file as an exhibit the information specified in Items 4, 5, 6, 7, 8, 9 (if applicable), and 10 of Form T–5, or shall file as an exhibit or incorporate by reference any Form T–5 filed with the Commission not more than one year prior to the date of this filing.

Part III—Undertaking and Consent to Service of Process

1. Undertakings

a. Registrant undertakes to make available, in person or by telephone, representatives to respond to inquiries made by the Commission 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. Registrant further undertakes to disclose in the United States, on the same basis as it is required to make such disclosure pursuant to any applicable Canadian federal and/or provincial or territorial law, regulation or policy, information regarding purchase of the registrant's securities or of the issuer's securities during the exchange offer.

Note: No-action positions taken under Rules 10b–6 and 10b–13:

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 the registrant to make certain purchases of securities in Canada, as permitted by Canadian federal, provincial or territorial laws, regulations or policies, during the period of an exchange offer registered on Form F–8.

With respect to an exchange offer registered on Form F–8, the staff will not recommend that the Commission take enforcement action under Rules 10b–6 and 10b–13 for bids and purchases by the registrant in Canada, as permitted by Canadian federal, 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–8 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

The registrant shall, at the time of filing Form F–8, furnish to the Commission, on Form F–X, a written irrevocable consent and power of attorney which designates an agent upon whom may be served any process, pleadings, subpoenas, or other papers in

(1) Any investigation or administrative proceeding conducted by the Commission; and

(2) Any civil suit or action brought against the registrant or to which the registrant has been joined as defendant or respondent, in any appropriate court in any place subject to the jurisdiction of any state or of the United States,

where the investigation, proceeding or cause of action arises out of or relates to or concerns any offering made or purported to be made in connection with the securities registered pursuant to Form F–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.

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 _____, 19____.

Registrant _____

By (Signature and Title) _____

Pursuant to the requirements of the Securities Act, this registration statement has been signed by the following persons in the capacities and on the dates indicated.

(Signature) _____

(Name and Title) _____

(Date)

Instructions

A. The registration statement shall be signed by the registrant, its principal executive officer or officers, its principal financial officer, its controller, or principal accounting officer, at least a majority of the board of directors or persons performing similar functions and its authorized representative in the United States. Where the registrant is a limited partnership, the registration statement shall be signed by a majority of the board of directors of any corporate general partner signing the registration statement.

B. The name of each person who signs the registration statement shall be typed or printed beneath his signature. Any person who occupies more than one of the specified positions shall indicate each capacity in which the registration statement is signed.

C. 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 by service of said subpoena or process upon the registrant's designated agent.

Form F-9—Registration Statement Under the Securities Act of 1933

U.S. Securities and Exchange Commission,
Washington, DC 20549
OMB Approval
OMB Number: #3235-040I
Expires: Approval Pending
Estimated average burden hours per response—2.0

(Exact name of Registrant as specified in its charter)

(Translation of Registrant's name into English)

(Province or other jurisdiction of incorporation or organization)

(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)

It is proposed that this filing will become effective (check appropriate box)

[ ] pursuant to Rule 467(a) on the date on which the securities legally may be offered and sold in the registrant's principal jurisdiction

[ ] pursuant to Rule 467(b) on (date) at (time) (but 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 security holders under the Indenture to which such application relates.

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 II.D for rules as to calculation of the registration fee.

If, as a result of stock splits, stock dividends or similar transactions, the number of securities purported to be registered on this registration statement changes, the provisions of Rule 416 shall apply to this transaction.

The Registrant hereby amends this Registration Statement on such date or dates as may be necessary to delay its effective date until the Registrant shall file a further amendment which specifically states that this Registration Statement shall thereafter become effective in accordance with section 8(a) of the Securities Act of 1933 or until the Registration Statement shall become effective on such date as the Commission, acting pursuant to said section 8(a), may determine.

General Instructions

I. Eligibility Requirements for Use of Form F-9

A. This Form F-9 may be used for the registration under the Securities Act of 1933 (the "Securities Act") of investment grade non-convertible debt or preferred securities.

Instructions

1. Securities shall be "investment grade" if, at the time of effectiveness of the registration statement, at least one nationally recognized statistical rating organization (as that term is used in relation to Rule 15c3-1(c)(2)(vi)(F) under the Securities Exchange Act of 1934 (the "Exchange Act") (§ 240.15c3-1(c)(2)(vi)(F) of this chapter) has rated the security in one of its generic rating categories that signifies investment grade; typically, the four highest rating categories (within which there may be subcategories or gradations indicating relative standing) signify investment grade.

2. Securities shall be "non-convertible" if they may not be converted for a period of at least one year from the date of effectiveness of the registration statement.

B. Form F-9 is available to any registrant incorporated or organized under the laws of Canada, or any Canadian province or territory, that has been subject to the periodic reporting requirements of any securities commission or equivalent regulatory authority in Canada for a period of at least 36 calendar months immediately preceding the filing of the registration statement on this Form, and that is currently in compliance with such obligations, if (1) the aggregate market value of the common stock (including non-voting common stock) of such registrant was, as of the end of the registrant's previous fiscal year, (CN) $180 million or more; and (2) the aggregate market value of such common stock held by non-affiliates is (CN) $75 million or more, *provided*, That for the purposes of this Instruction, the term "affiliate" shall mean any person holding 10 percent or more of the common stock (including non-voting common stock) of the registrant.

Instruction. The market value of the registrant's outstanding voting stock shall be computed by use of the price at which the stock was last sold, or the average of the bid and asked prices of such stock, in the principal market for such stock as of a date within 30 days prior to the date of filing.

C. This Form shall not be used if the registrant is an investment company, as defined in Section 3 of the Investment Company Act of 1940.

D. A registration statement on this Form should be filed with the Commission simultaneously with the filing of the home jurisdiction document(s) accompanying such Form with the jurisdiction identified on the cover of the Form as the principal jurisdiction regulating the offering ("principal jurisdiction"). Pre-effective amendments to this Form should be filed simultaneously with the filing of additional or changed documents in the principal jurisdiction. In accordance

with Rule 467, this registration statement shall be deemed effective for purposes of the Securities Act on the date on which the securities covered herein legally may be sold in the principal jurisdiction.

Any amendment to such home jurisdiction document(s) after the effective date of this registration statement shall be filed with the Commission as a post-effective amendment to this Form simultaneously with the filing of such document(s) with the principal jurisdiction. *See infra* Part III.1.b. Such post-effective amendment shall be deemed effective for purposes of the Securities Act at such time as the amendment to the home jurisdiction document(s) legally may be used under the applicable law of such jurisdiction, in accordance with Rule 467.

Any amendment to a registration statement on this Form shall be filed under cover of an appropriate facing sheet, shall be numbered consecutively in the order in which filed, and shall indicate on the facing sheet the applicable 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 effectivenss of the registration statement that increases the number of securities that may be sold thereunder, in lieu of filing a post-effective amendment hereto, a new registration statement shall be filed on this Form. As provided in Rule 429, the prospectus included in the new registration statement shall be deemed to include a prospectus covering unsold securities registered previously. If this is the case, the following legend shall appear at the bottom of the facing page of the registration statement: "This combined prospectus relates to registration statement[s] 33-[insert file numbers of previous registration statements]."

If the registration statement or any post-effective amendment thereto relates to an offering that is not a contemporaneous offering, it shall become effective in accordance with Rule 467(b).

II. Application of General Rules and Regulations

A. The only Securities Act rules and regulations that apply to filings on this Form are those rules and regulations specifically referred to in the Form and Rule 408, which provides that in addition to the information expressly required to be included in the registration statement, there shall be added such further material information, if any, as may be necessary to make the required statements, in light of the circumstances under which they are made, not misleading. A registration statement or amendment thereto shall be deemed to be filed on the proper form unless objection to the form is made by the Commission prior to the effective date.

B. Three copies of the complete registration statement and any amendments thereto, including exhibits and all other papers and documents filed as a part of the registration statement or post-effective amendment, shall be filed with the Commission at its principal office. Each copy shall be bound, stapled or otherwise compiled in one or more parts, without stiff covers. The binding shall be made on the side or stitching margin in such manner as to leave the reading matter legible. Three additional copies of the registration statement and any post-effective amendments thereto, similarly bound, also shall be filed. No other exhibits are required to accompany such additional copies.

C. At least one copy of every registration statement and any post-effective amendment thereto shall be signed manually by the persons specified herein. Unsigned copies shall be conformed.

D. At the time of filing this registration statement, the applicant shall pay to the Commission, by a United States postal money order, certified check, bank cashier's check or bank money order, a fee of one fiftieth of one per centum of the maximum aggregate price at which the securities are proposed to be offered in the United States, but in no case shall such fee be less than $100.

E. Subject to the requirements of Item 1 of Part I, if any part of the registration statement or a post-effective amendment thereto, or any exhibit or other paper or document filed as part of the registration statement is in a foreign language, it shall be accompanied by a summary, version or translation in the English language.

F. The manually signed original of the registration statement or any amendment thereto shall be numbered sequentially (in addition to any internal numbering which otherwise may be present) by handwritten, 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 Exchange Act, Trust Indenture Act and Auditor Independence and Reporting Requirements

A. Pursuant to Rule 15d-4 under the Exchange Act, reporting obligations under section 15(d) of the Exchange Act arising solely from an offering of securities registered on this form may be met by filing with the Commission, under cover of Form 40-F, documents that are filed with the securities commission or equivalent regulatory authority in the registrant's jurisdiction of incorporation. Registrant's attention is directed, however, towards other provisions of the Exchange Act that may be applicable, and specifically to the provisions of sections (12(b) and 12(g) of the Exchange Act and Rules 10b-6 and 10b-7 under the Exchange Act.

B. Pursuant to Rule 4d-2(b) under the Trust Indenture Act of 1939 (the "Trust Indenture Act") a registrant registering debt securities on this Form may apply for exemption from the U.S. trustee provisions of section 310(a) of that Act by so indicating on the facing page of this Form and including the information specified by Item (6) of Part II thereto. Pursuant to Rule 4d-5 under the Trust Indenture Act, the application will be deemed to be granted unless, within seven days after such filing, the Commission orders a hearing thereon. Registrants' attention is directed towards other provisions of the Trust Indenture Act that may be applicable.

C. The Commission's rules on auditor independence as codified in Section 600 of the Codification of Financial Reporting Policies apply to all financial statements that are included in this registration statement.

D. Independent accountants reporting on financial statements included in the registration statement should consider Canadian auditing guidelines pertaining to the Canada-U.S. reporting conflict with respect to contingencies and going concern considerations. If additional comments for U.S. readers are appropriate under these guidelines but are not included in the prospectus itself, those comments should be included with the legends required by Item 2 of Part I herein. In addition, the accountant's consent specifically should refer to any additional comments provided for U.S. readers.

Part I—Information Required To Be Sent to Shareholders

Item 1. Home Jurisdiction Document

The prospectus shall consist of the entire disclosure document or documents required to be delivered by the registrant in connection with the transaction pursuant to the laws of the jurisdiction in which the registrant is incorporated or organized or, where applicable, pursuant to the rules of any stock exchange upon which the issuer has any class of securities listed, or has applied for such listing. It need not include any documents incorporated by reference into such disclosure documents and not distributed to offerees pursuant to the laws of such jurisdiction. If any part of the document or documents to be sent to shareholders is in a foreign language, it shall be accomplished by a translation in English.

Item 2. Informational Legends

The following legends, to the extent applicable, shall appear on the outside front cover page of the prospectus in bold-face roman type at least as high as ten-point modern type and at least two points leaded:

"This offering is made by a foreign issuer, and while the issuer is subject to disclosure requirements in its own country, prospective investors should be aware that these requirements are different from those of the United States. The financial statements have not been prepared in accordance with United States generally accepted accounting principles and thus may not be comparable to financial statements of United States companies.

"Prospective investors should be aware that the acquisition of the securities described herein may have tax consequences both in the United States and in the country of the registrant. Such consequences for investors who are residents in, or citizens of, the United States may not be described fully herein.

"The enforcement by investors of civil liabilities under the federal securities laws may be affected adversely by the fact that the registrant is located in a foreign country, that some or all of its officers and directors are residents of a foreign country, that some or all of the underwriters or experts named in the registration statement are residents of a foreign country and that all or a substantial portion of the assets of the registrant and said persons are located outside the United States."

Item 3. List of Documents Filed with Commission

There shall be attached to the prospectus a list of all documents filed with the Commission as part of the registration statement.

Part II—Information Not Required To Be Sent to Shareholders

The exhibits specified below shall be filed as part of the registration statement. Exhibits shall be appropriately lettered or numbered for convenient reference.

(1) File any reports or information that in accordance with the requirements of the jurisdiction of the registrant must be made publicly available in connection with the transaction.

(2) File copies of any documents incorporated by reference into, or filed with any other regulatory authority concurrently with, the prospectus.

(3) If any accountant, engineer or appraiser, or any person whose profession gives authority to a statement made by him, is named as having prepared or certified any part of the offering document, or is named as having prepared or certified a report or valuation for use in connection with the offering document, the written consent of such person shall be filed.

If any such person is named as having prepared or certified any other report or valuation (other than a public official document or statement) which is used in connection with the registration statement, but 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 shall also be filed unless the Commission dispenses with such filing as impracticable or as involving undue hardship in accordance with Rule 437.

Any other consent required by Rules 436 or 438 also shall be filed. Every amendment relating to a certified financial statement shall include the consent of the certifying accountant to the use of his certificate in connection with the amended financial statements in the registration statement or prospectus and to being named as having certified such financial statements.

Note: The consents required by this item shall specifically indicate consent regarding the use of the report or valuation in the registration statement filed in the United States.

(4) If any name is signed to the registration statement or report pursuant to power of attorney, manually signed copies of such power of attorney shall be filed. If the name of any officer signing on behalf of the registrant is signed pursuant to a power of attorney, certified copies of a resolution of the registrant's board of directors authorizing such signature also shall be filed.

(5) File a copy of any indenture relating to the registered securities. If such indenture is to be qualified under the Trust Indenture Act, it should include or be accompanied by (1) a cross-reference sheet to the location in the indenture of Sections 310–318(a) of the Trust Indenture Act and (2) as table of contents. If any such indenture is to be qualified under the Trust Indenture Act, also file the statement of eligibility of the trustee on Form T–1 and, if applicable, for individual trustee(s) on Form T–5.

(6) If debt securities are to be registered and an exemption from the U.S. trustee provisions of Section 310(a) of the Trust Indenture Act is sought pursuant to General Instruction III.B. or has been sought with respect to the securities to be registered, the registrant shall file as an exhibit the information specified in Items 4, 5, 6, 7, 8, 9 (if applicable), and 10 of Form T–5, or shall file as an exhibit or incorporate by reference any Form T–5 filed with the Commission not more than one year prior to the date of this filing.

Part III—Undertakings and Consent to Service of Process

1. Undertakings

a. Registrant undertakes to make available, in person or by telephone, representatives to respond to inquiries made by the Commission staff, and to furnish promptly, when requested to do so by the Commission staff, information relating to the securities registered pursuant to Form F–9 or to transactions in said securities.

b. If the offering registered on this Form is not being made simultaneously in Canada, and will continue for a period in excess of 30 days from the date of initial effectiveness of this registration statement, the registrant undertakes to file as a post-effective amendment to this registration statement, during any period in which offers or sales are being made, any amendment to the home jurisdiction document(s) accompanying this Form that would be required by Canadian law had the offering been made contemporaneously in Canada.

2. Consent to Service of Process

The registrant shall, at the time of filing Form F–9, furnish to the Commission, on Form F–X, a written irrevocable consent and power of attorney which designates an agent upon whom may be served any process, pleadings, subpoenas, or other papers in

(1) Any investigation or administrative proceeding conducted by the Commission; and

(2) Any civil suit or action brought against the registrant or to which the registrant has been joined as defendant or respondent, in any appropriate court in any place subject to the jurisdiction of any state or of the United States,

where the investigation, proceeding or cause of action arises out of or relates to or concerns any offering made or purported to be made in connection with the securities registered pursuant to Form F–9 or any purchases or sales of any security in connection therewith, and stipulates and agrees that any such civil suit or action or administrative proceeding may be commenced by the service of process upon, and that service of an administrative subpoena shall be 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–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 _____, 19_____

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) _____

Instructions

(Date) _____

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–9 or any purchases or sales of any security in connection therewith, may be commenced against it in any administrative tribunal or in any appropriate court in any place subject to the jurisdiction of any state or of the United States by service of said subpoena or process upon the registrant's designated agent.

Form F–10—Registration Statement Under the Securities Act of 1933

U.S. Securities and Exchange Commission
Washington, DC 20549

OMB Approval
OMB Number: 3235–040J
Expires: Approval Pending

Estimated average burden hours per response—2.0

(Exact name of Registrant as specified in its charter)

(Translation of Registrant's name into English)

(Province or other jurisdiction of incorporation or organization)

(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)

It is proposed that this filing will become effective (check appropriate box)

[ ] pursuant to Rule 467(a) on the date on which the securities legally may be offered and sold in the registrant's principal jurisdiction

[ ] pursuant to Rule 467(b) on (date) at (time) (but 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 security holders under the indenture to which such application relates.

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 II.D for rules as to calculation of the registration fee.

If, as a result of stock splits, stock dividends or similar transactions, the number of securities purported to be registered on this registration statement changes, the provisions of Rule 416 shall apply to this transaction.

The Registrant hereby amends this Registration Statement on such date or dates as may be necessary to delay its effective date until the Registrant shall file a further amendment which specifically states that this Registration Statement shall thereafter become effective in accordance with section 8(a) of the Securities Act of 1933 or until the Registration Statement shall become effective on such date as the Commission, acting pursuant to said section 8(a), may determine.

General Instructions

I. Eligibility Requirements for Use of Form F–10

A. This Form F–10 may be used for the registration of securities under the Securities Act of 1933 (the "Securities Act").

B. Form F–10 is available to any registrant incorporated or organized under the laws of Canada, or any Canadian province or territory, that has been subject to the periodic reporting requirements of any securities commission or equivalent regulatory authority in Canada for a period of at least 36 calendar months immediately preceding the filing of the registration statement on this Form, and that is currently in compliance with such obligations, if (1) the aggregate market value of the common stock (including nonvoting common stock) of such registrant is (CN) $360 million or more; and (2) the aggregate market value of such common stock held by non-affiliates was, as of the end of the registrant's most recent fiscal year, (CN) $75 million or more, *provided,* That for the purposes of this Instruction, the term "affiliate" shall mean any person holding 10 percent or more of the common stock (including non-voting common stock) of the registrant.

Instruction. The market value of the registrant's outstanding voting stock shall be computed by use of the price at which the stock was last sold, or the average of the bid and asked prices of such stock, in the principal market for such stock as of a date within 30 days prior to the date of filing.

C. This Form shall not be used if the registrant is an investment company, as defined in Section 3 of the Investment Company Act of 1940.

D. A registration statement on this Form should be filed with the Commission simultaneously with the filing of the home jurisdiction document(s) accompanying such Form with the jurisdiction identified on the cover of the Form as the principal jurisdiction regulating the offering ("principal jurisdiction"). Pre-effective amendments to this Form should be filed simultaneously with the filing of additional or changed documents in the principal jurisdiction. In accordance with Rule 467, this registration statement shall be deemed effective for purposes of the Securities Act on the date on which the securities covered herein legally may be sold in the principal jurisdiction.

Any amendment to such home jurisdiction document(s) after the effective date of this registration statement shall be filed with the Commission as a post-effective amendment to this Form simultaneously with the filing of such document(s) with the principal jurisdiction. Such post-effective amendment shall be deemed effective for purposes of the Securities Act at such time as the amendment to the home jurisdiction document(s) legally may be used under the applicable law of such jurisdiction, in accordance with Rule 467.

Any amendment to a registration statement on this Form shall be filed under cover of an appropriate facing sheet, shall be numbered consecutively in the order in which filed, and shall indicate on the facing sheet the applicable registration form on which the amendment is prepared and the file number of the registration statement.

If, however, an amendment to the home jurisdiction document(s) is filed after effectiveness of the registration statement that increases the number of securities that may be sold thereunder, in lieu of filing a post-effective amendment hereto, a new registration statement shall be filed on this Form. As provided in Rule 429, the prospectus included in the new registration statement shall be deemed to include a prospectus covering unsold securities registered previously. If this is the case, the following legend shall appear at the bottom of the facing page of the registration statement: "This combined prospectus relates to registration statement[s] 33-[insert file numbers of previous registration statements]."

If the registration statement or any post-effective amendment thereto relates to an offering that is not a contemporaneous offering, it shall become effective in accordance with Rule 467(b).

II. Application of General Rules and Regulations

A. The only Securities Act rules and regulations that apply to filings on this Form are those rules and regulations specifically referred to in the Form and Rule 408, which provides that in addition to the information expressly required to be included in the registration statement, there shall be added such further material information, if any, as may be necessary to make the required statements, in light of the circumstances under which they are made, not misleading. A registration statement or amendment thereto shall be deemed to be filed on the proper form unless objection to the form is made by the Commission prior to the effective date.

B. Three copies of the complete registration statement and any amendments thereto, including exhibits and all other papers and documents filed as a part of the registration statement or any post-effective amendment thereto, shall be filed with the Commission at its principal office. Each copy shall be bound, stapled or otherwise compiled in one or more parts, without stiff covers. The binding shall be made on the side or stitching margin in such manner as to leave the reading matter legible. Three additional copies of the registration statement and any post-effective

amendments thereto, similarly bound, also shall be filed. No other exhibits are required to accompany such additional copies.

C. At least one copy of every registration statement and any amendment thereto shall be signed manually by the persons specified herein. Unsigned copies shall be conformed.

D. At the time of filing this registration statement, the applicant shall pay to the Commission, by a United States postal money order, certified check, bank cashier's check or bank money order, a fee of one fiftieth of one per centum of the maximum aggregate price at which the securities are proposed to be offered in the United States, but in no case shall such fee be less than $100.

E. Subject to the requirements of Item 1 of Part I, if any part of the registration statement or a post-effective amendment thereto, or any exhibit or other paper or document filed as part of the registration statement or post-effective amendment, is in a foreign language, it shall be accompanied by a summary, version or translation in the English language.

F. The manually signed original of the registration statement or any post-effective amendment thereto shall be numbered sequentially (in addition to any internal numbering which otherwise may be present) by handwritten, typed, printed or other legible form of notation from the first page of the document through the last page of that document and any exhibits or attachments thereto. Further, the total number of pages contained in a numbered original shall be set forth on the 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 Exchange Act, Trust Indenture Act and Auditor Independence and Reporting Requirements

A. Pursuant to Rule 15d–4 under the Exchange Act, reporting obligations under section 15(d) of the Exchange Act arising solely from an offering of securities registered on this Form may be met by filing with the Commission, under cover of Form 40–F, documents that are filed with the securities commission or equivalent regulatory authority in the registrant's jurisdiction of incorporation. 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 and Rules 10b–6 and 10b–7 under the Exchange Act.

B. Pursuant to Rule 4d–2(b) under the Trust Indenture Act of 1939 (the "Trust Indenture Act"), a registrant registering debt securities on this Form may apply for exemption from the U.S. trustee provisions of section 310(a) of that Act by so indicating on the facing page of this Form and including the information specified by Item (6) of Part II thereof. Pursuant to Rule 4d–5 under the Trust Indenture Act, the application will be deemed to be granted unless, within seven days after such filing, the Commission orders a hearing thereon. Registrants' attention is directed towards other provisions of the Trust Indenture Act that may be applicable.

C. The Commission's rules on auditor independence as codified in section 600 of the Codification of Financial Reporting Policies apply to all financial statements that are included in this registration statement.

D. Independent accountants reporting on financial statements included in the registration statement should consider Canadian auditing guidelines pertaining to the Canada-U.S. reporting conflict with respect to contingencies and going concern considerations. If additional comments for U.S. readers are appropriate under those guidelines but are not included in the prospectus itself, those comments should be included with the legends required by Item 2 of Part I herein. In addition, the accountant's consent specifically should refer to any additional comments provided for U.S. readers.

Part I—Information Required To Be Sent to Shareholders

Item 1. Home Jurisdiction Document

The prospectus shall include the entire disclosure document or documents required to be delivered by the registrant in connection with the transaction pursuant to the laws of the jurisdiction in which the registrant is incorporated or organized or, where applicable, pursuant to the rules of any stock exchange upon which the issuer has any class of securities listed, or has applied for such listing. It need not include any documents incorporated by reference into such disclosure documents and not distributed to offerees pursuant to the laws of such jurisdiction. If any part of the document or documents to be sent to shareholders is in a foreign language, it shall be accompanied by a translation in English.

Item 2. Additional Information

The following information shall also be provided to offerees as part of the prospectus:

(a) Financial Statements.

Financial statements included in the home jurisdiction document should be supplemented to the extent necessary to satisfy the requirements of Item 18 of Form 20–F under the Exchange Act.

(b) Description of Business.

Registrants that are banks shall disclose the information set out under Item III.C., "Risk Elements," and Item IV., "Summary of Loan Loss Experience," of Industry Guide 3 under the Securities Act.

Item 3. Informational Legends

The following legends, to the extent applicable, shall appear on the outside front cover page of the prospectus in bold-face roman type at least as high as ten-point modern type and at least two points leaded:

"This offering is made by a foreign issuer, and while the issuer is subject to disclosure requirements in its own country, prospective investors should be aware that these requirements are different from those of the United States. Financial statements included herein, if any, have not been prepared in accordance with United States generally accepted accounting principles and thus may not be comparable to financial statements of United States companies.

"Prospective investors should be aware that the acquisition of the securities described herein may have tax consequences both in the United States and in the country of the registrant. Such consequences for investors who are resident in, or citizens of, the United States may not be described fully herein.

"The enforcement by investors of civil liabilities under the federal securities laws may be affected adversely by the fact that the registrant is located in a foreign country, that some or all of its officers and directors are residents of a foreign country, that some or all of the underwriters or experts named in the registration statement are residents of a foreign country and that all or a substantial portion of the assets of the registrant and said persons are located outside the United States."

Item 4. List of Documents Filed with Commission

There shall be attached to the prospectus a list of all documents filed with the Commission as part of the registration statement.

Part II—Information Not Required To Be Sent to Shareholders

The exhibits specified below shall be filed as part of the registration statement. Exhibits shall be appropriately lettered or numbered for convenient reference.

(1) File any reports or information that in accordance with the requirements of the jurisdiction of the registrant must be made publicly available in connection with the transaction.

(2) File copies of any documents incorporated by reference into, or filed with any other regulatory authority concurrently with, the prospectus.

(3) If any accountant, engineer or appraiser, or any person whose profession gives authority to a statement made by him, is named as having prepared or certified any part of the offering document, or is named as having prepared or certified a report or valuation for use in connection with the offering document, the written consent of such person shall be filed.

If any such person is named as having prepared or certified any other report or valuation (other than a public official document or statement) which is used in connection with the registration statement, but is not named as having prepared or certified such report or valuation for use in connection with the registration statement, the written consent of such person also shall be filed unless the Commission dispenses with such filing as impracticable or as involving undue hardship in accordance with Rule 437.

Any other consent required by Rules 436 or 438 also shall be filed. Every amendment relating to a certified financial statement shall include the consent of the certifying accountant to the use of his certificate in connection with the amended financial statements in the registration statement or prospectus and to being named as having certified such financial statements.

Note: The consents required by this item shall specifically indicate consent regarding use of the report or valuation in the

registration statement filed in the United States.

(4) If any name is signed to the registration statement or report pursuant to power of attorney, manually signed copies of such power of attorney shall be filed. If the name of any officer signing on behalf of the registrant is signed pursuant to a power of attorney, certified copies of a resolution of the registrant's board of directors authorizing such signature also shall be filed.

(5) File a copy of any indenture relating to the registered securities. If such indenture is to be qualified under the Trust Indenture Act, it should include or be accompanied by (1) a cross-reference sheet to the location in the indenture of information included pursuant to sections 310–318(a) of the Trust Indenture Act and (2) a table of contents. If any such indenture is to be qualified under the Trust Indenture Act, also file the statement of eligibility of the trustee on Form T–1 and, if applicable, for individual trustee(s) on Form T–5.

(6) If debt securities are to be registered and an exemption from the U.S. trustee provisions of Section 310(a) of the Trust Indenture Act is sought pursuant to General Instruction III.B. or has been sought with respect to the securities to be registered, the registrant shall file as an exhibit the information specified in Items 4, 5, 6, 7, 8, 9 (if applicable), and 10 of Form T–5, or shall file as an exhibit or incorporate by reference any Form T–5 filed with the Commission not more than one year prior to the date of this filing.

Part III—Undertakings and Consent to Service of Process

1. Undertakings

a. Registrant undertakes to make available, in person or by telephone, representatives to respond to inquiries made by the Commission staff, and to furnish promptly, when requested to do so by the Commission staff, information relating to the securities registered pursuant to Form F–10 or to transactions in said securities.

b. If the offering registered on this Form is not being made simultaneously in Canada, and will continue for a period in excess of 30 days from the date of initial effectiveness of this registration statement, the registrant undertakes to file as a post-effective amendment to this registration statement, during any period in which offers or sales are being made, any amendment to the home jurisdiction document(s) accompanying this Form that would be required by Canadian law had the offering been made contemporaneously in Canada.

2. Consent to Service of Process

The registrant shall, at the time of filing Form F–10, furnish to the Commission, on Form F–X, a written irrevocable consent and power of attorney which designates an agent upon whom may be served any process, pleadings, subpoenas, or other papers in

(1) Any investigation or administrative proceeding conducted by the Commission; and

(2) Any civil suit or action brought against the registrant or to which the registrant has been joined as defendant or respondent, in any appropriate court in any place subject to the jurisdiction of any state or of the United States.

where the investigation, proceeding or cause of action arises out of or relates to or concerns any offering made or purported to be made in connection with the securities registered pursuant to Form F–10 or any purchases or sales of any security in connection therewith, and stipulates and agrees that 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–10 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 _____, 19 ___.

Registrant _____

By (Signature and Title) _____

Pursuant to the requirements of the Securities Act, this registration statement has been signed by the following persons in the capacities and on the dates indicated.

(Signature) _____

(Name and Title) _____

(Date) _____

Instructions

A. The registration statement shall be signed by the registrant, its principal executive officer or officers, its principal financial officer, its controller or principal accounting officer, at least a majority of the board of directors or persons performing similar functions and its authorized representative in the United States. Where the registrant is a limited partnership, the registration statement shall be signed by a majority of the board of directors of any corporate general partner signing the registration statement.

B. The name of each person who signs the registration statement shall be typed or printed beneath his signature. Any person who occupies more than one of the specified positions shall indicate each capacity in which the registration statement is signed.

C. By signing this form, the registrant consents without power of revocation that any administrative subpoena may be served, or any administrative proceeding, civil suit or civil action where the cause of action arises out of or relates to or concerns any offering made or purported to be made in connection with the securities registered pursuant to Form F–10 or any purchases or sales of any security in connection therewith, may be commenced against it in any administrative tribunal or in any appropriate court in any place subject to the jurisdiction of any state or of the United States by service of said subpoena or process upon the registrant's designated agent.

Form 40–F

U.S. Securities and Exchange Commission, Washington, DC 20549

OMB Approval

OMB Number: 3235–040L

Expires: Approval Pending

Estimated average burden hours per response—2.0

[Check one]

[ ] Registration Statement Pursuant to Section 12 of the Securities Exchange Act of 1934 or

[ ] Annual Report Pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934 or

[ ] Current Report Pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934

For the fiscal year ended _____

Commission File Number _____

(Exact name of Registrant as specified in its charter)

(Translation of Registrant's name into English)

(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)

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 that 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.

(2) Form 40–F also may be used to register securities with the Commission pursuant to section 12 (b) or (g) of the Exchange Act, and to file reports with the Commission pursuant to section 13(a) of the Exchange Act and Rule 13a–3 (17 CFR 240.13a–3) thereunder. Registrants eligible to use this form for such purposes shall have been incorporated or organized under the laws of Canada, or any Canadian province or territory, been subject to the periodic reporting requirements of any securities commission or equivalent regulatory authority in Canada for a period of at least 36 calendar months immediately preceding the filing of this form and be currently in compliance with such obligations. The market value of the common stock (including non-voting common stock) of such registrant shall be (i) (CN) $180 million or more if a report or registration statement filed on this Form relates to debt or preferred stock that is investment grade; or (ii) (CN)

$360 million or more in the case of all other reporting requirements. The aggregate market value of such common stock held by non-affiliates shall be (CN) $75 million or more, *provided,* That for the purposes of this Instruction, the term "affiliate" shall mean any person holding 10 percent or more of the common stock (including non-voting common stock) of the registrant.

Instructions

1. A security is "investment grade" if at the time of filing this form, at least one nationally recognized statistical rating organization (as that term is used in Rule 15c3–1(c)(2)(vi)(F) under the Exchange Act (§ 240.15c3–1(c)(2)(vi)(F) of this chapter)) has rated the security in one of its generic rating categories that signifies investment grade; typically, the four highest rating categories (within which there may be subcategories or gradations indicating relative standing) signify investment grade.

2. The market value of the registrant's outstanding voting stock shall be computed by use of the price at which the stock was last sold, or the average of the bid and asked prices of such stock, in the principal market for such stock as of a date within 30 days prior to the date of filing.

(3) A report on this Form shall be filed at the same time the information included herein is filed with the securities commission or equivalent regulatory authority of the jurisdiction of incorporation of the registrant.

(4) Registrants not previously having filed a Form F–X (§§ 239.41 and 249.50 of this chapter) in relation to the class of securities registered on this Form or with regard to which this report is filed shall file a Form F–X with the Commission together with their first filing on this form.

(5) 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) Registrants shall file with the Commission on this Form all information specified in the Instruction to this paragraph that the registrant (i) makes or is required to make public pursuant to the law of the jurisdiction of its domicile or in which it is incorporated or organized, (ii) files or is required to file with a stock exchange on which its securities are traded and which was made public by such exchange, or (iii) distributes or is required to distribute to its security holders.

Instruction: The information required to be filed under paragraph (1) of this section is information material to an investment decision such as: the financial condition or results of operations; changes in business; acquisitions or dispositions of assets; issuance, redemption or acquisitions of securities; changes in management or control; the granting of options or the payment of other compensation to directors or officers; and transactions with directors, officers or principal security holders.

(2) Registrants reporting on this Form pursuant to the provisions of section 13(a) or 15(d) of the Exchange Act shall, when filing with the Commission any annual report required by any Canadian federal and/or provincial or territorial securities commission or equivalent agency, additionally furnish financial statements in the form required by Item 17 of Form 20–F under the Exchange Act (§ 249.220f of this chapter) unless this Form is filed with respect to non-convertible investment grade debt or preferred stock in which case no such financial statements are required, or unless this Form is filed with respect to a reporting obligation under section 15(d) that arose solely as a result of a filing made on Form F–7, F–8, F–9 or F–10, in which case no such financial statements are required.

Signatures

Pursuant to the requirements of the Exchange Act, the registrant certifies that it meets all of the requirements for filing on Form 40–F and has duly caused this report to be signed on its behalf by the undersigned, thereto duly authorized.

Registrant _____
By (Signature and Title)* _____
Date _____

Form F–X—Appointment of Agent for Service of Process by Foreign Issuers Registering Securities on Forms F–7, F–8, F–9 or F–10, or Registering or Filing Periodic Reports on Form 40–F, or by any Person Filing Tender Offer Documents on Schedules 13E–4F, 14D–1F or 14D–9F

U.S. Securities and Exchange Commission,
Washington, D.C. 20549

OMB APPROVAL
OMB Number: 3235–040K
Expires: Approval Pending
Estimated average burden hours per response—2.0

General Instructions

I. Form F–X shall be filed with the Commission: (a) By any issuer registering securities on Forms F–7, F–8, F–9 or F–10 under the Securities Act of 1933; (b) by any issuer registering securities or filing periodic reports on Form 40–F under the Securities Exchange Act of 1934 if it has not previously filed a Form F–X in connection with the class of securities registered or in relation to which a report is filed on Form 40–F; and (c) by any issuer or other person filing tender offer documents on Schedules 13E–4F, 14D–1F or 14D–9F under the Securities Exchange Act of 1934.

II. Form F–X shall be filed in duplicate original.

1. Name of issuer or person: _____
2. This is (select one)

[ ] an original filing for the above issuer or person
[ ] an amended filing for the above issuer or person

3. The issuer or person is incorporated or organized under the laws of (Name of the jurisdiction under whose laws the issuer is organized or incorporated) _____ and has its principal place of business at (Address in full) _____

4. The issuer or person designates and appoints, for as long as any of its securities referred to below are outstanding, (Name of United States person serving as agent) _____ ("Agent") located at (Address in full in the United States) _____

as the agent of the issuer or person upon whom may be served any process, pleadings, subpoenas, or other papers in

(1) Any investigation or administrative proceeding conducted by the Commission; and

(2) Any civil suit or action brought against the issuer or person or to which the issuer or person has been joined as defendant or respondent, in any appropriate court in any place subject to the jurisdiction of any state or of the United States,

where the investigation, proceeding or cause of action arises out of or relates to or concerns (a) any offering made or purported to be made in connection with the securities registered by the issuer on Form (Name of Form _____ on (Date) _____ or any purchases or sales of any security in connection therewith; or (b) any tender offer for the securities of a Canadian issuer with respect to which filings are made with the Commission on Schedules 13E–4F, 14D–1F or 14D–9F. The issuer or person stipulates and agrees that any such civil suit or action or administrative proceeding may be commenced by the service of process upon, and that service of an administrative subpoena shall be effected by service upon, such agent for service of process, and that the service as aforesaid shall be taken and held in all courts and administrative tribunals to be as valid and binding as if due personal service thereof had been made.

5. The issuer or person stipulates and agrees, for as long as any of the securities described above are outstanding, to appoint a successor agent for service of process and file an amended Form F–X if the issuer or person discharges the Agent or the Agent is unwilling or unable to continue to accept service on behalf of the issuer. The issuer or person further undertakes to advise the Commission promptly in writing of any change to the Agent's name or address.

The issuer or person certifies that it has duly caused this power of attorney, consent, stipulation and agreement to be signed on its behalf by the undersigned, thereunto duly authorized, in the city of _____ Province (or State of) _____ this ___ day of _____ 19____ A.D. _____

Issuer or Person:

By (Signature and Title)

This statement has been signed by the following persons in the capacities and on the dates indicated.

(Signature) _____
(Title) _____
(Date) _____

Instructions

1. The power of attorney, consent, stipulation and agreement shall be signed by any person filing this Form, and, if such person is an issuer, by the Issuer, its principal executive officer or officers, at least a majority of the board of dirctors or persons performing similar functions, and its

*Print the name and title of the signing officer under this signature.

authorized Agent in the United States. Where the Issuer or person is a limited partnership, the power of attorney, consent, stipulation and agreement shall be signed by a majority of the board of directors of any corporate general partner signing the power of attorney, consent, stipulation and agreement.

2. The name of each person who signed Form F-X shall be typed or printed beneath his signature. Any person who occupies more than one of the specified positions shall indicate each capacity in which he signs Form F-X. Each copy shall be manually signed by the persons specified in Instruction 1. Where any name is signed pursuant to a board resolution, a certified copy of the resolution shall be filed with each copy of this Form. If any name is signed pursuant to a power of attorney, a manually signed copy of each power of attorney shall be filed with each copy of the Form.

NOTE: The persons executing this power of attorney, consent, stipulation and agreement should appear before a person authorized to administer acknowledgements in the jurisdiction in which it is executed and acknowledge that they executed it on behalf of the Issuer or person as its free and voluntary act. The acknowledgement should be in the form prescribed by the law of the jurisdiction in which it is executed. The form of acknowledgement suggested below should be used only if consistent with the requirements of the law of such jurisdiction.

The failure of any acknowledgement to meet applicable requirements shall not affect the validity or effect of the foregoing power of attorney, consent, stipulation and agreement.

Province (or State) of _____
County of _____

I (Name)_____, a (Official position of person administering acknowledgement) _____, in and for (said County in) the Province (or State) aforesaid, certify that the foregoing named persons personally appeared before me this day, stated that they are the same persons named in this instrument, that they serve in the capacity stated in this instrument, that they are authorized to execute this instrument for the Issuer or person, and that they signed and sealed this instrument for and on behalf of the Issuer or person as its free and voluntary act for the uses and purposes set forth.

Given under my hand and seal this ____ day of _____, 19 ____ A.D. (Seal)

Signature of official: _____
Official position: _____
My Commission (or Office) expires:
(Date)_____

Application for Exemption Pursuant to Rule 4d-1 Under the Trust Indenture Act of 1939

U.S. Securities and Exchange Commission,
Washington, DC 20549

Form T-5

OMB APPROVAL
OMB Number: 3235-040P
Expires: Approval Pending
Estimated average burden hours per response—2.0

_____
(Name of applicant)

_____
(Jurisdiction of incorporation)

_____
(Address and telephone number of Applicant's principal executive offices)

_____
(Name, address and telephone number of agent for service)

_____
(Exact name of trustee as specified in its charter)

_____
(Jurisdiction of incorporation)

_____
(Address and telephone number of principal executive offices)

_____
(Name, address and telephone number of agent for service)

General Instructions

1. Rule as to use of Form T-5. Form T-5 shall be used for applications for exemption filed pursuant to Rule 4d-1 under the Trust Indenture Act of 1939 (the "Act") [17 CFR 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 whether the applicant expects to issue the securities that are the subject of this application within one year from the date of the application, and the basis for such expectation.

Instruction. If the securities that are the subject of this application are outstanding, a statement to that effect shall be made.

Item 3: Describe the securities that are the subject of the application and identify the indenture under which issued or to be issued.

Instructions

1. There shall be given such information as will indicate the type and general character of the securities. The applicant may provide a non-specific description of the securities, such as "unsecured debentures or notes."

2. The application may relate to different types or classes of securities issued or to be issued under different indentures, but appropriate description should be given, such as: "unsecured debentures to be issued under an indenture between the applicant and trustee x," and "mortgage bonds to be issued under an indenture and deed of trust between the applicant and trustee y."

3. To the extent known at the time of application, indicate 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: Give the maximum aggregate principal amount of the securities proposed to be issued under the indenture or indentures to which reference is made in response to Item 3. Give the maximum aggregate principal amount of the securities that are the subject of the application.

Instruction. If the securities that are the subject of the application have been or will be issued under more than one indenture, appropriate details shall be given.

Item 5: Indicate whether this appplication 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 6: File the following information as to each trustee who proposes to serve as trustee with respect to the securities specified in the application:

(a) The name of the trustee and the address of its principal executive offices.

(b) The form and date of organization.

(c) The name and address of each examining or supervising authority to which it is subject.

(d) Whether it is authorized to exercise corporate trust powers.

(e) The amount of the combined capital and surplus of the trustee as of the end of its most recent fiscal year.

Item 7: Give a brief description of the nature and extent of supervision and examination of the trustee by regulatory authorities in the jurisdiction in which the trustee is organized and doing business.

Item 8: If the applicant does not desire an opportunity for a hearing it may include in the application the waiver and request provided for in Rule 4d-5 [17 CFR 260.4d-5].

Item 9: Listing of Exhibits. List below all exhibits filed as a part of this application.

Signature

The applicant, _____, a _____ organized and existing under the laws of _____, has duly caused this application to be signed on its behalf by the undersigned, thereunto duly authorized, all in the City of _____ and State (Province or Territory) of _____, on the _____ day of _____, 19_____

(Applicant) _____
(Name and Title) By: _____

Instruction as to Signature. The name of each person signing the application shall be typed or printed beneath the signature.

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 9.

1. A copy of the articles of association of the trustee is now in effect.

2. A copy of the certificate of authority of the trustee to commence business, if not contained in the articles of association.

3. A copy of the authorization of the trustee to exercise corporate trust powers, if such authorization is not contained in the documents specified in paragraph (1) or (2) above.

4. A copy of the existing bylaws of the trustee, or instructions corresponding thereto.

5. A copy of each indenture to which reference is made in Item 3, if available at the time of application.

6. A copy of the latest report of condition, if 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—Multijurisdictional Disclosure System; Canada

The Ontario Securities Commission (the "OSC") and the Commission des valeurs mobilieres du Quebec (the "CVMQ") (collectively, the "Commissions") are publishing for comment an outline of a multijurisdictional disclosure system that would permit United States issuers that, depending on the nature of the offering, meet market value, public float and U.S. reporting history tests to distribute securities in Canada using disclosure documents prepared according to the requirements of U.S. regulatory authorities. Simultaneously with the publication of this release, the Securities and Exchange Commission (the "SEC") is publishing for comment a multijurisdictional disclosure release and proposed Rules, Forms and Schedules that would permit Canadian issuers that, depending on the offering, meet market value, public float and Canadian reporting history tests to register securities in the U.S. using disclosure documents prepared according to the requirements of Canadian regulatory authorities. Canadian issuers meeting tests of market value and public float also would be able to use Canadian documents to meet U.S. periodic disclosure requirements. In addition, Canadian issuers would be able to use Canadian documents to meet proxy requirements for certain solicitations and to meet insider reporting requirements.

The multijurisdictional disclosure system further would permit third party and issuer share exchange and cash take-over bids/tender offers to be made in compliance with the provisions of applicable take-over bid regulations in the target's home jurisdiction where less than 20 percent of the class of securities subject to the offer were held of record by residents of the other jurisdiction, whether Canada or the U.S.

SEC Release: Copies of the SEC Multijurisdictional Disclosure System Release are available upon request from the Secretary of the OSC and of the CVMQ.

Date for Submission of Comments: October 31, 1989

Reference:

Pamela Hughes, Deputy Director, Legal, Corporate Finance Branch, Ontario Securities Commission, (416) 593–3653.
Rosetta Gagliardi, Direction de l'information, Commission des valeurs mobilieres du Quebec, (514) 873–5326.

I. Introduction

A. Summary

Developments in the international securities markets and an increase in the number of securities offerings made across national boundaries have emphasized the problems caused to issuers by compliance with the securities laws of multiple jurisdictions. Attempting to comply with the disclosure provisions of securities regulators in multiple countries adds expense and additional time. The additional time may substantially increase cost, since conditions advantageous to the issuer may prevail in the capital markets only for a limited period. Rather than comply with the requirements of regulators in more than one country, issuers may choose to exclude certain jurisdictions from their offerings, thus excluding investors in that jurisdiction from investment opportunities.

In 1985, the Securities and Exchange Commission ("SEC") issued Securities Act Release No. 6568 "Facilitation of Multinational Securities Offerings" requesting comments on two alternative methods of dealing with multijurisdictional offerings: "the common prospectus approach" and the "reciprocal prospectus approach".

A majority of commenters favoured the reciprocal approach. The OSC and the CVMQ in consultation with the other securities regulatory authorities in Canada commenced discussions with the SEC in 1987 with a view toward establishing a system of multijurisdictional disclosure based on the reciprocal approach. The system as proposed is a hybrid between the reciprocal approach and the common prospectus approach.

The system would permit single-jurisdiction regulation of certain multiple-jurisdiction securities offerings and continuous reporting obligations so that such offers may be made more efficiently and at less expense. The disclosure document for an offering would be prepared in accordance with the requirements of the issuer's home jurisdiction. The regulatory authorities of the home jurisdiction would be solely responsible for establishing the disclosure standards for both offering documents and continuous reporting. Regulatory review of the offering disclosure document would be that customary in that issuer's home jurisdiction and the document generally would be given a no-review status in the other jurisdiction (the "receiving jurisdiction") in which the securities are being distributed. The system would also facilitate crossjurisdictional debt and equity offerings in which the disclosure document for an offering would be prepared in accordance with the requirements of the issuer's home jurisdiction and filed solely in the receiving jurisdiction. Issuers would continue to be subject in each jurisdiction where the offer was made to provisions imposing civil or criminal liability for any material misrepresentation or omission in the disclosure document or fraud or manipulation in connection with the offering and would be subject to the authority of each securities commission to halt the offering in the public interest and for the protection of investors.

The multijurisdictional system represents an initial step towards recognition of home jurisdiction disclosure requirements by the receiving jurisdiction and would cover debt and equity offerings by "substantial" issuers and a larger class of rights and exchange offerings, where less than 20 percent of the class of securities involved are held of record by residents of the receiving jurisdiction.

The multijurisdictional system also extends to regulations applicable to third-party and issuer exchange and cash tender offers made for the securities of U.S. issuers in compliance with U.S. tender offer regulations, where less than 20 percent of the shares involved are held of record by Canadian residents and to exchange and cash take-over bids and issuer bids made for the securities of Canadian issuers in compliance with Canadian take-over bid and issuer bid rules, where less than 20 percent of the shares involved are held of record by U.S. residents.

OSC Policy Statement 7.1 *Application of Requirements of the Securities Act to Certain Reporting Issuers* and the CVMQ permit issuers other than those incorporated, organized or continued under the laws of Canada or a province or territory of Canada, which are subject to the reporting obligations of the SEC under the Securities Exchange Act of 1934 (the "Exchange Act"), to file with the OSC and CVMQ the continuous disclosure materials filed with the SEC in lieu of materials required by the Securities Act (Ontario) (the "Ontario Act") and the Securities Act (Quebec) (the "Quebec Act"). The multijurisdictional system would permit use of Canadian periodic reporting to meet the reporting requirements of the Exchange Act where (a) such requirements arose solely by reason of offerings registered on the multijurisdictional forms, or (b) the issuer of the securities met tests of market value and reporting history. This would include Annual Information Forms, Annual Reports, Management Discussion and Analysis, annual and interim financial statements, material change reports, insider reporting and proxy materials for routine annual meeting matters.

At approximately the same time as this proposal is published for comment, the SEC is issuing a release setting forth changes that would permit the implementation of a multijurisdictional disclosure system to enable issuers to make public offerings and take-over bids in the receiving jurisdiction using disclosure documents prepared according to home jurisdiction requirements.

The multijurisdictional system would not be available with respect to distributions of securities or continuous reporting by mutual

funds in Canada or investment companies required to register under the U.S. Investment Company Act of 1940.

B. Canadian Issuers in the United States Market

Canadian companies are frequent issuers in the U.S. capital markets. In 1987 and 1988, Canadian issuers made a total of 124 public offerings in the United States for an approximate total of $10,084,287,000 of which $8,095,023,000 was equity. Canadian companies also have made use of the U.S. shelf registration system. Over $1,761,622,000 of debt securities have been registered by Canadian issuers for sale under SEC Rule 415 in the last three years. As of June 30, 1989, there were 21 Canadian equities listed on the New York Stock Exchange, 38 on the American Stock Exchange and 146 on the National Association of Securities Dealers' Automated Quotation system ("NASDAQ").

C. Mutual Recognition and Harmonization

Efficiency of the capital-raising process would be enhanced greatly by permitting an issuer to prepare one disclosure document for use in each jurisdiction in which it chooses to sell securities. There are two primary approaches to achieve this goal: harmonization of disclosure standards and mutual recognition of disclosure standards established in other jurisdictions.

Under a harmonization approach, participating jurisdictions would agree upon a set of disclosure requirements that would be the same in each jurisdiction, with the result that a disclosure document prepared pursuant to the requirements of one participating jurisdiction would comply automatically with the requirements of all other participating jurisdictions. In addition to reducing costs, a prime benefit of such a system would be to provide comparability of information from issuer to issuer and country to country.

Mutual recognition, on the other hand, would enable an issuer to prepare a disclosure document according to the requirements of its home jurisdiction, and to have that document accepted for securities offerings in every other participating jurisdiction. Mutual recognition does not necessarily ensure comparability from issuer to issuer and country to country.

As proposed, the multijurisdictional disclosure system is a hybrid of the two approaches. While it is based on the concept of mutual recognition, the participants will be those jurisdictions whose disclosure systems, while different in detail, in substance provide investors with information to make an informed investment decision and financial statements of relevance and reliability. The existence of a well-developed, sophisticated and reliable system for administering these requirements is also critical, as the Commission will rely primarily on foreign disclosure requirements, application of disclosure standards and day-to-day enforcement of those standards.

II. The Proposed System

A. Overview and Purpose

In proposing adoption of the system, the Commissions are taking a first step rather than providing for multijurisdictional registration and disclosure in all cases. Limiting the first phase of the system to a relatively limited number of transactions and issuers will enable the regulators to monitor use of the system and to address potential problems. At a later date, a wider variety of transactions, a greater number of issuers and other jurisdictions may be added.

The system as presently proposed would extend to debt and equity offerings by "substantial" issuers, and to specified rights and exchange offers. All issuers making such offers in Ontario or Quebec pursuant to the system would be required to have three-year reporting histories with the SEC and to be in compliance with the reporting requirements of the SEC at the time of filing. Issuers would also be required, except in the case of rights offerings, to meet tests of minimum market value or public float. The system also would permit compliance with the Exchange Act to suffice for compliance with the Ontario Act and Quebec Act in the case of takeover bids and issuer bids made to Ontario residents for the securities of U.S. issuers, a limited percentage of which are held by Canadian residents.

The purpose of the "substantial" designation is to single out issuers whose size is such to suggest that the market operates efficiently in respect of their securities. Such issuers generally have a wide market following and the marketplace is in a position to set a price on their securities based on all available information. The Commissions have distinguished between investment grade debt and preferred shares, and other securities in determining the availability of total reliance on U.S. disclosure. A "substantial" issuer is defined as one that has a market value of at least U.S. $150 million in the context of investment grade debt and preferred shares, and U.S. $300 million in the case of other securities.

The Commissions are proposing to rely completely on U.S. disclosures in the case of investment grade debt and preferred shares. Investment grade debt and preferred shares would be defined as in Paragraph C.1 and the schedule to O.S.C. Policy Statement 5.6 and under Quebec rules with the exception that convertible debt or convertible preferred shares that are non-convertible for at least one year from the date of issue would be included within debt or preferred shares. Major factors affecting the trading price of such securities would be the yield on such securities and the rating that they carry. Financial information pertaining to liquidity and capital resources is most relevant to this investment decision and both U.S. and Canadian GAAP usually provide an adequate basis for an assessment of this information with respect to the ability to repay principal and interest when due.

In the case of offerings by substantial issuers of securities other than investment grade debt and preferred shares, the Commissions propose to continue to require financial statement reconciliation, based on the premise that comparability of financial information, particularly net income and shareholders' equity, as a whole and on a per share basis, is of greater importance to investment decisions in these securities.

The Commissions specifically request comment as to whether the differences in accounting principles are sufficient to warrant reconciliation requirements, or whether Canadian investors would be in an adequate position to make an informed decision on the basis of information contained in U.S. financial statements. The Commissions also request comment as to whether domestic issuers would be unduly disadvantaged by permitting U.S. issuers to distribute equity in Ontario and Quebec without reconciliation.

The multijurisdictional registration process also would be extended to certain rights offers and securities exchange take-over bids ("exchange offers"), primarily because of concerns for domestic investors' interests. Rights and exchange offers made in Ontario or Quebec must be filed with the respective Commission. Foreign issuers making an exchange offer may not extend the offer to Canadian holders because they are unwilling to bear the costs and other burdens of complying with Canadian take-over laws. Investors are relegated either to selling into the market at less than the full tender offer consideration and incurring transaction 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.

It therefore would appear to be in the interests of domestic investors to facilitate the qualification of such offerings to encourage U.S. issuers to extend such offers to domestic shareholders. Additionally, imposing a duplicative cost on issuers would seem particularly inappropriate where the effect on Canada is incidental to a transaction. Where less than 20% of the class of securities to which the rights or exchange offer related are held of record by Canadian residents, offers could be made in Ontario or Quebec pursuant to the system. The percentage of record holders would be determined as of the end of the issuer's last quarter or, if such quarter ended within 60 days prior to the date of filing, as of the end of the preceding quarter.

Rights offerings to Ontario and Quebec investors that already own the securities of the issuer are particularly appropriate for multijurisdictional registration. Investors reasonably could be expected to proceed to make a further investment based on the same type of information that they relied upon when they bought the securities in the secondary market. Consistent with this theory, multijurisdictional registration for rights offerings could be made available to a larger class of issuers than those designated "substantial". Comment is requested as to whether rights offers should be permitted to be made pursuant to the system in the event that more than 20 percent of the subject securities were held of record by Canadian residents. For example, should the limit be 30, 40 or 50 percent or should there be no limit at all?

In the case of exchange offers, it similarly seems appropriate to facilitate distribution of securities in Ontario and Quebec so that domestic investors are not denied rights of value that are offered to all other holders of the same class of securities. On the other hand, in non-issuer exchange offers, unlike

rights offerings, the investor has not already made an investment decision with respect to the bidder whose securities are being offered in the exchange. Due to this difference, the multijurisdictional registration system is proposed to extend to exchange offers with higher eligibility standards than those applicable to rights offerings. As with rights offerings, multijurisdictional registration would be available where the receiving country's investors do not own more than 20% of the outstanding shares of the targeted class. U.S. participants making exchange offers ("bidders") would be required to have a public float of (U.S.) $75 million and have a three-year reporting history with the SEC.

In the case of exchange offers, a decision to extend offers to Ontario and Quebec investors depends not only on the application of Ontario and Quebec disclosure requirements but also Ontario and Quebec take-over bid regulation. U.S. issuers conducting tender offers for the shares of U.S. target companies may be deterred from extending both exchange and cash offers to target shareholders residing in Ontario and Quebec by costs attendant to compliance with Ontario's and Quebec's applicable take-over bid rules and thus exclude Ontario, Quebec and other Canadian investors from their tender offers.

Rather than protecting Ontario and Quebec investors, the application of Ontario and Quebec take-over bid rules to predominantly U.S. tender offers thus can operate to deny these investors the opportunity to participate in such transactions.

The proposed system would work as follows: when (1) Ontario and/or Quebec constitutes the primary jurisdiction for a bid; and (2) less than 20% of the securities of the target corporation are held of record by U.S. residents, then, pursuant to proposed requirements of the SEC under the system, the bid must be extended to all U.S. shareholders on the same terms as made to Ontario and/or Quebec shareholders. The bid must be made in compliance with Ontario and/or Quebec law.

Similarly, when (1) the U.S. constitutes the primary jurisdiction for the tender offer; and (2) less than 20% of the securities of the target corporation are held of record by Canadian residents, then, pursuant to proposed requirements of the Commissions under the system, the U.S. tender offer must be extended to Ontario and/or Quebec shareholders on the same terms as made to U.S. shareholders. The tender offer must be made in conformity with the Exchange Act.

The multi-jurisdictional system should reduce disincentives to the inclusion of Canadian shareholders in predominantly U.S. cash or exchange offers where less than 20 percent of the subject class was held of record by Canadian residents. More importantly, because the substantive protection and disclosure obligations established by the U.S. tender offer regulations are generally comparable in most respects to those prescribed by the Ontario Act and the Quebec Act, the regulation made thereunder and the Commissions' policy statements, holders of shares in U.S. companies residing in Ontario or Quebec will not be unduly disadvantaged by comparison with Ontario or Quebec shareholders in domestic companies. To minimize any potential regulatory inequality, the nationality of a bidder in a cash tender offer would not determine availability of the system. Thus, Canadian and U.S. bidders for a U.S. target would be governed by the same tender offer regulation.

B. The Mechanics of the Multijurisdictional Disclosure System

The aim of the multijurisdictional disclosure system is to enable an issuer to prepare a disclosure document according to the requirements of its home jurisdiction, and to use that document for a securities offering in the receiving jurisdiction, either in conjunction with an offering in the home jurisdiction or solely as an offering in the receiving jurisdiction.

In the case of securities offerings made pursuant to the system in Canada by U.S. issuers, U.S. regulatory authorities would be responsible for establishing and applying disclosure standards. For offerings made by U.S. issuers both in the U.S. and Canada, regulatory review of the disclosure document would be that customary in the U.S. Thus, except in the unusual case where the Commission staff had reason to believe there was a problem with the filing or the offering, the documents generally would be given a "no review" status in Ontario and Quebec. Unless the principal jurisdiction specified by the issuer pursuant to National Policy Statement No. 1 had received notification from another jurisdiction in Canada in which the securities were being distributed that it was not prepared to issue a receipt, the principal jurisdiction would issue the receipt for the final prospectus upon notification that the registration statement had been declared effective by the SEC. Although U.S. issuers offering securities pursuant to the system would not be required to comply with Ontario and Quebec disclosure requirements, they nonetheless would be liable under Ontario and Quebec civil liability provisions for any misrepresentation in the disclosure document. They would have to comply with requirements concerning the language of disclosure documents if the offering is made in Quebec. They would also be subject to the authority of the Commissions to stop the offering in the public interest and for the protection of investors.

The system would distinguish between the disclosure document required to be given to each investor and the documents to be filed with the Commissions. Participating U.S. issuers would be required to provide Ontario and Quebec investors with the same information as investors in the home jurisdiction receive. Information incorporated by reference in the prospectus would not be required to be distributed to investors, but would be deemed part of the prospectus. Investors would be able to obtain such information from the Commissions or, upon request, from the issuer.

The document delivered to investors, together with all the information incorporated into that document by reference or filed with the appropriate U.S. regulatory authority or authorities at the same time the disclosure document is filed would be required to be filed with the Commissions. In addition, documents filed and subsequently incorporated by reference into the prospectus must also be filed with the Commissions contemporaneously with the filing with the SEC. Thus, the prospectus would be subject to section 70 and section 126 liability under the Ontario Act and all other provisions of the securities laws applicable to a prospectus filed under the Ontario and Quebec Acts. Moreover, the prospectus would be in the public files, available for public review.

The issuer would be required to add to the prospectus legends warning investors that the investment may have tax consequences in the issuer's jurisdiction, that investors may have to pursue remedies for any securities law violation against persons and assets located in the issuer's jurisdiction, and that any financial statements are prepared in accordance with U.S. accounting standards. The issuer would also be required to add a description of purchasers' statutory rights of rescission and damages and issuer's and underwriters' certificates prepared in accordance with Ontario and Quebec requirements.

The prospectus would be accompanied by a consent to service of process and appointment of an Ontario and a Quebec person as agent for process.

Where debt securities are to be distributed by a U.S. issuer, issuers would be required to comply with the trust indenture provisions of the Business Corporations Act, 1982 ("OBCA"). The Commission intends to issue a blanket ruling pursuant to ss. 46(4) of the OBCA to permit U.S. issuers of debt pursuant to the system to use solely a U.S. trustee.

Prospectuses on the proposed forms must be filed with the Commissions on the same day as the filing of the registration statement with the SEC. Any post-effective amendment similarly must be filed on the same day with the Commissions as an amendment.

A prospectus prepared in connection with a contemporaneous offering in the issuer's home jurisdiction and the receiving jurisdiction would be issued a final receipt on the date the securities legally could be sold in the home jurisdiction. A prospectus filed in connection with an investment grade debt, preferred share or equity offering solely in the receiving jurisdiction would be issued a final receipt in Canada or declared effective in the U.S. seven days after the date of filing of the prospectus in the receiving jurisdiction. A Canadian issuer making an offering solely in the U.S. would file the registration statement filed with the SEC contemporaneously with the Commissions pursuant to the issuer's continuous disclosure obligations. The Commissions specifically request comment as to whether the procedures outlined are likely to result in Canadian issuers that would otherwise have offered securities in Canada choosing to offer only in the United States. Registrants making a delayed or continuous debt or equity offering in the U.S. pursuant to SEC Rule 415 (the shelf registration system) would be able to make a contemporaneous offering in Canada pursuant to the multijurisdictional system.

Whenever a U.S. issuer is subject to a requirement pursuant to Item 512(a) of

Regulation S–K to file a post-effective amendment, the amendment would be filed under subsection 56(1) of the Ontario Act and section 25 of the Quebec Act. The amendment would become effective simultaneously in the U.S., Ontario and Quebec. A post-effective amendment or supplement describing the attributes of specific securities to be taken from the "shelf" and distributed would not constitute an amendment "for the purpose of distributing securities in addition to the securities previously disclosed in the prospectus" for the purposes of subsection 56(2) of the Ontario Act and pursuant to sections 62.6 and 62.9 of the Regulations under the Quebec Act.

The requirement that an amendment to the prospectus be filed does not apply to a Form S–3 where the required updating is included in periodic reports that are incorporated by reference into the shelf prospectus.

A prospectus supplement or "sticker" reflecting material changes, not comprising fundamental changes under Item 512(a) of Regulation S–K, such as changes in interest rates, redemption prices or maturities where a shelf prospectus relates to a series of debt offerings or the selection of the final method of distribution or of any one or more of the underwriters named would be filed with the Commissions on the same day as filed with the SEC.

All shelf prospectuses filed pursuant to the multijurisdictional system must be accompanied by an undertaking of the issuer to the Commissions to file with the Commissions an amendment or supplement whenever required by the rules of the SEC. In addition, when a shelf prospectus contains no set plan of distribution or generally states that securities may be sold pursuant to one of several distribution methods and does not include an underwriters' certificate, an amendment to the prospectus must be filed, disclosing the material aspects of the plan of distribution including a certificate of the underwriters, prior to the distribution of securities under the prospectus.

C. Application of the System to Specific Transactions by Canadian Issuers

The following is a detailed discussion of how Canadian issuers could offer securities or any offerors could make a cash tender offer in the United States under the multijurisdictional disclosure system. These procedures are equivalent to those proposed by the OSC and the CVMQ for use by U.S. issuers in Canada.

1. *Offerings by Substantial Issuers*—(a) *Offerings of Investment Grade Debt and Preferred Stock (SEC Form F–9).* Multijurisdictional registration would be permitted for offerings by substantial issuers of non-convertible debt securities or non-convertible preferred stock that are investment grade, as defined in the United States. Securities that are not convertible for one year from the date of effectiveness of the registration statement would be treated as non-convertible. Comment is requested as to the treatment of convertible securities. Should the period of non-convertibility be longer (e.g. two or three years)?

Offerings of such investment grade securities would be registered with the SEC on proposed Form F–9. Form F–9 would be a cover page setting out registration details, including certain prospectus legends and wraparound the Canadian prospectus. To be eligible to use that form, an issuer would be required to be incorporated anywhere in Canada, with a total market value for its securities of (CDN.) $180 million and a public float of (CDN.) $75 million. "Public float" is the monetary value of all outstanding equity securities owned by non-affiliates, and would be determined according to Canadian practice. Non-voting common stock would be included in the calculation of public float. The (CDN.) $180 million requirement parallels one of the eligibility standards for use of Form S–3, which permits use of a short-form prospectus in the United States by U.S. issuers. The public float requirement is derived from the Canadian test for eligibility for the prompt offering qualification system and is based on the Canadian definition of affiliates in determining the amount of securities publicly held. These requirements are expressed in terms of Canadian rather than U.S. currency so that fluctuations in exchange rates would not affect an issuer's eligibility to use the Form. The date as of which the issuer must meet the market value and float tests would be a date within the 30 day period prior to the filing of the registration statement. Form F–9 would not require reconciliation of financial statements from Canadian GAAP to U.S. GAAP. Comment is requested as to whether the requirements set forth provide adequate indication of an issuer's market following. Should the market value and public float tests be set at different levels, and if so, should they be higher (for example, market value of (CDN.) $300 or $500 million, or float of (CDN.) $100 or $300 million) or lower (for example, market value of (CDN.) $100 or $75 million or float of (CDN.) $50 or $25 million?

(b) *Other Offerings (SEC Form F–10).* Offerings by substantial issuers of securities other than investment grade debt or preferred stock would be registered on proposed Form F–10. In this context, "substantial issuers" would be those with a market value of (CDN.) $360 million (to approximate the SEC's requirement that equity issuers eligible to use the Form F–3 short form prospectus have a market value of securities of (U.S.) $300 million), and a public float of (CDN.) $75 million. Eligibility would be determined as of a date within the 30 day period prior to the filing of the registration statement. As with Form F–9, comment is requested as to the appropriateness of the tests for eligibility for Form F–10.

Form F–10 would require reconciliation of financial statements to U.S. GAAP. The reconciliation required would be that specified in Item 18 of SEC Form 20–F. Item 18 requires the full disclosure of all information required by Regulation S–X and U.S. GAAP, including segment information and supplemental oil and gas data. Comment is solicited as to whether, if reconciliation is to be required, Item 17 reconciliation should suffice. Should reconciliation of shareholders' equity and net income, as a whole and on a per share basis, suffice?

Items 17 and 18 of Form 20–F each permit the use of financial statements which are in accordance with accounting principles other than those of the United States if the items include a discussion of the material variations from United States accounting principles and Regulation S–X and if a quantified reconciliation is made as to material variations in net income as presented and net income under United States accounting principles and as to balance sheet line items and earnings per share. Item 18 calls for a greater amount of detail than does Item 17 as Item 18 asks for all other information required by the generally accepted accounting principles of the United States while Item 17 contains no such provision. Item 17 disclosure may be used for annual reports and registration under the Exchange Act, while Item 18 disclosure generally is required in Forms F–1, F–2 and F–3 in connection with the public offering of securities in the United States.

In the United States, registration statements are subject to certain industry specific requirements relating to an issuer's business and operations. Foreign issuers generally are held to the same level of disclosure as U.S. domestic issuers. Given Canadian disclosure requirements and practices, the SEC proposes to require only additional industry-specific information from issuers engaged in banking. Canadian banks using Form F–10 would be required to disclose information substantially equivalent to the information set out under Item III.C., "Risk Elements," and Item IV., "Summary of Loan Loss Experience" of Industry Guide 3 under the Securities Act of 1933. Comment is solicited as to whether this requirement is appropriate. Disclosure would be more extensive than the information proposed in Item 3(1)(l) of the Annual Information Form forming part of the Annual Information Form and Management Discussion and Analysis requirements released for comment in the OSC Bulletin of June 9, 1989 and in the CVMQ Bulletin of June 23, 1989. Both the reconciliation and the supplemental Industry Guide 3 information are required to be included in both the prospectus delivered to investors and the registration statement.

2. *Rights Offers & Securities Exchange Take-over Bids (Exchange Offers)*— (a) *Rights Offers (SEC Form F–7).* Form F–7 is proposed for use by Canadian issuers making rights offerings in the United States. To be eligible, the issuer would have to (1) be incorporated in Canada, and (2) have had for the 36 months immediately preceding the offering, a class of securities listed on The Toronto Stock Exchange or the Montreal Exchange. Form F–7 would not require that registrants meet any test of market value of shares or public float. Comment is requested as to whether the eligibility tests proposed for use of Form F–7 are appropriate or whether the $75 million market value requirement imposed by Form F–8 should be extended to Form F–7.

Either a rights offering circular filed in Ontario pursuant to paragraph 71(1)(h)(i) of the Ontario Act and in Quebec pursuant to section 52(1) of the Quebec Act or a rights offering prospectus may be filed under Form F–7. Since is it intended that Form F–7 would exclude offerings that are major financings,

an eligible offer, if completely subscribed, could not increase the capital of the class of securities offered by more than 25 percent in number (or, in the case of debt, the principal amount). The 25 percent test is derived from OSC Policy Statement 6.2 which uses the 25 percent threshold to identify rights offerings subject to prospectus filing requirements.

U.S. residents must hold of record less than 20 percent of the class of securities to which the rights offering is related. The rights could not be transferable to U.S. residents. The underlying securities, however, could be so transferable. The exercise period of the rights must not exceed 90 days.

The securities to be registered on Form F–7 would be those issuable upon the exercise of rights. The rights themselves generally are not registrable in the U.S. on a "no-sale" theory. If they were required to be registered, the issuer could register them on Form F–7.

(b) *Exchange Offers (SEC Form F–8)*— (i) *Prospectus Issues.* Proposed Form F–8 would be used to register exchange offers that are primarily Canadian in character, in which all or a portion of the consideration offered is the securities of the bidder, and less than 20 percent of the securities of the target class are held of record by U.S. residents. The target of the bid would be required to be incorporated or organized under the laws of Canada or any province or territory. The aggregate market value of the registrant's common shares must equal or exceed (CDN) $75 million. Registrants would be required to have had their securities listed on The Toronto Stock Exchange or the Montreal Exchange for the 36 months immediately preceding the offering. Comment is requested as to whether these eligibility tests are appropriate.

The bidder must offer its securities upon identical terms and conditions to both U.S. and Canadian shareholders of the target. Adherence to this requirement would prevent discrimination among holders of the class of securities that is the subject of the offer.

The multi-jurisdictional registration system would enable a qualified Canadian reporting issuer planning to commence a non-exempt exchange offer to file its take-over bid circular with the SEC.

Contemporaneously with the filing of the take-over bid circular with the OSC and the CVMQ, a Canadian offeror making an offer pursuant to the system would file the circular, accompanied by Forms F–8 and F–X, with the SEC. The circular would be distributed by mail to shareholders in both countries. As in Ontario and Quebec an exchange offer is deemed to commence upon mailing, it also would commence upon mailing in the United States.

(ii) *Tender Offer Regulation.* Exchange offers also raise the question of the need for compliance with each jurisdiction's regulatory scheme relating to take-over bids/tender offers. The multijurisdictional system would provide that, when a Canadian bidder is eligible to use the system for an exchange offer, the take-over bid rules of its home jurisdiction would govern, and compliance with the home jurisdiction rules would be sufficient under the Exchange Act. U.S. and other non-Canadian offerors not eligible to use Form F–8 similarly could make exchange offers for the securities of Canadian issuers (where, less than 20 percent of the holders of record of the subject securities were U.S. residents) pursuant to Canadian tender offer regulations. Such non-Canadian issuers, however, would have to comply with U.S. registration disclosure requirements.

(iii) *Proxy Regulation.* Any solicitation of U.S. shareholders involved in the offer and sale of securities registered on Form F–8 would be exempt from Exchange Act proxy information and filing requirements pursuant to the proposed amendment to Rule 3a12–3(c).

3. *Tender Offers Pursuant to the System.* Pursuant to amendments to be proposed to the SEC's tender offer rules, third-party or issuer tender offer filings in connection with offers in both jurisdictions for a class of shares of a Canadian issuer, less than 20 percent of which is held of record by U.S. residents, would be permitted to proceed in the United States in compliance with the laws of Ontario and/or Quebec, provided the tender offer is extended to all holders of the class of securities in the United States, and that the transaction is covered by substantive provisions of Canadian law regulating the terms and conditions of the offer. In these instances, compliance with Canadian law would suffice for compliance with the Exchange Act. Where a bid not covered by such Canadian regulation, for example a stock exchange bid exempt under the Ontario Act and the Quebec Act, was extended to U.S. shareholders, the Exchange Act and the rules thereunder would govern the conduct of the offer in the United States even if the bid otherwise would qualify for inclusion in the multijurisdictional system. The schedules would require that the bidder comply with the laws, regulations and policies of any Canadian federal and/or provincial or territorial regulatory agency applicable to the particular offer. If the offeror failed to comply with Canadian law, it would be in violation of both Canadian and U.S. law.

The take-over bid circular filed with the OSC and the CVMQ would be filed simultaneously with the SEC, together with the appropriate "wraparound" forms (F–8 or other Securities Act registration form for exchange offers, Schedule 14D–1F for third party and affiliate tender offers, Schedule 14D–9F for the target's response and Schedule 13E–4F for issuer tender offers), and disseminated to all U.S., Ontario and Quebec shareholders. Where an exchange offer was being made pursuant to the system by an offeror not eligible to use Form F–8, U.S. shareholders would receive SEC-mandated disclosure in addition to the information required to be disseminated under Canadian law.

As discussed, only Canadian companies reporting to Canadian securities regulatory authorities would be eligible to register on Form F–8 securities issued in connection with an exchange offer. The bidder in an all-cash offer need not meet the nationality, reporting status and size requirements that would be imposed on participating exchange offerors. The target must be a Canadian reporting company, less than 20 percent of the subject securities of which is held by U.S. residents.

The process for conducting an all-cash tender offer under the proposed system, whether the offer is made by a third party, the issuer itself or its affiliate, is virtually identical to that outlined above for exchange offers. When filing its take-over bid circular or issuer bid circular with home jurisdiction authorities in Canada, a bidder would file that document or documents, and any amendments thereto, with the SEC under cover of proposed wraparound forms Schedule 14D–1F (third party or affiliate or insider bids) or Schedule 13E–4F (issuer bids) together with an executed Form F–X. Home country filings, including any amendments, would be disseminated to shareholders in Canada and the United States pursuant to applicable Canadian law, with U.S. shareholders also receiving the appropriate Schedule.

In response to unaffiliated third-party and insider bids, the target issuer would file with the SEC the document or documents prescribed by Canadian law, including any amendments thereto, coupled with Schedule 14D–9F and Form F–X. Again, this Schedule and the underlying Canadian documents, and any amendments, would be sent, in the manner prescribed by Canadian law, to U.S. shareholders and, without the Schedule, to Canadian shareholders.

In cases of tender offers ineligible for multijurisdictional treatment in the United States because 20 percent or more of the subject shares is held by U.S. residents, the rules and regulations of the United States generally would apply. Further, as a policy matter, the OSC, the CVMQ and the SEC believe it is in the public interest that take-over bids/tender offers be extended to all holders of the class of securities in Canada and the United States, and that efforts to avoid compliance with the other jurisdictions' regulation by attempting to exclude certain shareholders from the offer are consistent neither with the purposes of either country's laws nor with the public interest. However, the terms of an exchange offer for certain, otherwise qualified issuers may conflict with restrictions on foreign ownership imposed by Canadian and United States law. Under circumstances where national policy concerns may militate against application of the broad principles of equality underlying the multijurisdictional system, the SEC may determine to exercise its exemptive authority to permit a Canadian bidder to issue cash consideration in lieu of securities in connection with a concurrent exchange offer made to Canadian holders of the target. Relief thus may be sought from this "all holders" policy that otherwise would mandate the extension of an exchange offer to U.S. shareholders of the Canadian target on the identical terms and conditions offered to Canadian shareholders.

D. Exchange Act Provisions Affecting the Activities of Participants in Tender and Exchange Offers

SEC Rule 10b–6 generally prohibits a distribution participant from, directly or indirectly, bidding for or purchasing, or attempting to induce others to purchase, the securities in distribution or any security of the same class and series or any right to purchase such security ("related securities"),

until the participant's role in the distribution has terminated.

SEC Rule 10b–13 prohibits a person who is making a cash tender offer or exchange offer for any equity security from, directly or indirectly, purchasing or making any arrangement to purchase such security (or any other security which is immediately convertible into or exchangeable for such security) otherwise than pursuant to the tender offer or exchange offer, from the time of announcement of the offer until its expiration, including any extensions thereof. The rule is designed to "protect shareholders in the tender offer from the harmful effects of purchases or arrangements made outside, and on terms or conditions different from, the tender offer, and to protect the integrity of the tender offer process by proscribing side deals that could render the tender offer a sham."

Canadian rules 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. For example, Canadian rules permit, in limited circumstances, purchases by an offeror during a take-over bid, or by an issuer during an issuer bid otherwise than pursuant to a circular bid. Such purchases are permitted from the third business day following the date of the bid until its termination. Purchases are conditioned upon limiting the amount of securities acquired to five percent of the outstanding securities as of the date of the bid, disclosing the intention to make such purchases in the third party or issuer bid circular, and issuing and filing a press release with the relevant exchange or regulatory commission at the close of each day on which securities have been purchased (subsection 93(3) of the Act and Regulation 169 and section 142 of the Quebec Act). The press release is required to disclose the purchaser, the number of shares purchased, the highest price paid on that day, the average price paid for the securities that were purchased by the purchaser through the facilities of the stock exchange during the bid, and the total number of securities owned by the purchaser as of the close of business of the stock exchange on that day.

In connection with the proposed multijurisdictional disclosure system, the SEC is considering publication of no-action positions with respect to Rules 10b–6 and 10b–13. The contemplated no-action positions would apply solely to tender and exchange offers on Form F–8 and Schedules 14D–1F and 13E–4F, and would permit securities purchases that are permitted in Canada and that are not made for the purposes of creating actual or apparent trading activity in or of raising the price of such securities. The no-action positions would apply to: (1) With respect to cash tender offers, purchases of the securities which are the subject of the offer and any other security that is a right to purchase such security or is immediately convertible into or exchangeable for such security ("target securities"); and (2) with respect to exchange offers, the purchases of target securities and bids for and purchases of the securities offered by the bidder or issuer ("offered securities"), and any security of the same class and series or any right to purchase any such offered securities (collectively, "subject securities"). The proposed no-action positions would be available to issuers and bidders that: (1) Disclose in the Form F–8 and Schedules 13E–4F and 14D–1F the possibility of, or the intent to make, purchases of subject securities outside the offer as permitted by applicable Canadian regulations; and (2) submit an undertaking to disclose in the U.S. information regarding purchases of subject securities on the same basis as it is required to be disclosed or otherwise is disclosed pursuant to Canadian statutory and regulatory requirements.

E. Proxy and Insider Reports

Canadian issuers that currently are eligible to use Form 20–F are not subject to U.S. proxy regulation. All other Canadian issuers, however, must comply with both Canadian and U.S. proxy regulations when they solicit U.S. residents. In connection with the implementation of the system, the SEC proposes to amend certain of the proxy rules to allow compliance by Canadian issuers with Canadian proxy rules to suffice for U.S. purposes.

The SEC's proxy rules provide that, if an issuer is soliciting proxies for an annual meeting at which the only matters being voted upon include such routine items as the election of directors or/and ratification or approval of accountants, only definitive proxy statements must be filed with the SEC. Thus, no filing of preliminary materials is required. If a Canadian issuer falls within the provisions of this rule so that only definitive material is required to be filed, the amendments to SEC Rule 14a–6 would provide that the proxy material need only be prepared in accordance with Canadian requirements. If, however, the matters to be voted on would require the filing of preliminary proxy materials in the United States, then a Canadian issuer subject to U.S. proxy rules would be required to prepare the proxy statement in accordance with U.S. rules.

An additional area affected by the proposed rule changes would be that of shareholder proposals. An amendment to Rule 14a–8 under the Exchange Act would provide that any Canadian issuer subject to U.S. proxy rules that complied with applicable Canadian shareholder proposal rules would be deemed to have complied with the requirements of Rule 14a–8.

Directors, officers and principal stockholders of Canadian and other foreign private issuers eligible to use Form 20–F are not subject to Section 16 of the Exchange Act. In a situation somewhat analogous to the case of proxy regulation, Canadian persons that are in certain relationships with a Canadian foreign private issuer must comply with both Canadian and U.S. reporting requirements. The SEC is proposing a new Rule 16a–12 that would provide that only persons required to report their securities holdings in Canada would be required to report to the SEC, and the reporting obligations with the SEC could be met by furnishing the report filed with the Canadian authorities.

F. Continuous Disclosure

Issuers that make a registered offering of securities in the United States, or that have a certain number of shareholders in the United States, are subject to reporting requirements under the Exchange Act.

Section 15(d) of the Exchange Act, as supplemented by Regulation 15D, requires each issuer that has filed a registration statement that has become effective under the Securities Act to file periodic reports thereafter. Section 13(a) of the Exchange Act requires each issuer that has securities registered under Section 12 of that Act to file periodic reports. Securities may be registered under Section 12 for two reasons. Section 12(b) of the Exchange Act requires registration of any class of securities, whether debt or equity, that is listed on a national securities exchange. Section 12(g) requires issuers to register any class of equity securities held of record by 500 or more persons if certain tests are met. Foreign private issuers are exempt from the requirements of Section 12(g) if they have fewer than 300 U.S. holders. Rule 12g3–2(b) provides a further exemption from section 12(g).

Non-Canadian issuers both register their securities with the SEC and file annual reports on Form 20–F, and furnish current reports on Form 6–K. Form 20–F is available to Canadian issuers for the initial registration of securities under section 12(g), and for the annual reports of issuers so registered. However, since it is not available for annual reports by issuers that have a reporting obligation under sections 12(b) or 15(d), most Canadian issuers currently file annual reports on Form 10–K, quarterly reports on Form 10–Q and current reports on Form 8–K.

Any section 15(d) obligation resulting from use of the proposed forms for any of the transactions covered by the proposed forms could be met by filing with the SEC under cover of proposed Form 40–F, the periodic disclosure documents required in Canada. These would include Annual Information Forms, Annual Reports, Management Discussion and Analysis, annual and interim financial statements and material change reports. Documents would be filed with the SEC at the same time as they were filed with the OSC and the CVMQ. No reconciliation of financial statements would be required. All Canadian disclosure documents filed with the SEC would be subject to antifraud liability.

Canadian issuers that incur registration or reporting obligations under section 12(g) generally would be required to fulfill those obligations by filing regular SEC continuous disclosure forms. The proposed system would, however, permit issuers that met the tests for eligibility for use of Form F–10 (i.e., that had an aggregate market value for their securities of $360 million and a public float of $75 million), regardless of whether they had made offerings pursuant to the system ("F–10 issuers"), to comply with section 12(g) continuous disclosure requirements by filing the equivalent Canadian documents under cover of Form 40–F. Reconciliation of financial statements would be required, but (as in annual reports on Form 20–F) this reconciliation would be to Item 17 of Form

20–F rather than to Item 18. The Commissions request comment as to whether there are distinct reasons not to require reconciliation for Exchange Act reporting purposes. The Commissions also request comment as to whether the multijurisdictional disclosure system and use of Form 40–F should be extended to all Canadian issuers reporting under section 12(g).

As is the case with F–10 issuers, Canadian issuers that met the test for eligibility for use of Form F–9 (i.e., that had an aggregate market value for the securities of $160 million and a public float of $75 million), even if they had not made an offering pursuant to the system ("F–9 issuers"), could comply with section 12(g) continuous disclosure requirements that arose in connection with non-convertible investment grade preferred stock by filing Canadian periodic reporting documents under cover of Form 40–F. Reconciliation of financial statements would not be required.

The exemption from section 12(g) provided by Rule 12g3–2(b) would continue to exist and would be unaffected by adoption of the multijurisdictional system. When a Canadian issuer currently furnishing Canadian disclosure documents to the SEC pursuant to Rule 12g3–2(b) extended an offer into the United States, it would become subject to the periodic reporting requirements of Section 15(d), which it would meet by filing with the SEC the same documents as it presently furnishes under Rule 12g3–2(b). However, civil liability under the Exchange Act would now attach to those filings, where no such liability existed before.

Section 12(b) registration and reporting obligations would be treated similarly under the system to obligations arising under section 12(g). Canadian issuers that have a class of securities listed on an exchange would have to file SEC continuous disclosure documents. F–10 issuers and F–9 issuers of non-convertible investment grade debt or non-convertible investment grade preferred stock, however, would be able to comply with their section 12(b) reporting obligations by filing the appropriate Canadian forms. If the class of securities listed were investment grade debt or preferred shares, no reconciliation of financial statements would be required, while if equity securities were listed, Item 17 reconciliation would be required.

G. State Securities Regulation

In addition to complying with the federal securities laws, issuers selling their securities in the United States are subject to the securities laws of the 50 states, the District of Columbia and Puerto Rico. Generally, these laws require state registration of offerings made to persons in the state.

In most jurisdictions, the registration statement filed with the SEC will also satisfy the state filing requirements. The filings are subject to review by each of the states, as to the adequacy of the disclosure and, in many states, for compliance with additional substantive standards. For example, a state may have the authority to deny registration if the offering involves excessive "cheap stock" to promoters, excessive options or warrants, unreasonable underwriters' compensation, or excessive dilution, or if a class of common stock lacks voting rights.

Various exemptions from registration under state law are available; the two most relevant to the multijurisdictional disclosure process are that for rights offerings and that for securities traded in specified marketplaces. The former exemption is usually limited to rights which are either nontransferable or exercisable for only a limited period of time. The marketplace exemptions generally apply to securities listed on the New York and American Stock Exchanges, and in some instances on specified regional exchanges, or designated as National Market System securities and quoted on NASDAQ. Securities of the same issuer which are senior to securities included in an exempt marketplace are also exempt.

Two factors have operated to produce considerable uniformity among the states. First, the securities laws of most states are modeled after the Uniform Securities Act. Second, the North American Securities Administrators Association ("NASAA") proposes uniform guidelines and procedures which are frequently adopted by many of its member states. Notwithstanding these factors, the specific requirements for offering and selling securities in any state will be governed by that jurisdiction's statute, rules and policies.

In April 1989, NASAA adopted a Statement on Internationalization of the Securities Markets, in which it urged securities regulators to "encourage legitimate capital raising activities across national borders," subject to "minimum rules to ensure investor protection." Consistent with that Statement, NASAA has formed a special task force to work with the Commission, the CVMQ and the SEC to determine what accommodations would be appropriate at the state level to facilitate use of the multijurisdictional disclosure process.

III. Request for Comments

Any interested person wishing to submit written comments on any aspect of the multijurisdictional disclosure system is requested to do so. Canadian issuers, underwriters, counsel and auditors are also encouraged to submit written comments on the SEC companion release to the SEC.

IV. Cost-Benefit Analysis

To evaluate fully the benefits and costs associated with the proposed multijurisdictional registration system, the Commissions request issuers, underwriters and their counsel and auditors to provide views and data as to the costs and benefits associated with multijurisdictional offerings under current law as compared to such costs and benefits under the proposed system.

[FR Doc. 89–17857 Filed 8–3–89; 8:45am]
BILLING CODE 8010–01–M

Federal Register

Friday
August 4, 1989

Part IV

Department of Health and Human Services

Office of Child Support Enforcement

45 CFR Part 232, 301 Through 304, 306 and 307

Standards for Program Operations; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Child Support Enforcement

45 CFR Parts 232, 301, 302, 303, 304, 306, and 307

RIN 0970-AA16

Standards for Program Operations

AGENCY: Office of Child Support Enforcement (OCSE)/FSA/HHS.

ACTION: Final rule.

SUMMARY: This final regulation implements the requirements of sections 121 and 122 of the Family Support Act of 1988 (Pub. L. 100–485) by revising current regulations to specify standards for processing child support enforcement cases and timeframes for distributing child support collections under title IV–D of the Social Security Act (the Act). By imposing requirements and timeframes for taking appropriate actions and clarifying or updating existing or vague timeframes and requirements, the regulation would ensure that child support services are effectively and expeditiously provided and that children receive the services they need and the support to which they are entitled. States are required to meet these standards by October 1, 1990.

In addition, this regulation implements sections 103(e)(3) and 127 of the Family Support Act of 1988 by revising regulations to exclude certain costs from administrative costs when computing incentive payments.

EFFECTIVE DATE: October 1, 1990.

FOR FURTHER INFORMATION CONTACT: Joyce Allred, Policy and Planning Division, OCSE (202) 252–5369.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

Public reporting burden for the collections of information requirements at 45 CFR 302.32(b), 303.2(b), 303.2(c), 303.4(e), 303.5(c), 303.6(c)(3), 303.6(c)(4), 303.11(c) and 303.11(d) is estimated to average 5, 5, 5, 5, 5, 5, 5, 5, and 5 minutes respectively, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Child Support Enforcement, Family Support Administration, 370 L'Enfant Promenade, SW., Washington, DC 20447; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

Background

Since the inception of the Child Support Enforcement (IV–D) program in 1975, States have been required to locate absent parents, establish paternity, obtain support orders and collect support payments. However, despite Federal and State efforts in the 13 years since the inception of the IV–D program, the child support problem continues to grow. On October 13, 1988, the Family Support Act of 1988 (Pub. L. 100–485) was signed into law. This new law addresses the injustice of parents failing to assume responsibility for their children's support. Section 121 of Public Law 100–485 requires the Secretary of Health and Human Services (HHS) to establish time limits within which States must accept and respond to requests for assistance in establishing and enforcing support orders, including requests to locate absent parents, establish paternity and initiate proceedings to establish and collect support awards. Section 121(b) requires the establishment of an advisory committee with which the Secretary must consult prior to issuing any regulations establishing standards. Section 122 of Public Law 100–485 requires the Secretary of HHS to establish time limits governing the period within which a State must distribute amounts collected as child support.

Based on the analysis of Federal program audit and program review results, input from State IV–D agencies, early discussions with experts in child support enforcement case processing and program operations and recommendations of the advisory committee mandated by section 121, we developed standards set forth in this regulation which should ensure appropriate and expeditious processing of IV–D cases. States must meet the standards for case processing contained in this final rule as one facet of the determination of whether they are in substantial compliance with the requirements of Title IV–D of the Act. We believe the standards are realistic and focused in areas where increased effectiveness and efficiency are necessary for an enhanced IV–D program.

Statutory Authority

This regulation is published under the authority of sections 452 (a)(1) and (a)(2), (h) and (i), 454(13), 458(d) and 1102 of the Act.

Sections 452(a) (1) and (2) require the Secretary to establish such standards for State programs for locating absent parents, establishing paternity, and obtaining child support as he determines to be necessary to assure that such programs will be effective, and to establish minimal organizational and staffing requirements for State units engaged in carrying out such programs. Section 452(h) of the Act, added by section 121 of Public Law 100–485, requires the Secretary to establish time limits governing the period or periods within which a State must accept and respond to requests for assistance in establishing and enforcing support orders, including requests to locate absent parents, establish paternity, and initiate proceedings to establish and collect child support awards. Section 452(i) of the Act, added by section 122 of Public Law 100–485, requires the Secretary to establish time limits governing the period or periods within which a State must distribute amounts collected as child support. Section 454(13) of the Act requires States to comply with such requirements and standards as the Secretary of HHS determines to be necessary for the establishment of an effective IV–D program. Section 458(d) of the Act, as amended by section 127 of Public Law 100–485, requires States to exclude for purposes of computing incentives, the amounts expended by the State in carrying out a special project assisted under section 455(e) of the Act. Section 1102 of the Act requires the Secretary to publish regulations that may be necessary for the efficient administration of the functions for which he is responsible under the Act.

Regulatory Provisions

This regulation prescribes standards for program operations which the IV–D agency must meet, including minimal organizational and staffing requirements, and requirements governing: maintenance of case records; location of absent parents; establishment of support obligations; establishment of paternity; service of process; enforcement of support obligations; conditions under which cases may be closed; distribution of support payments; and incentive payments. In addition, this regulation makes technical changes and adds new sections for clarity and consistency with the above-mentioned changes to parts 302 and 303. States are required to meet these standards by October 1, 1990.

Changes with respect to excluding costs of interstate grants when computing incentives would be effective January 1, 1990, and changes with respect to excluding costs of demonstration projects on model

procedures for reviewing child, support awards are effective when the costs are incurred.

Treatment of Child Support Collections Made in the Child Support Enforcement Program as Income and Resources in the Title IV–A Program—Section 232.20

Section 232.20(d) requires that the Aid to Families with Dependent Children (IV–A) agency, on behalf of the IV–D agency, must pay to the family the sum disregarded under § 302.51(b)(1) within 20 calendar days of the date of initial receipt in the State of the first $50 of support collected in a month, or, if less than $50 of support is collected in a month, within 20 calendar days of the end of the month in which the support is collected.

Collection and Distribution of Support Payments by the IV–D Agency—Section 302.32

Section 302.32 is revised to reduce the time within which IV–D agencies must report collections to IV–A agencies and to add specific timeframes for distribution of collections in both AFDC and non-AFDC cases to help ensure that child support collections reach the intended recipients as expeditiously as possible.

Section 302.32(b)—Informing the IV–A Agency of Collections

Section 302.32(b) requires that the IV–D agency inform the State's IV–A agency of the amount of the collection which represents payment on the required support obligation for the month, as determined in § 302.51(a), within 10 working days of the end of the month in which the support is received by the agency responsible for final distribution.

Section 302.32(f)—Timeframes for Distribution of Amounts Collected

1. *Section 302.32(f)(1)—Timeframes for distribution of amounts collected in interstate IV–D cases.* Paragraph § 302.32(f)(1) requires that in interstate IV–D cases, amounts collected by the responding State on behalf of the initiating State must be forwarded to the initiating State within 15 calendar days of the initial point of receipt in the responding State, in accordance with § 303.7(c)(7)(iv).

2. *Section 302.32(f)(2)—Timeframes for distribution of collections.* Paragraph (f)(2)(i) requires that, if the IV–D agency sends payments to the AFDC family under § 302.51(b)(1), payments must be sent to the family within 15 calendar days of the date of initial receipt in the State of the first $50 of support collected in a month, or, if less than $50 is collected in a month, within 15 calendar days of the end of the month in which the support was collected. When the IV–A agency sends payments to the family under § 302.51(b)(1), the IV–D agency must forward any amount due the family under § 302.51(b)(1) to the IV–A agency within 15 calendar days of the date of initial receipt in the State of the first $50 collected in a month, or, if less than $50 is collected in a month, within 15 calendar days of the end of the month in which the support was collected.

Paragraph (f)(2)(ii) requires that, except as specified under paragraph (f)(2)(iv), collections for the month after the month the family receives its last assistance payment and collections distributed under § 302.51(b) (3) and (5) of this part must be sent to the family within 25 calendar days of initial receipt in the State of a collection for the first month of ineligibility.

Paragraph (f)(2)(iii) requires that except as specified in paragraph (f)(2)(iv) of this section, collections in title IV–E foster care cases under § 302.52(b) (2) and (4) of this part must be distributed within 15 calendar days of the date of initial receipt in the State.

Paragraph (f)(2)(iv) requires that collections as a result of Federal or State income tax refund offset paid to the family under § 302.51(b)(5) of this part or distributed in title IV–E foster care cases under § 302.52(b)(4) of this part, must be sent to the AFDC family or IV–E agency, as appropriate, within 30 calendar days of the date of initial receipt by the IV–D agency, unless State law requires a post-offset appeal process. In this instance, if an appeal is filed timely, the IV–D agency must send any payment to the AFDC family or IV–E agency within 15 calendar days of the date the appeal is resolved.

3. *Section 302.32(f)(3)—Timeframes for distribution of amounts collected on behalf of non-AFDC individuals.* To ensure timely distribution of amounts collected on behalf of individuals receiving services under § 302.33, section 302.32(f)(3) sets forth timeframes within which States must distribute collections on behalf of non-AFDC families.

Under § 302.32(f)(3)(i), amounts collected which represent payment on the current support obligation must be paid to the family within 15 calendar days of the date of initial receipt in the State.

Paragraph (f)(3)(ii) adds a timeframe to current policy by requiring that, except as specified in paragraph (f)(3)(iii), if the amount collected is more than the amount required to be distributed in paragraph (f)(3)(i) discussed above, the State may, at its discretion, either opt to send such amounts to the family to satisfy non-AFDC past-due support within 15 calendar days of the date of initial receipt in the State or retain such amounts as have been assigned to satisfy past assistance paid to the family which has not been reimbursed.

Paragraph (f)(3)(iii) requires that collections due the family under § 302.51(b)(5) as a result of Federal or State income tax refund offset be sent to the family within 30 calendar days of the date of receipt in the IV–D agency, except: if State law requires a post-offset appeal process and an appeal is filed timely, in which case the IV–D agency must send any payment to the family within 15 calendar days of the date the appeal is resolved; or as provided in § 303.72(h) (5) of this chapter.

Since timeframes for distribution of all IV–D collections, regardless of the collection mechanism, (e.g., Federal or State income tax refund offset, wage withholding, etc.) are governed by § 302.32(f), reference to timeliness of distribution in other regulations is unnecessary. Accordingly, § 302.51 is amended by deleting in paragraph (a) the last sentence that reads "In any case in which collections are received by an entity other than the agency responsible for final distribution under this section, the entity must transmit the collections within 10 days of receipt" and by deleting in paragraphs (b)(3) and (5) the sentence that reads "This payment shall be made in the month following the month in which the amount of the collection was used to redetermine eligibility for an assistance payment under the State's title IV–A plan". Similarly, § 303.100(e)(2) is amended to delete reference to distributing "promptly" amounts collected through wage or income withholding. Finally, we are deleting from regulations governing distribution of State tax refund offset collections the words "Within a reasonable time period in accordance with State law" in § 303.102(g)(1).

Establishment of Cases and Maintenance of Case Records—Section 303.2

1. *Application Process.* Section 303.2(a)(1) requires that the IV–D agency must make applications for child support services readily accessible to the public.

Section 303.2(a)(2) requires that when an individual requests an application or IV–D services, the IV–D agency must provide applications on the day an individual makes a request in person, or send an application to the individual

within no more than 5 working days of a written or telephone request for services. In addition, information describing available services, the individual's rights and responsibilities and the State's fees, cost recovery and distribution policies must accompany all applications for services and must be provided to AFDC, Medicaid and title IV–E foster care applicants or recipients within no more than 5 working days of referral to the IV–D agency.

Paragraph (a)(3) requires that the IV–D agency must accept an application as filed on the day it and the application fee are received. An application is a written document provided by the State which indicates that the individual is applying for child support enforcement services under the State's title IV–D program and is signed by the individual applying for IV–D services.

2. *Opening cases.* Section 303.2(b) requires that, for all cases referred to the IV–D agency or applying for IV–D services under § 302.33, the IV–D agency must, within no more than 20 calendar days of receipt of referral of a case or filing an application for services, open a case by establishing a case record, and based on an assessment of the case to determine necessary action: solicit necessary and relevant information from the custodial parent and other relevant sources and initiate verification of information, if appropriate; and, if there is inadequate location information to proceed with a case, request additional information or refer the case for further location attempts as specified in § 303.3.

Location of Absent Parents—Section 303.3

1. *Definition.* Section 303.3(a) defines "location" as information concerning the physical whereabouts of the absent parent or the absent parent's employer(s), other sources of income, or assets, as appropriate, which is sufficient and necessary to take the next appropriate action in a case.

2. *Location sources.* Section 303.3(b)(1) requires the IV–D agency to use appropriate Federal, interstate and local location sources and to use appropriate State agencies and departments as authorized by State law.

Paragraph (b)(2) requires that States establish working relationships with all appropriate agencies in order to utilize locate resources effectively.

3. *Actions required within 75 calendar days.* Paragraph (b)(3) requires that the IV–D agency, within no more than 75 calendar days of determining that location is necessary, access all appropriate location sources, including the Federal PLS, and ensure that location information is sufficient to take the next appropriate action on a case.

Paragraph (b)(4) requires that the IV–D agency refer appropriate cases to the IV–D agency of any other State, in accordance with the requirements of § 303.7 of this part. To correspond with this requirement, § 303.7(b)(2) requires that the initiating State refer any interstate case to the responding State's central registry for action within 20 calendar days of determining the absent parent or putative father is in another State. The IV–D agency of the other State must follow the procedures in paragraphs (b) (1) through (5) for such cases, as necessary, except that the responding State is not required to access the Federal PLS under paragraph (b)(3).

4. *Continued location attempts.* Paragraph (b)(5) requires that the IV–D agency periodically repeat location attempts in cases in which previous attempts to locate absent parents or sources of income and/or assets have failed, but adequate identifying and other information exists to meet requirements for submittal for location. Attempts must be repeated quarterly, or immediately upon receipt of new information which may aid in location, whichever occurs sooner. Quarterly attempts may be limited to automated sources but must include accessing State employment security files. Repeated attempts because of new information must meet the requirements in paragraph (b)(3).

Paragraph (b)(6) requires that at least annually, States must submit to the Federal PLS cases in which location is needed and previous attempts to locate have failed and which meet the requirements for submittal to the Federal PLS.

Paragraph (c) requires that the State must establish guidelines defining diligent efforts to serve process. These guidelines must include periodically repeating service of process attempts in cases in which previous attempts to serve process have failed, but adequate identifying and other information exists to attempt service of process.

Establishment of Support Obligations—Section 303.4

Section 303.4(d) requires the IV–D agency, within 90 calendar days of locating the absent parent or of establishing paternity, to establish an order for support, or complete service of process necessary to establish a support order (or document unsuccessful attempts to serve process, in accordance with the State's guidelines defining diligent efforts under § 303.3(c)). To correspond with the requirement in paragraph (d), § 303.101(b)(2) states that actions to establish or enforce support obligations in IV–D cases must be completed from the time of successful service of process to the time of disposition with the required timeframes.

Section 303.4(e) requires that in situations where a support order is dismissed without prejudice, the IV–D agency must, at the time of the dismissal, examine the reasons for dismissal and determine when it would be appropriate to seek an order in the future, and seek a support order at that time.

Establishment of Paternity—Section 303.5

1. *Paternity establishment process timeframe.* Section 303.5(a)(1) requires that the IV–D agency, within no more than 90 calendar days of locating the alleged father, file for paternity establishment or complete service of process to establish paternity (or document unsuccessful attempts to serve process in accordance with the State's guidelines defining diligent efforts under § 303.3(c)), whichever occurs later in accordance with the State's procedures for paternity establishment. Under paragraph (a)(2), paternity must be established or the alleged father excluded as a result of genetic tests and/or legal process within one year of the later of: (i) Successful service of process; or, (ii) the child reaching 6 months of age.

Paragraph (a)(3) requires that, in any case where an alleged father is excluded but more than one alleged father has been identified, the IV–D agency must meet the requirements set forth in paragraphs (a) (1) and (2) for each alleged father identified.

2. *Use of laboratories which perform genetic testing at competitive rates.* Paragraph (c) requires that the IV–D agency identify and use through competitive procurement laboratories which perform, at reasonable cost, legally and medically acceptable genetic tests which tend to identify the father or exclude the alleged father. The IV–D agency must make available a list of such laboratories to appropriate courts and law enforcement officials, and to the public upon request.

To correspond with these changes, § 304.20(b)(2) is revised by changing the reference to blood tests to genetic tests and the reference to § 303.5(b) to § 303.5(c).

Enforcement of Support Obligations—Section 303.6

This final regulation revises § 303.6 by deleting the enforcement techniques listed in paragraphs (a) through (f) and adding monitoring and enforcement requirements in new paragraphs (a) through (c).

1. *Monitoring compliance with orders and identifying delinquencies.* Section § 303.6(a) requires that the IV–D agency maintain and use an effective system for monitoring compliance with the support obligation. This monitoring includes monitoring of all provisions of support orders, including health insurance for the child(ren).

Additionally, paragraph (b) requires that the IV–D agency maintain and use an effective system for identifying those cases in which there is a failure to comply with the support obligation on the date the parent fails to make payments in an amount equal to the support payable for one month or earlier in accordance with State law.

2. *Enforcement actions.* Paragraph (c)(1) requires that the State initiate wage withholding in accordance with the requirements of § 303.100. Paragraph (c)(2) requires that the State take any appropriate enforcement action (except income withholding, and Federal and State income tax refund offset) unless service of process is necessary, within no more than 30 calendar days of identifying a delinquency or other support-related non-compliance with the order, or location of the absent parent, whichever occurs later. If service of process is necessary prior to taking an enforcement action, the IV–D agency must complete such service (or document unsuccessful attempts to serve process in accordance with the State's guidelines defining diligent efforts under § 303.3(c)) and take the enforcement action, if process is served, within no more than 60 calendar days of identifying a delinquency or other support-related non-compliance with the order, or location of the absent parent, whichever occurs later.

This requirement includes taking appropriate enforcement action within the above timeframes upon notification of non-compliance with an order requiring health insurance coverage. In accordance with current medical support requirements, States must attempt to enforce a requirement in a support order that an absent parent obtain health insurance in cases of non-compliance with such an order.

With regard to Federal and State income tax refund offset, paragraph (c)(3) requires that States submit all cases which meet the certification requirements for State tax refund offset once a year, in accordance with § 303.102 and State guidelines developed under § 302.70(b), and for Federal tax refund offset in accordance with § 303.72.

Paragraph (c)(4) requires that in cases in which enforcement attempts have been unsuccessful, the State must, at the time an attempt to enforce fails, examine the reason the enforcement attempt failed and determine when it would be appropriate to take an enforcement action in the future, and take an enforcement action at that time.

Because of the changes discussed above, we deleted the list of enforcement techniques in former § 303.6 (a) through (f). There is no reason to list some enforcement actions or to try to list all techniques since States are required to take whatever enforcement action is warranted in a particular case.

Procedures for Case Assessment and Prioritization—Section 303.10

Section 303.10(a) requires that, if a State adopts a case assessment and prioritization system, the IV–D agency must continue to meet the timeframes and case processing standards contained in part 303.

Section 303.10(b)(5) requires a State, in implementing a case assessment and prioritization system, to prioritize cases after reviewing all intake information for accuracy and completeness and, if review indicates that additional information is needed, prioritize only after attempting to verify or secure the information. A cross reference to § 303.2 is added to § 303.10(b)(5) to ensure that cases are prioritized only after the requirements for establishment of cases and maintenance of case records in § 303.2 are met.

Finally, we are tying the case processing requirements in part 303 to the requirement for periodic review of low priority cases contained in § 303.10(b)(6). Paragraph (b)(6) is amended to require that periodic review of low priority cases must be in accordance with the standards set forth in part 303, such as quarterly location attempts and diligent efforts to effect service of process.

Case Closure Criteria—Section 303.11

Section 303.11 establishes criteria States must use to determine whether child support cases may be closed. If a case does not meet at least one of the following criteria, it must be kept open and worked. However, because current regulations at § 303.10 allow States to establish procedures for case prioritization, States may distinguish between those cases with current success potential and those which do not now, but may in the future, have potential for success. This latter group could include the cases which do not meet the criteria for closure but in which the next required case processing step cannot as yet be taken. Requirements for periodic review in § 303.10 governing case prioritization systems, and elsewhere in part 303, would apply in these cases.

Section 303.11 is entitled "Case closure criteria." Paragraph (a) requires States to establish a system for case closure. Paragraph (b) establishes the criteria for case closure eligibility.

Paragraph (b)(1) allows closure of a case where the child has reached the age of majority, there is no longer a current support order, and either no arrearages are owed or arrearages are under $500 or unenforceable under State law.

Paragraph (b)(2) allows case closure where the child has not reached the age of majority, arrearages are less than $500 or unenforceable under State law, and there is no longer a current support order.

Paragraph (b)(3) allows a State to close a case upon the death of the absent parent, or putative father, if no further action, including a levy against the estate, can be taken.

Paragraph (b)(4) states that the IV–D agency may close cases in which, either the child is at 1east 18 years old and the action is barred by a statute of limitations which meets the requirements of § 302.70(a)(5), or a genetic test or court or administrative process has excluded the putative father and no other putative father can be identified. In addition, paragraph (b)(4) specifies that, in accordance with § 303.5(b), the IV–D agency need not attempt to establish paternity in any case involving incest or forcible rape, or in any case where legal proceedings for adoption are pending, if, in the opinion of the IV–D agency, it would not be in the best interests of the child to establish paternity.

Paragraph (b)(5) allows case closure where the IV–D agency has been unable to locate an absent parent despite having made repeated location efforts using multiple sources, including those listed under § 303.3, over a three-year period.

Paragraph (b)(6) allows case closure if the absent parent cannot pay support for the duration of the child's minority because the parent has been institutionalized in a psychiatric facility, is incarcerated with no chance for parole, or has a medically-verified total and permanent disability with no

evidence of support potential. The State must also determine that no income or assets are available to the absent parent which could be levied or attached for support.

Paragraph (b)(7) allows a case to be closed when the absent parent is a citizen of, and lives in, a foreign country, does not work for the United States government or a company which has its headquarters or offices in the U.S., and has no reachable domestic income or assets; and the State has been unable to establish reciprocity with the country.

Paragraph (b)(8) allows a case to be closed if the resident parent, legal guardian, attorney, or agent of a child only requested the State parent locator service (PLS) to submit a request to the Federal PLS under the provisions of § 302.35(c)(3) and the location services have been completed.

Paragraph (b)(9) allows case closure in a non-AFDC case or in a former AFDC, Medicaid or foster care (title IV-E) case when the custodial parent requests that the case be closed and there are no arrearages assigned to the State.

Paragraph (b)(10) allows the IV-D agency to close a case when it has been notified by the IV-A or IV-E agency, in accordance with § 302.31(c), that there has been a finding of good cause for the recipient's failure to cooperate in obtaining support and the IV-A or IV-E agency has determined that paternity establishment or support establishment and enforcement may not proceed without risk or harm to the child or caretaker relative.

Paragraph (b)(11) allows case closure in non-AFDC cases if the IV-D agency is unable to contact the custodial parent over at least a 30-calendar day period despite attempts to contact the parent by both phone and letter, including at least one registered letter.

Paragraph (b)(12) allows case closure due to non-cooperation of the custodial parent when the State documents both the circumstances of the non-cooperation and that an action by the custodial parent is essential for the next step in providing support enforcement services.

Paragraph (c) requires the State, 60 calendar days prior to any case closure because of criteria in paragraphs (b)(1) through (7) and (11) and (12), to notify the custodial parent in writing of the State's intent to close the case. The case must be left open if the custodial parent supplies information in response to the notice which could lead to the establishment of paternity or a support order or enforcement of an order or re-establishes contact with the agency in the case of paragraph (b)(11). If a case is closed, the custodial parent may request at a later date that the case be reopened if there is a change in circumstances which could lead to the establishment of paternity or a support order, or enforcement of an order.

Paragraph (d) requires the IV-D agency to retain all records for cases closed pursuant to this section for a minimum of three years, in accordance with 45 CFR part 74, subpart D.

Minimal Organizational and Staffing Requirements—Section 303.20

Section 303.20(c), Minimal organizational and staffing requirements, requires that there must be an organizational structure and sufficient resources at the State or local level to meet the performance and time standards contained in Part 303 and to provide for the administration or supervision of support enforcement functions listed in paragraphs (c)(1) through (8).

Paragraph (c)(7) is revised to state that the activities to enforce collection of support must include wage withholding and other available enforcement techniques.

To further ensure effective child support programs, a new paragraph (g) is added which states that, if it is determined as a result of an audit under Part 305 that a State is not in substantial compliance with title IV-D of the Act, the Secretary will evaluate whether inadequate resources was a major contributing factor and, if necessary, may set resource standards for the State.

Incentive Payments to States and Political Subdivisions—Section 303.52 and Proposed Section 304.12

Because regulations for incentive payments, for the most part, govern a financial aspect of the program and do not therefore properly belong in Part 303, which establishes program standards, § 303.52(a), (b) and (c) are transferred to 45 CFR Part 304, Federal Financial Participation. Accordingly, current 45 CFR 303.52(d) is being redesignated as § 303.52. Furthermore, the section title, Incentive payments to States and political subdivisions, is changed to Pass-through of incentives to political subdivisions, since this is the only requirement remaining in this section.

To implement the provisions of sections 103(e) and 127 of Pub. L. 100-485, regulations governing incentive payments are amended in two ways. First, to implement section 127, which amends section 458(d) of the Act to exclude the costs of interstate grants when computing incentive payments, paragraph (b)(4)(v) is revised to state that, effective January 1, 1990, in calculating the amount of incentive payments, amounts expended by the State in carrying out a special project under section 455(e) of the Act shall not be included in the State's total IV-D administrative costs. In addition, to implement section 103(e) of Pub. L. 100-485, a new paragraph (vi) is added which states that the costs of demonstration projects for evaluating model procedures for reviewing child support awards under section 103(e) of Pub. L. 100-485 shall not be included in a State's total IV-D administrative costs for purposes of computing incentives.

For consistency with the redesignation of most of § 303.52 as § 304.12, all references to § 302.52(a) through (c) in other regulations are changed to refer to § 304.12.

Medical Support Enforcement—Part 306

Previously, Part 306 was divided into two Subparts. Subpart A contained requirements governing optional cooperative agreements and Subpart B contained required IV-D medical support activities. The requirements under current Subpart B (§ 306.50, Securing medical support information, and § 306.51, Securing medical support obligations) are moved to Part 303, redesignated as §§ 303.30 and 303.31, respectively. The regulations under current Subpart A remain as Part 306 without the heading of Subpart A.

For consistency with the changes and redesignations within Part 306, all references in program regulations to regulations in current Part 306 are changed to reflect the transfer of the contents of Subpart B to Part 303 and the redesignation of Subpart A of Part 306 as Part 306.

Response to Comments

We received comments on the notice of proposed rulemaking from over 150 commenters representing national organizations, State and local IV-D agencies, child advocacy groups, and private citizens. Comments and our responses are as follows.

Effective Date of Requirements and Corresponding Audit Standards

1. *Comment:* We received many comments on the proposed effective date of these requirements. The preponderance of commenters indicated that they could not meet the timeframes without Statewide and comprehensive automated information management systems. These commenters urged that the effective date for timeframes be tied to such a level of automation. Some

suggested that the timeframes not be effective until October 1, 1995, when States are required by the Family Support Act of 1988 to have operational automated child support enforcement systems in place, or even until one or two years after that date. One State with an automated support enforcement system requested, for example, that timeframes be phased in as part of a State's responsibilities to have automated systems in place by 1995, arguing that in their own situation, modification of State law and regulations as well as change to current system processing methods would be necessary. Others asked that implementation be delayed until two or three years after publication of the final rules, as opposed to the October 1, 1990 date set forth in the proposed rule.

Some commenters suggested a phase-in of timeframes between October of 1990 and October of 1995. One suggestion was that new IV–D cases be subject to the timeframes in 1991 and existing IV–D cases become subject to the timeframes in 1996. Others suggested that more liberal requirements be effective in 1992 (suggesting double the proposed timeframes for each action) and the proposed timeframes be effective in 1993. Still others suggested implementing timeframes one at a time or letting State IV–D agencies set their own timeframes.

A number of commenters asked that States not be subject to a determination of substantial compliance with the program standards as a result of an audit until there has been a period of evaluation of State performance with respect to the proposed standards. One commenter requested 100 percent Federal funding of the cost of implementation for a period of time prior to the effective date of the requirements and evaluation of the results achieved before such date. Some State agencies asked for technical assistance in meeting the timeframes established.

Response: The Congress, in requiring the Secretary to publish, within 10 months of the effective date of the Family Support Act of 1988, final regulations requiring States to provide IV–D services, including prompt distribution of collections to families, did not intend that the effective date of those regulations be inordinately delayed. Several commenters noted that many of the requirements set forth in the proposed rule reflected good management and were achievable in a well-run child support operation today.

Therefore, while we are sympathetic to the demands placed upon States by the new requirements, we believe that the approach most consistent with Congressional intent with respect to implementation of the timeframes and with the pressing need for performance improvement is to retain the October 1, 1990, effective date. We have, however, extended or revised many of the proposed timeframes to take into consideration the concerns of commenters and believe the revised timeframes to be indicative of alternative timeframes suggested by many States. We intend to consider concerns about how to assess compliance in developing audit requirements for these standards (see response to next comment).

2. *Comment:* Commenters requested that we change the current audit standard of 75 percent compliance with program requirements to begin with a lower percentage and increase the percentage of cases which must be processed in accordance with the timeframes between 1991 and 1995. One example given was 50 percent compliance in FY 1991, increasing by 5 percent a year until 75 percent compliance would be required in FY 1996. Alternatively, 40 percent compliance initially was suggested with an increase of 10 percent a year until a 75 percent compliance rate was reached in a later year. Other commenters, by the same token, requested a more stringent compliance standard (for services other than paternity establishment), suggesting between 90 and 98 percent rather than 75 percent, depending on the services needed in the case.

Response: Given the impact of these regulations, we are convinced by the commenters that the best way to ensure that States work all cases and provide all necessary services in accordance with the new program standards and timeframes would be to assess State compliance over a period of time. We are in the process of revising the audit regulations to address the new program standards and intend to publish a proposed audit regulation as soon as possible after publication of this regulation. Final revised audit regulations are scheduled to be published before the October 1, 1990, effective date for program standards. Specific suggestions for assessing State compliance with the new requirements will be considered in revising the audit regulation.

3. *Comment:* We solicited comments on what steps we should take to reflect improvements in case processing over time. Options presented in the preamble to the proposed rule were: (1) Wait to decide whether and how to change timeframes; (2) write into the final regulation a date by which the regulations must be reviewed and updated; and (3) write into the regulations shorter timeframes for years after 1990. We received preferences for each of the three options by those who responded. The majority of those who commented indicated that we should wait until after the standards are effective and State compliance has been evaluated before making any decisions with respect to revisions. States and localities wondered how we could plan to change standards before we have any experience with their impact. Some commenters preferred the regulations to include a date by which standards will be reviewed and revised. Suggestions for the timing of reviews ranged from 18 months to 4 years. It was suggested that revised standards be submitted to the Congress and that IV–D agencies and the courts have an opportunity to comment on the proposed standards.

Response: As a result of these comments, we have decided to wait until there is some base of experience with full implementation of the timeframes before we determine how or whether to revise them. However, we plan to look at operational experience with the timeframes and institute any necessary changes or other action within no more than 4 years of the effective date of October 1, 1990.

4. *Comment:* Several States stressed the need for clear and precise program standards which are not subject to interpretation by the auditors. They indicated that regulations are sometimes interpreted differently by auditors and any discretion on their part should be removed. They requested that changes to the audit regulations and audit guides to evaluate State compliance with the time standards be issued at the same time as the final regulations. A number of commenters were concerned about the need for, and how to, document compliance with each of the standards. They requested that documentation to prove compliance with case processing requirements be explicitly stated in regulations. States were concerned that documentation of each timeframe would be time consuming and take time which could otherwise be spent working cases. Commenters were concerned about documentation as the only way to prove action had been taken on a case.

Response: We have revised the proposed regulations to attempt to remove any ambiguity which might be subject to varying interpretation. In addition, as discussed previously, we are currently revising audit regulations to address the requirements of this regulation. Those regulations will be

published for comment as soon as possible after publication of these regulations in final form. With respect to concerns about documentation, States have always been, and will continue to be, responsible for proof, for purposes of an audit, that they are meeting program requirements or have met them with respect to a particular case. Necessary documentation is not specified in regulations because to do so would be overly prescriptive and it would be impossible to specify every type of documentation which would indicate compliance with each regulatory requirement. Elimination of an auditor's professional judgment is neither possible nor desirable, but a variety of internal quality controls ensures national consistency in the conduct of the audit function. Finally, we believe that the revisions to the proposed rule to eliminate unnecessary interim timeframes are responsive to States' concerns that documentation will be too time-consuming.

Overall Alternative Approaches

1. *Comment:* We received a number of alternatives to our approach to ensuring prompt response to requests for IV–D services. One State suggested that we recommend, rather than require, specific timeframes for case processing, and establish audit requirements based on end results, such as those in place for expedited processes for establishing and enforcing support orders. Specifically, the State recommended that actions taken to open cases, initiate absent parent or putative father locations, and where location of the parent is known, file petitions for paternity and/or support be required to be completed in 60 percent of the cases within three months, 70 percent within six months, and 75 percent within one year. Another alternative was to establish standards similar to the paternity establishment standard established by the Family Support Act, under which a State's performance is evaluated based on the percentage of actions taken out of the total actions needed to be taken, with a specific improvement in performance required each year. Finally, a commenter suggested that we mandate timeframes for major functions of the IV–D program, not each step of the process.

Response: We believe that changes made to the proposed rule to eliminate certain specific timeframes are consistent with the broader approach requested by some States. We disagree with the suggestion that we implement expedited processes-type timeframes for processing cases. We received a number of comments requesting that individual timeframes be imposed to control specific actions taken by different entities administering one or more facets of a State's overall IV–D program. Given the extent of comments about how many different entities are involved in the IV–D process, lack of adequate case management processes in many IV–D programs and delays in providing services, we believe that setting specific timeframes for each step of the process will ensure States provide necessary services on a timely basis. Finally, a standard based on the percentage of actions taken out of the total actions needed to be taken is not a measure of prompt response to requests for services.

2. *Comment:* A number of commenters suggested that we convert proposed timeframes so that all timeframes of over 9 days are calendar day timeframes and all timeframes of 9 or fewer days are work days.

Response: While we believe that looking back at case records and determining work days for audit purposes will necessitate additional effort, a State could be seriously disadvantaged in trying to meet calendar day timeframes of less than 10 days because of intervening weekends. Therefore, we have changed proposed timeframes by clarifying that those between 1 and 10 days are working days and timeframes of 11 days and above are calendar days. Furthermore, we have converted proposed timeframes of between 11 and 30 workdays to an approximate equivalent number of calendar days, for example, 15 workdays becomes 20 calendar days and 30 workdays becomes 40 calendar days.

3. *Comment:* We received many comments on each of the timeframes requiring IV–D agencies to, within 2 working days of completing one action, initiate the next necessary action or service. For example, when there is adequate location information to proceed with the case, the State must initiate an appropriate service within 2 working days of determination of the next appropriate action or service. Commenters were concerned that the requirement was too vague; they wanted us to define "initiate," "appropriate," and "determination." They were also concerned that 2 working days is not adequate to prepare all the documents necessary to take an action, for example, request service of process or prepare a petition for paternity establishment. They requested the timeframe be extended to anywhere from 5 to 45 working days. Commenters were unsure about whether the requirement was to start to take an action or to finish it. They indicated that the 2-day timeframes are unrealistic and don't account for illness, vacation, training or loss of staff. A number of commenters suggested that we eliminate these interim timeframes and include the actions required under an overall timeframe.

Response: In response to these comments we have removed the proposed requirements to initiate the next appropriate action or service under proposed §§ 303.2(c)(3) and 303.3(b)(6). Our intent is that cases move forward to the next step in case processing just as soon as an action is completed. However, we believe that since each timeframe begins with the accomplishment of the previous task, i.e., the timeframe for support order establishment begins with location of the absent parent or paternity establishment, there is no need for these work-initiation timeframes. Commenters convinced us that they are too burdensome to document, too vague to ensure consistent application or interpretation with respect to compliance, and truly unnecessary given the encompassing structure of other timeframes.

4. *Comment:* A number of commenters indicated that, if these timeframes are effective before 1995 when States must have operational automated systems, modifications to current automated systems will be necessary and Federal funding should be available for those modifications.

Response: Federal funding under the IV–D program is available for modifications to automated systems necessary to ensure compliance with these requirements.

Suggestions Beyond the Scope of These Regulations

1. *Comment:* Commenters requested that the incentive funding structure be changed to remove the cap on incentives paid on non-AFDC collections because it acts as a disincentive to providing services in non-AFDC cases. Commenters also were concerned that Congress not adopt a minimum cost to collections ratio for States to qualify for incentive payments. They argue that necessary changes to comply with new requirements will be costly and States should not be penalized by the fact that cost to collection ratios slip.

Response: The incentive funding structure is specified in the statute and changes to it are, therefore, beyond the scope of this regulation. States which implement effective case management procedures and aggressively use

available enforcement techniques can and do operate a cost effective IV–D program.

2. *Comment:* A number of States also requested that the $50 disregard and pass-through provisions of the statute be repealed and alternatively AFDC grants be increased across the board. Commenters argued that the $50 pass-through provision is cumbersome to administer, discriminates against children whose absent parents cannot be made to pay support, and doesn't result in greater cooperation from the custodial parent or compliance by the absent parent, as intended by the Congress.

Response: As the commenters recognized, any change in the $50 disregard and pass-through provisions would require a change in the statute governing the IV–A and IV–D programs.

3. *Comment:* Some commenters requested specific changes to the regulations governing the IV–A program. Specifically, they asked that IV–A agencies be required to determine AFDC eligibility within 2 rather than 47 days and to notify the IV–D agency within 2 days of application for AFDC, as opposed to the current requirement of notice within 2 days of determination of eligibility. Similarly, commenters requested a 2-day timeframe for notice by the IV–A agency to the IV–D agency of AFDC ineligibility or termination. Another commenter requested that standards be established for referral and processing of cases within the IV–A system and that applicants for AFDC be required to provide minimal information elements as a prerequisite to AFDC eligibility.

Response: The requested changes to AFDC program regulations are beyond the scope of these regulations, which is to establish standards for prompt response to requests for services under the IV–D program, including prompt distribution of collections to families. However, the Family Support Administration is committed to considering ways to strengthen those IV–A program requirements governing AFDC applicant and recipient cooperation so as to improve the quality and timeliness of information transfer between the IV–A and IV–D programs.

Support Payment to the IV–D Agency—Section 302.32

Title of Section

1. *Comment:* One commenter suggested that since § 302.32 now contains requirements for distribution of collections, the title of the section should be changed to reflect this additional content.

Response: We agree and have changed the title to "Collection and Distribution of Support Payments by the IV–D Agency."

Section 302.32(b)—Informing the IV–A Agency of Collections

1. *Comment:* We received a number of comments on the proposed requirement that IV–D agencies report the amount of any support collection to the IV–A agency within 10 working days of the collection. Commenters indicated that daily notice serves no practical purpose and would unnecessarily complicate the recordkeeping process because nothing can be done to redetermine AFDC eligibility until all collections for a month have been received. Alternatives suggested included keeping the current requirement that IV–D agencies report the amount of the collection "as soon as possible but not later than 30 days after the end of a month," or requiring notice to the IV–A agency within 10 days of the end of the month or 10 calendar days from the date of initial receipt in the State. The alternative suggested by the most commenters was 10 working days from the end of the month of collection.

Response: In retrospect and in light of the comments received, we agree that requiring notice to the IV–A agency within 10 calendar days of initial receipt in the State would be unduly stringent. We have revised § 302.32(b) as suggested by many commenters, to require the IV–D agency to inform the IV–A agency of the amount of the collection which represents payment on the required support obligation for the month within 10 working days of the end of the month in which the support is received by the IV–D agency responsible for final distribution of the collection.

2. *Comment:* One commenter asked if notice to the IV–A agency included notice of collection of past-due support or just notice of current support collected.

Response: Under § 302.32(b), the 10-working day reporting requirement applies only to the amount of collection which represents payment on the required support obligation for the month.

3. *Comment:* A number of commenters asked whether direct, on-line access by IV–A agencies to IV–D collection data meets the requirements for notice to the IV–A agency required under § 302.32(b).

Response: Direct, on-line access to IV–D collection data meets the requirement for notice under § 302.32(b).

4. *Comment:* One commenter asked why the proposal for reporting collections to the IV–A agency was inconsistent with the requirement for AFDC recipients to report collections within the first and fifth of each month.

Response: We believe the commenter is referring to the requirement at 45 CFR 233.36 for AFDC recipients to report earned income monthly to the IV–A agency. There is no Federal requirement to report income within 1 to 5 days of the end of the month. Because the timeframe for the IV–D agency to report collections to the IV–A agency is now linked to a full calendar month, it is consistent with the requirement for AFDC recipients to report earned income.

Section 302.32(f)—Timeframes for Distribution of Collections

General Comments

1. *Comment:* A few commenters questioned use of the term "distribution," and whether it was being confused with disbursement. They defined distribution as a process to identify the elements of a payment and to allocate the payment among those elements, i.e., $50 pass-through, current AFDC reimbursement, current support payment to family, past AFDC reimbursement, arrearages payment to family. They view disbursement as the sending of the payment itself and suggested that we either establish timeframes for disbursement of payments to families or establish one timeframe for the entire distribution process.

Response: While we agree with the commenter's characterization of disbursement versus distribution, because Congress referred, in the Family Support Act, to "distribution" of collections to families, "distribution" is generally used in these regulations. We have, however, in response to comments addressed later, revised the proposed requirements to establish timeframes for sending (disbursing) collections to families. We are not establishing one timeframe for the entire distribution process in AFDC cases because, while distribution to families of amounts in excess of the $50 pass-through payment depends on whether or not the family continues to be eligible for AFDC, the $50 pass-through payment itself does not, and may be sent to the family without waiting for eligibility redetermination.

2. *Comment:* We received a number of comments on the start date of timeframes for distribution of collections. One commenter wanted us to clarify "initial receipt in the State."

Response: We clarified the meaning of initial receipt in the State in response to comments on the final regulation on the

$50 pass-through in AFDC cases published June 9, 1988 (53 FR 21643). "Initial receipt in the State" for distribution purposes means when a collection is received by the first entity or agency of the State, whether or not the agency or entity is under cooperative or other agreement with the IV–D agency. This includes a clerk of the court, an employment security agency in cases of unemployment compensation withholding, or a bank handling collection responsibilities under contract with a government agency.

3. *Comment:* One commenter wanted the distribution timeframes to start with the date a payment is identified because, when payments are received without identifying information, it takes time to determine for whom the payment is intended.

Response: We believe that unidentified payments can be identified within the required timeframes for distribution. For example, we received comments from a State which indicated that even if a payment lacked identifying information, the State could determine to whom it was owed within the timeframe. In any event, if a payment is made without information which links it to a specific IV–D case and the State documents that it is unable to determine to whom the payment is owed, the State would not be penalized for failing to meet the timeframe for distribution in that case.

4. *Comment:* A number of States, especially those which do not have cooperative agreements with the courts which receive and/or distribute collections, requested that we start the timeframe for distribution of collections from the date of receipt in the IV–D agency. They argue that they have no control over the courts and cannot make them meet the timeframes. Some States which have State-supervised, county-administered IV–D programs indicated that they could not meet the 15 working day timeframes for distribution because of the structure of their programs. Some of those States, as well as States in which the courts collect support, urged us to retain the requirement that collections must be forwarded within 10 days of receipt by any agency not responsible for final distribution of the collection. They argued that the 10-day requirement is the only leverage they have to ensure collections are forwarded timely. Another commenter urged that we require any entity other than the agency responsible for final distribution to transmit the collection within 5 working days of receipt. Still another suggested 3 working days was sufficient.

Response: Congress expressed its concern about the delays in forwarding collections to families who are in need of them by requiring the Secretary to publish timeframes for prompt distribution of those collections. They indicated the urgency of establishing timeframes by requiring publication of final regulations within 10 months of enactment of the Family Support Act. State IV–D agencies are responsible for sending collections to families in IV–D cases, regardless of whether or not they have cooperative agreements with the courts that collect support obligations. State-supervised, county-administered IV–D programs are no less responsible for timely distribution of collections to families than State-run IV–D programs. Families should not suffer delays in receiving the support they need because of the structure of IV–D programs.

Federal funding of States' IV–A and IV–D programs depends on compliance with Federal IV–D requirements, regardless of whether or not there are cooperative agreements between courts and IV–D agencies or whether the program is State-supervised and county administered. The designated single State IV–D agency is responsible for ensuring that all program requirements are carried out within the State; to this end, it can certainly apportion appropriate segments of the overall timeframe for distribution among the entities involved in program administration.

In keeping with our response to comments requesting that we not impose excessively detailed timeframes for each step of the process and because States need flexibility commensurate with their responsibility for ensuring compliance with title IV–D requirements, we have not added the 10-day timeframe within which each entity other than the agency responsible for final distribution must forward the collection.

5. *Comment:* Some commenters asked that we require States to establish a grievance process to resolve disputes with respect to timely and accurate distribution of collections. Several commenters requested that the process be extended to resolve disputes over adequate provision of all services to ensure that the program standards requirements are followed by States. They suggested that States be required to establish toll-free numbers for custodial parents to call for information or to discuss how collections were distributed. In addition, they requested that States be required to pay custodial parents any interest earned on collections.

Response: There is nothing to preclude a State from setting up such a system to resolve disputes. However, there is no evidence that such a system is warranted in all States. Furthermore, State compliance with program requirements, such as these performance standards, is measured by program audits and other less formal reviews conducted by Federal staff. We believe that most States are distributing collections accurately and that grievance procedures are unnecessary. Finally, States are permitted to pay interest earned on non-AFDC collections paid to families to those families.

Section 302.32(f)(1)—Interstate Collections

Comment: Commenters requested that the timeframe for forwarding interstate collections, like other distribution timeframes, be reduced from 10 working to 10 calendar days. Alternatively, several State and local agency commenters requested that the timeframe for forwarding collections in interstate cases be changed to 15 working days to avoid any distinction between distribution timeframes for interstate and intrastate cases.

Response: We agree that there should be consistent interstate and intrastate distribution timeframes and have changed the proposed 10 working day timeframe for the responding State IV–D agency to forward collections to 15 calendar days from the date of initial receipt in the responding State. This is consistent with the requirement in § 302.32(f)(3)(i) to send collections to non-AFDC families within 15 calendar days of the date of initial receipt in the State. However, reducing the timeframe to 10 calendar days would be unduly restrictive at this time.

Section 302.32(f)(2)—AFDC Collections

a. $50 Pass Through Payments to Families

1. *Comment:* Almost every comment we received from a State or local IV–D agency objected to the proposal that payments to the AFDC family under § 302.51(b)(1) be made within 15 working days of the date of initial receipt in the State. Commenters strongly urged that IV–D agencies not be required to pay multiple pass-through payments until $50 is collected in cases in which payments are made weekly. Commenters suggested the timeframe for sending the $50 pass-through to families be tied to the end of the month of collection or the date at least $50 is

collected. In addition, commenters indicated that, if finalized, the proposal would require daily distribution of collections which has proven in at least one State to be confusing to AFDC recipients and difficult to administer.

Response: It was never our intention that States make multiple incremental payments of less than $50 to the AFDC family until the $50 limit on the pass-through of child support is reached. Recognizing that support may be paid weekly or bi-weekly, we have revised § 302.32(f)(2)(i) to make clear that one payment per month of up to $50 be passed through to AFDC families under § 302.51(b)(1) within 15 calendar days of the date of initial receipt in the State of the first $50 of support collected in a month, or, if less than $50 is collected in a month, within 15 calendar days of the end of the month in which the support is collected. The only instance where multiple pass-through payments are required would be when timely payments were made but not received by the agency responsible for final distribution until a later month in accordance with § 302.51 of this part.

2. *Comment:* Almost every commenter suggested alternative timeframes for passing through the first $50 of support collected in a month. Suggestions included 5, 7, 10, 15, 21 working days, or 15, 17, 21, 60 calendar days after the end of the month of collection. Others suggested keeping the current requirement at § 302.51(b) (3) and (5) for distribution by the end of the month following the month in which the amount of the collection is used to redetermine AFDC eligibility. Another alternative was to pay the $50 pass-through to the family within 15 working days after the total monthly obligation is collected or a minimum of $50 is collected, or when the next AFDC benefit check is mailed. A State IV–D agency argued that tying payment to the family to the next benefit check was unacceptable because the next month's check is produced at the end of the previous month (the month of collection) to allow mailing on the last working day of the previous month.

Many State and local agencies based their argument for longer timeframes on the need for enhanced automation or the need to assure that checks cleared before paying the family. One commenter argued that the date of receipt should be changed to the date the check clear because out-of-State checks take 25 days to clears and in-State checks take 3 working days, or 15 working days if resubmitted, to clear.

In response to anticipated State comments that checks have to clear before payments may go to the family, other commenters referenced Federal banking requirements which require in-State checks to be cleared within 4 working days and out-of-State checks to be cleared in 7 working days. These commenters argued that States, not custodial parents, should run the risk of checks not clearing because that is the purpose of the IV–D program.

Commenters requesting stricter timeframes suggested the proposed timeframe was much too long and 2 working days should be sufficient for any automated system. Other commenters argued that 15 calendar days from the end of the month of collection was adequate in automated States but 30 to 45 working days was more reasonable in States which are not fully automated. Still other commenters argued that, while 15 days for the first or last payment to be made to the family is understandable given the need to redirect payments in new or recently terminated AFDC cases, 2 to 3 working days should be adequate to pay collections to the family in regularly paying cases.

Finally, a number of commenters urged that the timeframe for payment of the $50 pass-through to AFDC families be required in regulations governing IV–A agencies because the IV–A agency frequently is responsible for making the $50 pass-through payment for the IV–D agency.

Response: Given the many comments we received on this provision of the proposed regulations, we have carefully reconsidered our proposed requirement. We agree with advocates who argue that Federal banking requirements prohibit financial institutions from holding checks for extended periods to ensure clearance. In response to comments, we are revising regulations governing the IV–A program at § 232.20(d) to require the IV–A agency to pay to the family the sum disregarded under § 302.51(b)(1) within 20 calendar days of the date of initial receipt in the State of the first $50 of support collected in a month, or, if less than $50 is collected in a month, within 20 calendar days of the end of the month in which the support is collected. Some State IV–A agencies enter into agreements under which the IV–D agency sends the $50 payment to AFDC families. In those States, the IV–D agency must send the pass-through payment to the family within the 15-calendar day requirement in § 302.32(f)(2)(i) because there is no need to transfer the collection from the IV–D to the IV–A agency. In the majority of States in which the IV–A agency sends the pass-through payment to the family, § 302.32(f)(2)(i) requires that the IV–D agency forward the collection to the IV–A agency within 15 calendar days of the date of initial receipt in the State of the first $50 of support collected in a month, or, if less than $50 is collected in a month, within 15 calendar days of the end of the month in which the support was collected.

We believe that these timeframes are adequate for any State, whether fully automated or not, to distribute the $50 pass-through payment to AFDC families.

b. *AFDC collections in excess of the first $50*—1. *Comment:* We received comments on our proposal to require the IV–D agency to distribute collections in excess of the $50 pass-through payment under § 302.52(b)(1) to the IV–A agency with 15 working days of notice of AFDC eligibility redetermination. Commenters argued that there was no need to regulate prompt distribution of amounts to be retained by the State and Federal governments, either in AFDC or title IV–E foster care cases as proposed in § 302.32(f)(2) (ii) and (iii), because it would be administratively complex and costly and would serve no practical benefit to do so. They argued that the Congress, in Pub. L. 100–485, only instructed the Secretary to regulate prompt distribution of collections due to families, not to be retained by States.

Response: Section 122 of Pub. L. 100–485 requires the Secretary to establish time limits for distributing child support collections, and the Conference Report (H. Rep. 100–998) on page 99 requires time limits within which child support payments must be distributed "to the families to whom they are owed." Because we agree that the intent of Congress was expeditious distribution of collections owed to families, rather than those collections assigned to, and retained by, the State in AFDC cases, we have revised § 302.32(f)(2)(ii) to require distribution only of collections in excess of the $50 pass-through which are paid to families in AFDC cases. We have made similar revisions with respect to collections in title IV–E foster care cases to ensure timely payment to the agency responsible for the child's needs of any collections to be used to serve the child's best interests.

2. *Comment:* A number of commenters expressed concern about delays of up to five months in forwarding payments to families after AFDC eligibility terminates. They stressed that such delays are untenable because the former AFDC family must rely on the support collection as a substitute, or partial substitute, for the amount the family previously received under the AFDC program. Alternatives to the proposed 15-working day timeframe ranged from 10 calendar days of notice of eligibility

redetermination to 20 days from the end of the month of collection. Other commenters requested that the support collection be paid to the family no later than the date the family would have received the next AFDC check. Other commenters pointed out that IV–A agencies are not required to notify IV–D agencies of a family's continued AFDC eligibility; they are only required to notify the IV–D agency of the effective date of the family's ineligibility.

Response: In response to comments, and because we are imposing timeframes only for distribution of amounts paid to families, we have revised § 302.32(f)(2)(ii) to require that, with the exception of Federal and State income tax refund offset collections which are dealt with separately, collections for the month following the month in which the family receives its last assistance payment and any collections paid to the family under § 302.51(b) (3) and (5) must be sent to the family within 15 calendar days of initial receipt in the State of a collection for the first month of ineligibility. We are not requiring States to send payments to the family by the date that the family would have received their next AFDC benefit check had benefits not been terminated, because that date may occur too soon to allow the IV–D agency adequate time to meet the timeframe. However, we strongly urge States to attempt to forward collections to the family as close to that date as possible.

c. *Non-AFDC collections*—1. *Comment:* We received many comments on the timeframe for distribution of collections in non-AFDC cases. Suggested alternatives ranged from 5 calendar days to 35 days from initial receipt in the State. Commenters also suggested a separate timeframe of 2 working days for non-AFDC cases in which no AFDC arrearages are owed, as well as 10 days initially, to be shortened when States are automated and upon reassessment of the timeframe in 2 years. A number of commenters indicated that 15 working days was sufficient if mailing the payment to the last known address of the custodial parent meets the requirement. Some commenters wanted a longer timeframe to account for unusual circumstances which may preclude timely distribution while others urged that we not establish a standard based on time necessary to distribute support in difficult cases.

Response: In response to concerns for prompt payment of collections to families in non-AFDC cases, we revised the proposed 15-working day timeframe to require IV–D agencies to send current support payments to non-AFDC families within 15 calendar days from the date of initial receipt in the State. We do not believe a standard should be set based on the time it takes to distribute collections in difficult cases which are the exception and not the rule. Mailing the payment to the last known address of the custodial parent would meet the requirement. If such payments are returned, however, States should attempt to promptly determine a new address for the custodial parent. We did not establish separate 2-day timeframes for distribution in non-AFDC cases in which there are no AFDC arrearages because we do not want to make distribution, complicated by its very nature, unduly so by requiring a myriad of different timeframes for each type of case.

2. *Comment:* We also received a number of comments on proposed § 302.32(f)(3)(ii) which would allow States to determine whether to pay arrearage collections to the family first or reimburse itself for unreimbursed past assistance paid to the family. Commenters were divided between wanting us to require payment to the family first or to require that State's retain amounts to reimburse unreimbursed past assistance first. Those in favor of paying the family first argued the family should receive arrearage payments to help them remain self-sufficient. One commenter urged that at least those arrearages which accrue after the family leaves the AFDC rolls should be paid to the family before the State retains its share of what it is owed. Those in favor of reimbursing the government for unreimbursed assistance paid to the family first argued that paying the family first violates section 457(b)(4) of the Act and § 302.51(f).

Response: Section 457(b) sets forth the distribution scheme for AFDC cases; section 457(c) governs services to former AFDC recipients and requires State IV–D agencies to continue to provide IV–D services to former AFDC cases subject to the same conditions and on the same basis as in the case of non-AFDC cases receiving services under 454(6) of the Act. Since section 454(6) is silent regarding the distribution of amounts collected in non AFDC cases, our longstanding policy has been to allow States flexibility regarding distribution of amounts collected in excess of current support in non-AFDC cases when there are both arrearages owed to the State and arrearages owed to the family. While § 302.51(f) requires States to attempt to collect any unpaid support after the family leaves the AFDC roles to reimburse the State and Federal government for unreimbursed assistance paid to the family, we agree that paying arrearages to a non-AFDC family before reimbursing unreimbursed assistance may impact positively on the family's ability to remain self-sufficient. We are in the process of clarifying distribution requirements in a separate rulemaking effort and will address this issue in more detail in that document. Since this final rule is establishing timeframes for distribution rather than distribution requirements themselves, we retained State flexibility in the final rule under paragraph (f)(3)(ii) but changed the proposed requirement to require IV–D agencies which send amounts to the non-AFDC family to satisfy past-due support to do so within the 15 calendar days, for consistency with paragraph (f)(3)(i).

d. *Federal and State income tax refund offset collections*—1. *Comment:* Most States requested a longer period of time within which to distribute collections made through offset of Federal and State income tax refunds. Suggested alternatives ranged from distribution within 15 days of receipt by the agency responsible for final distribution to distribution within 180 days of receipt. Most commenters, however, suggested collections be distributed within approximately 30 to 45 calendar days of receipt or within 15 days of expiration of any post-offset appeal or review process required by State law. States requested that the timeframe commence with receipt by the IV–D agency to avoid including receipt by the State Revenue Agency which is responsible for the State income tax refund offset process.

Response: We are convinced by commenters that additional time is needed to distribute these collections because of their volume. Therefore, we require in § 302.32(f)(2)(iv) that IV–D agencies send to the AFDC family or IV–E agency, as appropriate, within 30 calendar days of receipt by the IV–D agency amounts offset in AFDC cases and paid to the family under § 302.51(b)(5) and amounts offset in title IV–E foster care cases and distributed under § 302.52(b)(4), unless State law requires a post-offset appeal process and an appeal is filed, in which case the IV–D agency must send any payment to the AFDC family or IV–E agency within 15 calendar days of the date the appeal is resolved. We also revised § 302.32(f)(3)(iii) to require the IV–D agency to send amounts offset in non-AFDC cases to the family within 30 calendar days of receipt by the IV–D agency, with two exceptions. First, if State law requires a post-offset appeal

process and an appeal is filed, the IV–D agency must send the payment to the family within 15 calendar days of the date the appeal is resolved. Second, in accordance With § 303.72(h)(5), if the Secretary of the Treasury, through OCSE, notifies the State that an offset is being made to satisfy non-AFDC past-due support from a refund based on a joint return, the State may delay distribution until notified that the unobligated spouse's proper share of the refund has been paid or for a period not to exceed six months from notification of offset, whichever is earlier. We want to stress, however, that States may not routinely hold tax offset collections in non-AFDC cases for up to 6 months. The IV–D agency must receive a notice that a joint refund is involved before distribution may be delayed in such cases.

4. *Comment:* A number of commenters asked that we clarify that § 302.32(f)(3)(iii) requires State, as well as Federal, income tax refund offset collections to be distributed in non-AFDC cases within the specified timeframe.

Response: We inadvertently omitted reference in § 302.32(f)(3)(iii) to State tax refund offset distribution in non-AFDC cases. Distribution of such amounts is required within the same timeframe as distribution for Federal income tax refund offset collections in non-AFDC cases.

3. *Comment:* A commenter indicated that offset collections can be distributed only after both the collections and the tape specifying from whom the collections were made are received.

Response: The 30-calendar day timeframe should allow adequate time to receive both the collections and the magnetic tape and to distribute the collections.

Establishment of Cases/Maintenance of Case Records—Section 303.2

Application Process—Section 303.2(a)

1. *Comment:* Commenters requested that IV–A agencies be required to refer AFDC cases immediately or within two working days to the IV–D agency because families applying for AFDC are in immediate need of child support payments.

Response: Section 235.70 requires referral of AFDC cases to the IV–D agency within 2 days of eligibility determination and allows referral earlier at State discretion. Some States refer cases immediately upon application for AFDC or have co-located IV–A and IV–D offices so that IV–D services are provided prior to AFDC eligibility being determined and within the timeframe allowed for the eligibility determination process. Because some families are subsequently determined to be ineligible for AFDC and may not want to apply for IV-D services, we do not believe immediate referral should be mandatory at this time.

An earlier response noted the Family Support Administration's commitment to strengthen interaction between the IV–A and IV-D programs.

2. *Comment:* We received many comments on the requirement to provide applications on the day an individual requests an application for services. Commenters asked that we allow a State between 2 and 10 working days to respond to a request for an application to allow for unpredictable personnel events and requests received late in the day. We were asked to require that applications be given to individuals who come into the IV–D agency to request services on the day they come in and that applications be mailed to individuals within 2 to 5 working days of a telephone or written request. Some commenters requested that States be required, if applications are filed in the wrong office, to refer them to the correct office immediately and to inform custodial parents that written applications are necessary.

Response: We revised the requirement in § 303.2(a)(2) to require IV–D agencies to provide an application to an individual who requests an application or services in person on the date of the request and to send applications to individuals within no more than 5 working days of a written or telephone request. We did not require IV–D agencies to forward applications to the correct IV–D office because an application may be filed at any IV–D office.

Although written applications are necessary, we did not add a requirement that States inform custodial parents of that fact because we believe it is obvious. States may include such a statement in information publicizing the availability of services under the IV–D program.

3. *Comment:* Commenters requested that States be required to explain the rights and responsibilities and distribution policies of the IV–D program to AFDC as well as non-AFDC families because AFDC recipients have a right to, and need to know, this information.

Response: We agree that States should explain the IV–D program and its procedures, as well as the rights and responsibilities of those who receive IV–D services, to any individual receiving IV–D services. Therefore, we have revised § 303.2(a)(2) to require the IV–D agency to provide that information to AFDC, Medicaid, and title IV–E foster care applicants or recipients within no more than 5 working days of referral to the IV–D agency.

4. *Comment:* A number of commenters requested that IV–D agencies be required to accept an application as filed on the day it is filed and the application fee is paid.

Response: We have revised § 303.2(a)(3) to require the IV–D agency to accept as filed an application signed by the individual applying for IV–D services on the day it and the application fee are received. An application should be accepted as filed if it is completed to the best of the individual's ability, signed, and submitted to the IV–D agency.

5. *Comment:* Commenters asked that we not require IV–D agencies to accept applications until relevant information is provided which is necessary to determine whether IV–D services are available to the individual. They argued that States must be able to require certain minimal data to determine if a case should be opened, e.g., the name and address of the custodial parent, age of the children, and residence of the custodial parent. States argued that services are only available if there is a minor child or the custodial parent is a resident of the State. With respect to providing services to non-minor children, a commenter urged that States only be required to provide services in cases in which application is received when the child is a minor. Finally, commenters requested that the IV–D agency not be required to accept applications until an intake interview is conducted.

Response: Accepting applications should not involve any action by the IV–D agency other than recording the date of filing on the application. There are no conditions for receipt of IV–D services other than the requirement to file a written application requesting child support enforcement services under the IV–D program. Anyone may apply for IV–D services who needs help with securing child support; availability of services is not limited to minors or to those who are residents of the State. While States argue that they should not be required to provide IV–D services in cases in which the child is no longer a minor, to limit availability of services to minor children would encourage absent parents to avoid their support obligations until the child reaches the age of majority. States may not work cases in anticipation of being able to close those cases once the child reaches the age of majority.

6. *Comment:* A commenter requested that we define more specifically what an application for IV–D services is and asked if an endorsed check, a petition for establishment of paternity or support establishment or enforcement, or application by operation of State law meet the regulatory requirements.

Response: In order to comply with Federal requirements of filing an application, the application must be in writing, be signed by the individua1, and clearly state that the individual is applying for child support enforcement services under the State's IV–D program. We revised the definition in paragraph (a)(3) slightly to specifically refer to child support enforcement services under the State's IV–D program. A petition with the court or administrative authority responsible for establishing paternity and/or establishing and enforcing support obligations may be considered an application if the petition is signed by the individual requesting services and clearly states that the individual is requesting child support enforcement services under the State's title IV–D program. An endorsement on the back of a support check does not meet requirements for an application for services. Application deemed by operation of State law does not meet the requirement for application for IV–D services because it does not allow the individual the option to choose whether or not to apply for IV–D services provided under section 454(6) of the Act.

Case Opening and Actions Required Within 20 Calendar Days of Receipt of Referral or Application—Section 303.2 (b) and (c)

1. *Comment:* A number of commenters asked if the 2-day timeframe for case opening is intended to include action by the central registry in interstate cases. Otherwise, commenters generally asked that the 2-day timeframe be expanded to between 5 and 10 working days or, alternatively, be eliminated and the required actions be included under the 15-working day timeframe in proposed § 303.2(c). Other commenters wanted clarification that a case is considered "opened" if a record of the application or referral has been created and an identification number has been assigned. Another commenter indicated that she could not meet the 2-day timeframe for opening a case because of her ethical duty under State law to determine whether an applicant has a legally defensible case and a case that she can legally pursue.

Response: The case opening requirement in § 303.2 applies to the initial opening of a IV–D case upon referral or application for services; it does not include taking action upon receipt of an interstate referral. The requirements in § 303.7 for central registries apply to interstate cases.

We did not intend that any substantive action or decision must be made on a case within the 2-day timeframe for case opening. However, we are convinced by States' arguments that we should not impose timeframes for each specific action required but establish timeframes governing broader necessary actions. Therefore, we have deleted the separate 2-day timeframe for opening a case and revised § 303.2(b) to require the IV–D agency to open a case by establishing a case record within the 15-working day timeframe (which has been converted to 20 calendar days) for taking specific actions to solicit action and refer a case for further location attempts, if necessary.

2. *Comment:* We were asked to clarify that a case record may be automated, on paper, or a combination thereof.

Response: We moved from proposed § 303.2(b) to § 303.2(c) the requirement that a case record must be supplemented with all information and documents pertaining to the case, as well as all relevant facts, dates, actions taken, contacts made and results in a case. Records of contacts, communications, and other actions in a case may be maintained in a physical or electronic record. Case records, therefore, may be automated, on paper, or a combination thereof.

3. *Comment:* We received comments which indicated that if necessary forms for case processing are not complete when received by the IV–D agency, the IV–D agency should be allowed to return the forms to the IV–A agency or non-AFDC applicant for completion before opening a case.

Response: As required under § 303.2(b), the IV–D agency must open a case and solicit necessary and relevant information from the custodial parent and other relevant sources within the 20-calendar day timeframe.

4. *Comment:* We received a number of comments in response to the solicitation of views about the possibility of requiring State IV–D agencies to have agreements in place to ensure that all cases are referred within a specified number of working days of an application or determination of eligibility for AFDC, Foster Care or Medicaid benefits. Although a few commenters supported such a requirement, the majority strongly objected to placing an additional burden on the IV–D agency to ensure compliance by IV–A agencies with IV–A requirements. The commenters said that regulations governing the IV–A, IV–E and XIX programs should require those program agencies to promptly refer cases to the IV–D agency.

Response: While we agree that requiring agreements to ensure that IV–D agencies receive referrals is an indirect, inappropriate method of ensuring prompt referral, we are not addressing prompt referral by other agencies because these issues are beyond the scope of this regulation which governs IV–D agency activities.

5. *Comment:* A number of commenters requested that we extend to 30 days the proposed 15-working day timeframe for soliciting additional information to allow rescheduling of interviews and to allow group interviews. Others asked that States be required to develop a plan of service within the proposed 15-day timeframe. Some commenters requested that the timeframe be reduced to 15 calendar days while others asked that IV–D agencies only be required to initiate action to solicit information, verification or access to automated location sources within the proposed 15-day timeframe.

Response: We believe that 20 calendar days, as required in § 303.2(b) to solicit additional information, including to schedule, and reschedule interviews, if necessary, is adequate in the vast majority of cases. While we have not imposed an explicit requirement that IV–D agencies develop a plan of service within this initial assessment period, actions required within the 20 calendar day timeframe must be based on an assessment of the case to determine necessary action. In addition, while we believe reducing the timeframe to 15 calendar days would be excessive at this time, requiring IV–D agencies only to initiate the required actions during the 20 calendar day timeframe would not ensure the case will be worked promptly.

6. *Comment:* We received a number of comments expressing confusion about the two separate timeframes for accessing automated versus all other location sources. Commenters asked that we not establish a separate timeframe for accessing automated location sources.

Response: In response to these comments and to avoid confusion, we have deleted the proposed requirement that IV–D agencies access all appropriate State and local automated sources within the proposed 15-day timeframe from receipt of referral or application. Section 303.3 now contains all location requirements. Therefore, § 303.2(b) now requires IV–D agencies, within no more than 20 calendar days of

receipt of referral of a case or filing of an application for services, to open a case by establishing a case record and, based on an assessment of the case to determine necessary action, to: (1) Solicit necessary and relevant information from the custodial parent and other relevant sources and initiate verification of information, if necessary; and (2) If there is inadequate location information to proceed with the case, refer the case for further location attempts, as specified in § 303.2.

Location of Absent Parents—Section 303.3

Section 303.3(a)—Definition

1. *Comment:* With respect to the proposed definition of location, the majority of the commenters requested clarification of the word "confirmed." Some commenters requested that we not require confirmation of a location if there is every indication that the information is current. Commenters generally agreed that finding an address should not be considered locating the absent parent unless the agency can take necessary action or effect service of process on the individual based on the address. Finally, commenters requested clarification regarding the inclusion of the absent parent's employer, assets and/or income in the definition of location.

Response: As stated in the preamble to the proposed rule, the advisory committee stressed that the location function can only be considered complete or successful when the address received is sufficient and necessary to take the next appropriate action in a case. The definition of location is important because many of the timeframes in the regulation begin with location. While a sufficient address is a prerequisite to effective service of process, to define location as successful service of process would require service of process within the location function, which is not necessarily appropriate in every case. States should determine whether an address is sufficient to proceed with necessary action, which could include service of process. Verification of an address would not be necessary in a situation where the State knows the address is sufficient to take the next appropriate action. At such time as it is determined that service of process cannot be effected because the information is not sufficient to take the next appropriate action, the case would be referred for additional location attempts.

With respect to the request for clarification of why employer and asset information is included in the definition of location, we want to clarify that States must locate the absent parent, the absent parent's employer, income and assets, depending on what information is necessary to proceed with appropriate action on a case. Section 303.3(a) is revised to remove the word "confirmed" and define location as information concerning the physical whereabouts of the absent parent, or the absent parent's employer, sources of income or assets, as appropriate, which is sufficient and necessary to take the next appropriate action in the case.

Section 303.3(b)(1)—Location Sources

1. *Comment:* We received several comments regarding the list of appropriate State agencies and departments States must use to locate absent parents in proposed paragraph (b)(3). The commenters were concerned about the existing requirement to use departments which maintain records of criminal records. The commenters stated that some States would require legislative changes to access these records. Some commenters suggested that we eliminate the list in this section and require States to develop guidelines determining sources to be used in the State so that States will have the flexibility to use sources allowable under State law and the ability to add new sources to the list which can be accessed in one State but not another (e.g., utility account information, financial institution records, etc.).

Response: The proposed regulation only added wages and employment records to the existing list of State sources; access to criminal records was included in existing regulations. We did not delete specific reference to locate sources and require States to issue guidelines to determine appropriate location sources because we want to ensure States access all appropriate sources. However, because we combined all location sources, the State sources listed in proposed (b)(3), as well as the Federal Parent Locator Service (PLS) and interstate location networks, are included under paragraph (b)(1). States should access any appropriate location source, whether in or out-of-State, including the Federal PLS. However, because some States may not have access to certain sources because of restrictions in State law, paragraph (b)(1) requires States to use State location sources such as those listed as permitted under State law.

2. *Comment:* In response to our request regarding whether States should be required or encouraged to use private automated data sources such as credit reporting agencies and the Postal Service contractor's recent mover data base, those who responded-favored requiring the use of credit reporting agencies but pointed out that some States may need legislative changes to access this source. Commenters were opposed to requiring use of the Postal Service contractor's recent mover data base unless it could be accessed via the Federal PLS. The majority of the commenters urged a demonstration project to assess the cost-effectiveness of this source.

Response: In response to comments, we are not requiring use of these private data sources at this time. However, States should assess the availability of these sources and use them, if available and appropriate. Federal financial participation is available for the cost of using these sources. OCSE will further explore both sources as part of continuing assessment and enhancement of the Federal PLS.

Sections 303.3(b)(3)—Timeframe for Location

1. *Comment:* The majority of the commenters requested that proposed paragraph (b)(4) require that "appropriate location sources" include the Federal PLS. These commenters were opposed to the exclusion of the Federal PLS from a timeframe, as proposed, and requested that regulations require that States submit requests to the Federal PLS simultaneously with submittal to State and local sources. In addition, several commenters stated that regulations should require a timeframe within which the Federal PLS must respond.

Response: Since State and local sources often provide more recent and accurate location information, requests to the Federal PLS may not be appropriate in many cases. However, we agree that cases should be transmitted to the Federal PLS in a timely manner if and when a State determines that the Federal PLS is an appropriate source. Accordingly, we have deleted proposed paragraph (b)(5) and revised proposed paragraph (b)(4), which is redesignated as paragraph (b)(3), to require referral to the Federal PLS within the timeframe for accessing appropriate location sources. Cases may be submitted to the Federal PLS and other location sources simultaneously, or to the Federal PLS after accessing State and local sources is unsuccessful, whichever is appropriate given the case information. However, all appropriate sources must be used within the required timeframe.

We did not include a timeframe within which the Federal PLS will respond to requests for location because

Federal regulations for the IV–D program apply to States, not the Federal government. However, depending on the sources checked, the Federal PLS responds in one, two or three weeks from request for location from a State or local PLS.

2. *Comment:* The majority of the commenters requested clarification of the term "access" in proposed paragraph (b)(3). These commenters requested that regulations require that States query sources within the timeframe, rather than require receipt of information from sources within the timeframe, because State agencies often have no control over the time it takes to get a response from sources. One commenter suggested that, rather than require the return of information within a stringent timeframe, States should be encouraged to work with sources to improve turn-around time and be required only to query sources within a timeframe and follow-up within a certain period of time if the IV–D agency has not received a response from the source.

Commenters were also concerned about the 30-working day timeframe. Several commenters requested that we retain the current 60-calendar day timeframe because a 30-working day timeframe would force States to send simultaneous location requests to sources which may have a fast response time but may not have information pertaining to the case. Several commenters stated that 30 working days is not long enough to receive and evaluate responses from non-automated sources. Suggested alternate timeframes were 30, 40 and 45 calendar days.

Response: We believe it is crucial for States to determine which sources are most likely to provide information concerning the absent parent's or alleged father's whereabouts and to access these sources simultaneously, rather than one at a time. With regard to response time, we recognize that States do not have direct control over the response time of some sources. However, many sources respond in a timely manner. As stated in the preamble to the proposed rule, the 60-day timeframe was reduced to 30 working days based on the fact that the 60-day timeframe was set in 1978, prior to automated access. However, as pointed out by commenters, all States do not yet have automated capabilities. While only requiring States to access (i.e., query or request location information), as opposed to receive responses from, location sources would not ensure continuing responsibility for case processing, we realize that even the most diligent efforts may not result in accessing and evaluating location information within a 30-working day timeframe. The majority of the commenters believed that 60 calendar days would be adequate to request and receive responses from sources. However, because some States do not yet have automated access to location sources, Federal PLS access is included in the timeframe, and States must ensure that the location information is sufficient, we have revised the proposed paragraph (b)(4) (redesignated as paragraph (b)(3)) to extend 30 working days to 75 calendar days. Within this timeframe, States must access all appropriate locations sources, including the Federal PLS, and ensure the sufficiency of the information received.

3. *Comment:* One commenter requested clarification of the location requirements with regard to situations in which a State receives information which indicates that an absent parent may be in one of several States.

Response: With regard to these situations, a State may request several States to attempt to locate an absent parent or putative father. However, because the case is not yet an interstate case, the requesting State must take this action within its own timeframe (i.e., the requesting State must request and receive location information from any other States within the 75-day timeframe). Since the States providing location information are not subject to the timeframe, access should be limited to automated sources to ensure a quick response to the request.

4. *Comment:* A number of commenters were concerned that, if, as proposed, States are required to initiate the next appropriate action within 2 working days of location, they would have insufficient time to complete the necessary forms in interstate cases.

Response: Because we deleted the 2-day timeframe for initiation of the next appropriate action in proposed paragraph (b)(6), we revised § 303.7(b)(2), which requires initiating states to "promptly" refer any interstate IV–D case to the responding State's interstate central registry for action, to require referral within 20 calendar days of determining that the absent parent or putative father is in another State. Under this requirement, the initiating State would prepare the appropriate standard interstate form(s) and forward the case to the responding State's central registry. For example, if the State determines an absent parent or putative father is in another State and the next appropriate step is establishment of an order, the initiating State would prepare the necessary forms and forward the case to the responding State within 20 calendar days from determining that the absent parent is in another State. Upon receipt of the case in the responding State's central registry, the requirements in § 303.7(a) apply. Once the case is forwarded for necessary action by the central registry within the 10-working day requirement, the timeframes for taking each necessary action, in this case establishment of a support order, must be met by the responding State. We also corrected references in proposed paragraph (b)(7) (redesignated as paragraph (b)(4)) because of other changes to § 303.3.

Section 303.3(b)(5)—Repeated Location Attempts

1. *Comment:* We received a number of comments on the requirement in proposed paragraph (b)(8) that States must repeat location attempts quarterly in appropriate cases in which previous attempts to locate absent parents, or sources of income and/or assets have failed but adequate information exists to meet requirements for submittal for location, in conjunction with quarterly updates of State employment security files. The majority of the commenters requested that this requirement only apply if the State receives new information on a case since the last request for location. Several commenters requested that regulations clarify that this requirement only applies to automated sources and to cases where there is a known Social Security number. One commenter requested clarification regarding the statement that it must be "in conjunction with quarterly updates of State employment security files." Finally, several commenters requested that resubmittal only be required semiannually because not all sources are updated quarterly.

Response: It is essential that cases be resubmitted for location even if the State IV–D agency does not receive new information on the case. Often, the agency would not be aware of the fact that an absent parent has gotten a job or a driver's license. However, we agree that subsequent attempts will not be helpful unless there is sufficient identifying information on the absent parent. We required in the proposed rule that the State repeat location attempts quarterly "in conjunction with quarterly updates to State employment files" to ensure that States re-check this invaluable source after it is updated. Moreover, limiting cases to those with social security numbers (SSNs) is inappropriate because social security

numbers are obtainable through the Federal PLS.

For the reasons mentioned above, we have revised proposed paragraph (b)(8) (which is redesignated as paragraph (b)(5)) in several ways. We revised the requirement so that States must repeat location attempts in cases in which previous attempts to locate have failed but adequate identifying and other information exists to meet requirements for submittal for location, either quarterly or upon receipt of new information which would aid in location, whichever occurs sooner. Quarterly attempts may be limited to automated location sources but must include accessing State employment security files. Repeated attempts upon receipt of new information which may aid in location must meet the requirements at § 303.3(b)(3), i.e., the State must access all appropriate sources within the 75-calendar day timeframe.

2. *Comment:* In response to our request for comments on requiring annual submittal of unlocated cases to the Federal PLS, the majority of the commenters requested that, rather than require annual submittal to the Federal PLS, regulations should require that the FPLS retain cases and check them periodically without the need for resubmittal.

Response: If the Federal PLS were to check cases periodically as suggested without resubmittal, there would be no way to keep the data up-to-date. For example, the Federal PLS would have no way of knowing if information provided to the State was successful in locating the absent parent or if the absent parent had been located using other location sources. The list of cases, would, therefore, continue to grow from year to year.

Since, however, the Federal PLS is such a valuable location source, we believe mandatory annual submittal to the Federal PLS of unlocated cases in which adequate information exists to access the Federal PLS is warranted. Therefore, we have added such a requirement at paragraph (b)(6).

Section 303.3(b)(7)—Referral for Location When Location Becomes Unknown

1. *Comment:* The majority of the commenters stated that 5 working days is too short a period of time to refer for location services when location becomes unknown. In addition, several commenters requested clarification of this requirement because it could be interpreted that a State would have to locate the absent parent's assets or income if unknown even if the case is in payment status.

Response: Because we have eliminated all interim timeframes and because the timeframe for the location requirement starts upon determining that location is necessary, we have deleted this section.

Establishment of Support Obligations—Section 303.4

1. *Comment:* The majority of the commenters were opposed to the 30-working day timeframe to establish a support order or file a petition for establishment of a support order with the court or administrative authority responsible for establishment of obligations. Most stated that 60 calendar days would be more reasonable to allow the State sufficient time to request that the absent parent come in for an interview, attempt settlement, prepare a complete petition and refer the case to the attorney if settlement is not reached. Many commenters pointed out that the 30-day timeframe would force States to file cases without attempting consent.

In addition, many commenters requested clarification regarding the proposed standard and timeframe as it relates to service of process and expedited processes timeframes. Some States indicated their procedures require that legal actions must be filed prior to any negotiations or settlement discussions being taken in the State. Alternatively, some States attempt to obtain consent orders prior to filing a case. Commenters stated that because of differing State procedures, the proposed requirement to establish an order or file a petition for establishment of a support order with the court or administrative authority within 30 days of locating the absent parent should be revised and/or clarified. Some commenters suggested a separate timeframe for consent processes, to encompass the period of time prior to when a case must be filed in the State. Other commenters suggested that the timeframe for filing a case be shortened and that another timeframe be added for the establishment of an order and/or initiation of establishment of an order. Most commenters indicated that filing a case does not bring the absent parent under the jurisdiction of the expedited process system. Rather, it is service of process that must be accomplished to ensure that the absent parent is under the jurisdiction of the State's expedited process system.

With regard to service of process, the majority of the commenters were opposed to the requirements in proposed § 303.9. With regard to proposed § 303.9(b), commenters stated that 2 working days is not adequate time to prepare documents for service and to refer documents to the process server. With regard to the requirement that service of process must be completed within 10 working days of the request, commenters were most concerned with the fact that even service of process by certified mail takes longer than 10 days. In addition, the majority of commenters were concerned with the assumption in the preamble to the proposed rule that the percentage of cases where process could not be served would be accounted for in the 25% margin for error in a 75% audit criteria. Commenters pointed out that despite diligent efforts, absent parents successfully avoid service in a sufficiently large percentage of cases to warrant this fact to be taken into consideration in developing a standard. Commenters requested that regulations state that States attempt service within a timeframe and document attempts to show what efforts were taken if an absent parent is not successfully served. Many commenters requested that the 10-day timeframe be extended to allow for due process requirements which may require service by mail to be followed by personal service if necessary. Suggested timeframes included 15, 20, 30 and 45 calendar days. Finally, commenters requested that service of process timeframes be outside of the overall timeframes for action. Rather, these commenters believed that service of process timeframes should be in addition to overall timeframes, and that expedited processes requirements should be revised accordingly.

Response: As required in § 303.101, States must have and use expedited processes to establish and enforce support obligations. Those expedited processes and the timeframes in § 303.101 only apply to cases once they are under administrative or judicial jurisdiction. As stated in the preamble to the proposed rule, the proposed case processing timeframes for establishment of support obligations were intended to encompass all necessary actions up to the point where the expedited processes timeframes begin (i.e., the date a case is filed or the date of successful service of process, depending on which date the State chooses for purposes of computing expedited processes timeframes.) However, as a result of comments, we realize that many States must file a document with the court or administrative process before any action can be taken to establish a support obligation and that cases are not under administrative or judicial jurisdiction until the absent parent has been served with notice. To respond to the commenters' concerns, we believe it

is necessary to revise both §§ 303.4 and 303.101.

Section 303.101(b)(2) is revised by replacing reference to the time of filing as the starting point for the expedited processing timeframe so that, under expedited processes, actions to establish and enforce support obligations must be completed from the date of successful service of process to the time of disposition within the required timeframes. In conjunction with this revision, § 303.4(d) is revised to encompass the period of time from location of the absent parent or establishment of paternity through establishment of an order, successful service of process, or documented attempts to serve process in accordance with State guidelines defining diligent efforts to effect service of process. To ensure States make diligent efforts to serve process, we added a requirement at § 303.3(c) to require that the State develop guidelines defining diligent efforts for service of process and that the guidelines must include periodically repeating service of process attempts in cases in which previous attempts to serve process have failed, but adequate identifying and other information exists to attempt service of process. Therefore, within the timeframe to be discussed below, States must serve process or document attempts to serve process. In situations where process could not be served because the absent parent is no longer at the address, the State must document this as the reason and the case must be resubmitted for location.

Because State procedures differ with respect to the order in which actions are taken to establish an order for support, rather than attempt to establish sequential timeframes for each step a State must take, we have extended the timeframe sufficiently to allow a State to attempt to establish an order by consent, or file an action and serve the absent parent in accordance with its procedures. As indicated above, the majority of the commenters stated that 60 calendar days would be adequate for a State to attempt to establish an order by consent or refer the case to an attorney, prepare a complete petition and file the case. In addition, the majority of the commenters indicated that 30 calendar days would be a reasonable period of time in which to accomplish both service by mail and personal service, if necessary. Accordingly, § 303.4(d) requires that IV-D agencies must establish an order for support or serve process necessary to commence proceedings to establish an order or document unsuccessful attempts to serve process within 90 calendar days of location or of establishment of paternity. Therefore, given the 20-day timeframe for case opening, the 75-day timeframe for location and the 90-day timeframe discussed above, support orders must be established or cases must enter the expedited processes system within 185 calendar days of application or referral. We want to point out that this approach allows establishing an order by consent at any time in case processing, whether before or after a case is filed with the court or administrative authority. With respect to interstate cases, the timeframes in § 303.4 apply upon receipt by the agency in the responding State responsible for the establishment of support obligations.

2. *Comment:* Many commenters requested that regulations allow States to determine whether cases should be pursued. Examples included: the absent parent is receiving public assistance or SSI; the absent parent is incarcerated or institutionalized without income or assets; and the absent parent's income level is below the minimum set by State law.

Response: While some discretion is necessary, States must have standards for pursuing cases. Those situations mentioned in the comments as set forth above would be accounted for by applying the State's guidelines for setting support awards.

3. *Comment:* The majority of the commenters requested that regulations specify when and how often States must review dismissals without prejudice as well as what documentation is necessary.

Response: In this situation, we believe States are in a better position to determine when to refile a previously dismissed case or when to seek a support order on a case-by-case basis. However, we have clarified that States must, at the time of dismissal, determine when it would be appropriate to pursue an order in the future. Notations in the case record are sufficient documentation. If a case is dismissed because of unemployment or insufficient income, the State should return the case to the "locate" function for quarterly and annual checks on changes in income and assets.

Establishment of Paternity—Section 303.5

1. *Comment:* In response to our request for comments regarding whether there should be separate timeframes and requirements for uncontested paternity cases, commenters stated that this would not be practical because often it is difficult to differentiate between contested and uncontested paternity cases. Commenters pointed out that uncontested cases could become contested and vice versa at various points in case processing. Most commenters believed that separate timeframes would only complicate the process or increase court actions to establish paternity if the deadline for establishment by consent was missed.

Response: While we have not required separate timeframes for uncontested cases, we strongly urge States to attempt to establish paternity by voluntary acknowledgement immediately upon location of the alleged father.

2. *Comment:* Many commenters were concerned with the statement in the preamble that cases which are difficult or impossible to complete within one year would easily be accounted for within the 25 percent margin allowed as part of the 75 percent substantial compliance audit standard. Commenters requested that regulations allow States to exercise prosecutorial discretion or, at the very least, list categories of cases which should be excluded from the timeframe. Commenters also described unavoidable delays which cause proceedings to extend beyond the one-year timeframe despite diligent efforts on behalf of the IV-D agency (e.g., extensive pre-trial discovery, interlocutory appeals and post-judgment appeals, etc.). Finally, commenters questioned our legal authority to establish an outside limit for completion of paternity establishment since the Congress allowed States to exclude paternity establishment from their expedited processes.

Response: We believe that Congress allowed States to exclude paternity establishment from their expedited processes to ensure that jurisdictions that wanted to have judges hear paternity cases were able to do so. We also believe that setting standards for paternity establishment is well within the Secretary's rulemaking authority.

In response to commenters' concerns, however, we have revised the proposed timeframe to take into consideration the more difficult paternity establishment case and to allow for differences in State procedures with regard to paternity establishment. Rather than outline step-by-step standards and timeframes for when in the process a State must file a petition with the court for paternity establishment, attempt to establish paternity by consent and serve the alleged father, we have revised the regulations to ensure that all actions necessary to initiate and complete legal proceedings to establish paternity are accomplished in a timely manner.

Section 303.5(a)(1) is revised to require, under paragraph (1), that, within 90 calendar days of locating the alleged father, the IV–D agency must file a petition for paternity establishment or complete service of process necessary to establish paternity (or document unsuccessful attempts to serve process in accordance with the State's guidelines defining diligent efforts under § 303.3(c)), whichever occurs later in accordance with State procedures for paternity establishment. Paragraph (a)(2) requires that paternity must be established (or the alleged father excluded by genetic tests and/or legal process) within one year of the later of: (i) Successful service of process; or, (ii) the child reaching 6 months of age. Under this requirement, States may establish paternity by acknowledgment or consent and, according to State procedures, a support obligation, at any time during the processing of the case. This expanded timeframe allows States 3 months to serve process or file a petition for paternity establishment and one year to establish paternity from successful service, unless the child is under 6 months old and therefore too young for bloodtesting when process is served, in which case the State has one year from the child's 6-month birthday to establish paternity.

We believe the extension of the paternity establishment timeframe addresses commenters' concerns about those contested cases which cannot be completed within one year of locating the putative father. One year from successful service of process or the child being 6 months old is a reasonable amount of time to allow for completion of the great preponderance of paternity cases.

3. *Comment:* The majority of commenters requested that regulations take into consideration the fact that despite the alleged father being located prior to or immediately after the birth of the child, blood cannot be drawn from infants for certain tests until a child is at least six months old.

Response: In response to comments, we have revised paragraph (a) to state that the one-year timeframe for paternity establishment begins with successful service of process or of the child being six months old, whichever occurs later. This will allow States to serve process on the putative father as soon as possible after the child is born when the putative father is more likely to be responsive because the timeframe for paternity establishment will not begin until the child is old enough for a blood test. However, in the future we intend to reexamine the use of DNA testing which does not require the child to be six months old.

4. *Comment:* The majority of the commenters were opposed to the proposed requirement that alleged fathers may only be excluded as a result of genetic tests. Commenters pointed out that in many States genetic tests alone are not sufficient to establish or refute paternity. In addition, evidence or lack of evidence may exclude the alleged father without the need for or despite genetic tests.

Response: We recognize that a putative father may be excluded as a result of either genetic tests or court action and we have revised paragraph (a)(1) (redesignated as paragraph (a)(2)) to state that within the timeframe, the State must establish paternity or exclude the alleged father as a result of genetic tests and/or legal process.

5. *Comment:* Several commenters requested clarification of the term "genetic tests."

Response: We replaced "blood tests" with "genetic tests" to more accurately reflect the advancements in, and increased refinement of, testing methods to determine paternity. We want to point out, however, that "genetic" tests include any blood or tissue testing processes used to confirm or exclude parentage.

6. *Comment:* The majority of commenters were opposed to the requirement in proposed paragraph (a)(2) that, in any case in which an alleged father is excluded but more than one alleged father is identified, the IV–D agency must meet the requirements for each alleged father identified. Commenters were concerned because of evidentiary problems with cases involving more than one alleged father. Some States indicated that they are prohibited by State law from bringing action against a second alleged father when the custodial parent has filed a paternity establishment action naming another man. In addition, commenters believed that States should be required to pursue the most "likely" alleged father in order to protect the custodial parent's credibility as a witness.

Response: We have retained the requirement in proposed paragraph (a)(2), which has been redesignated as paragraph (a)(3), because all children are entitled to have their paternity established. It is imperative that States establish procedures which permit paternity establishment even if the custodial parent names more than one possible alleged father. Blood tests prior to filing the action, or petitions alleging intercourse with each possible father and naming two or more defendants may minimize the evidentiary programs identified. We also want to clarify that when there is more than one alleged father named, if one alleged father is excluded, the timeframes for paternity establishment would apply for the next alleged father once he is located and served.

7. *Comment:* We received several comments with regard to the requirement in proposed paragraph (c) that IV–D agencies must identify and use through competitive procurement laboratories which perform, at reasonable cost, tests which tend to identify the father or exclude the alleged father. Commenters requested clarification regarding whether States may contract with more than one laboratory for different tests. In addition, commenters requested that regulations allow States to take into consideration accessibility and timeliness of results in choosing a lab.

Response: As stated in the preamble to the proposed rule, we want to avoid situations where States use laboratories at exorbitant cost when there may be a laboratory available which performs comparable testing at more reasonable cost. Within those parameters, States may evaluate services provided by laboratories, and choose one or more laboratories which provide necessary services at reasonable cost. Accessibility and timeliness may be considered in determining choice of laboratory but not to the degree that costs become exorbitant in comparison to other laboratories.

Enforcement of Support Obligations—Section 303.6

1. *Comment:* The majority of the commenters were opposed to the requirement that States must identify on the date the parent fails to make payments in an amount equal to the support payable for one month, or an earlier date in accordance with State law, those cases in which there is a failure to comply with the support obligation. Commenters believe that this requirement is too stringent because it entails daily monitoring.

Response: Effective and timely monitoring of compliance is essential in order to trigger income withholding in accordance with statutory requirements and to ensure timely use of other enforcement techniques as appropriate. Because section 466(b)(3) of the Act requires that an absent parent become subject to withholding and that advance notice be sent to the absent parent on the date on which the parent fails to make payments in an amount equal to the support payable for one month,

States must identify delinquencies immediately in all cases. Therefore, we have not revised this requirement.

2. *Comment:* We specifically requested comments on whether the requirement for sending notice to a delinquent absent parent should be amended from "the State must take steps * * * to send notice on the day" to "send the advance notice on the day the delinquency reaches one month's support." The majority of commenters were opposed to tightening this requirement. In fact, many commenters suggested that the requirement be revised to require that States send the notice within a longer timeframe. Suggestions included 3 days, 5 days and 1 week.

Response: As previously stated, section 466(b)(3) of the Act requires that advance notice of the withholding be sent to the absent parent on the date on which the parent fails to make payments in an amount equal to the support payable for one month. Therefore, we cannot extend this timeframe. However, providing notice on the date the absent parent is delinquent may be impossible in all cases. Therefore, we are retaining the current requirement to take steps to send the notice on that date.

3. *Comment:* In response to our request for comments, the majority of the commenters believed that regulations should not require that States process uncontested wage withholding cases more quickly than contested cases.

Response: Current requirements at § 303.100(d)(2) require notice to the employer to be sent immediately if the absent parent fails to contact the State within the period specified in the advance notice. Because we are establishing specific timeframes for taking actions in IV–D cases, we replaced "immediately" with "within 5 working days" in § 303.100(d)(2).

4. *Comment:* In response to our request for comment regarding whether wage withholding notices to employers should inform the employer when enrollment in employment-based medical insurance has been required by the support order, whether the IV–D agency should request the employer to alert the IV–D agency if the absent parent has not enrolled the child(ren), and whether the IV–D agency should request the employer to enroll the child(ren) if the absent parent has not, the majority of commenters indicated that none of the above suggestions are appropriate or within the scope of State laws. Commenters also pointed out that requiring these actions could potentially harm working relationships with employers at precisely the time when cooperation is necessary for effective wage withholding procedures.

Response: Because of possible conflicts with State law, we have not added these requirements. We want to clarify, however, that the requirement in § 303.6 to take appropriate enforcement action includes situations where there is noncompliance with an order requiring health insurance coverage. In accordance with § 303.31(b)(7) (formerly § 306.51(b)(7)), if health insurance is available to the absent parent at reasonable cost and has not been obtained at the time the order is entered, the State must take steps to enforce the health insurance coverage required by the support order.

5. *Comment:* Commenters stated that the requirement that States must initiate any other enforcement techniques as appropriate within 30 working days of identifying a delinquency would not allow sufficient time to verify an address for service of process, gather enough information to refer the case to an attorney, prepare the case for trial and prepare interrogatories. In addition, commenters requested clarification of "initiate" for purposes of meeting the timeframe when the State uses administrative procedures, such as debt collection agencies and telephone collection techniques. These commenters were concerned that this requirement implies that States must file a petition for enforcement because there would not be sufficient time to allow for calling the absent parent in or using other techniques not included in the mandatory techniques specified in § 302.70(a).

Response: Because States must have and use expedited processes for the enforcement of child support obligations, we believe it is necessary to revise § 303.6 for consistency with the changes to the expedited processes timeframe starting date discussed previously. It is essential that cases enter expedited processes as soon as the State obtains necessary jurisdiction over the absent parent to allow enforcement of the support obligation. However, we believe it is also necessary to account for situations in which States attempt to enforce obligations by consent or using other administrative enforcement techniques before filing a petition for enforcement of a support obligation. Section 303.6(c)(2) is revised to require that the State take any appropriate enforcement action (except income withholding and Federal and State income tax refund offset) unless service of process is necessary, within no later than 30 calendar days of identifying a delinquency or other support-related noncompliance with the order or location of the absent parent, whichever occurs later. When service of process is necessary prior to taking an enforcement action, service must be completed (or unsuccessful attempts to serve process must be documented in accordance with the State's guidelines under § 303.3(c)) and enforcement action taken, if process is served, within no later than 60 calendar days of identifying a delinquency or other support related noncompliance with the order or location of the absent parent, whichever occurs later. Therefore, within this timeframe, States may enforce support obligations by consent, use of administrative procedures such as debt collection, telephone contact, demand letters, or publication of names, for example, and/or file a petition to enforce by legal action. Accomplishing enforcement by consent would be allowable at any time. The date of successful service of process would then be the date when expedited timeframes commence. We want to point out that States are not required to use a specific enforcement technique if that technique is determined to be inappropriate in accordance with the guidelines allowed in § 302.70(b).

6. *Comment:* With regard to the requirement that States must submit once a year, all cases which meet the certification requirements for State and/or Federal income tax refund offset, commenters were most concerned about complying with this requirement before States are fully automated. Commenters pointed out that often collections from prior years would not be all received or applied before it would be time to certify again. In addition, commenters were concerned that requiring certification does not give the custodial parent an opportunity to object to the action. Finally, commenters also requested that we clarify which State, in an interstate case, is required to submit past-due support for Federal income tax refund offset.

Response: In response to State concerns that amounts offset from prior years may not be received or applied by the date States are required to submit amounts for Federal income tax refund offset, past-due support submitted for offset must meet the certification requirements for Federal income tax refund offset, under which the State must verify the amount of past-due support. If the State cannot assure that the past-due support is the correct amount owed, submittal is not required. However, given the timeframe for transmission of offset collection information from OCSE to the States and the schedule for submission of the

next round of certifications from the States to OCSE, such situations should be the exception rather than the rule. With respect to custodial parents' right to refuse to have past-due support submitted for offset, we reiterate our longstanding position that, when an individual receives IV–D services, they may not dictate which services they receive. Tax refund offset has proven to be a very successful enforcement technique and its use is essential to ensure children receive the support they deserve.

With respect to the question about which State in an interstate, non-AFDC case may submit past-due support for Federal income tax refund offset, in accordance with § 303.72(a)(4), the State in which an application for IV–D services has been filed pursuant to § 302.33, (i.e., the initiating State), must submit the past-due support for offset. This is consistent with the requirement that past-due support owed in AFDC cases must be submitted by the State in which there is an assignment of support rights to the State under § 232.11, (in interstate cases, generally the initiating State). It is necessary to specify which State must submit past-due support owed in non-AFDC cases for Federal tax refund offset to avoid both States submitting the same arrearages. The initiating State is in the best position to pay the custodial parent any amount offset quickly and to handle any necessary adjustments to the amount of offset based on an amended tax return.

7. *Comment:* The majority of the commenters requested clarification regarding the requirement in proposed paragraph (c)(4) that in cases where previous enforcement attempts have been unsuccessful, the State must examine the factors quarterly and initiate appropriate enforcement techniques as appropriate.

Response: As stated in the preamble to the proposed rule, this requirement was added to ensure that States keep abreast of case circumstances so that when the potential for resumed enforcement efforts occurs, States would initiate appropriate enforcement techniques. We do not intend that State re-exercise enforcement techniques which are inappropriate given case circumstances or attempt enforcement when circumstances which caused initially unproductive enforcement attempts have not changed. For clarity, we have revised paragraph (c)(4) to require that, in cases in which enforcement attempts have been unsuccessful, the State must, at the time an attempt to enforce fails, examine the reason the enforcement attempt failed and determine when it would be appropriate to take an enforcement action in the future, and take an enforcement action at that time. When a case cannot be enforced because of unemployment or insufficient income, the State should return the case to the "locate" function for quarterly and annual checks on changes in income and assets.

Procedures for Case Assessment—Section 303.10

Comment: We received a number of comments arguing that, because cases must be processed within the required timeframes, States may not prioritize cases.

Response: We disagree with these comments. States may establish a case assessment system which meets the requirements of § 303.10 and which allows the State to prioritize which cases to work first, within the timeframes for case processing. Case prioritization is not a system to determine which workable cases not to work; case closure criteria in § 303.11 allow States to close cases which have little or no potential for success either currently or in the future.

Case Closure Criteria—Section 303.11

Section 303.11(b)—Criteria for Case Closure

a. *General*—1. *Comment:* Some commenters asked whether a case must be closed if the case met one or more of the criteria enumerated in paragraph (b), or whether States could exercise discretion in opting not to close some cases which qualified for closure.

Response: A State may opt to continue to work a case that otherwise qualifies for closure under paragraph (b) if it believes that there is potential for success. A State may also elect to establish criteria for closure which make it harder to close a case than those established in paragraph (b).

2. *Comment:* Other commenters proposed that we add a provision under which States may close a case which does not fit any criterion established in paragraph (b), but in which the State has determined closure is appropriate.

Response: We have not included this proposal in the regulation because it is open-ended and contrary to the purpose of establishing clear and concise standards which preclude premature or inappropriate closing of cases. However we have, elsewhere in this section, modified or expanded the criteria in response to comments which identified specific areas in addition to those proposed where closure is appropriate.

3. *Comment:* Several commenters asked if a support order or arrearages which accrued under that order are affected when a IV–D case is closed.

Response: Case closure does not affect the support order or arrearages which have accrued under the order; it only means that services under the IV–D program will no longer be provided. Although the IV–D agency closes a case, the support order remains in effect and arrearages continue to accrue for the life of the order. In accordance with the requirements of section 466(a)(9) of the Act and § 303.106, these arrearages are judgments by operation of law and are subject to enforcement.

4. *Comment:* Several commenters felt that additional time should be allowed for IV–D agencies to establish a case closure system, review existing cases to determine if closure is appropriate, and close cases which meet one or more of the criteria, since case closure was not previously addressed in regulations.

Response: We believe that States can comply with this requirement by October 1, 1990, since States are not required to close all cases which meet the criteria.

5. *Comment:* One State asked that, for audit purposes, any open case meeting at least one of the closure criteria be considered closed and not affect the State's performance with regard to substantial compliance. In a related comment on the audit, the State questioned whether the IV–D agency must properly close all cases which meet closure criteria, or that all cases closed must meet the criteria.

Response: The establishment of case closure criteria is designed to limit cases the State may close to those in which there is no reasonable expectation of establishing paternity, obtaining a support order, or collecting child or spousal support, either now or in the future. Any case which meets the criteria for case closure, as demonstrated by the State during the course of the audit, would be considered unworkable and would not count against the State for purposes of the audit. For purposes of auditing case closure requirements, the auditors will review cases which have been closed to determine if the IV–D agency properly applied the criteria for closure.

6. *Comment:* Commenters also suggested that the regulations establish a special category of "inactive cases" in order to minimize the administrative costs associated with the closing and subsequent reopening of certain cases.

Response: Since States are not required to close all cases meeting case closure criteria and will not be subject

to audit penalties for those in which no action is currently possible, a "de facto" inactive file can be created since the State is not penalized for its failure to work these cases.

7. *Comment:* One commenter recommended that the regulations require States to submit their proposed criteria to OCSE for approval prior to implementation.

Response: States are responsible for meeting requirements in Federal regulations. While States may work with OCSE Regional Offices in developing case closure systems, we see no necessity for requiring prior approval of case closure systems.

b. *No Current Order—§ 303.11(b) (1) and (2)*—1. *Comment:* We received many comments which were critical of proposed paragraphs (b) (1) and (2) establishing a $150 ceiling of arrearages below which the IV–D agency could close a case when there was no longer a current support order for cases involving both minor children and children who had reached the age of majority. A number of commenters argued that continued enforcement in arrears-only cases for arrearages of $150 or more was in most instances fruitless and not cost-effective. Several of these commenters recommended an increase in the level below which States could close all cases. Other commenters suggested that a separate $500 limit be applied to arrearages owed to non-minor children. In addition, we also received comments which recommended that closure be allowed in non-AFDC arrearage-only cases involving non-minor children where the arrearages accrued when the child was a minor and before application for IV–D services was made.

Response: Title IV–D of the Act does not limit application for, or availability of, IV–D services to minor children. Therefore, we cannot permit States to close non-AFDC arrearage-only cases involving non-minor children where the arrearages accrued when the child was a minor and before application for IV–D service was made. However, in response to comments, we raised the limit on arrearages to $500 in paragraphs (b) (1) and (2). Therefore, paragraph (b)(1) now allows case closure if a child has reached the age of majority, there is no current support order and arrearages are under $500 or unenforceable under State law. Paragraph (b)(2) now allows case closure if a child has not reached the age of majority, there is no longer a current support order and arrearages are under $500 or unenforceable under State law.

2. *Comment:* Other commenters maintained that, by not allowing closure of arrearage-only cases for non-minors when arrears were above a certain level, we were mandating a service in these cases when regulations at § 303.1 give the State an option of whether or not to provide services in cases in which there are no minor children.

Response: Section 466(e) of the Act and § 303.1 provide States the option of whether or not to collect overdue support using the mandatory practices in § 302.70 (wage withholding, State income tax offset, etc.) for children who are not minors. These provisions do not allow States to choose not to provide any services in cases in which there are no minor children. As discussed above, the State may not refuse to enforce past-due court or administratively-ordered support owed to emancipated children in non-AFDC IV–D cases, unless there is no current support order and arrearages are under $500 or unenforceable under State law, as discussed above.

3. *Comment:* One commenter suggested that arrearages under paragraphs (b) (1) and (2) be expanded to include outstanding medical bills for which the absent parent is responsible.

Response: IV–D agencies are required to collect medical support only if a specific dollar amount for medical support is designated in the order. Past-due cash amounts for medical support would be part of the arrearages accruing under a support order.

4. *Comment:* One State recommended that we include the death of the child for whom support was owed as an additional criterion for closing.

Response: The death of a child would constitute grounds for the termination of an order for current support. The IV–D agency would then either close the case under § 303.11(b)(1) or (2) if no arrearages were owed, or the arrears were below the established ceiling, or continue enforcement until such arrearages are reduced below the established ceiling. If the arrearages accrued pursuant to an order when the child was alive, the absent parent's obligation under that order for past-due support does not necessarily end with the death of the child.

5. *Comment:* We also received a suggestion that we include reconciliation of the custodial and absent parent with no arrearages owed the State as grounds for case closure.

Response: As stated in the preamble of the proposed rules, reconciliation is a valid reason for closure under paragraph (b)(2).

6. *Comment:* Another commenter asked that the regulation address cases in which the fact that there is no current order is a temporary condition (i.e., absent parent has no current income) where circumstances may change in the future.

Response: These cases may not be closed under paragraphs (b) (1) or (2), but should be addressed as part of a State's case prioritization system and reviewed periodically for a change in status. If the absent parent attempts to have the order vacated under these circumstances by the court or administrative authority which issued the order, the IV–D agency should argue that the order remain in effect and current payments be held in abeyance or tolled during the period the absent parent is unable to pay.

c. *Death of Absent Parent and No Resources Available—§ 303.11(b)(3)*—1. *Comment:* Several commenters proposed that cases should be closed if there were no arrearages owed by the deceased parent which had been assigned to the State.

Response: We believe that this approach would not ensure that appropriate services are available to the many non-AFDC cases in the IV–D system where there is no assignment to the State. As we noted in the preamble to the proposed rules, delinquent absent parents may have assets which he or she has protected from collection procedures, and the parent's death may release these assets for collection by the IV–D agency.

2. *Comment:* One commenter indicated that the law in their State provides that probate can be filed within three years, and the IV–D agency would have to wait that length of time to ascertain that assets were or were not available. Another commenter pointed out that it is difficult in these circumstances for the State to prove a negative proposition (i.e., that assets are not available).

Response: We agree with these comments and have changed the final rule to allow closure if the State has made documented attempts and failed to identify any assets which could be levied. However, if the IV–D agency has identified assets through its search, or the custodial parent has presented information regarding assets which can be verified, the State must keep the case open if it is possible that the assets can be reached for collection.

d. *Unable To Establish Paternity—§ 303.11(b)(4)*—1. *Comment:* We received many comments on this issue. Several commenters objected to proposed paragraph (4)(ii) which allows closure if a court or administrative process has excluded the putative father and no other putative father can be identified. Some commenters pointed out that if a genetic test excludes the

putative father it would be foolhardy and a waste of public resources to try such cases in court or before an administrative hearing.

Response: We agree with this position and have inserted the phrase "A genetic test or" at the beginning of paragraph (4)(ii).

2. *Comment:* Another commenter requested that this criterion for closure include test results which do not exclude the putative father but indicate a "low probability" of paternity, since some courts will not determine paternity unless there is more compelling evidence to support the claim.

Response: While such cases are problematic, we do not believe that it is appropriate to use such a subjective standard for closure. These cases should be pursued unless a genetic test or a court or administrative process excludes the putative father and no other putative father can be identified.

3. *Comment:* Several other commenters pointed out that paragraph (4)(iii), which allows closure when it is in the best interest of the child, only references § 303.5(b) which involves paternity cases involving incest, forcible rape, or where legal adoption proceedings are pending. These commenters pointed out that this definition was inconsistent with the provisions of § 232.42 which defined good cause for AFDC cases as physical or emotional harm to the child, custodial parent or caretaker relative.

Response: Cases which may be closed as a result of a good cause finding under the AFDC program are addressed in § 303.11(b)(10). Section 303.5 includes, for IV–D purposes, a separate definition with respect to paternity establishment cases.

e. *Unable To Locate For Three Years—§ 303.11(b)(5)—Comment:* We specifically requested comments on this provision which would allow a case to be closed when the absent parent's location is unknown, and the State has made regular attempts over a three-year period, all of which have been unsuccessful. Several commenters asked that no time limit be placed in this criterion for closure, and were concerned that the custodial parent would never be able to prove a change in circumstance to reopen a case. Other commenters recommended that the three-year requirement did not allow enough time for location attempts. Another commenter requested that this criterion be deleted and that the regulation mandate that these cases be maintained in a suspense file with annual locate submissions. We received a parallel number of comments that the three-year requirement was too long, and that the IV–D agency would be able to determine if location was futile after one to two years of regular locate attempts. Other commenters supported the three-year requirement if quarterly locate attempts are made.

Response: We have retained the three-year requirement because we believe that if adequate information exists to meet the requirements for submittal for location, quarterly locate attempts, including those listed under § 303.3, over a three-year period are sufficient. Again, States may choose to keep cases open and continue location attempts for more than 3 years.

f. *Absent Parent Institutionalized or Incarcerated—§ 303.11(b)(6)—Comment:* Several commenters maintained that the criterion for closure should include parents who, although not institutionalized or incarcerated, are unable to pay currently or in the foreseeable future because of total and permanent disability. In addition, many commenters felt that the five-year limit for institutionalization and the 12-year limit for incarceration without parole were excessive, maintaining that many cases which were unworkable with extremely low chances for any future collections would be kept open with a resulting negative impact on the best use of the State's resources. Some felt that the time limits were irrelevant, and that the only test should be that the absent parent cannot pay for the duration of the child's minority.

Response: In response to these comments, we are dropping the five- and 12-year time limits and have added a category where the absent parent has a medically verified permanent and total disability with no evidence of support potential. The revised language now reads: The absent parent cannot pay for the duration of the child's minority because the parent has been institutionalized in a psychiatric facility, is incarcerated with no chance of parole, or has a medically verified total and permanent disability with no evidence of support potential. We have retained the second sentence regarding income and assets which may be available.

g. *Absent Parent Citizen of and Lives in a Foreign Country—§ 303.11(b)(7)—*1. *Comment:* Two States recommended that the criterion that refers to an absent parent who is a citizen of a foreign country include residents and members of American Indian tribes living on reservations. These commenters pointed out that in most cases States do not have legal jurisdiction to establish or enforce child support orders on tribal lands, and for all intents and purposes these cases jurisdictionally resemble a sovereign foreign nation.

Response: While we realize the difficulty of providing services in these cases, we believe that American Indians should not be included in this category. Indians are American citizens and therefore subject to certain legal procedures both on and off the reservation. Federal income tax refund offset is available, and income withholding is required if tribal members work outside of the reservation. We also encourage States to enter into cooperative agreements or other arrangements with Tribal entities which would establish jurisdiction for child support matters by the State, or the Tribe acting for the State. In addition, States are not penalized for these open cases by auditors, where the Indian absent parent is a resident of and works on a reservation and no means exist to obtain jurisdiction over the absent parent to obtain or enforce a support order.

2. *Comment:* Other commenters felt that if a State was unable to assert personal jurisdiction over the absent parent or the absent parent had no reachable domestic income, the case should be closed.

Response: We believe these cases can still be worked where reciprocity between a State and a foreign jurisdiction has been established.

h. *Locate Only Cases—§ 303.11(b)(8)—*1. *Comment:* One commenter suggested that cases in which a locate only application has been made be closed only when location services have been "successfully" completed.

Response: There is no guarantee that location attempts will be successful.

Suggested New Criteria

i. *Unable To Locate Custodial Parent—§ 303.11(b)(11)—*1. *Comment:* We received the greatest number of comments from States who pointed out that they cannot work many cases where the custodial parent who applied for non-AFDC services can no longer be located despite repeated attempts to contact the client by the IV–D agency.

Response: We believe that this is a reasonable criterion for closure, but we are also concerned that such a criterion take into account periodic absences of custodial parents who may be unavailable due to vacations, business travel or family emergencies. Consequently, we are adding a new paragraph (b)(11) which would allow closure in non-AFDC cases if the IV–D agency is unable to contact the custodial parent over a 30 calendar day period despite attempts to contact the parent by both phone and letter, including at

least one registered letter. The 60-day notice of case closure required by paragraph (c) will also allow those parents who want continuing services to avoid closure by contacting the IV–D agency.

j. *Failure To Cooperate by the Non-AFDC Custodial Parent (new) 303.11(b)(12)*—1. *Comment:* We received many comments by States and other organizations who requested that non-cooperation by the custodial parent (failure to attend hearings, refusal to sign forms, etc.) in non-AFDC cases be addressed.

Response: In response to these comments, we are establishing a new paragraph (b)(12) which allows closure for non-cooperation in non-AFDC cases, but only when the case file documents the circumstances of the non-cooperation and that an action by the custodial parent is essential for the next step in providing services. We would also point out that the custodial parent may avoid closure by responding with the necessary cooperation during the 60-day notice period required under paragraph (c).

k. *Custodial Parent Moves out of State—Comment:* A number of States requested that case closure be allowed when the custodial parent moves to another State.

Response: This is not an appropriate justification for closing a case. There is no residency requirement for provision of IV–D services in either the Federal statutes or regulations. More specifically, section 454(6) of the Act and § 302.33 require that States must provide child support collection or paternity determination services to any individual not otherwise eligible for such services upon an application filed by that individual. A IV–D agency may close a case in which the custodial parent moves from the State only if the case meets one of the criteria enumerated in paragraph (b) of this section, or when the State is aware that the custodial parent has applied for services in another State.

1. *60-Day Notice of Closing To Custodial Parent—§ 303.11(c)—Comment:* We received a number of comments on this provision. Some commenters felt that such a provision would mean that custodial parents would be entitled to a hearing during the 60-day period to contest the closure. Other commenters wondered why such a 60-day notice was given unless the custodial parent had a chance to contest. Other commenters felt the 60-day period was too long when compared to the case processing timeframes the State must meet.

Response: We have retained the 60-day notice requirement, but added that the custodial parent may, during that time, request that the case be kept open upon the presentation of new information which constitutes changed circumstances or when contact with the custodial parent has been reestablished in certain non-AFDC cases. We believe that hearings would not be justified in these cases because the criteria clearly limits the circumstances qualifying for closure, and the custodial parent's opportunity to provide new information will ensure that all cases with potential will be worked. Conversely, there is no absolute right to IV–D services where basic information is lacking.

m. *Retention of Records for Three Years*—1. *Comment:* One State asked if, instead of destroying case files after one year it could archive such records, and an organization suggested that files be retained indefinitely on microfiche and not destroyed.

Response: As stated earlier, none of the case closure criteria requires the States to take any action if a State decides, under its own criteria, to work or archive cases. The requirement for retaining all records for cases closed for a period of three years is a Federal provision at 45 CFR Part 74, Subpart D. This is a minimum requirement and States may choose to retain records for a longer period, as discussed above. States may want to consider maintaining some type of minimal case record file beyond the 3-year requirement when the IV–D agency closes an active AFDC case.

Minimal Organizational and Staffing Requirements—Section 303.20

a. Organizational Structure and Sufficient Resources—§ 303.20(c)

1. *Comment:* Several commenters felt that this requirement was a critical provision which could be used by State and local jurisdictions to allocate resources and review priorities in a manner which could be most beneficial to the child support enforcement program. Other commenters, while supportive of the overall intention of this provision, felt that OCSE should either establish standards for staffing and resources just as it did for State performance standards, or provide specific guidance on how States and localities should allocate resources.

Response: We believe that States and localities should establish specific resource or staffing standards. As we emphasized in the preamble to the proposed regulations, this requirement has never been quantified as a national standard. Therefore, while we believe that it is highly beneficial for IV–D programs to establish such standards, OCSE is not establishing universal standards in this regulation because there are factors which are unique to each State or locality. OCSE will, however, continue to provide technical assistance and disseminate relevant information pertaining to resource or staffing standards.

2. *Comment:* Several commenters recommended that OCSE commission a new study which would take into consideration the increased staffing requirements which States would need to meet in complying with the timeframes established in the standards for program operations.

Response: OCSE believes that a study of this type is not relevant to the issues at hand. Any study would, by necessity, be focused on a national base which would not be relevant to specific State and local circumstances and organizational differences. Moreover, simply focusing on staffing requirements ignores the need, attested to by program reviews and program audits, to carefully reassess organizational structures, work process flows, policies and procedures, priorities and other facets of program management that go well beyond just the number of employees assigned to a task.

3. *Comment:* Several States felt that this requirement signaled a shift in Federal priorities by emphasizing procedural and organizational standards to the detriment of results-oriented policies previously established through incentive payments and emphasis on cost/benefit ratios. Some commenters suggested that OCSE revise its incentive formulas to take into account that performance as measured by increased collections is no longer a priority. One locality complained that the Federal requirement would force the doubling of staff providing IV–D services.

Response: The requirements of this section are designed, in part, to correct problems in State and local operations identified by both the previously cited GAO report and OCSE program reviews and audits. One of the conclusions which can be drawn from these reports is that many States and localities were not effective in either establishing paternity or establishing and enforcing support orders.

The requirements at issue do not signal a shift in priority; from its inception in 1975, the focus of the Child Support Enforcement program has been to establish paternity and to collect support. When States are not in substantial compliance with standards for program operations, it is incumbent

upon the Federal government to stimulate effective and prompt remedial action. To do otherwise is to ignore both the pressing need for vigorous child support enforcement and allow a perpetuation of the operational deficiencies found in examinations of State and local program performance.

Executive Order 12291

Comment: We received several comments with regard to the statement in the preamble that this rule does not constitute a "major" rule. Commenters believed that it is a major rule because it is likely to result in a major increase in costs for State government agencies. Many commenters were opposed to the statement that States should reallocate existing resources to concentrate efforts on child support enforcement because a transfer of funds would cripple the losing program and be in conflict with employees' union contracts. Commenters requested that we submit the regulation for review under Executive Order 12291.

Response: Given the fact that we have extended the timeframes for action in the final rule, we do not believe that implementation of this regulation would require a sufficient increase in staff to necessitate the transfer of resources from other programs to IV–D programs unless a State or local jurisdiction, on its own initiative, decided to proceed in this manner. Moreover, the financing structure of the IV–D program itself makes it a very profitable enterprise for State and local government, with great potential to expand upon the direct payoff to government and the cost avoidance value of the program even if an infusion of resources is required to enhance operational performance. We believe that the revised standards and timeframes are within the grasp of any well-managed IV–D agency. However, recognizing that substantial resources will be needed to implement these new standards, we have prepared a Regulatory Impact Analysis (see section below).

Economic Impact

The Child Support Enforcement program was established under title IV–D of the Act by the Social Services Amendments of 1974, for the purposes of enforcing the support obligations owed by absent parents to their children, locating absent parents, establishing paternity and obtaining child support. The IV–D program collected some $4.7 billion in FY 1988—over $1.5 billion on behalf of children receiving AFDC and the remainder on behalf of children not receiving AFDC. State and local expenditures amounted to $1.2 billion. Collections for AFDC families, after a $50 disregard, are used to offset the costs of assistance payments made to such families. The intent of this final regulation is to improve the efficiency and effectiveness of IV–D programs. Because this final rule strengthens and clarifies existing program operations regulations, it is expected that State performance will improve and cases will be worked more effectively. It is expected that any increase in administrative costs will be more than offset by an increase in collections. The principal impact of the regulation will be on State operations. State expenditures may increase initially; however, we believe that the increase will be more than offset by the increase in collections and by the avoidance of governmental assistance costs that would otherwise be incurred and therefore, a net savings to State governments will result.

Executive Order 12291

In accordance with Executive Order 12291, we are required to prepare a Regulatory Impact Analysis for any "major" rule. A major rule is one that is likely to result in:

(1) An annual effect on the economy of $100 million or more:

(2) A major increase in costs or prices for consumers, 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 to compete with foreign-based enterprises in domestic or export markets.

This rule meets none of these criteria with the possible exception of an annual effect on the economy of $100 million or more. Although the fiscal effects of this rule cannot be predicted with precision, and depend on individual State implementation decisions, it is possible that administrative costs will rise by $100 million or more within the five-year period that we use for analyzing impacts, and likely that AFDC collections will rise by several hundred million dollars annually. Therefore, although the net effect of the rule on both States and society will be positive, we have prepared the following analysis which, together with the remainder of this preamble, meets the requirements of E.O. 12291.

The rule establishes performance standards for processing child support cases. Most of these standards contribute directly or indirectly to increasing the speed or likelihood of payment of child support. Most of them do not inherently require additional resources to administer, either because they affect the timing rather than the amount of work, or because the deadlines involved require changes rather than increases in resource use (e.g., change internal State procedures for accessing records to provide more timely response). And some can reduce administrative costs, depending on how implemented.

Nonetheless, these standards will increase the number of cases successfully resulting in payment of support obligations, and therefore will necessarily entail additional costs for the work performed on cases which would not otherwise have been successfully handled. In particular, we do not expect that a State with large numbers of cases per caseworker will be able to comply with these rules without an increase in caseworker staff.

The real challenge this rule presents most States is the need to review and in many cases radically change existing bureaucratic procedures. For example, a State which relies on sequential, totally manual, multi-agency transfer and review procedures for tracking payments and issuing checks will have difficulty meeting the 15-day deadline for payments to families even if it adds substantial clerical resources to each stage of the process. Substantial changes in handling distribution of collections, service of process, access of data bases used for location of absent parents, and other cross-agency functions and procedures may be needed in many States.

As discussed in detail elsewhere in this preamble, we considered numerous alternatives and made substantial changes in these standards form those originally proposed. In reaching decisions on the final standards we sought to maximize State flexibility wherever possible. For example, we decided to replace a number of more detailed location standards with an "umbrella" standard requiring accessing all appropriate location sources within 75 calendar days. In devising each standard we considered all comments and other information on feasibility and in every case imposed a standard which was clearly implementable at reasonable cost in a well-managed program. Any reasonable standards would necessarily require most States to review and revise procedures.

Of course, nothing in this rule dictates the precise methods by which States achieve these standards. To the contrary, we are well aware that each State has unique administrative structures and implementation procedures now, and expect that future solutions will be almost equally diverse.

We have sought to provide maximum flexibility for each State to devise whatever changes it finds most cost-effective.

A final issue concerns timing. As discussed elsewhere in this preamble, we believe Congress did not intend the effective date of this regulation to be inordinately delayed. However, while the effective date of these requirements is October 1, 1990, we extended or revised many of the proposed timeframes to take into consideration the concerns and alternative timeframes suggested by many States. Regardless, States have known for many years that reforms were needed, have known for almost a year that changes would have to be made under the Family Support Act requirements, and have more than a year to initiate actions to meet the specific requirements of this final rule. While the requirements are effective on October 1, 1990, in reality, States have time after that date to fine-tune State processes and avoid paying fiscal penalties. A State would not pay a penalty for failing to substantially comply with the new requirements until, at the earliest, the beginning of FY 1993. If however, the State took corrective action in accordance with Federal requirements within a year of notification of non-compliance, the State would pay no penalty at all.

We suggested in the preamble to the NPRM, purely as an example, that transfers of staff from other functions and agencies was one approach that some States might consider to expedite augmenting child support functions (other options include recruitment of new staff, use of contract assistance to clear up backlogs, etc.). To the extent that long lead times are needed (e.g., to plan and implement ADP systems) States can also consider systems which can be implemented more rapidly and leave more ambitious systems for future years. In this regard, this Department commits itself to reviewing required ADP plans with the greatest possible speed, taking into account the deadlines these standards impose.

The case closure criteria contained in § 303.9 should result in improved performance of State IV-D agencies because they will ensure that available resources are focused on IV-D cases in which there is a potential for paternity establishment and support order establishment and enforcement. They will allow States to close unworkable cases and improve the management of their caseloads. Increased efforts focused on workable cases should result in increased collections, greater avoidance of governmental assistance costs and commensurate savings to the State and Federal governments.

In summary, whatever the unavoidable effect of this rule on administrative processes, an effect which each State has maximum flexibility to determine, it has a net beneficial impact on State budgets. Like the overall program, which returns States in excess of $380 million annually (through reductions in AFDC payments, Federal matching of administrative costs, and Federal incentive matching) in excess of administrative costs, the increase of child support payments made is likely to return through AFDC collections alone more than double the amount spent on processing cases. States will retain most of this increment. Therefore, the net effects of this rule will not only be financially beneficial to States, but will simultaneously improve the operation of child support enforcement from every perspective, including especially that of beneficiaries of increased and more timely child support payments.

Regulatory Flexibility Analysis

The Secretary certifies, under 5 U.S.C. 605(b), as enacted by the Regulatory Flexibility Act (Pub. L. 96-354), that this regulation will not result in a significant impact on a substantial number of small entities. The primary impact is on State governments and individuals, which are not considered small entities under the Act.

Lists of Subjects

45 CFR Part 232

Aid to families with dependent children, Child support, Grant programs—social programs.

45 CFR Parts 301, 303 and 304

Child support, Grant programs—social programs, Penalties, Reporting and recordkeeping requirements, Unemployment compensation.

45 CFR Part 302

Child support, Grant programs—social programs, Reporting and recordkeeping requirements, Unemployment compensation.

45 CFR Part 306

Child support, Grant programs—social programs, Medicaid, Reporting and recordkeeping requirements.

45 CFR Part 307

Child support, Grant programs—social programs, Computer technology, Reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance Program No. 13.783, Child Support Enforcement Program.)

Dated: July 14, 1989.

Catherine Bertini,

Acting Director, Office of Child Support Enforcement.

Approved: July 26, 1989.

Louis W. Sullivan,

Secretary.

For the reasons set forth in the preamble, 45 CFR Parts 232, 301 through 304, 306 and 307 are amended as set forth below.

PART 232—[AMENDED]

1. The authority citation for Part 232 continues to read as follows:

Authority: 42 U.S.C. 1302.

2. Section 232.20(d) is revised to read as follows:

§ 232.20 Treatment of child support collections made in the Child Support Enforcement Program as income and resources in the Title IV-A Program.

* * * * *

(d) The State plan must provide that the IV-A agency, on behalf of the IV-D agency, will send to the family the sum disregarded under § 302.51(b)(1) within 20 calendar days of the date of initial receipt in the State of the first $50 of support collected in a month, or, if less than $50 is collected in a month, within 20 calendar days of the end of the month in which the support was collected.

PART 301—[AMENDED]

1. The authority citation for part 301 continues to read as follows:

Authority: 42 U.S.C. 651 through 658, 660, 664, 666, 667, 1302, 1396a(a)(25), 1396b(d)(2), 1396b(o), 1396b(p) and 1396k.

§ 301.1 [Amended]

2. Section 301.1 is amended by removing the paragraph designations; by moving the definitions of "Medicaid agency" and "Medicaid" which are currently in § 306.1(b) and (c); by moving the definition of "Political subdivision" which is currently in § 303.52(a); and placing the definitions in alphabetical order.

PART 302—[AMENDED]

1. The authority citation for Part 302 continues to read as follows:

Authority: 42 U.S.C. 651 through 658, 660, 664, 666, 667, 1302, 1396a(a)(25), 1396b(d)(2), 1396b(o), 1396b(p), and 1396(k).

2. Section 302.32 is amended by the revising the title and first sentence of paragraph (b) and adding paragraph (f) to read as follows:

§ 302.32 Collection and distribution of support payments by the IV–D agency.

* * * * *

(b) The IV–D agency must inform the State's IV–A agency of the amount of the collection which represents payment on the required support obligation for the month as determined in § 302.51(a) within 10 working days of the end of the month in which the support is received by the IV–D agency responsible for final distribution. * * *

* * * * *

(f) *Timeframes for distribution of support payments.* (1) In interstate IV–D cases, amounts collected by the responding State on behalf of the initiating State must be forwarded to the initiating State within 15 calendar days of the initial point of receipt in the responding State, in accordance with § 303.7(c)(7)(iv).

(2) Amounts collected by the IV–D agency on behalf of recipients of aid under the State's title IV–A or IV–E plan for whom an assignment under § 232.11 of this title or section 471(a)(17) of the Act is effective shall be distributed as follows:

(i) when the IV–D agency sends payments to the family under § 302.51(b)(1) of this part, payments to the family must be sent to the family within 15 calendar days of the date of initial receipt in the State of the first $50 of support collected in a month, or, if less than $50 is collected in a month, within 15 calendar days of the end of the month in which the support was collected. When the IV–A agency sends payments to the family under § 302.51(b)(1) of this part, the IV–D agency must forward any amount due the family under § 302.51(b)(1) to the IV–A agency within 15 calendar days of the date of initial receipt in the State of the first $50 of support collected in a month, or, if less than $50 is collected in a month, within 15 calendar days of the end of the month in which the support was collected.

(ii) Except as specified under paragraph (f)(2)(iv) of this section, collections for the month after the month the family receives its last assistance payment and collections distributed under § 302.51(b)(3) and (5) of this part must be sent to the family within 15 calendar days of the date of initial receipt in the State of a collection for the first month of ineligibility.

(iii) Except as specified in paragraph (f)(2)(iv) of this section, collections in IV–E foster care cases under §§ 302.52(b)(2) and (4) of this part must be distributed within 15 calendar days of the date of initial receipt in the State.

(iv) Collections as a result of Federal or State income tax refund offset paid to the family under § 302.51(b)(5) of this part, or distributed in title IV–E foster care cases under § 302.52(b)(4) of this part, must be sent to the AFDC family or IV–E agency, as appropriate, within 30 calendar days of the date of initial receipt by the IV–D agency, unless State law requires a post-offset appeal process and an appeal is filed timely, in which case the IV–D agency must send any payment to the AFDC family or IV–E agency within 15 calendar days of the date the appeal is resolved.

(3) Amounts collected on behalf of individuals receiving services under § 302.33 of this part shall be distributed as follows:

(i) Amounts collected which represent payment on the current support obligation shall be sent to the family within 15 calendar days of the date of initial receipt in the State.

(ii) Except as specified in paragraph (f)(3)(iii) of this section, if the amount collected is more than the amount required to be distributed in paragraph (f)(3)(i) of this section, the State may at its discretion either send such amounts to the family to satisfy past-due support within 15 calendar days of the date of initial receipt in the State or retain such amounts as have been assigned to satisfy assistance paid to the family which has not been reimbursed.

(iii) Collections due the family under § 302.51(b)(5) as a result of Federal or State income tax refund offset must be sent to the family within 30 calendar days of the date of receipt in the IV–D agency, except:

(A) If State law requires a post-offset appeal process and an appeal is timely filed, in which case the IV–D agency must send any payment to the family within 15 calendar days of the date the appeal is resolved; or

(B) As provided in § 303.72(h)(5) of this chapter.

§ 302.51 [Amended]

3. Section 302.51 is amended by changing all references to "§ 303.52" to "§ 304.12"; by removing the last sentence "In any case in which collections are received by an entity other than the agency responsible for final distribution under this section, the entity must transmit the collection within 10 days of receipt." in paragraph (a); and by removing the sentence "This payment shall be made in the month following the month in which the amount of the collection was used to redetermine eligibility for an assistance payment under the State's title IV–A plan." in paragraphs (b)(3) and (5).

§ 302.55 [Amended]

4. Section 302.55 is amended by changing reference to "§ 303.52" to "§ 304.12" and the reference to "§ 303.52(d)" to "§ 303.52."

§ 302.80 [Amended]

5. Section 302.80 is amended by removing the words "Subpart A of" in paragraph (a) and replacing the words "Subpart B of Part 306" in paragraph (b) with the words "§§ 303.30 and 303.31".

PART 303—[AMENDED]

1. The authority citation for Part 303 continues to read as follows:

Authority: 42 U.S.C. 651 through 658, 660, 663, 664, 666, 667, 1302, 1396a(a)(25), 1396b(d)(2), 1396b(o), 1396b(p) and 1396(k).

2. Part 303 is amended as follows:

§ 303.0 [Amended]

a. Section 303.0 is amended by removing the words "effective July 1, 1975;" in paragraph (a).

b. Section 303.2 is revised to read as follows:

§ 303.2 Establishment of cases and maintenance of case records.

(a) The IV–D agency must:

(1) Make applications for child support services readily accessible to the public;

(2) When an individual requests an application or IV–D services, provide an application to the individual on the day the individual makes a request in person or send an application to the individual within no more than 5 working days of a written or telephone request. Information describing available services, the individual's rights and responsibilities, and the State's fees, cost recovery and distribution policies must accompany all applications for services and must be provided to AFDC, Medicaid and title IV–E foster care applicants or recipients within no more than 5 working days of referral to the IV–D agency; and

(3) Accept an application as filed on the day it and the application fee are received. An application is a written document provided by the State which indicates that the individual is applying for child support enforcement services under the State's title IV–D program and is signed by the individual applying for IV–D services.

(b) For all cases referred to the IV–D agency or applying for services under § 302.33 of this chapter, the IV–D agency must, within no more than 20 calendar days of receipt of referral of a case or filing of an application for services under § 302.33, open a case by

establishing a case record and, based on an assessment of the case to determine necessary action:

(1) Solicit necessary and relevant information from the custodial parent and other relevant sources and initiate verification of information, if appropriate; and

(2) If there is inadequate location information to proceed with the case, request additional information or refer the case for further location attempts, as specified in § 303.3.

(c) The case record must be supplemented with all information and documents pertaining to the case, as well as all relevant facts, dates, actions taken, contacts made and results in a case.

c. Section 303.3 is revised to read as follows:

§ 303.3 Location of absent parents.

(a) *Definition.* "Location" means information concerning the physical whereabouts of the absent parent, or the absent parent's employer(s), other sources of income or assets, as appropriate, which is sufficient and necessary to take the next appropriate action in a case.

(b) For all cases referred to the IV–D agency or applying for services under § 302.33 of this chapter, the IV–D agency must attempt to locate all absent parents or sources of income and/or assets when location is necessary to take necessary action. Under this standard, the IV–D agency must:

(1) Use appropriate location sources such as the Federal PLS; interstate location networks; local officials and employees administering public assistance, general assistance, medical assistance, food stamps and social services (whether such individuals are employed by the State or a political subdivision); relatives and friends of the absent parent; current or past employers; the local telephone company; the U.S. Postal Service; financial references; unions; fraternal organizations; and police, parole, and probation records if appropriate; and State agencies and departments, as authorized by State law, including those departments which maintain records of public assistance, wages and employment, unemployment insurance, income taxation, driver's licenses, vehicle registration, and criminal records;

(2) Establish working relationships with all appropriate agencies in order to utilize locate resources effectively;

(3) Within no more than 75 calendar days of determining that location is necessary, access all appropriate location sources, including transmitting appropriate cases to the Federal PLS, and ensure that location information is sufficient to take the next appropriate action in a case;

(4) Refer appropriate cases to the IV–D agency of any other State, in accordance with the requirements of § 303.7 of this Part. The IV–D agency of such other State shall follow the procedures in paragraphs (b)(1) through (5) of this section for such cases, as necessary, except that the responding State is not required to access the Federal PLS under paragraph (b)(3) of this section;

(5) Repeat location attempts in cases in which previous attempts to locate absent parents or sources of income and/or assets have failed, but adequate identifying and other information exists to meet requirements for submittal for location, either quarterly or immediately upon receipt of new information which may aid in location, whichever occurs sooner. Quarterly attempts may be limited to automated sources but must include accessing State employment security files. Repeated attempts because of new information which may aid in location must meet the requirements of paragraph (b)(3) of this section; and

(6) Submit to the Federal PLS at least annually cases in which location is needed and previous attempts to locate have failed and which meet the requirements for submittal.

(c) The State must establish guidelines defining diligent efforts to serve process. These guidelines must include periodically repeating service of process attempts in cases in which previous attempts to serve process have failed, but adequate identifying and other information exists to attempt service of process.

d. The introductory text of § 303.4 is republished and the section is amended by adding new paragraphs (d) and (e) to read as follows:

§ 303.4 Establishment of support obligations.

For all cases referred to the IV–D agency or applying for services under § 302.33 of this chapter, the IV–D agency must:

* * * * *

(d) Within 90 calendar days of locating an absent parent or of establishing paternity, establish an order for support, or complete service of process necessary to commence proceedings to establish a support order (or document unsuccessful attempts to serve process, in accordance with the State's guidelines defining diligent efforts under § 303.3(c)).

(e) If the court or administrative authority dismisses a petition for a support order without prejudice, the IV–D agency must, at the time of dismissal, examine the reasons for dismissal and determine when it would be appropriate to seek an order in the future, and seek a support order at that time.

e. Section 303.5 is amended by revising paragraphs (a) and (c) to read as follows:

§ 303.5 Establishment of paternity.

(a) For all cases referred to the IV–D agency or applying for services under § 302.33 of this chapter in which paternity has not yet been established:

(1) The IV–D agency must, within no more than 90 calendar days of locating the alleged father, file for paternity establishment or complete service of process to establish paternity (or document unsuccessful attempts to serve process, in accordance with the State's guidelines defining diligent efforts under § 303.3(c)), whichever occurs later in accordance with State procedures for paternity establishment.

(2) Paternity must be established or the alleged father excluded as a result of genetic tests and/or legal process within one year of the later of:

(i) Successful service of process; or,

(ii) The child reaching 6 months of age.

(3) In any case where an alleged father is excluded but more than one alleged father has been identified, the IV–D agency must meet the requirements set forth in paragraph (a)(1) and (2) of this section for each alleged father identified.

* * * * *

(c) The IV–D agency must identify and use through competitive procurement laboratories which perform, at reasonable cost, legally and medically acceptable genetic tests which tend to identify the father or exclude the alleged father. The IV–D agency must make available a list of such laboratories to appropriate courts and law enforcement officials, and to the public upon request.

f. Section 303.6 is revised to read as follows:

§ 303.6 Enforcement of support obligations.

For all cases referred to the IV–D agency or applying for services under § 302.33 in which the obligation to support and the amount of the obligation have been established, the IV–D agency must maintain and use an effective system for:

(a) Monitoring compliance with the support obligation;

(b) Identifying on the date the parent fails to make payments in an amount equal to the support payable for one month, or on an earlier date in accordance with State law, those cases in which there is a failure to comply with the support obligation; and

(c) Enforcing the obligation by:

(1) Initiating income withholding, in accordance with § 303.100; or

(2) Taking any appropriate enforcement action (except income withholding and Federal and State income tax refund offset) unless service of process is necessary, within no more than 30 calendar days of identifying a delinquency or other support-related non-compliance with the order or the location of the absent parent, whichever occurs later. If service of process is necessary prior to taking an enforcement action, service must be completed (or unsuccessful attempts to serve process must be documented in accordance with the State's guidelines defining diligent efforts under § 303.3(c)), and enforcement action taken if process is served, within no later than 60 calendar days of identifying a delinquency or other support-related non-compliance with the order, or the location of the absent parent, whichever occurs later;

(3) Submitting once a year all cases which meet the certification requirements under § 303.102 of this part and State guidelines developed under § 302.70(b) of this title for State income tax refund offset, and which meet the certification requirements under § 303.72 of this part for Federal income tax refund offset; and

(4) In cases in which enforcement attempts have been unsuccessful, at the time an attempt to enforce fails, examining the reason the enforcement attempt failed and determining when it would be appropriate to take an enforcement action in the future, and taking an enforcement action in accordance with the requirements of this section at that time.

§ 303.7 [Amended]

g. Section 303.7 is amended by adding the word "working" between the words "10" and "days" in paragraphs (a)(2), (b)(5), and (c)(5), (6) and (9); replacing the word "promptly" with the words "within 20 calendar days of determining that the absent parent is in another State" in paragraph (b)(2); adding the word "calendar" between the words "30" and "days" in paragraph (b)(4); and replacing the word "60" with the words "90 calendar" in paragraph (c)(4); adding the word "calendar" between the words "90" and "days" in paragraph (b)(6).

h. The introductory text of § 303.10(b) is republished and § 303.10 is amended by revising paragraphs (a), (b)(5) and (b)(6) to read as follows:

§ 303.10 Procedures for case assessment and prioritization.

(a) The IV–D agency may implement a case assessment and prioritization system Statewide or in a particular political subdivision of the State to manage its caseload. If a IV–D agency implements a case assessment and prioritization system, the IV–D agency must continue to meet the timeframes and case processing standards contained in this Part.

(b) In implementing a case assessment and prioritization system, the IV–D agency must:

* * * * *

(5) Prioritize cases after reviewing all intake information for accuracy and completeness and, if review indicates that additional information is needed, prioritize only after attempting to verify or secure the information in accordance with § 303.2.

(6) Establish a mechanism for the periodic review of low priority cases in accordance with the standards set forth in part 303, and for notifying the custodial parent in these cases that new information may result in a higher priority for the case.

i. A new § 303.11 entitled "Case closure criteria" is added to read as follows:

§ 303.11 Case closure criteria.

(a) The IV–D agency shall establish a system for case closure.

(b) In order to be eligible for closure, the case must meet at least one of the following criteria:

(1) In the case of a child who has reached the age of majority, there is no longer a current support order and arrearages are under $500 or unenforceable under State law;

(2) In the case of a child who has not reached the age of majority, there is no longer a current support order and arrearages are under $500 or unenforceable under State law;

(3) The absent parent or putative father is deceased and no further action, including a levy against the estate, can be taken;

(4) Paternity cannot be established because:

(i) The child is at least 18 years old and action to establish paternity is barred by a statute of limitations which meets the requirements of § 302.70(a)(5) of this chapter;

(ii) A genetic test or a court or administrative process has excluded the putative father and no other putative father can be identified; or

(iii) In accordance with § 303.5(b) of this part, the IV–D agency has determined that it would not be in the best interests of the child to establish paternity in a case involving incest or forcible rape, or in any case where legal proceedings for adoption are pending;

(5) The absent parent's location is unknown, and the State has made regular attempts using multiple sources to locate the absent parent over a three-year period, all of which have been unsuccessful;

(6) The absent parent cannot pay support for the duration of the child's minority because the parent has been institutionalized in a psychiatric facility, is incarcerated with no chance for parole, or has a medically-verified total and permanent disability with no evidence of support potential. The State must also determine that no income or assets are available to the absent parent which could be levied or attached for support;

(7) The absent parent is a citizen of, and lives in, a foreign country, does not work for the Federal government or a company with headquarters or offices in the United States, and has no reachable domestic income or assets; and the State has been unable to establish reciprocity with the country;

(8) The IV–D agency has provided location-only services as requested under § 302.35(c)(3) of this chapter;

(9) The non-AFDC custodial parent requests closure of a case and there is no assignment to the State of arrearages which accrued under a support order;

(10) There has been a finding of good cause as set forth at §§ 302.31(c) and 232.40 through 232.49 of this chapter and the State or local IV–A or IV–E agency has determined that support enforcement may not proceed without risk or harm to the child or caretaker relative;

(11) In a non-AFDC case, the IV–D agency is unable to contact the custodial parent within a 30 calendar day period despite attempts by both phone and at least one registered letter; or

(12) In a non-AFDC case, the IV–D agency documents the circumstances of the custodial parent's noncooperation and an action by the custodial parent is essential for the next step in providing IV–D services.

(c) In cases meeting the criteria in paragraphs (b) (1) through (7) and (11) and (12) of this section, the State must notify the custodial parent in writing 60 calendar days prior to closure of the case of the State's intent to close the case. The case must be kept open if the

custodial parent supplies information in response to the notice which could lead to the establishment of paternity or a support order or enforcement of an order or, in the instance of paragraph (b)(11) of this section, if contact is reestablished with the custodial parent. If the case is closed, the custodial parent may request at a later date that the case be reopened if there is a change in circumstances which could lead to the establishment of paternity or a support order or enforcement of an order.

(d) The IV–D agency must retain all records for cases closed pursuant to this section for a minimum of three years, in accordance with 45 CFR Part 74, Subpart D.

j. Section 303.20 is amended by revising the introductory language in paragraph (c) and paragraph (c)(7) and adding new paragraph (g) to read as follows:

§ 303.20 Minimum organizational and staffing requirements.

* * * * *

(c) There is an organizational structure and sufficient resources at the State and local level to meet the performance and time standards contained in this part and to provide for the administration or supervision of the following support enforcement functions:

* * * * *

(7) *Enforcement.* Activities to enforce collection of support, including income withholding and other available enforcement techniques.

* * * * *

(g) If it is determined as a result of an audit conducted under Part 305 of this chapter that a State is not in substantial compliance with the requirements of title IV–D of the Act, the Secretary will evaluate whether inadequate resources was a major contributing factor and, if necessary, may set resource standards for the State.

§§ 303.30 and 303.31 [Redesignated from §§ 306.50 and 306.51 respectively]

k. Section 306.50 is redesignated as a new § 303.30 and § 306.51 is redesignated as a new § 303.31.

l. In § 303.52, the definition of "Political subdivision" is moved from paragraph (a) to § 301.1 and § 303.52 is revised to read as follows:

§ 303.52 Pass-through of incentives to political subdivisions.

The State must calculate and promptly pay incentives to political subdivisions as follows:

(a) The State IV–D agency must develop a standard methodology for passing through an appropriate share of its incentive payment to those political subdivisions of the State that participate in the costs of the program, taking into account the efficiency and effectiveness of the activities carried out under the State plan by those political subdivisions. In order to reward efficiency and effectiveness, the methodology also may provide for payment of incentives to other political subdivisions of the State that administer the program.

(b) To ensure that the standard methodology developed by the State reflects local participation, the State IV–D agency must submit a draft methodology to participating political subdivisions for review and comment or use the rulemaking process available under State law to receive local input.

§ 303.72 [Amended]

m. Section 303.72(g)(8) is amended by changing the reference to "§ 303.52" to "§ 304.12".

§ 303.73 [Amended]

n. Section 303.73(a)(1) is amended by changing the reference to "§ 303.7(a)(3)" to "§ 303.7".

§ 303.100 [Amended]

o. Section 303.100 is amended by replacing the word "immediately" with the words "within 5 working days" in paragraph (d)(2) and by removing the word "promptly" after the word "distributed" in paragraph (e)(2).

§ 303.101 [Amended]

p. Section 303.101(b)(2) is amended by replacing the words "from the time of filing" with "from the time of successful service of process".

§ 303.102 [Amended]

q. Section 303.102(g)(1) is amended by removing the words "Within a reasonable time period in accordance with State law," and capitalizing the word "a" before the word "State".

PART 304—[AMENDED]

1. The authority citation in Part 304, continues to read as follows:

Authority: 42 U.S.C. 651 through 655, 657, 1302, 1396a(a)(25), 1396b(d)(2), 1396b(o), 1396b(p), and 1396(k).

2. Part 304 is amended as follows:

a. A new § 304.12 is added to read as follows:

§ 304.12 Incentive payments.

(a) *Definitions.* For the purposes of this section: "AFDC collections" means support collections satisfying an assigned support obligation under § 232.11 of this title or section 471(a)(17) of the Act, including collections treated in accordance with paragraph (b)(4)(ii) of this section.

"Non-AFDC Collections" means support collections, on behalf of individuals receiving services under this title, satisfying a support obligation which has not been assigned under § 232.11 of this title or section 471(a)(17) of the Act, including collections treated in accordance with paragraph (b)(4)(ii) of this section and collections made under §§ 302.51(e) of this chapter.

"Total IV–D administrative costs" means total IV–D administrative expenditures claimed by a State in a specified fiscal year adjusted in accordance with paragraphs (b)(4)(iii), (b)(4)(iv) and (b)(4)(v) of this section.

(b) *Incentive payments to States.* Effective October 1, 1985, the Office shall compute incentive payments for States for a fiscal year in recognition of AFDC collections and of non-AFDC collections.

(1) A portion of a State's incentive payment shall be computed as a percentage of the State's AFDC collections, and a portion of the incentive payment shall be computed as a percentage of its non-AFDC collections. The percentages are determined separately for AFDC and non-AFDC portions of the incentive. The percentages are based on the ratio of the State's AFDC collections to the State's total administrative costs and the State's non-AFDC collections to the State's total administrative costs in accordance with the following schedule:

Ratio of collections to total IV–D administrative costs	Percent of collection paid as an incentive
Less than 1.4	6.0
At least 1.4	6.5
At least 1.6	7.0
At least 1.8	7.5
At least 2.0	8.0
At least 2.2	8.5
At least 2.4	9.0
At least 2.6	9.5
At least 2.8	10.0

(2) The ratios of the State's AFDC and non-AFDC collections to total IV–D administrative costs will be truncated at one decimal place.

(3) The portion of the incentive payment paid to a State for a fiscal year in recognition of its non-AFDC collections is limited to the percentage of the portion of the incentive payment paid for that fiscal year in recognition of its AFDC collections, as follows:

(i) 100 percent in fiscal years 1986 and 1987;

(ii) 105 percent in fiscal year 1988;

(iii) 110 percent in fiscal year 1989; and

(iv) 115 percent in fiscal year 1990 and thereafter.

(4) In calculating the amount of incentive payments, the following conditions apply:

(i) Only those AFDC and non-AFDC collections distributed and expenditures claimed by the State in the fiscal year shall be used to determine the incentive payment payable for that fiscal year;

(ii) Support collected by one State on behalf of individuals receiving IV–D services in another State shall be treated as having been collected in full by each State;

(iii) Fees paid by individuals, recovered costs, and program income such as interest earned on collections shall be deducted from total IV–D administrative costs;

(iv) At the option of the State, laboratory costs incurred in determining paternity may be excluded from total IV–D administrative costs; and

(v) Effective January 1, 1990, amounts expended by the State in carrying out a special project under section 455(e) of the Act shall not be included in the State's total IV–D administrative costs.

(vi) Costs of demonstration projects for evaluating model procedures for reviewing child support awards under section 103(e) of Public Law 100–485 shall not be included in the State's total IV–D administrative costs.

(c) *Payment of incentives.* (1) The Office will estimate the total incentive payment that each State will receive for the upcoming fiscal year.

(2) Each State will include one-quarter of the estimated total payment in its quarterly collection report which will reduce the amount that would otherwise be paid to the Federal government to reimburse its share of assistance payments under §§ 302.51 and 302.52 of this chapter.

(3) Following the end of a fiscal year, the Office will calculate the actual incentive payment the State should have received based on the reports submitted for that fiscal year. If adjustments to the estimate made under paragraph (c)(1) of this section are necessary, the State's IV–A grant award will be reduced or increased because of over- or under-estimates for prior quarters and for other adjustments.

(4) For FY 1985, the Office will calculate a State's incentive payment based on AFDC collections retained by the State and paid to the family under § 302.51(b)(1) of this chapter.

(5) For FY 1986 and 1987, a State will receive the higher of the amount due it under the incentive system and Federal matching rate in effect as of FY 1986 or 80 percent of what it would have received under the incentive system and Federal matching rate in effect during FY 1985.

§ 304.20 [Amended]

b. Section 304.20(b)(2) is amended by substituting the word "genetic" for the word "blood" wherever it appears and changing the reference to "§ 303.5(b)" to "§ 303.5(c)".

§ 304.23 [Amended]

c. Section 304.23(g) is amended by removing the words ", Subpart A," after the words "Part 306".

§ 304.26 [Amended]

d. Section 304.26(b) is amended by changing the reference to "§ 303.52" to "§ 304.12".

Part 306 is amended by removing the heading of Subpart A, transferring the definitions of "Medicaid agency" and "Medicaid" from § 306.1 to § 301.1, transferring the contents of Subpart B—Required IV–D Activities, which consists of §§ 306.50 and 306.51, to Part 303 and redesignating them as new §§ 303.30 and 303.31, respectively, and the part is revised to read as follows:

PART 306—OPTIONAL COOPERATIVE AGREEMENTS FOR MEDICAL SUPPORT ENFORCEMENT

Sec.

Authority: 42 U.S.C. 652, 1302, 1396a(a)(25), 1396b(d)(2), 1396b(o), 1396b(p), and 1396(k).

§ 306.0 Scope of this part.

This part defines the requirements for an optional cooperative agreement between the IV–D agency and the Medicaid agency for the purpose of enforcing medical support obligations under section 1912 of the Act.

§ 306.2 Cooperative agreement.

The cooperative agreement between the IV–D agency and the Medicaid agency shall be a written agreement for the IV–D agency to assist the Medicaid agency by securing and enforcing the medical support obligation of an absent parent to a child for whom an assignment of medical support rights has been executed under 42 CFR 433.146. The functions that the IV–D agency may perform under the cooperative agreement are set forth in § 306.10. The administrative requirements are set forth at § 306.11.

§ 306.10 Functions to be performed under a cooperative agreement.

The functions that the IV–D agency may perform under a cooperative agreement with the Medicaid agency are limited to one or any combination of the following activities. The agency may:

(a) Receive referrals from the Medicaid agency.

(b) Locate the absent parent, using the State Parent Locator Service and the Federal Parent Locator Service, as needed.

(c) Establish paternity if necessary.

(d) Determine whether the parent has a health insurance policy or plan that covers the child.

(e) Obtain sufficient information about the health insurance policy or plan to permit the filing of a claim with the insurer.

(f) File a claim with the insurer; or transmit the necessary information to the Medicaid agency, or to the appropriate State agency or fiscal agent for the filing of the claim; or require the absent parent to file a claim.

(g) Secure health insurance coverage through court or administrative order.

(h) Take direct action against the absent parent to recover amounts necessary to reimburse medical assistance payments when the absent parent does not have health insurance and the amounts collected will not reduce the absent parent's ability to pay child support.

(i) Receive medical support collections.

(j) Distribute the collections as required by 42 CFR 433.154 including calculation and payment of the incentives provided for by 42 CFR 433.153.

(k) Perform other functions as may be specified by instructions issued by the Office of Child Support Enforcement.

§ 306.11 Administrative requirements of cooperative agreements.

(a) *Organizational structure.* The cooperative agreement must:

(1) Describe the organizational structure of the unit or units within the IV–D agency that are responsible for medical support enforcement activities.

(2) List the medical support enforcement functions that are to be performed outside of the IV–D agency with the name of the organization responsible for performance.

(3) Provide that the IV–D agency shall have responsibility for securing compliance with the requirements of the cooperative agreement by individuals or agencies outside the IV–D agency performing medical support enforcement functions.

(b) *Maintenance of records.* The cooperative agreement must specify that the IV–D agency will establish and maintain case records of medical support enforcement activities in accordance with the provisions of § 302.15 of this chapter.

(c) *Safeguarding information.* The cooperative agreement must provide that the use or disclosure of information concerning applicants for, or recipients of, medical support enforcement services is subject to the limitations in § 303.21 of this chapter.

(d) *Fiscal policies and accountability.* (1) The cooperative agreement must provide that the IV–D agency will maintain an accounting system and supporting fiscal records adequate to assure that claims for reimbursement from the Medicaid agency are in accordance with applicable Federal requirements in 45 CFR Part 74.

(2) The cooperative agreements must provide for the establishment of a method for properly allocating those costs that cannot be directly charged to the medical support enforcement effort.

§ 306.20 Prior approval of cooperative agreements.

(a) Prior to implementation, the IV–D agency must submit two copies of any cooperative agreement entered into under this part to the Regional Representative for approval.

(b) The Regional Representative will review the cooperative agreement for conformity with the requirements of this part and 42 CFR 433.152.

(c) The Regional Representative will promptly notify the State of approval or disapproval. The State may consider the agreement approved if notification is not received within 60 days after the agreement is received by the Regional Representative.

§ 306.21 Subsidiary cooperative agreements with courts and law enforcement officials.

The IV–D agency will enter into subsidiary written cooperative agreements with appropriate courts and law enforcement officials to the extent necessary to perform those functions specified in the cooperative agreement between the IV–D agency and the Medicaid agency. These agreements must be made in accordance with the requirements of § 302.34 (Cooperative agreements).

§ 306.22 Purchase of service agreements.

The IV–D agency will enter into written purchase of service agreements to the extent necessary to fulfill the requirements of its cooperative agreement with the Medicaid agency.

§ 306.30 Source of funds.

The cooperative agreement must specify that the IV–D agency will receive full reimbursement from the Medicaid agency for all medical support enforcement activities performed under the agreement. (See § 306.11(d) for requirements on fiscal policies and accountability.)

PART 307—[AMENDED]

1. The authority citation for Part 307 continues to read as follows:

Authority: 42 U.S.C. 652 through 658, 664, 666, 667 and 1302.

§ 307.10 [Amended]

2. Section 307.10 is amended by changing the reference in paragraph (a)(2)(xiii) to "45 CFR part 306" to "§§ 303.30 and 303.31".

[FR Doc. 89–18178 Filed 8–1–89; 12:50 pm]
BILLING CODE 4150–04–M

Federal Register

Friday
August 4, 1989

Part V

Department of the Interior

Minerals Management Service

30 CFR Part 250

Oil and Gas and Sulphur Operations in the Outer Continental Shelf; Information To Be Made Available to the Public; Notice of Proposed Rulemaking

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 250

RIN 1010-AB34

Oil and Gas and Sulphur Operations in the Outer Continental Shelf; Information to be Made Available to the Public

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Minerals Management Service's (MMS) regulations governing oil, gas, and sulphur operations in the Outer Continental Shelf (OCS) include provisions for making data and information available to the public. The MMS believes that the rules need clarification to assure that the items of data and information submitted on Forms MMS–1866, Request for Reservoir Maximum Efficient Rate; MMS–1867, Request for Well Maximum Production Rate; MMS–1868, Well Potential Test Report; MMS–1869, Quarterly Oil Well Test Report; and MMS–1870, Semiannual Gas Well Test Report that are made available for public inspection are clearly identified in the regulations. This notice proposes to amend 30 CFR 250.18 to clarify which data and information submitted in association with the regulation of drilling and production operations in the OCS will be available to the public.

DATE: Comments must be postmarked or hand delivered by October 3, 1989.

ADDRESS: Comments should be mailed or hand delivered to the Department of the Interior; Minerals Management Service; Mail Stop 646; 381 Elden Street; Herndon, Virginia 22070; Attention: Gerald D. Rhodes.

FOR FURTHER INFORMATION CONTACT: John V. Mirabella; Offshore Rules and Operations Division; Branch of Rules, Orders, and Standards; Telephone: (703) 787–1600 or FTS 393–1600.

SUPPLEMENTARY INFORMATION: The rules at 30 CFR Part 250 governing offshore oil and gas and sulphur operations, which were published in the **Federal Register** on April 1, 1988, included provisions in § 250.18 governing the release of data and information to the public. Section 250.18 specifies periods of time that certain geological and geophysical data and information will be protected from disclosure to the public. Section 250.18(d) identifies specific items of data and information on Forms MMS–330, MMS–331, and MMS–331C which are to be protected from disclosure for the specified time periods. The release dates for data and information on other MMS reporting forms are not mentioned in 30 CFR part 250. This apparent inconsistency makes it necessary to determine whether data and information submitted on Forms MMS–1866, MMS–1867, MMS–1868, MMS–1869, or MMS–1870 should be available for public inspection when similar data or information is protected from disclosure for specified periods of time under § 250.18 when submitted on Forms MMS–330, MMS–331, or MMS–331C.

Under OCS Order No. 12, Public Inspection of Records, which was rescinded by the **Federal Register** Notice published April 1, 1988 (53 FR 10596), lessees were advised regarding the release of specific data and information and the specified time periods that certain data and information would be protected from disclosure. The provisions of § 250.18 are not as inclusive and specific as OCS Order No. 12.

Under revised Part 250, the Gulf of Mexico OCS Region issued further guidance in the form of a Notice to Lessees and Operators (NTL). The NTL 88–03 was issued on June 29, 1988, and provided an interpretation on the release of data and information which is to be made available to the public. The MMS is considering the need for additional specificity in the regulations which became effective May 31, 1988. Revision of the governing regulations would ensure that data and information are made available to the public on a uniform basis in all OCS Regions. Use of the rulemaking process to propose a revision of the governing rule will provide the public an opportunity to provide comments concerning the release of data and information to the public.

This proposed rule would amend § 250.18 to identify specific items of data and information which are submitted on MMS reporting Forms MMS–1866 and MMS–1868 and the specific timetables for the release of that data and information to the public. The proposed rule also provides that all data and information submitted on Forms MMS–1867, MMS–1869, and MMS–1870 would be available for public inspection. The treatment and timetables for release of protected data and information under the proposed rule are generally consistent with the treatment of similar data and information under the regulations in effect prior to May 31, 1988, as interpreted by OCS Order No. 12. Under OCS Order No. 12, information (other than that which was clearly geological) submitted on Forms MMS–330, MMS–331, and MMS–331C was made available to the public after the well went on production. Under the current rule, the release of data and information is not triggered by the commencement of production. The proposed rule does not change this situation.

The proposed rule would allow release of data and information submitted on production Forms MMS–1869 and 1870 upon receipt, while similar information submitted on operating Form MMS–330 would be protected from disclosure until the applicable time period for protection expired. Comments are specifically requested on this aspect of the rule.

Interested persons wishing to comment on the proposed rule should forward written comments to the address specified above.

The Department of the Interior (DOI) has determined that this rule proposes to codify existing practices and will not have any effect on the economy and is not a major rule.

The DOI has determined that this rule will not have a significant economic effect on small entities since offshore activities are complex undertakings generally engaged in by enterprises that are not considered small entities.

The DOI certifies that the rule does not represent a Government action capable of interference with constitutionally protected property rights. Thus, a Taking Implication Assessment has not been prepared pursuant to Executive Order 12630, Government Action and Interference with Constitutionally Protected Property Rights.

This proposed rule does not affect any information collection which requires approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

Author: This document was prepared by John V. Mirabella, Offshore Rules and Operations Division, MMS.

List of Subjects in 30 CFR Part 250

Continental shelf, Environmental impact statements, Environmental protection, Government contracts, Incorporation by reference, Investigations, Mineral royalties, Oil and gas development and production, Oil and gas exploration, Oil and gas reserves, Penalties, Pipelines, Public lands-mineral resources, Public lands-right-of-way, Reporting and recordkeeping requirements, Sulphur development and production, Sulphur exploration, Surety bonds.

Dated: June 14, 1989.

Barry A. Williamson,

Director, Minerals Management Service.

For the reasons set forth above, 30 CFR Part 250 is proposed to be amended as follows:

PART 250—[AMENDED]

1. The authority citation for Part 250 continues to read as follows:

Authority: Sec. 204 Pub. L. 95–372, 92 Stat. 629 (43 U.S.C. 1334).

2. Section 250.18 is proposed to be amended by republishing the introductory text of (d) and by adding new paragraphs (d)(4), (d)(5), (d)(6), (d)(7), and (d)(8) as follows:

§ 250.18 Data and information to be made available to the public.

* * * * *

(d) Data and information identified below shall not be available for public inspection without the consent of the lessee for the same periods as those provided in paragraph (b) of this section:

* * * * *

(4) On Form MMS–1866, Request for Reservoir Maximum Efficient Rate:

(i) Item 1, Cut offs ϕ Upper Lower, k Upper lower—md,

(ii) Item 2, G/O Interface,

(iii) Item 3, W/O Interface,

(iv) Item 4, Area @ G/O,

(v) Item 5, Area used to determine Rock Volume,

(vi) Item 6, V_o Oil Zone Rock Volume,

(vii) Item 7, V_g Gas Zone Rock Volume,

(viii) Item 8, H_o, h_o,

(ix) Item 9, H_g, h_g,

(x) Item 10, ϕ,

(xi) Item 11, Sw,

(xii) Item 12, Sg,

(xiii) Item 13, So,

(xiv) Item 14, Boi, Bgi,

(xv) Item 15, N, G,

(xvi) Item 16, Ri,

(xvii) Item 17, RiN, RiG,

(xviii) Item 18, Np/N, G_p/G,

(xix) Item 19, Average Well Depth,

(xx) Item 20, Kh,

(xxi) Item 21, Kv,

(xxii) Item 22, °API @ 60°F,

(xxiii) Item 23, SG,

(xxiv) Item 24, Rsi,

(xxv) Item 25, μ_{oi},

(xxvi) Item 26, μ_o,

(xxvii) Item 27, Tavg,

(xxviii) Item 28, Pi,

(xxix) Item 29, Pws,

(xxx) Item 30, Pb,

(xxxi) Item 31, Datum Depth,

(xxxii) Item 32, GOR,

(xxxiii) Item 33, WOR.

(5) On Form MMS–1867, Request for Maximum Production Rate, all items of data and information are available for public inspection.

(6) On Form MMS–1868, Well Potential Test Report (this form does not use item numbers):

(i) Type well,

(ii) Perforation interval,

(iii) Choke size (for pretest),

(iv) Number of hours tested (for production test),

(v) Choke size (for production test),

(vi) Production during test period:

(A) Oil,

(B) Gas,

(C) Water,

(D) GOR,

(E) Water cut,

(F) Flowing tubing pressure.

(vii) Calculated 24-hr. rate:

(A) Oil,

(B) Gas,

(C) Water,

(D) Oil gravity,

(E) Specific gravity of gas.

(viii) Static bottom hole pressure, and

(ix) Cumulative production during entire testing period:

(A) Oil,

(B) Gas,

(C) Water.

(7) On Form MMS–1869, Quarterly Oil Well Test Report, all items of data and information are available for public inspection.

(8) On Form MMS–1870, Semiannual Gas Well Test Report, all items of data and information are available for public inspection.

* * * * *

[FR Doc. 89–18253 Filed 8–3–89; 8:45 am]

BILLING CODE 4310-MR-M

federal register

Friday
August 4, 1989

Part VI

Environmental Protection Agency

40 CFR Parts 261 and 302

Hazardous Waste Management Systems; Identification and Listing of Hazardous Waste; Reportable Quantity Adjustment; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 261 and 302

[FRL-3545-3; EPA/OSW-FR-89-012]

RIN 2050-AC78

Hazardous Waste Management Systems; Identification and Listing of Hazardous Waste; Reportable Quantity Adjustment

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection agency (EPA) is today proposing to modify the scope of the EPA Hazardous Waste No. F019 contained in the list of hazardous wastes from non-specific sources. See Subpart D of Part 261. The Agency is proposing to amend the F019 listing to exclude wastewater treatment sludges from the zirconium phosphating step when such phosphating is an exclusive process in the aluminum can washing process because the Agency believes that such sludges do not pose a substantial hazard to human health or the environment and should not be regulated as a listed hazardous waste. The Agency also is proposing to remove these zirconium phosphating sludges from the list of hazardous substances under § 302.4. This modification to the F019 listing would not affect any other wastewater treatment sludges from the chemical conversion coating of aluminum. EPA does not solicit any comments regarding any other aspect of the F019 listing and will not respond to any such comments that are received.

DATES: EPA will accept comments on this proposed rule until September, 5, 1989.

Any person may request a public hearing on this proposed amendment by filing a written request with EPA, to be received no later than August 21, 1989.

ADDRESSES: Comments on the RCRA portions of the proposal should be sent in triplicate to: EPA RCRA Docket Clerk (OS-332), U.S. Environmental Protection Agency, 401 M Street SW., Room SE-2427, Washington, DC 20460. All comments must be marked "Docket Number [F-89-F19P-FFFFF]."

Comments on the CERCLA portions of the proposal should be sent in triplicate to: Emergency Response Division, Docket Clerk, ATTN.: Docket No. RQ, Room LG-100, U.S. EPA, 401 M Street SW., Washington, DC 20460.

Copies of materials relevant to this proposed rulemaking are located at U.S. EPA, 401 M Street SW., Washington, DC 20460. The RCRA portions are located in the Room SE 2427; the public must make an appointment in order to review them by calling (202) 475-9327. The CERCLA portions are contained in Room LG-100; for an appointment call (202) 382-3046. Both dockets are available for inspection from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding holidays. The public may copy 100 pages from the docket at no charge; additional copies are $0.15 per page.

Requests for a public hearing should be addressed to Mr. Devereaux Barnes, Director, Characterization and Assessment Division (OS-300), Office of Solid Waste, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: The RCRA/CERCLA Hotline at (800) 424-9346 or, in the Washington, DC area, (202) 382-3000. For technical information on the RCRA portions of the proposal, contact Ms. Denise A. Wright, Listing Section, Office of Solid Waste (OS-333) at (202) 245-3519. For technical information on the CERCLA portion of the proposal, contact Ms. Ivette Vega, Response Standards and Criteria Branch, Emergency Response Division (OS-210) at (202) 475-7369. Both are available at U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION:

The contents of today's preamble are listed in the following outline:

I. Background

On May 19, 1989, EPA published an interim final rule listing "wastewater treatment sludges from electroplating operations" as EPA Hazardous Waste No. F006. See 40 CFR 261.31 (45 FR 33112). The hazardous constituents for which this waste was listed are cadmium, chromium, nickel, and complexed cyanide. In response to comments on this regulation, the listing was modified on November 12, 1989 (45 FR 74884) to read as follows: "wastewater treatment sludges from electroplating operations except from the following processes: (1) Sulfuric acid anodizing of aluminum; (2) tin plating on carbon steel; (3) zinc plating (segregated basis) on carbon steel; (4) aluminum or zinc-aluminum palting on carbon steel; (5) cleaning/stripping associated with tin, zinc, and aluminum plating on carbon steel; and (6) chemical etching and milling of aluminum.[1]

Additionally, in response to other comments, EPA separated "wastewater treatment sludges from the chemical conversion coating of aluminum" from the F006 listing and listed them as F019. Commenters had argued that these sludges should not be listed as F006 because they did not contain all four of the constituents for which F006 was listed. That is, they contended that these wastes do not typically contain cadmium and nickel. The Agency agreed that these wastes do not typically contain cadmium and nickel but maintained that, since the wastes contain hexavalent chromium and complexed cyanides, they should nevertheless be regulation. The Agency therefore listed them as hazardous waste, F019, and only listed hexavalent chromium and complexed cyanides as constituents of concern in Appendix VII of part 261.

On December 2, 1986 (51 FR 43350), the Agency issued an interpretive rule stating that it had re-evaluated its previous interpretations of the scope of application of F006 and had determined that those interpretations were overly broad. As a result, the Agency stated that the following processes were not included in the F006 listing: chemical conversion coating, electroless plating, and printed circuit board manufacturing.[2] The Agency further clarified that the F006 listing includes wastewater treatment sludges from: (1) Common and precious metals electroplating, except tin, zinc (segregated basis),[3] aluminum and zinc palting on carbon steel; (2) anodizing, except sulfuric acid anodizing of aluminum; (3) chemical etching and milling, except when performed on aluminum; and (4) cleaning and stripping, except when associated with tin, zinc, and aluminum plating on

[1] The Agency also indicated that hexavalent chromium rather than total chromium would be listed as a constituent of concern in Appendix VII of part 261.

[2] Wastewater treatment sludges from printed circuit board manufacturing operations that include processes which are within the scope of the F006 listing (e.g., chemical etching) continue to be regulated as F006.

[3] "Zinc plating (segregated basis)" refers to non-cyanidic zinc plating processes (i.e., where no cyanides are used). Where both cyanidic and non-cyanidic plating baths are used, the sludges from non-cyanidic are excluded provided they are segregated from sludges resulting from cyanidic plating processes.

carbon steel, While this interpretation removed chemical conversion coating from the scope of F006, it did not affect the F019 listing. That is, wastewater treatment sludges from chemical conversion coating of aluminum continued to be regulated as F019.

II. Reasons and Basis for Today's Proposed Rule

In the Listing Background document for electroplating wastes, the Agency agreed with commenters that the hazardous constituents used in the chemical conversion coating of aluminum were different from those use in electroplating (i.e., F006), but still contained complexed cyanides and chromium. In describing the hazards associated with these wastes, the Agency noted that sodium chromate or potassium dichromate is used in common oxide-conversion coating solutions, potassium dichromate is used in phosphate-conversion coatings solution, and sodium dichromate is used in chromate-conversion coating solutions. Additionally, the Agency indicated that cyanides are known to be used in the coloring of anodized aluminum. Thus, EPA believed that chemical conversion coating processes on aluminum typically resulted in hazardous sludges.

The Agency has since learned that one of the chemical conversion coating operations—zirconium phosphating performed during the washing of aluminum cans—is not expected to result in a hazardous wastewater treatment sludge. This process uses only one hazardous constituent (hydrofluoric acid) which is chemically changed into a non-hazardous salt as described below. Additionally, no hazardous constituents are formed during the process. EPA is therefore proposing today to amend the F019 listing to exclude the wastewater treatment sludges from the zirconium phosphating step of the aluminum can washing process.

In the alumnium can making process, cans are rinsed with water in a multi-step can washing process. After forming, the cans are cleaned in a dilute sulfuric acid/hydrofluoric acid solution containing surfactants. This operation is performed to remove excess lubricants and aluminum fines. The acid treatment exposes the aluminum metal which then reacts with air to form an aluminum oxide, Al_2O_3, film. The can is next rinsed with water to remove any excess acid. This step causes the Al_2O_3 to become hydroxylated to form a continuous layer of Al_2O_3—AlO(OH). This layer is formed as a result of the reaction $Al_2O_3 + H_2O \rightarrow 2AlO(OH)$. The aluminum hydroxide AlO(OH) will further react with water, if unhindered, to form a porous colloidal aluminum hydroxide, $Al(OH)_3$, through the reaction $AlO(OH) + H_2O \rightarrow Al(OH)_3$. Light reflecting reflecting through this $Al(OH)_3$ film causes discoloration of the can. This porous colloidal aluminum hydroxide does not provide as good a base for organic finishes as compared to the former Al_2O_3–AlO(OH) layer. Thus, a zirconium phosphate solution is used to prevent the conversion of the desirable AlO(OH) to $Al(OH)_3$. The zirconium phosphating step allows an ion exchange between the monovalent hydrogen on the hydroxide group with tetravalent zirconium resulting in an inert and nonporous aluminum oxide-zirconium species on the can surface.

Based on the process chemistry, the Agency believes that, although the sludge currently meets the F019 listing description, this sludge should not have been included in the F019 listing because it is not hazardous. In particular, in reviewing the solutions that are used in the zirconium phosphating process, no hazardous constitutents (listed in Appendix VIII of 40 CFR 261) are contained or used in this conversion coating step, except for hydrofluoric acid. The zirconium phosphate solution typically used includes fluorozirconic acid (as a source of zirconium), nitric and hydrofluoric acids, and phosphoric acid. The hydrofluoric acid, which is present in the can washing wastewater in low concentrations that are readily treated, is chemically converted in the wastewater treatment process into calcium fluoride or calcium aluminum fluoride, which is non-hazardous. Thus, the slightly alkaline sludge would not be expected to contain any hazardous constituents, nor exhibit any of the characteristics of hazardous waste. The Agency has also evaluated analytical data on these wastewater treatment sludges. These data, which are available in the RCRA docket supporting this proposed rule, do not indicate the presence of significant concentrations of Appendix VIII constituents. Additionally, the data shows that these sludges do not exhibit any hazardous waste characteristics. The Agency is, therefore, proposing to modify the F019 listing to exclude the wastewater treatment sludges from the zirconium phosphating step of the aluminum can washing process.

The proposed exclusion applies only to sludges from processes that exclusively use zirconium phosphating solutions that do not contain hexavalent chromium and cannot produce complexed cyanides. Further, these processes are not associated with electroplating or conversion coating steps where hazardous constituents are used. For example, if a can maker employs a chromating step, separately or in conjunction with such zirconium phosphating, the wastewater treatment sludges would meet the F019 listing and would not be excluded under this rulemaking.

Other wastewater treatment sludges from conversion coating processes falling within the scope of the F019 listing may not in fact contain or produce hazardous constituents. At this time, the Agency is not excluding these sludges from the scope of the F019 listing, is not soliciting comments regarding these sludges or processes, and will not respond to any such comments received. Prior to proposing today's action the Agency had received data from industry on this zirconium phosphating process and the composition of the wastewater treatment sludge on which to base this proposed exclusion. Because such data are not currently in the Agency's possession for other processes that may not use hazardous constituents, the Agency will not at this time consider excluding them from the scope of the F019 listing.

III. Relationship to Other Regulatory Authorities

All hazardous wastes listed pursuant to 40 CFR 261.31 through 261.33, as well as any solid waste that meets one or more of the characteristics of a RCRA hazardous waste (as defined in 40 CFR 261.21 through 261.24), are hazardous substances as defined at section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980. The CERCLA hazardous substances are listed at 40 CFR 302.4 along with their reportable quantities (RQs). CERCLA section 103(a) requires that persons in charge of vessels or facilities from which a hazardous substance has been released in a quantity that is equal to or greater than its RQ shall immediately notify the National Response Center of the release. In addition, section 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 hazardous substance or an extremely hazardous substance to the appropriate state emergency response commission (SERC) and to the local emergency planning committee (LEPC) when the amount released equals or exceeds the RQ for the substance, or one pound when no RQ has been set.

When this rulemaking becomes effective, the description of hazardous

waste stream F019 in Table 302.4 will change to exclude wastewater treatment sludges from the zirconium phosphating step of aluminum can washing process. These zirconium phosphating sludges will no longer be listed hazardous substances under CERCLA Section 101(14) and 102(a). Reporting of releases of sludge from the zirconium phosphating of aluminum cans process will no longer be required under either section 103 of CERCLA or section 304 of SARA. Although the Agency has no reason to believe that releases of zirconium phosphating sludges will contain hazardous constituents subject to reporting under section 103 of CERCLA or section 304 of SARA, the Agency reminds the regulated community that reporting of releases of such sludges is required if a RQ or more of a hazardous substance (which is contained as a constituent of the sludge) is released to the environment. Reporting also is required when the wastewater treatment sludge meets one or more of the characteristics of unlisted hazardous waste for ignitability, corrosivity, reactivity, or EP Toxicity and 100 pounds or more is released to the environment (50 FR 13456, April 4, 1985).

The existing 10-pound RQ of waste stream F019 will not be affected by this rule, except for the exclusion of sludges from processes that use only zirconium phosphating. Releases of wastewater treatment sludges from the chemical conversion coating of aluminum (other than from exclusive zirconium phosphating) remain subject to the reporting requirements of section 103 of CERCLA and section 304 of SARA when a RQ or more is released to the environment. EPA is not soliciting comments on the existing applicable RQ for F019, and will not respond to any such comments received.

IV. State Authority

A. Applicability of Rules in Authorized States

Under section 3006 of RCRA, EPA may authorize qualified States to administer and enforce the RCRA program within the State. (See 40 CFR part 271 for the standards and requirements for authorization.) Following authorization, EPA retains inspection authority under section 3007 and enforcement authority under sections 3008, 7003, and 3013 of RCRA, although authorized States have primary enforcement responsibility.

Prior to the Hazardous and Solid Waste Amendments of 1984 (HSWA), a State with final authorization administered its hazardous waste program entirely in lieu of EPA administering the Federal program in that State. The Federal requirements no longer applied in the authorized State, and EPA could not issue permits for any facilities in the State which the State was authorized to permit. When new, more stringent Federal requirements were promulgated or enacted, the State was obliged to enact equivalent authority within specified time frames. New Federal requirements did not take effect in an authorized State until the State adopted the requirements as State law.

In contrast, under section 3006(g) of RCRA, 42 U.S.C. 6926(g), new requirements and prohibitions imposed by the Hazardous and Solid Waste Amendments of 1984 (HSWA) take effect in authorized States at the same time that they take effect in non-authorized States. The rulemaking proposed today, however, would not be imposed pursuant to HSWA.

B. Effect on State Authorizations

Today's proposed rule will not be effective in authorized States since the regulations are not being imposed pursuant to HSWA. Thus, the regulation will be applicable only in those States that do not have interim or final authorization. In authorized States, the regulations will not be applicable until the State revises its program to adopt equivalent regulations under State law.

40 CFR 271.21(e)(2) requires that States that have final authorization must modify their programs to include equivalent regulations within a year of promulgation of these regulations if only regulatory changes are necessary, or within two years of promulgation if statutory changes are necessary. These deadlines can be extended in exceptional cases (40 CFR 271.21(e)(3)). Once EPA approves the modification, the State requirements become Subtitle C RCRA requirements.

It should be noted that authorized States are only required to modify their programs when EPA promulgates Federal regulations that are more stringent or broader in scope than the existing Federal regulations. For those Federal program changes that are less stringent or reduce the scope of the Federal program, States are not required to modify their programs. This is a result of section 3009 of RCRA, which allows States to impose regulations in addition to those in the Federal program. The regulations proposed today at § 261.31 are considered to be less stringent or to reduce the scope of the existing Federal regulations. Therefore, authorized States will not be required to modify their programs to adopt regulations equivalent or substantially equivalent to the provisions listed above.

V. Effective Date

This rule will be effective immediately upon promulgation. The Hazardous and Solid Waste Amendments of 1984 amended section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six month period to come into compliance. This is the case here since this rule will reduce, rather than increase, the existing requirements for persons generating hazardous wastes. In light of the unnecessary hardship and expense which would be imposed on the regulated community by an effective date six months after promulgation and the fact that such a deadline is not necessary to achieve the purpose of section 3010, this rule will be effective immediately upon promulgation. Once effective, this modification to the listing will be applied retroactively to the above described previously generated zirconium wastes, because these particular wastes should not have been included within the scope of the 1980 listing. Thus, where this rule applies, EPA will not consider such wastes, whenever they were generated, to be F019. EPA's decision does not effect authorized State regulation of such waste if a State is more stringent or broader in scope.

VI. Regulatory Impact

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This proposed rule reduces the regulatory requirements applicable to the regulated community. It is not major because it would not result in an effect on the economy of $100 million or more, nor would it result in a major increase in costs or prices to individual industries, consumers, Federal, State or local government agencies, or geographic regions. Finally, there would be no adverse impact on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets. Accordingly, this proposed amendment is not a major regulation, and no Regulatory Impact Analysis has been conducted.

This proposed amendment was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291.

VII. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601–612, whenever an agency is required to publish a general notice of rulemaking, for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). The Administrator may certify, however, that the rule will not have a significant economic impact on a substantial number of small entities.

This proposed amendment will not have a significant economic impact on small entities since it reduces regulatory requirements. Accordingly, I certify that this proposed rule will not have a significant economic impact on a substantial number of small entities. This regulation, therefore, does not require a regulatory flexibility analysis.

VIII. Paperwork Reduction Act

This proposed rule does not contain any information collection requirements subject to OMB review under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq.

List of Subjects

40 CFR Part 261

Hazardous wastes, Recycling.

40 CFR Part 302

Air pollution control, Chemicals, Hazardous materials, Hazardous substances, Hazardous wastes, Intergovernmental relations, Natural resources, Nuclear materials, Pesticides and pests, Radioactive materials, Recycling, Reporting and recordkeeping requirements, Superfund, Waste treatment and disposal, Water pollution control.

Dated: July 27, 1989.

William K. Reilly,

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: Sections 1006, 2002(a), 3001, and 3002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, (42 U.S.C. 6905, 6912(a), 6921 and 6922).

2. Section 261.31 is amended by revising the hazardous waste entry "F019" to read as follows:

§ 261.31 Hazardous waste from non-specific sources.

* * * * *

Industry and EPA hazardous waste No.	Hazardous waste	Hazard code
*	* * * *	
F019	Wastewater treatment sludges from the chemical conversion coating of aluminum except from zirconium phosphating in aluminum can washing when such phosphating is an exclusive conversion coating process.	(T)
*	* * * *	

PART 302—DESIGNATION, REPORTABLE QUANTITIES, AND NOTIFICATION

3. The authority citation for part 302 continues to read as follows:

Authority: Section 102 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9602; sections 311 and 501(a) of the Federal Water Pollution Control Act, 33 U.S.C. 1321 and 1361.

§ 302.4 [Amended]

4. Table 302.4 of § 302.4 is amended by revising the first column containing the description of Hazardous waste stream F019.

TABLE 302.4.—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES

[see footnotes at end of Table 302.4]

Hazardous substance	CASRN	Regulatory synonyms	Statutory			Final RQ	
			RQ	Code	RCRA waste No.	Category	Pounds (kg)
*	*	*	*		*		
F019 Wastewater treatment sludges from the chemical conversion coating of aluminum except from zirconium phosphating in aluminum can washing when such phosphating is an exclusive conversion coating process.							
* *		*	*		*		

[FR Doc. 89–18256 Filed 8–3–89; 8:45 am]

BILLING CODE 6560–50–M

federal register

Friday
August 4, 1989

Part VII

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Emergency Determination of Endangered Status for the Mojave Population of the Desert Tortoise; Emergency Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AB35

Endangered and Threatened Wildlife and Plants; Emergency Determination of Endangered Status for the Mojave Population of the Desert Tortoise

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Emergency rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) exercises its emergency authority to determine the Mojave population of the desert tortoise (*Gopherus agassizii*) to be an endangered species pursuant to the Endangered Species Act of 1973, as amended (Act). An emergency situation, in the form of a recently documented outbreak of a virulent desert tortoise upper respiratory disease syndrome (Respiratory Disease Syndrome), has been identified and has caused significant declines to certain tortoise subpopulations and threatens to become pandemic in subpopulations already stressed as a result of habitat degradation, predation, and other factors. Because of the need to make Federal funding, protection, and other measures immediately available to combat the Respiratory Disease Syndrome, the Service finds that good cause exists to make this emergency rule effective upon publication. The emergency rule will implement Federal protection for 240 days.

The status of the Beaver Dam Slope desert tortoises, which were listed as threatened with critical habitat in 1980, will not change. The Service does not expect additional benefits would accrue to this subpopulation by changing its listing to endangered at this time. A proposed rule to list the Mojave population of the desert tortoise will be published shortly to provide for public comment, and hearings (if requested). The Service will accept comments on the status of the species at any time.

EFFECTIVE DATES: This emergency rule is effective on August 4, 1989 and expires on April 2, 1990.

ADDRESSES: The complete file for this rule is available for inspection during normal business hours at the U.S. Fish and Wildlife Service, Regional Office, Division of Endangered Species and Habitat Conservation, 1002 NE Holladay Street, Portland, Oregon 97232-4181.

FOR FURTHER INFORMATION CONTACT: Mr. Robert P. Smith—Assistant Regional Director for Fish and Wildlife Enhancement, at the above address (telephone (503) 231-6131 or FTS 429-6131).

SUPPLEMENTARY INFORMATION:

Background

The desert tortoise is one of three species in the genus *Gopherus* found in the United States. The Berlandier's tortoise (*G. berlandieri*) is found in northeastern Mexico and southern Texas. The gopher tortoise (*G. polyphemus*) is found in the hot, humid portions of southeastern United States. *G. agassizii* is relatively large, with adults measuring up to 15 inches in shell length and inhabits the Mojave, Colorado, and Sonoran deserts in the southwestern United States and adjacent Mexico.

Recent studies based on shell shape and variations in genetic composition indicate that the species has two distinct populations, one of which is divided into two subpopulations (Spang et al. 1988). A summary of this information is as follows:

The two populations are the Mojave and the Sonoran. These are separated in the U.S. and Mexico by the Colorado River, with the former populations being found to the west and north of the river and the latter being found to the east and south. The Mojave population is further divided into two subpopulations.

The western Mojave subpopulation includes parts of the west Mojave, east Mojave, and Colorado Deserts in California and extreme southern Nevada. Tortoises occur in creosote bush, alkali sink, and tree yucca habitats in valleys, on alluvial fans, and in low rolling hills at elevations generally ranging from 2,000 to 4,000 feet above sea level. Study plot data from eight sites indicate that populations have declined at rates of 10 percent or more per year for the last six to eight years. Vandalism, collections, raven predation, and disease are a few of the many causes for population declines. Habitat is deteriorating and being lost from urban, energy, and mineral development, vehicle-oriented recreation, grazing, and other uses.

The eastern Mojave subpopulation includes tortoises in eastern California, southern Nevada, and the Beaver Dam Slope and the Virgin River Basin of southwestern Utah and extreme northwestern Arizona (north of the Grand Canyon). For the purposes of this rule, the status of Beaver Dam slope tortoises will remain unchanged. Eastern Mojave tortoises occur in creosote bush-burro bush or creosote bush-tree yucca vegetation types. Downward trends in this subpopulation and its habitat are believed to be a result of urban development, long-term livestock grazing, mining, large-scale water development, off-road vehicle use, collecting, and many other human-related uses.

The Sonoran population is found in Arizona, south and east of the Colorado River, and in Mexico. Tortoises in this area are found on steep, rocky slopes of mountain ranges, primarily in Arizona upland vegetation dominated by palo verde and saguaro cactus. The distribution of the present population and habitat is disjunct. Some habitat has been lost to expansion of urban areas. Grazing, mining, and fire have adversely affected some areas of tortoise habitat.

The Beaver Dam Slope population of desert tortoises in Utah was listed as threatened with critical habitat on August 20, 1980 (45 FR 55654). The Service received a petition on September 14, 1984, from the Environmental Defense Fund, Natural Resources Defense Council, and Defenders of Wildlife to list the desert tortoise in Arizona, California, and Nevada as endangered under the Endangered Species Act. The Service determined in September 1985 that the proposed listing of the tortoise within the three petitioned States was warranted but precluded by other listing actions of higher priority under authority of section 4(b)(3)(iii) of the Act. Annual findings of warranted but precluded have been made in each subsequent year since 1985 under authority of section 4(b)(3)(C) of the Act.

For the purpose of this rule, the Mojave population of the desert tortoise includes all desert tortoises north and west of the Colorado River, including desert tortoises in the Colorado and Mojave Deserts of California, southern Nevada, southwestern Utah, and northwestern Arizona, other than the Beaver Dam Slope population of desert tortoises, which is already listed as a threatened species under the Act.

Data collected on the Mojave population in recent months indicate that many local tortoise populations throughout the range of the species have declined precipitously. The rapid spread of Respiratory Disease Syndrome, rarely seen before in wild tortoises, has been identified as a significant contributing factor in the current high level of tortoise losses.

On May 31, 1989, the same three environmental organizations that petitioned the Service in 1984 petitioned the Service to list the desert tortoise as an endangered species throughout its United States range under the expedited

emergency provisions of the Act. This petition was received on June 2, 1989. In response to this petition, the Service conducted an extensive review of existing information on the Respiratory Disease Syndrome, other reported diseases in Arizona, and tortoise status. As a result of this and other information, the Service determines the Mojave population of the desert tortoise to be an endangered species. The Service will not take emergency action to reclassify the Beaver Dam Slope population in Utah to endangered because it is already protected by the Act. The Service does not concur with the requested action under the petition to emergency list the Sonoran population of desert tortoises. The rationale leading to this decision is as follows:

1. Historically, desert tortoises in the Sonoran population occur in numerous small groups, more or less patchy or disjunct, inhabiting steep-sided canyons.

2. The very patchiness of the distribution in the Sonoran population leads the Service to believe that the Respiratory Disease Syndrome affecting other subpopulations will not likely reach the epidemic proportions that it has in locations like the Desert Tortoise Natural Area in California. Although a few instances of a respiratory disease have been documented in the Sonoran population and are of concern to the Service, it appears that respiratory disease is: (a) Usually present in tortoise populations to varying degrees, (b) has not shown any evidence of becoming pandemic, (c) has not been shown to be Respiratory Disease Syndrome, and (d) is currently being addressed by the Service and the Arizona Game and Fish Department, who will continue to gather and evaluate data. A report on the results of these studies will be available after two field seasons.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that the Mojave population of the desert tortoise should be classified as endangered. A species may be determined to be endangered or threatened due to one or more of the five factors described in section 4(a)(1). These factors and their application to the Mojave population of desert tortoise are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range

As indicated above, habitat is deteriorating and has been lost due to an accelerating rate of urban, energy, and mineral development, military activities, vehicle-oriented recreational activities, grazing, and land exchanges.

Changes in perennial vegetation, essentially the reduction in cover of small and large shrubs and perennial grasses, are believed to be the result of cattle and sheep grazing pressures. These changes have created openings and barren areas in desert landscape and have deteriorated the quality of habitat for the tortoise. Losses of plant cover may contribute to the excessive raven predation on small tortoises being recorded. Changes in annual vegetation have also affected food supplies for tortoises. Weedy plant species that have been introduced for grazing can germinate, flower, and fruit before the native plants. Native plant species are essential to meet the nutritional needs of the tortoise and are their favored forage. The exotic weedy species are outcompeting many native plant species (Berry 1988). Additional potential adverse impacts to the tortoise from cattle and sheep grazing include: damage to shrubs used for tortoise shelter, crushing of burrows and nests, and trampling of young tortoises. Cattle grazing has contributed to declines in many tortoise populations. The degree and nature of impacts from cattle grazing is dependent upon habitat, grazing history, seasons of use, stocking rates, and density of the tortoise population (Sievers et al. 1988).

The following discussions are summarized from Alden Sievers and the California Desert Tortoise Workgroup's 1988 Recommendations for Management of the Desert Tortoise in the California Desert, submitted to the Bureau of Land Management (BLM), Riverside, California, and to the California Department of Fish and Game, Long Beach, California (Sievers et al. 1988):

Vehicle free-play in tortoise habitat results in cumulative adverse impact to tortoise habitat. Impacts vary from minor habitat alteration and vehicle route proliferation to total denudation of extensive areas created by intensive vehicle play, parking, and camping. Concentrated vehicle play areas may eliminate all but the most hardy shrubs. Other impacts include soil compaction and erosion. Tortoises suffer from loss of forage, loss of vegetative cover, and loss of burrow sites and then become subject to increased mortality from crushing, collection, and vandalism.

Competitive off-highway vehicle racing events adversely impact tortoise habitat. They usually involve several hundred race participants and thousands of spectators. The camping and race start and finish areas receive intensive vehicle use and become devoid of vegetation. Tortoises are eliminated from these areas entirely due to the loss of food, cover, and burrow sites. Affected areas become enlarged with continued use.

Vehicle route proliferation has occurred in many areas and can result in a significant cumulative loss of habitat. Human access increases the incidence of tortoise mortality from collection, gunshot, and crushing by vehicles. Soil compaction results in loss of vegetation and increases in erosion.

Large surface disturbances (e.g., power plants, mining, agricultural developments, military activities, and urbanization) cause longterm, permanent loss of habitat. Both large and small developmental activities often induce further surface disturbing activities with resulting habitat loss and tortoise population reduction. Increased human activity results in increased vehicle kills, vandalism, and collecting of tortoises.

Land exchanges may result in habitat loss and increased fragmentation of populations. Even where tortoise habitat is exchanged by the Bureau of Land Management for other tortoise habitat, there is an increased likelihood of development, resulting in loss of habitat, on the new private holdings.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Desert tortoises have long been a popular pet in the Southwest. It is not currently known to what extent collecting has impacted wild populations. It is estimated that 100,000 desert tortoises exist in captivity. Many tortoises held in captivity, however, are known to exhibit signs of contagious Respiratory Disease Syndrome. The release of diseased captive tortoises is considered by the BLM to be the source of introduction of the currently identified Respiratory Disease Syndrome found in wild populations. The release of captive tortoises to the wild population following listing as Endangered could be considered to constitute harm to the wild population.

C. Disease of Predation

Predation of young tortoises by ravens is a growing threat to the species. Common raven populations in the southwestern deserts have increased significantly since the early 1940's, presumably in response to expanding human use of the desert. Sewage ponds, landfills, power lines, roads, and other uses have increased available foraging, roosting, and nesting opportunities for ravens. In recent years, raven predation

on juvenile desert tortoises has increased to a point where recruitment of young tortoises into the adult population has been significantly reduced or eliminated in certain localities. Ravens are highly adaptable as to their feeding patterns, and concentrate on easily available seasonal food sources such as juvenile tortoises, including live, healthy animals. In the Desert Tortoise Natural Area, a protected area of 21,320 acres in the western Mojave Desert, even though tortoise eggs are still being laid and hatched, as shown by the presence of very small tortoises, raven predation appears to have prevented the recruitment of the young into the adult population (BLM 1989).

The BLM's 1989 Environmental Assessment (BLM 1989) for the Selected Control of the Common Raven to Reduce Desert Tortoise Predation in the Mojave Desert, California, further summarizes the annual trend (percent annual change) and the change (percent) of raven numbers in the last 20 years for the following deserts:

In the Mojave Desert, raven populations have increased 15-fold between 1968 and 1988, at a rate of nearly 15 percent per year.

A new threat to certain desert tortoise populations has recently been identified. A fatal disease, currently referred to as Desert Tortoise Respiratory Disease Syndrome, is spreading and appears to target the mature, reproductively active segment of the population.

The disease has been known for some time in captive tortoises throughout the world (Shipes et al. 1980), although the exact cause, or etiological agent, has not been clearly identified. The disease is probably the result of multiple factors working in concert. It is known that the disease may be readily transmitted from an infected tortoise to a non-infected tortoise (Rosskopf 1988). A virus (herpes-like) has been observed by electron microscopic studies in other species of turtles with respiratory tract infections (Jacobson et al. 1986). A paramyxovirus is also considered as a primary pathogen capable of initiating the disease (Jacobson, personal communication, in Rosskopf 1988). Infected animals may not necessarily exhibit obvious signs of the disease.

Once the disease is initiated, bacteria may invade and become the primary pathological agent. *Pasturella testudinatus* was recently isolated from a series of sick tortoises collected for disease study from the Desert Tortoise Natural Area in California. Species of *Pasturella* Bacteria are commonly associated with disease syndromes initiated or enhanced by other predisposing factors, including poor nutrition, stress, and immune system compromise.

The disease appears to be spread via contact between infected and non-infected animals (Rosskopf 1988). Adult male tortoises may contact many females in a single breeding season and, thus, the occurrence of the disease in the adult breeding population would reinforce the conclusion that direct nose contact during courtship activities could spread the pathogen to susceptible tortoises. Once the disease is contracted, there appears to be little chance of full recovery and the affected individual eventually becomes debilitated and dies. Even individuals given extensive treatment in captivity usually succumb to the disease eventually. Furthermore, if an inidividual appears to overcome the disease, relapse may occur under stress conditions (Rosskopf 1988).

Although the transmittance of an infectious agent from one tortoise to another occurs by contact, the actual infection of the newly inoculated individual may be associated with other factors that increase its susceptibility. Some of the original information published about this disease suggested a nutritional and/or stress-related cause with a secondary bacterial infection of debilitated animals (Fowler 1977). The combination of an infectious agent along with lowered resistance is typical of these types of disease syndromes in many other animals.

Based on current knowledge of the incidence, morbidity, and the mortality rates, the disease appears to be escalating in surveyed populations in the western Mojave Desert. The disease was first recognized as a major problem in wild populations in the spring of 1988 (Fauna West Wildlife Consultants 1989). Signs of the disease were observed in up to 46 percent of adult tortoises examined during surveys of the Desert Tortoise Natural Area in the western Mojave Desert in southern California in the spring of 1988. In one portion of this range, the infection rate went from 9 percent in a 1988 survey to 52 percent of all tortoises in a 1989 survey. A loss of about 20 percent of the marked tortoise population with disease signs occurred in one year in this plot.

While not all populations surveyed have such high mortality rates, these figures demonstrate the potential impact the disease can have on any given area. Infection rates in multiple grid areas in the southern California study area range from 7 to 50 percent. The disease symptoms have also been observed in individual tortoises from a variety of populations (Berry 1989) including the Fremont Valley (50 percent infection rate), Saguaro National Monument in Arizona (2 of 12 radio tagged infected, and died), and Beaver Dam Slope, Utah-Arizona (10 to 20 percent infection rate with high mortality in radio tagged animals). Interviews of personnel at veterinary hospitals in the Las Vegas, Nevada area by Service personnel have revealed that most cases of Respiratory Disease Syndrome are found in captive tortoises, but that wild tortoises have been brought in with symptoms of respiratory disease. The potential exists for the Respiratory Disease Syndrome to reach epidemic proportions throughout the Mojave population. There appear to be no natural barriers that would prevent transfer of infectious agents from California subpopulations to Nevada, Utah, and Arizona subpopulations in the Mojave desert. In addition to the identified respiratory disease in the Beaver Dam Slope population, an apparent nutritional disease causing osteoporosis of the bones has been identified (Jarchow 1988).

D. The Inadequacy of Existing Regulatory Mechanisms

All four involved States have laws that provide varying levels of protection for the desert tortoise.

State of Nevada laws concerning fish, game, and watercraft, as amended in 1987, afford limited protection in the desert tortoise. Nevada Revised Statutes (NRS), Section 501.110.1(d) sets forth that reptiles must be classified as either protected or unprotected. NRS Section 501.110.2 states that protected wildlife may be further classified as either sensitive, threatened, or endangered. The Nevada Administrative Code (NAC), Section 503.080.1(a) classifies the desert tortoise as protected and rare outside the urban areas of Clark County (Las Vegas). NRS Section 503.597, states that it is unlawful, unless with written consent of the Nevada Department of Wildlife, to transport a desert tortoise from one portion to another portion of the State or across State lines.

The California Fish and Game Commission adopted a regulation change on June 22, 1989, to amend the California Code of Regulations, Section 670.5(b)(4) of Title 14, to add the desert tortoise as a State threatened species. Under the Fish and Game Code, Article 3, Section 2080 prohibits the import or export of endangered or threatened species. This section also indicates that no person shall take, possess, purchase, or sell within the State, any listed species, or any part or product thereof, except as otherwise provided in State

law or regulation. Violations of these provisions relating to endangered species may result in both fines (up to $5,000.) and/or imprisonment (up to one year).

The California Fish and Game Code, Article 4, Section 2090 requires that each State agency shall consult with the California Department of Fish and Game to ensure that any action authorized, funded, or carried out by that State lead agency is not likely to jeopardize the continued existence of any State listed species.

In Arizona, the collecting season has been closed on the desert tortoise since January 1, 1988, under Arizona Game and Fish Commission Order 43: Reptiles. Under Arizona Administrative Code, Title 12, Chapter 4, Article 319.3, the desert tortoise is considered "prohibited wildlife" and may not be imported, exported, possessed, transported, propagated, purchased, bartered, sold, leased, or offered for sale except as expressly authorized by State law.

In Utah, the status of the desert tortoise is considered by the State to be endangered (Utah Division of Wildlife Resources 1987). The desert tortoise is also considered a "prohibited reptile" under Utah Rule, Collection, Importation, Transportation and Subsequent Possession of Zoological Animals (R608–3). In Utah, the desert tortoise is prohibited from collection, importation, transportation, possession, sale, transfer, or release.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

Vandalism, including shooting and crushing of tortoises under vehicles, has been documented by the Bureau of Land Management (Bureau) and is considered a factor in reducing the number of tortoises in their natural habitat. Bureau studies on 11 permanent study plots showed 14.3 percent of the carcasses with evidence of gunshot. The highest incidence of gunshot is found in the western Mojave Desert. At one plot, the highest frequency of carcasses with evidence of gunshot was 28.9 percent (Sievers et al. 1988).

Status of Feral Tortoises and Tortoises Currently Held in Captivity

Feral desert tortoises, which have been released inside the native habitat of the desert tortoise, are classified endangered species in the area north and west of the Colorado River and are protected under the Act. Tortoises found released outside of the known Mojave population range will be considered as captive animals.

Under section 9(b)(1) of the Act, prohibitions applicable to the Mojave population will not apply to tortoises that were held in captivity or in a controlled environment on the date of the publication of this notice, provided, that such holding and any subsequent holding or use of the tortoise was not in the course of a commercial activity.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time a species is determined to be endangered or threatened. The Service finds that critical habitat for this population is not determinable.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with States, and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing.

Such increased recognition and an active recovery program would provide a means to ensure survival for the desert tortoise. Available funding would be used on research to determine the causes of and possible treatments for the disease currently infecting tortoise populations and to determine whether the disease can be passed on to hatchlings by infected females. Available funding would also be used for, but would not necessarily be limited to, the identification of and isolation of healthy populations, carrying out raven control to reduce loss of immature tortoises, and public education to discourage further releases of diseased captive tortoises.

The protection required of Federal agencies and the applicable prohibitions are discussed, in part, below:

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

Over 63 percent of occupied desert tortoise habitat is managed by the BLM. Other Federal Managers of tortoise habitat include the Department of Defense, National Park Service, Fish and Wildlife Service, and lands managed by Indian tribes. All current and proposed actions and plans for management of the habitat will require considerations for the protection of the tortoise, as required by the Act. Such activities may include, but may not be limited to, grazing, off-highway-vehicle use, mining, construction of developments and rights-of-way, and activities in tortoise habitat that kill tortoises and fragment their habitat.

The Act and its implementing regulations found at 50 CFR 17.21 set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take, import or export, ship in interstate commerce in the course of a commercial activity, or sell or offer for sale any desert tortoise in interstate or foreign commerce. It is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been illegally taken. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife under certain circumstances. Regulations governing such permits are codified at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities. In some instances, permits may be issued during a specified period of time to relieve undue economic hardship that would be suffered if such relief were not available.

All *Gopherus* tortoises, including the desert tortoise, were listed on July 1, 1975, as Appendix II species under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). The only exception within the genus is *G. flavomarginatus*, which was listed as an Appendix I species.

Emergency Determination

Under section 4(b)(7) of the Act and 50 CFR 424.20, the Secretary may

determine a species to be endangered or threatened by an emergency rule that shall cease 240 days following publication in the **Federal Register**. The reasons for taking this action with respect to the desert tortoise are discussed below. If at any time after this rule has been issued, the Secretary determines that substantial evidence does not exist to warrant such a rule, it shall be withdrawn.

As noted above, an emergency posing a significant risk to the well-being of the desert tortoise exists as a result of the outbreak and rampant spread of a contagious disease that is often, and may always be, fatal and for which no known cure currently exists. Even before the recent outbreak of a virulent respiratory disease, the desert tortoise was in serious peril for the many reasons already noted.

In 1985, when the Service found that the listing of the remaining populations of the desert tortoise as endangered was warranted, disease was not known to be a major factor affecting the species' survival. Today, however, a highly contagious and often fatal Respiratory Disease Syndrome is known to exist in tortoise populations in California, Utah, Arizona, and Nevada. Tortoises in some of these areas have experienced extraordinary population collapses within the very recent past and infection rates of surviving animals often exceed 50 percent. The outbreak of this disease syndrome, particularly when viewed against the background of the many other serious factors detrimentally affecting wild tortoise populations, poses a significant risk to the immediate well-being and survival of the species.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined by the National Environmental Policy Act of 1969, need not be prepared in connection with listing species under the Endangered Species Act of 1973, as amended.

References Cited

Berry, K.H. 1988. A brief outline of the effects of sheep grazing on desert tortoise. Paper presented at meeting of desert tortoise-sheep grazing technical review team, Mojave, CA, September 22, 1988. 7 pp.

Berry, K.H. 1989. Revised meeting notes for the May 4, 1989, meeting, Respiratory disease in desert tortoises at the Desert Tortoise Natural Area.

Fauna West Wildlife Consultants. 1989. Unpublished data. Boulder, Montana.

Fowler, M.A. 1977. Respiratory disease in desert tortoises. Annual Proceedings of the American Assoc. of Zoo Animal Veterinarians. pp. 79–99.

Jacobson, E.R., J.M. Gaskin, M. Roelke, E.C. Greinen, and J. Allen. 1986. Conjunctivitis, tracheitis, and pneumonia associated with herpes virus infection in green sea turtles. J. Am. Vet. Med. Assoc. 189:1020–1023.

Jarchow, J. 1988. Report on investigation of desert tortoise mortality on Beaver Dam Slope, Arizona and Utah (Abstract). 13th Annual Meeting and Symposium, Desert Tortoise Council, March 26–27, 1988.

Rosskopf, W.J. 1988. Protocol for treating diseased tortoises (respiratory disease) at the Desert Tortoise Natural Area. Prepared for the U.S. Bureau of Land Management, Riverside, CA. 22 pp.

Shipes, K.P., E.L. Biberstein, and M.E. Fowler. 1980. A *Pasteurella* sp. associated with respiratory disease in captive desert tortoises. J. Am. Vet. Med. Assoc. 177:804–807.

Sievers, A., J.B. Aardahl, K.H. Berry, B.L. Burge, L.D. Foreman, G.E. Monesko, and J.A. St. Amant. 1988. Recommendations for management of the desert tortoise in the California desert. Submitted to the U.S. Bureau of Land Management, Riverside, CA. 54 pp.

Spang, E.F., G.W. Lamb, F. Rowley, W.H. Radtkey, R.R. Olendorf, E.A. Dahlem, and S. Slone. 1988. Desert tortoise habitat management of the public lands: a rangewide plan. Bureau of Land Management, Riverside, CA. 23 pp.

Utah Division of Wildlife. 1987. Native Utah wildlife species of special concern. Salt Lake City.

U.S. Department of the Interior, Bureau of Land Management (BLM). 1989. Environmental Assessment for selected control of the common raven to reduce desert tortoise predation in the Mojave Desert, California. Riverside, CA. 33 pp.

Author

The primary author of this emergency rule is Miss Jackie Campbell, Division of Endangered Species and Habitat Conservation, Regional Office, U.S. Fish and Wildlife Service, 1002 NE Holladay Street, Portland, Oregon 97232–4181, (503) 231–6131 or FTS 429–6131.

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Regulations Promulgation

PART 17—[AMENDED]

Accordingly, until April 2, 1990, Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, is amended as set forth below:

1. The authority citation for Part 17 continues to read as follows:

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411; Pub. L. 100–478, 102 Stat. 2306; Pub. L. 100–653, 102 Stat. 3835 (16 U.S.C. 1531 *et seq.*), Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. Amend § 17.11(h) by revising the entry of the "Tortoise, desert * * *" under REPTILES to read as follows:

§ 17.11 Endangered and Threatened Wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
REPTILES •	•	•	•	•	•	•	
Tortoise, desert	*Gopherus (=Xerobates, =Scaptochelys) agassizii.*	U.S.A. (AZ, CA, NV, UT), Mexico.	Entire, except AZ south and east of Colorado R., Mexico, and where listed as threatened below.	E	357E	NA	NA
Do	do	do	Beaver Dam Slope, UT.	T	103, 357E	17.95(c)	NA
•	•	•	•	•	•		

Dated: August 2, 1989.

Susan Recce Lamson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 89-18459 Filed 8-3-89; 9:07 am]

BILLING CODE 4310-55-M

Reader Aids

Federal Register
Vol. 54, No. 149
Friday, August 4, 1989

INFORMATION AND ASSISTANCE

Federal Register

Index, finding aids & general information	523-5227
Public inspection desk	523-5215
Corrections to published documents	523-5237
Document drafting information	523-5237
Machine readable documents	523-5237

Code of Federal Regulations

Index, finding aids & general information	523-5227
Printing schedules	523-3419

Laws

Public Laws Update Service (numbers, dates, etc.)	523-6641
Additional information	523-5230

Presidential Documents

Executive orders and proclamations	523-5230
Public Papers of the Presidents	523-5230
Weekly Compilation of Presidential Documents	523-5230

The United States Government Manual

General information	523-5230

Other Services

Data base and machine readable specifications	523-3408
Guide to Record Retention Requirements	523-3187
Legal staff	523-4534
Library	523-5240
Privacy Act Compilation	523-3187
Public Laws Update Service (PLUS)	523-6641
TDD for the deaf	523-5229

FEDERAL REGISTER PAGES AND DATES, AUGUST

CFR PARTS AFFECTED DURING AUGUST

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
6002.....31794
6003.....31931
6004.....31933
6005.....32033
Executive Orders:
12685.....31796

7 CFR

29.....31797
58.....31646
910.....32035
945.....31798
1076.....31799
Proposed Rules:
911.....31843
929.....31844
967.....31845
993.....31846

8 CFR

Proposed Rules:
210.....31966

9 CFR

92.....31800

10 CFR

7.....31646

12 CFR

33.....31935
207.....31646
220.....31646
221.....31646
224.....31646
229.....32035
Proposed Rules:
226.....32089

14 CFR

39.....31649, 31651-31653, 31803-31809, 31935
71.....31654, 31936, 31937
75.....31937
73.....31,655
217.....31810
241.....31810
Proposed Rule:
39.....31693, 31694, 31847
71.....31696-31704, 31966
75.....31705, 31967

15 CFR

773.....31812

17 CFR

140.....31814
270.....31850, 32048
274.....32048
275.....32048
279.....32048
Proposed Rules:
230.....32226
239.....32226
240.....31850, 32229
249.....32226
260.....32226
269.....32226

18 CFR

271.....31938
Proposed rules:
37.....31706

20 CFR

Proposed Rules:
208.....32163
219.....31939
220.....32163
230.....32163
260.....32163
416.....31656
Proposed Rules:
327.....31968

21 CFR

133.....32050
Proposed Rules:
133.....32091
522.....31949
556.....31949
1308.....31815
1310.....31657
1313.....31657
1316.....31669
Proposed Rule:
1308.....31855

22 CFR

60.....31815
61.....31815
62.....31815
63.....31815
64.....31815
65.....31815

24 CFR

200.....32059
206.....32059
570.....31670
Proposed Rule:
Ch. I.....31856

26 CFR

1.....31672, 31816
602.....31672
Proposed Rule:
1.....31708

28 CFR

523.....32027

544.....32026

29 CFR

1600.....32061
1601.....32061
1610.....32061
1611.....32061
1620.....32061
1626.....32061
1691.....32061
1910.....31765, 31970
Proposed Rule:
1910.....31858

30 CFR

934.....32063
Proposed Rules:
250.....31768, 32316
917.....32093
925.....32094
931.....32095, 32096
946.....32097, 32098

31 CFR

500.....32064

32 CFR

706.....31825

33 CFR

100.....31826, 32066
117.....31827
Proposed Rules:
100.....31859, 31860

35 CFR

Proposed Rules:
133.....32099
135.....32099

36 CFR

1202.....32067
1250.....32067
1254.....32067

38 CFR

3.....31828, 31950
21.....31829, 31950–31952, 32070

39 CFR

111.....32071

40 CFR

52.....31953, 32072, 32073
180.....31674, 31830–31836
81.....32078
Proposed Rules
52.....32101
185.....31836
186.....31832–31836
261.....31675, 32320
302.....32320
704.....31680
Proposed Rules:
81.....31860, 31971, 31972
180.....31971, 31972

44 CFR

80.....31681
83.....31681
352.....31920

45 CFR

232.....32284
302.....32284
303.....32284
304.....32284
306.....32284
307.....32284
1632.....31954

47 CFR

73.....31685, 31686, 31838, 31960
80.....31839

48 CFR

203.....32161
208.....32161
209.....32161
212.....32161
213.....32161
214.....32161
215.....32161
216.....32161
217.....32161
219.....32161
222.....32161
223.....32161
226.....32161
242.....32161
245.....32161
252.....32161
253.....32161
273.....32161
801.....31961

49 CFR

571.....31687

50 CFR

17.....32326
226.....32085
227.....32085
661.....31841
663.....31688
675.....31842
Proposed Rules:
611.....31861
620.....31861
655.....31862
672.....31861
675.....31861

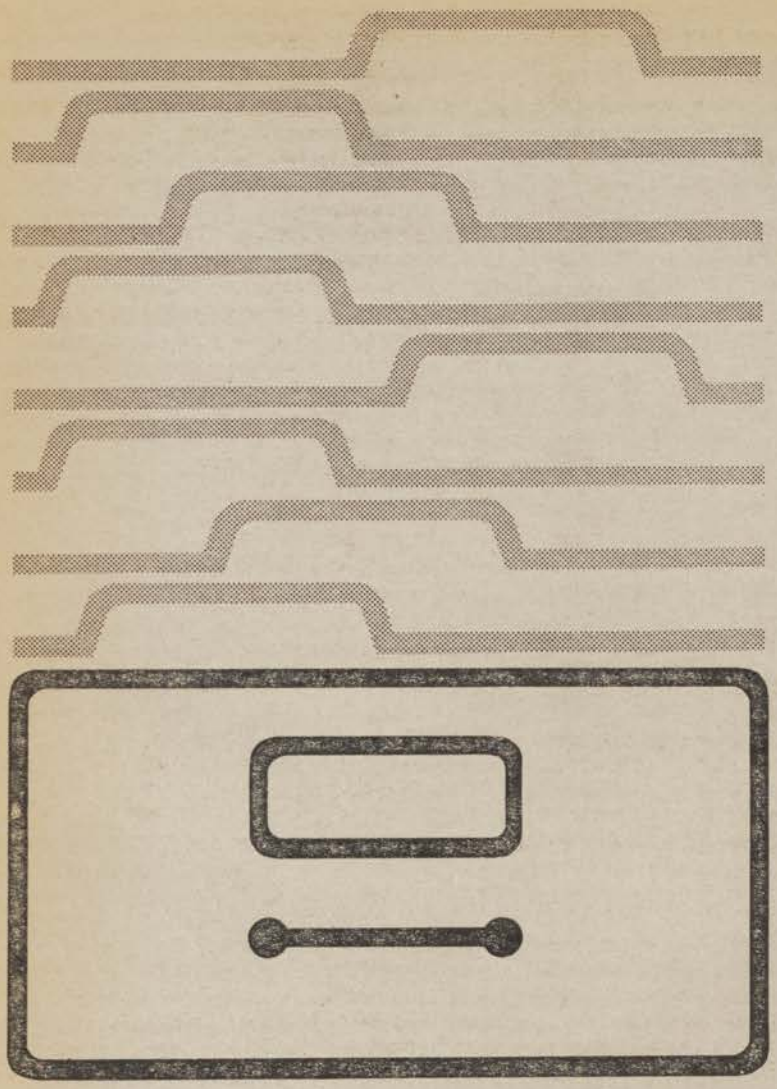
LIST OF PUBLIC LAWS

Last List: August 3, 1989

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 523-6641. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone 202-275-3030).

H.R. 310 / Pub. L. 101-68

To remove a restriction from a parcel of land in Roanoke Virginia, in order for that land to be conveyed to the state of Virginia for use as a veterans nursing home. (August 1, 1989; 103 Stat. 175; 2 pages) Price: $1.00



Guide to Record Retention Requirements

in the Code of Federal Regulations (CFR)

Revised January 1, 1989

The GUIDE to record retention requirements is a useful reference tool, compiled from agency regulations, designed to assist anyone with Federal record-keeping obligations.

The various abstracts in the GUIDE tell the user (1) what records must be kept, (2) who must keep them, and (3) how long they must be kept.

The GUIDE is formatted and numbered to parallel the CODE OF FEDERAL REGULATIONS (CFR) for uniformity of citation and easy reference to the source document.

Compiled by the Office of the Federal Register, National Archives and Records Administration.

Order from Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402–9325.

Superintendent of Documents Publication Order Form

Order Processing Code: ***6660**

Charge your order. It's easy! MasterCard VISA

To fax your orders and inquiries. 202-275-0019

☐ **YES,** please send me the following indicated publication:

_____copies of the 1989 GUIDE TO RECORD RETENTION REQUIREMENTS IN THE CFR
S/N 069–000–00020–7 at $12.00 each.

1. The total cost of my order is $_____ (International customers please add 25%). All prices include regular domestic postage and handling and are good through 1/90. After this date, please call Order and Information Desk at 202–783–3238 to verify prices.

Please Type or Print

2. _____
(Company or personal name)

_____
(Additional address/attention line)

_____
(Street address)

_____
(City, State, ZIP Code)

(_____)_____
(Daytime phone including area code)

3. Please choose method of payment:

☐ Check payable to the Superintendent of Documents

☐ GPO Deposit Account ☐☐☐☐☐☐☐–☐

☐ VISA or MasterCard Account

☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

_____ ***Thank you for your order!***
(Credit card expiration date)

_____
(Signature)

7/89

4. Mail To: Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325